



NOTICE OF MEETING

Elected Members

Please be advised that the next Ordinary Meeting of Council will be held in Council Chambers, Home Island on Wednesday, 25 March 2020 commencing at 4.00pm.

Andrea Selvey
Chief Executive Officer

DISCLAIMER

The advice and information contained herein is given by and to the Council without liability or responsibility for its accuracy. Before placing any reliance on this advice or information, a written inquiry should be made to the Council giving entire reasons for seeking the advice or information and how it is proposed to be used.

Please note this agenda contains recommendations which have not yet been adopted by Council. Members of the public should note that in any discussion regarding any planning or other application that any statement or intimation of approval made by any member or officer of the Shire during the course of any meeting is not intended to be and is not to be taken as notice of approval from the Shire. No action should be taken on any item discussed at a Council meeting prior to written advice on the resolution of the Council being received. Any plans or documents contained in this document may be subject to copyright law provisions (Copyright Act 1968, as amended) and the express permission of the copyright owner(s) should be sought prior to the reproduction.

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OUR VALUES

Service

Provide the best service we can.

We serve the community and each other.

Accountability

We take responsibility for our own actions.

We do what we say we will do.

Mistakes are an opportunity to learn.

Support

We support our team and our community.

Look for opportunities to help each other.

Respect

We respect and value others.

Our interactions are always respectful towards others.

Integrity

We will be honest and transparent with all our dealings.

Maintain confidentiality.

Trust each other.

Achievement

Being proactive and enabling the outcomes.

Be creative and think outside the square.

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1. OPENING/ANNOUNCEMENTS OF VISITORS

2. ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4. PUBLIC QUESTION TIME

In accordance with *Section 5.24(1) (a) of the Local Government Act 1995*, time is allocated for questions to be raised by members of the public, as follows:

(1) The minimum time to be allocated for the asking of and responding to questions raised by members of the public at ordinary meetings of councils and meetings referred to in regulation 5 is 15 minutes.

(2) Once all the questions raised by members of the public have been asked and responded to at a meeting referred to in sub regulation (1), nothing in these regulations prevents the unused part of the minimum question time period from being used for other matters.

Pursuant to *regulation 7(4) (a) of the Local Government (Administration) Regulations 1996*, questions from the public must relate to a matter affecting the local government.

In accordance with *Section 5.25 (1) (f) of the Local Government Act 1995* and the *Local Government (Administration) Regulations 1996 regulation 11(e)* a summary of each question raised by members of the public at the meeting and a summary of the response to the question will be included in the minutes of the meeting.

Where a question is taken on notice at the meeting, a summary of the response to the question will be included in the agenda for the following Council meeting.

5. LEAVE OF ABSENCE

The *Local Government Act 1995 (Section 2.25)* provides that a Council may, by resolution, grant leave of absence to a member for Ordinary Council Meetings. A member who is absent, without first obtaining leave of the Council, throughout three consecutive Ordinary meetings of the Council is disqualified from continuing his or her membership of the Council. Disqualification from membership of the Council for failure to attend Ordinary Meetings of the Council will be avoided so long as the Council grants leave prior to the member being absent. The leave cannot be granted retrospectively. An apology for non-attendance at a meeting is not an application for leave of absence.

5.1 LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Councillor	Date of Leave	Approved by Council
Cr Anthony	1 – 25 March 2020	26 February 2020

5.2 APPLICATION FOR LEAVE OF ABSENCE

6. PETITIONS/DEPUTATIONS/PRESENTATIONS

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING(S)

7.1 Ordinary Council Meeting held on 26 February 2020 -Attachment 7.1

OFFICER'S RECOMMENDATION

THAT COUNCIL BY SIMPLE MAJORITY, PURSUANT TO SECTIONS 5.22(2) AND 3.18 OF THE LOCAL GOVERNMENT ACT 1995, RESOLVES THAT THE MINUTES OF THE ORDINARY COUNCIL MEETING 26 FEBRUARY 2020, AS PRESENTED IN ATTACHMENT 7.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

8. ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS

9. DECLARATION OF INTERESTS

Councillors are to complete a Disclosure of Interest Form for each item they are required to disclose an interest in. The Form should be given to the Presiding Member before the meeting commences. After the meeting, the Form is to be provided to the Governance and Risk Coordinator for inclusion in the Disclosures Register.

10. REPORT AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.1.1 MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 29 FEBRUARY 2020

Report Information

Date: 20 March 2020
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1 Statement of Financial Activity with accompanying notes 29 February 2020

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input checked="" type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning</i>

		<i>applications, building licenses, applications for other permits / licenses.</i>
<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Report Purpose

To inform Council of the financial position of the Shire at 29 February 2020 in compliance with the provisions of Section 6.4 of the Local Government Act 1995 and Regulation 34 of the Local Government (Financial Management) Regulations 1996.

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Monthly Financial Statements for the period 1st July 2019 to 29 February 2020 are presented for consideration.

Comment

The Monthly Financial Report is prepared in accordance with the requirements of the Local Government Act 1995 and Local Government (Financial Management) Regulations.

A statement of Financial Activity with accompanying notes is attached for the period 1 July 2019 to 29 February 2020.

Policy and Legislative Implications

Regulation 34 of the Local Government (Financial Management) Regulations 1996 requires all Local Governments to prepare each month a Statement of Financial Activity reporting on the revenue and expenditure for the month in question.

Financial Management Regulation 34 also requires this statement to be accompanied by:-

- a. An explanation of the composition of the net current assets, less committal assets and restricted assets;
- b. An explanation of material variances; and
- c. Such supporting information that is relevant to the Local Government

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	That budget allocations are significantly exceeded.	Moderate (6)	Variances are monitored and highlighted to Council on a monthly basis for corrective action.
Health & Safety	N/A	N/A	N/A
Reputation	The monthly financial statements are open to public scrutiny.	Low (3)	Procedures in place to ensure all expenditure is justifiable.
Service Interruption	N/A	N/A	N/A
Compliance	The report is to be presented to Council within two months in order to comply with relevant legislation.	Low (3)	There are processes in place to ensure compliance with legislation.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	That the report is manipulated.	Low (3)	Interim and end of year audits.

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Conclusion

That the financial statements for the period 1 July 2019 to 29 February 2020 be received.

OFFICER'S RECOMMENDATION – ITEM NO 10.1.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY 2019 TO 29 FEBRUARY 2020.

10.1.2 SCHEDULED OF ACCOUNTS PAID FOR PERIOD 1 FEBRUARY 2020 TO 29 FEBRUARY 2020

Report Information

Date: February 2020
 Location: Not applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Senior Finance Officer
 Island: Shire Wide
 Attachments: Schedule of accounts paid

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Report Purpose

To inform Council of funds disbursed for the period 1st February 2020 -29th February 2020.

Relevant Documents

Available for viewing at the meeting

Nil

Background

A list of accounts paid between 1st February and 29th February 2020 is attached.

Comment

The schedule of accounts paid is submitted in accordance with regulation 13(1) of the Local Government (Financial Management) Regulations 1996.

Policy and Legislative Implications

Nil

Strategic Implications:

Nil

Conclusion

That Council receives the list stating all accounts paid for February 2020.

OFFICER'S RECOMMENDATION – ITEM NO

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE REPORT FROM THE CHIEF EXECUTIVE OFFICER ON THE EXERCISE OF DELEGATED AUTHORITY IN RELATION TO CREDITOR PAYMENTS FROM THE MUNICIPAL FUND FOR THE PERIOD 1 FEBRUARY TO 29 FEBRUARY 2020 INCLUSIVE OF CHEQUE 11579 TO 11583 AND EFT 7089 TO EFT 7145, VIVA ENERGY & DIRECT DEBIT SUPERANNUATION TOTALLING \$240,754.02.

10.2 LEASES

All leases for consideration in this agenda are for leases of Trust Land and therefore listed in a separate part of this meeting dealing with Land Trusts matters.

10.3 PLANNING/BUILDING

10.4 ADMINISTRATION

10.4.1 2019 COMPLIANCE AUDIT

Report Information

Date: 16 March 2020
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Location: N/A
 Disclosure of Interest: Nil
 Reporting Officer: Governance and Risk Coordinator
 Island: Shire Wide
 Attachments: 10.4.1 2019 Compliance Audit Return

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input checked="" type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Report Purpose

To refer the Shire's responses to the Department of Local Government 2019 Compliance Audit Return to Council for its consideration and adoption.

Relevant Documents

Minutes of the Audit Committee Meeting held on 18 February 2020.

Available for viewing at the meeting

2018 Compliance Audit Return

Background

In accordance with *Regulation 14 of the Local Government (Audit) Regulations 1996* the Shire must carry out an annual audit of statutory compliance for the period 1 January to 31 December, in the form of Department of Local Government Compliance Audit Return.

The 2019 Compliance Audit Return focuses on those areas considered high risk.

The Audit Committee is required to review the completed CAR and report the results to Council, prior to CAR adoption by Council and submission to the Department of Local Government, Sport and Cultural Industries by 31 March 2020.

Comment

The CAR is a reminder for local government officers to engage with elected members via the audit committee to provide Council with a plan and timeframe within which to address areas of concern or of non-compliance. Please see those items below.

1. Some changes to the audit process (i.e. audits carried out by the Office of the Auditor General) have resulted in a few changes to compliance reporting. For example, the reporting of significant adverse trends – see number 8 on page 5 of the CAR. The use of the term significant invokes a requirement for specific reporting to the Minister. The CAR highlighted this change and officers have acted within the required timeframe.
2. The other change is an amendment to the timeframes required for the Reg 5 Financial Management Review (FMR) – see number 1 on page 9. The interval required was changed from 4 yearly to 3 yearly in 2018. In the absence of any advice to the contrary Shire officers are working on the assumption that our Reg 5 FMR is due by June 2020 as per the original timeframe (i.e. 4-year interval) but that the next Reg 5 FMR will be due in three years.

Policy and Legislative Implications

The Shire must undertake a Compliance Audit for the Period 1 January to 31 December each year and submit to the Director General of the WA Department of Local Government and the Assistant Secretary of the Federal department of Regional development.

Regulation 14 of the Local Government (Audit) Regulations 1996 requires the Local Government's Audit Committee to review the Compliance Audit Report and report the results to the Council, prior to the Compliance Audit Report's adoption by Council and Submissions to the relevant departments.

Financial Implications

Nil

Strategic Implications

Nil

Conclusion

Further to the Audit and Governance Committee's endorsement, the completed 2019 Compliance Audit Return is attached for adoption by Council.

AUDIT COMMITTEE RECOMMENDATION – ITEM NO 10.4.1

- 1. THAT COUNCIL ADOPT THE ATTACHED DEPARTMENT OF LOCAL GOVERNMENT COMPLIANCE AUDIT RETURN FOR THE PERIOD 1 JANUARY 2019 TO 31 DECEMBER 2019.**
- 2. THAT COUNCIL AUTHORISE THE CERTIFICATION TO BE JOINTLY COMPLETED BY THE SHIRE PRESIDENT AND CHIEF EXECUTIVE OFFICER IN ACCORDANCE WITH *REGULATION 15 OF THE LOCAL GOVERNMENT (AUDIT) REGULATIONS 1996*.**

10.4.2 APPOINTMENT OF MANAGER WORKS AND SERVICES

Date: 20 March 2020
 Location: Not applicable
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.4.2 CONFIDENTIAL – Resume Mr Glen Brigg

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.</i>
<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Report Purpose

This report brings the recommendation for the appointment of Glen Brigg as Manager of Works and Services to Council.

Relevant Documents

Available for viewing at the meeting
 Nil

Background

On the 7 February 2020 the Shire advertised for a Manager Works and Services for a three-year performance-based contract through various means including the Local Government Job Directory, Seek, Atoll, Shire website and social media pages. Applications were open from the 7 February until the 24 February 2020. During this period in excess of 60 applications were received for the position.

A recruitment panel was formed consisting of the Shire’s Chief Executive Officer, the Deputy Chief Executive Officer and Mr Ben Symmons, Director of Asset Infrastructure Management. Ben has been providing Asset Management Mentoring to the Shire and has a sound understanding of the organisation.

Interviews were conducted in Perth.

Comment

Applicants who were interviewed were all were of a very high standard. Despite the high quality of the applicants, the panel was unanimous in its decision that Mr Glen Brigg was their preferred candidate. Mr Brigg is a highly experienced Works Manager who is able to work in the policy and strategy area whilst also having a good range and depth of hands on experience. Mr Brigg has a long history of working in Local Government in both Western Australia and in Queensland. Mr Brigg has previously held the roles of Manager of Works and Manager of Engineering at the Shires of Tambo, Lake Grace, Broomehill Tambellup, Cranbrook, Katanning & Dowerin. Mr Brigg has also held the role of Manager Road Performance Maintenance at the Cairns Regional Council. (See confidential attachment 10.4.2 for Mr Brigg’s resume).

Policy and Legislative Implications

Section 5.37(2) of the *Local Government Act 1995 (WA) (CKI)* relating to the appointment of Senior Employees. This recruitment process has been consistent with this legislation and Council’s Recruitment Policy.

Strategic Implications

Corporate Business Plan 2018/19 – 2021/22 Civic Leadership – Objective 1 Attract and retain quality staff and elected members.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A	N/A	The package offered is within budget parameters.

Health & Safety	In this current environment, COVID 19 will be a factor to consider in bringing the candidate from the mainland.	Low (4)	The candidate will be required to self-isolate for 14 days upon his arrival to Cocos.
Reputation	N/A	N/A	N/A
Service Interruption	Gap between outgoing Manager and incoming Manager	Moderate (6)	The current Manager has offered to stay to hand over; however, even if that is not possible, the Works Supervisor and other key staff will be able to ensure basic levels of continuity of service.
Compliance	Process not compliant	Low (4)	The process has been entirely compliant with legislation and Council policy.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	N/A	N/A	N/A

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority

Conclusion

The officer's recommendation based on the unanimous recommendation of the recruitment panel is for Council to endorse the decision to appointment Mr Glen Brigg as Manager Works and Services on a three-year contract.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.2

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *SECTION 5.37 (2) OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO:

- 1. ENDORSE THE APPOINTMENT OF MR GLEN BRIGG AS MANAGER WORKS AND SERVICES TO THE SHIRE OF COCOS (KEELING) ISLANDS ON A THREE-YEAR CONTRACT.**
- 2. OFFER A REMUNERATION FOR THE POSITION OF MANAGER WORKS AND SERVICES THAT CONSISTS OF A SALARY COMPONENT OF \$110,000 WITH AN OVERALL PACKAGE OF \$157,478 WHICH INCLUDES SUPERANNUATION AND OTHER BENEFITS AS DETAILED IN THE ADVERTISEMENT AND APPLICATION PACKAGE.**

10.5 MINUTES TO BE RECEIVED

11. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

12. MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL

13. MATTERS BEHIND CLOSED DOORS

13.1 PERFORMANCE APPRAISAL FOR CEO

Report Information

Date: 20 March 2020
 Location: N/A
 Applicant: N/A
 File Ref: [Click here to enter text.](#)
 Disclosure of Interest: N/A
 Reporting Officer: Cornerstone HR
 Island: Shire Wide
 Attachments: Confidential-CEO Performance Appraisal Report

Authority/Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Report Information

This report is confidential under Section 5.23 (2) of the Local Government Act 1995.

(2) *If a meeting is being held by a council or by a committee referred to in subsection (1)*
(b), the council or committee may close to members of the public the
meeting, or part of the meeting, if the meeting or the part of the
meeting deals with any of the following–

(a) a matter affecting an employee or employees.

14. MATTERS RELATING TO THE LAND TRUSTS



MATTERS RELATING TO THE LAND TRUST 1979 AND LAND TRUST 1984

The Australian Government transferred ownership of portions of land on the Cocos (Keeling) Islands, under two separate deeds, to the Territory's local government being the Cocos (Keeling) Islands Council. On 1 July 1992 the Territories Law Reform Act came into effect by which the Commonwealth Government applied Western Australian laws to the Cocos (Keeling) Islands. The Local Government (Transition) Ordinance 1992 established the Shire of the Cocos (Keeling) Islands by absorbing the Cocos (Keeling) Islands Council. By this arrangement, the body corporate called the Shire of Cocos (Keeling) Islands became the Trustee for both Land Trusts. Decisions relating to the Trust are made by Council as the decision-making arm of the body corporate.

The 1979 Deed: The 1979 Trust Deed applies to all of the land above the high-water mark on Home Island, except Lot 13, Lot 14 and Pulu Gangsa (Cemetery Island). The Deed states that the land is to be held 'upon trust for the benefit, advancement and wellbeing of the community formed by the Kampong residents.' No other terms were expressed in the Deed. 'Kampong residents' were described in the 1979 Trust Deed as 'the residents from time to time of the Kampong area'.

The 1984 Deed: The 1984 Trust Deed applies to all parcels of land situated and being above high-water mark within the Cocos (Keeling) Islands, including North Keeling Island, but not including parcels of land as described in the First Schedule of the 1984 Trust Deed.

This transferred land was to be held by the Council (and later, by its successor, the Shire) 'upon trust for the benefit, advancement and wellbeing of the Cocos (Keeling) Islanders resident in the Territory on land owned by the Council.'

14.2 TRUSTS LEASE

14.2.1 LEASE – PORTION OF LOT 102 DIRECTION ISLAND

Report Information

Date: 13 March 2020
 Location: Lot 102 Direction Island (Portion thereof)
 Applicant: Cocos Boronia Resort Pty Ltd
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Direction Island
 Attachments: 14.2.1 Stakeholder and Community Engagement Outcomes Report-
 March 2020
 14.2.1 Maps showing public access
 14.2.1 Formal Request
 14.2.1 Letter from CBR to Assistant Minister requesting over the
 water lease dated 16 November 2019
 14.2.1 Letter from CBR to the Shire endorsing Shire's proposal to
 manage over the water lease dated 9 March 2020
 14.2.1 Confidential - Valuation;
 14.2.1 Confidential - QC advise
 14.2.1 Confidential – Six public submissions received in January
 2020
 14.2.1 Confidential – Draft Lease
 14.2.1 Business Case

Authority / Discretion

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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>
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Report Purpose

This report formally brings the request from Cocos Boronia Resort Pty Ltd for the lease of Part of Lot 102 Direction Island to develop a Luxury Resort along with the public submissions on intent to the dispose (by lease) of the property before Council. Note that in this matter, Council is acting in its capacity as Trustee of the 1984 Land Trust.

Relevant Documents

Available for viewing at the meeting

Concept plans

Background

At the Ordinary Meeting of Council on 24 January 2019, Council resolved to:

1. *IMPLEMENT THE COMMUNITY AND STAKEHOLDER ENGAGEMENT STRATEGY AS PER ATTACHMENT 10.2.2 TO SEEK COMMUNITY AND STAKEHOLDER VIEWS ON THE REQUEST FROM CHRIS BLAKEMAN OF COCOS BORONIA RESORT PTY LTD THAT COUNCIL COMMITS TO NEGOTIATING EXCLUSIVELY WITH COCOS BORONIA RESORT PTY LTD IN GOOD FAITH, SUBJECT TO STATUTORY PROCESSES, FOR LEASING LAND ON DIRECTION ISLAND TO DEVELOP A RESORT;*
2. *CONSIDER THE RECOMMENDATIONS FROM THE COMMUNITY AND STAKEHOLDER ENGAGEMENT AND ANY PUBLIC SUBMISSIONS AT AN ORDINARY MEETING OF COUNCIL IN MAKING A DETERMINATION ON THE REQUEST FROM COCOS BORONIA RESORT PTY LTD; AND*
3. *ADVISE THE PROPONENT THAT ANY DECISION TO PROGRESS WITH A LEASE WOULD NEED TO ADHERE TO THE STATUTORY PROCESSES AS REQUIRED BY SECTION 3.58 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) AND ASSOCIATED REGULATIONS.*

This resolution of Council was in response to a request from Mr Blakeman in November 2018 for a level of assurance from Council that they would be willing to consider leasing land on Direction Island to Cocos Boronia Resort Pty Ltd (CBR) for the purpose of developing a resort. The specific request from Mr Blakeman was that Council would deal exclusively with CBR as a proponent for the potential to lease a parcel of land on Direction Island.

Following the Community and Stakeholder engagement process at the Ordinary meeting of Council on the 22 May 2019, Council resolved to:

1. *RECEIVE THE STAKEHOLDER AND COMMUNITY ENGAGEMENT OUTCOMES REPORT, APRIL 2019 AS PER ATTACHMENT 10.2.2 THAT PROVIDES INFORMATION ON COMMUNITY AND STAKEHOLDER VIEWS ON THE REQUEST FROM CHRIS BLAKEMAN OF COCOS BORONIA RESORT PTY LTD THAT COUNCIL COMMITS TO NEGOTIATING EXCLUSIVELY WITH COCOS BORONIA RESORT PTY LTD IN GOOD FAITH, SUBJECT TO*

STATUTORY PROCESSES, FOR LEASING LAND ON DIRECTION ISLAND TO DEVELOP A RESORT;

2. *ACKNOWLEDGE THE PARTICIPANTS FOR THEIR INPUT;*
3. *INVITE COCOS BORONIA RESORT PTY LTD TO ENTER INTO NEGOTIATIONS REGARDING A POTENTIAL LEASE FOR A RESORT ON DIRECTION ISLAND AND CONSIDER THE RESULTS OF NEGOTIATIONS AT AN ORDINARY MEETING OF COUNCIL AS SOON AS POSSIBLE.*

In summary, the stakeholder and community engagement process of March/April 2019 resulted in:

Public Submissions - a total of 18 public submissions were received, 5 were in support, 10 were against, 1 was in support of some level of development but of a lesser scale than the current proposal, and 2 made observations rather than stating a position.

Community Reference Group (CRG) - of the 23 participants, 20 supported the proposal in some form while 3 did not support the current proposal. Of the 20 who supported the proposal in some form, 12 recommended that Council support the CBR proposal, with conditions, while 8 felt that Council should not deal exclusively with CBR.

Of those 12 who supported the current proposal, the conditions they recommended Council consider were:

- Size and scale – 5 felt it should be smaller while 7 recommended that 60 rooms was acceptable.
- Local employment – an overwhelming condition recommended by the CRG was a commitment to local employment and up-skilling of local people.
- Halal section – the majority of the CRG felt that any resort development should include a Halal section. Associated conditions included the requirement for a social impact study and cultural awareness officer.
- Environment – environmental studies were an important consideration.
- Flights and freight – a condition that the resort comes with its own flight and freight services was another recurring theme.

The 3 people who voted against the proposal gave the scale of the proposal as their primary concern.

In June 2019 CBR entered into a negotiation with the Shire, with all negotiations informed and underpinned by the feedback from the Community Reference Group and Councillors.

Valuation and Lease Fee

An independent valuation received in October 2019 proposed an annual lease fee of \$225,000. This valuation was forwarded to CBR and the following has been negotiated:

Pre-construction:

- \$100,000 once-off payment made up-front.
- Pre-construction is defined as the period from the date the lease is signed until the date the Shire issues a Building Permit. Limit for this stage is 18 months. Should the pre-construction period exceed 18

months a \$5,000 per month fee will be charged until the pre-construction period is finalised.

- Plus Council Rates as determined by the Valuer-General paid to the Shire and any other applicable taxes.

Construction:

- \$10,000 per month. This stage is approx. 30 months as per the preliminary timeline provided by CBR.
- Plus Council Rates as determined by the Valuer-General paid to the Shire and any other applicable taxes.

Post-construction:

- \$18,750 per month, resulting in an annual payment of \$225,000, paid as ground rent/lease fee.
- A per guest / per night levy once occupancy reaches a target level to go into a community program fund.
- Plus Council Rates as determined by the Valuer-General paid to the Shire and any other applicable taxes.

Should Council resolve to proceed with the lease CBR is proposing to pay a one-off fee to the SoCKI of \$100,000 during the due diligence stage and have agreed to a special condition in the lease stating that if the due diligence takes longer than 18 months to complete that a monthly lease fee of \$5,000 per month will be incurred until all due diligence is submitted. CBR recognises that the \$100,000 will not be returned if the proposal does not proceed past the due diligence phase. It is anticipated that the upfront payment will cover the cost to the SoCKI to engage the appointed independent consultant to evaluate the due diligence.

As Commonwealth sanction for the land lease has not been received by the Shire and that the over-the water area has not been considered by the Commonwealth, the officer's recommendation allows for a maximum 9 month period to finalise negotiations before the lease is executed. Further detail on current status of Commonwealth sanction and the over-the-water lease is covered later in this agenda item.

It is the position of the administration that the proposed payment structure is fair and reasonable to all parties.

Lease Term

CBR requested a lease term of 50 years + 20 years + 20 years however negotiations have resulted in a term of 40 years + 20 years + 20 years being recommended to Council as this is consistent with the Expression of Interest that was facilitated by the Commonwealth in 2004 through the then Department of Transport and Regional Development which invited expressions of interest for a tourism resort development (albeit on a different parcel of Trust Land) under the same Trust Deed.

Based on the negotiations, on the 18 November 2019 the Shire received a formal request from CBR for a long-term lease at the Direction Island site (see attachment 10.2.1-Formal Request) and at the Ordinary Meeting of Council on 4 December 2019, Council considered the request and resolved as follows:

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES TO:

1. GIVE LOCAL PUBLIC NOTICE AND INVITE SUBMISSIONS ON THE INTENT TO DISPOSE (BY LEASE) OF A PORTION OF LOT 102 DIRECTION ISLAND GIVING A TOTAL LEASE AREA OF 18.01 HECTARES TO COCOS BORONIA RESORT FOR THE PURPOSE OF DEVELOPING A LUXURY RESORT AS PER THE FOLLOWING LEASE CONDITIONS:
 - a) LEASE PAYMENTS AS PER THE FOLLOWING SCHEDULE:
 - i. \$100,000 ONCE-OFF UPFRONT PAYMENT DURING THE PRE-CONSTRUCTION PHASE. PRE- CONSTRUCTION IS DEFINED AS THE PERIOD FROM THE DATE THE LEASE IS EXECUTED UNTIL THE DATE THE SHIRE ISSUES A BUILDING PERMIT UP TO A MAXIMUM OF 18 MONTHS AFTER WHICH A \$5,000 MONTHLY FEE WILL BE ALSO PAYABLE;
 - ii. \$10,000 PER MONTH DURING THE CONSTRUCTION PERIOD
 - iii. \$225,000 PER ANNUM LEASE FEE POST CONSTRUCTION AS DETERMINED BY THE INDEPENDENT PROFESSIONAL VALUATION BY OPTEON AND SUBJECT TO ANNUAL CPI OR MARKET REVIEW;
 - b) LEASE TERM OF 40 YEARS PLUS 20 YEARS PLUS 20 YEARS;
 - c) THE LEASE APPLICATION IS MADE BY COCOS BORONIA RESORT PTY LTD, A WHOLLY OWNED SUBSIDIARY OF INDIAN OCEAN LEISURE PTY LTD.
2. RECOGNISE THAT SANCTION FROM THE COMMONWEALTH WILL BE REQUIRED BEFORE ANY LEASE CAN BE EXECUTED.
3. CONSIDER THE REPORT ON THE RESULTS OF STAKEHOLDER AND COMMUNITY CONSULTATION AND ALL PUBLIC SUBMISSIONS AT AN ORDINARY MEETING OF COUNCIL AS SOON AS POSSIBLE TO DETERMINE WHETHER TO EXECUTE A LEASE WITH COCOS BORONIA RESORT PTY LTD.

THE MOTION WAS PUT AND DECLARED CARRIED (7/0)

(NB: The lease area referred to in the above resolution refers to a lease area of 18.01ha. The lease area defined in the updated maps shows a lease area of 16.116ha. This is a result of more accurate mapping of the lease area.)

Comment

Following the Council resolution of 4 December 2019, the Shire advertised for public submissions in the Atoll on 12 December 2019 and via the Shire website and social media. CBR held public information sessions on Home Island and West Island to ensure the community had an opportunity to seek further detailed information about the proposal to inform their submissions. 4 attended the Home Island session on 5 December 2019 and 15 people attended the West Island session on 4 December 2019.

The Shire also wrote to all members of the Community Reference Group and to all individuals who made a submission in March / April 2019 to advise of current status and invite submissions.

Public submissions were open from 12 December 2019 until 15 January 2020. At the close of submissions six written submissions had been received. Of the six submissions received, one “on and off” resident was against; two residents were in favour; one resident asked questions regarding the land tenure of Direction Island without stating an opinion; one ratepayer/seasonal resident was against; one non-resident was against.

A summary table is included in the Community and Stakeholder Engagement Outcomes Report at page 38 (See attachment 14.2.1 Direction Island Resort Proposal Community and Stakeholder Engagement Outcomes Report March 2019 to March 2020).

Business Case for Major Land Transaction

Given the complex legal environment of the Cocos (Keeling) Islands Land Trusts and the Cocos (Keeling) Islands in general, legal advice about whether the Council was required to prepare a Business Plan in accordance with section 3.59 of the *Local Government Act (WA) (CKI) 1995* for the project was not clear. However, officers believed it was prudent do so for a land transaction of this size. Accordingly, a Business Case was prepared and was advertised for public submissions in the Atoll on 24 January 2020.

The Business Case (see attachment 14.2.1 Business Plan CBR JANUARY 2020) outlines the:

- expected impact on the Land Trust finances;
- expected benefit, advancement and wellbeing of Cocos Islanders residing on land owned by the former Cocos (Keeling) Islands Council;
- ability of the Shire to manage the undertaking and performance of a major land transaction.

This Business Case provides details of the project venture, land ownership and benefits each party may become entitled to as a result of this proposed development.

This Business Case posits that this project has the potential to unlock a highly valuable and well-located land asset and balance complex legal and land administration processes and local economic conditions. The Business Case offers a sound basis to progress this long-term land dealing that enables the best possible economic and social development outcomes in accordance with the Trust Deed 1984.

This Business Case concludes that the Shire has the capability and capacity to manage the project. It is expected that the project will stimulate local business activity, particularly across the growing local tourism and allied service industries in a way that Advances our Islands and progresses the purpose of the 1984 Land Trust, being the benefit, advancement and wellbeing of Cocos Islanders residing on land owned by the former Cocos (Keeling) Islands Council.

Public submissions on the Business Case were invited from 24 January 2020 until 11th of March 2020. No submissions were received.

Commonwealth Sanction and Over-Water Lease

The Shire commenced with informal discussions with the (then) Department of Infrastructure, Transport, Cities and Regional Development (the Department) regarding Commonwealth sanction for this lease on 17 September 2019 with several conversations regarding this matter, including a visit to Direction Island by the Assistant Minister and Executive staff from the Department. More formal requests have included an official Ministerial Briefing to the Assistant Minister dated 22 November 2019 and a visit by the Shire President and CEO to Canberra on 27 February 2020 to meet with the Assistant Minister. At this meeting the Shire President was advised that the Shire would be provided with an update on Commonwealth sanction by mid-March. The Shire President sent a follow-up thank you letter reiterating the urgency for a decision or update on the Commonwealth sanction. To date no response has been received.

CBR had been in informal discussions with the Department regarding leasing an area of the lagoon for the over-the-water component of the development. On 16 November 2019, those discussions were formalised in the form of correspondence from CBR to the Assistant Minister. In November 2019, the Shire's solicitor suggested that it may be feasible and more streamlined for the Commonwealth to lease the water area to the Shire and for the Shire to sub-lease the water area to CBR to manage as one lease. This concept was presented to the Assistant Minister in the briefing dated 22 November 2019. At the 27 February 2020 meeting between the Shire President and the Assistant Minister, the matter of the water area lease was raised, and the Assistant Minister advised that the water area lease would also need to be reviewed by the Department of Finance. In March 2020 CBR advised that they had not had any response to their request to lease the water area and that they were supportive of the water area being leased to the Shire for the Shire to sub-lease to CBR. (See attachment 14.2.1 Cocos Council Over Water Lease Takeover). Therefore, the officer's recommendation includes that the Shire formally seeks approval from the Commonwealth to grant the Shire the lease of the water area of 7.110ha. The recommendation also provides for a maximum 9 period for CBR and the Shire to secure that approval before executing the lease.

Legal and Peer Advice

Given the significance of this proposal, the complex legal context with the Trust Deed and the IOTs and the potential risks involved, it was critical to secure robust legal and peer advice. This current advice has relied on previous legal advice whereby the Shire has, on three separate occasions, received Queens Council (QC) advice all of which notes that a lease of a particular term would not be inconsistent with the Trust purposes and that there may be cases where, in order to advance the Trust purpose, a long term lease is necessary and appropriate to give effect to the purpose. QC Colvin's advice (see confidential attachment 10.2.1-Colvin's QC advice) stated that an assessment should be made on a case by case basis having regard to the consequences of the lease and the extent to which the proposal lease advantages the community. Obviously the longer the lease term, the more significant the required advantage to the community. The Shire is of the view that the investment and benefits to the community from a proposal of this size and scale has the potential to provide unprecedented economic development and further the purpose of the Trust.

The Shire is fortunate to have a relationship with other Local Governments in Western Australia who undertake major land transactions frequently. These include the Shire of Shire of Cocos (Keeling) Islands

Dandaragan and the City of Busselton. The pro-bono specialist advice from senior officers in both these local governments proved invaluable and the Shire of Cocos (Keeling) Islands acknowledges that support.

The Shire also engaged the services of a Solicitor and Barrister with a sound understanding of the Land Trusts who drafted the lease. This draft was reviewed by Shire officers and an updated draft document was sent to a legal practice in Perth for peer review by their Principal and a Senior Solicitor, both of whom have many years of experience in negotiating commercial leases for local governments in Western Australia.

The Hon. Nola Marino MP, Assistant Minister for Regional Development and Territories, visited Direction Island in September 2019 and took a keen interest in the proposal and in ensuring the best outcomes for the community. The Assistant Minister offered support from Departmental staff and therefore the updated draft lease was sent to senior officers in the Department for review. The draft lease was workshopped with all Trustee members and is included as a confidential attachment to this agenda item. (see confidential attachment 14.2.1 19-0007 Deed of Lease Direction Island).

The lease development process was as follows:

- Draft lease from Solicitor and Barrister specialising in the Land Trusts;
- Internal staff review and refinement;
- Peer Review - City of Busselton and Shire of Dandaragan;
- Peer Review - Perth legal firm;
- Peer Review - Department of Infrastructure, Transport, Cities and Regional Development;
- Trustee member review and workshop;

It should also be noted that Approval from WAPC will be required once the lease is finalised – adding a further layer of independent expert review.

Based on the above community input, the legal and peer advice and officer's assessment of the very low risk to the Trustee, to the Shire and to the community, the recommendation by the officer is to execute the lease as per the conditions outlined in this report.

Policy and Legislative Implications

1984 Trust Deed

Section 3.58 of the Local Government Act 1995 (WA)

Trustees Act 1962 (WA) (CKI)

The process has met all statutory requirements (and exceeded them for community engagement) for disposal of property as per the *Local Government Act 1995 (WA) (CKI)*. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the Land Trust as the Land (Lot 102) is held in Trust; however the process as outlined in this report applies all requirements of the *Local Government Act 1995 (WA) (CKI)* to provide transparency and as a best practice process. Council, in making any decision in relation to the Trust, must give due consideration of the purpose of the Trust that is "for the benefit, advancement and

wellbeing of the Cocos Islanders resident in the Territory” and ensure their decision-making is guided by this objective. Council, acting in its capacity as Trustee, has the authority to dispose of Land held in Trust to the Lessee but also requires Commonwealth sanction of that decision (see above regarding the current status of Commonwealth sanction).

Financial Implications

Land Trust:

The Land Trust would receive \$225,000 per annum once the resort is constructed and \$10,000 per month while it is under construction. During the pre-construction period the trust would receive a \$100,000 up front payment while in the due diligence phase of the project capped at 18 months with \$5,000 / month payments thereafter if due diligence extends past this period.

Shire:

The Shire would raise rates based on a valuation from the Valuer General from the time the lease is executed. The Shire would potentially also receive additional revenue for community programs in years that a target occupancy threshold is met.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2016 Outcome 1.1 Encourage economic stability for the Islands.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	That the project does not proceed if Commonwealth Sanction and/or the water area lease is not approved in a timely manner, thus losing this revenue for the Trust and the Shire.	Moderate (6)	The Shire continues to proactively engage with the Assistant Minister to progress these items.
Financial	Costs of repatriation of the land either in mid construction or during operations exceed the security amounts detailed in the lease.	Moderate (6)	Amounts for repatriation have been carefully considered and there is a high level of confidence they will be sufficient.
Health & Safety	N/A	N/A	N/A
Reputation	Should the project not proceed or fail, the Shire’s reputation could be damaged.	Low (3)	Clear communication that the project is not guaranteed, and that the due diligence is a

			legitimate step to assess the project's viability.
Service Interruption	N/A	N/A	N/A
Compliance	Any deviation from legislation will expose the Shire and the project.	Low (3)	Process to-date has been compliant and there are processes in place to ensure compliance with legislation.
Property	N/A	N/A	N/A
Environment	The project has a negative impact on the environment.	Low (4)	The project will require full Environmental assessments and approvals before proceeding.
Fraud	N/A	N/A	N/A

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority

Conclusion

The officer's recommendation supports progressing with the disposal (by lease) of a portion of Lot 102 Direction Island to CBR. The recommendation has been made on the basis that the project offers significant social and economic benefits, progresses the objectives of the Trusts for the community, carries little risk to the Trustee, the Shire and the community, and provides a financial return on otherwise under-utilised land.

OFFICER'S RECOMMENDATION - ITEM NO 14.2.1

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 LAND TRUST BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES TO:

- 1. RECEIVE THE PUBLIC SUBMISSIONS LODGED IN RESPONSE TO STATUTORY ADVERTISING OF THE INTENT TO DISPOSE (BY LEASE) OF A PORTION OF LOT 102 DIRECTION ISLAND;**

2. NOTE THAT NO SUBMISSIONS WERE RECEIVED IN RESPONSE TO THE ADVERTISED BUSINESS CASE;
3. DISPOSE (BY LEASE) OF A PORTION OF LOT 102 DIRECTION ISLAND GIVING A TOTAL LEASE AREA OF 16.116 HECTARES TO COCOS BORONIA RESORT FOR THE PURPOSE OF DEVELOPING A LUXURY ECO-RESORT AS PER THE FOLLOWING LEASE CONDITIONS:
 - A. LEASE PAYMENTS AS PER THE FOLLOWING SCHEDULE:
 - iv. \$100,000 ONCE-OFF UPFRONT PAYMENT AT THE COMMENCEMENT OF THE PRE-CONSTRUCTION PHASE. PRE-CONSTRUCTION IS DEFINED AS THE PERIOD FROM THE DATE THE LEASE IS EXECUTED UNTIL THE DATE THE SHIRE ISSUES A BUILDING PERMIT UP TO A MAXIMUM OF 18 MONTHS AFTER WHICH A \$5,000 MONTHLY FEE WILL BE ALSO PAYABLE;
 - v. \$10,000 PER MONTH DURING THE CONSTRUCTION PERIOD;
 - vi. \$225,000 PER ANNUM LEASE FEE POST CONSTRUCTION AS DETERMINED BY THE INDEPENDENT PROFESSIONAL VALUATION BY OPTEON AND SUBJECT TO ANNUAL CPI OR MARKET REVIEW;
 - B. LEASE TERM OF 40 YEARS PLUS 20 YEARS PLUS 20 YEARS;
 - C. THE LEASE APPLICATION IS MADE BY COCOS BORONIA RESORT PTY LTD, A WHOLLY OWNED SUBSIDIARY OF INDIAN OCEAN LEISURE PTY LTD;
 - D. NOTE THAT COMMONWEALTH SANCTION WILL BE REQUIRED PRIOR TO THE LEASE BEING EXECUTED.
4. SUBJECT TO POINT 'D' ABOVE (BEING THE RECEIPT OF COMMONWEALTH SANCTION FOR THE LEASE) EXECUTE THE LEASE WITHIN 9 MONTHS FROM THE DATE OF THIS COUNCIL RESOLUTION OR WITHIN TWO WEEKS OF THE OVER THE WATER LEASE BEING SECURED, WHICHEVER IS THE SOONER.
5. FORMALLY APPROACH THE ASSISTANT MINISTER OF THE TERRITORIES TO PROVIDE THE SHIRE WITH A LEASE FOR THE OVER THE WATER SECTION OF 7.110 HECTARES FOR THE SHIRE TO SUB-LEASE TO COCOS BORONIA RESORT PTY LTD ALLOWING THE SHIRE TO MANAGE THE WHOLE PROPOSAL.

15. CLOSURE