



NOTICE OF MEETING

Elected Members

Please be advised that the next Ordinary Meeting of Council will be held in CRC Meeting Room, West Island on Wednesday, 26 August 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.

PO Box 1094, Home Island, Cocos (Keeling) Islands
INDIAN OCEAN 6799
Tel: (08) 9162 6649 Fax:(08) 9162 6668
Email: info@cocos.wa.gov.au

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.

TABLE OF CONTENTS

1	OPENING/ANNOUNCEMENTS OF VISITORS
2	ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)
3	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE
4	PUBLIC QUESTION TIME
5	LEAVE OF ABSENCE
5.1	LEAVE OF ABSENCE (PREVIOUSLY APPROVED)
5.2	APPLICATION FOR LEAVE OF ABSENCE
6	PETITIONS/DEPUTATIONS/PRESENTATIONS
7	CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS
7.1	ORDINARY COUNCIL MEETING HELD ON 24 JUNE 2020
8	ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS
9	DECLARATION OF INTERESTS
10	REPORT AND RECOMMENDATIONS
REPORTS OF OFFICERS	
10.	FINANCE
10.1.1	MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 30 JUNE 2020
10.1.2	SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 JULY 2020 TO 31 JULY 2020
10.2.	LEASE
ALL MATTERS RELATING TO LEASES FOR CONSIDERATION IN THIS AGENDA RELATE TO LEASES OF TRUST LAND AND THEREFORE ARE LISTED IN A SEPARATE PART OF THIS MEETING DEALING WITH LAND TRUSTS MATTERS.	
10.3	PLANNING/BUILDING
10.3.1	DEVELOPMENT APPLICATION FOR THE SHORT STAY ACCOMMODATION USE ('GUEST HOUSE') LOT 164 AIRFORCE ROAD, WEST ISLAND
10.4	ADMINISTRATION
10.4.1	ATTENDANCE AT EVENTS POLICY
10.4.2	PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW – FINAL ADOPTION
10.4.3	RATES INTEREST RATE & INSTALMENT DATES
10.4.4	RFT 2020 21 DESIGN AND SUPPLY OF ONE KIT HOME FOR A RESIDENTIAL PROPERTY
10.4.5	PURCHASING POLICY
10.5	MINUTES TO BE RECEIVED
NIL	

11	ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN
12	MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL
13	MATTERS BEHIND CLOSED DOORS
NIL	
14.	MATTERS RELATING TO THE LAND TRUSTS
14.1	TRUSTS ADMINISTRATION
NIL	
14.2	TRUSTS LEASE
14.2.1	APPLICATION TO RENEW LEASE FOR MARINE CENTRE – LINX-CKI PORT
14.2.2	APPLICATION TO RENEW LEASE FOR CRANE SHED – LINX-CKI PORT
14.2.3	APPLICATION TO RELINQUISH LEASE FOR LOTS 219 AND 220 AND TO LEASE PART LOT 220 – COCOS ARTISANS COLLECTIVE
14.2.4	APPLICATION TO RENEW LEASE FOR TIMBER AND PAINT STORE – COCOS ISLANDS COOPERATIVE SOCIETY
14.2.5	APPLICATION TO RENEW LEASE FOR GAS BOTTLE STORAGE – COCOS ISLANDS COOPERATIVE SOCIETY
14.2.6	WALGA AGM AND VOTING DELEGATES
14.3	TRUSTS FINANCE
NIL	
15.	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING (LATE ITEM)
NIL	
16.	CLOSURE

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	21 May 2020 – 30 August 2020	20 May 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 5 August 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 5 AUGUST 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 30 JUNE 2020

Report Information

Date: 13/08/2020
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1.1 Statement of Financial Activity with accompanying notes 30 June 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 30 June 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 30 June 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 30 June 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

Conclusion

That the financial statements for the period 1 July 2019 to 30 June 2020 be received.

OFFICER 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 1ST JULY 2019 TO 30TH JUNE 2020.

10.1.2 SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 JULY 2020 TO 31 JULY 2020

Report Information

Date: 14/08/2020
 Location: Not applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Senior Finance Officer
 Island: Shire Wide
 Attachments: 10.1.2 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>
<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 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 funds disbursed for the period 1 July 2020 - 31 July 2020.

Relevant Documents

Available for viewing at the meeting

Nil

Background

A list of accounts paid between 1 July 2020 and 31 July 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 July 2020.

OFFICER'S RECOMMENDATION – ITEM NO 10.1.2

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 JULY 2020 TO 31 JULY 2020 INCLUSIVE OF CHEQUE 11597 TO 11601 AND EFT 7367 TO EFT 7456, & DIRECT DEBIT SUPERANNUATION TOTALLING \$641,343.05.

10.2 LEASES

All matters relating to leases for consideration in this agenda relate to leases of trust land and therefore are listed in a separate part of this meeting dealing with land trusts matters.

10.3 PLANNING/BUILDING

10.3.1 DEVELOPMENT APPLICATION FOR THE SHORT STAY ACCOMMODATION USE ('GUEST HOUSE') LOT 164 AIRFORCE ROAD, WEST ISLAND

Report Information

Date: 10 August 2020
 Location: Lot 164 Airforce Road, West Island
 Applicant: J Trinder
 File Ref:
 Disclosure of Interest: A. Selvey, Chief Executive Officer
 Reporting Officer: Chief Executive Officer
 Island: West Island
 Attachments: 10.3.1 Development Application Cover Letter
 10.3.1 Development Application
 10.3.1 Floor Plan
 10.3.1 Site Plan

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 type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
<input checked="" 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

To consider a development application for the short stay accommodation use ('Guest House') of the newly constructed dwelling upon Lot 164 Airforce Road, West Island.

Relevant Documents

Available for viewing at the meeting

Background

The landowner of Lot 164 Airforce Road, West Island has lodged a development application to use the newly completed three-bedroom, three-bathroom dwelling as a commercial 'Guest House' for up to six guests at any one time for a maximum booking period of three months. The applicant has chosen to self-manage the bookings of this property.

A 'Guest House' means the following Shire's *Local Planning Scheme No.1 (LPS1)*:
the use of premises for a commercial accommodation establishment compatible in character and scale with residential housing.

Surrounding possible affected landowners were contacted in writing for comment. No submissions were received.

Comment

The request to accommodate up to six guests across the three bedrooms is in accordance with local health regulations which outline that each person requires fourteen cubic meters of air space to sleep within a bedroom.

There is scope to provide an initial two-year approval for the proposal, which on cessation can be extended by Council if deemed appropriate.

It is recommended Council retains a degree of control by making the approval subject to various conditions. Should a breach of these conditions occur, Council, in accordance with the enforcement provisions of LPS1 can cancel the Guest House registration.

No property management plan was submitted with the application, therefore one of the recommended conditions of approval calls for such to be approved by the Shire prior to commencement of the accommodation use.

Policy and Legislative Implications

The subject property is zoned 'Residential' under LPS1, where the subject land use of 'Guest House' is 'discretionary'. This means the use is not permitted unless Council has exercised its discretion by granting development approval (the subject of this item).

Financial Implications

The applicant has paid the required fee for the development application.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2016 – 2026: Outcome 1.1.2: Encourage low impact tourism.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	Safety of guests	Moderate (5)	Approval condition – property management plan.
Reputation	N/A		
Service Interruption	N/A		
Compliance	Unruly behaviour of guests in a residential area	Moderate (9)	Approval condition enforcement
Property	N/A		
Environment	N/A		
Fraud	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

It is recommended the Guest House is approved for an initial two-year period. Council has the option of granting a five-year extension at the completion of the two-year period. The officer's recommendation is consistent with previous applications of a similar nature.

OFFICER'S RECOMMENDATION – ITEM NO 10.3.1

THAT COUNCIL:

- 1. GRANTS DEVELOPMENT APPROVAL FOR THE OPERATION OF A GUEST HOUSE UPON LOT 164 AIRFORCE ROAD, WEST ISLAND FOR A PERIOD OF TWO-YEARS COMMENCING 01 SEPTEMBER 2020, SUBJECT TO THE FOLLOWING CONDITIONS:**
 - a. THE GUEST HOUSE MUST NOT CAUSE NUISANCE OR DEGRADE THE AMENITY OF THE NEIGHBOURHOOD IN ANY WAY, INCLUDING BY REASON OF THE EMISSION OF NOISE, LIGHT, ODOUR, FUMES, SMOKE, VAPOUR OR OTHER POLLUTANT, OR IMPACT ON PUBLIC SAFETY OR OTHERWISE; TO THE SATISFACTION OF THE SHIRE OF COCOS (KEELING) ISLANDS;**
 - b. A MAXIMUM OCCUPANCY OF SIX (6) PEOPLE AT ANY ONE TIME;**
 - c. A 'PROPERTY MANAGEMENT PLAN' MUST BE SUBMITTED AND THEREAFTER APPROVED BY THE SHIRE OF COCOS (KEELING) ISLANDS;**
 - d. EACH BEDROOM TO BE FITTED WITH A HARD-WIRED SMOKE DETECTOR;**
 - e. A FULLY MAINTAINED AND COMPLIANT FIRE EXTINGUISHER TO BE IN A CLEARLY VISIBLE AND ACCESSIBLE LOCATION;**
 - f. ALL VEHICLE PARKING MUST BE CONTAINED ON-SITE;**
 - g. SIGNAGE BE RESTRICTED TO ONE SIGN ON-SITE NOT EXCEEDING AN AREA OF 0.5 SQUARE METRES AND INCORPORATED INTO THE FENCE OR FRONT OF THE BUILDING;**
 - h. BARBEQUES ARE TO BE LIMITED TO GAS OR ELECTRIC ONLY.**

ADVICE NOTES:

- a. THIS APPROVAL IS ISSUED TO THE CURRENT APPLICANT AND IS NOT TRANSFERABLE TO ANOTHER PERSON OR ANOTHER PARCEL OF LAND.**
- b. DEVELOPMENT APPROVAL DOES NOT AFFECT THE EXISTING AND FUTURE USE OF THE PREMISES AS A SINGLE HOUSE.**

10.4 ADMINISTRATION

10.4.1 ATTENDANCE AT EVENTS POLICY

Report Information

Date: 12 August 2020
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: A. Selvey, Chief Executive Officer
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island: N/A
 Attachments: 10.4.1 Draft Attendance at Events Policy

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 presents a draft Attendance at Events Policy for Council consideration and the officer's recommendation is that Council resolves to accept the policy as presented.

Relevant Documents

Available for viewing at the meeting

Nil

Background

It is a legislative requirement that all Councils have a policy on attendance at events to ensure consideration of the purpose and benefit to the community from Elected Members and the CEO attending events.

Comment

The attached draft policy is based on the template provided by the Department of Local Government, Sport and Cultural Industries (DLGSC). It recognises the different types of events as covered by the legislation and provides guidance for Elected Members and the CEO.

Policy and Legislative Implications

Section 5.90A of the Local Government Act 1995 (WA)(CKI) stipulates that local governments must prepare and adopt, by Absolute Majority, a policy that deals with matters relating to the attendance of council members and the CEO at events, including:

- (a) the provision of tickets to events; and
- (b) payments in respect of attendance; and
- (c) approval of attendance by the local government and criteria for approval; and
- (d) any prescribed matter.

Financial Implications

There are no direct financial implications in adopting this policy; however, in applying the policy there may be occasions that the Shire will meet the costs of attendance at some events or associated costs. These will be considered at the time and be subject to the policy principles as outlined in this document, noting that a decision of Council will be required for each occasion.

Strategic Implications

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	N/A		
Reputation	The risk to Council’s reputation if there is a perception that the position of Councillor	Moderate (6)	The policy provides clear and transparent guidelines for decision-making that can be defended if required.

	or the position of the CEO is being abused.		
Service Interruption	N/A		
Compliance	Non-compliance with the requirement to have a policy.	Moderate (8)	The policy ensures Council is compliant.
Property	N/A		
Environment	N/a		
Fraud	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

Absolute majority required

Conclusion

The draft policy ensures the Shire is compliant with legislative requirements for this policy and therefore the officer recommends that the policy is adopted as presented.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.1

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTION 5.90A OF THE LOCAL GOVERNMENT ACT 1995 (WA)(CKI), RESOLVES TO ADOPT THE ATTENDANCE AT EVENTS POLICY AND INCLUDE THE POLICY IN THE SHIRE OF COCOS (KEELING) POLICY MANUAL 2020 FOR REVIEW WHEN THE POLICY MANUAL IS REVIEWED IN JANUARY/FEBRUARY 2021.

10.4.2 PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW – FINAL ADOPTION

Report Information

Date: 6 August 2020
 Location: Shire of Cocos (Keeling) Islands
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Niel Mitchell, Consultant
 Island: Shire wide
 Attachments: 10.4.2 Summary of submissions.
 10.4.2Draft Public Places and Local Government Property Local Law 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 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

The purpose of this report is to seek a Council resolution to:

- a) make the final adoption of the local law, incorporating all amendments as approved by Council;
- b) authorise the affixing of the Common Seal to the local laws;
- c) authorise publication of the local law as a Notifiable Instrument in the Federal Register of Legislation; and

- d) after publication as a Notifiable Instrument, give local public notice of the date the local laws will come into effect.

Relevant Documents

Available for viewing at the meeting

Nil

Background

At the Ordinary Meeting of Council held on 20 May 2020 Council resolved to commence the process to make a Public Places and Local Government Property Local Law.

Comment

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on any proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

The draft local laws were advertised as required for public comment on the proposed local laws in *The Atoll* on 12 June 2020. Advertising in *The Atoll* complies with the requirements of both Statewide and local public notice.

At the close of the submission period on 3 August 2020, no public submissions had been received, and comments from Dept of Local Government, Sport & Cultural Industries (DLGSC) were received – see Attachment 10.4.2.

The DLGSC's comments for the local law covered multiple matters. It is considered that no substantive matters were raised, with the comments consisting of:

- clarification of several clauses while remaining consistent with the proposed clauses in the original drafts,
- minor editorial nature, and
- being of a contextual or technical nature, punctuation and grammar.

None of the suggested changes altered the intent of the provision amended nor placed additional obligations on the community. It is considered that the amendments agreed are not of a nature that requires re-advertising.

The draft local law (Attachment 10.4.2) has been amended from the proposed amendment local law advertised for public submissions, in accordance with the Department's comments as noted and agreed.

Summary

As modified by legislation applying to Cocos (Keeling) Islands, once formally adopted by Council, the local law:

- is to be published as a Notifiable Instrument in the Federal Register of Legislation,
- local public notice given of adoption (separate to previous advertising of proposals),
- signed copies are to be sent to relevant Ministers or their delegate.

The local law takes effect on the day stipulated in the local law, being 14 days after publication as a notifiable instrument in the Federal Register of Legislation.

Policy and Legislative Implications

Legislation Act 2003 (Commonwealth) –

- *s.11 – Definition of notifiable instruments*

Cocos (Keeling) Islands Act 1995 (Commonwealth) –

- *s.8G(1) – where reference in WA Legislation to Governor, Minister etc. the action is to be directed to the Minister for Territories.*

Local Government Act 1995 (WA)(CKI) –

- *s.3.12 – Procedure for making local laws*
 - (2) *Notice of purpose and effect of local law to be given by the person presiding*
 - (3) *Statewide public notice required, and copies to Minister/s immediately after notice given, minimum 6 weeks’ notice*
 - (3a) *Local public notice also required to be given*
 - (4) *After notice period, all submissions to be considered, and local law may then be made by absolute majority*
 - (5) *Publication in Government Gazette required*
 - (7) *Parliament to be advised within 10 working days of Gazettal*
- *s.3.13 – Significant changes require recommencement of proposal*
- *s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal*
- *s.3.15 – local public notice of the final adoption/making of a local law to be given*

Shire of Cocos (Keeling) Islands, Publishing of Delegated Legislation and Statewide Public Notices Policy

Financial Implications

Nil

Strategic Implications

Strategic Community Plan: Civic Leadership Objective

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A	N/A	N/A
Health & Safety	If not implemented, some community health & safety aspects remain compromised	Low (4)	If implemented, control and management of these matters have legislative backing
Reputation	The proposed local law is considered to impose on community	Low (3)	Education/publication within the community of reasons and benefits.
Service Interruption	N/A	N/A	N/A
Compliance	N/A	N/A	N/A
Property	If not implemented, some public places and local government property remain susceptible	Moderate (9)	If implemented, control and management of these matters have legislative backing
Environment	If not implemented, environment considerations in public places and on local government property remain susceptible	High (12)	If implemented, control and management of these matters have legislative backing
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

Absolute majority

Conclusion

The proposed local law provides the necessary legislative authority for the control and management of facilities and reserves, including road verges, for which the Shire has responsibility. Penalties may be imposed for non-compliance.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.2

1. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTION 3.12(5) OF *THE LOCAL GOVERNMENT ACT 1995(WA)(CKI)*, AND ALL OTHER LEGISLATION ENABLING IT, RESOLVES TO:
 - a) MAKE THE PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020 AS PER THE ATTACHED DRAFT, AND INCORPORATING THE AMENDMENTS OUTLINED BY THE DEPARTMENT OF LOCAL GOVERNMENT, SPORT AND CULTURAL INDUSTRIES;
 - b) AUTHORISE THE PRESIDENT AND CEO TO AFFIX THE COMMON SEAL OF THE SHIRE AND TO SIGN THE LOCAL LAW;
 - c) AUTHORISE THE CEO TO –
 - PUBLISH THE LOCAL LAW AS A NOTIFIABLE INSTRUMENT ON THE FEDERAL REGISTER OF LEGISLATION,
 - GIVE LOCAL PUBLIC NOTICE OF THE ADOPTION OF THE LOCAL LAW, AND
 - PROVIDE COPIES OF THE LOCAL LAW TO THE RELEVANT MINISTERS OR DELEGATE.

10.4.3 RATES INTEREST RATE & INSTALMENT DATES

Report Information

Date: 13/08/2020
 Location: N/A
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Deputy Chief Executive Officer
 Island: N/A
 Attachments: 10.4.3 WALGA guide – Giving effect to the COVID-19 Ministerial Order

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

To seek a resolution of Council to revoke the decision of Council regarding the due dates for the rates and rates instalment and the interest rates applicable to unpaid rates and instalment interest and adopt adjusted dates and interest rates that are compliant with the *Local Government Act (WA)(CKI) 1995* and the *Local Government (COVID-19 Response) Ministerial Order 2020*, gazetted on 8 May 2020.

Relevant Documents

Available for viewing at the meeting

Background

At the Ordinary Council Meeting on 5 August 2020 Council resolved as follows:

1. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTIONS 6.45 AND 6.50 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 AND REGULATION 64(2) OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996 RESOLVES TO ADOPT THE 2020/2021 PAYMENT OPTIONS FOR THE PAYMENT OF RATES & DOMESTIC REFUSE CHARGE FOR THE SHIRE OF COCOS (KEELING) ISLANDS AS FOLLOWS:
 - a. ONE INSTALMENT:
PAYMENT IN FULL BY 14TH OF SEPTEMBER 2020.
 - b. FOUR INSTALMENTS:
1ST QUARTERLY INSTALMENT DUE DATE 14TH OF SEPTEMBER 2020;
2ND QUARTERLY INSTALMENT DUE DATE 9TH OF NOVEMBER 2020;
3RD QUARTERLY INSTALMENT DUE DATE 21ST OF DECEMBER 2020;
4TH QUARTERLY INSTALMENT DUE DATE 1ST OF FEBRUARY 2021.
2. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO REGULATION 68 OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996 RESOLVES TO ADOPT AN INSTALMENT INTEREST RATE OF 5.5% FOR THE SHIRE OF COCOS (KEELING) ISLANDS WHERE THE OWNER HAS ELECTED TO PAY RATES AND SERVICE CHARGES THROUGH AN INSTALMENT OPTION.
3. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTIONS 6.51(1) AND 6.51(4) OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 AND REGULATION 19(A) AND 70 OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996 RESOLVES TO ADOPT AN INTEREST RATE OF 11% PER ANNUM FOR RATES AND CHARGES THAT REMAIN UNPAID AFTER BECOMING DUE AND PAYABLE.

Comment

The instalment dates that were adopted by council on the 5th of August 2020 did not all have the required two-month time period between them as required under Section 6.50 of the *Local Government Act (WA)(CKI) 1995*. As such the due dates for the rates need to be adjusted to ensure compliance with the Act. The following dates are being proposed:

- Payment in full and the 1st instalment due date of the 5th of October 2020
- 2nd instalment due date of the 7th of December 2020
- 3rd instalment due date of the 8th of February 2021
- 4th instalment due date of the 12th of April 2021

On the 8th of May 2020 the Local Government (COVID-19 Response) Ministerial Order 2020 was gazetted which included a cap on the level of interest rates that can be charged on both unpaid rates and instalment interest.

Clause 13 of the *Local Government (COVID-19 Response) Ministerial Order 2020* limits a local government which has not adopted a financial hardships policy to charging an interest rate of 3% applicable to rate and service charge instalment arrangements. As the Shire has not yet adopted a financial hardships policy the interest rate for instalment arrangements will need to be varied to 3%. The Clause also prohibits Local Governments from applying an additional charge and / or interest on instalment arrangements on an excluded person. The Ministerial Order defines an excluded person as *'being a residential ratepayer or small business ratepayer that is considered by the Local Government to be suffering financial hardship as a consequence of the COVID-19 pandemic'*.

Clause 14 of the *Local Government (COVID-19 Response) Ministerial Order 2020* limits a local government to charging an interest rate for unpaid rates and service charges to 8%. The Ministerial Order also prohibits interest from applying to an excluded person as defined above.

In accordance with Regulation 10(1) of the *Local Government (Administration) Regulations 1996*, the support of one third of the Council is required to consider revoking or changing a previous decision. Under Regulation 10(2) the decision to change or revoke a previous decision must be carried by an absolute majority.

The officer's recommendation refers to an 'excluded person' as this is a requirement of the *Local Government (COVID-19 Response) Ministerial Order 2020*. The criteria to determine whether a ratepayer is an excluded person, ie suffering financial hardship as a consequence of COVID-19 pandemic is articulated in the draft Financial Hardships Policy which is currently in draft before Council.

Policy and Legislative Implications

Sections 6.45, 6.5, 6.51(1) & 6.51 (4) of the *Local Government Act (WA)(CKI) 1995*.

Regulations 19A, 64(2), 68 & 70 of the *Local Government (Financial Management) Regulations 1996*.

Regulation 10 of the *Local Government (Administration) Regulations 1996*.

Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020

Financial Implications

The initial issuing of the 2020/2021 rates notices will be delayed by three weeks. The interest income received by the Shire will be reduced as a result of the new limits of the interest rates however this is not expected to have a material affect on the budget.

Strategic Implications

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial			
Health & Safety			
Reputation			
Service Interruption			
Compliance	Not adopting these changes will result in non-compliance	High (12)	The proposed changes to the dates for instalments and the proposed interest rate are compliant.
Property	N/A		
Environment	N/A		
Fraud	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

Absolute Majority

Conclusion

Council resolutions from the Ordinary Meeting of Council on 5 August cannot be given effect and are therefore not valid in relation to dates due dates and interest rates. Therefore the officer's recommendation is that Council revokes those decisions and resolves on matters relating the instalment dates and interest rates in a manner that is compliant with both the *Local Government Act (WA) (CKI) 1995* and the *Local Government (COVID-19 Response) Ministerial Order 2020*, gazetted on 8 May 2020.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.3

1. THAT COUNCIL, **BY ONE-THIRD SUPPORT**, PURSUANT TO REGULATION 10(1) OF THE *LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS 1996* RESOLVES TO CONSIDER REVOKING THE FOLLOWING COUNCIL RESOLUTIONS MADE AT THE 5TH OF AUGUST 2020 ORDINARY MEETING:
 - a. THAT COUNCIL, **BY ABSOLUTE MAJORITY**, PURSUANT TO SECTIONS 6.45 AND 6.50 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995* AND REGULATION 64(2) OF THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT THE 2020/2021 PAYMENT OPTIONS FOR THE PAYMENT OF RATES & DOMESTIC REFUSE CHARGE FOR THE SHIRE OF COCOS (KEELING) ISLANDS AS FOLLOWS:
 - i. ONE INSTALMENT:
PAYMENT IN FULL BY 14TH OF SEPTEMBER 2020.
 - ii. FOUR INSTALMENTS:
1ST QUARTERLY INSTALMENT DUE DATE 14TH OF SEPTEMBER 2020;
2ND QUARTERLY INSTALMENT DUE DATE 9TH OF NOVEMBER 2020;
3RD QUARTERLY INSTALMENT DUE DATE 21ST OF DECEMBER 2020;
4TH QUARTERLY INSTALMENT DUE DATE 1ST OF FEBRUARY 2021.
 - b. THAT COUNCIL, **BY ABSOLUTE MAJORITY**, PURSUANT TO REGULATION 68 OF THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT AN INSTALMENT INTEREST RATE OF 5.5% FOR THE SHIRE OF COCOS (KEELING) ISLANDS WHERE THE OWNER HAS ELECTED TO PAY RATES AND SERVICE CHARGES THROUGH AN INSTALMENT OPTION.
 - c. THAT COUNCIL, **BY ABSOLUTE MAJORITY**, PURSUANT TO SECTIONS 6.51(1) AND 6.51(4) OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995* AND REGULATION 19(A) AND 70 OF THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT AN INTEREST RATE OF 11% PER ANNUM FOR RATES AND CHARGES THAT REMAIN UNPAID AFTER BECOMING DUE AND PAYABLE.
2. THAT COUNCIL, **BY ABSOLUTE MAJORITY**, PURSUANT TO REGULATION 10(2) OF THE *LOCAL GOVERNMENT (ADMINISTRATION) REGULATIONS 1996* RESOLVES TO REVOKE THE FOLLOWING COUNCIL RESOLUTIONS MADE AT THE 5TH OF AUGUST 2020 ORDINARY MEETING:
 - a. THAT COUNCIL, **BY ABSOLUTE MAJORITY**, PURSUANT TO SECTIONS 6.45 AND 6.50 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995* AND REGULATION 64(2) OF THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT THE 2020/2021 PAYMENT

OPTIONS FOR THE PAYMENT OF RATES & DOMESTIC REFUSE CHARGE FOR THE SHIRE OF COCOS (KEELING) ISLANDS AS FOLLOWS:

- i. ONE INSTALMENT:**
PAYMENT IN FULL BY 14TH OF SEPTEMBER 2020.
 - ii. FOUR INSTALMENTS:**
1ST QUARTERLY INSTALMENT DUE DATE 14TH OF SEPTEMBER 2020;
2ND QUARTERLY INSTALMENT DUE DATE 9TH OF NOVEMBER 2020;
3RD QUARTERLY INSTALMENT DUE DATE 21ST OF DECEMBER 2020;
4TH QUARTERLY INSTALMENT DUE DATE 1ST OF FEBRUARY 2021.
 - b. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *REGULATION 68 OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT AN INSTALMENT INTEREST RATE OF 5.5% FOR THE SHIRE OF COCOS (KEELING) ISLANDS WHERE THE OWNER HAS ELECTED TO PAY RATES AND SERVICE CHARGES THROUGH AN INSTALMENT OPTION.**
 - c. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *SECTIONS 6.51(1) AND 6.51(4) OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 AND REGULATION 19(A) AND 70 OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT AN INTEREST RATE OF 11% PER ANNUM FOR RATES AND CHARGES THAT REMAIN UNPAID AFTER BECOMING DUE AND PAYABLE.**
- 3. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *SECTIONS 6.45 AND 6.50 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 AND REGULATION 64(2) OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT THE 2020/2021 PAYMENT OPTIONS FOR THE PAYMENT OF RATES & DOMESTIC REFUSE CHARGE FOR THE SHIRE OF COCOS (KEELING) ISLANDS AS FOLLOWS:**
- i. ONE INSTALMENT:**
PAYMENT IN FULL BY 5TH OF OCTOBER 2020.
 - ii. FOUR INSTALMENTS:**
1ST QUARTERLY INSTALMENT DUE DATE 5TH OF OCTOBER 2020;
2ND QUARTERLY INSTALMENT DUE DATE 7TH OF DECEMBER 2020;
3RD QUARTERLY INSTALMENT DUE DATE 8TH OF FEBRUARY 2021;
4TH QUARTERLY INSTALMENT DUE DATE 12TH OF APRIL 2021.
- 4. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *SECTION 6.45(3) OF THE LOCAL GOVERNMENT ACT 1995 AND CLAUSE 13 OF THE LOCAL GOVERNMENT (COVID-19 RESPONSE) MINISTERIAL ORDER 2020, GAZETTED ON 8 MAY 2020* RESOLVES TO ADOPT AN INSTALMENT INTEREST RATE OF 3% FOR THE SHIRE OF COCOS (KEELING) ISLANDS WHERE THE OWNER HAS ELECTED TO PAY RATES AND SERVICE CHARGES THROUGH AN INSTALMENT OPTION, SUBJECT TO:**

- a. THIS INTEREST RATE CANNOT BE APPLIED TO AN EXCLUDED PERSON, AS DEFINED IN THE LOCAL GOVERNMENT (COVID-19 RESPONSE) MINISTERIAL ORDER 2020, THAT HAS BEEN DETERMINED BY THE SHIRE OF COCOS KEELING ISLANDS AS SUFFERING FINANCIAL HARDSHIP AS A CONSEQUENCE OF THE COVID-19 PANDEMIC.
5. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTIONS 6.51(1) AND 6.51(4) OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 AND CLAUSE 14 OF THE LOCAL GOVERNMENT (COVID-19 RESPONSE) MINISTERIAL ORDER 2020, GAZETTED ON 8 MAY 2020 RESOLVES TO ADOPT AN INTEREST RATE OF 8% PER ANNUM FOR RATES AND CHARGES THAT REMAIN UNPAID AFTER BECOMING DUE AND PAYABLE, SUBJECT TO:
- a. THIS INTEREST RATE CANNOT BE APPLIED TO AN EXCLUDED PERSON, AS DEFINED IN THE LOCAL GOVERNMENT (COVID-19 RESPONSE) MINISTERIAL ORDER 2020, THAT HAS BEEN DETERMINED BY THE SHIRE OF COCOS KEELING ISLANDS AS SUFFERING FINANCIAL HARDSHIP AS A CONSEQUENCE OF THE COVID-19 PANDEMIC.

10.4.4 RFT 2020/01 DESIGN AND SUPPLY OF ONE KIT HOME FOR A RESIDENTIAL PROPERTY

Report Information

Date: 18 August 2020
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref: [Click here to enter text.](#)
 Disclosure of Interest: Nil
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island: N/A
 Attachments: [Click here to enter text.](#)

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 results of a tender for the supply and construction of one residential on Home Island before Council, seeking a Council resolution to reject all tenders as a result of additional funding.

Relevant Documents

[Available for viewing at the meeting](#)

Background

As part of the 2019/20 budget, Council allocated \$500,000 for the construction of one residential property on Home Island. The CEO, under delegated authority, advertised the tender for this project. Advertising was done via the Atoll on 29 May 2020, the West Australian on 30 May 2020 and via the Shire’s website.

At close of tender on 20 July 2020, three compliant and one non-compliant tender had been received and the tenders were of a suitable standard and within budget capacity. However, in mid-July, the Shire was advised that the Australian Government had supported a request from the Shire for matching funding (i.e. \$500,000) to allow for two homes to be built.

Comment

Under the *Local Government (Functions and General) Regulations 1996* the procurement for an additional house would require the Shire to run another tender. The Shire contacted all three compliant tenderers to advise them of the additional funding and all agreed that a new tender, for two houses, would allow them to offer a more competitive pricing structure and therefore it would be advantageous to the Shire to run a new tender for both houses. As a result, this report recommends that Council rejects all tenders in recognition that the additional funding secured to allow for an additional property to be built would allow current tenderers to review their pricing and as the tender may be more attractive to new tenderers.

Policy and Legislative Implications

Regulation 18(5) of the *Functions and General Regulations* and Section 11 (2) of the *Local Government (Functions and General) Regulations 1996*

Financial Implications

The Shire’s budget makes an allocation for this project and the Australian Government has matched this funding. It is likely a more competitive price can be secured by tendering for two houses under one tender.

Strategic Implications

Housing has been repeatedly raised as a priority strategic issue and barrier to social and economic sustainability. See Corporate Business Plan ED1.1.21 and ED1.1.25

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Not getting the best value for money	Moderate (9)	Readvertise tender for two houses to allow more competitive pricing options
Health & Safety	N/A		
Reputation	Tenderers disillusioned by Shire rejecting	Moderate (6)	All tenderers have been contacted and all agree

	tenders and do not resubmit.		that re-advertising is a good option.
Service Interruption	Project delays due to retendering.	High (10)	The likely better financial outcome outweighs the delay in the project. The project milestones for external funding component take this retendering into consideration.
Compliance	Process non-compliant	Low (4)	Retendering will ensure compliance.
Property	N/A		
Environment	N/A		
Fraud	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 for Council to reject all tenders is based on ensuring compliance and being able to secure a better price and/or better product as a result of retendering.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.4

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO REGULATION 18(5) OF THE FUNCTIONS AND GENERAL REGULATIONS AND SECTION 11 (2) OF THE *LOCAL GOVERNMENT (FUNCTIONS AND GENERAL) REGULATIONS 1996* RESOLVES TO:

1. REJECT ALL TENDERS SUBMITTED FOR RFT 2020/01 DESIGN AND SUPPLY OF ONE KIT HOME FOR A RESIDENTIAL PROPERTY ON THE BASIS THAT THE RECENTLY ANNOUNCED ADDITIONAL FUNDING FROM THE AUSTRALIAN GOVERNMENT WILL ALLOW FOR SECOND PROPERTY TO BE BUILT AND THEREFORE RETENDERING MAY

PROVIDE A BETTER TENDER OUTCOME FOR THE SHIRE, EITHER THROUGH BETTER PRICING AND/OR BETTER PRODUCTS.

10.4.5 DRAFT UPDATED PURCHASING POLICY CPF4

Report Information

Date: 20 August 2020
 Location: N/A
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref: [Click here to enter text.](#)
 Disclosure of Interest: Nil
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island: Shire Wide
 Attachments: DRAFT UPDATED PURCHASING POLICY CPF4

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 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 updated Purchasing Policy for the Shire before Council in draft and seeks a Council resolution to adopt the Policy as presented.

Relevant Documents

[Available for viewing at the meeting](#)

Background

At the Ordinary Meeting of Council on 26 February 2020, Council adopted the updated Shire of Cocos (Keeling) Islands Policy Manual which included the Purchasing Policy.

DEFINITION: Policy: “A course or principle of action”

Section 2.7 of the Local Government Act (WA) (CKI) 1995 prescribes part of the role of a Council is to “determine the local government’s policies”. The Act does not define the term “policy” and hence, for the purpose of the City it shall mean: “A general rule or principles, adopted by the Council to provide clear direction to the Chief Executive Officer on the day to day management of the local government.

Policies provide guidance to Council, staff and our community and aim to articulate and communicate Council position on matters affecting the good governance of the Shire and to enable the effective and efficient management of Shire resources. They assist in ensuring sound and equitable decision-making.

Policies are not binding on Council, instead they provide a structure to avoid ad-hoc decision making. Generally, policies are living documents that evolve through a process of review and refinement in respond to internal and external environment changes.

For this reason, it is important that a review process is in place and at the Shire of Cocos (Keeling) Islands this review takes place annually at the start of each calendar year to ensure the integrity and relevance of the policies in place.

Comment

On 9 April 2020, the Minister for Local Government; Heritage; Culture and the Arts (WA Government) advised that amendments to the regulations dealing with procurement had been changes in response to the Covid-19 outbreak. Specifically, an amendment was made to regulation 11(1) to increase the tender threshold from \$150,000 to \$250,000 to align with State Government tendering thresholds. This permits local governments to extend the use of their own purchasing policy and apply local content provisions more readily to goods and services acquired via written quotations.

A further exemption ensures the formal tender process does not need to be undertaken when sourcing and securing essential goods and services to respond to a state of emergency. As outlined in regulation 11(3), there must be a state of emergency declaration in force for the local government district or part of the district and the goods or services must be required to address needs arising from, or impacts or consequences of, the hazard to which the emergency relates.

The draft updated policy as presented has been amended to reflect these changes to the legislation. The draft updated policy also includes an increase in the purchasing threshold for the Deputy CEO and for the Manager of Works and Services from \$20,000 to \$50,000. This

threshold is recommended, particularly given the recent implementation of the online procurement module at the Shire to manage compliance in all aspects of procurement.

The other change to the policy is to note that, in some circumstances, the Shire may elect to invite public tenders even though not required to under this Policy and the Legislation. This decision will be based on value for money, efficiency, risk mitigation and sustainable procurement benefits.

The updated draft also better defines procurement during an emergency.

All changes have been highlighted.

Policy and Legislative Implications

Local Government Act (WA)(CKI) 1995

Local Government (Functions and General) Regulations 1996

Financial Implications

There no direct financial implications from adopting this policy. Furthermore, all procurement will be in accordance with Council’s adopted budget and hence will not have any impact the finances of the organisation.

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Procurement does not present value for money.	Moderate (6)	Value for money is a guiding principle for this policy and for procurement decisions.
Health & Safety	N/A		
Reputation	Lack of transparency in decision making. Inconsistent decision. Perception that decisions are based on	High (16)	Carefully considered and communicated policies that guide administrative action and Council decisions and inform Council of a policy position rather than a

	personalities rather than good policy.		response to a specific enquiry.
Service Interruption	Decisions held up due to lack of policy position – reinventing the wheel	Moderate (8)	Good policies to smooth and fast track decision making and actions.
Compliance	Decisions not consistent with legislation	Moderate (8)	Policies that ensure legislative compliance
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	Fraudulent procurement practices.	Moderate (8)	Internal controls and procurement system and processes mitigate this risk.

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 draft updated Purchasing Policy is presented to Council after a thorough review. The officer's recommendation is that Council adopts the Policy as presented, confident that new Policy complies with legislation and facilitates efficient and effective practices. Should it be adopted by Council, the updated Purchasing Policy will be included in the Shire of Cocos (Keeling) Manual which is scheduled to be reviewed in February 2021.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.5

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTIONS 2.7 and 3.57 LOCAL GOVERNMENT ACT (WA)(CKI) 1995 AND THE LOCAL GOVERNMENT (FUNCTIONS AND GENERAL) REGULATIONS 1996 RESOLVES TO ADOPT THE SHIRE OF COCOS (KEELING)

ISLANDS PURCHASING POLICY AND REVIEW THE POLICY AS PART OF THE NEXT ANNUAL REVIEW OF ALL POLICIES IN FEBRUARY 2021.

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

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.'

14.1 TRUSTS ADMINISTRATION

Nil

14.2 TRUSTS LEASE

14.2.1 APPLICATION TO RENEW LEASE FOR MARINE CENTRE – LINX-CKI PORT

Report Information

Date: 16 July 2020
 Location: Lot 242, Marine Centre
 Applicant: LINX trading as CKI PORT
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Asset & Property Management Coordinator
 Island: Home Island
 Attachments: 14.2.1 Lease application

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

To present the request and supporting documentation for LINX to enter into new lease agreement for Lot 242 to Council for consideration. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the Land Trusts as the Land (Lot 242) is held in Trust. Council, in making any decision in relation to the Trusts, must give due consideration

of the purpose of the Trusts that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and the wellbeing of Cocos Islanders” and ensure their decision-making is guided by this objective. Council, acting in its capacity as Trustee, has the authority to consider matters relating to Land held in Trust.

Relevant Documents

Available for viewing at the meeting

Background

The Commonwealth of Australia through their representatives LINX trading as CKI Ports has held a lease with the Shire for Lot 242 known as the Marine Centre. The lease term was for 20 years with no lease option.

The Shire wrote to the lessee advising them that the lease had expired and to seek their intentions moving forward. They have advised the Shire of their intent to enter into a lease agreement with the Shire and subsequently submitted their request on 9th of July 20. See attachment 10.2.2.

In their application, LINX has used the template provided by the Shire for all smaller commercial leases. The template was developed by the Shire to ensure applicants provided information in a uniform format and under standard headings wherever possible, for Council to make their decision in an informed and consistent manner.

Comment

This facility is used by LINX for storage and a workshop to undertake maintenance and repairs of Commonwealth marine assets and infrastructure. The facility is crucial as it serves the community by supporting essential transport services. LINX management of the facility employs local contractors for maintenance of critical community transport vessels.

LINX is an important service provider responsible for the management and operations of inter-island ferry and the back-up ferry. The inter-island ferry service is vital to the Islands daily business operations. LINX also manages other inter islands transport vessels which also allow for ongoing business continuity for the community.

A revaluation will be sought from a registered independent valuer which will determine the annual lease fee to be charged. In addition to this Shire rates would also be raised on the area if this lease is approved.

The proponent has requested a 5 years lease with 2 + 2-year option.

Milestones have not been requested as there is no change proposed for the current business use and output, however the lease will stipulate that the lease purpose continues to be met.

As noted above, in determining this matter, Council is acting in its capacity as the Trustee of the Land Trusts as the Land (Lot 242) is Land held in Trust under the 1979 Land Trust Deed; therefore Council, is required to have due consideration of the purpose of the Trust, that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and ensure their decision-making is guided by this objective.

Policy and Legislative Implications

Section 3.58 of the *Local Government Act (WA) (CKI)* 1995 as amended

Financial Implications

The applicant has committed to paying the market value. The current lease fee is \$6,541 and it is likely the valuation will be of a similar amount; therefore, it is unlikely to have any impact on the adopted budget.

Strategic Implications

Strategic Community Plan: Economic Objective – Encourage Economic Stability and Diversity on the Islands

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A	N/A	N/A
Health & Safety	N/A	N/A	N/A
Reputation	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a critical community service	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a critical community service could be disrupted.	Moderate (6)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Compliance	The process for leasing does not comply with legislation	Low (3)	The process outlined in this report is consistent with

			legislative requirements.
Property	N/A	N/A	N/A
Environment	Commercial activities could damage the environment	Low (3)	The lease contains clauses to protect the environment
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 request for a new lease is presented to Council for consideration and the officer's recommendation is that the request is approved based on:

1. The area houses critical infrastructure for the delivery of maritime services
2. Securing the ongoing maintenance management of critical inter island transport vessels for the benefit of the community and visitors to the islands; and
3. The service supports various objectives of the Shire of Cocos Keeling Islands Strategic Community Plan.

OFFICER'S RECOMMENDATION – ITEM NO 14.2.1

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

1. TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO ENTER INTO A LEASE FOR LOT 242 (USED AS A MARINE CENTRE) WITH LINX AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE, SUBJECT TO THE FOLLOWING CONDITIONS:
 - a. THE LEASE FEE TO BE SET AT THE MARKET VALUE AS DETERMINED BY AN INDEPENDENT VALUER, SUBJECT TO ANNUAL CPI REVIEWS, PLUS A ONE-OFF LEASE PREPARATION FEE OF \$250;
 - b. THE LEASE TERM BEING FOR 5 YEARS WITH 2 + 2 YEAR OPTIONS;
 - c. THE PURPOSE OF LEASE IS TO CONTINUE TO SUPPORT THE DELIVERY OF CRITICAL MARITIME SERVICES TO THE COMMUNITY.

2. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD, THE CEO IS TO ENTER THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;
3. THAT IF OBJECTIONS ARE RECEIVED, CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;
4. REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN;
5. TO ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE; THEY ARE TO BE PAID IN FULL.

14.2.2 APPLICATION TO RENEW LEASE FOR CRANE SHED – LINX-CKI PORT

Report Information

Date: 16 July 2020
 Location: Part LOT230, Crane Shed
 Applicant: LINX trading as CKI PORT
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Asset & Property Management Coordinator
 Island: Home Island
 Attachments: 14.2.2 Lease application; and Map showing proposed lease area

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

To present the request and supporting documentation from LINX to enter into new lease agreement for Part Lot 230 to Council for consideration. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the Land Trusts as the Land (Part Lot 230) is held in Trust. Council, in making any decision in relation to the Trusts, must give due consideration of the purpose of the Trusts that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and the wellbeing of Cocos Islanders” and ensure their decision-making is guided by this objective. Council, acting in its capacity as Trustee, has the authority to consider matters relating to Land held in Trust.

Relevant Documents

Available for viewing at the meeting

Background

The Commonwealth of Australia through their representatives LINX trading as CKI Port has held a lease with the Shire for Part Lot 230 (for use as a Crane Shed). The lease term was for 20 years with no lease option.

The Shire wrote to the lessee advising them that the lease had expired and to seek their intentions moving forward. They have advised the Shire of their intent to enter into a lease agreement with the Shire and subsequently submitted their request on 9 July 2020. See attachment 14.2.3

Comment

The Shire has indicated to the applicant that the new lease area would need to include the additional area already used by LINX for the storage of an old crane and other plant. LINX has advised that the old crane will be removed for disposal and the other piece will be placed inside the shed until such time that an alternative storage option becomes available for volunteer groups. The final negotiated position regarding the lease area is as follows:

- Total lease area: 395m²
- Additional 6metres to the existing western boundary to align with the current boundary fence;
- Additional 2metres to the existing northern boundary to align with the adjoining Water Corp fence line.

See attached map showing proposed lease area.

A revaluation will be sought from a registered independent valuer which will determine the annual lease fee to be charged. In addition to this Shire rates would also be raised on the area if this lease is approved.

The proponent has requested a 5 years lease with 2 + 2-year option.

Milestones have not been requested as there is no change proposed for the current business use and output, however the lease will stipulate that the lease purpose continues to be met.

As noted above, in determining this matter, Council is acting in its capacity as the Trustee of the Land Trusts as the Land (Part Lot 230) is Land held in Trust under the 1979 Land Trust

Deed; therefore Council, is required to have due consideration of the purpose of the Trust, that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and ensure their decision-making is guided by this objective.

Policy and Legislative Implications

Section 3.58 of the *Local Government Act (WA) (CKI) 1995*

Financial Implications

The applicant has committed to paying the market value. The current lease fee is \$3,589 and it is likely the valuation will be of a similar amount; therefore, it is unlikely renewing this will have any impact on the adopted budget.

Strategic Implications

Strategic Community Plan: Economic Objective – Encourage Economic Stability and Diversity on the Islands

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A	N/A	N/A
Health & Safety	N/A	N/A	N/A
Reputation	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a critical community service	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a critical community service could be disrupted.	Moderate (6)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Compliance	The process for leasing does not comply with legislation	Low (3)	The process outlined in this report is consistent with legislative requirements.
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

Conclusion

The request for a new lease is presented to Council for consideration and the officer's recommendation is that the request is approved based on:

1. The area houses critical infrastructure for the delivery of maritime services;
2. With limited storage opportunity proponents have also allowed for short term storage for vital volunteer groups equipment, plant and machinery; and
3. The service supports various objectives of the Shire of Cocos Keeling Islands Strategic Community Plan.

OFFICER'S RECOMMENDATION – ITEM NO 14.2.2

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

6. **TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO ENTER INTO A LEASE FOR PART LOT 230 (USED AS A CRANE SHED) WITH LINX AS PER THE SHIRE'S COMMERCIAL LEASE TEMPLATE, SUBJECT TO THE FOLLOWING CONDITIONS:**
 - a. **THE LEASE FEE TO BE SET AT THE MARKET VALUE AS DETERMINED BY AN INDEPENDENT VALUER, SUBJECT TO ANNUAL CPI REVIEWS WITH A ONE-OFF LEASE PREPARATION FEE OF \$250;**
 - b. **THE LEASE TERM BEING FOR 5 YEARS WITH 2 + 2-YEAR OPTIONS;**
 - c. **A COMMITMENT TO REMOVE THE OLD CRANE WITHIN 12 MONTHS;**
 - d. **THE PURPOSE OF LEASE IS TO CONTINUE TO SUPPORT THE DELIVERY OF CRITICAL MARITIME SERVICES TO THE COMMUNITY.**
7. **THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD; THE CEO IS TO ENTER THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;**
8. **THAT IF OBJECTIONS ARE RECEIVED, CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;**
9. **REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN;**

- 10. TO ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE; THEY ARE TO BE PAID IN FULL.**

14.2.3 APPLICATION TO RELINQUISH LEASE FOR LOTS 219 AND 220 AND TO LEASE PART LOT 220 – COCOS ARTISANS COLLECTIVE

Report Information

Date: 17 August 2020
 Location: Lot 219 and Lot 220
 Applicant: Cocos Artisans Collective
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Asset & Property Management Coordinator
 Island: West Island
 Attachments: 14.2.3 Trust Land Proponent response.V5.pdf

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 item deals with a request from Cocos Artisans Collective to relinquish the current lease on Lots 219 and 220 and presents a request from the same applicant to enter into a new lease for a portion of Lot 220. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the Land Trusts as the Land (Lots 219 and 220) is held in Trust. Council, in making any decision in relation to the Trusts, must give due consideration of the purpose of the Trusts that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and the wellbeing of Cocos Islanders” and ensure their decision-making is guided by this objective. Council, acting in its capacity as Trustee, has the authority to consider matters relating to Land held in Trust.

Relevant Documents

[Available for viewing at the meeting](#)

Background

At the Ordinary Meeting of Council in August 2016, Council resolved as follows:

1. *That Council advertise its intention to enter into a five (5) year lease with a five (5) year option with Cocos Tropical Foods for farm Lot 219 and 220 including the shed, cool room and other infrastructure, with the following exclusion:*
 - a. *Current lime trees on the south side of Mahoon Rd*
 - b. *A small area for community garden plots.*
2. *That Council advertise its intention to grant planning approving for an initial two (2) year period to allow for the sale of products made substantially from produce grown on the farm site.*

An advertisement was placed in the Atoll on the 29 of September 2016 regarding the lease of both Lot 219 & Lot 220 to a single entity with the exclusion of the lime trees and an area for community garden plots. At the conclusion of the submission period on the 12th of October 2016 no submissions were received from the public. The Shire then sought a valuation from Landgate for a lease amount for the combined Lots including the shed which came back at \$12,000pa. Cocos Artisan Collective challenged the lease valuation and requested a discount on the lease fee. At its meeting on 29 March 2017, Council resolved as follows:

That council after taking into consideration the points raised during public submissions and acknowledging “the small scale of the business, it is employing locals and has not had any external assistance” agree to lease to Cocos Artisans Collective the combined Lots 219 & Lots 220, which includes the shed, but excludes the lime trees on a 5 year lease with a 5 year option at the amount of \$6,000 for the first three years and then \$12,000 plus CPI for the rest of the lease.

Therefore, the lease fee is now due to revert to the Landgate valuation of \$12,000 (plus CPI) per annum. The leaseholder is aware of this and has advised that the business cannot absorb the lease fee; hence a request from Cocos Artisan Collective in August 2020 that they would like to surrender the current lease and reapply for a smaller area, being a portion of Lot 220 (inclusive of the sheds). Subsequent to the initial request from Cocos Artisan Collective in April 2020, the Shire and Cocos Artisan Collective have been working on the proposal currently before Council – see attachment 14.2.3 Trust Land Proponent response.V5.pdf.

Comment

While the lease allows Council to terminate a lease where the conditions are not being met, the lease makes no provision for a lessee to seek to relinquish a lease. However, a search of

previous Council meeting minutes, shows that Council has previously accepted requests from lessees to surrender their leases where it is no longer viable to continue with the lease. Therefore, the officer's recommendation is for Council to accept the request from Cocos Artisan Collective to relinquish the lease on Lot 219 and Lot 220 (being the Farm on West Island).

The second part of this agenda item presents a request from Cocos Artisan Collective to seek a new lease on a portion of Lot 220 (including the farm shed) to enable the continuation of the production of export products, primarily coconut chips. A proposal, including a map showing the requested lease area from Cocos Artisan Collective is attached for further information. The proposal also includes a request for first option on remainder of Lot 220 (excluding the community lime trees).

The area requested for this lease, i.e. a portion of Lot 220 as depicted as Option A on the attached map, has been independently valued at \$2650 per annum.

The officer recommends accepting the proposal and proceeding as per legislative requirements (i.e. giving local public notice and considering any submissions) and subject to the following conditions:

1. That the lease be conditional upon the following milestones as provided by the proponent.
 - a. 2021/2022
 - plantation of 200 moringa seedlings
 - plantation of season crops of pumpkins/chilli crop
 - plantation of 100 curry leaf plant
 - plantation of 100 lemongrass
 - completion of 1 solar evaporated sea salt system
 - plantation of 50 water coconuts
 - b. 2022/2023
 - management of crops planted in Year 1
 - employment of 1 permanent part time staff & casual staff
 - completion of 3 solar evaporation sea salt system
 - propagation of additional lime trees from cuttings
 - plantation of 500 lime trees in Option B zone
 - engagement of packaged food consultant Alison Ball
 - c. 2023/2024
 - management of crops planted in Year 1
 - creation of farm tourism products: group tours
 - invest in new hydroponic system for cafes and community

- d. 2024/2025 management of crops planted in Year 1 & 3
- e. 2025/2026 management and harvesting of long-term crops from Year 1

Lease Period: The applicant has requested a 10 year + 10 year lease. Officers do not support the requested lease period, and instead recommend a 5 year + 5 year lease period. The rationale for the officer's recommendation is as follows:

- o The current lease at the farm is a 5 + 5 year lease;
- o Recent leases that have been approved by council under the current administration include Zephyr Kite Tours on a 5 x 5 year and Ape X Kiteboarding on a 1 x 2 year lease;
- o The only leases approved by Council under the current administration for a longer time period include Direction Island 40 x 40 years and the Solar Farm 15 x 15 years due to the scale of the significant capital investment involved in these proposals;

The applicant does not agree with the officer's recommendation and has offered the following in support of his request for a 10 year + 10 year lease:

- o The current lease at the farm is a 5 x 5 year.

Response from applicant: *that was due to the previous administration, note that the previous administration granted Cocos Clams a 10x10 year lease on 1 paragraph and other leases were and are 10 x 10 year lease.*

- o Recent leases that have been approved by council under the current administration include Zephyr Kite Tours on a 5 x 5 year and Ape X Kiteboarding on a 1 x 2 year lease.

Response from applicant: *sorry but those leases are not relevant to the farm area leases (water sports leases are different, are seasonal and don't factor in employment opportunities for locals)*

- o The only leases approved by council under the current administration for a longer time period include Direction Island 40 x 40 years and the Solar Farm 15 x 15 years due to the scale of the significant capital investment involved in these proposals.

Response from applicant: *these multimillion-dollar lease proposals are also very different and not related*

- o Your proposed milestones have a 5 year horizon

Response from applicant: *It's quite normal to provide a 5 year business plan/horizon based on agriculture projects as the trees do not die after 5 years and employment is ongoing due to farming activities required, hence the 10 x 10year proposal to offer the proponent some security against the long term planting of lime trees, etc*

Officers have considered the points raised by the applicant and maintain their recommendation for a 5 year + 5 year lease.

Policy and Legislative Implications

Section 3.58 of the *Local Government Act (WA) (CKI) 1995*

Financial Implications

The surrender of the current lease for Lots 219 and 220 would result in lost revenue of \$12,000 in 2020/21 – noting that only \$6,000 per annum has previously been received as a result of the discount approved by Council in March 2017.

The new proposed lease would result in the following revenue items:

- i. Annual lease fee - \$2,650 per annum plus CPI;
- ii. Annual rates charge - \$1,600 (noting that this amount may increase in accordance with Council adopted Rates Charges)

Relinquishment of the current lease would be conditional on the make good clause in the current lease. The new lease will be conditional on any outstanding amounts owing to the Shire having been first paid.

Strategic Implications

Strategic Community Plan: Economic Objective – Encourage Economic Stability and Diversity on the Islands

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A	N/A	N/A
Health & Safety	N/A	N/A	N/A
Reputation	Inconsistent decision making	Moderate (6)	This recommendation is consistent with

			precedent and established process.
Service Interruption	N/A	N/A	N/A
Compliance	Lack of legislative compliance	Moderate (6)	The process outlined in this report is consistent with legislative requirements.
Property	The lessee does not maintain the property to a habitable standard.	Moderate (9)	The Shire intends commencing a process to inspect leased properties soon to ensure they are being maintained.
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 request for a new lease is supported based on supporting a local small business to ensure they continue to be viable and sustainable. It has become apparent that the area currently on lease (i.e. Lots 219 and 220) are too large for the current lessee to maintain and to be financially viable. This smaller lease will provide an opportunity for the applicant to maintain this business on a lease area and cost that is more manageable

OFFICER'S RECOMMENDATION – ITEM NO 14.2.3

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

1. TO ACCEPT THE REQUEST FROM COCOS ARTISANS COLLECTIVE TO RELINQUISH THEIR LEASE ON LOT 219 AND LOT 220, SUBJECT TO ALL OUTSTANDING FEES AND RATES ARE BEING PAID IN FULL AND THE SITE BEING FULLY REMEDIATED AS PER THE LEASE CONDITIONS;

2. TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY LEASE OF A PORTION OF LOT 220 TO COCOS ARTISAN COLLECTIVE FOR THE PURPOSE OF THE PRODUCTION OF PACKAGED EXPORT FOOD PRODUCTS AND THE AGRICULTURE OF FOOD CROPS AS PER THE MILESTONES BELOW;
3. THE LEASE CONDITIONS TO BE SET AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE WITH THE FOLLOWING SPECIAL CONDITIONS:
 - a. THAT THE LEASE FEE BE SET AS PER THE INDEPENDENT VALUATION OF \$2,650, SUBJECT TO ANNUAL CPI REVIEWS, PLUS A ONE-OFF LEASE PREPARATION FEE OF \$250;
 - b. THE LEASE OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;
 - c. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;
 - d. THE LEASE TERM BEING FOR 5 YEARS WITH 5 YEAR OPTION;
4. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD, AUTHORISE THE CEO TO ENTER THE LEASE AS PER THE SHIRE'S STANDARD RESIDENTIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE AND THE MILESTONES AS FOLLOWS;
 - a. **2021/2022** PLANTATION OF 200 MORINGA SEEDLINGS
PLANTATION OF SEASON CROPS OF PUMPKINS/CHILLI CROP
PLANTATION OF 100 CURRY LEAF PLANT
PLANTATION OF 100 LEMONGRASS
COMPLETION OF 1 SOLAR EVAPORATED SEA SALT SYSTEM
PLANTATION OF 50 WATER COCONUTS
 - b. **2022/2023** MANAGEMENT OF CROPS PLANTED IN YEAR 1
EMPLOYMENT OF 1 PERMANENT PART TIME STAFF & CASUAL STAFF
COMPLETION OF 3 SOLAR EVAPORATION SEA SALT SYSTEM
PROPAGATION OF ADDITIONAL LIME TREES FROM CUTTINGS
PLANTATION OF 500 LIME TREES IN OPTION B ZONE
ENGAGEMENT OF PACKAGED FOOD CONSULTANT ALISON BALL
 - c. **2023/2024** MANAGEMENT OF CROPS PLANTED IN YEAR 1
CREATION OF FARM TOURISM PRODUCTS: GROUP TOURS
INVEST IN NEW HYDROPONIC SYSTEM FOR CAFES AND COMMUNITY

- d. 2024/2025 MANAGEMENT OF CROPS PLANTED IN YEAR 1 & 3
 - e. 2025/2026 MANAGEMENT AND HARVESTING OF LONG-TERM CROPS FROM YEAR 1
-
- 5. THAT IF OBJECTIONS ARE RECEIVED, CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;
 - 6. TO ADVISE THE PROSPECTIVE LESSEE THAT, SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL;
 - 7. TO NOTE THE APPLICANTS REQUEST FOR THE FIRST OPTION ON THE REMAINDER OF LOT 220 (EXCLUDING THE COMMUNITY LIME TREES) SHOWN AS OPTION B ON THE ATTACHED MAP AND AGREE TO THE REQUEST, SUBJECT TO THE APPLICANT ADHERING TO ALL LEASE CONDITIONS AND TO COMPLYING WITH THE LEGISLATIVE REQUIREMENTS FOR DISPOSAL OR PROPERTY, INCLUDING GIVING LOCAL PUBLIC NOTICE.

14.2.4 APPLICATION TO RENEW LEASE FOR TIMBER AND PAINT STORE – COCOS ISLANDS COOPERATIVE SOCIETY

Report Information

Date: 21 July 2020
 Location: Lot 249, Home Island
 Applicant: Cocos Islands Cooperative Society
 File Ref: [Click here to enter text.](#)
 Disclosure of Interest: [Click here to enter text.](#)
 Reporting Officer: Asset & Property Management Coordinator
 Island: Home Island
 Attachments: 14.2.4 Timber and Paint Store Lease Proposals.pdf

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

To present the request and supporting documentation from the Cocos Islands Cooperative Society to enter into new lease agreement for Lot 249 to Council for consideration. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the Land Trusts as the Land (Lot 249) is held in Trust. Council, in making any decision in relation to the Trusts, must give due consideration of the purpose of the Trusts that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and the wellbeing of Cocos Islanders” and ensure their decision-making is guided by this objective. Council, acting in its capacity as Trustee, has the authority to consider matters relating to Land held in Trust.

Relevant Documents

[Available for viewing at the meeting](#)

Background

The Cocos Keeling Islands Cooperative Society Ltd (Cocos Coop) has been the lessee of Lot 249, known as the Timber and Paint Store which is utilised for the storage of large construction materials such as timber, roofing, and paint products as part of the hardware stocked items.

The Shire wrote to the lessee advising them that the lease had expired and to seek their intentions moving forward. They have advised the Shire of their intent to enter into a new lease agreement with the Shire and subsequently submitted their request on 20 July 2020. See 14.2.4 LOT 249 Timber and Paint Store Lease Proposals.pdf

In their application, Cocos Coop has used the template provided by the Shire for smaller commercial leases.

Comment

The Cocos Coop is the only business that provides hardware sales on Cocos and is an important service to the community. The remoteness of Cocos provides very limited opportunities for customers to purchase hardware products.

A revaluation will be sought from a registered independent valuer which will determine the annual lease fee to be charged, noting the fee would be subject to annual CPI review. In addition to this Shire rates would also be raised on the area if this lease is approved.

The proponent has requested a 5 year with a further 5 year option. Milestones have not been requested as there is no change proposed for the current business use and output, however the lease will stipulate that the lease purpose continues to be met.

As noted above, in determining this matter, Council is acting in its capacity as the Trustee of the Land Trusts as the Land (Lot 249) is Land held in Trust under the 1984 Land Trust Deed; therefore Council, is required to have due consideration of the purpose of the Trust, that is “upon trust for the benefit, advancement and wellbeing of the Cocos (Keeling) Islanders resident in the Territory on land owned by the Council.”

Policy and Legislative Implications

Section 3.58 of the *Local Government Act (WA) (CKI)* 1995 as amended

Financial Implications

The applicant has committed to paying the market value. The current lease fee is \$6,495 and it is likely the valuation will be of a similar amount; therefore, it is unlikely to have any impact on the adopted budget

Strategic Implications

Strategic Community Plan: Economic Objective – Encourage Economic Stability and Diversity on the Islands

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	N/A	N/A	N/A
Reputation	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a critical community service	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a critical community service could be disrupted.	Moderate (6)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Compliance	The process for leasing does not comply with legislation	Low (3)	The process outlined in this report is consistent with legislative requirements.
Property	The property is being used other than what it has been intended for	Low (3)	Property inspection to be conducted annually
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 request for a new lease is presented to the Trust for consideration and the officer's recommendation is that the request is approved based on:

4. That it provides an important service to the community;
5. Continuation of service for other on island businesses that seek their service through the procurement of supplies and equipment;
6. The service supports various objectives of the Shire of Cocos Keeling Islands Strategic Community Plan.

OFFICER'S RECOMMENDATION – ITEM NO 14.2.4

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

11. TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY LEASE OF LOT 249 TO THE COCOS ISLANDS COOPERATIVE SOCIETY AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE, SUBJECT TO THE FOLLOWING CONDITIONS:
 - a. THAT THE LEASE FEE BE SET AS PER THE INDEPENDENT VALUATION, SUBJECT TO ANNUAL CPI REVIEWS, PLUS A ONE-OFF LEASE PREPARATION FEE OF \$250;
 - b. THE LEASE OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;
 - c. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;
 - d. THE LEASE TERM BEING FOR 5 YEARS WITH 5 YEAR OPTION;
 - e. THE PURPOSE OF THE LEASE IS TO CONTINUE TO PROVIDE ESSENTIAL STORAGE FOR THE HARDWARE.
12. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD, AUTHORISE THE CEO TO ENTER THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;

13. THAT IF OBJECTIONS ARE RECEIVED, CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;
14. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN;
15. TO ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE; THEY ARE TO BE PAID IN FULL.

14.2.5 APPLICATION TO RENEW LEASE FOR GAS BOTTLE STORAGE – COCOS ISLANDS COOPERATIVE SOCIETY

Report Information

Date: 21 July 2020
 Location: Lot 251, Home Island
 Applicant: Cocos Islands Cooperative Society
 File Ref: [Click here to enter text.](#)
 Disclosure of Interest: [Click here to enter text.](#)
 Reporting Officer: Asset & Property Management Coordinator
 Island: Home Island
 Attachments: 14.2.5 LOT 251 Gas Bottle Storage Lease Proposal.pdf

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

To present the request and supporting documentation for Cocos Islands Cooperative Society to enter into new lease agreement for Lot 251 to Council for consideration. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the Land Trusts as the Land (Lot 251) is held in Trust. Council, in making any decision in relation to the Trusts, must give due consideration of the purpose of the Trusts that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and the wellbeing of Cocos Islanders” and ensure their decision-making is guided by this objective. Council, acting in its capacity as Trustee, has the authority to consider matters relating to Land held in Trust.

Relevant Documents

Available for viewing at the meeting

Background

The Cocos Keeling Islands Cooperative Society Ltd (Cocos Coop) has been the lessee of Lot 251, known as the Gas Bottle Storage for domestic and commercial sale.

The Shire wrote to the lessee advising them that the lease had expired and to seek their intentions moving forward. They have advised the Shire of their intent to enter into a lease agreement with the Shire and subsequently submitted their request on 20 July 2020. See 14.2.5 LOT 251 Gas Bottle Storage Lease Proposal.pdf

In their application, Cocos Coop has used the template provided by the Shire for smaller commercial leases.

Comment

The Cocos Coop has provided sale of LPG and shielding gas for many years to the community and businesses alike. The Cooperative's hardware and fuel depot division encompasses a range of important services such as the main hardware store, timber and paint storage as well as the gas bottle storage.

A revaluation will be sought from a registered independent valuer which will determine the annual lease fee to be charged, noting the fee would be subject to annual CPI review. In addition to this Shire rates would also be raised on the area if this lease is approved.

The proponent has requested a 5 year with a further 5 year option. Milestones have not been requested as there is no change proposed for the current business use and output, however the lease will stipulate that the lease purpose continues to be met.

As noted above, in determining this matter, Council is acting in its capacity as the Trustee of the Land Trusts as the Land (Lot 251) is Land held in Trust under the 1984 Land Trust Deed; therefore Council, is required to have due consideration of the purpose of the Trust, that is "upon trust for the benefit, advancement and wellbeing of the Cocos (Keeling) Islanders resident in the Territory on land owned by the Council."

Policy and Legislative Implications

Section 3.58 of the *Local Government Act (WA) (CKI)* 1995 as amended

Financial Implications

The applicant has committed to paying the market value. The current lease fee is \$2,774 and it is likely the valuation will be of a similar amount; therefore it is unlikely to have any impact on the adopted budget

Strategic Implications

Strategic Community Plan: Economic Objective – Encourage Economic Stability and Diversity on the Islands

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	N/A	N/A	N/A
Reputation	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a critical community service	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a critical community service could be disrupted.	Moderate (6)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Compliance	The process for leasing does not comply with legislation	Low (3)	The process outlined in this report is consistent with legislative requirements.
Property	The property is being used other than what it has been intended for	Low (3)	Property inspection to be conducted annually
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 request for a new lease if presented to the Trust for consideration and the officer's recommendation is that the request is approved based on:

That it provides an important service to the community

OFFICER'S RECOMMENDATION – ITEM NO 14.2.5

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

1. TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY LEASE OF LOT 251 TO THE COCOS ISLANDS COOPERATIVE SOCIETY AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE, SUBJECT TO THE FOLLOWING CONDITIONS:
 - a. THAT THE LEASE FEE BE SET AS PER THE INDEPENDENT VALUATION, SUBJECT TO ANNUAL CPI REVIEWS, PLUS A ONE-OFF LEASE PREPARATION FEE OF \$250;
 - b. THE LEASE OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;
 - c. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;
 - d. THE LEASE TERM BEING FOR 5 YEARS WITH 5 YEAR OPTION;
 - e. THE PURPOSE OF THE LEASE IS TO CONTINUE TO PROVIDE ESSENTIAL STORAGE FOR GAS BOTTLES FOR SALE TO THE COMMUNITY AND BUSINESSES VIA THE COOPERATIVE'S HARDWARE;
2. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD, AUTHORISE THE CEO TO ENTER THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;
3. THAT IF OBJECTIONS ARE RECEIVED, CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;

4. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN;
5. TO ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE; THEY ARE TO BE PAID IN FULL.

14.2.6 WALGA AGM AND VOTING DELEGATES

Report Information

Date: 20 August 2020
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref: [Click here to enter text.](#)
 Disclosure of Interest: Nil
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island: N/A
 Attachments: Notice of WALGA AGM; and WALGA AGM Agenda

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

To inform Council of the upcoming Annual General Meeting (AGM) of the WA Local Government Association (WALGA). This item also seeks a Council resolution to formally appoint delegates to vote on behalf of Council.

Relevant Documents

[Available for viewing at the meeting](#)

Background

As the peak industry body, WALGA advocates on behalf of 138 WA Local Governments and negotiates service agreements for the sector. The AGM provides a forum for all member Local Governments to contribute to the priorities for the association.

The WALGA AGM is to be held on Friday 25 September 2020. The Shire is a member of WALGA and all Member Councils are entitled to be represented by two (2) voting delegates at the AGM which will be held at the Crown in Perth.

The AGM program includes an address by the Hon David Templeman MLA, Minister for Local Government, the Hon Bill Marmion MLA, Shadow Minister for Local Government. See attached AGM program.

Comment

The Shire will need to notify WALGA by 28 August 2020 if it wishes to register the attendance and voting entitlements of Council's delegates. The timing of the AGM would require a full week in Perth (Tuesday 22 September until Tuesday 29 September).

In the event that a Voting Delegate is unable to attend, provision is made for proxy delegates to be registered. Only registered delegates or proxy registered delegates will be permitted to exercise voting entitlements on behalf of Member Councils. Delegates may be Elected Members or serving officers.

The CEO will be in Perth for other professional development earlier that week and will stay until Friday 25 September to attend the AGM.

Policy and Legislative Implications

Nil

Financial Implications

Travel costs associated with attendance at the AGM in Perth, inclusive of airfares, accommodation and meals allowances, would be approx. \$3,500. The Council budget for 2020/21 has an allocation for Councillor PD and Training, such as the WALGA AGM.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2016 -2026 Outcome 4.1.1 -To provide leadership to the community

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	N/A		
Reputation	The Shire is seen as disengaged from the sector.	Low (4)	Attendance at the WALGA AGM allows Elected Members to engage with Councillors and professionals from around the State and become better acquainted with sector-side issues.
Service Interruption	N/A		
Compliance	N/A		
Property	N/A		
Environment	N/A		
Fraud	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 that that the Shire does appoint at least one voting delegate and seeks a Council resolution to formally appoint delegates to vote on behalf of Council at the 2020 Annual General Meeting of the WA Local Government Association (WALGA).

OFFICER’S RECOMMENDATION – ITEM NO 14.2.6

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.18 OF THE LOCAL GOVERNMENT ACT (WA)(CKI) 1995 RESOLVES TO NOMINATE THE FOLLOWING AS VOTING DELEGATES TO THE 2019 WA LOCAL GOVERNMENT ASSOCIATION ANNUAL GENERAL MEETING:

1. _____; AND

2. _____

PROXY _____

14.3 TRUSTS FINANCE

15. NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING (LATE ITEM)

16. CLOSURE