

Shire of Cocos (Keeling) Islands

Shire of Cocos (Keeling) Islands

Agenda

Ordinary Meeting of Council

25 August 2021, 4.00pm

CRC Meeting Room, West Island

OUR VALUES

Service

Provide the best service we can.
We serve the community and each other.

Accountability

We take responsibility for our own actions.
We do what we say we will do.
Mistakes are an opportunity to learn.

Support

We support our team and our community.
Look for opportunities to help each other.

Respect

We respect and value others.
Our interactions are always respectful towards others.

Integrity

We will be honest and transparent with all our dealings.
Maintain confidentiality.
Trust each other.

Achievement

Being proactive and enabling the outcomes.
Be creative and think outside the square.

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1. OPENING/ANNOUNCEMENTS OF VISITORS

2. ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

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 (WA)(CKI)HE*, 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 (WA)(CKI)* 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 (WA)(CKI) (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
NIL		

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 28 July 2021 - Attachment 7.1

OFFICER RECOMMENDATION

THAT COUNCIL BY SIMPLE MAJORITY, PURSUANT TO SECTIONS 5.22(2) AND 3.18 OF THE LOCAL GOVERNMENT ACT 1995 (WA)(CKI), RESOLVES THAT THE MINUTES OF THE ORDINARY COUNCIL MEETING HELD ON 28 JULY 2021, 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.

Name	Item No.	Interest	Nature

10. REPORTS AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.1.1 MONTHLY FINANCIAL REPORT FOR THE MONTH ENDING 31 JULY 2021

Report Information

Date: 13 August 2021
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1.1.1 - Monthly Financial Report Containing Statement of Financial Activity with accompanying notes 31 July 2021

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 provide a monthly financial report, which includes rating, investment, reserve, debtor, and general financial information to Elected Members in accordance with Section 6.4 of the *Local Government Act 1995 (WA) (CKI)*.

Relevant Documents

Available for viewing at the meeting.

Nil

Background

The reporting of monthly financial information is a requirement under section 6.4 of the *Local Government Act 1995 (WA) (CKI)*, and Regulation 34 of the *Local Government (Financial Management) Regulations 1996* and provides oversight of the Shire's finances to Council.

Comment

The period of review is July 2021. The current closing municipal surplus for this period is \$2,487,961 compared to a budget position of \$2,345,104. This is considered a satisfactory result for the Shire as it is maintaining a healthy surplus position.

Income for the July 2021 period year to date is \$2,326,597 which is made up exclusively of operating revenues with no non-operating grants, contributions and subsidies received as yet. The budget estimated \$2,330,790 would be received for the same period. The variance to budget is (\$4,193).

Expenditure for the July 2021 period year to date is \$676,430. This is made up of \$573,425 in operating expenditure and \$103,005 in capital expenditure. The budget estimated \$946,232 would be spent for the same period. The variance to budget is \$269,802.

Details of all significant variances against the current budget are provided in the notes to the Monthly Financial Report contained within Attachment 10.1.1.1.

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.

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

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

Strategic Implications

Nil

Risk Implications

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

Risk Matrix

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

Conclusion

That the Monthly Financial Report for the period 1 July 2021 to 31 July 2021, including explanations of material variances, be received.

OFFICER RECOMMENDATION – ITEM NO 10.1.1

THAT COUNCIL:

1. BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE MONTHLY FINANCIAL REPORT FOR THE PERIOD 1 JULY 2021 TO 31 JULY 2021, AS CONTAINED IN ATTACHMENT 10.1.1.1; AND
2. ACCEPTS THE EXPLANATIONS FOR MATERIAL VARIANCES FOR THE PERIOD 1 JULY 2021 TO 31 JULY 2021, AS CONTAINED IN ATTACHMENT 10.1.1.1.

10.1.2 SCHEDULE OF ACCOUNTS PAID FOR THE PERIOD 1 JULY 2021 TO 31 JULY 2021

Report Information

Date: 16 August 2021
 Location: Not applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Senior Finance Officer
 Island: Shire Wide
 Attachments: 10.1.2.1 - Schedule of Accounts paid – July 2021
 10.1.2.2 – Credit Card Transactions – July 2021

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 present to Council a list of accounts paid under delegated authority for the period 1 July 2021 to 31 July 2021, as required by the *Local Government (Financial Management) Regulations 1996*.

Relevant Documents

Available for viewing at the meeting

Nil

Background

Council has delegated, to the Chief Executive Officer, the exercise of its power to make payments from the Shire's Municipal and Trust funds. In accordance with Regulation 13 of the *Local Government (Financial Management) Regulations 1996* a list of accounts paid is to be provided to Council, where such delegation is made.

Comment

The following table summarises the payments for the period by payment type, with full details of the accounts paid contained within Attachment 10.1.2.1.

Payment Type	Amount (\$)
EFT Payments #8224 to #8272	\$570,050.07
Direct Debit Payment	\$48,513.35
Cheque Payment	\$5,969.38
Total Payments	\$624,532.80

Contained within Attachment 10.1.2.2 is a detailed transaction listing of credit card expenditure for the period ended 31 July 2021. This amount is included within the total payments, listed above.

Policy and Legislative Implications

Nil

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	That budget allocations are significantly exceeded.	Moderate (6)	Variances are monitored and highlighted to Council monthly for corrective action.
Reputation	The accounts paid report is open to public scrutiny.	Low (3)	Procedures in place to ensure all expenditure is justifiable.
Compliance	The report is to be presented to Council in order to comply with relevant legislation.	Low (3)	There are processes in place to ensure compliance with legislation.
Fraud	That the report is manipulated.	Low (3)	Interim and end of year audits along with sequence checks.

Risk Matrix

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

Conclusion

It is recommended that Council receives the reports provided for the period ended 31 July 2021.

OFFICER RECOMMENDATION – ITEM NO 10.1.2

THAT COUNCIL:

1. BY SIMPLE MAJORITY, PURSUANT TO REGULATION 13(1) OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996 RECEIVES THE REPORT FROM THE CHIEF EXECUTIVE OFFICER ON THE EXERCISE OF DELEGATED

AUTHORITY IN RELATION TO PAYMENTS MADE FROM MUNICIPAL OR TRUST FUNDS FOR THE PERIOD 1 JULY 2021 TO 31 JULY 2021 TOTALLING \$624,532.80 AS CONTAINED IN ATTACHMENT 10.1.2.1.

- 2. RECEIVES THE DETAILED TRANSACTION LISTING OF CREDIT CARD EXPENDITURE FOR THE PERIOD ENDED 31 JULY 2021, AS CONTAINED IN ATTACHMENT 10.1.2.2.**

10.1.3 AMENDMENT TO SCHEDULE OF FEES AND CHARGES 2021/2022

Report Information

Date: 17 August 2021
 Location: N/A
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire wide
 Attachments: Nil

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 correct an administrative error that occurred when the schedule of fees and charges 2021/2022 was entered into a new format.

Relevant Documents

Available for viewing at the meeting

Background

The Schedule of Fees and Charges 2021/2022 was adopted at the July 2021 OCM as part of the budget adoption.

OFFICER RECOMMENDATION – ITEM NO 10.1.3

THAT COUNCIL, BY ABSOLUTE MAJORITY:

11. FEES AND CHARGES

**PURSUANT TO SECTION 6.16 OF THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)*,
ADOPTS THE FEES AND CHARGES SET OUT IN ATTACHMENT 10.1.3.2 AND**

Comment

For the 2021/2022 year the format in which the Schedule of Fees and Charges is presented was updated. In the process of transferring across the information the rate for Sand – Delivered to Home Island and Sand – Delivered to West Island were inadvertently switched.

The following were the rates as adopted in July:

Sand – Delivered to Home Island	\$133 Per m3
Sand – Delivered to West Island	\$101 Per m3

The following are the rates which are being proposed to correct this oversight:

Sand – Delivered to Home Island	\$101 Per m3
Sand – Delivered to West Island	\$133 Per m3

Policy and Legislative Implications

The *Local Government Act (WA) (CKI) 1995*, s6.16, s6.17 and s6.19 stipulate the requirements for imposing fees and charges.

Financial Implications

This report will allow the fees and charges for sand to be charged out at the correct rate for each service.

Strategic Implications

Shire of Cocos (Keeling) Islands Corporate Business Plan 2018/19 – 2021/22

Civic Leadership, Objective 4 – Ensure efficient and effective management of the organisation and financial resources.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Fees and charges do not reflect cost (i.e. are too low) or are unaffordable (i.e. too high).	Moderate (6)	Fees and charges are carefully considered to ensure they balance the need cost recovery requirements with affordability.
Health & Safety	N/A		
Reputation	Costs are seen by the community and stakeholders as too high.	Moderate (6)	Fees and charges are carefully considered to ensure they balance the need for cost recovery with affordability.

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

OFFICER RECOMMENDATION – ITEM NO 10.1.3

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO S6.16, S6.17 AND S6.19 OF THE LOCAL GOVERNMENT ACT (WA)(CKI) 1995 RESOLVES TO AMEND THE 2021/2022 SCHEDULE OF FEES AND CHARGES FOR SAND, AS FOLLOWS:

- A. SAND – DELIVERED TO HOME ISLAND \$101 PER M3**
- B. SAND – DELIVERED TO WEST ISLAND \$133 PER M3**

10.2 LEASES

10.3 PLANNING/BUILDING

10.4 ADMINISTRATION

10.4.1 2021 WALGA AGM AND VOTING DELEGATES

Report Information

Date: 19 August 2021
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Governance and Risk Coordinator
 Island: N/A
 Attachments: 10.4.1.1 - Notice of WALGA AGM 2021
 10.4.1.2 – Agenda AGM 2021

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>
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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 Monday 20 September 2021. 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 John Carey MLA, Minister for Housing; Local Government, the Hon Mia Davies MLA, Leader of the Opposition and Cr Linda Schott, ALGA President See attached AGM program.

Comment

The Shire will need to notify WALGA by 27 August 2021 if it wishes to register the attendance and voting entitlements of Council's delegates.

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.

Policy and Legislative Implications

Nil

Financial Implications

As the AGM is held at the WA Local Government Convention, the cost associated with registration at the AGM would be approx. \$1200 plus travel costs. The Council budget for 2021/22 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
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.

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 2021 Annual General Meeting of the WA Local Government Association (WALGA).

OFFICER RECOMMENDATION – ITEM NO 10.4.1

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 2021 WA LOCAL GOVERNMENT ASSOCIATION ANNUAL GENERAL MEETING:

1. _____; AND

2. _____

PROXY _____

10.5 MINUTES TO BE RECEIVED

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

12. MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL

13. MATTERS BEHIND CLOSED DOORS

13.1 CONFIDENTIAL ITEM - APPOINTMENT OF DESIGNATED SENIOR EMPLOYEES

Report Information

Date: 16 August 2021
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref: Not Applicable
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Shire Wide
 Attachments: Circulated under separate cover

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</i>

		<i>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 Information

This matter will be considered behind closed doors in accordance with Section 5.23(2) (b) and (e) of the Local Government Act as it related to the personal affair of a person and a contract that may be entered into.

Voting Requirement

Simple Majority

OFFICER RECOMMENDATION:

THAT COUNCIL GO BEHIND CLOSED DOORS IN ACCORDANCE WITH SECTION 5.23(2)(B) AND (E) OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI).

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) Islander's resident in the Territory on land owned by the Council.'

14.1 TRUSTS ADMINISTRATION

14.2 TRUSTS LEASES

14.2.1 RESIDENTIAL ASSIGNMENT OF LEASE REQUEST – LOT 169 HOME ISLAND JALAN BUNGA KANGKONG

Report Information

Date: 12 August 2021
 Location: Lot 169 (House 69), Jalan Bunga Kangkong
 Applicant: Mr Zaikat Omal & Mrs Danie Olbio
 File Ref: HL169
 Disclosure of Interest:
 Reporting Officer: Leasing Officer
 Island: Home Island
 Attachments: 14.2.1.1 - Applicant Request Letter
 14.2.1.2 - Map Lot169 Home Island

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 to Council, a request and supporting documentation for assignment of a lease for Lot 169 (69) Home Island Jalan Bunga Kangkong. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the 1979 Land Trust as the land (Lot 183) is held in Trust. Council, in making any decision in relation to the Trust, must give due consideration of the purpose of the Trust 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

Nil

Background

Lot 169 (69) Home Island Jalan Bunga Kangkong is currently leased to Mr Omal Ebnue and Mrs Imie Jamihan who are now both deceased. The applicants Mr Omal who is the lease holders only son, and Mrs Olbio currently resides in House 69 with their daughter and her three family members.

Both applicants were primary carers for their deceased parents until they passed away. A request has been submitted to transfer the lease to Mr Omal and Mrs Olbio, as per Attachment 14.2.1.1.

It is to be noted there is also a request for the assignment of lease for Lot 55 Home Island to Mr Omal and Mrs Olbio’s eldest daughter.

Comment

Clause 3.22 of the lease agreement deals with assignment and states:

3.22 Assignment or subletting

The Lessee shall not assign, sublet or otherwise part with the possession of or dispose of the Premises or the benefit of this Lease without the prior written consent of the Lessor provided that:

(a) Consent not unreasonably withheld to assignment

If the Lessee wishes to assign the whole of the Premises and the benefit of this Lease the Lessor may not unreasonably withhold its consent to that assignment if:

- (i) the proposed assignee is a respectable, responsible and solvent Kampong resident (the onus of proof of which shall be upon the Lessee);*
- (ii) the Lessee procures the execution by the proposed assignee of a deed of assignment of this Lease to which the Lessor is a party prepared and completed by the Lessor's solicitors at the cost of the Lessee in all respects and the covenants and agreements on the part of any proposed assignee will be deemed to be supplementary to this Lease and will not in any way relieve the Lessee from its liability under this Lease;*
- (iii) all outgoing and other payments then due or payable have been paid and there is not any existing unremedied breach of any of the Lessee's obligations under this Lease;*
- (iv) the deed of assignment contains a covenant by the assignee with the Lessor that the assignee will at all times during the continuance of the Term duly observe and perform all the Lessee's obligations under this Lease;*
- (v) the Lessee pays to the Lessor all proper and reasonable costs charges and expenses incurred by the Lessor of and incidental to the deed of assignment and any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility, solvency and identity of any proposed assignee.*

(b) Exclusion of Sections

Sections 80 and 82 of the Property Law Act 1969 are excluded from any assignment or sub-lease.

The Officer's recommendation is for Council to approve the request for the assignment. The applicant is aware of the terms of the current lease and have accepted the property at its current condition.

It is to be noted the applicants are lease holders for Lot 55 Home Island and there is an application for an assignment of lease for this property.

It is also proposed to add the following additional special condition to the assignment document and also to all future assignment or new kampong lease agreements:

“That Council may terminate this lease if the lessee does not occupy the house for at least six months in any 12-month period unless written approval for the absence has been given by the Shire.”

This additional condition has been added to ensure that lease houses in the kampong do not sit vacant for long periods of time. It also protects against the property potentially being used like an investment property and rented out to others by an absentee lessee.

Policy and Legislative Implications

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

Financial Implications

An assignment of lease should always be conditional on any outstanding amounts owing to the shire having been first paid. A fee of \$250 will be charged for the preparation of assignment of lease document.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan:
*Outcome 4.1 An informed Council leading working with others to advance our Islands.
 4.1.1 To provide leadership to the community.*

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	Inconsistent decision making	Moderate (6)	This recommendation is consistent with precedent and established process.
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.

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 to assign a lease is presented to Council, acting as the Trustee of the 1979 Land Trust, for consideration and the Officer's recommendation is that the request is approved on the basis that a lease provides more surety of tenure for residents, whilst alleviating the Shire of the financial burden of the property maintenance for the leased property. It is noted that the proposed lessees are already residing at the property prior to the request.

OFFICER RECOMMENDATION – ITEM NO – 14.2.1

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1979 LAND TRUST DEED, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES:

- 1. TO ASSIGN THE LEASE FOR LOT 169, JLN BUNGA KANGKONG TO MR ZAIKAT OMAL & MRS DANIE OLBIO AS PER THE SHIRE'S STANDARD RESIDENTIAL LEASE AGREEMENT WITH THE FOLLOWING SPECIAL CONDITIONS:**
 - A. THE LEASE EXPIRY DATE IS SET FOR 30 NOVEMBER 2043;**
 - B. THERE IS A ONE-OFF LEASE PREPARATION FEE OF \$250**
 - C. THE LEASE OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;**
 - D. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;**
 - E. THAT THE TRUSTEE ADVISES THE PROSPECTIVE LESSEE THAT ANY NON-COMPLIANT OUT-BUILDING ON PROPERTY, IF THEY SO EXIST, ARE THE LESSEE'S RESPONSIBILITY TO ACCEPT LIABILITY SHOULD ANY FUTURE CLAIMS ARISE IN RESPECT TO THESE NON-COMPLIANT OUT-BUILDINGS.**
 - F. THAT COUNCIL MAY TERMINATE THIS LEASE IF THE LESSEE DOES NOT OCCUPY THE HOUSE FOR AT LEAST 6 MONTHS IN ANY 12 MONTH PERIOD**

UNLESS WRITTEN APPROVAL FOR THE ABSENCE HAS BEEN GIVEN BY THE SHIRE.

- 2. ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL BEFORE THE ASSIGNMENT CAN OCCUR.**

14.2.2 RESIDENTIAL ASSIGNMENT OF LEASE REQUEST – LOT 155 HOME ISLAND JALAN BUNGA KANGKONG

Report Information

Date: 12 August 2021
 Location: Lot 155 (House 55), Jalan Bunga Kangkong
 Applicant: Mrs Juwanie Zaikat & Mr Ag Julfaizal Ag Jual
 File Ref: HL155
 Disclosure of Interest:
 Reporting Officer: Leasing Officer
 Island: Home Island
 Attachments: 14.2.2.1 - Applicant Request Letter
 14.2.2.2 - Map Lot155 Home Island

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 to Council, a request and supporting documentation for assignment of a lease for Lot 155 (55) Home Island Jalan Bunga Kangkong. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the 1979 Land Trust as the land (Lot 155) is held in Trust. Council, in making any decision in relation to the Trust, must give due

consideration of the purpose of the Trust 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

Nil

Background

Lot 155 (House 55) Home Island Jalan Bunga Kangkong is currently leased to Mr Zaikat Omal and Mrs Danie Olbio. Due to family circumstances and carer responsibilities for Mr Omal’s now deceased parents the lease holder currently resides in Lot 169 (House 69). There is also an application from Mr Omal and Mrs Olbio for assignment of lease for Lot 169 (House 69) Home Island.

The applicants Mrs Juwanie Zaikat and Mr Ag Julfaizal Ag Jual resides in Lot 55 Home Island with their 3 children. They are also carers for their grandmother and grandfather (parents of current lease holder Mrs Olbio) who also resides in the property.

Mrs Zaikat and Mr Ag Jual has submitted a request to transfer the lease as primary lease holder, as per attachment 14.2.2.1.

Comment

Clause 3.22 of the lease agreement deals with assignment and states:

3.22 Assignment or subletting

The Lessee shall not assign, sublet or otherwise part with the possession of or dispose of the Premises or the benefit of this Lease without the prior written consent of the Lessor provided that:

(a) Consent not unreasonably withheld to assignment

If the Lessee wishes to assign the whole of the Premises and the benefit of this Lease the Lessor may not unreasonably withhold its consent to that assignment if:

- (i) the proposed assignee is a respectable, responsible and solvent Kampong resident (the onus of proof of which shall be upon the Lessee);*

- (ii) *the Lessee procures the execution by the proposed assignee of a deed of assignment of this Lease to which the Lessor is a party prepared and completed by the Lessor's solicitors at the cost of the Lessee in all respects and the covenants and agreements on the part of any proposed assignee will be deemed to be supplementary to this Lease and will not in any way relieve the Lessee from its liability under this Lease;*
- (iii) *all outgoing and other payments then due or payable have been paid and there is not any existing unremedied breach of any of the Lessee's obligations under this Lease;*
- (iv) *the deed of assignment contains a covenant by the assignee with the Lessor that the assignee will at all times during the continuance of the Term duly observe and perform all the Lessee's obligations under this Lease;*
- (v) *the Lessee pays to the Lessor all proper and reasonable costs charges and expenses incurred by the Lessor of and incidental to the deed of assignment and any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility, solvency and identity of any proposed assignee.*

(b) Exclusion of Sections

Sections 80 and 82 of the Property Law Act 1969 are excluded from any assignment or sub-lease.

The Officer's recommendation is for Council to approve the request for the assignment. The applicant is aware of the terms of the current lease and have accepted the property at its current condition.

It is also proposed to add the following additional special condition to the assignment document and also to all future assignment or new kampong lease agreements:

"That Council may terminate this lease if the lessee does not occupy the house for at least six months in any 12-month period unless written approval for the absence has been given by the Shire."

This additional condition has been added to ensure that lease houses in the kampong do not sit vacant for long periods of time. It also protects against the property potentially being used like an investment property and rented out to others by an absentee lessee.

Policy and Legislative Implications

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

Financial Implications

An assignment of lease should always be conditional on any outstanding amounts owing to the shire having been first paid. A fee of \$250 will be charged for the preparation of assignment of lease document.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan:

Outcome 4.1 An informed Council leading working with others to advance our Islands.

4.1.1 To provide leadership to the community.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	Inconsistent decision making	Moderate (6)	This recommendation is consistent with precedent and established process.
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.

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 to assign a lease is presented to Council, acting as the Trustee of the 1979 Land Trust, for consideration and the Officer's recommendation is that the request is approved on the basis that a lease provides more surety of tenure for residents, whilst alleviating the Shire of the financial burden of the property maintenance for the leased property. It is noted that the proposed lessees are already residing at the property prior to the request.

OFFICER'S RECOMMENDATION – ITEM NO – 14.2.2

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1979 LAND TRUST DEED, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* RESOLVES:

- 3. TO ASSIGN THE LEASE FOR LOT 155, JALAN BUNGA KANGKONG TO MRS JUWANIE ZAIKET AND MR AG JULFAIZAL AG JUAL AS PER THE SHIRE'S STANDARD RESIDENTIAL LEASE CONDITIONS WITH THE FOLLOWING SPECIAL CONDITIONS:**
 - A. THE LEASE EXPIRY DATE IS SET FOR 30 NOVEMBER 2043;**
 - B. THERE IS A ONE-OFF LEASE PREPARATION FEE OF \$250**
 - C. THE LEASE OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;**
 - D. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;**
 - E. THAT THE TRUSTEE ADVISES THE PROSPECTIVE LESSEE THAT ANY NON-COMPLIANT OUT-BUILDING ON PROPERTY, IF THEY SO EXIST, ARE THE LESSEE'S RESPONSIBILITY TO ACCEPT LIABILITY SHOULD ANY FUTURE CLAIMS ARISE IN RESPECT TO THESE NON-COMPLIANT OUT-BUILDINGS.**
 - F. THAT COUNCIL MAY TERMINATE THIS LEASE IF THE LESSEE DOES NOT OCCUPY THE HOUSE FOR AT LEAST 6 MONTHS IN ANY 12 MONTH PERIOD UNLESS WRITTEN APPROVAL FOR THE ABSENCE HAS BEEN GIVEN BY THE SHIRE.**
- 4. ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL BEFORE THE ASSIGNMENT CAN OCCUR.**

14.3 TRUSTS FINANCE

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

16. CLOSURE