

Shire of Cocos (Keeling) Islands

Shire of Cocos (Keeling) Islands

Agenda

Ordinary Meeting of Council

Wednesday 15 December 2021, 4.00pm

**Council Chambers, Administration Building
at Lot 256 Jalan Bunga Melati, Home Island**

Disclaimer

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.

OUR VALUES

Service

Provide the best service we can.

We serve the community and each other.

Accountability

We take responsibility for our own actions.

We do what we say we will do.

Mistakes are an opportunity to learn.

Support

We support our team and our community.

Look for opportunities to help each other.

Respect

We respect and value others.

Our interactions are always respectful towards others.

Integrity

We will be honest and transparent with all our dealings.

Maintain confidentiality.

Trust each other.

Achievement

Being proactive and enabling the outcomes.

Be creative and think outside the square.

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1. OPENING/ANNOUNCEMENTS OF VISITORS

2. ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4. PUBLIC QUESTION TIME

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

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

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

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

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

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

5. LEAVE OF ABSENCE

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

5.1 LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Councillor	Date of Leave	Approved by Council
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 24 November 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 24 NOVEMBER 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
NIL			

10. REPORT AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.1.1 MONTHLY FINANCIAL REPORT - NOVEMBER 2021

Report Information

Date: 15 December 2021
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1.1.1 - Monthly Financial Report - November 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>

Report Purpose

The purpose of this report is to provide a monthly financial report for November 2021, 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 November 2021. The current closing municipal surplus for this period is \$1,243,175 compared to a budget position of \$419,759. This is considered a satisfactory result for the Shire as it is maintaining a healthy surplus position.

Income for the November 2021 period year to date is \$3,470,998 which is made up \$3,410,998 in operating revenues and \$60,000 in non-operating grants, contributions, and subsidies. The budget estimated \$3,246,533 would be received for the same period. The variance to budget is \$224,465.

Expenditure for the November 2021 period year to date is \$3,582,794. This is made up of \$3,023,446 in operating expenditure and \$559,347 in capital expenditure. The budget estimated \$4,276,477 would be spent for the same period. The variance to budget is \$693,683.

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.
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 ending 30 November 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 ENDING 30 NOVEMBER 2021, AS CONTAINED IN ATTACHMENT 10.1.1.1; AND
2. ACCEPTS THE EXPLANATIONS FOR MATERIAL VARIANCES FOR THE PERIOD ENDING 30 NOVEMBER 2021, AS CONTAINED IN ATTACHMENT 10.1.1.1.

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

Report Information

Date: 02 December 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
 10.1.2.2 – Credit Card Transaction

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 November 2021 to 30 November 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 #8439 to #8533	\$370,393.41
Direct Debit Payment	\$42,800.09
Cheque Payment	\$6,325.98
Total Payments	\$419,519.48

Contained within 10.1.2.2 is a detailed transaction listing of credit card expenditure for the period ended 30 November 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.
Health & Safety	N/A	N/A	N/A
Reputation	The accounts paid report is 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 in order to comply with relevant legislation.	Low (3)	There are processes in place to ensure compliance with legislation.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	That the report is manipulated.	Low (3)	Interim and end of year audits 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 30 November 2021.

OFFICER'S 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 NOVEMBER 2021 TO 30 NOVEMBER 2021 TOTALLING \$419519.48 AS CONTAINED IN 10.1.2.1.
2. RECEIVES THE DETAILED TRANSACTION LISTING OF CREDIT CARD EXPENDITURE FOR THE PERIOD ENDED 30 NOVEMBER 2021, AS CONTAINED IN 10.1.2.2.

10.2 LEASES

10.3 PLANNING/BUILDING

10.3.1 CONDITION OF DEVELOPMENT APPROVAL – REQUEST FOR EXTENSION - PART LOT 100 – WEST ISLAND (RED CLAW)

Report Information

Date: 6 December 2021
 Applicant: Mr Greg Cahill as Trustee for “Cahill Family Trust”
 Location: Part Lot 100 Sydney Highway
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: West Island
 Attachments: Nil

<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>
	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 information relating to the Condition of Development Approval for Aquaculture Licence at Part Lot 100 West Island and the proponents request for an extension.

Relevant Documents

[Available for viewing at the meeting](#)

Background

In December 2014 the proponent formally advised that he had been awarded a lease and given planning approval for an Aquaculture Farm and associated Caretaker Dwelling on part Lot 100.

The permitted use on the lease is "Aquaculture". According to the Department of Primary Industries and Regional Development (Fisheries WA) website, the definition of Aquaculture is *the keeping, breeding, hatching, culturing or harvesting of fish.*

While no timeframes were included in the original planning approval, the proponents proposal to Council stated that the aquaculture business would be operational by 2017.

The previous CEO conducted a site visit on 1 October 2019 and confirmed that the 20 photographs dated 24 September 2019 tabled by the proponent at the Ordinary Meeting of Council on 25 September 2019, accurately depict the commencement of work on site which consists of an automated hydroponics and small aquaculture setup with guppies and a small palm nursery.

At the Ordinary Meeting of Council, Council resolved that works had not substantially commenced and that a new Development Application would be required from the proponent. Following this decision of Council, the proponent and the Shire have worked together to negotiate new timeframes that were agreeable to both parties and as a result the proponent provided the Shire with new milestone timeframes as follows:

- a. *MILESTONE ONE: AQUACULTURE (ALL SHADE) SHELTER TO BE ERECTED BY MAY 2020;*
- b. *MILESTONE TWO: MR CAHILL WILL HAVE HIS AQUACULTURE LICENCE BY DECEMBER 2020;*
- c. *MILESTONE THREE: THE FIRST BATCH OF "CERTIFIED DISEASE FREE - RED CLAW HATCHLINGS OR A FISHERIES APPROVED ALTERNATIVE" WILL BE ON SITE BY DECEMBER 2021 WITH THE INTENT TO GROW & SELL.*

While these milestones do not tie the proponent to having a viable business operational by December 2021, it was intended that it would provide some reassurance that the business would be at a stage to commence. The proponent was also advised that at the conclusion of his first ten-year lease period Council is likely to expect an aquaculture farm in accordance with the lease conditions when considering the second ten-year option. The proponent was also advised that in the event that any of these milestones were not met, this would be deemed as non-compliance with the planning approval conditions and planning approval will lapse. The above milestones along with the conditions imposed by Council in the Council resolution from November 2014 formed part of the Council's consideration in granting the proponent a Development Approval at the Ordinary Council Meeting on 6 November 2019. The following conditions were resolved:

2. INCLUDE THE THREE FOLLOWING MILESTONES TO THE DEVELOPMENT APPROVAL CONDITIONS:

THE APPLICANT IS REQUIRED TO MEET THE BELOW MILESTONES BY THE DUE DATES. THE CHIEF EXECUTIVE OFFICER MAY GRANT AN EXTENSION OF UP TO A MAXIMUM OF THREE MONTHS FOR EACH MILESTONE IF THERE ARE EXTENUATING CIRCUMSTANCES THAT JUSTIFY AN EXTENSION. APPLICATION FOR AN EXTENSION WILL BE REQUIRED JUSTIFYING THE CIRCUMSTANCES AND THE GRANTING OF AN EXTENSION IS AT THE SOLE DISCRETION OF THE CHIEF EXECUTIVE OFFICER.

- A. *MILESTONE ONE: AQUACULTURE (ALL SHADE) SHELTER TO BE ERECTED BY MAY 2020;*
- B. *MILESTONE TWO: MR CAHILL WILL HAVE HIS AQUACULTURE LICENCE BY DECEMBER 2020;*
- C. *MILESTONE THREE: THE FIRST BATCH OF "CERTIFIED DISEASE FREE - RED CLAW HATCHLINGS OR A FISHERIES APPROVED ALTERNATIVE" WILL BE ON SITE BY DECEMBER 2021 WITH THE INTENT TO GROW & SELL.*

Comment

Whilst it is not a requirement imposed on obtaining an aquaculture licence, the proponent maintains that in order to be able to obtain an aquaculture licence he must travel to Queensland to learn more about the best way to farm his Red Claw hatchlings.

Milestone Two (Condition 2B) was provided with an extension of six months by the previous Chief Executive Officer in recognition of the COVID-19 context, with the new Milestone Completion date of 30 June 2021. On an email confirmation provided on the 21 July 2021, the proponent has not been able to meet the extension deadline and has requested for a further extension, due to his inability to travel due to COVID-19.

The COVID-19 pandemic and restrictions placed on travel between the IOTs, Western Australia and the rest of the country have been uncertain since the inception of the global pandemic. Whilst there has been opportunities to travel during the pandemic, the uncertainty of lock downs have remained with Western Australia's approach to border conditions for the pandemic.

Extensive discussions with the proponent and a site visit has confirmed that progress on any development works has commenced and does continue, albeit at a very slow pace. The current building approvals for product tasting shelter and care takers residence works expires in September and October 2022 respectively.

In regards to the conditions of the Development Approval, Council still reserves the right to grant the extension. However, the timing of both condition 2B and 2C may need to be altered to be effective for the proponent and reflect the still uncertain COVID-19 implications. Given this is not the first extension Council may in their consideration state this is the final extension or not grant the extension at all.

Financial Implications

There are no direct financial implications; however, managing this process has been a time resource intensive process for Shire officers over a number of years.

Policy and Legislative Implications

Clause 77 of the Deemed Provisions of the Shire's Local Planning Scheme No.1 is the applying function:

77. Amending or cancelling development approval

Amending or cancelling development approval

(1) An owner of land in respect of which development approval has been granted by the local government may make an application to the local government requesting the local government to do any or all of the following —

(a) to amend the approval so as to extend the period within which any development approved must be substantially commenced;

However, in granting or not granting the extension it should be made clear to the proponent that the Shire’s decision does not provide avenue to change any other current conditions of approval nor afford a right of appeal to the State Administrative Tribunal. The decision merely relates to the period of time, on which the development must have substantially commenced.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2016-2026

Key Result Area: Economic Opportunities

Outcome 1.1 Encourage economic stability for the Islands.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	Council does not approve the extension and is seen as being unreasonable in the context of the COVID-19 environment	Low (3)	Consider the impact of COVID-19 along with all other facts when making their decision

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

The proponents lease on the land expires on 31 May 2025 and the lease provides for a further ten-year term.

Having considered all of the background information, any new information provided by the proponent, and taking into consideration the ongoing issues associated with COVID-19 the officer's recommendation to Council is to provide an extension to the milestones so they reflect the COVID-19 uncertainty and tie in with the expiry of the lease's first term.

It is proposed to extend Milestone Two to 31 December 2023 and Milestone Three to 31 December 2024 (6 months prior to the expiry of the lease term) and to inform Mr Cahill that should the milestones not be achieved this may impact the conditions under the lease and Council's decision to exercise an option for further term.

When considering the completeness of the milestones the Shire would be looking for the following:

- Milestone Two – A copy of approved Aquaculture licence to be provided to the Shire.
- Milestone Three – Whether Mr Cahill intends to get a licence for milkfish or Redclaw or other approved aquaculture product, the important points to note is that Mr Cahill is to have his first batch of approved product on site with the intent to grow and sell. The Shire would be looking for sufficient evidence that Mr Cahill is ready to grow and sell, for example:
 - Hatchlings/fisheries alternative in place and thriving
 - A registered business is in place to sell the product
 - Any required insurances are in place
 - Evidence of a business plan, such as the products Mr Cahill is planning to sell, how Mr Cahill plans to sell them, at what prices and to what markets.

The Officers recommendation has taken into consideration all relevant information held by the Shire and provided by the proponent. The recommendation provides the proponent with sufficient time, clarity and means to be able to meet the previously agreed milestones.

OFFICER RECOMMENDATION – ITEM NO 10.3.1

THAT COUNCIL, RECOGNISING THE IMPLICATIONS ASSOCIATED WITH COVID-19 AND RESTRICTIONS ON TRAVEL, GRANT THE FOLLOWING TIME EXTENSION TO EXISTING DEVELOPMENT APPROVAL FOR AQUACULTURE FARM AND CARETAKER DWELLING AT PART LOT 100 SYDNEY HIGHWAY, WEST ISLAND LEASED BY MR GREG CAHILL;

- 1. APPROVE AN EXTENSION TO MILESTONE TWO, RESULTING IN THE PROPONENT TO PROVIDE A COPY OF HIS AQUACULTURE LICENCE BY 31 DECEMBER 2023;**
- 2. APPROVE AN EXTENSION TO MILESTONE THREE, RESULTING IN MR CAHILL TO HAVE THE FIRST BATCH OF “CERTIFIED DISEASE FREE – RED CLAW HATCHLINGS OR A FISHERIES APPROVED ALTERNATIVE” ON SITE BY 31 DECEMBER 2024 WITH THE INTENT TO GROW AND SELL;**
- 3. INSTRUCT THE CEO TO INFORM MR CAHILL THAT SHOULD ANY MILESTONES NOT BE MET, THAT THIS MAY IMPACT CONDITIONS UNDER THE LEASE.**

10.4 ADMINISTRATION

10.4.1 PERMISSION TO IMPORT VEHICLE TO HOME ISLAND

Report Information

Date: 3 December 2021
 Applicant: Cocos Island Cooperative Society
 Location: Home Island
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Governance and Risk Coordinator
 Island: Home Island
 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>
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<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 obtain Council approval for the importation of a commercial replacement vehicle (light truck) to Home Island.

Relevant Documents

[Available for viewing at the meeting](#)

Background

The Cocos Island Cooperative have formally advised the Shire that they will require a work vehicle on Home Island that arrived on the November 2021 ship. The requirement relates to a replacement vehicle for a light truck vehicle that is no longer serviceable.

Comment

Council's policy allows Council to approve the importation of commercial vehicles on Home Island where it can be demonstrated that the use is for bona fide commercial purpose.

The request from the Cocos Cooperative is reasonable and will purely be used for commercial purposes such as stevedoring operations e.g., delivery of sea freight, transport of crane spreader when crane is relocated outside of the stevedoring area, and transport of diesel fuel for the Cooperative's fuel depot.

The approval shall only be used for work purposes and shall not be allowed for any private use, as this is neither needed nor permitted.

Policy and Legislative Implications

Council Policy CPC 2 - Motor Vehicles on Home Island states:

- 1. The importations of passenger vehicles and utilities for private/non-commercial use to Home Island will not be approved and Council will refuse to issue a motor vehicle registrations licence to passenger vehicles and utilities for private/non-commercial use arriving on Home Island after 1st March 2008.*
- 2. Emergency vehicles are exempt from this restriction.*
- 3. Council will consider requests for the importation of commercial vehicles on Home Island where it can be demonstrated that the use is for bona fide commercial purposes.*
- 4. Vehicles approved for importation to Home Island for commercial purposes cannot be used for private purposes or outside of work hours.*

Financial Implications

Nil

Strategic Implications

Nil

Conclusion

The Officer's recommendation is that Council approves the request by the Cocos Island Cooperative for the importation of a vehicle (light truck) to Home Island for commercial purposes only.

OFFICER RECOMMENDATION – ITEM NO 10.4.1

THAT COUNCIL APPROVE THE REQUEST FOR THE IMPORTATION OF A REPLACEMENT VEHICLE (LIGHT TRUCK) TO HOME ISLAND FOR USE ONLY BY THE COCOS ISLAND COOPERATIVE TO BE USED FOR COMMERCIAL PURPOSES AND CANNOT BE USED FOR PRIVATE PURPOSES OR OUTSIDE OF WORK HOURS.

10.4.2 APPOINTMENT OF A SHIRE NOMINATED COMMUNITY REPRESENTATIVE TO PULU KEELING NATIONAL PARK COMMUNITY MANAGEMENT COMMITTEE (PKNPCMC)

Report Information

Date: 3 December 2021
 Location: Not applicable
 Applicant: Not applicable
 File Ref: Not applicable
 Disclosure of Interest: Impartial – The recommended Community Member is a former employee of the Shire of Cocos (Keeling) Islands
 Reporting Officer: Chief Executive Officer
 Island: Not applicable
 Attachments: 10.4.2.1 - Current Pulu Keeling National Park Community Management Committee 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>

Report Purpose

The purpose of this report is for Council to appoint a Shire appointed Community Representative to the Pulu Keeling National Park Community Management Committee (PKNPCMC).

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Shire has an official Council representative on the Pulu Keeling National Park Community Management Committee (PKNPCMC). Under the PKNPCMC Terms of Reference the CMC consists of ten members. These being, six nominated by the Shire from time to time to represent the Cocos (Keeling) Islands community, the Director of National Parks or their nominee, and three other members nominated by Parks Australia from time to time.

With the recent resignation from the Committee by two members, these positions are due to be replaced.

Comment

Parks Australia recently ran an Expression of Interest in the local Atoll newsletter and on social media to fill the vacancies on the Committee.

Following the outcome of the EOI for the vacancy on the Committee five responses were received:

1. Adrian Granger
2. Bree Waller
3. Isa Minkom
4. Zabedi Abedin
5. Azlah Mihan

Parks Australia have informed the Shire that they have appointed Zabedi Abedin as their nominated Community Representative with Azlah Mihan as a proxy.

Three remaining EOIs for a Community Member are available for Council to determine the Shire appointed Community Representative to replace outgoing member, Wesen Rasa.

The current make-up of the Committee includes a number of representatives in the community that reside on West Island, and/or are employees of the CKI District Highschool, as contained in Attachment 10.4.2.1. The application from Isa Minkom is set apart from the others as he is a permanent resident of the islands having been born and raised on the islands, he is also a member of the newly formed Cocos Marine Care and is heavily involved in the Cocos Marine Parks process.

Whilst the other applicants demonstrated they have a strong interest in the conservation and sustainability of PKNP and other islands, the attributes of Isa Minkom stand out for the above reasons.

Policy and Legislative Implications

There are no policy/legislative implications associated with this report.

Financial Implications

There are no financial implications associated with this report.

Strategic Implications

Strategic Community Plan - Key Result Area: *Civic Leadership*

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	Other EOI applicants are aggrieved by the decision.	Low (3)	EOIs were assessed on their merit against the PKNPCMC objectives and the information provided in the EOI.

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

The officer's recommendation is for Council to appoint Isa Minkom as the Shire Community Representative to the PKNPCMC.

OFFICER RECOMMENDATION – ITEM NO 10.4.2

THAT COUNCIL, BY SIMPLE MAJORITY, RESOLVES TO ENDORSE ISA MINKOM AS A SHIRE'S COMMUNITY REPRESENTATIVE ON THE PKNPCMC.

10.4.3 APPOINTMENT OF AN EXTERNAL MEMBER TO THE AUDIT AND GOVERNANCE COMMITTEE

Report Information

Date: 6 December 2021
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref: Not Applicable
 Disclosure of Interest: Nil
 Reporting Officer: Chief Executive Officer
 Island: Not Applicable
 Attachments: 10.4.3.1 Confidential Attachment - Applicant Assessment - External Audit Committee Member 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>

Report Purpose

This report presents the Expressions of Interest received from individuals seeking to fill the role of external committee member on the Shire of Cocos (Keeling) Islands Audit and Governance Committee.

Relevant Documents

Available for viewing at the meeting

Nil

Background

At the Ordinary Meeting of Council on 6 November 2019, Council resolved to re-establish the Shire of Cocos (Keeling) Islands Audit and Governance Committee and adopted the Terms of Reference (ToRs) for this Committee.

The ToRs established that the membership would consist of four members with three elected members and one external person. The ToRs stated that the appointment of an external person would be made by Council by way of a public advertisement and would be for a maximum term of two years. The ToRs stated that the external person appointed to the Committee would have financial management/reporting knowledge in a local government context and experience and be conversant with financial and other reporting requirements. The ToRs also allowed all members full voting rights, including the External Member.

Comment

The previously appointed external committee members term ended in October 2021. An expression of interest process was conducted with a closing date of Monday 18 October 2021. The EOI was advertised in the Atoll, on the Shire's website and noticeboards and was distributed by the Local Government Professionals WA jobs board. Four applications were received.

In accordance with s7.1A (3) of the *Local Government Act 1995 (WA) (CKI)* the CEO is not to be a member of an audit committee and may not nominate a person to be a member of an audit committee or have a person to represent the CEO as a member of an audit committee.

Confidential Attachment 10.4.3.1 provides full details of all applications received and an initial assessment of applications to assist Council in determining who to appoint as the external committee member of the Shire of Cocos (Keeling) Islands Audit and Governance Committee. The assessment does not provide a nomination or recommendation by the CEO or any officer.

Policy and Legislative Implications

Section 7.1A of the *Local Government Act (WA)(CKI) 1996* states that:

- (1) *A local government is to establish an audit committee of 3 or more persons to exercise the powers and discharge the duties conferred on it.*
- (2) *The members of the audit committee of a local government are to be appointed* by the local government and at least 3 of the members, and the majority of the members, are to be council members.*

** Absolute majority required.*

The Shire of Cocos (Keeling) Islands Audit and Governance Committee complies with this requirement in that three members of the Committee are Councillors.

Financial Implications

The Audit and Governance Committee's Terms of Reference allows for reimbursement of approved expenses to be paid to an external person who is a member of the Committee by prior approval and subject to budget with the intent of having the external member attend one meeting per annum in person. Therefore, the approximate financial impact is dependant on flight and accommodation costs at the time and may range between \$2,500 - \$4,000 per annum.

Strategic Implications

Strategic Community Plan: Civic Leadership Objective

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	The Shire's reputation could possibly be damaged if the Audit Committee does not fulfil its functions appropriately.	Moderate (6)	Audit Committees provide another reassurance to the community regarding the operations of the organisation and assist in maintaining a positive reputation.
Compliance	The Audit Committee acts outside its legislative remit.		The Audit Committee has properly scoped Terms of Reference.
Fraud	Without relevant skills and experience, the Audit Committee is less effective in fulfilling its role in protecting the Shire from possible fraud.	Moderate (6)	An external member with appropriate skills, qualifications and experience will aid in ensuring an effective Audit and Governance Committee is one tool to protect an organisation from fraud.

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

As the Audit and Governance Committee have not been able to meet prior to this Council meeting, a recommendation has not been made by the Committee. The assessment and appointment is to be made by Council.

COMMITTEE’S RECOMMENDATION – ITEM NO 10.4.3

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO S7.1A OF THE LOCAL GOVERNMENT ACT 1995 (WA)(CKI), RESOLVES TO:

1. **NOMINATE _____ AS THE PREFERRED APPLICANT; AND**
2. **SUBJECT TO THE SHIRE PRESIDENT HOLDING A TELEPHONE INTERVIEW WITH THE PREFERRED APPLICANT AND BEING SATISFIED THAT THEY HOLD THE REQUIRED SKILLS AND EXPERIENCE, APPOINT _____ TO THE SHIRE OF COCOS (KEELING) ISLANDS AUDIT AND GOVERNANCE COMMITTEE WITH THEIR MEMBERSHIP EXPIRING ON THE DAY PRIOR TO THE NEXT ORDINARY LOCAL GOVERNMENT ELECTION DUE TO BE HELD IN OCTOBER 2023.**

- 11. MINUTES TO BE RECEIVED**
- 12. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 13. MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL**
- 14. MATTERS BEHIND CLOSED DOORS**
- 15. 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.'

15.1 TRUSTS ADMINISTRATION

15.2 TRUSTS LEASES

15.3 TRUSTS FINANCE

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

17. CLOSURE