

# Shire of Cocos (Keeling) Islands

## Shire of Cocos (Keeling) Islands

### Agenda

#### Ordinary Meeting of Council

**Wednesday 27 October 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
Cr Iku	26 October – 2 November 2021	25 August 2021

### 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 29 September 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, RESOLVES THAT THE MINUTES OF THE ORDINARY COUNCIL MEETING 29 SEPTEMBER 2021, AS PRESENTED IN ATTACHMENT 7.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.**

7.2 Special Meeting of Council held on 20 October 2021 – Attachment 7.2

**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 SPECIAL MEETING OF COUNCIL 20 OCTOBER 2021, AS PRESENTED IN ATTACHMENT 7.2 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.**

## 8. ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS

## 9. DECLARATION OF INTERESTS

## 10. REPORT AND RECOMMENDATIONS OF COMMITTEE

### 10.1 FINANCE

#### 10.1.1 MONTHLY FINANCIAL REPORT - SEPTEMBER 2021

##### Report Information

Date: 16 October 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 - September 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 September 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 September 2021. The current closing municipal surplus for this period is \$2,084,439 compared to a budget position of \$1,966,378. This is considered a satisfactory result for the Shire as it is maintaining a healthy surplus position.

Income for the September 2021 period year to date is \$3,091,745 which is made up exclusively of operating revenues with no non-operating grants, contributions and subsidies received as yet. The budget estimated \$3,037,725 would be received for the same period. The variance to budget is \$54,020.

Expenditure for the September 2021 period year to date is \$2,185,809. This is made up of \$1,815,582 in operating expenditure and \$370,227 in capital expenditure. The budget estimated \$2,277,261 would be spent for the same period. The variance to budget is \$91,452.

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

**10.1.2 SCHEDULE OF ACCOUNTS PAID FOR THE PERIOD 1 SEPTEMBER 2021 TO 30 SEPTEMBER 2021**

**Report Information**

Date: 12 October 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 Transactions Period Ended 30 September 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 September 2021 to 30 September 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 #8273 to #8357	\$413,997.12
Direct Debit Payment	\$55,166.74
Cheque Payment	\$0.00
<b>Total Payments</b>	<b>\$469,163.86</b>

Contained within Attachment 10.1.2.2 is a detailed transaction listing of credit card expenditure for the period ended 30 September 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	Low (3)	There are processes in place to ensure

	order to comply with relevant legislation.		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)
<b>Almost Certain (5)</b>	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
<b>Likely (4)</b>	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
<b>Possible (3)</b>	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
<b>Unlikely (2)</b>	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
<b>Rare (1)</b>	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 September 2021.

### OFFICER'S RECOMMENDATION – ITEM NO 10.1.1

#### 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 SEPTEMBER 2021 TO 30 SEPTEMBER 2021 TOTTALLING \$469,163.86 AS CONTAINED IN ATTACHMENT 10.1.2.1; AND
2. RECEIVES THE DETAILED TRANSACTION LISTING OF CREDIT CARD EXPENDITURE FOR THE PERIOD ENDED 30 SEPTEMBER 2021, AS CONTAINED IN ATTACHMENT 10.1.2.2.

### 10.1.3 BUDGET VARIATION – TRANSPORTABLE AMENITY BLOCK

#### Report Information

Date: 20 October 2021  
 Location: Not Applicable  
 Applicant: Not Applicable  
 File Ref: Not Applicable  
 Disclosure of Interest: Nil  
 Reporting Officer: Chief Executive Officer  
 Island: Home Island  
 Attachments: Nil

#### Authority / Discretion

#### Definition

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<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
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<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

#### Report Purpose

The purpose of this report is for Council to consider a variation to the 2021/2022 Annual Budget in relation to the capital project C199 – Transportable Amenity Block.

#### Relevant Documents

Available for viewing at the meeting

## Background

In 2020/2021 the Shire purchased a transportable amenity block with the intention for it to be installed at the West Island Shire Depot. A budget for the installation was included in the 2021/2022 Annual Budget (\$79,015).

Since the purchase and delivery of the amenity block no suitable solution has been identified to complete the installation (including power, plumbing and sewerage) at the West Island Depot.

The purpose of the amenity block was to provide the West Island Shire workers with an indoor break room and suitable toilet facilities in close proximity to the Depot.

## Comment

With the feasibility of the installation at the West Island Depot not progressing, an alternative purpose for the already purchased amenity block has been considered. An option would be to sell the amenity block locally, or alternatively officers feel that it would be of value to the Shire to change the intended purpose of the building. With the current shortage of suitable accommodation on the islands officers are recommending that the amenity block be repurposed as accommodation, similar to a studio unit. The amenity block has a basic kitchenette and shower and toilet facilities.

It is proposed that the amenity block be relocated to Home Island and installed on Lot 198 Home Island (adjacent to the Fire Brigade building). This will enable the Shire to provide short term accommodation to Shire contractors or visiting service providers, reducing the stress on the already pressured accommodation market. It may also be made available, where required, to other organisations on island who are unable to find suitable accommodation.

As this is a Shire asset no Development Approval is required for the provision of this accommodation facility, however Building Approval will be sought on the installation.

As the West Island Depot is on Commonwealth owned land, alternative solutions for a suitable break room for the West Island Depot workers is being discussed with the Department of Infrastructure, Transport, Regional Development and Communications.

## Policy and Legislative Implications

Section 6.8. of the *Local Government Act 1995 (WA) (CKI)* states:

*6.8. Expenditure from municipal fund not included in annual budget*

*(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —*

*(a) is incurred in a financial year before the adoption of the annual budget by the local government; or*

*(b) is authorised in advance by resolution\*; or*

(c) is authorised in advance by the mayor or president in an emergency.

\* Absolute majority required.

### Financial Implications

No impact is expected on the current budget. \$79,015 was set aside for the installation of the amenity block at the West Island Depot. Whilst quotes are still being sought, it is expected that the repurposing of the building will be able to be achieved within the same budget allocation.

### Strategic Implications

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

*Key Result Area 4 – 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	Funding and expenditure budgets are utilised without council approval resulting in misallocation of funds for priority areas.	Moderate	Ensure council adopt the utilisation of Shire resources via council report prior to commitment of funds.

### 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

A variation to the 2021/2022 Annual Budget is recommended as follows:



Description	Amount
C199 - Transportable Amenity Block WI Depot – not to commence	(\$79,015)
New Project – Installation of Studio Unit to Lot 198 Home Island	\$79,015
Impact on Surplus/(Deficit)	\$0

**OFFICER RECOMMENDATION – ITEM NO 10.1.3**

**THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTION 6.8. OF THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* APPROVES THE FOLLOWING VARIATION TO THE 2021/2022 ANNUAL BUDGET:**

Description	Amount
<b>C199 - Transportable Amenity Block WI Depot – not to commence</b>	<b>(\$79,015)</b>
<b>New Project – Installation of Studio Unit to Lot 198 Home Island</b>	<b>\$79,015</b>
<b>Impact on Surplus/(Deficit)</b>	<b>\$0</b>

## 10.2 LEASES

## 10.3 PLANNING/BUILDING

## 10.4 ADMINISTRATION

### 10.4.1 APPOINTMENT OF COUNCIL REPRESENTATIVES TO COMMITTEES AND ORGANISATIONS

#### Report Information

Date: 13 October 2021  
 Applicant: The Shire of Cocos (Keeling) Islands  
 Location: N/A  
 File Ref:  
 Disclosure of Interest: Nil  
 Reporting Officer: Chief Executive Officer  
 Island: N/A  
 Attachments: 10.4.1.1-Terms of Reference Audit and Governance Committee  
 10.4.1.2-Terms of Reference Community Funding Program Committee

#### 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 seeks Council's consideration of establishing Council Committees and appointments to each Committee.

## Relevant Documents

Available for viewing at the meeting

Nil

## Background

Council Committees dissolve at the time of a Local Government Election, which occur every two years, and therefore cannot meet until re-established by a Council decision. The Local Government Elections were held on 16 October 2021.

The Shire of Cocos (Keeling) Islands is required to re-establish the Committees and delegates after the Council election. This also provides an opportunity for the formation of any new Committees.

Section 5.8 of the *Local Government Act 1995 (WA) (CKI)* allows Council to establish, by absolute majority, Committees of three or more persons to assist Council and to exercise the powers and discharge the duties of the local government that can be delegated to Committees.

The following internal Committees have been addressed in this report:

- The Shire of Cocos (Keeling) Islands Audit and Governance Committee
- The Shire of (Cocos) Keeling Islands Community Funding Program Committee

In addition to internal committees of Council, the Council is also invited to hold membership to a number of external committees and associations, being:

- Pulu Keeling National Park Community Management Committee (PKNPCMC)
- Indian Ocean Group Training Association Committee (IOGTA)
- The (WALGA) Kimberly Zone

Previous appointments to the Committees were as follows:

- The Shire of Cocos (Keeling) Islands Audit and Governance Committee
  - Cr Charlston
  - Cr Minkom
  - Cr Lacy
  - Mr Phillip Anastasakis (External Member)
- The Shire of (Cocos) Keeling Islands Community Funding Program Committee
  - Cr Seri Iku

- Cr Mazlin Hamiril
- Cr Jamil Ibram
  
- Pulu Keeling National Park Community Management Committee (PKNPCMC)
  - Cr Shane Charlston
  - Cr Anthoney (Proxy)
  
- Indian Ocean Group Training Association Committee (IOGTA)
  - Chief Executive Officer – Andrea Selvey
  - Cr Lacy (Proxy)
  
- The (WALGA) Kimberly Zone
  - Chief Executive Officer – Andrea Selvey
  - Cr Hamiril

### **Comments**

Some Committees, such as the Audit and Governance Committee, must be established under statutory or regulatory provisions, and their role is prescribed. The primary objective of the Audit and Governance Committee (the Committee) is to accept responsibility for the annual external audit, liaise with the Shire's external auditor and provide review and oversight of internal audit process, including performance and independence of internal auditor, so that Council can be satisfied with the performance of the Shire in managing its financial affairs. Terms of Reference for the Audit and Governance Committee ensures the Committee and individual members on the Committee are fully aware of their role and responsibilities. See attachment 10.4.1.1 - Terms of Reference for the Audit and Governance Committee.

The other Committee of Council, being the Community Funding Program Committee, is established at the discretion of the Council and must have its terms of reference formally determined by Council resolution. The primary objective of the Community Funding Program Committee (the Committee) is to assist with the facilitation of a fair, equitable and transparent process for Council funding of community projects, programs and initiatives. See attachment 10.4.1.2 - Terms of Reference for the Community Funding Program Committee.

Council Committees have an important role in assisting Council to undertake its duties efficiently and effectively.

Good risk management practice is for Committee workloads to be fairly shared across the elected members of Council. This ensures that individual Councillors do not suffer inequitable workload pressures. It also helps ensure that decision-making influence remains equitable across all Councillors.

### **Financial Implications**

Nil - there are no direct financial implications; however, Committees established by Council all require allocation of officer resources, for secretariat support and Committee coordination and, in relation to the business of a Committee as provided in its terms of reference, allocation of officer resources for preparation of necessary reports.

**Policy and Legislative Implications**

Section 5.8 of the *Local Government Act 1995 (WA) (CKI)* allows Council to establish Committees to assist it in discharging its duties under the Act, with a minimum number of three (3) or more persons.

**Strategic Implications**

Strategic Community Plan - *Key Result Area: Civic Leadership Outcome 4.1 – An informed Council leading working with others to advance our Islands.*

**OFFICER RECOMMENDATION – ITEM NO 10.4.1**

**THAT COUNCIL:**

1. ENDORSE THE REQUIREMENT OF ELECTED MEMBERS ATTENDING MEETINGS FOR EXTERNAL COMMITTEES AND ORGANISATIONS TO PROVIDE A WRITTEN REPORT TO ALL ELECTED MEMBERS ON SIGNIFICANT MATTERS ARISING FROM THESE MEETINGS; AND
2. APPROVE THE ELECTED MEMBER AND SHIRE OFFICER APPOINTMENTS TO EXTERNAL COMMITTEES AND ORGANISATIONS AND COUNCIL COMMITTEES AS FOLLOWS:

**AUDIT AND GOVERNANCE COMMITTEE**

POSITION / ORGANISATION	NAME
Councillor	
Councillor	
Councillor	
External Committee Member	To be considered at first meeting of Committee

**COMMUNITY FUNDING PROGRAM COMMITTEE**

POSITION / ORGANISATION	NAME
Councillor	
Councillor	
Councillor	

**PULU KEELING NATIONAL PARK COMMUNITY MANAGEMENT COMMITTEE (PKNPCMC)**

POSITION / ORGANISATION	NAME
Councillor/Staff Member	
Councillor/Staff Member (As Proxy)	

**INDIAN OCEAN GROUP TRAINING ASSOCIATION (IOGTA) COMMITTEE**

<b>POSITION / ORGANISATION</b>	<b>NAME</b>
Councillor/Staff Member	
Councillor/Staff Member (As Proxy)	

**THE (WALGA) KIMBERLEY COUNTRY ZONE**

<b>POSITION / ORGANISATION</b>	<b>NAME</b>
Councillor	
Councillor (As Proxy)	

## 10.4.2 MEETING SCHEDULE FOR ORDINARY MEETINGS OF COUNCIL FOR 2022

### Report Information

Date: 13 October 2021  
 Applicant: Shire of Cocos (Keeling) Islands  
 Location: N/A  
 Disclosure of Interest: Nil  
 Reporting Officer: Governance and Risk Coordinator  
 Island: Shire wide  
 Attachments: Nil

### Authority / Discretion

### Definitions

<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 purpose of this report is to determine schedule for Ordinary Meetings of Council for 2022.

### Relevant Documents

Available for viewing at the meeting

Nil

**Background**

Under Section 5.3 of the *Local Government Act 1995 (WA)(CKI)*, Councils are required to hold Ordinary Meetings no more than three months apart, although for good governance, more frequent meetings are standard practice. The Shire of Cocos (Keeling) Islands usual practice is to hold monthly meetings. However, informal discussions with several Councillors suggests that some Councillors may be off-Island in January 2022, therefore, it may be more appropriate to not hold an Ordinary Meeting in January.

The *Local Government (Administration) Regulations 1996* – Reg 12 requires Council to give local public notice of dates, times and the location of its Ordinary and Special Meetings.

*Meetings, public notice of (Act s. 5.25(1) (g))*

*(1) At least once each year a local government is to give local public notice of the dates on which and the time and place at which*

*(a) the ordinary council meetings; and*

*(b) the committee meetings that are required under the Act to be open to members of the public or that are proposed to be open to members of the public, are to be held in the next 12 months*

*2) A local government is to give local public notice of any change to the date, time or place of a meeting referred to in sub regulation (1).*

**Comment**

The following dates for the Ordinary Meetings of Council for 2022 listed below are proposed for Council’s consideration taking into account external factors, school and gazetted holidays relevant in the Territory of Cocos (Keeling) Islands.

Also, Councillors should note that the 27 April 2022 meeting is scheduled at 1.00pm in consideration of Ramadan.

The dates proposed for the Ordinary Meetings of Council for 2022 are as follows:

Time	Date	Venue
4pm	Wednesday, 23 February 2022	CRC Meeting Room, West Island
4pm	Wednesday, 23 March 2022	Council Chambers, Home Island
1pm	Wednesday, 27 April 2022	Council Chambers, Home Island
4pm	Wednesday, 25 May 2022	CRC Meeting Room, West Island



4pm	Wednesday, 22 June 2022	Council Chambers, Home Island
4pm	Wednesday, 27 July 2022	Council Chambers, Home Island
4pm	Wednesday, 24 August 2022	CRC Meeting Room, West Island
4pm	Wednesday, 28 September 2022	Council Chambers, Home Island
4pm	Wednesday, 26 October 2022	Council Chambers, Home Island
4pm	Wednesday, 23 November 2022	CRC Meeting Room, West Island
4pm	Wednesday, 14 December 2022	Council Chambers, Home Island

It should also be noted that this schedule to holding two meetings on Home Island to every one meeting on West Island in recognition that the majority of the community reside on Home Island.

**Policy and Legislative Implications**

Section 5.3 of the *Local Government Act 1995 (WA) (CKI)* stipulates the requirement to hold regular Ordinary Meetings of Council and Regulation 12 of the *Local Government (Administration) Regulations 1996* requires Council to give local public notice of dates, times and the location of its Ordinary and Special meetings. The officer’s recommendation complies with these statutory requirements.

**Financial Implications**

Nil, there are no direct financial implications from adopting a schedule of meetings.

**Strategic Implications**

Shire of Cocos (Keeling) Islands Strategic Community Plan 2016 – 2026:  
*Outcome 4.1 - An informed Council leading working with others to advance our Islands*  
*4.1.2 - Continue to improve organisational planning*

**Risk Implications**

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	Council does not encourage active participation in Council meeting processes.	Moderate	Council hold Ordinary Council meetings on Home and West Island
Compliance	Non-compliance with the <i>Local Government Act 1995 (WA) (CKI)</i> with respect to setting meeting dates and providing the necessary notice	Low	This report to Council and the associated decision ensures compliance with the Act and Regulations. Public notice is to be given after the Council has set the 2022 Council meeting dates.

**Risk Matrix**

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

**Conclusion**

The proposed schedule for the Ordinary Meetings of Council for the 2022 calendar year has been developed to ensure dates and times are suitable and do not overlap with public holidays or other significant events; therefore, it is recommended they are adopted as presented.

**OFFICER’S RECOMMENDATION – ITEM NO 10.4.2**

**THAT THE COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 5.3 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES TO ADOPT THE FOLLOWING SCHEDULE FOR ORDINARY MEETINGS OF COUNCIL FOR 2022 AS FOLLOWS AND GIVE LOCAL PUBLIC NOTICE REGARDING THIS SCHEDULE VIA THE ATOLL IN AT LEAST THREE EDITIONS AND ON THE SHIRE’S WEBSITE.**

Time	Date	Venue
4pm	Wednesday, 23 February 2022	CRC Meeting Room, West Island
4pm	Wednesday, 23 March 2022	Council Chambers, Home Island
1pm	Wednesday, 27 April 2022	Council Chambers, Home Island
4pm	Wednesday, 25 May 2022	CRC Meeting Room, West Island
4pm	Wednesday, 22 June 2022	Council Chambers, Home Island
4pm	Wednesday, 27 July 2022	Council Chambers, Home Island
4pm	Wednesday, 24 August 2022	CRC Meeting Room, West Island
4pm	Wednesday, 28 September 2022	Council Chambers, Home Island
4pm	Wednesday, 26 October 2022	Council Chambers, Home Island
4pm	Wednesday, 23 November 2022	CRC Meeting Room, West Island
4pm	Wednesday, 14 December 2022	Council Chambers, Home Island

### 10.4.3 DRAFT BUSINESS IMPROVEMENT GRANT POLICY – CPC8

#### Report Information

Date: 22 October 2021  
 Location: N/A  
 Applicant: N/A  
 File Ref: N/A  
 Disclosure of Interest: Nil  
 Reporting Officer: Chief Executive Officer  
 Island: N/A  
 Attachments: 10.4.4.1 - Draft Business Improvement Grants Policy – CPC8

#### 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 draft policy – Business Improvement Grants Policy – CPC8 for consideration.

#### Relevant Documents

Available for viewing at the meeting.

## Background

The Shire of Cocos (Keeling) Islands Strategic Community Plan 2016 – 2026 identifies the need to encourage economic stability for the Islands. The Shires Corporate Business Plan further defines the aspiration to support employment and promote business opportunities. Local businesses have requested support from the Shire in the past through requests for equipment, lease hold improvements and other business support. Previously Council has not had a governance framework to consider these requests and were assessed on a case by case basis.

## Comment

The introduction of a Business Improvement Grant aims to achieve equity and transparency when assessing these requests and enables the Shire to assess any requests in line with the Policy and Budget limitations without the need to seek Council direction for each application.

The objective of the draft policy is to support new and existing local businesses to improve amenity, stimulate business activity and provide direct benefits to the Shire of Cocos (Keeling) Islands Community in a manner that is fair, equitable and transparent.

It is proposed that the initial budget allocated to this program is \$15,000. This may be sufficient for the volume of eligible applications each financial year, however the amount allocated to the program can be assessed by Council at each Budget Review or Annual Budget adoption and either increased or decreased. Adoption of this policy does not compel Council to allocate a budget to the program and should no allocation in a given year be provided, the program will be unable to run in that financial year.

## Policy and Legislative Implications

Section 2.7 of the *Local Government Act 1995 (WA) (CKI)* prescribes part of the role of a Council is to “determine the local government’s policies”.

Section 6.8. of the *Local Government Act 1995 (WA) (CKI)* states:

*6.8. Expenditure from municipal fund not included in annual budget*

*(1) A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure —*

*(a) is incurred in a financial year before the adoption of the annual budget by the local government; or*

*(b) is authorised in advance by resolution\*; or*

*(c) is authorised in advance by the mayor or president in an emergency.*

*\* Absolute majority required.*

## Financial Implications

An initial budget of \$15,000 is proposed to fund the program for 2021/22. This will enable a minimum of ten successful applications. Should there be significant interest in the program with eligible projects, further budget allocation can be considered as part of the Budget Review process.

It is proposed that the \$15,000 is allocated from the unallocated surplus identified through receiving additional Supplementary Road Funds and the adopted budget variation (\$48,031), Item 10.4.2 at the Ordinary Council Meeting held on 29 September 2021.

## Strategic Implications

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

*Key Result Area 1 – Economic Development*

*Objective 5 – Support employment and promote business opportunities.*

*Key Result Area 4 – 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	Not enough funds are allocated to achieve the objectives of the program and some eligible applications miss out.	Moderate	Reconsider budget allocation at the annual Budget Review.

## Risk Matrix

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

## Voting Requirements

Absolute majority

**Conclusion**

The draft policy and budget variation is presented for Council consideration.

**OFFICER'S RECOMMENDATION – ITEM NO 14.4.4****THAT COUNCIL BY ABSOLUTE MAJORITY:**

- 1. PURSUANT TO SECTION 2.7 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES TO ADOPT THE BUSINESS IMPROVEMENT GRANTS POLICY – CPC8; AND**
- 2. PURSUANT TO SECTION 6.8. OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) APPROVES THE FOLLOWING VARIATION TO THE 2021/2022 ANNUAL BUDGET:**

<b>Description</b>	<b>Amount</b>
<b>Business Improvement Grant Policy 2021/22 Allocation</b>	<b>\$15,000</b>
<b>Unallocated Surplus</b>	<b>(\$15,000)</b>

- 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

### 15.1.1 BASIS OF ACCOUNTING – SEPARATION OF SHIRE, 1979 TRUST AND 1984 TRUST ACCOUNTS

Date: 18 October 2021  
 Location: Not applicable  
 Applicant: Shire of Cocos (Keeling) Islands  
 File Ref:  
 Disclosure of Interest: Nil  
 Reporting Officer: Chief Executive Officer  
 Island: Shire Wide  
 Attachments: 15.1.1.1 – Cocos Land Trust Advice – Basis of Treatment October 2021  
 15.1.1.2 - Basis of Accounting - Asset Separation Shire/1979 Trust/1984 Trust

#### 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 consider the proposed Basis of Accounting for the split between Trust and Shire assets, liabilities, income and expenditure.

#### Relevant Documents

Available for viewing at the meeting

Nil

## Background

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.

At the February 2020 Ordinary Council Meeting a report brought to Council information from the Australian Government Solicitor (AGS) and the Australian Government's [former] Department of Infrastructure and Regional Development (DIRD) regarding the governance of the Land Trusts before Council. The following resolution was passed in relation to the governance of the Trusts:

### COUNCIL RESOLUTION – ITEM NO 14.1.1

*MOVED CR ANTHONY, SECONDED CR CHARLSTON*

*THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.18 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 RESOLVES TO:*

- 1. NOTE THE ADVICE FROM THE AUSTRALIAN GOVERNMENT SOLICITOR AND DEPARTMENT OF INFRASTRUCTURE AND REGIONAL DEVELOPMENT REGARDING THE GOVERNANCE AND DECISION MAKING ON MATTERS RELATING TO THE 1979 TRUST DEED AND THE 1984 TRUST DEED;*
- 2. DELINEATE THE PART OF THE MEETING THAT DEALS WITH MATTERS OF THE TRUSTS;*
- 3. CONTINUE TO OBSERVE THE REQUIREMENTS OF LOCAL GOVERNMENTS IN WESTERN AUSTRALIA AND THE SHIRE OF COCOS (KEELING) ISLANDS IN ALL ASPECTS OF MANAGING AND ADMINISTERING THE TRUSTS.*
- 4. INVESTIGATE A MEANS TO MEASURE DECISIONS AGAINST THE PURPOSES OF THE 1979 TRUST DEED (BEING THE BENEFIT, ADVANCEMENT AND WELLBEING OF THE COMMUNITY FORMED BY THE KAMPONG RESIDENTS) AND THE 1984 TRUST DEED (BEING THE BENEFIT, ADVANCEMENT AND WELLBEING OF THE COCOS (KEELING) ISLANDERS RESIDENT IN THE TERRITORY ON LAND OWNED BY THE COUNCIL), AS PART OF THE MAJOR REVIEW OF THE STRATEGIC COMMUNITY PLAN IN 2020.*

*THE MOTION WAS PUT AND DECLARED CARRIED (5/0)*

*FOR: ANTHONY, CHARLSTON, HAMIRIL, IBRAM, IKU  
AGAINST: NIL*

The 18 February 2020 Council report also noted there are specific legislative requirements regarding the keeping of Trust accounts, including that Trust finances be held separately from Shire finances. This requirement for separate accounting is consistent with the requirements of the *Local Government Act 1995 (WA)(CKI)*. While this has not previously been done in the history of the Trusts, the Shire received funding from the Australian Government to separate trust accounts from Shire accounts. Moore Australia (WA) were engaged by the Shire to complete this work.

### **Comment**

Moore Australia (WA) through working with Shire staff for information have provided advice in regards to the account separation, as contained in Attachment 15.1.1.1.

To be able to finalise the 2020/2021 Annual Financial Statements for both the Shire and the Trust a basis of accounting to inform the account separation is required. The Chief Executive Officer and the Manager Finance and Corporate Services (as well as the previous Deputy Chief Executive Officer) have reviewed the advice and the basis of accounting and provided feedback throughout the process.

A key assumption for the basis of accounting has been that any asset that was constructed prior to the Trust Deeds (1979 & 1984) remain an asset of the respective Trust Deed. Any asset that has been constructed since the inception of the Trusts will remain as a Shire Asset.

Shire staff have reviewed records held by the Shire and further enquired with relevant staff members that have the historical knowledge to determine the required split. Where information is uncertain, a consistent approach has been taken and the asset has been placed in the relevant Trust. Attachment 15.1.1.2 – Asset Allocation for the Basis of Accounting – Trust Account Separation details all assets recorded in the Shire’s finance system showing the proposed split. It is important that Council consider this attachment in detail as this is the key informing assumption to the basis of accounting.

Another key determination of Council is to consider the major reconstruction costs associated with significant renewal of assets, such as the Retail Precinct – Home Island and the proposed future redevelopment of the Tokoh – Waterfront Building. The scope of works and extent to which Shire funds (and usually grant funds) are expended on these redevelopments essentially reflect the scrapping of an asset and rebuilding of a new asset. Where this occurs it is proposed that the asset is scrapped for nil value in the accounts of the relevant trust, and recognised in the Shire accounts.

### **Policy and Legislative Implications**

As a Local Government, the Shire operates under numerous pieces of legislation, particularly the *Local Government Act (WA)(CKI) 1995* and subsidiary regulations.

The Shire also works under policy and procedural frameworks such as Local Laws, Policies as adopted by Council and the Code of Conduct.

In matters relating to the Trusts, the Shire needs to consider the Trust instruments (the Deeds), the *Trustees Act 1962 (WA)(CKI)*, the *Charitable Trusts Act 1962 (WA)(CKI)*.

### Strategic Implications

Nil

### Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Trust finances are not reported separately from Shire finances.	High	Work has been undertaken to separate the Trust finances from the Shire finances.
Reputation	Decisions of the Trustee are challenged.	High	Carefully considered decisions that are well documented and based on legal advice.
Compliance	Decisions not consistent with legislation	Moderate	Advice from the AGS, DIRD

### Risk Matrix

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

### Voting Requirements

Absolute majority is required as the impacts of the basis of accounting will impact future budget decisions and the financial affairs of both the Shire and the Trusts.

### Conclusion

It is recommended that Council adopt the basis of accounting as outlined within Attachment 15.1.1.2. The Shire has taken a conservative approach with considering the basis of accounting to ensure that the benefits of the trust are taken into consideration and to prevent any potential conflict between their duty as Councillors and as Trustee for both of the Trusts.

**OFFICER RECOMMENDATION - ITEM NO 15.1.1**

**THAT COUNCIL, BY ABSOLUTE MAJORITY:**

- 1. ADOPT THE BASIS OF ACCOUNTING, AS CONTAINED IN ATTACHMENT 15.1.1.2, FOR THE SEPARATION OF THE SHIRE AND 1979 TRUST AND 1984 TRUST ACCOUNTS AS AT 30 JUNE 2021 FOR INCLUSION IN THE 2020/2021 ANNUAL FINANCIAL STATEMENT PREPARATION;**
- 2. ADOPT THE SPLIT OF ASSETS AS DETAILED IN ATTACHMENT 15.1.1.2; AND**
- 3. DETERMINE THAT ON COMPLETION OF THE HOME ISLAND RETAIL PRECINCT PROJECT, THAT THE RETAIL PRECINCT ASSET BE SCRAPPED FOR NIL VALUE IN THE 1979 TRUST ACCOUNTS AND THAT THE RECONSTRUCTED/NEW BUILD ON THIS SITE BY THE SHIRE TO BE RECOGNISED AS A SHIRE ASSET.**

## 15.2 TRUSTS LEASES

### 15.2.1 EXPRESSIONS OF INTERESTS – PART LOT 45 HOME ISLAND LIA SHED 2

#### Report Information

Date: 22 October 2021  
 Location: Part Lot 45 Home Island LIA Shed 2  
 Applicant:  
 File Ref:  
 Disclosure of Interest:  
 Reporting Officer: Leasing Officer  
 Island: Home Island  
 Attachments: 15.2.1.1 – Assessment of LIA Shed 2 Expressions of Interest  
 15.2.1.2 to 15.2.1.5 - Confidential EOI Applications Received

#### 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 to Council for consideration.

#### Relevant Documents

Available for viewing at the meeting.

## **Background**

The lease for Part Lot 45 LIA Shed 2 expired on 31 August 2021 and the tenants informed they will not exercise the further 5 years option. An expression of interest (EOI) was advertised in the Atoll Newsletter on 10 September 2021 seeking Expressions of Interest (EOI) for this workshop space.

## **Comment**

At the end of the submission period on 27 September 2021 four EOIs were received. A summary of the EOIs are as follows:

### **Application 1: 'Sweet As' Lawn Section Maintenance**

The applicant proposed to utilise the space to operate his lawn mowing business. He currently employs a casual staff member and school students on the weekends when needed and will also explore other employment opportunities for the community. The applicant also plans to use the space for storage of other machinery as he expands his business and as a nursery to supply his retail business 'Sweet As Gifts'. The applicant has the necessary experience, skills and qualification to operate this business. See attachment 15.2.1.2.

### **Application 2: Mr Des Chongkin**

Mr Chongkin proposes to use this space to operate a cabinetry business. The applicant intends to produce cabinetry items (kitchen shelving, vanity cabinets, bookshelves and other cabinetry requirements) to reduce the expense and time to purchase these items from the mainland. He has over 30 years of experience in this field and would consider offering an apprenticeship in the future. The applicant anticipates to operate the business at least 4 days a week. See attachment 15.2.1.3.

### **Application 3: CKI Golf Cart Solutions**

The applicant proposes to use this space for the operation of servicing and maintenance of battery-operated vehicles. With over 10 years of experience and a certification in this field the applicant has the necessary skills for the successful operation of this business. The applicant intends to employ a trade assistant within the second year. Mr Dennis has provided an extensive application with evidence of necessary documents for an established business. See attachment 15.2.1.4.

The applicant has requested the Shire fund some additional lease improvements to the site.



#### **Application 4: Phosphate Resources Limited (PLR)**

PLR is a large private business on Christmas Island and is seeking a workshop space to operate their business CI Maintenance Services (CIMS) on Cocos. CIMS provides a range of services on Christmas Island including Fire, Electrical, Pest Control, Weed Management as well as building services. CIMS is committed to use local resources and provide appropriate training programs particularly to the youth to encourage and develop new skills for the next generation. See attachment 15.2.1.5.

Officers reviewed all the EOI received and assessed them against the following criteria:

1. Will the business increase employment?
2. Will the business encourage and generate new revenue into the community?
3. Is the service being offered something that is needed? Is there a demand for this service?
4. Has the applicant demonstrated the necessary skills to make this business a success?

A summary of the evaluation and officer comments are provided in Attachment 15.2.1.1.

#### **Policy and Legislative Implications**

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

#### **Financial Implications**

Progressing the EOI to formal lease arrangements will result in revenue to the Shire. A valuation will be requested to determine the annual lease fee.

#### **Strategic Implications**

Strategic Community Plan: Key Result Area 1– Economic: Outcome 1.1. Encourage economic stability for the Islands.

### Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	No clear process with selecting applicants  Perceived conflict of Interest by Shire Officers due to applicants employed with Shire.	Minor (6)	Application is assessed based on the criteria  Officers have provided comments for Council consideration, however, have left the resolution open for Council to determine successful applicant.

### 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 for Council consideration. To alleviate any perceived or real conflict of interest the Officers have provided comments on each application and withheld a recommendation on which application they recommend to Council.

### OFFICER RECOMMENDATION – ITEM NO 15.2.1

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

1. TO ENTER INTO FORMAL LEASE NEGOTIATIONS WITH \_\_\_\_\_ FOR PART LOT 45 HOME ISLAND LIA SHED 2;
2. TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY LEASE OF PART LOT 45 HOME ISLAND LIA SHED 2 TO THE SUCCESSFUL APPLICANT 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 PER THE LEASE CONDITIONS;
- 3. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD; THE CHIEF EXECUTIVE OFFICER IS AUTHORISED TO ENTER INTO THE LEASE AS PER THE SHIRE’S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;
- 4. THAT IF OBJECTIONS ARE RECEIVED, TO CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;
- 5. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN; AND
- 6. TO ADVISE THE PROSPECTIVE LESSEE THAT, SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL.

**15.2.2 APPLICATION TO ENTER INTO A NEW LEASE FOR PART LOT 100 WEST ISLAND – SOUTH END ROAD PRECINCT AREA 5**

**Report Information**

Date: 22 October 2021  
 Location: Part Lot 100, West Island – South End Road Precinct Area 5  
 Applicant: Ape X Kite Boarding Pty Ltd  
 File Ref:  
 Disclosure of Interest: Nil  
 Reporting Officer: Leasing Officer  
 Island: West Island  
 Attachments: 15.2.2.1 - Lease Proposal

**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 April Warren, Director of Ape X Kiteboarding to Council in which Ape X Kiteboarding seeks to enter into a new lease for portion of Lot 100, in the South End Precinct being Area 5. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the 1984 Land Trusts as the Land (part Lot 100) 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 Cocos (Keeling) Islanders resident in the Territory on land owned by the Council” 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**

On 5 October 2020 Ms Warren, Director of Ape X Kiteboarding requested to relinquish their lease at South End Road Precinct Area 5. At the Ordinary Council Meeting on 11 November 2020 Council resolved the following:

*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 to accept the request from Ape X Kiteboarding to relinquish its lease on a portion of lot 100 (being the south end precinct area 5) which was used for a kiteboarding tourism operator, subject to all outstanding fees and rates being paid in full and the site being fully remediated as per the lease conditions.*

Ms Warren is applying for a new lease with the Shire for the same purpose and have subsequently submitted their request on 13 August 2021. See attachment 15.2.2.1.

**Comment**

Ape X Kiteboarding commenced their kite boarding operations on Cocos in 2018. The applicants continued their business up until 2020 when they requested to relinquish the lease due to circumstances that made their business inoperable.

The applicants have informed us they have restructured their business to allow kiteboarding and wing foil lessons as well as bringing at least 3 tour groups to Cocos each year. They intend to operate their business during July to October. The tour groups will offer lessons to other visitors or locals on Cocos as well as utilising other local services. It will also offer activities and attractions to the island which will increase the revenue for existing businesses. The advertising of their business in the mainland will also broaden and increase tourism awareness. This is a positive economic outcome for the Community as per the Trust requirements.

Council should note the applicants will offer to sublease the property during the off-kite season between November to June. They have been informed an application must be submitted and approved by Council prior to any arrangements at that time. The Shire has also rejected the request to Ape X Kiteboarding proposal to cutting down vegetation along the coastline while Shire considers an approach and develop a policy around this matter.

Ape X Kiteboarding has been informed that a valuation will be sought by a registered independent valuer to determine the annual lease fee to be charged, noting the fee would be subject to annual CPI review and a market review at the commencement of any further terms.

The proponent has requested a two (2) year lease with a further one (1) year plus one (1) year and will accept to commence the lease once the disposition notice ends providing there are no objections received.

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 100) 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 1995 (WA) (CKI)*.

**Financial Implications**

An updated valuation has been sought by an independent property valuer to determine the lease fee. The current lease fee is \$1,125.00 and it is likely the valuation will be of a similar amount; therefore, it is unlikely to have any impact on the adopted budget.

This lease will provide lease income to the Land Trust.

**Strategic Implications**

Strategic Community Plan: *Key Result Area 1– Economic: Outcome 1.1. Encourage economic stability for the Islands.*

**Risk Implications**

<b>Risk Category</b>	<b>Description</b>	<b>Rating (consequence x likelihood)</b>	<b>Mitigation Action</b>
Reputation	Not progressing with the lease in a timely manner could result in uncertainty for a service provider	Moderate (8)	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 used in a manner that is other than what it has been intended for.	Low (3)	Property inspection to be conducted annually

Environment	Commercial activities could damage the environment	Moderate (6)	The lease contains clauses to protect the environment
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### Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
<b>Almost Certain (5)</b>	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
<b>Likely (4)</b>	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
<b>Possible (3)</b>	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
<b>Unlikely (2)</b>	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
<b>Rare (1)</b>	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, acting as the Trustee of the 1984 Land Trust, for consideration. The officer's recommendation is that the request is approved based on:

1. Continuation of service for other on island businesses
2. The service supports various objectives of the Shire of Cocos Keeling Islands Strategic Community Plan.

### OFFICER'S RECOMMENDATION – ITEM NO 15.2.2

**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 TO:**

7. TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY LEASE OF PART LOT 100 SOUTH END PRECINCT AREA 5 TO APE X KITEBOARDING PTY LTD 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. THE LEASE TERM BEING FOR 2 YEARS WITH A 1 YEAR WITH A 1 YEAR OPTION;
  - d. THE PURPOSE OF THE LEASE IS TO OPERATE KITE BOARDING BUSINESS TOUR
8. 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;

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



### 15.2.3 APPLICATION TO LEASE PART LOT 18 HOME ISLAND RETAIL CENTRE - TENANCY 1 – COCOS ASIAN IMPORTS

#### Report Information

Date: 22 October 2021  
 Location: Part Lot 18 Home Island Retail Centre – Tenancy 1 Cocos Asian Imports  
 Applicant: Mrs R Arkrie  
 File Ref:  
 Disclosure of Interest:  
 Reporting Officer: Leasing Officer  
 Island: Home Island  
 Attachments: 15.2.3.1 - Leasing Proposal  
 15.2.3.2 – Map Part Lot 18 Home Island Tenancy 1

#### 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 Mrs Arkie to renew the lease at Part Lot 18 Home Island Retail Centre known as Tenancy 1 Cocos Asian Imports to Council for consideration. 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 (Part Lot 18) 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 “for the benefit, advancement and wellbeing of the community formed by the Kampong residents” 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 lease at Part Lot 18 Home Island Tenancy 1 commonly known as Cocos Asian Imports has expired and is currently in holding over arrangement. The applicant Mrs Arkrie submitted their request to enter into a new lease agreement. See attachment 15.2.3.1.

### **Comment**

The proponent has held the lease for Part Lot 18 Tenancy 1 for over 25 years. They are a well-established business and have shown this by continuously providing a great service to the community. They constantly offer a variety of products and have imported unique items from Malaysia. The proponents ensure new products in the current market are available at the shop to meet the community's demand.

The day to day running of the business is currently managed by the applicant and her husband. Local staff are employed to manage the operation of the shop where necessary and to assist with offloading the shipping container upon arrival on Cocos. This brings a positive economic outcome for the Community as per the Trust requirements.

The proponents have requested a five (5) year with a further five (5) year option lease and officers support this lease tenure.

Milestones have not been requested however the lease will stipulate that the lease purpose continues to be met.

### **Policy and Legislative Implications**

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

### **Financial Implications**

A valuation has been sought from a registered independent valuer and have presented a valuation for a of \$6,250.00 per annum noting the fee would be subject to annual CPI review, market review at the commencement of option of any further term.

The proponent has disputed this amount and have requested for Council to consider a rent reduction. The current lease is \$3,900.00 per annum and with the new valuation at \$6,250.00 per annum this is a rental increase of \$2,350.00 per annum. The tenant acknowledges the upgrade to the retail space however the increase in rent will have a flow effect to the product

prices and ultimately will affect their revenue. They have requested the Shire to consider an increase lease fee of \$4,900.00 and is in agreeable to negotiate this amount.

Officers recommend to reject the request for a rental reduction at this time and for the Shire to consider developing a policy to assist in equitable consideration of these requests.

**Strategic Implications**

Shire of Strategic Community Plan 2016-2026:  
*Outcome 1.1 Encourage economic stability for the Islands.*  
*1.1.1 Increase employment opportunities for local residents.*

**Risk Implications**

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a good community service.	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a valuable 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.

**Risk Matrix**

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
<b>Almost Certain (5)</b>	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
<b>Likely (4)</b>	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
<b>Possible (3)</b>	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
<b>Unlikely (2)</b>	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
<b>Rare (1)</b>	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 as it continues to provide a great service to the Community.

## 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:**

- 1. TO GIVE LOCAL PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY WAY OF LEASE OF PART LOT 18 HOME ISLAND RETAIL CENTRE TENANCY 1 TO MRS R ARKRIE 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, ANNUAL LEASE FEE IS SUBJECT TO ANNUAL CPI REVIEWS, A MARKET REVIEW AT THE EXERCISE OF ANY FURTHER TERM AND A ONE-OFF LEASE PREPARATION FEE OF \$250;**
  - b. THE LEASE TERM BEING FOR FIVE (5) YEARS WITH A FIVE (5) YEAR OPTION;**
- 2. THE PURPOSE OF THE LEASE IS TO OPERATE A RETAIL SHOP KNOWN AS COCOS ASIAN IMPORTS;**
- 3. TO REJECT THE RENTAL DISCOUNT AND CONSIDER DEVELOPING A POLICY FOR THE CONSIDERATION OF THESE REQUESTS;**
- 4. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD; THE CHIEF EXECUTIVE OFFICER IS AUTHORISED TO ENTER INTO THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;**
- 5. THAT IF OBJECTIONS ARE RECEIVED, TO CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD AND;**
- 6. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY BE UNDERTAKEN.**

**15.2.4 APPLICATION TO LEASE PART LOT 18 HOME ISLAND RETAIL CENTRE - TENANCY 2 –  
COCOS GENERAL AGENCY**

**Report Information**

Date: 22 October 2021  
 Location: Part Lot 18 Home Island Retail Centre – Tenancy 2 Cocos General Agency  
 Applicant: Mr W Liedie  
 File Ref:  
 Disclosure of Interest:  
 Reporting Officer: Leasing Officer  
 Island: Home Island  
 Attachments: 15.2.4.1 - Leasing Proposal  
 15.2.4.2 – Map Part Lot 18 Home Island Tenancy 2

**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 Mr Liedie to renew the lease at Part Lot 18 Home Island Retail Centre known as Tenancy 2 Cocos General Agency to Council for consideration. 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 (Part Lot 18) 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 “for the benefit, advancement and wellbeing of the community formed by the Kampong residents” 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 lease at Part Lot 18 Home Island Tenancy 2 commonly known as Cocos General Agency has expired and is currently in holding over arrangement. The applicant Mr Liedie submitted their request to enter into a new lease agreement. See attachment 15.2.4.1.

### **Comment**

The applicant offers a variety of on shelf products to the community. They have a larger electrical product available in store and special orders is arranged upon requests from the customers. The community are satisfied with this level of service.

The applicant currently employs a casual staff member to manage the shop on a daily basis. Local people are employed to assist with offloading products from the container. This brings a positive economic outcome for the Community as per the Trust requirements.

The proponents have requested a two (2) year with a further two (2) year option lease and officers support this request.

Milestones have not been requested however the lease will stipulate that the lease purpose continues to be met.

### **Policy and Legislative Implications**

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

### **Financial Implications**

A valuation has been sought from a registered independent valuer and have presented a valuation of \$4,550.00 per annum noting the fee would be subject to annual CPI review, and market review at the commencement of option of any further term.

The proponent has disputed this amount and have requested for Council to consider a rent reduction. The proponent is currently paying \$2,846.00 per annum and with the new valuation at \$4,550.00 per annum this is a lease increase of \$1,704.00 per annum. The tenant is requesting the Shire to consider lease fee of \$3,360.00 per annum.

Whilst Officers recognise this is a significant increase on the current lease amount, an independent market valuation has been completed to ensure lease fees are set at current

market rates. It is recommended to reject the request for a rental reduction at this time to allow the Shire to consider developing a policy to assist in equitable consideration of these requests.

### Strategic Implications

Shire of Strategic Community Plan 2016-2026:

*Outcome 1.1 Encourage economic stability for the Islands.*

*1.1.1 Increase employment opportunities for local residents.*

### Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Reputation	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a good community service.	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a valuable 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.

### Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
<b>Almost Certain (5)</b>	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
<b>Likely (4)</b>	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
<b>Possible (3)</b>	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
<b>Unlikely (2)</b>	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
<b>Rare (1)</b>	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 as it continues to provide a great service to the Community.

## OFFICER'S RECOMMENDATION – ITEM NO 15.2.4

**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 GIVE LOCAL PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY WAY OF LEASE A PORTION OF PART LOT 18 HOME ISLAND RETAIL CENTRE TENANCY 2 TO MR W LIEDIE 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, ANNUAL LEASE FEE IS SUBJECT TO ANNUAL CPI REVIEWS, A MARKET REVIEW AT THE EXERCISE OF ANY FURTHER TERM AND A ONE-OFF LEASE PREPARATION FEE OF \$250;**
  - b. THE LEASE TERM BEING FOR TWO (2) YEARS WITH A TWO (2) YEAR OPTION;**
- 2. THE PURPOSE OF THE LEASE IS TO OPERATE A RETAIL SHOP KNOWN AS COCOS GENERAL AGENCY;**
- 3. TO REJECT THE RENTAL DISCOUNT AND CONSIDER DEVELOPING A POLICY FOR THE CONSIDERATION OF THESE REQUESTS;**
- 4. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD; THE CHIEF EXECUTIVE OFFICER IS AUTHORISED TO ENTER INTO THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;**
- 5. THAT IF OBJECTIONS ARE RECEIVED, TO CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD AND;**
- 6. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY BE UNDERTAKEN.**



### 15.2.5 REQUEST FOR LEASE – LOTS 223 & 224 TRANNIES BEACH WEST ISLAND (COCOS ECO RESORT)

#### Report Information

Date: 20 October 2021  
 Location: Lots 223 & 224 Trannies Beach West Island  
 Applicant: Mr Chris Blakeman – Indian Ocean Leisure  
 File Ref: Not Applicable  
 Disclosure of Interest: Nil  
 Reporting Officer: Chief Executive Officer  
 Island: West Island  
 Attachments: 15.2.5.1 - Cocos Eco Resort Proposal and Supporting Documentation  
 15.2.5.2 - Cocos Eco Resort Preliminary Concept  
 15.2.5.3 - CONFIDENTIAL – Cocos Eco Resort Financial Projections  
 15.2.5.4 - Cocos Eco Resort Community Engagement Strategy  
 15.2.5.5 - Cocos Eco Resort Unsolicited Land Lease Proposal Timeline

#### 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 consider an unsolicited proposal from Chris Blakeman of Indian Ocean Leisure (Cocos Eco Resort) to lease Lots 223 & 224 Trannies Beach, West Island for the purposes of developing a tourist resort, 'Cocos Eco Resort'. This report provides background information and due diligence documents from Cocos Eco Resort for Council to determine whether to go to community consultation on this proposal. 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 223 & 224 Trannies Beach, West Island) is held in Trust. Council as the Trustee, 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 Cocos (Keeling) Islanders resident in the Territory on land owned by the Council”*, and ensure their decision-making is guided by this objective. Council, acting in its capacity as Trustee, has the authority to dispose of Land held in Trust to the Lessee.

### **Relevant Documents**

[Available for viewing at the meeting](#)

### **Background**

In July 2021, Mr Chris Blakeman contacted the Shire to request Council consideration to lease Lots 223 and 224 Trannies Beach, West Island for the purposes of developing a tourist resort, Cocos Eco Resort.

Mr Blakeman is also progressing a lease request for a tourist resort on Direction Island, known as Cocos Boronia Resort. Council supported this request at the Ordinary Meeting of Council held on 25 March 2020. As the Direction Island proposal involves an over the water component, approval is still being considered by the Commonwealth Government for this component prior to a lease being finalised.

Informal discussions with the Shire and presentation to a Councillor workshop have progressed with the proponent between the initial request and the formalising of the request to lease the land.

### **Comment**

The proposal is detailed in Attachment 15.2.5.1 Cocos Eco Resort Proposal and Supporting Documentation, requesting Lots 223 and Lots 224 Trannies Beach, West Island.

The concept design for a “family friendly eco resort” includes a combination of 1, 2 and 3 Bed Villa’s and backpacker type accommodation. The concept estimates approximately 153 rooms will be part of the resort in addition to staff housing requirements. Other amenities include restaurant/dining areas, swimming pool, bar, and plant nursery. Details of the concept design is contained in Attachment 15.2.5.2 Cocos Eco Resort Preliminary Concept.

In support of his request Mr Blakeman has provided supporting documentation for financial forecasts (Confidential Attachment 15.2.5.3 CONFIDENTIAL – Cocos Eco Resort Financial Projections), due diligence reports and information to support the request to proceed with public consultation. These items, with the exception of commercial in-confidence financial information, will be made available to the community as it is likely the community would want to see this level of detail to be able to provide informed input.

Given the complexity of the proposal and likelihood of strong public interest, officers recommend that a preliminary stakeholder and community engagement process is implemented to gauge public interest in the concept before Council is able to give consideration to entering into negotiations. The engagement strategy as contained in Attachment 15.2.5.4 Cocos Eco Resort Community Engagement Strategy presented for Council consideration takes into consideration the complexity of this proposal.

This item seeks a Council resolution to proceed with Stakeholder and Community Engagement noting that this is a preliminary engagement and does not meet the statutory requirements for disposal of property (by lease) as required by Section 3.58 of the *Local Government Act 1995 (WA) (CKI)*. Should Council resolve to proceed with negotiations, the statutory process would need to be implemented prior to Council making a final decision regarding a lease.

Should Council agree to a lease, as the issuing authority, prior to the project being able to be progressed it is a legislative requirement that the proponent lodges a Development Application for Council to consider the specifics of the proposal. A tentative timeline for this unsolicited land lease proposal is contained in Attachment 15.2.5.5 Cocos Eco Resort Unsolicited Land Lease Proposal Timeline. Should Council resolve to progress to Community and Stakeholder engagement, Mr Blakeman will be able to update the draft project timeline contained in the supporting documents with this information.

It is important to note that there has been recent interest in these lots by contractors for the runway upgrade, as it presented a suitable option for a portion of the accommodation needs of the project. This initial interest was withdrawn via email to the Chief Executive Officer dated 20 October 2021 and alternative sites/solutions are being considered for their needs.

### **Policy and Legislative Implications**

There are no direct policy or legislative implications associated with this stage of the proposal. Should the Council consider continuing with lease discussions, the requirements of Section 3.58 of the *Local Government Act 1995 (WA) (CKI)* are required to be adhered to.

Initial stakeholder engagement will also be required to ensure that the requirements of Council Policies, Coastal Development Policy – CPP6 and Essential Services - CPP7, are feasibly able to be met.

### **Financial Implications**

The direct financial implication from the engagement activity is likely to be minimal, however it is proposed that costs incurred with the exception of staff time is to be borne by the proponent.

### **Strategic Implications**

*Key Result Area 1 – Economic Development*

*Objective 1 – Support and assist tourism in recognition of its importance as an economic driver*

*Objective 2 – Facilitate additional accommodation to meet a variety of needs*

*Objective 3 – Promote potential developments that foster economic development and diversification*

**Risk Implications**

<b>Risk Category</b>	<b>Description</b>	<b>Rating (consequence x likelihood)</b>	<b>Mitigation Action</b>
Financial	Progressing to statutory advertising of disposal of lease without community and stakeholder engagement may result in wastage of Shire and Proponent resources.	High	Due to the complexity of the proposal ensure engagement strategy is carried out.
Reputation	Council determine to progress with the lease without considering key stakeholders and community opinion.	Moderate	Due to the complexity of the proposal ensure engagement strategy is carried out.

**Risk Matrix**

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

**Voting Requirements**

Simple Majority

**Conclusion**

This is a complex proposal and will need a considered approach. On top of the already significant investment, it is also acknowledged that the proponent will incur further costs to progress with investigations and planning and understandably the proponent requires some level of assurance of the appetite of Council and the community. The process outlined in this report and the officer’s recommendation provides an avenue for Council and the community to have input and for the proponent to test the proposal without committing either party to a binding agreement at this preliminary stage.

**OFFICER RECOMMENDATION – ITEM NO 15.2.5**

**THAT COUNCIL, ACTING AS TRUSTEE FOR THE 1984 TRUST DEED, BY SIMPLE MAJORITY, AND PURSUANT TO SECTION 3.18 OF THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* RESOLVES TO:**

- 1. IMPLEMENT THE COMMUNITY AND STAKEHOLDER ENGAGEMENT STRATEGY AS PER ATTACHMENT 15.2.5.4 TO SEEK COMMUNITY AND STAKEHOLDER VIEWS ON THE REQUEST FROM CHRIS BLAKEMAN OF COCOS ECO RESORT;**
- 2. ADVISE THE PROPONENT THAT ANY COSTS IN ADDITION TO STAFF TIME TO CARRY OUT THE COMMUNITY AND STAKEHOLDER ENGAGEMENT WILL BE BORNE BY THE PROPONENT;**
- 3. CONSIDER THE RECOMMENDATIONS FROM THE COMMUNITY AND STAKEHOLDER ENGAGEMENT AND ANY PUBLIC SUBMISSIONS AT AN ORDINARY MEETING OF COUNCIL IN MAKING A DETERMINATION ON THE REQUEST FROM COCOS ECO RESORT; AND**
- 4. ADVISE THE PROPONENT THAT ANY DECISION TO PROGRESS WITH A LEASE WOULD NEED TO ADHERE TO THE STATUTORY PROCESSES AS REQUIRED BY SECTION 3.58 OF THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* AND ASSOCIATED REGULATIONS.**

**15.3 TRUSTS FINANCE**

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

**17. CLOSURE**