

Shire of Cocos (Keeling) Islands

Shire of Cocos (Keeling) Islands

Agenda

Special Meeting of Council

15 April 2021, 1.00pm

Council Chambers, Home Island and Via
Video Conferencing Platform

OUR VALUES

Service

Provide the best service we can.

We serve the community and each other.

Accountability

We take responsibility for our own actions.

We do what we say we will do.

Mistakes are an opportunity to learn.

Support

We support our team and our community.

Look for opportunities to help each other.

Respect

We respect and value others.

Our interactions are always respectful towards others.

Integrity

We will be honest and transparent with all our dealings.

Maintain confidentiality.

Trust each other.

Achievement

Being proactive and enabling the outcomes.

Be creative and think outside the square.

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1. OPENING/ANNOUNCEMENTS OF VISITORS

2. ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

4. PUBLIC QUESTION TIME

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

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

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

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

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

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

5. LEAVE OF ABSENCE

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

5.1 LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Councillor	Date of Leave	Approved by Council
NIL		

5.2 APPLICATION FOR LEAVE OF ABSENCE

6. PETITIONS/DEPUTATIONS/PRESENTATIONS

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING(S)

8. ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS

9. DECLARATION OF INTERESTS

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

10. REPORT AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.2 LEASES

10.3 PLANNING/BUILDING

10.4 ADMINISTRATION

10.5 MINUTES TO BE RECEIVED

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

12. MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL

13. MATTERS BEHIND CLOSED DOORS

14. MATTERS RELATING TO THE LAND TRUSTS



MATTERS RELATING TO THE LAND TRUST 1979 AND LAND TRUST 1984

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

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

The 1984 Deed: The 1984 Trust Deed applies to all parcels of land situated and being above high-water mark within the Cocos (Keeling) Islands, including North Keeling Island, but not including parcels of land as described in the First Schedule of the 1984 Trust Deed. This transferred land was to be held by the Council (and later, by its successor, the Shire) 'upon trust for the benefit, advancement and wellbeing of the Cocos (Keeling) Islanders resident in the Territory on land owned by the Council.'

14.1 TRUSTS ADMINISTRATION

14.2 TRUSTS LEASE

14.2.1 CEO HOUSING

Report Information

Date: 14 April 2021
 Location: Home Island
 Applicant:
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Acting Chief Executive Officer
 Island: Home Island
 Attachments: 14.2.1 Email Notification

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
<input 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>

Background

The Shire entered into a 10-year lease arrangement with the Commonwealth of Australia in September 2009 for Lot 126 West Island also known as Government House. This residence has been used by the Shire as the CEO's residence for that period. The lease for the house expired in September 2019 and since then has been in hold over on a month-by-month basis. The Shire submitted a new 10-year maintenance plan to the Commonwealth for consideration of a new 10-year agreement for the premises in January 2021.

On the 31 March 2021, the Assistant Secretary – Indian Ocean Territories Branch advised the Acting CEO in a teleconference that due to the requirement for the current and future Administrators to have a space to hold functions and entertain guest as part of their role the Department was planning to not renew the lease on Government House. The Acting CEO therefore requested that as a result of this the Department make available an alternate premise on West Island that could be used as the CEO residence.

On the 8 April 2021, an email was received from the Director – Indian Ocean Territories Administration confirming in writing that the Department's decision not to renew the lease for Government House. The letter also advised that due to limited housing stock an alternative residence would not be available on an ongoing basis.

Comment

The Shire have no housing stock on West Island and long-term rentals are extremely rare. The only suitable premise that the Shire could secure for the CEO residence is the house formerly used as the CEO residence that is currently used as the Doctors residence. The lease agreement for this house is also currently in hold over so the Shire as Trustee could give notice and cancel the lease with a months' notice (or alternative period by agreement by all parties). There is a risk that taking back this house may have the unintended consequence of the Doctor either now or in the future being permanently re-located on West Island however this is not something the Shire has any control over.

As noted above, in determining this matter, Council is acting in its capacity as the Trustee of the Land Trusts as the House is Land held in Trust under the 1979 Land Trust Deed; therefore Council, is required to have due consideration of the purpose of the Trust, that is *"upon trust for the benefit, advancement and wellbeing of the community formed by the Kampong residents."*

Policy and Legislative Implications

Lease agreements.

Financial Implications

Under the current lease agreement for Government House the Shire is required to maintain the premise to the approximate annual cost of \$25,000. House 100 Home Island is currently lease to the Department for \$20,363 p.a.

Strategic Implications

Corporate Business Plan – *Civic Leadership – Objective 1 Attract and retain quality staff and elected members.*

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A	N/A	N/A
Health & Safety	N/A	N/A	N/A
Reputation	That if the Doctor is relocated to West Island that the Community will hold the Shire responsible for this occurring.	Moderate (6)	Public documentation of reasons behind the decision through the preparation of the agenda item.
Service Interruption	The Shire have recently appointed a new CEO and the provision of housing is essential for the incoming CEO to be able to commence in the role.	High (12)	This report provides an option to secure appropriate accommodation before the planned arrival of the incoming CEO.
Compliance	N/A	N/A	N/A
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	N/A	N/A	N/A

Risk Matrix

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

Voting Requirements

Simple Majority

Conclusion

That Council give notice of its intention to terminate the lease agreement for House 100 Home Island so that the residence can be used as the CEO residence due to the Department's notification that it will no longer lease Government House to the Shire for this purpose.

OFFICER'S RECOMMENDATION – ITEM NO 14.2.1

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1979 LAND TRUST DEED, BY SIMPLE MAJORITY RESOVLES TO AUTHORISE THE ACTING CEO TO ADVICE THE DEPARTMENT OF INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT AND COMMUNICATIONS THAT IT IS TERMINATING THE LEASE AGREEMENT FOR HOUSE 100 HOME ISLAND.

14.3 TRUSTS FINANCE

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

16. CLOSURE