

# Shire of Cocos (Keeling) Islands

## Shire of Cocos (Keeling) Islands

### Agenda

#### Special Meeting of Council

8 September 2021, 4.00pm

Council Chambers, Home Island

## OUR VALUES

### Service

Provide the best service we can.

We serve the community and each other.

### Accountability

We take responsibility for our own actions.

We do what we say we will do.

Mistakes are an opportunity to learn.

### Support

We support our team and our community.

Look for opportunities to help each other.

### Respect

We respect and value others.

Our interactions are always respectful towards others.

### Integrity

We will be honest and transparent with all our dealings.

Maintain confidentiality.

Trust each other.

### Achievement

Being proactive and enabling the outcomes.

Be creative and think outside the square.

**TABLE OF CONTENTS**

<b>1</b>	<b>OPENING/ANNOUNCEMENTS OF VISITORS</b>	<b>4</b>
<b>2</b>	<b>ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)</b>	<b>4</b>
<b>3</b>	<b>RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE</b>	<b>4</b>
<b>4</b>	<b>PUBLIC QUESTION TIME</b>	<b>4</b>
<b>5</b>	<b>LEAVE OF ABSENCE</b>	<b>5</b>
5.1	LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	5
5.2	APPLICATION FOR LEAVE OF ABSENCE	5
<b>6</b>	<b>PETITIONS/DEPUTATIONS/PRESENTATIONS</b>	<b>5</b>
<b>7</b>	<b>CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS</b>	<b>5</b>
NIL		5
<b>8</b>	<b>ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS</b>	<b>5</b>
<b>9</b>	<b>DECLARATION OF INTERESTS</b>	<b>5</b>
<b>10</b>	<b>REPORT AND RECOMMENDATIONS</b>	<b>5</b>
<b>REPORTS OF OFFICERS AND RECOMMENDATIONS OF COMMITTEE</b>		<b>5</b>
<b>10.1</b>	<b>FINANCE</b>	<b>6</b>
NIL		6
<b>10.2.</b>	<b>LEASE</b>	<b>6</b>
NIL		6
<b>10.3</b>	<b>PLANNING/BUILDING</b>	<b>6</b>
NIL		6
<b>10.4</b>	<b>ADMINISTRATION</b>	<b>6</b>
10.4.1	RFT 2021/02 COMPLETION OF CONSTRUCTION OF TWO RESIDENTIAL KIT HOMES	6
<b>10.5</b>	<b>MINUTES TO BE RECEIVED</b>	<b>12</b>
NIL		12
<b>11</b>	<b>ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN</b>	<b>12</b>
<b>12</b>	<b>MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL</b>	<b>12</b>
<b>13</b>	<b>MATTERS BEHIND CLOSED DOORS</b>	<b>12</b>

NIL		
<b>14.</b>	<b>MATTERS RELATING TO THE LAND TRUSTS</b>	<b>12</b>
<b>14.1</b>	<b>TRUSTS ADMINISTRATION</b>	<b>14</b>
NIL		14
<b>14.2</b>	<b>TRUSTS LEASES</b>	<b>14</b>
NIL		14
<b>14.3</b>	<b>TRUSTS FINANCE</b>	<b>14</b>
NIL		14
<b>15.</b>	<b>NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING (LATE ITEM)</b>	<b>14</b>
NIL		14
<b>16.</b>	<b>CLOSURE</b>	<b>14</b>

## 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

### 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

### 10.4.1 RFT 2021/02 COMPLETION OF CONSTRUCTION OF TWO RESIDENTIAL KIT HOMES

#### Report Information

Date: 6 September 2021  
 Location: Not Applicable  
 Applicant: Not Applicable  
 File Ref: Not Applicable  
 Disclosure of Interest: Nil  
 Reporting Officer: Chief Executive Officer  
 Island: Home Island  
 Attachments: 10.4.1.1 - Confidential Attachment – RFT 2021-02 Evaluation Report

#### 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</i>

		<i>applications, building licenses, applications for other permits / licenses.</i>
<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

### **Report Purpose**

The purpose of this report is for Council to consider the results of Tender RFT 2021/02 Completion of Construction of Two Residential Kit Homes and to award the tender.

### **Relevant Documents**

Available for viewing at the meeting

Nil

### **Background**

The construction of two residential kit homes on Home Island commenced in 2020/21. Original budget estimates on the construction of two new houses on Home Island was \$1,000,000. \$500,000 of the cost of the project was to be funded by the Economic Stimulus (Supporting Local Employment) package provided by the Department of Infrastructure, Transport, Regional Development and Communications (the Department), with the remaining \$500,000 to be funded from Council reserve funds. Original estimates included utilising Shire employed building trades and labourers, however due to a number of circumstances linked to the pressures resulting from COVID 19, such as:

- lack of available local resources;
- lack of available accommodation options;
- increased demand for and lack of availability of materials; and
- shortage of available resources on the mainland;

a local contractor was engaged to supervise and provide the qualified labour along with support from local Shire employed labour. At the time of engagement the Shire still expected to be able to source its own builders to complete the project, resulting in the local contractor being engaged on a purchase order for an hourly rate, with no contract in place. As the impacts of COVID-19 continued, it became clear to the Shire that being able to complete the construction with Shire resources/employees was not possible.

In accordance with regulation 11 of the *Local Government (Functions and General) Regulations 1996* and to assist in quality, cost and risk mitigation it was identified that it was important to enter into a contract with a suitable builder to complete the construction of the two houses. The local contractor engaged was provided four weeks' notice that the remainder of the project was to be tendered.



## **Comment**

Under delegated authority, the Chief Executive Officer called for open public tenders from suitably qualified and experienced contractors to complete the construction of two partially built residential houses on Home Island. Both houses are at different stages of construction.

The RFT was advertised in the West Australian and the Shire's Website, Facebook Page and Noticeboards on Wednesday 18 August 2021 and in the Atoll on 20 August 2021. Three responses were received by the deadline of the Request for Tender (RFT). One response was received after the deadline and was not evaluated.

Confidential Attachment 10.4.1.1 – RFT 2021-02 Evaluation Report contains details of the tenders received, the process of the tender and the evaluation panel's findings and recommendations to Council.

## **Policy and Legislative Implications**

Regulation 11 of the *Local Government (Functions and General) Regulations 1996* deals with when tenders are to be publicly invited.

Regulation 18 of the *Local Government (Functions and General) Regulations 1996* deals with how a local government is to reject or accept publicly invited tenders.

The CEO does not have delegation to award Tenders.

## **Financial Implications**

The result of the recommended tender requires a budget variation to increase the budget to complete the construction of the houses (\$110,122). Additional budget has been identified through the receipt of confirmation of the Financial Assistance Grant (FAG) for 2021/22. The originally budgeted FAG to be received was \$4,208,556, whereas confirmation of actual FAG funding is \$4,531,554. Allowing for an expected surplus of \$322,998. It is recommended to utilise a portion of this additional funding to fund the gap in budget and tenders received.

## **Strategic Implications**

Shire of Cocos (Keeling) Islands Strategic Community Plan 2017 - 2027  
*Key Result Area 1 – Economic Development*

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

*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	The cost exceeds budget allocation	Low (4)	A sound contract, good project management and oversight to ensure project is managed within budget.
Health & Safety	Injury	Moderate (8)	The recommended tenderer is an experienced builder with all OSH documentation and processes in place (one of the compliance requirements).
Reputation	Cost and time to complete project exceeds expectations	Moderate (6)	A sound contract, good project management and oversight to ensure project is managed within budget.
Compliance	Process non-compliant	Low (4)	The tender process has been compliant.

**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

At the completion of each panel members evaluation, the evaluation panel met to discuss the results and recommendation moving forward. In addition to the individual scoring, the panel discussed the:

1. Risks to the Shire;
2. The methodology provided especially in regards to including local content and the time to complete the houses;
3. Value for money, and certainty around costs;
4. Experience of the tenderers; and
5. Limitations on accommodation and flights.

The panel unanimously concluded that although BLS Construction Pty Ltd was the highest tendering response; taking into consideration value for money, risks to the project and the Shire, experience of the tenderers and the ability to complete the houses in a timely manner, that tender RFT 2021/02 is recommended to be awarded to BLS Construction Pty Ltd.

## OFFICER'S RECOMMENDATION – ITEM NO 10.4.1

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

1. **ACCEPT THE RECOMMENDATION OF THE EVALUATION PANEL; BEING THE TENDER RECEIVED FROM BLS CONSTRUCTION FOR RFT 2021/02;**

2. **APPROVE THE FOLLOWING BUDGET VARIATION:**

<b>INCREASE TO FINANCIAL ASSISTANCE GRANT FUNDING</b>	<b>(\$322,998)</b>
<b>INCREASE TO CAPITAL EXPENDITURE – HOME ISLAND HOUSES</b>	<b>\$110,122</b>
<b>UNALLOCATED SURPLUS</b>	<b>\$212,876;</b>

3. **NOTE THE UNALLOCATED SURPLUS WILL BE CONSIDERED AS PART OF THE ANNUAL BUDGET REVIEW PROCESS; AND**

4. INSTRUCT THE CHIEF EXECUTIVE OFFICER TO AWARD THE CONTRACT FOR RFT 2021/02 AND TO ENTER INTO A CONTRACT WITH BLS CONSTRUCTION FOR THE COMPLETION OF CONSTRUCTION FOR THE TWO KIT HOMES ON HOME ISLAND FOR THE TENDERED PRICE OF \$\_\_\_\_\_. (NB: VALUE OF TENDER WILL BE INSERTED IN THE MINUTES AFTER COUNCIL MEETING TO MAINTAIN COMMERCIAL IN CONFIDENCE UNTIL AFTER THE TENDER IS AWARDED).

**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**

**14.3 TRUSTS FINANCE**

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

**16. CLOSURE**