

14.1 TRUSTS ADMINISTRATION

Nil

14.2 TRUSTS LEASES

Cr Lacy declared financial interest on Item No 14.2.1 and left the meeting chambers at 4.16pm.

14.2.1 APPLICATION TO LEASE FOR PART LOT 18 HOME ISLAND RETAIL CENTRE

Report Information

Date: 19 April 2021
 Location: Part Lot 18 Home Island Retail Centre – Tenancy 8 Bakery
 Applicant: Azah Badlu and Siti Az-Zahra Azah
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Acting Chief Executive Officer
 Island: Home Island
 Attachments: 14.2.1 CONFIDENTIAL – Lease Proposal – Bakery Commitment

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 from Mr Badlu and Mrs Azah to have the Shire supply essential equipment for the bakery tenancy and incorporate into the lease at Part Lot 18 Home Island retail centre. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the 1979 Land Trust as the Land (Lot 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 Shire advertised in the Atoll seeking expressions of interest for 4 new retail tenancies at the Home Island Retail Centre. Mr Badlu and Mrs Azah wrote to the Shire expressing their interest in tenancy 8 for the purpose of a Bakery. At the April Ordinary Council Meeting council resolved the following:

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 (WA) (CKI) 1995* RESOLVES:

- 1. TO GIVE PUBLIC NOTICE OF THE INTENT (INCLUDING INVITING PUBLIC SUBMISSIONS) TO DISPOSE BY LEASE OF PART LOT 18 HOME ISLAND RETAIL CENTRE TENANCY 8 TO THE MR BADLU & MRS AZAH 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 TERM BEING FOR 3 YEARS WITH 3 YEAR OPTION;**
- 2. THE PURPOSE OF THE LEASE IS TO OPERATE A BAKERY BUSINESS.**
- 3. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD; THE CEO 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;

The proposal from Mr Badlu and Mrs Azah also included a request for Council to fund the essential equipment required for the bakery acknowledging that this would increase the annual lease fee for the tenancy. This agenda item deals with the request for the essential equipment.

Comment

In the leasing proposal as flagged in their original expression of interest proposal Baked by Zahra are requesting the Shire to fit out the Bakery with the essential items of equipment that will become fixtures to the tenancy. Items over and above the basic essential needs of the bakery will be the responsibility of the tenant.

Baked by Zahra has submitted a revised proposal that gives more details regarding the financial commitment they are making towards the venture. They estimate the upfront outlay to get the business up and running from them will be approximately \$37,500.

The cost of providing the essential items as fixtures with the tenancy will be recouped over time through an increase in the annual lease fee than what would otherwise be charged. Similar arrangements are in place with the other cafes the Shire controls where equipment such as ovens and kitchens are provided as fixtures.

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 18) 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 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 (WA) (CKI)* 1995 as amended.

Financial Implications

The total costs for these essential bakery equipment are expected to be \$26,900 plus freight costs which can be accommodated within the current budget remaining for this project for the 2020/21 financial year. The Shire has purchased similar equipment for the Café and Restaurant, which also remain the property of the Shire. The Shire would seek a valuation for the lease fee that takes into account the fixtures that are being provided to the tenant.

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
Financial	N/A	N/A	N/A
Health & Safety	N/A	N/A	N/A
Reputation	N/A	N/A	N/A
Service Interruption	Without the support of the essential equipment the tenancy may not be taken on and the community will not have access to this service.	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.
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

The request for essential equipment to be provided as fixtures under the lease is present to council.

Cr Hamiril returned to the meeting via Zoom video conference at 4.24pm.

Cr Iku moved an amendment for Council provide the tenancy with only the first three items from the requested list of essential items.

Cr Charlston seconded the motion.

Debate was held around the amendment to motion in relation to the fit out of the tenancy with essential items.

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, PURSUANT TO SECTION 3.58 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 RESOLVES:

1. THAT COUNCIL AGREE TO FITOUT THE TENANCY WITH THE ESSENTIAL ITEMS AS LISTED IN THIS REPORT WHICH WILL BE FACTORED INTO THE LEASE VALUATION AND REMAIN THE PROPERTY OF THE SHIRE.

AMENDMENT TO MOTION / COUNCIL RESOLUTION – ITEM NO 14.2.1

MOVED: CR IKU

SECONDED: CR CHARLSTON

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 (WA) (CKI) 1995* RESOLVES:

- 1. THAT COUNCIL AGREE TO FITOUT THE TENANCY WITH THE FIRST THREE ESSENTIAL ITEMS ONLY AS LISTED IN THIS REPORT BEING THE TRAY RACK – 18 SHELVES, ROTEL OVEN AND CHEF 60CM STOVE TOP WHICH WILL BE FACTORED INTO THE LEASE VALUATION AND REMAIN THE PROPERTY OF THE SHIRE.**

THE MOTION WAS PUT AND DECLARED CARRIED (6/0)

FOR: CHARLSTON, HAMIRIL, IBRAM, IKU, LACY, MINKOM

AGAINST: NIL

REASON FOR AMENDMENT

To be consistent with other café and restaurant that the Shire have purchased and fitted with essential equipment.

Cr Lacy returned to the meeting chambers at 4.28pm.