

Shire of Cocos (Keeling) Islands

Shire of Cocos (Keeling) Islands

Agenda

Special Meeting of Council

Friday 27 January 2023, 8.30am

Council Chambers, Administration Building
at Lot 256 Jalan Bunga Melati, 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.

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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

Please Note: Section 7(4)(b) of the *Local Government (Administration) Regulations 1996* states that a Council at a Special Meeting is not required to answer a question that does not relate to the purpose of the meeting. It is requested that only questions that relate to items on the agenda be asked.

5. REPORT OF THE RETURNING OFFICER – LOCAL GOVERNMENT ELECTION

The report received from the Returning Officer for the Local Government Election is to be read aloud by the Chief Executive Officer.

6. SWEARING IN OF NEWLY ELECTED COUNCILLOR

In accordance with section 2.29 of the *Local Government Act 1995 (WA)(CKI)*, a person elected as a Councillor is to make a declaration in the prescribed form before acting in the office.

Declarations required are to be made before an authorised person. In accordance with regulation 13(5) of the *Local Government (Constitution) Regulations 1998* an authorised person means a person before whom a statutory declaration can be made under *the Oaths, Affidavits and Statutory Declarations Act 2005*.

Mr Haji Adam Anthony JP has been invited to assist in the swearing in ceremony.

7. 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.

7.1 LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

| Councillor | Date of Leave | Approved by Council |
|------------|---------------|---------------------|
| NIL | | |

7.2 APPLICATION FOR LEAVE OF ABSENCE**8. PETITIONS/DEPUTATIONS/PRESENTATIONS****9. CONFIRMATION OF MINUTES OF PREVIOUS MEETING(S)**

9.1 Ordinary Council Meeting held on 14 December 2022 – Attachment 9.1

OFFICER RECOMMENDATION – ITEM NO 9.1

THAT COUNCIL BY SIMPLE MAJORITY, PURSUANT TO *SECTIONS 5.22(2) AND 3.18 OF THE LOCAL GOVERNMENT ACT 1995 (WA)(CKI)*, RESOLVES THAT THE MINUTES OF THE ORDINARY MEETING OF COUNCIL HELD ON 14 DECEMBER 2022 AS PRESENTED IN ATTACHMENT 9.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

10.ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS**11.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.

12. REPORT AND RECOMMENDATIONS OF COMMITTEE**12.1 CHIEF EXECUTIVE OFFICER****12.2 MANAGER FINANCE AND CORPORATE SERVICES**

12.2.1 PRESENTATION OF THE 2021/2022 ANNUAL REPORT

Report Information

Date: 25 January 2023
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Location: Not Applicable
 Disclosure of Interest: Nil
 Reporting Officer: Manager Finance & Corporate Services
 Island: Shire Wide
 Attachments: 12.2.1.1 - Financial Statements for the year ended 30 June 2022
 12.2.1.2 - Independent Auditors Report 2022
 12.2.1.3 - CONFIDENTIAL Final Management Letter 30 June 2022
 12.2.1.4 - Annual Report 2021/22.

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

To receive the Draft Annual Report and Audit Report for the 2021/2022 Financial Year and recognise the meeting held with the Shires Auditors.

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Office of the Auditor General (OAG) conducted an on-site Audit from the 2nd to the 8th November 2022. Following the conclusion of the Audit an Audit Exit Meeting was held on the 19 December 2022 between Frank Mills - CEO, Vikki Lauritsen – Manager Finance & Corporate Services, Katie MacLachlan – Director of Financial Audit at the OAG and Jency Santhou – Principal Auditor at the OAG. Councillor Young (President of the Shire Audit and Governance Committee) was unable to attend.

It is a requirement under *Section 7.12A (2) of the Local Government Act 1995 (WA) (CKI)* that the Audit and Governance Committee meets with the Local Governments Auditor at least once every 12 months. It is recommended that a member of the Audit and Governance Committee attend the next Audit ‘Entry’ meeting as well as ‘Exit’ meeting for the 2022/23 financial audit.

As a requirement of the *Local Government Act 1995 (WA)(CKI)* the Shires Auditors are required to report on certain compliance matters and any other matters which arise during the course of their audit. The Independent Auditors Report is the format in which the Auditors report this information and was received on 20 December 2022.

The Audit Committee is to examine the Annual Financial Report, review any matters raised by the Auditor in the Management Report and ensure that appropriate action is taken in respect to those matters raised.

Section 5.27 of the *Local Government Act 1995 (WA) (CKI)* requires a general meeting of electors to be held not more than 56 days after the local government accepts the annual report. In order to set a date for the 2023 Electors’ General Meeting (EGM), the Council is required to have both received the audit report for the prior period as well as having accepted the Annual Report. In addition to acceptance of the Annual Report at the next Ordinary Council Meeting, approval of Council will be sought to set the date of the Electors’ General Meeting.

Upon acceptance of the Annual Report and approval of the EGM date and time, statutory advertising will take place and the Annual Report will be made available for viewing on the night of the Elector’s General Meeting and at any time on the Shire’s website.

This report presents the audited Annual Financial Report including the Independent Auditor’s Report and the Management Letter from the Shire’s Auditors for the year ended 30 June 2022. A copy of the Annual Report for the year ended 30 June 2022 is attached for the Audit and Risk Committee’s review.

An unqualified opinion has been issued, meaning that the Shire of Cocos (Keeling) Island's financial records and statements are fairly and appropriately presented, and in accordance with Australian Accounting Standards Board (AASB) and the *Local Government Act 1995 (WA)(CKI)*.

Comment

The Audit Report received shows an unqualified audit opinion of the 2021/2022 Annual Financial Statements for the Shire. However, the report highlighted two findings, one Moderate and the other Significant,

The 2 items of non-compliance outlined below,

- The Auditors noted that termination checklists for 13 out of 16 terminated employees were not complete. In the absence of a completed checklist, there is a risk that not all matters associated with terminations are being addressed. There is an increased risk of financial loss to the Shire as assets may be misappropriated and the systems and network may be accessed inappropriately. It was recommended that management should review the processes associated with terminated employees to ensure that the termination checklists are completed for all terminating employees.
 - Management note that the Shire does not have a designated Human Resources Officer and recruitment and terminations are driven by the relevant manager with varying degrees of compliance and record keeping. The matter is on the agenda for the next Leadership Team meeting to ensure managers are aware of the correct process. The recent Workforce Plan adopted by Council in November 2022, outlines the recruitment of an appropriate staff member to perform a Human Resource Management role. The budget implications for this will be addressed as part of the 2022/23 Budget Review with recruitment expected to commence prior to 30 June 2023.
- The Significant finding raised related to a carry forward of prior year assessments that the Shire does not have policies and procedures in place for financial management and internal controls covering the following areas and functions:
 - ~ Risk management, including developing a risk register; and
 - ~ Business continuity and disaster recovery, including developing action plans.
 - Management note that a Risk Management Policy, Risk Management Framework and Risk Register have been drafted and will be presented for endorsement at the Audit Committee Meeting prior to being presented to Council for adoption.
 - Management has noted that Disaster Management and recovery is run by the Commonwealth. The Shire CEO has raised the question of recovery planning with

the Commonwealth at the last Disaster Management Committee meeting and intends to develop a Business Continuity action plan that aligns to the Commonwealths plans. The Commonwealth response was that their plans will be updated post this cyclone season. The Shire CEO expects to be able to develop a business continuity plan by June 2023.

Policy and Legislative Implications

Local Government Act 1995 (WA) (CKI)

Section 1.4 Financial Report

Section 5.27 Electors General Meeting

Section 5.53 Annual Reports

Section 5.54 Acceptance of Annual Reports

Section 5.55 Notice of Annual Reports

Division 3A Financial Audit

Financial Implications

The indicative audit fee for 2022 was \$69,300.

Strategic Implications

Strategic Community Plan: Civic Leadership

Risk Implications

| Risk Category | Description | Rating (consequence x likelihood) | Mitigation Action |
|----------------------|---|--|---|
| Reputation | For transparency it is important that the audit report is presented to the audit and governance committee. | Moderate (6) | There is a process in place to ensure the audit report is presented to the audit committee. |
| Compliance | The Report is to be presented to the Audit Committee annually in order to comply with relevant legislation. | Low (4) | There are processes in place to ensure compliance with relevant legislation. |
| Fraud | That the annual financial statements are materially misstated. | Moderate (8) | Annual statements are audited by the office of the auditor general. |

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 Audit and Governance Committee recommends that Council receives the 2021/2022 Auditors Report of the Shire of Cocos (Keeling) Islands and notes the meeting held with the Shire's external auditors.

AUDIT AND GOVERNANCE COMMITTEE RECOMMENDATION – ITEM NO 12.2.1

THAT COUNCIL, IN ACCORDANCE WITH SECTION 5.54 OF THE *LOCAL GOVERNMENT ACT 1995 (WA)(CKI)*, AT ITS NEXT ORDINARY COUNCIL MEETING:

1. RECEIVE:
 - a. THE ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2022, INCLUDING THE INDEPENDENT AUDITORS REPORT AS DETAILED AT ATTACHMENT 12.2.1.1 AND 12.2.1.2
 - b. THE AUDITORS MANAGEMENT LETTER AS DETAILED IN CONFIDENTIAL ATTACHMENT 12.2.1.3; AND
 - c. THE 2021/22 ANNUAL REPORT AS DETAILED IN ATTACHMENT 12.2.1.4; AND

2. SET THE DATE FOR THE ANNUAL ELECTORS GENERAL MEETING AS WEDNESDAY 29 MARCH 2023 AT 12:45PM AT THE HOME ISLAND COUNCIL CHAMBERS AND AUTHORISE THE CEO TO GIVE PUBLIC NOTICE OF THE MEETING AND THE AVAILABILITY OF THE ANNUAL REPORT.

12.3 MANAGER INFRASTRUCTURE

13. MINUTES TO BE RECEIVED

13.1 MINUTES FROM AUDIT AND GOVERNANCE COMMITTEE MEETING TO BE RECEIVED

Report Information

Date: 25 January 2023
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Location: N/A
 Disclosure of Interest: Nil
 Reporting Officer: Governance, Risk and Planning Coordinator
 Island: Shire Wide
 Attachments: 13.1 Audit and Governance Committee Meeting Minutes
 (Confirmed) 16 November 2023
 13.2 Audit and Governance Committee Meeting Minutes
 (Unconfirmed) 25 January 2023

Authority / Discretion

Definition

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|-------------------------------------|----------------|--|
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| <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> |

Summary

The report formally presents the (confirmed and unconfirmed) minutes of Audit and Governance Committee of Council from the previous meeting.

Background

The Shire has established the Audit and Governance Committee as a Committee of Council. The Audit and Governance Committee does not have any delegated authority; therefore, any recommendations requiring a Council decision that result from this Committee meeting must be brought before Council. This will be done via agenda items to Council.

Comment

The attached minutes are the unconfirmed minutes of the meeting of Audit and Governance Committee of Council held on the 16 November 2022 and 25 January 2023.

Consultation

N/A

Financial Implications

The Officer's recommendation for Council to receive the minutes of Committee meetings carries no financial commitment for Council. Should any recommendation require a financial commitment or have any implication outside the CEO's delegated authority, the matter will be referred to Council as a specific agenda item.

Risk Implications

Nil

Policy Implications

Nil

Statutory Implications

Administration regulation 11 sets out the content that the minutes of council or committee meetings must contain, including:

- the names of members present at the meeting;

- details of each motion moved, the mover and the outcome of the motion;
- details of each decision made at the meeting; and
- written reasons for each decision made at a meeting that is significantly different from the committee's or council employee's recommendation.

Section 5.22(2) and (3) of the Act requires that the minutes of a council or committee meeting are to go to the next meeting of the council or committee for confirmation and signing by the person presiding to certify the confirmation.

Strategic Implications

Shire of Cocos (Keeling) Islands Strategic Community Plan 2016-2026
Outcome 4.1.2 Continue to improve organisational planning.

Voting Requirements

Simple majority

Conclusion

That the minutes of the Audit and Governance Committee meeting held on the 16 November 2022 and 25 January 2023 be received.

OFFICER RECOMMENDATION – ITEM NO 13.1

THAT COUNCIL, BY SIMPLE MAJORITY PURSUANT TO SECTION 3.18 OF THE LOCAL GOVERNMENT ACT 1995 RESOLVES TO RECEIVE THE MINUTES OF THE AUDIT AND GOVERNANCE COMMITTEE MEETING HELD ON 16 NOVEMBER 2022 AND 25 JANUARY 2023.

- 14. ELECTED MEMBERS MOTION OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN**
- 15. MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL**
- 16. MATTERS BEHIND CLOSED DOORS**
- 17. 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.'

17.1 TRUSTS ADMINISTRATION

17.2 TRUSTS LEASE

17.3 TRUSTS FINANCE

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

19. CLOSURE