



MINUTES

ORDINARY MEETING OF COUNCIL

held in Council Chambers, Home Island on Wednesday, 20 May 2020
commencing at 12.15pm.

DISCLAIMER

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Please note this agenda contains recommendations which have not yet been adopted by Council. 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

The Presiding member declared the meeting open at 12.23pm and welcome Councillors and staff to the meeting.

2. ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE

President Cr A Minkom

Deputy President Cr S Iku

Councillors Cr M Hamiril
Cr J Ibram

Officers A Selvey, Chief Executive Support Officer
J Soderlund, Deputy Chief Executive Officer
I Macrae, Governance and Risk Coordinator

Public Nil

Visitors: Nil

Apologies: Cr S Charlston

Approved Leave of Absence: Cr T Lacy

3. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

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.

Nil

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 Lacy	22 April 2020 to 20 May 2020	22 April 2020

5.2 APPLICATION FOR LEAVE OF ABSENCE

MOVED CR IKU, SECONDED CR IBRAM

THAT CR ANTHONY BE GRANTED LEAVE OF ABSENCE IN ACCORDANCE TO *SECTION 2.25 OF THE LOCAL GOVERNMENT ACT 1995* FOR THE 21 MAY 2020 TO 30 AUGUST 2020 INCLUSIVE.

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

6. PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING(S)

7.1 Ordinary Council Meeting held on 22 April 2020 -Attachment 7.1

MOVED CR IBRAM, SECONDED CR HAMIRIL

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 22 APRIL 2020, AS PRESENTED IN ATTACHMENT 7.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM
AGAINST: NIL

OFFICER'S 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 22 APRIL 2020, AS PRESENTED IN ATTACHMENT 7.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

8. ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS

Nil

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.

Name	Item No.	Interest	Nature
Andrea Selvey	13.1	Financial	As the CEO the item directly relates to her remuneration.

10. REPORT AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.1.1 MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 30 APRIL 2020

Report Information

Date: 14 May 2020
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1.1 Statement of Financial Activity with accompanying notes 30 April 2020

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 inform Council of the financial position of the Shire at 30 April 2020 in compliance with the provisions of Section 6.4 of the Local Government Act 1995 and Regulation 34 of the Local Government (Financial Management) Regulations 1996.

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Monthly Financial Statements for the period 1st July 2019 to 30 April 2020 are presented for consideration.

Comment

The Monthly Financial Report is prepared in accordance with the requirements of the Local Government Act 1995 and Local Government (Financial Management) Regulations.

A statement of Financial Activity with accompanying notes is attached for the period 1 July 2019 to 30 April 2020.

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 in question.

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.
Health & Safety	N/A	N/A	N/A
Reputation	The monthly financial statements are open to public scrutiny.	Low (3)	Procedures in place to ensure all expenditure is justifiable.
Service Interruption	N/A	N/A	N/A
Compliance	The report is to be presented to Council	Low (3)	There are processes in place to ensure

	within two months in order to comply with relevant legislation.		compliance with legislation.
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
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 financial statements for the period 1 July 2019 to 30 April 2020 be received.

COUNCIL RESOLUTION – ITEM NO 10.1.1

MOVED CR IKU, SECONDED CR IBRAM

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY 2019 TO 30 APRIL 2020.

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

OFFICER'S RECOMMENDATION – ITEM NO 10.1.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY 2019 TO 30 APRIL 2020.

10.1.2 SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 APRIL 2020 TO 30 APRIL 2020

Report Information

Date: 14 May 2020
 Location: Not applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Senior Finance Officer
 Island: Shire Wide
 Attachments: 10.1.2 Schedule of Accounts paid

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 inform Council of funds disbursed for the period 1 April 2020 - 30 April 2020.

Relevant Documents

Available for viewing at the meeting

Nil

Background

A list of accounts paid between 1 April and 30 April 2020 is attached.

Comment

The schedule of accounts paid is submitted in accordance with regulation 13(1) of the Local Government (Financial Management) Regulations 1996.

Policy and Legislative Implications

Nil

Strategic Implications:

Nil

Conclusion

That Council receives the list stating all accounts paid for April 2020.

COUNCIL RESOLUTION – ITEM NO 10.1.2

MOVED CR IKU, SECONDED CR IBRAM

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE REPORT FROM THE CHIEF EXECUTIVE OFFICER ON THE EXERCISE OF DELEGATED AUTHORITY IN RELATION TO CREDITOR PAYMENTS FROM THE MUNICIPAL FUND FOR THE PERIOD 1 APRIL TO 30 APRIL 2020 INCLUSIVE OF CHEQUE 11589 TO 11590 AND EFT 7209 TO EFT 7251, VIVA ENERGY AND DIRECT DEBIT SUPERANNUATION TOTALLING \$411,712.88

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

OFFICER'S RECOMMENDATION – ITEM NO 10.1.2

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE REPORT FROM THE CHIEF EXECUTIVE OFFICER ON THE EXERCISE OF DELEGATED AUTHORITY IN RELATION TO CREDITOR PAYMENTS FROM THE MUNICIPAL FUND FOR THE PERIOD 1 APRIL TO 30 APRIL 2020 INCLUSIVE OF CHEQUE 11589 TO 11590 AND EFT 7209 TO EFT 7251, VIVA ENERGY AND DIRECT DEBIT SUPERANNUATION TOTALLING \$411,712.88

10.1.3 DIFFERENTIAL RATING 2020/2021 FINANCIAL YEAR

Report Information

Date: 12 May 2020
 Location: Not Applicable
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: Nil

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 information to Council on rates modelling and obtain Council approval to give public notice of its intention to adopt differential rates and minimum payments for the 2020/2021 financial year.

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Local Government Act 1995 as amended, provides that before imposing differential general rates or a minimum payments applying to a differential rate category, a local government is to give 21 days' local public notice of the intention to do so. Where a local government proposes to modify the proposed rates or minimum payments after considering any submissions received during the advertising period, it is not required to give local public notice of the modified rate or minimum payment.

The Local Government Act 1995 as amended provides that a local government may impose differential general rates according to any, or a combination, of the following characteristics:

- A. The purpose for which the land is zoned under a town planning scheme in force under the Town Planning and Development Act 1928;
- B. The predominant purpose for which the land is held or used as determined by the local government;
- C. Whether or not the land is vacant; or
- D. Any other characteristic or combination of characteristics prescribed.

Comment

Every four years the Office of the Valuer General undertakes a revaluation of all properties on Cocos (Keeling) Islands. This process was last completed for rates beginning the 1 of July 2019, therefore there will be no change to the overall valuations until the rate year beginning 1 July 2023.

At the April Ordinary Council meeting Council resolved the following:

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.18 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES TO CONSIDER THE FOLLOWING MEASURES WHEN SETTING THE 2020/2021 SCHEDULE OF RATES AND THE 2020/2021 SCHEDULE OF FEES AND CHARGES:

- a) **NO INCREASE IN THE RATE IN THE DOLLAR ACROSS ALL DIFFERENTIAL RATING CATEGORIES;**
- b) **REDUCE THE RATE IN THE DOLLAR FOR HOLIDAY ACCOMMODATION TO THE SAME AS GENERAL DEVELOPED;**
- c) **NO INCREASE IN THE FEE AND CHARGE FOR WASTE COLLECTION.**

Therefore based on this resolution of council the total value of rates revenue raised is proposed to decrease by approximately 2.94% or \$12,137.

The majority of this decrease relates to the Holiday Accommodation rating category as a result of bringing the rate in the dollar in line with residential as a financial relief measure in response to the current COVID-19 pandemic.

The application of differential rates aims to provide a more equitable solution for the rates charged according to the use of the property. The land use is the recommended way to

determine the categories and following are the intended differential rates for the 2020/2021 financial year.

RATING CATEGORY	RATE IN \$ 2019/20	MINIMUM RATE 2019/20	TOTAL RATE REVENUE 2019/20	RATE IN \$ 2019/20	MINIMUM RATE 2019/20	TOTAL RATE REVENUE 2019/20
GRV General Developed	.1090	\$ 705	\$239,774	.1090	\$705	\$243,487
GRV Vacant Land	.2175	\$ 800	\$15,206	.2175	\$800	\$16,622
GRV Business	.1150	\$ 705	\$112,308	.1150	\$705	\$112,235
GRV Holiday Accommodation	.1090	\$ 705	\$32,473	.1617	\$705	\$39,555

Policy and Legislative Implications

Sections 6.33, 6.35 & 6.36 of the Local Government Act 1995 as amended.

Financial Implications

If imposed the above rates would yield revenue of \$399,761 comprising a 2.94% decrease in total rates revenue raised compared to the 2019/2020 year.

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	That freezing rates and reducing the holiday accommodation rating category to the same as general developed will have a significant financial impost on the Shire.	Low (3)	The reduced rates revenue will be considered when preparing the 2020/21 budget.
Health & Safety	N/A	N/A	N/A
Reputation	N/A	N/A	N/A
Service Interruption	N/A	N/A	N/A

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)

Conclusion

The proposed differential rates set out in the report are in line with the rates Council resolved to consider in response to the current Covid 19 pandemic. The officer's recommendation is for the proposed differential rates and minimum payments to be considered by Council for advertising.

COUNCIL RESOLUTION – ITEM NO 10.1.3

MOVED CR IKU, SECONDED CR HAMIRIL

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTIONS 6.33, 6.35 AND 6.36 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995 RESOLVES TO GIVE LOCAL PUBLIC NOTICE ITS INTENTION TO ADOPT THE FOLLOWING DIFFERENTIAL RATES AND MINIMUM PAYMENTS FOR EACH OF THE FOLLOWING RATING CATEGORIES IN THE 2020/2021 FINANCIAL YEAR.

RATING CATEGORY	RATE IN THE DOLLAR	MINIMUM RATES
GRV GENERAL DEVELOPED	0.1090	\$ 705
GRV VACANT LAND	0.2175	\$ 800
GRV BUSINESS	0.1150	\$ 705
GRV HOLIDAY ACCOMMODATION	0.1090	\$ 705

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

OFFICER'S RECOMMENDATION – 10.1.3

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTIONS 6.33, 6.35 AND 6.36 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) RESOLVES TO GIVE LOCAL PUBLIC NOTICE ITS INTENTION TO ADOPT THE FOLLOWING DIFFERENTIAL RATES AND MINIMUM PAYMENTS FOR EACH OF THE FOLLOWING RATING CATEGORIES IN THE 2020/2021 FINANCIAL YEAR.

RATING CATEGORY	RATE IN THE DOLLAR	MINIMUM RATES
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GRV GENERAL DEVELOPED	0.1090	\$ 705
GRV VACANT LAND	0.2175	\$ 800
GRV BUSINESS	0.1150	\$ 705
GRV HOLIDAY ACCOMMODATION	0.1090	\$ 705

10.2 LEASES

All matters relating to leases for consideration in this agenda relate to leases of trust land and therefore are listed in a separate part of this meeting dealing with land trusts matters.

10.3 PLANNING/BUILDING

Nil

10.4 ADMINISTRATION

10.4.1 SHIRE OF COCOS (KEELING) ISLANDS CORPORATE BUSINESS PLAN 2020 - 2024

Report Information

Date: 12 May 2020
 Location: N/A
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Andrea Selvey, Chief Executive Officer
 Island: N/A
 Attachments: 10.4.1 Shire of Cocos (Keeling) Islands Corporate Business Plan Key Results Area Tables 2020 – 2024
 10.4.1 Update on Actions from the Corporate Business Plan During 2019/2020

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>
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Report Purpose

For Council to consider the reviewed Key Result Areas of the Shire Corporate Business Plan 2020 – 2024.

Relevant Documents

Available for viewing at the meeting

Background

The Corporate Business Plan (CBP) is a part of the Integrated Planning and Reporting Framework (IPRF) and a key document that operationalises the Strategic Community Plan and takes into consideration other planning documents including the Workforce Plan, Long Term Financial Plan and Asset Management Plans. The CBP identifies Council priorities and details current services, future operations and major projects expected to be undertaken by the Shire over the next four years. The CBP outlines the operational activities that will be undertaken to achieve the desired outcomes of the Strategic Community Plan.

The current Corporate Business Plan 2016 - 2020 was originally adopted at an Ordinary Council Meeting on 25 January 2017 and reviewed and updated in 2019 as per the legislative requirement.

Comment

The 2020 review has been a minor review as the Shire is required by the IPRF legislation to conduct a major review of its Strategic Community Plan by December 2020. The updated Strategic Community Plan will trigger a major review of the Corporate Business Plan in early 2021.

Notwithstanding the pending major review, this minor review is important as it provides an opportunity to report back to Council on progress against the CBP actions and to ensure actions flagged for 2021/22, which will inform the 2021/22 budget, align with Council priority.

Please see attached update on CBP actions from March 2019 to April 2020.

Policy and Legislative Implications

All local governments are currently required to produce a plan for the future under S5.56 (1) of the Local Government Act 1995. Regulations have been made under S5.56 (2) of the Act to briefly outline the minimum requirements to achieve this.

Financial Implications

The Corporate Business Plan will be used to inform the annual budget and the Long-Term Financial Plan; therefore any commitment to expenditure will be considered by Council as part of the budgeting process.

Strategic Implications

Strategic Community Plan: Civic Leadership Objective

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	The CBP commits the Shire beyond its funding capacity	Moderate (9)	In addition, all items will be considered in detail by Council in the context of the budget setting.
Health & Safety	N/A		
Reputation	The CBP is a public document to which the Shire is held accountable by the Community. Failure to deliver can reflect badly on Council.	Moderate (6)	Officers have been mindful to consider resourcing capability and capacity in drafting the CBP.
Service Interruption	N/A		
Compliance	Failure to adopt a current CBP in a timely manner will result in non-compliance.	Low (4)	The draft CBP is compliant in terms of timeframes, process and content.
Property	N/A		
Environment	N/A		
Fraud	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 CBP is a useful tool for officers and Council in prioritising resource allocations. The draft CBP as presented provides a sound basis to further the Strategic Community Plan and is therefore recommended to be adopted.

COUNCIL RESOLUTION – ITEM NO 10.4.1

MOVED CR IBRAM, SECONDED CR HAMIRIL

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *S5.56 (1) OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995* ADOPTS THE SHIRE OF COCOS (KEELING) ISLANDS CORPORATE BUSINESS PLAN 2020 – 2024.

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

OFFICER'S RECOMMENDATION – ITEM NO 10.4.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *S5.56 (1) OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995* ADOPTS THE SHIRE OF COCOS (KEELING) ISLANDS CORPORATE BUSINESS PLAN 2020 – 2024.

**10.4.2 DRAFT PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW –
APPROVAL TO ADVERTISE FOR PUBLIC COMMENT**

Report Information

Date: 14 May 2020
 Location: Shire of Cocos (Keeling) Islands
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Niel Mitchell, Consultant
 Island: Shire wide
 Attachments: 10.4.2 Draft Public Places and Local Government Property Local Law
 10.4.2 Council water area description map

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 allow the Presiding person to give notice to the meeting of the intention to make the proposed Shire of Cocos (Keeling) Islands Public Places and Local Government Property Local Law 2020 and to resolve the elements of the process as required by legislation.

Relevant Documents

Available for viewing at the meeting

Background

The statutory review of local laws carried out in early 2017 identified several local laws as needing replacement since they offered inadequate scope for management of various matters (e.g. camping) and gaps that were needed to be covered in order to ensure appropriate management of various activities and locations. Accordingly, a draft Public Places and Local Government Property Local Law has been prepared for consideration.

Comment

Purpose and effect of the draft Public Places and Local Government Property Local Law

Purpose – to prescribe for the management of public places and thoroughfares, and all local government property.

Effect – to repeal the *Camping Local Law 2009* and establish necessary local government property controls for activities in public places including thoroughfares, and for the use of, provide for permitted and prohibited activities on local government property, and create offences for non-compliance.

Jurisdiction

It took some time to establish that, unlike mainland Western Australian local governments, the Shire has jurisdiction over all waters to the boundaries of the Territory. This information and interpretation has been confirmed by Department of Infrastructure, Transport, Cities and Regional Development who advised in their email of 20 August 2019 that:

*the Local Government (Transition) Ordinance 1992 made under the Cocos (Keeling) Islands Act 1955 states that for the purpose of the **Local Government Act**, the TERRITORY is a SHIRE.*

Local Government (Transition) Ordinance 1992

Ordinance No. 4 of 1992 as amended made under the Cocos (Keeling) Islands Act 1955

4 The Cocos (Keeling) Islands Shire

*(1) For the purposes of the Local Government Act, the **Territory** is a **shire**, named the Cocos (Keeling) Islands Shire.*

And under the Cocos (Keeling) Islands Act 1955 the following are interpreted:

***the Islands** means the Cocos or Keeling Islands situated in the Indian Ocean in or about latitude 12°5' south and longitude 96°53' east, including the Northern Island otherwise called North Keeling Island.*

***the Territory** means the Territory of Cocos (Keeling) Islands.*

So on that basis, the local government district would be taken to include the lagoon (and Keeling Island) because the lagoon is part of the Territory.

And in case there is any doubt, under 15B Application of Acts in coastal sea (Acts Interpretation Act 1901)

Coastal sea of external Territory

(3) An Act that is in force in an external Territory is taken to have effect in, and in relation to, the coastal sea of the Territory as if that coastal sea were part of the Territory.

*So, the **Local Government Act**, which empowers the Shire to make local laws, is in force in the external territory of Cocos and appears to be enforceable within 3 nautical miles seaward of the Territory.*

This is of course not legal advice.

Commonwealth legislation overrides local laws, and accordingly, the local law once made is not enforceable on lands or within waters controlled by a Commonwealth agency. However, the relevant agency may request that the Shire administer various aspects of the local law within areas controlled by them, and a written agreement to do so can be made. This is common in urban areas, particularly for parking, but has been used for other activities and areas as well.

Process

The proposed local law is set out in the attachment to this report. In making a new local law, Council must comply with the provisions of section 3.12 of the *Local Government Act*, and any specific requirements of other legislation.

The *Local Government (Functions and General) Regulations* (Regulation 3) states that for the purpose of Section 3.12(2) of the Act, the person presiding at a council meeting is to give notice of the purpose of the local law by ensuring that the purpose and effect of the proposed local law is included in the agenda for that purpose and the minutes of the meeting of the council include the purpose and effect of the proposed local law.

Notices are to invite the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks.

The advertisement will be placed once Council has resolved its intent to make the local law.

As noted in the Council Policy, the requirement for Statewide publication is met by publication in *The Atoll* newsletter, and this has been confirmed by a legal opinion. The requirement for local public notice is also satisfied.

The *WA Local Government Act 1995* s.3.12(3), notice of intent is to be given to the WA Minister for Local Government. In accordance with the *Cocos (Keeling) Islands Act 1955* s.8G

–

Vesting of powers in the Minister

(1) If a power is vested in:

- (a) a Minister of Western Australia; or*
- (b) the Governor of Western Australia; or*
- (c) the Governor-in-Council of Western Australia;*

by a Western Australian law in force in the Territory under section 8A, the power is, in relation to the Territory, vested in the Minister instead of the person or authority mentioned in paragraph (a), (b) or (c).

Accordingly, notice of the proposed local law is to be given to the Administrator on behalf of the Assistant Minister for Regional Development Territories. It is suggested that notice also be provided to the WA Dept of Local Government, Sport and Cultural Industries for review of consistency with the *Local Government Act 1995* and other relevant WA Legislation, as required by the Act at this point.

After the submission period is closed, Council is to consider any submissions received. Minor amendments not affecting the intent of the provisions can be made, but if significant changes are needed, the proposal must be readvertised.

If finally adopted, the proposed local law with any amendments, is then published in the Federal Register of Legislation rather than the Western Australian *Government Gazette*, and comes into effect on the date specified. The Gazzetal copy and other documentation is then sent to the Minister for Territories.

Publication in the Federal Register of Legislation as a Notifiable Instrument is consistent with Commonwealth legislation and the Policy adopted by Council and satisfies the requirement of the *Local Government Act s.3.12(5)*.

In accordance with the Legislation Act (2003) (Commonwealth) s.11 –

(4) If an Act or an instrument requires an instrument (other than a legislative instrument), or the particulars of the instrument's making, to be published or notified in the Gazette or in any other way, then, unless the contrary intention appears, the requirement is taken to be satisfied if the instrument is registered as a notifiable instrument.

The processes for Parliamentary review as required by the *Local Government Act 1995 s.3.12(5)* is satisfied by the submission of the adopted document to the Assistant Minister for Regional Development and Territories. It is not required to be submitted to the WA Minister for Local Government.

This action is consistent with the Community Bulletin put out by Dept of Industry and Regional Development in May 2017, and the adopted Policy of Council.

Content of Local Law

A number of matters are drawn to Council's notice –

- Part 2 – Determinations
See more detailed comment below.
- Clause 1.4 – Repeal

The Camping Local Law 2009 is to be repealed. Legal advice previously obtained by the Shire indicated that the definition of camping was too specific in that it referred to a “tent”. The draft local law does not define camping, but has a much broader application in cl.3.2(2) which uses standard wording of other local laws.

- Clauses 4.2, 4.4 and 4.5
These clause act to prevent damage to gardens and parks etc and particularly to native flora and fauna.
- Clause 4.10 – Vehicles on local government property
This clause acts for all property and land under the Shire’s control – reserves, playgrounds and beaches generally. Clause 5.4 also applies specifically to beaches.
- Clause 5.4 – Vehicles on beaches and foreshores
For instance, a private vehicle on a beach is in breach of this clause, and if any flora or fauna is damaged, could also be penalised under clauses 4.4 or 4.5.
- Clauses 5.6 and 5.7
The effect of these clauses is that fishing and launching of boats is permitted, except where signs have been erected.
- Clauses 6.6 to 6.9 – Verge treatments
Controls the improvements or treatments that an adjoining landowner may make to a verge in front of their property.
- Part 8 – Temporary signs
This part is designed around the Signs Policy recently approved by Council. The policy is effectively an instruction to staff on what they may approve, but it cannot be enforced on residents, unlike the local law.
- Clause 9.5 – Imposing conditions under a policy
Where a policy is used to apply conditions to a permit, the person must be given a copy of the relevant policy or portions of it. Alternatively, the conditions of approval are to be stated in full in the approval document.
- Clause 11.1 – Objections and review
Any decision that is discretionary is subject to objection and review. The simplest way to determine if a decision is discretionary is the use of terms such as “...an authorised person may...” or “...conditions may be applied...”, whereas a mandatory requirement has no discretion, using words such as “... shall ...”, “... is to ...” or “... will...”. A formal objection or review must be dealt with by the Council, but at a practical level, there is no prohibition on the CEO attempting to resolve an issue prior to reference to Council.

Determinations

Determinations permit Council to apply the authority of the local law to activities in specific areas or activities without having to amend the local law. Doing so does require that the procedure laid out in the local law is followed. The provision of this Part is intended to apply where the full process to amend a local law is inappropriate, but where some formalised means of regulating use is needed.

The subjects about which Determinations can be made is limited to those listed in clauses 2.7 and 2.8, and that the procedure to make or amend determinations is in clause 2.2 and 2.6. The scope of subjects has been limited by the views taken by the WA Parliamentary Joint

Standing Committee on Delegated Legislation, which reviews local laws on behalf of Parliament, and which has the power to recommend disallowance of a local law.

The WA Dept of Local Government Operational Guidelines for local laws advises that determinations are –

... a device used in the WALGA model local government property local law to specify the times and places that certain contraventions in local laws apply. These council decisions are not contained in the actual local law.

The (WA) Parliament's Delegated Legislation Committee does not support such devices in principle. However, it has advised that it will accept this practice only for this type of local law for practical reasons. Local governments will need to ensure that they do not use this practice to any greater extent than this.

A determination cannot be something that is totally new and not provided for in the local law. The Shire must have the legal capacity to control or manage the area that the determination is made for. These areas include –

- roadways,
- parks and reserves,
- buildings and other facilities,
- beaches,
- the waters of the Territory, as per DITCRD comments above.

Some examples of matters for which a determination could be considered at some future stage, include but are not limited to –

- control of moorings in public waters – waters are included in the definition of local government property, refer clause 1.5 “local government property” subclause (c), and clause 2.7(1)(c)
- placement of charity collection bins on road reserves, refer clause 2.7(1)(f)
- dedication of a particular area for a specified activity to the exclusion of other activities, clause 2.7(1) generally
- exclude certain types of vehicles from specified areas, where they, might otherwise be presumed to be acceptable, such as a golf cart on a reserve or in a car park, refer clause 2.8(1)(b) and (c).

In some instance, other provisions may be able to be applied to the same or similar effect, rather than using the determinations provisions.

A map of foreshores and waters that are of primary interest to the Shire and are under Shire control was prepared by the Department in consultation with the Port Authority, and will be useful in preparation of areas where –

- determinations that may be applied, or
- conditions may be placed on conditions approvals for activities or licences.

The map is not a part of the local law, and therefore does not restrict decisions concerning determinations or conditions, but is intended as a guide for staff and information to the community or applicants.

As the map is informing only and not a part of the local law, it means that –

- the map can be altered at any time, either by Council resolution or at the discretion CEO, or
- if necessary in appropriate circumstances, a determination or conditions might be considered for an area outside of the main area of interest as indicated on the map.

Policy and Legislative Implications

Legislation Act 2003 (Commonwealth) –

- *s.11 – Definition of notifiable instruments*

Cocos (Keeling) Islands Act 1995 (Commonwealth) –

- *s.8G(1) – where reference in WA Legislation to Governor, Minister etc the action is to be directed to the Minister for Territories.*

Local Government Act 1995 (WA)(CKI) –

- *s.3.12 – Procedure for making local laws*
 - (2) Notice of purpose and effect of local law to be given by the person presiding*
 - (3) Statewide public notice required, and copies to Minister/s immediately after notice given, minimum 6 weeks’ notice*
 - (3a) Local public notice also required to be given*
 - (4) After notice period, all submissions to be considered, and local law may then be made by absolute majority*
 - (5) Publication in Government Gazette required*
 - (7) Parliament to be advised within 10 working days of Gazettal*
- *s.3.13 – Significant changes require recommencement of proposal*
- *s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal*
- *s.3.15 – local public notice of the final adoption/making of a local law to be given*

This process is consistent with the *Shire of Cocos (Keeling) Islands, Publishing of Delegated Legislation and Statewide Public Notices Policy*.

Financial Implications

There is minor cost associated with advertising the proposed local law and this can be met with current budget allocations for advertising.

Strategic Implications

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

Goal 3.1.1: Increase the environmental credential of the Islands

Goal 3.1.2: Protect the Islands environment

Goal 4.1.1: To provide leadership to the community

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A	N/A	N/A
Health & Safety	If not implemented, some community health & safety aspects remain compromised	Low (4)	If implemented, control and management of these matters have legislative backing
Reputation	The proposed local law is considered to impose on community	Low (3)	Education/publication within the community of reasons and benefits.
Service Interruption	N/A	N/A	N/A
Compliance	(1)	Moderate (9)	(2)
Property	If not implemented, some public places and local government property remain susceptible to misuse	Moderate (9)	If implemented, control and management of these matters have legislative backing
Environment	If not implemented, environment considerations in public places and on local government property remain susceptible to misuse	High (12)	If implemented, control and management of these matters have legislative backing
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

1. If not implemented, it is not possible for the Shire to enforce compliance

2. If implemented, the local law gives legislative backing to enforcement.

Conclusion

The recommendation is in compliance with legislative requirements and development of appropriate controls for the management of lands and facilities under Shire control or management.

COUNCIL RESOLUTION – ITEM NO 10.4.2

MOVED CR IBRAM, SECONDED CR HAMIRIL

1. THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *SECTION 3.12(3) AND (3A) OF THE LOCAL GOVERNMENT ACT (WA)(CKI) 1995* GIVES STATEWIDE AND LOCAL PUBLIC NOTICE THAT IT INTENDS TO MAKE *THE SHIRE OF COCOS(KEELING) ISLANDS PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020 –*
 - PURPOSE – TO PRESCRIBE FOR THE MANAGEMENT OF PUBLIC PLACES AND THOROUGHFARES, AND ALL LOCAL GOVERNMENT PROPERTY.
 - EFFECT – TO REPEAL THE *CAMPING LOCAL LAW 2009* AND ESTABLISH NECESSARY LOCAL GOVERNMENT PROPERTY CONTROLS FOR ACTIVITIES IN PUBLIC PLACES INCLUDING THOROUGHFARES, AND FOR THE USE OF/PROVIDE FOR PERMITTED AND PROHIBITED ACTIVITIES ON LOCAL GOVERNMENT PROPERTY, AND CREATE OFFENCES FOR NON-COMPLIANCE.
2. IN ACCORDANCE WITH SECTION 3.12(3) OF THE *LOCAL GOVERNMENT ACT 1995 (WA)(CKI)* ADVICE OF THE PROPOSED LOCAL LAW BE GIVEN TO:
 - THE ASSISTANT MINISTER FOR REGIONAL DEVELOPMENT AND TERRITORIES, AND
 - WA DEPARTMENT OF LOCAL GOVERNMENT, SPORT AND CULTURAL INDUSTRIES.

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

OFFICER’S RECOMMENDATION – ITEM NO 10.4.2

1. THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *SECTION 3.12(3) AND (3A) OF THE LOCAL GOVERNMENT ACT 1995 (WA)(CKI)* GIVES STATEWIDE AND LOCAL PUBLIC NOTICE THAT IT INTENDS TO MAKE *THE SHIRE OF COCOS(KEELING) ISLANDS PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020 –*
 - PURPOSE – TO PRESCRIBE FOR THE MANAGEMENT OF PUBLIC PLACES AND THOROUGHFARES, AND ALL LOCAL GOVERNMENT PROPERTY.

- EFFECT – TO REPEAL THE *CAMPING LOCAL LAW 2009* AND ESTABLISH NECESSARY LOCAL GOVERNMENT PROPERTY CONTROLS FOR ACTIVITIES IN PUBLIC PLACES INCLUDING THOROUGHFARES, AND FOR THE USE OF, PROVIDE FOR PERMITTED AND PROHIBITED ACTIVITIES ON LOCAL GOVERNMENT PROPERTY, AND CREATE OFFENCES FOR NON-COMPLIANCE.
2. IN ACCORDANCE WITH SECTION 3.12(3) OF THE *LOCAL GOVERNMENT ACT 1995* (WA)(CKI) ADVICE OF THE PROPOSED LOCAL LAW BE GIVEN TO:
- THE ASSISTANT MINISTER FOR REGIONAL DEVELOPMENT AND TERRITORIES, AND
 - WA DEPARTMENT OF LOCAL GOVERNMENT, SPORT AND CULTURAL INDUSTRIES.

10.4.3 REVIEW OF SHIRE OF COCOS (KEELING) ISLANDS DELEGATION REGISTER-MAY 2020

Report Information

Date: 12 May 2020
 Location: N/A
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Andrea Selvey, Chief Executive Officer
 Island: N/A
 Attachments: 10.4.3 Shire of Cocos (Keeling) Islands Delegation Register, May 2020

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

Under s. 5.46 of the Local Government Act 1995 (the Act) the CEO is to maintain a register of delegations that must be reviewed by Council at least once every financial year. This report brings a formal review before Council as per the legislative requirements.

Relevant Documents

Available for viewing at the meeting

Nil

Background

Under s. 5.42 of the Local Government Act 1995, a local government may delegate to the CEO the exercise of any of its powers or the discharge of its duties under the Act. This is subject to the limitations in s. 5.43, and Regulation. This section states:

5.43. Limits on delegations to CEO A local government cannot delegate to a CEO any of the following powers or duties — (a) any power or duty that requires a decision of an absolute majority or a 75% majority of the local government; (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph; (c) appointing an auditor; (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph; (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100; (f) borrowing money on behalf of the local government; (g) hearing or determining an objection of a kind referred to in section 9.5; (ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government; (h) any power or duty that requires the approval of the Minister or the Governor; (i) such other powers or duties as may be prescribed.

The Shire of Cocos (Keeling) Islands Delegations Register was last reviewed by Council in June 2019. The review conducted in 2019 was a major review that aligned the Shire's Delegation Register with the WALGA best practice template.

Comment

The annual review process does not preclude the Council from granting new delegations to the CEO if and when required, nor for it to review existing delegations at any time during the course of the financial year.

The format of the delegations contained in the Register seeks to reflect the legislative requirements of the Act. Each delegation specifies the head of power under which the delegation has been made and the legislative reference of the power that is delegated.

The format also states the function delegated and any conditions that Council wishes to place on the exercise of delegation. It notes whether the CEO has the power to sub-delegate under s. 5.44 of the Act to another employee. It should be noted that whether a function or duty has been sub-delegated is determined by the CEO unless the Council has made it a condition that the original delegation may not be sub-delegated.

Each delegation has been considered on the basis of whether or not the delegation is necessary and if it will provide greater efficiency in service delivery for the Shire. No significant changes to the delegations are included in this updated draft.

Policy and Legislative Implications

Section 5.46 of the Local Government Act 1995 deals with the need for CEOs to maintain a register of delegations and the requirement to conduct annual reviews of delegations.

Many of the delegations are guided by Policies of Council.

Financial Implications

Nil – there are no direct financial implications in adopting the delegations register.

Strategic Implications

Strategic Community Plan 2016-2020: Civic Leadership Objective

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety			
Reputation	Poor or lack of delegation can hamper decision-making resulting in reputational damage	Low (4)	Delegations are based on WALGA best practice template.
Service Interruption	Lack of delegation in appropriate areas of service delivery could result in delays in normal operations as those items would have to be referred to Council for decisions.	Moderate (8)	Officers have reviewed operations and believe all necessary delegations, appropriate to a Council of our size, have been included
Compliance	No review conducted, or not conducted in a timely manner.	Low (3)	Review of Delegation Register is listed on the corporate compliance calendar which is checked every month.
Property	N/A		
Environment	N/A		
Fraud	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

Absolute Majority

Conclusion

The review of the Delegations Register is required to ensure that delegations to the CEO are consistent with Council's preference for matters it wishes to consider itself or those it would prefer dealt with at an administrative levels. This review makes significant changes to the current formal delegation but covers areas of operation that have been dealt with administratively in the past, but without appropriate delegations in place.

COUNCIL RESOLUTION – ITEM NO 10.4.3

MOVED CR HAMIRIL, SECONDED CR IKU

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *SECTIONS 5.46, 5.45 AND 5.42 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* RESOLVES TO:

1. ENDORSE THE REVIEW OF ITS DELEGATIONS IN ACCORDANCE WITH SECTION 5.46 OF THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)*;
2. DELEGATE AUTHORITY TO THE CEO AS DETAILED IN THE SHIRE OF COCOS (KEELING) ISLANDS DELEGATIONS REGISTER MAY 2020 (ATTACHED) IN ACCORDANCE WITH *SECTION 5.42 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* , ACKNOWLEDGING THE RELEVANT HEADS OF POWER IN ADDITION TO THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)*:
 - *BUILDING ACT 2011 – SECTION 127*
 - *CAT ACT 2011 – SECTION 44*
 - *FOOD ACT 2008 – SECTION 118*
 - *PUBLIC HEALTH ACT 2016 – SECTION 21*

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

OFFICER'S RECOMMENDATION – ITEM NO 10.4.3

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *SECTIONS 5.46, 5.45 AND 5.42 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* RESOLVES TO:

1. ENDORSE THE REVIEW OF ITS DELEGATIONS IN ACCORDANCE WITH SECTION 5.46 OF THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)*;
2. DELEGATE AUTHORITY TO THE CEO AS DETAILED IN THE SHIRE OF COCOS (KEELING) ISLANDS DELEGATIONS REGISTER MAY 2020 (ATTACHED) IN ACCORDANCE WITH *SECTION 5.42 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* , ACKNOWLEDGING THE RELEVANT HEADS OF POWER IN ADDITION TO THE *LOCAL GOVERNMENT ACT 1995 (WA) (CKI)*:
 - *BUILDING ACT 2011 – SECTION 127*
 - *CAT ACT 2011 – SECTION 44*
 - *FOOD ACT 2008 – SECTION 118*
 - *PUBLIC HEALTH ACT 2016 – SECTION 21*

10.5 MINUTES TO BE RECEIVED

10.5.1 MINUTES FROM CEO REVIEW COMMITTEE MEETING TO BE RECEIVED

Report Information

Date: 15 May 2020
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Location: N/A
 Disclosure of Interest: Nil
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.5.1 Minutes CEO review committee 22 April 2020

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>

Summary

The report formally presents the (unconfirmed) minutes of CEO Review Committee of Council from the previous meeting.

Background

The Shire has established the CEO Review Committee as a Committee of Council. The CEO Review 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 the CEO Review Committee of Council held on the 22 April 2020.

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 2013 – Outcome 4.1.2 Continue to improve organisational planning.

Voting Requirements

Simple majority

Conclusion

That the minutes of the CEO Review Committee meeting held on the 22 April 2020 be received.

COUNCIL RESOLUTION – ITEM NO 10.5.1

MOVED CR IKU, SECONDED CR IBRAM

THAT COUNCIL BY SIMPLE MAJORITY PURSUANT TO SECTION 3.18 OF THE LOCAL GOVERNMENT ACT 1995 RESOLVES TO:

- 1. RECEIVE THE MINUTES OF THE CEO REVIEW COMMITTEE MEETING HELD ON 22 APRIL 2020.**

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

**FOR: IKU, HAMIRIL, IBRAM, MINKOM
AGAINST: NIL**

OFFICER'S RECOMMENDATION – ITEM NO 10.5.1

THAT COUNCIL BY SIMPLE MAJORITY PURSUANT TO SECTION 3.18 OF THE LOCAL GOVERNMENT ACT 1995 RESOLVES TO:

1. RECEIVE THE MINUTES OF THE CEO REVIEW COMMITTEE MEETING HELD ON 22 APRIL 2020.

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

Nil

12. MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL

Nil

13. MATTERS BEHIND CLOSED DOORS

13.1 PERFORMANCE REVIEW AND KPIS

Report Information

Date: 15 May 2020
 Location: N/A
 Applicant: N/A
 File Ref:
 Disclosure of Interest: N/A
 Reporting Officer: Deputy CEO as secretariat for the CEO Review Committee
 Island: Shire Wide
 Attachments: 13.1 CEO KPis and Variation to CEO Contract

Authority/Discretion

Definition

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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 Information

This report is confidential under Section 5.23 (2) of the Local Government Act 1995 and is circulated under a separate cover.

(2) *If a meeting is being held by a council or by a committee referred to in subsection (1) (b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following–*

(a) a matter affecting an employee or employees.

COUNCIL RESOLUTION – ITEM NO 10.3.1

MOVED CR IKU, SECONDED CR IBRAM

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 5.38 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES TO:

- 1. ADOPT THE KPIS OUTLINED IN THE CONFIDENTIAL ATTACHMENT 13.1 FOR THE CEO FOR THE 2020/2021 FINANCIAL YEAR;**
- 2. CARRY OUT A REVIEW OF THE CEO AGAINST THESE KPIS IN JULY 2021;**
- 3. VARY THE CEO CONTRACT TO INCLUDE THE CLAUSE OUTLINED IN THE CONFIDENTIAL ATTACHMENT 13.1.**

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

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.'

14.2 TRUSTS LEASE

14.2.1 FINANCIAL RELIEF – COVID 19 RESPONSE – KAMPONG RENTALS

Report Information

Date: 12 May 2020
 Location:
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Joanne Soderlund, DCEO
 Island: N/A
 Attachments: NIL

Authority / Discretion

Definition

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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

To seek Council's approval to maintain Kampong Rental prices for the 2020/2021 financial year at their current level in line with the Residential Tenancies (COVID-19 Response) Act 2020. This matter is presented to Council acting in it's capacity of Trustee of the 1979 Trust Deed.

Relevant Documents

Available for viewing at the meeting

Background

On 24 April 2020, in response to the COVID-19 pandemic and the financial hardship being suffered by many renters, the West Australian Government enacted the Residential Tenancies (COVID-19 Response) Act 2020. The Act applies to residential leases during the ‘emergency period’, which is for a period of six months from 30 March 2020 with the possibility of extension. The legislation specifies, amongst other measures, a ban on rent increases during the emergency period.

The Residential Tenancies (COVID-19 Response) Act 2020 does not require that landlords provide a rent reduction during the emergency period for tenants suffering financial hardship. Renters who are not financially affected by COVID-19 must continue to pay rent as normal. Renters who are financially affected by COVID-19 can discuss their circumstances with the landlord to try and come to a compromise that suits both parties. Landlords can request evidence of a tenant’s financial hardship to substantiate their claims for financial assistance.

Comment

Under Section 8A of the Cocos (Keeling) Islands Act 1955 Western Australian in force legislation automatically applies to the Cocos (Keeling) Islands. As a result it is currently not legal to increase residential rental amounts due to the Residential Tenancies (COVID-19 Response) Act 2020. This ban is currently in place until the beginning of October however this may be extended.

Item	Details	Saving to community	Foregone Revenue for the Trust
Kampong rental INCREASE freeze	Freezing kampong rents (i.e. no CPI increase so rental rates would remain at 2019/20 levels) and foregone revenue to the Trust.	\$520 saving per household per annum.	\$16,120

Policy and Legislative Implications

Residential Tenancies (COVID-19 Response) Act 2020
Section 8A of the Cocos (Keeling) Islands Act 1955

Financial Implications

The freezing of kampong rental amounts proposed for adoption in this agenda will not have any effect of the current 19/20 financial year budget. It is anticipated that they it will however reduce the revenue available in 20/21 budget by \$16,120.

Strategic Implications

Corporate Business Plan 2018/19 – 2021/22: Civic Leadership Objective 2 – Provide quality information for Council decision-making.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	That the recommended measures have a significant financial impost on the Shire.	Low (3)	Financial relief measures will be included in the preparation of the 20/21 financial year budget.
Health & Safety	N/A	N/A	N/A
Reputation	That the recommended measures are seen as either too generous or not generous enough.	Low (4)	Financial relief measures proposed are all in line with the requirements of the Residential Tenancies (COVID-19 Response) Act 2020.
Service Interruption	N/A	N/A	N/A
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

The officer's recommendation is based on the requirements set out by the Residential Tenancies (COVID-19 Response) Act 2020 and the guiding principal of sharing the burden of the economic impacts of the COVID 19 pandemic.

COUNCIL RESOLUTION – ITEM NO 14.2.1

MOVED CR HAMIRIL, SECONDED CR IKU

THAT COUNCIL AS TRUSTEE OF THE 1979 TRUST DEED (COCOS KEELING ISLANDS LAND TRUST) BY SIMPLE MAJORITY, PURSUANT TO *SECTION 3.18 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* RESOLVES TO CONSIDER FREEZING KAMPONG RENTAL AMOUNTS WHEN SETTING THE 2020/2021 SCHEDULE OF FEES AND CHARGES.

THE MOTION WAS PUT AND DECLARED CARRIED (4/0)

FOR: IKU, HAMIRIL, IBRAM, MINKOM

AGAINST: NIL

OFFICER'S RECOMMENDATION – ITEM NO 14.2.1

THAT COUNCIL AS TRUSTEE OF THE 1979 TRUST DEED (COCOS KEELING ISLANDS LAND TRUST) BY SIMPLE MAJORITY, PURSUANT TO *SECTION 3.18 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI)* RESOLVES TO CONSIDER FREEZING KAMPONG RENTAL AMOUNTS WHEN SETTING THE 2020/2021 SCHEDULE OF FEES AND CHARGES.

