

Shire of Cocos (Keeling) Islands

Shire of Cocos (Keeling) Islands

Minutes

Ordinary Meeting of Council

26 May 2021, 4.00pm

CRC Meeting Room, West 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

The presiding member declare the meeting opened at 4.00pm and welcome Councillors and staff to the meeting.

2. ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE

Shire President: Cr A Minkom

Deputy President: Cr S Iku

Councillors: Cr J Ibram
Cr T Lacy
Cr S Charlston
Cr M Hamiril (Via Zoom video conferencing)

Officers: J Soderlund, Acting Chief Executive Officer
G Brigg, Manager Works and Services
I Macrae, Governance and Risk Coordinator

Public: 5

Visitors: Nil

Apologies: Nil

Approved Leave of Absence: Nil

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.

Mrs Jill Welch

Question

Could the Shire communicate with the Commonwealth regarding the West Island boat ramp as its current state of condition is causing damage to vehicles, boats and other on-going issues.

Response

The Presiding member advised that the question will be taken on notice and a full response will be provided at the next Ordinary meeting of Council.

5. LEAVE OF ABSENCE

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

5.1 LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Councillor	Date of Leave	Approved by Council
NIL		

5.2 APPLICATION FOR LEAVE OF ABSENCE

Nil

6. PETITIONS/DEPUTATIONS/PRESENTATIONS

Nil

7. CONFIRMATION OF MINUTES OF PREVIOUS MEETING(S)

7.1 Ordinary Council Meeting held on 28 April 2021 - Attachment 7.1

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 28 APRIL 2021, AS PRESENTED IN ATTACHMENT 7.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

COUNCIL RESOLUTION – ITEM NO 7.1

MOVED: CR IBRAM

SECONDED: CR IKU

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 28 APRIL 2021, AS PRESENTED IN ATTACHMENT 7.1 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

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

FOR: CHARLSTON, HAMIRIL, IBRAM, IKU, LACY, MINKOM
AGAINST: NIL**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
Cr Lacy	14.2.1	Indirect financial	Applicant is a current employee

10. REPORT AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.1.1 MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 30 APRIL 2021

Report Information

Date: 22 April 2021
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: A/Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1.1 Statement of Financial Activity with accompanying notes
 30 April 2021

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 2021 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 reporting of monthly financial information is a requirement under section 6.4 of the Local Government Act 1995, and Regulation 34 of the Local Government (Financial Management) Regulations.

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 2020 to 30 April 2021.

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 within two months in order to comply with relevant legislation.	Low (3)	There are processes in place to ensure 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 2020 to 30 April 2021 be received.

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 2020 TO 30 APRIL 2021.

COUNCIL RESOLUTION – ITEM NO 10.1.1

MOVED: CR CHARLSTON

SECONDED: CR IKU

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RECEIVES THE FINANCIAL STATEMENTS FOR THE PERIOD 1 JULY 2020 TO 30 APRIL 2021.

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

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

AGAINST: NIL

10.1.2 SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 APRIL 2021 TO 30 APRIL 2021

Report Information

Date: April 2021
 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
 10.1.2 Credit Cards

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 2021 – 30 April 2021.

Relevant Documents

Available for viewing at the meeting.

Nil

Background

A list of accounts paid between 1 April 2021 and 30 April 2021 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

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 within two months in order to comply with relevant legislation.	Low (3)	There are processes in place to ensure 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 Council receives the list stating all accounts paid for April 2021.

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 2021 TO 30 APRIL 2021 INCLUSIVE OF CHEQUE 11633 TO 11636 AND EFT 8002 TO EFT 8082, VIVA ENERGY, MASTER CARD & DIRECT DEBIT SUPERANNUATION TOTALLING \$482,965.50.

COUNCIL RESOLUTION – ITEM NO 10.1.2

MOVED: CR IBRAM

SECONDED: CR LACY

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 2021 TO 30 APRIL 2021 INCLUSIVE OF CHEQUE 11633 TO 11636 AND EFT 8002 TO EFT 8082, VIVA ENERGY, MASTER CARD & DIRECT DEBIT SUPERANNUATION TOTALLING \$482,965.50.

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

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

AGAINST: NIL

Due to technical issues with Zoom video connection, Cr Hamiril left the meeting at 4.13pm.

10.1.3 BUDGET ADJUSTMENTS 20/21

Report Information

Date: 23 April 2021
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: A/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 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 present budget adjustments to Council for adoption.

Relevant Documents

Available for viewing at the meeting.

Nil

Background

The Council adopted the Budget review at its meeting held in April. A review of changes since that time has resulted in Officers seeking changes to some budgets.

Comment

Since the budget was adopted by Council in August 2020 and the budget review report was adopted by Council in April 2021 officers have identified further budgets that require adjustment. It is good management practice to revise the adopted budget when it is known that circumstances have changed.

Officers have reviewed the adopted budget for the month of April and we recommend alterations to the budget as list below.

Account	Description	Current Budget	Proposed Budget	Current YTD Actual	Budget Change	Running Surplus/Deficit	Comment
	<i>Current Predicted Surplus/Deficit</i>					0	
1122110	Maintenance Beach Facilities	0	(69,613)	(50,042)	(69,613)	(69,613)	Budget was excluded from original budget calculations due to coding error in Synergysoft.
1012200	Home Island Transfer Station	(286,206)	(327,206)	(304,313)	(41,000)	(110,613)	Incinertor has required urgent repairs.
	Interest	9,450	21,600	11,938	12,150	(98,463)	Correction to budget review calculation.
H100	House 100	(11,828)	(41,828)	11,041	(30,000)	(128,463)	Estimate to Refurbish House 100.
	Building Reserve	507,155	378,692	0	128,463	0	Reduce transfer to reserve as per Budget Review amendment

Policy and Legislative Implications

In accordance with section 6.8(1) of the Local Government Act 1995 a local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure:

- Is incurred in a financial year before the adoption of the annual budget by the local government
- Is authorised in advance by Council resolution - absolute majority required
- Is authorised in advance by the Mayor or President in an emergency.

Approval is therefore sought for the budget adjustments detailed below for the reasons specified.

*Absolute majority required.

Financial Implications

The proposed changes propose an end of year surplus of \$0, with a reduction in transfers to reserves of \$128,463.

Strategic Implications:

Nil

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Changes do not reflect current position of Council.	Low (1)	Ensure that existing policies and processes are implemented and are compliant with relevant legislation and that there are sufficient funds to meet estimated expenditure for the remainder of the year.
Health & Safety	N/A	N/A	N/A
Reputation	The Budget is open to public scrutiny.	Low (3)	Procedures in place to ensure all expenditure is justifiable.
Service Interruption	N/A	N/A	N/A

Compliance	That expenditure is in accordance with the Local Government Act.	Low (1)	That budgets be monitored and Council be made aware of any material changes required to expenditure.
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

That Council adopt the budget review.

OFFICER'S RECOMMENDATION – ITEM NO 10.1.3

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *REGULATION 33A OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT THE BUDGET AMENDMENTS AS LISTED IN THE REPORT, RESULTING IN NO CHANGE TO THE PROPOSED CLOSING BUDGET SURPLUS/DEFICIT OF \$0.

COUNCIL RESOLUTION – ITEM NO 10.1.3

MOVED: CR CHARLSTON

SECONDED: CR IKU

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *REGULATION 33A OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT THE BUDGET AMENDMENTS AS LISTED IN THE REPORT, RESULTING IN NO CHANGE TO THE PROPOSED CLOSING BUDGET SURPLUS/DEFICIT OF \$0.

THE MOTION WAS PUT AND DECLARED CARRIED BY ABSOLUTE MAJORITY (5/0)

FOR: CHARLSTON, IBRAM, IKU, LACY, MINKOM

AGAINST: NIL

10.2 LEASES

Nil

10.3 PLANNING/BUILDING

10.3.1 PROPOSED SERVICED APARTMENT – 17 BUFFETT CLOSE, WEST ISLAND

Report Information

Date: 11 May 2021
 Location: 17 (Lot 6) Buffett Close, West Island
 Applicant: Paul Marshall
 File Ref:
 Reporting Officer: Acting Chief Executive Officer
 Island: West Island

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 checked="" 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

For Council to consider a development application for the short-stay accommodation use of a self-contained, single bedroom, 21sqm detached serviced apartment upon 17 Buffett Close, West Island.

Relevant Documents

[Available for viewing at the meeting.](#)

Development plans

Background

The subject property of Lot 113 William Keeling Crescent, West Island is zoned Residential under the Shire's *Local Planning Scheme No.1* (the Scheme).

Current property improvements are of a single house and ancillary dwelling. This application seeks Council's approval for the use of the existing ancillary dwelling as serviced apartment for short stay guests.

The Scheme defines a serviced apartment as an independent living residential unit for short stay accommodation purposes not including a hotel or motel.

Under the Scheme a serviced apartment is discretionary land use for the Residential zone. This means the land use is not permitted unless Council exercises discretion in its decision making.

The applicant has submitted a property management plan for the serviced apartment as attached to this item.

Currently Council does not have a delegation register in place for statutory town planning approvals, meaning each application must be presented to Council for determination.

Comment

Development approval as serviced apartment will limit the commercial use of the self-contained ancillary dwelling to short stay accommodation only, meaning any paying guest can stay up to maximum of 3 months in any successive 12-month period. This is reinforced as a condition of approval, in addition to the maximum guest capacity being 2 people in accordance with local health overcrowding regulations.

In accordance with the Shire’s newly adopted Growth Policy the development application was referred to the essential service providers, Water Corporation, and Indian Ocean Territories Power Service for comment. Both service providers raised no concern with the proposed development given the ancillary dwelling has been existing on the subject property and been used intermittently since April 2016.

Policy and Legislative Implications

Shire of Cocos (Keeling) Islands Local Planning Scheme No.1

Shire of Cocos (Keeling) Islands Growth Policy

Financial Implications

This item has no financial implications.

Strategic Implications

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

Outcome 3.2 Future development is sympathetic to the Islands environment

3.2.1 Maintain and develop infrastructure in-line with community needs and the Islands environment.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial			
Health & Safety	House fire	Moderate (5)	Approval condition – property management plan
Reputation			
Service Interruption			
Compliance	Unruly behaviour of guests in a residential area	Moderate (9)	Approval condition enforcement
Property			
Environment			
Fraud			

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

Given there is no relevant planning concerns, the officer supports the proposals subject to conditions being imposed on the applicant.

OFFICER'S RECOMMENDATION – ITEM NO 10.3.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE *SHIRE OF COCOS (KEELING) ISLANDS LOCAL PLANNING SCHEME NO.1*, RESOLVES TO GRANT DEVELOPMENT APPROVAL FOR A SERVICED APARTMENT AT LOT 6 BUFFETT CLOSE, WEST ISLAND SUBJECT TO THE FOLLOWING CONDITIONS AND ADVICE NOTES:

1. DEVELOPMENT MAY BE CARRIED OUT ONLY IN ACCORDANCE WITH THE DETAILS OF THE APPLICATION AS APPROVED HEREIN AND ANY APPROVED PLAN.
2. ANY ADDITIONAL DEVELOPMENT WHICH IS NOT IN ACCORDANCE WITH THE APPLICATION THE SUBJECT OF THIS APPROVAL OR ANY CONDITION OF APPROVAL WILL REQUIRE THE FURTHER APPROVAL OF THE SHIRE OF COCOS (KEELING) ISLANDS.
3. THE TOTAL NUMBER OF PEOPLE TO BE ACCOMMODATED IN THE SERVICED APARTMENT SHALL NOT EXCEED TWO (2) GUESTS AT ALL TIMES.
4. THE DEVELOPMENT MUST NOT CAUSE NUISANCE OR DEGRADE THE AMENITY OF THE LOCALITY IN ANY WAY, INCLUDING BY REASON OF THE EMISSION OF NOISE, LIGHT, ODOUR, FUMES, SMOKE, VAPOUR OR OTHER POLLUTANT, OR IMPACT ON PUBLIC SAFETY OR OTHERWISE; TO THE SATISFACTION OF THE SHIRE OF COCOS (KEELING) ISLANDS.
5. THE LISTED 'PROPERTY MANAGER' SHALL UNDERTAKE THE DUTIES LISTED ON THE 'PROPERTY MANAGEMENT PLAN' SUBMITTED WITH THE SUBJECT DEVELOPMENT APPLICATION DATED 22 MARCH 2021.
6. BARBEQUES ARE TO BE LIMITED TO GAS OR ELECTRIC ONLY.

7. GUESTS OF THE SERVICED APARTMENT ARE TO BE SHORT STAY ONLY, MEANING NO GUEST SHALL OCCUPY THE SERVICED APARTMENT FOR MORE THAN A TOTAL OF THREE MONTHS IN ANY ONE TWELVE-MONTH PERIOD.

ADVICE NOTES:

1. THIS IS A DEVELOPMENT APPROVAL OF THE SHIRE OF COCOS (KEELING) ISLANDS UNDER ITS *LOCAL PLANNING SCHEME NO.1*. IT IS NOT AN APPROVAL TO COMMENCE OR CARRY OUT DEVELOPMENT UNDER ANY OTHER LAW. IT IS THE RESPONSIBILITY OF THE APPLICANT/LANDOWNER TO OBTAIN ANY OTHER NECESSARY APPROVALS, CONSENTS, PERMITS AND LICENSES REQUIRED UNDER ANY OTHER LAW, AND TO COMMENCE AND CARRY OUT DEVELOPMENT IN ACCORDANCE WITH ALL RELEVANT LAWS.
2. THE APPLICANT IS TO IMPLEMENT AND MAINTAIN REPORTING MECHANISMS FOR COMPLAINTS CONCERNING THE OPERATION OF THE SERVICED APARTMENT. IN THE EVENT OF A SUBSTANTIATED COMPLAINT BEING RECEIVED THE APPLICANT IS REQUIRED TO DEMONSTRATE MITIGATION RESPONSE(S) TO THE APPROVAL OF THE SHIRE OF COCOS (KEELING) ISLANDS.
3. SHOULD THE APPLICANT BE AGGRIEVED BY THE DECISION (IN PART OR WHOLE) THERE IS A RIGHT PURSUANT TO THE *PLANNING AND DEVELOPMENT ACT 2005* TO HAVE THE DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL. SUCH AN APPLICATION MUST BE LODGED WITHIN TWENTY-EIGHT (28) DAYS FROM THE DATE OF THE DECISION.

COUNCIL RESOLUTION – ITEM NO 10.3.1

MOVED: CR LACY

SECONDED: CR IBRAM

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE SHIRE OF COCOS (KEELING) ISLANDS LOCAL PLANNING SCHEME NO.1, RESOLVES TO GRANT DEVELOPMENT APPROVAL FOR A SERVICED APARTMENT AT LOT 6 BUFFETT CLOSE, WEST ISLAND SUBJECT TO THE FOLLOWING CONDITIONS AND ADVICE NOTES:

1. **DEVELOPMENT MAY BE CARRIED OUT ONLY IN ACCORDANCE WITH THE DETAILS OF THE APPLICATION AS APPROVED HEREIN AND ANY APPROVED PLAN.**
2. **ANY ADDITIONAL DEVELOPMENT WHICH IS NOT IN ACCORDANCE WITH THE APPLICATION THE SUBJECT OF THIS APPROVAL OR ANY CONDITION OF APPROVAL WILL REQUIRE THE FURTHER APPROVAL OF THE SHIRE OF COCOS (KEELING) ISLANDS.**
3. **THE TOTAL NUMBER OF PEOPLE TO BE ACCOMMODATED IN THE SERVICED APARTMENT SHALL NOT EXCEED TWO (2) GUESTS AT ALL TIMES.**
4. **THE DEVELOPMENT MUST NOT CAUSE NUISANCE OR DEGRADE THE AMENITY OF THE LOCALITY IN ANY WAY, INCLUDING BY REASON OF THE EMISSION OF NOISE, LIGHT, ODOUR, FUMES, SMOKE, VAPOUR OR OTHER POLLUTANT, OR IMPACT ON**

PUBLIC SAFETY OR OTHERWISE; TO THE SATISFACTION OF THE SHIRE OF COCOS (KEELING) ISLANDS.

- 5. THE LISTED 'PROPERTY MANAGER' SHALL UNDERTAKE THE DUTIES LISTED ON THE 'PROPERTY MANAGEMENT PLAN' SUBMITTED WITH THE SUBJECT DEVELOPMENT APPLICATION DATED 22 MARCH 2021.**
- 6. BARBEQUES ARE TO BE LIMITED TO GAS OR ELECTRIC ONLY.**
- 7. GUESTS OF THE SERVICED APARTMENT ARE TO BE SHORT STAY ONLY, MEANING NO GUEST SHALL OCCUPY THE SERVICED APARTMENT FOR MORE THAN A TOTAL OF THREE MONTHS IN ANY ONE TWELVE-MONTH PERIOD.**

ADVICE NOTES:

- 1. THIS IS A DEVELOPMENT APPROVAL OF THE SHIRE OF COCOS (KEELING) ISLANDS UNDER ITS LOCAL PLANNING SCHEME NO.1. IT IS NOT AN APPROVAL TO COMMENCE OR CARRY OUT DEVELOPMENT UNDER ANY OTHER LAW. IT IS THE RESPONSIBILITY OF THE APPLICANT/LANDOWNER TO OBTAIN ANY OTHER NECESSARY APPROVALS, CONSENTS, PERMITS AND LICENSES REQUIRED UNDER ANY OTHER LAW, AND TO COMMENCE AND CARRY OUT DEVELOPMENT IN ACCORDANCE WITH ALL RELEVANT LAWS.**
- 2. THE APPLICANT IS TO IMPLEMENT AND MAINTAIN REPORTING MECHANISMS FOR COMPLAINTS CONCERNING THE OPERATION OF THE SERVICED APARTMENT. IN THE EVENT OF A SUBSTANTIATED COMPLAINT BEING RECEIVED THE APPLICANT IS REQUIRED TO DEMONSTRATE MITIGATION RESPONSE(S) TO THE APPROVAL OF THE SHIRE OF COCOS (KEELING) ISLANDS.**
- 3. SHOULD THE APPLICANT BE AGGRIEVED BY THE DECISION (IN PART OR WHOLE) THERE IS A RIGHT PURSUANT TO THE PLANNING AND DEVELOPMENT ACT 2005 TO HAVE THE DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL. SUCH AN APPLICATION MUST BE LODGED WITHIN TWENTY-EIGHT (28) DAYS FROM THE DATE OF THE DECISION.**

THE MOTION WAS PUT AND DECLARED CARRIED (5/0)

FOR: CHARLSTON, IBRAM, IKU, LACY, MINKOM

AGAINST: NIL

10.4 ADMINISTRATION

Nil

10.5 MINUTES TO BE RECEIVED

10.5.1 MINUTES FROM EXTERNAL COMMITTEE MEETINGS TO BE RECEIVED

Report Information

Date: 4 May 2021
 Location: Not applicable
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref: Not applicable
 Disclosure of Interest: Nil
 Reporting Officer: Governance and Risk Coordinator
 Island: Not applicable
 Attachments: 10.5.1 Minutes of external committees 1. PKNPCMC

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

The report formally presents the minutes of external committee from previous month.

Relevant Documents

Available for viewing at the meeting

Nil

Background

The Shire has an official Council representative on the following committees which are external to the Shire (i.e. established and managed by an external agency).

1. The Pulu Keeling National Park Community Management Committee (PKNPCMC)
2. The IOT Regional Development Organisation (IOTRDO)
3. Cocos Keeling Islands Tourism Association (CKITA)
4. Indian Ocean Group Training Association (IOGTA)
5. Kimberley Zone

To ensure that Council is kept informed of the activities of these external committees in which it has an interest, the minutes from all external committees will be presented for Council to receive as soon as they are available from the secretariat of the group.

It should be noted that by receiving the minutes Council is not being asked to endorse a decision of the external committee, nor can it be implied that Council is committing resources in support of a recommendation by the external committee. Should a decision or resource allocation be required from Council on a specific matter, a separate agenda item will be prepared for Council consideration.

Council's representatives on the various external committees will be able to answer any questions arising from the minutes.

Comment

The attached minutes are the minutes of the following external committees:

1. PKNPCMC Committee held on the 31 March 2021.

Policy and Legislative Implications

Nil

Financial Implications

The Officer's recommendation to receive the minutes of external committee meetings carries no financial commitment for Council.

Strategic Implications

Strategic Community Plan - Key Result Area: Civic Leadership

OFFICER RECOMMENDATION – ITEM NO 10.5.1

THAT COUNCIL BY SIMPLE MAJORITY PURSUANT TO SECTION 3.18 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO RECEIVE THE MINUTES OF THE FOLLOWING EXTERNAL COMMITTEES ON WHICH IT HAS A REPRESENTATIVE:

1. PKNPCMC COMMITTEE MEETING HELD ON THE 31 MARCH 2021.

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 (WA) (CKI) 1995 RESOLVES TO RECEIVE THE MINUTES OF THE FOLLOWING EXTERNAL COMMITTEES ON WHICH IT HAS A REPRESENTATIVE:

- 1. PKNPCMC COMMITTEE MEETING HELD ON THE 31 MARCH 2021.**

THE MOTION WAS PUT AND DECLARED CARRIED (5/0)

FOR: CHARLSTON, IBRAM, IKU, LACY, MINKOM

AGAINST: NIL

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

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) Islander's resident in the Territory on land owned by the Council.'

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.

14.2.2 APPLICATION TO RENEW LEASE FOR PART LOT 103 SEWAGE PUMP STATION

Report Information

Date: 20 May 2021
 Location: Part Lot 103 Home Island – Sewage Pump Station
 Applicant: Water Corporation
 File Ref:
 Disclosure of Interest:
 Reporting Officer: S Bulka, Leasing Officer
 Island: Home Island
 Attachments: 14.2.2 Application Letter to Lease

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 supporting documentation from Water Corporation to enter into a new lease for Part Lot 103 Home Island to Council for consideration. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the Land Trusts as the Land (Part Lot 103) is held in Trust. Council, in making any decision in relation to the Trusts, must

give due consideration of the purpose of the Trusts that is “the benefit, advancement and wellbeing of the community formed by Kampong residents; and the wellbeing of Cocos Islanders” 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.

Background

Water Corporation has held a lease with the Shire for Part Lot 103 Home Island for the use of Sewage Pump Station. The term lease was for 10 years with no further option to renew.

The Shire wrote to the lessees advising them that the lease had expired and to seek their intentions moving forward. They have advised the Shire of their intent to enter into a new lease agreement with the Shire and subsequently submitted their request. See attachment 10.2.2.

Comment

The Water Corporation provides essential services to the Cocos Island and one of the main services is the management and collection of sewage waste. The infrastructure located on part land Lot 103 Home Island is used to collect sewage waste for the Home Island community.

A revaluation will be sought from a registered independent valuer which will determine the annual lease fee to be charged, noting the fee would be subject to annual CPI review. In addition to this Shire rates would also be raised on the area if this lease is approved.

The proponent has requested a ten (10) years with a further ten (10) year option. The officers support this long-term lease proposal as this is a lease with the Commonwealth and Water Corporation provides an essential service to the community.

Milestones have not been requested as there is no change proposed for the current business use and output, however the lease will stipulate that the lease purpose continues to be met.

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 103) is Land held in Trust under the 1984 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 applicant has committed to paying the market value. An updated valuation has been requested. The current annual lease fee is \$4,129.40 and it is likely the valuation will be of a similar amount; therefore, it is unlikely to have any impact on the adopted budget.

Strategic Implications

Strategic Community Plan: Key Result Area 4 – Civic Leadership

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	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a critical community service	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a critical community service could be disrupted.	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	Commercial activities could damage the environment	Low (3)	The lease contains clauses to protect the environment
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 request for a new lease is presented to Council, acting as the Trustee of the 1984 Land Trust, for consideration and the officer's recommendation is that the request is approved as it continues to provide an important service for the community.

OFFICER'S RECOMMENDATION – ITEM NO 14.2.2

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 LAND TRUST DEED, BY SIMPLE MAJORITY RESOLVES TO AUTHORISE THE CEO TO ENTER INTO A LEASE TO DISPOSE THE LEASE AT PART LOT 103 TO WATER CORPORATION AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE, SUBJECT TO THE FOLLOWING CONDITIONS:

1. 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;
2. THE LEASE OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;
3. THE LEASE TERM BEING FOR 10 YEARS WITH 10 YEAR OPTION;
4. THE PURPOSE OF THE LEASE IS TO ALLOW INFRASTRUCTURE TO CONTINUE OPERATION FOR THE COLLECTION OF SEWAGE WASTE TO THE HOME ISLAND COMMUNITY
5. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN;
6. TO ADVISE THE PROSPECTIVE LESSEE THAT, SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL.
7. WATER CORPORATION IS CLASSIFIED AS AN 'INSTRUMENTALITY OF THE CROWN' AND IS EXEMPT TO ADVERTISE THE DISPOSITION OF PROPERTY NOTICE AS PER THE FUNCTIONS AND GENERAL REGULATIONS 1996 SECTION 30(2)(C)(ii).

COUNCIL RESOLUTION – ITEM NO 14.2.2

MOVED: CR LACY

SECONDED: CR IKU

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 LAND TRUST DEED, BY SIMPLE MAJORITY RESOLVES TO AUTHORISE THE CEO TO ENTER INTO A LEASE TO DISPOSE THE LEASE AT PART LOT 103 TO WATER CORPORATION AS PER THE SHIRE’S STANDARD COMMERCIAL LEASE TEMPLATE, SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. 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;**
- 2. THE LEASE OF PROPERTY WILL BE FOR “AS IS WHERE IS” BASIS;**
- 3. THE LEASE TERM BEING FOR 10 YEARS WITH 10 YEAR OPTION;**
- 4. THE PURPOSE OF THE LEASE IS TO ALLOW INFRASTRUCTURE TO CONTINUE OPERATION FOR THE COLLECTION OF SEWAGE WASTE TO THE HOME ISLAND COMMUNITY**
- 5. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN;**
- 6. TO ADVISE THE PROSPECTIVE LESSEE THAT, SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL.**
- 7. WATER CORPORATION IS CLASSIFIED AS AN ‘INSTRUMENTALITY OF THE CROWN’ AND IS EXEMPT TO ADVERTISE THE DISPOSITION OF PROPERTY NOTICE AS PER THE FUNCTIONS AND GENERAL REGULATIONS 1996 SECTION 30(2)(C)(ii).**

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

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

AGAINST: NIL

14.3 TRUSTS FINANCE

Nil

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

Nil

16. CLOSURE

The Presiding member declared the meeting closed at 4.30pm.

These minutes were confirmed at a meeting on

SIGNED this day of 2021

as a true record of proceedings.

PRESIDING MEMBER