

Shire of Cocos (Keeling) Islands

Shire of Cocos (Keeling) Islands

Minutes

Ordinary Meeting of Council

28 April 2021, 1.00pm

Council Chambers, Home Island

OUR VALUES

Service

Provide the best service we can.

We serve the community and each other.

Accountability

We take responsibility for our own actions.

We do what we say we will do.

Mistakes are an opportunity to learn.

Support

We support our team and our community.

Look for opportunities to help each other.

Respect

We respect and value others.

Our interactions are always respectful towards others.

Integrity

We will be honest and transparent with all our dealings.

Maintain confidentiality.

Trust each other.

Achievement

Being proactive and enabling the outcomes.

Be creative and think outside the square.

TABLE OF CONTENTS

1	OPENING/ANNOUNCEMENTS OF VISITORS	4
2	ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	4
3	RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE	4
4	PUBLIC QUESTION TIME	4
5	LEAVE OF ABSENCE	5
5.1	LEAVE OF ABSENCE (PREVIOUSLY APPROVED)	5
5.2	APPLICATION FOR LEAVE OF ABSENCE	5
6	PETITIONS/DEPUTATIONS/PRESENTATIONS	5
7	CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS	5
7.1	ORDINARY COUNCIL MEETING HELD ON 31 MARCH 2021	5
7.2	SPECIAL MEETING OF COUNCIL HELD ON 15 APRIL 2021	
8	ANNOUNCEMENTS BY THE PRESIDING MEMBER AND COUNCILLORS	5
9	DECLARATION OF INTERESTS	6
10	REPORT AND RECOMMENDATIONS	6
REPORTS OF OFFICERS AND RECOMMENDATIONS OF COMMITTEE		6
10.1	FINANCE	6
10.1.1	MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 31 MARCH 2021	6
10.1.2	SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 MARCH 2021 TO 31 MARCH 2021	10
10.1.3	MID YEAR BUDGET REVIEW 2020/2021	13
10.2.	LEASE	17
NIL		17
10.3	PLANNING/BUILDING	17
10.3.1	PROPOSED HOME OCCUPATION – 39 NELSON MANDELA WALK, WEST ISLAND	17
10.4	ADMINISTRATION	22
10.4.1	POLICY MANUAL REVIEW 2021	22
10.5	MINUTES TO BE RECEIVED	28
NIL		28

11	ELECTED MEMBERS MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN	28
12	MOTIONS WITHOUT NOTICE WITH LEAVE OF COUNCIL	28
13	MATTERS BEHIND CLOSED DOORS	28
14.	MATTERS RELATING TO THE LAND TRUSTS	28
14.1	TRUSTS ADMINISTRATION	30
NIL		30
14.2	TRUSTS LEASES	30
14.2.1	RESIDENTIAL LEASE REQUEST	30
14.2.2	APPLICATION TO LEASE FOR PART LOT 18 HOME ISLAND RETAIL CENTRE	35
14.3	TRUSTS FINANCE	40
NIL		40
15.	NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY DECISION OF MEETING (LATE ITEM)	40
NIL		40
16.	CLOSURE	40

1. OPENING/ANNOUNCEMENTS OF VISITORS

The presiding member declare the meeting opened at 1.00pm 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 M Hamiril
Cr T Lacy
Cr Charlston

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

Public: Nil

Visitors: Nil

Apologies: Cr N Anthoney (arrived at 1.04pm)

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.

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
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 31 March 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 31 MARCH 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 31 MARCH 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

7.2 Special Meeting of Council held on 15 April 2021 – Attachment 7.2

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 SPECIAL MEETING OF COUNCIL 15 APRIL 2021, AS PRESENTED IN ATTACHMENT 7.2 BE CONFIRMED AS A TRUE AND CORRECT RECORD OF PROCEEDINGS.

COUNCIL RESOLUTION – ITEM NO 7.2

MOVED: CR HAMIRIL

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 SPECIAL MEETING OF COUNCIL 15 APRIL 2021, AS PRESENTED IN ATTACHMENT 7.2 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	14.2.2	Financial	Employer of applicant

10. REPORT AND RECOMMENDATIONS OF COMMITTEE

10.1 FINANCE

10.1.1 MONTHLY STATEMENT OF FINANCIAL ACTIVITY FOR THE MONTH ENDING 31 MARCH 2021

Report Information

Date: 22 April 2021
 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 31 March 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 31 March 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 31 March 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 31 March 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 31 MARCH 2021.

Cr Anthony arrived at the meeting chambers at 1.04pm. The Presiding member acknowledged his arrival.

COUNCIL RESOLUTION – ITEM NO 10.1.1

MOVED: CR CHARLSTON

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 2020 TO 31 MARCH 2021.

THE MOTION WAS PUT AND DECLARED CARRIED (7/0)

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

AGAINST: NIL

10.1.2 SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 MARCH 2021 TO 31 MARCH 2021

Report Information

Date: March 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

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 March 2021 – 31 March 2021.

Relevant Documents

Available for viewing at the meeting.

Nil

Background

A list of accounts paid between 1 March 2021 and 31 March 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 accounts paid report 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	The report is to be presented to Council 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 along with sequence checks.
-------	---------------------------------	---------	--

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 March 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 MARCH 2021 TO 31 MARCH 2021 INCLUSIVE OF EFT 7923 TO EFT 8001, CHEQUE 11631, MASTERCARD, VIVA ENERGY & DIRECT DEBIT SUPERANNUATION TOTALLING \$478,656.45.

COUNCIL RESOLUTION – ITEM NO 10.1.2

MOVED: CR ANTHONY

SECONDED: CR IKU

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 MARCH 2021 TO 31 MARCH 2021 INCLUSIVE OF EFT 7923 TO EFT 8001, CHEQUE 11631, MASTERCARD, VIVA ENERGY & DIRECT DEBIT SUPERANNUATION TOTALLING \$478,656.45.

THE MOTION WAS PUT AND DECLARED CARRIED (7/0)

FOR: ANTHONY, CHARLSTON, HAMIRIL, IBRAM, IKU, LACY, MINKOM
AGAINST: NIL

10.1.3 MID YEAR BUDGET REVIEW 2020/2021

Report Information

Date: 23 April 2021
 Location: Not Applicable
 Applicant: Not Applicable
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Deputy Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.1.3 Budget Review Report

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input 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 the Budget Review to Council for adoption.

Relevant Documents

Available for viewing at the meeting.

Nil

Background

The Local Government (Financial Management) Regulations 1996, regulation 33A as amended, requires that local governments conduct a budget review between 1 January and 31 March in each financial year. A copy of the review and determination is to be provided to the Department of Local Government within 30 days of the adoption of the review.

Comment

The budget review has been prepared to include information required by the Local Government Act 1995, Local Government (Financial Management) Regulations 1996 and Australian Accounting Standards. Council has adopted a 10% or \$20,000 (whichever is the greater) threshold for material variances for management reporting and is used in the statements of financial activity and the annual budget review.

A full list of all amendments is included in the Budget Review attachment.

Policy and Legislative Implications

Regulation 33A of the Local Government (Financial Management) Regulations 1996 requires:

Between 1 January and 31 March in each financial year a local government is to carry out a review of its annual budget for that year.

(2A) The review of an annual budget for a financial year must —

Consider the local government's financial performance in the period beginning on 1 July and ending no earlier than 31 December in that financial year;

- (b) Consider the local government's financial position as at the date of the review; and
 - (c) Review the outcomes for the end of that financial year that are forecast in the budget
- (2) Within 30 days after a review of the annual budget of a local government is carried out it is to be submitted to the council.
- (3) A council is to consider a review submitted to it and is to determine* whether or not to adopt the review, any parts of the review or any recommendations made in the review. *Absolute majority required.
- (4) Within 30 days after a council has made a determination, a copy of the review and determination is to be provided to the Department.

Financial Implications

This review proposes an end of year surplus of \$0 with transfers to reserves of \$992,155 and transfers from reserves of \$874,317.

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 Review report 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 budget review is not completed in accordance with the Local Government Act.	Low (1)	The budget review is included in the Compliance Calendar to ensure it is completed in a timely manner. An industry template is used to ensure the format complies with requirements.
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 REVIEW AS ATTACHED AND PROVIDE A COPY OF THE DETERMINATION TO THE DEPARTMENT OF LOCAL GOVERNMENT WITHIN 30 DAYS.

COUNCIL RESOLUTION – ITEM NO 10.1.3

MOVED: CR CHARLSTON

SECONDED: CR IBRAM

THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO *REGULATION 33A OF THE LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) REGULATIONS 1996* RESOLVES TO ADOPT THE BUDGET REVIEW AS ATTACHED AND PROVIDE A COPY OF THE DETERMINATION TO THE DEPARTMENT OF LOCAL GOVERNMENT WITHIN 30 DAYS.

THE MOTION WAS PUT AND DECLARED CARRIED (7/0)

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

AGAINST: NIL

10.2 LEASES

Nil

10.3 PLANNING/BUILDING

10.3.1 PROPOSED HOME OCCUPATION – 39 NELSON MANDELA WALK, WEST ISLAND

Report Information

Date: 15 April 2021
 Location: 39 (LOT 139) Nelson Mandela Walk, West Island
 Applicant: Penne Yorke
 File Ref:
 Reporting Officer: Acting Chief Executive Officer
 Island: West Island
 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 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 use of the subject dwelling's deck for the purposes of a home occupation of packing and distributing fresh produce.

Relevant Documents

Available for viewing at the meeting.

Development application

Background

The subject property of Lot 139 Nelson Mandela Walk, West Island is zoned Residential under the Shire's *Local Planning Scheme No.1* (Scheme).

Currently only a single house exists on the property. This application seeks Council's approval for the use of the home's deck for the purposes of packaging and distributing fresh produce from time to time.

This proposal fits the use class of 'home occupation' under the Scheme, which is defined as: *means a business or activity carried out within a dwelling house or the curtilage of a house by a person resident therein or within a domestic outbuilding by a person resident in the dwelling house to which it is appurtenant that:*

- a) entails the conduct of a business, office, a workshop only, and does not entail the retail sale or display of goods of any nature;*
- b) does not cause injury to or prejudicially affect the amenity of the neighbourhood;*
- c) does not employ persons other than members of the occupier's family;*
- d) does not generally occupy a floor area of more than 30 square metres;*
- e) does not require the provision of any public utility service other than those normally provided in the Residential zone;*
- f) does not alter the general residential character of the locality and is, in the opinion of the local government, compatible with residential use of the area;*

This land use is listed as a permitted use under the Zoning Table of the Scheme, meaning the proposal is permitted by the Scheme providing the use complies with the relevant development standards and requirements of the Scheme.

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

No potential adverse impacts are expected from the proposed development; however, it is recommended Council retains a degree of control by making the approval subject to various conditions. Should a breach of these conditions occur, Council, in accordance with the enforcement provisions of the Scheme can cancel the home occupation approval.

Policy and Legislative Implications

- Shire of Cocos (Keeling) Islands Local Planning Scheme No.1 – as outlined.
- Given the applicant will be working with fresh produce a permit under the Food Act 2008 WA (CKI) will also be required before the use can commence.

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.

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial			
Health & Safety			
Reputation			
Service Interruption			
Compliance	Permit not obtained under the Food Act 2008	Low (1)	Advice notes added to planning approval.
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

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 HOME OCCUPATION AT LOT 139 NELSON MANDELA WALK, 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 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.
4. THE HOME OCCUPATION HEREBY PERMITTED MUST NOT OCCUPY AN AREA GREATER THAN 50 SQUARE METRES.
5. THE APPLICANT MUST NOT ERECT OR OTHERWISE DISPLAY ON THE HOME OCCUPATION PREMISES ANY SIGN WITH AN AREA EXCEEDING 0.2 SQUARE METRES. A SIGN ERECTED UNDER THIS CONDITION MUST:
 - a) ONLY NAME THE HOME OCCUPATION AND PROVIDE THE RELEVANT MANAGEMENT CONTACT DETAILS;
 - b) BE PLACED ON A BUILDING, WALL, FENCE OR ENTRY STATEMENT OF THE HOME OCCUPATION; AND
 - c) NOT BE ILLUMINATED NOR USE REFLECTIVE OR FLUORESCENT MATERIALS.

6. THE HOME OCCUPATION MUST NOT EMPLOY ANY PERSON WHO IS NOT A MEMBER OF THE OCCUPIER'S HOUSEHOLD.
7. ALL VEHICLES AND PARKING ASSOCIATED WITH THE HOME OCCUPATION MUST BE CONFINED TO THE HOME OCCUPATION PREMISES.
8. ALL PICK-UP AND DELIVERIES OF GOODS OR MATERIALS ASSOCIATED WITH THE HOME OCCUPATION ACTIVITY CARRIED OUT BY ANYONE OTHER THAN THE APPLICANT IS ONLY PERMITTED FROM 8AM TO 6PM.

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 HOME OCCUPATION. 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 IKU

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 HOME OCCUPATION AT LOT 139 NELSON MANDELA WALK, 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 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.

4. THE HOME OCCUPATION HEREBY PERMITTED MUST NOT OCCUPY AN AREA GREATER THAN 50 SQUARE METRES.
5. THE APPLICANT MUST NOT ERECT OR OTHERWISE DISPLAY ON THE HOME OCCUPATION PREMISES ANY SIGN WITH AN AREA EXCEEDING 0.2 SQUARE METRES. A SIGN ERECTED UNDER THIS CONDITION MUST:
 - a) ONLY NAME THE HOME OCCUPATION AND PROVIDE THE RELEVANT MANAGEMENT CONTACT DETAILS;
 - b) BE PLACED ON A BUILDING, WALL, FENCE OR ENTRY STATEMENT OF THE HOME OCCUPATION; AND
 - c) NOT BE ILLUMINATED NOR USE REFLECTIVE OR FLUORESCENT MATERIALS.
6. THE HOME OCCUPATION MUST NOT EMPLOY ANY PERSON WHO IS NOT A MEMBER OF THE OCCUPIER'S HOUSEHOLD.
7. ALL VEHICLES AND PARKING ASSOCIATED WITH THE HOME OCCUPATION MUST BE CONFINED TO THE HOME OCCUPATION PREMISES.
8. ALL PICK-UP AND DELIVERIES OF GOODS OR MATERIALS ASSOCIATED WITH THE HOME OCCUPATION ACTIVITY CARRIED OUT BY ANYONE OTHER THAN THE APPLICANT IS ONLY PERMITTED FROM 8AM TO 6PM.

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 HOME OCCUPATION. 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 (7/0)

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

AGAINST: NIL

10.4 ADMINISTRATION

10.4.1 POLICY MANUAL REVIEW 2021

Date: 22 April 2021
 Location: Not applicable
 Applicant: Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Acting Chief Executive Officer
 Island: Shire Wide
 Attachments: 10.4.1 Shire of Cocos (Keeling) Islands Policy Manual 2020 – Civic Legal review plus BM v7 minor changes accepted, Shire of Cocos (Keeling) Islands – Civic Legal Policy Manual Review annotated

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

This report brings the reviewed and updated Policy Manual before Council and seeks a Council resolution to adopt the Policy Manual 2021.

Relevant Documents

Available for viewing at the meeting.

Nil

Background

DEFINITION: Policy: “A course or principle of action”

Section 2.7 of the *Local Government Act (WA) (CKI)* 1995 prescribes part of the role of a Council is to “determine the local government’s policies”. The Act does not define the term “policy” and hence, for the purpose of the City it shall mean: “A general rule or principles, adopted by the Council to provide clear direction to the Chief Executive Officer on the day-to-day management of the local government.

Policies provide guidance to Council, staff and our community and aim to articulate and communicate Council position on matters affecting the good governance of the Shire and to enable the effective and efficient management of Shire resources. They assist in ensuring sound and equitable decision-making.

Policies are not binding on Council, instead they provide a structure to avoid ad-hoc decision making. Generally, policies are living documents that evolve through a process of review and refinement in respond to internal and external environment changes.

For this reason, it is important that a review process is in place and at the Shire of Cocos (Keeling) Islands this review takes place annually at the start of each calendar year to ensure the integrity and relevance of the policies in place.

Comment

The annual review of the *Shire of Cocos (Keeling) Islands Policy Manual* has been completed. The review consisted of two phases: a preliminary review by Civic Legal; and a subsequent internal review.

Civic Legal’s proposed amendments were reviewed by the former Chief Executive Officer, who determined the amendments to accept and the further considerations to be actioned within the 2021 review. All suggested amendments in Civic Legal’s report have been actioned, and the report has been annotated to include details of what has been actioned from the *Further Considerations* section.

To reduce the clutter within the track changes version of the reviewed *Policy Manual*, numerous changes that do not affect the intent of the policies have already been accepted. Please note that a copy of the *Policy Manual* with all track changes is available on request and will be retained for record-keeping purposes. The already accepted changes include:

- updating the template and formatting throughout the manual for consistency;
- correcting grammatical errors and inconsistencies;
- writing references to legislation in a consistent format;
- updating the terminology used for consistency throughout the manual:
 - using the Shire of Cocos (Keeling) Islands (the Shire) for first use within each policy;
 - writing Chief Executive Officer and Deputy Chief Executive Officer in full; and
 - using the term Councillor to replace ad hoc use of the terms *Elected Member* and *member of Council*;
- noting the missing delegation references from the *Office Use Only* section at the end of each policy for future updating; and
- adding the two new policies approved by Council on 31 March 2020 to the manual:
 - *Coastal Development Policy*; and
 - *Growth & Essential Services Policy*.

The other changes not yet accepted in track changes and for review by Council include:

- the inclusion of standard definitions of employee, contractor, Councillor, work experience student and volunteer to provide clarity around who the policies apply to;
- replacing of the term *staff* with the relevant term(s) above;
- adding sections missing from policies, for example Scope and Relevant Legislation/Local Law.
- adding references to related documents and other policies.
- updating references to include the new *Local Government (Model Code of Conduct) Regulations 2021* and *Shire of Cocos (Keeling) Islands Code of Conduct for Council Members, Committee Members and Candidates*. Please note that the existing *Code of Conduct* remains in force for employees until a new *Code of Conduct* for employees is developed;
- updating policies where the terms *Council* and *Shire* are used interchangeably; and
- including the suggested changes from DITRDC to the *Growth and Essential Services Policy*, which were received after Council had endorsed the new policy.

The following actions are to be undertaken in due course:

- Review the suggested changes from the WA Department of Planning, Lands and Heritage to the *Coastal Development Policy*, which was not received until after Council had endorsed the new policy.

- Review and update the *Complaints Handling and Public Interest Disclosures Policy (CPA16)* to incorporate legislative changes. The policy has been removed from the *Policy Manual*.
- Develop a new *Code of Conduct* for employees.
- Update the *Office Use Only* tables at the end of each policy with the references from the *Delegations Register*.

Future reviews of the *Policy Manual* could include the following:

- Review of the proposed amendments, further considerations and additional policies suggested by Civic Legal that were not actioned as part of the 2021 review.
- Further review of policies for consistency in how they are written, and to ensure it is clear who a policy applies to, and who is responsible for each action.
- Further review of the policies to ensure actions that must be done (policy) are clearly differentiated from guideline information.
- Obtain legal advice in relation to the effects of the new *Work Health and Safety Act 2020 (WA)* on the Shire's policies (from Civic Legal review).

Where during the year, prior to the next scheduled review in January 2022, a policy amendment is deemed appropriate, the amendment to the policy will also follow the above procedures. On such occasions, the CEO is to prepare a draft for consideration by Council at a Councillor Workshop for review prior to formally presenting the draft policy for Council to consider adopting.

Once Council has adopted a new policy, amended or reviewed a policy, the Governance and Risk Coordinator will ensure that:

- The Policy Manual is updated promptly;
- All relevant staff and stakeholders are advised; and
- The Shire's website is promptly updated.

Policy and Legislative Implications

Section 2.7 of the *Local Government Act (WA) (CKI) 1995* prescribes part of the role of a Council is to "determine the local government's policies".

Policies in the Policy Manual 2021 will inform and guide the decisions and activities of the Administration and form the basis of recommendations to Council.

Strategic Implications

Nil

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	Lack of transparency in decision making. Inconsistent decision. Perception that decisions are based on personalities rather than good policy.	High (16)	Carefully considered and communicated policies that guide administrative action and Council decisions and inform Council of a policy position rather than a response to a specific enquiry.
Service Interruption	Decisions held up due to lack of policy position – reinventing the wheel	Moderate 8	Good policies to smooth and fast track decision making and actions.
Compliance	Decisions not consistent with legislation	Moderate 8	Policies that ensure legislative compliance
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 draft updated Policy Manual 2021 is presented to Council after a thorough review. The officer's recommendation is that Council adopts the Policy Manual 2021, confident that new

policies can be added, and amendments can be made as required throughout the year. A review of the Policy Manual will next commence in January 2022.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.1

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *SECTION 2.7 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO ADOPT THE SHIRE OF COCOS (KEELING) ISLANDS POLICY MANUAL 2021 AND CONDUCT THE NEXT ANNUAL REVIEW OF ALL POLICIES IN FEBRUARY 2022.

COUNCIL RESOLUTION – ITEM NO 10.4.1

MOVED: CR IKU

SECONDED: CR ANTHONY

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO *SECTION 2.7 OF THE LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO ADOPT THE SHIRE OF COCOS (KEELING) ISLANDS POLICY MANUAL 2021 AND CONDUCT THE NEXT ANNUAL REVIEW OF ALL POLICIES IN FEBRUARY 2022.

THE MOTION WAS PUT AND DECLARED CARRIED (7/0)

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

AGAINST: NIL

10.5 MINUTES TO BE RECEIVED

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

14.2.1 RESIDENTIAL LEASE REQUEST

Report Information

Date: 1 April 2021
 Location: Lot 129 (House 29) Jalan Kembang Molok
 Applicant: Fareez Bluedy and Rachel Jean Hutchinson
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Asset and Property Management Coordinator
 Island: Home Island
 Attachments: 14.2.1 Letter of request from applicant, Map of Lot129

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 for a new lease for land held under the 1979 Land Trust Deed to Council, acting in its capacity as the Trustee, for consideration.

Relevant Documents

Available for viewing at the meeting.

Background

The proponent has requested to enter into a Residential Lease Agreement for House 29 Home Island. The proponent currently rents this property from the Shire.

At the Ordinary Meeting of Council in April 2009, Council resolved the following:

53/2010

Moved Cr Arkrie Seconded Cr Anthoney that Council accepts the current Lease Document as being suitable for the establishment of new Residential Lease Agreements for the remaining 35 Kampong Homes based on the following: -

- 1. That the term of the new Agreements be reduced to coincide with the expiration of the 40-year Leases in 2043;*
- 2. That the initial Lease Premium for the new Agreements be set at an upfront payment of \$3,500 however, should the tenant be prepared to take up a Lease prior to 1 January 2011, the Lease Premium be reduced to \$3,000 as a financial inducement to take up the Lease Agreement.*
- 3. That Council advises prospective Lessee's and Assignee's of non-compliant out-buildings on properties, if they so exist, and that it is the prospective Lessee and Assignee's responsibility to accept liability should any future claims arise in respect to these non-compliant out-buildings.*
- 4. That Council lists in its 2011/2012 Budget considerations the appointment of a suitably qualified person to undertake inspections of the leased homes within the Kampong and to develop a procedural periodic inspection process for the future.*

Comment

Based on the formal position of Council, as articulated in April 2009, it is proposed to offer the lease for Lot 129, Jalan Kembang Molok on a 22-year term as this period will result in the lease expiration coinciding with the expiry of all other Kampong House leases in November

2043. Conditions of the lease will be consistent with all other Kampong leases and the position of Council as outlined above. The more significant of these conditions include the following:
- i. Maintenance of the house will become the responsibility of the leaseholder;
 - ii. The prospective lessee assumes responsibility for and accepts liability should any future claims arise in respect to non-compliant out-buildings.

The Shire's standard process for leases is to seek independent valuation on the property to determine the market rental value for the initial lease fee. However, officers are bound by the Council resolution from April 2009 (cited above) which sets a one-off lease fee at \$3,500. Officers recognise that the \$3,500 lease fee does not financially benefit the Trust; however, officers also recognise that a lease promotes good social outcomes in terms of a stronger sense of ownership and security of tenure.

Previous leases have included a requirement for the Shire to carry out a full inspection of the property to determine whether any remedial work would be required to be undertaken prior to leasing. The officer's recommendation does not support that previous requirement; instead, the recommendation is that the house is offered on an as-is basis given the very generous financial terms of \$3,500 one-off lease fee.

Policy and Legislative Implications

Section 3.58 of the *Local Government Act (WA) (CKI) 1995*

Financial Implications

This lease would result in the following additional revenue items:

- i. Once-off lease fee - \$3,500;
- ii. Annual land rates charge approx. - \$2,102.08 (noting that this amount is dependant on a GRV from the Valuer General and may increase in accordance with Council adopted Rates Charges)
- iii. Annual contribution towards insurance costs currently - \$1272

This lease would also result in a reduction in revenue from rent charges of \$250 per week.

A lease preparation fee of \$250 will be charged.

This new lease will be conditional on any outstanding amounts owing to the Shire having been first paid.

In addition, approving a lease agreement for this tenancy, will minimise the Shire’s annual Kampong housing maintenance operational budget; however, this amount cannot be accurately quantified as it varies depending on maintenance requirements.

Strategic Implications

Nil

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Reduction in rent revenue	Moderate (5)	Offset by the reduced responsibility and cost in housing maintenance.
Health & Safety	N/A	N/A	N/A
Reputation	Inconsistent decision making	Moderate (6)	This recommendation is consistent with precedent and established process.
Service Interruption	N/A	N/A	N/A
Compliance	Lack of legislative compliance	Moderate (6)	The process outlined in this report is consistent with legislative requirements.
Property	The lessee does not maintain the property to a habitable standard.	Moderate (9)	The Shire intends commencing a process to inspect leased properties soon to ensure they are being maintained.
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

Conclusion

The request for a new lease is supported based on the precedent set by Council whereby previous applications for leases by Kampong resident tenants have always been supported on the basis that a lease provides more surety of tenure for residents, whilst alleviating the Shire of the financial burden of the property maintenance for the leased property.

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. TO ENTER INTO A LEASE FOR LOT 129, JLN KEMBANG MOLOK WITH FAREEZ BLUEDY & RACHEL JEAN HUTCHINSON AS PER THE SHIRE'S STANDARD RESIDENTIAL LEASE CONDITIONS WITH THE FOLLOWING SPECIAL CONDITIONS:
 - a. THE LEASE EXPIRY DATE IS SET FOR 30 NOVEMBER 2043;
 - b. THAT THE INITIAL LEASE PREMIUM FOR THE AGREEMENT BE SET AS AN UPFRONT PAYMENT OF \$3,500 INCLUDING \$250 FOR THE LEASE PREPARATION FEE;
 - c. THE LEASE OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;
 - d. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;
 - e. THAT THE TRUSTEE ADVISES THE PROSPECTIVE LESSEE THAT NON-COMPLIANT OUT-BUILDING ON PROPERTY, IF THEY SO EXIST, ARE THE LESSEE'S RESPONSIBILITY TO ACCEPT LIABILITY SHOULD ANY FUTURE CLAIMS ARISE IN RESPECT TO THESE NON-COMPLIANT OUT-BUILDINGS.
2. ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL.

COUNCIL RESOLUTION – ITEM NO 14.2.1

MOVED: CR IKU

SECONDED: CR LACY

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 ENTER INTO A LEASE FOR LOT 129, JLN KEMBANG MOLOK WITH FAREEZ BLUEDY & RACHEL JEAN HUTCHINSON AS PER THE SHIRE’S STANDARD RESIDENTIAL LEASE CONDITIONS WITH THE FOLLOWING SPECIAL CONDITIONS:
 - a. THE LEASE EXPIRY DATE IS SET FOR 30 NOVEMBER 2043;**
 - b. THAT THE INITIAL LEASE PREMIUM FOR THE AGREEMENT BE SET AS AN UPFRONT PAYMENT OF \$3,500 INCLUDING \$250 FOR THE LEASE PREPARATION FEE;**
 - c. THE LEASE OF PROPERTY WILL BE FOR “AS IS WHERE IS” BASIS;**
 - d. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;**
 - e. THAT THE TRUSTEE ADVISES THE PROSPECTIVE LESSEE THAT NON-COMPLIANT OUT-BUILDING ON PROPERTY, IF THEY SO EXIST, ARE THE LESSEE’S RESPONSIBILITY TO ACCEPT LIABILITY SHOULD ANY FUTURE CLAIMS ARISE IN RESPECT TO THESE NON-COMPLIANT OUT-BUILDINGS.****
- 2. ADVISE THE PROSPECTIVE LESSEE THAT SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL.**
- 3. THAT THE EXISTING BOUNDARY THAT IS CURRENTLY BUILT OVER THE PROPERTY BOUNDARY IS RECTIFIED BEFORE THE LEASE IS RECTIFIED.**

THE MOTION WAS PUT AND DECLARED CARRIED (7/0)

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

AGAINST: NIL

Cr Lacy has declared financial interest on Item No 14.2.2 and left the meeting chambers at 1.16pm.

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

Report Information

Date: 21 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: Asset and Property Management Coordinator
 Island: Home Island
 Attachments: 14.2.2 Application letter to lease, Expression of Interest Proposal

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 Mr Badlu and Mrs Azah to lease for Part Lot 18 Home Island retail centre Tenancy 8 for the purpose of a Bakery to Council for consideration. 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. See attachment 14.2.2.

Comment

At the Ordinary Council Meeting on the 31 March 2021 Council resolved to enter formal lease negotiations with the Siti Az-Zahra Azah and Azah Badlu from Baked by Zahra for Tenancy 8 for the purpose of operating a bakery.

In the leasing proposal as flagged in their originally 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.

A valuation will be sought from a registered independent valuer which will determine the annual lease fee to be charged factoring in the fixtures and capital equipment, noting the fee would be subject to annual CPI review and considering the requests. In addition to this Shire rates would also be raised on the area if this lease is approved.

The proponents have requested a three (3) year lease with a further three (3) year option. Officer's support this request as this is a new business unlike those already more established at the Home Island Retail Centre.

Milestones have not been requested as there is no development required by the proponent, 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 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 Shire is seeking a valuation for the retail outlets. It is likely the valuation will be of a similar amount with the other leases in the retail centre. The applicant is also requesting the Shire to fit out the tenancy with the essential bakery fixtures & capital equipment required for the business. The total costs for these essential bakery equipment are expected to be \$26,900 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.

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	Not progressing with the lease in a timely manner could result in uncertainty for a key stakeholder who provides a good community service.	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	Without a lease, a valuable 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	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 a new lease if presented to the Trust for consideration and the officer's recommendation is that the request is approved as it continues to provide an important service to the community.

OFFICER'S RECOMMENDATION – ITEM NO 14.2.2

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;
6. 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.

ALTERNATIVE MOTION / COUNCIL RESOLUTION – ITEM NO 14.2.2

MOVED: CR CHARLSTON

SECONDED: ANTHONY

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 MOTION WAS PUT AND DECLARED CARRIED (6/0)

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

AGAINST: NIL

Cr Lacy returned to the meeting chambers at 1.30pm.

