

Shire of Cocos (Keeling) Islands

Shire of Cocos (Keeling) Islands

Minutes

Ordinary Meeting of Council

31 March 2021, 4.00pm

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.

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1. OPENING/ANNOUNCEMENTS OF VISITORS

The presiding member declare the meeting opened at 4.07pm 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 N Anthoney
Cr T Lacy
Cr Charlston

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

Public: Nil

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.

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 24 February 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 24 FEBRUARY 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 ANTHONY

SECONDED: CR IBRAM

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

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

FOR: ANTHONY, 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	14.2.3	Direct 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 28 FEBRUARY 2021

Report Information

Date: 26 March 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 28 February 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 28 February 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 28 February 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.
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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 28 February 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 28 FEBRUARY 2021.

COUNCIL RESOLUTION – ITEM NO 10.1.1

MOVED: CR IKU

SECONDED: CR CHARLSTON

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 28 FEBRUARY 2021.

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

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

AGAINST: NIL

10.1.2 SCHEDULE OF ACCOUNTS PAID FOR PERIOD 1 FEBRUARY 2021 TO 28 FEBRUARY 2021

Report Information

Date: 25 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 February 2021 – 28 February 2021.

Relevant Documents

Available for viewing at the meeting.

Nil

Background

A list of accounts paid between 1 February 2021 and 28 February 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 February 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 FEBRUARY 2021 TO 28 FEBRUARY 2021 INCLUSIVE OF CHEQUE 11628 TO 11630, EFT 7844 TO EFT 7922, VIVA ENERGY & DIRECT DEBIT SUPERANNUATION TOTALLING \$621,934.84.

COUNCIL RESOLUTION – ITEM NO 10.1.2

MOVED: CR ANTHONY

SECONDED: CR HAMIRIL

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 FEBRUARY 2021 TO 28 FEBRUARY 2021 INCLUSIVE OF CHEQUE 11628 TO 11630, EFT 7844 TO EFT 7922, VIVA ENERGY & DIRECT DEBIT SUPERANNUATION TOTALLING \$621,934.84.

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

Nil

10.4 ADMINISTRATION

10.4.1 DRAFT COASTAL DEVELOPMENT POLICY

Report Information

Date: 22 March 2021
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island: N/A
 Attachments: 10.4.1 Draft Coastal Development Policy

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</i>

		<i>applications, building licenses, applications for other permits / licenses.</i>
<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Report Purpose

The purpose of this report is to present a draft policy on matters relating to Coastal Development for Council consideration.

Relevant Documents

Available for viewing at the meeting.

Background

While the Shire is awaiting a report from a Coastal Vulnerability Assessment commissioned by the Commonwealth Government, Council is being frequently asked to consider and assess Development Approvals, and in its capacity as Trustee, to consider applications for land leases. These decisions need to cognisant of the risks arising from coastal erosion and inundation.

Officers recommended that a policy was needed to provide a transparent and robust framework for Council to make those considerations and for planning officers to base their recommendations to Council. It was also the view of officers, that proponents needed to be clear on these considerations before expending effort and resources on proposals and to ensure their proposals, should they continue with them, were able to address these matters.

To develop this policy, Shire officers worked with our contract planning consultants at the Shire of Dandaragan, with senior representatives from the Department of Infrastructure, Transport, Regional Development and Communications, Watercorp and CKITA. Several Councillors were also in attendance.

Comment

The coastal planning requirements set out in this draft policy are informed by the future Cocos (Keeling) Islands Coastal Vulnerability Study (CVS). A subsequent Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) will also be developed by the WA Department of Planning, Lands and Heritage in the coming years.

The CVS will consider the coastal inundation and erosion hazards across the Cocos (Keeling) Islands, whilst the CHRMAP will provide a holistic approach to manage and mitigate coastal hazard risk and will be developed in consultation with the local community and key stakeholders.

This policy is recommended to be used to guide Council's assessment of all development applications.

Until such time as the CVS is finalised, it is proposed that Council will consider all land on the Islands to be at risk of coastal inundation and erosion. The CVS will inform the CHRMAP with more detailed risk information that will further guide Council in decision making.

Policy and Legislative Implications

*Planning and Development (Local Planning Schemes) Regulations 2015;
Schedule 2 Deemed provisions for local planning schemes.*

Financial Implications

While there are no direct implications from adopting this policy, there are potentially significant financial impacts from developments not being able to be progressed due uncertain surround coastal hazards and the possible responses. See below – Strategic Implications.

Strategic Implications

Economic Objective: *Lobby to remove impediments to the Islands economic growth.*

The threat of coastal erosion and inundation is a significant impediment to the Islands' economic growth. Therefore, the officer's recommendation includes lobbying efforts to finalise the Coastal Vulnerability Assessment Report and progress the CHRMAP as a matter of priority as this would provide a greater level of certainty for future potential developments. The officer's recommendation is that the Shire to use various forums to raise this matter, including in the Shire's submission to the Joint Standing Committee inquiry into and reporting on the challenges, barriers and opportunities for economic, social and environmental sustainability in the Indian Ocean Territories (IOT).

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Potential developers are deterred from progressing developments.	High (12)	This policy aims to provide clarity for potential developers early in the process. Without a policy, the risk is that developers progress with applications, at some cost to themselves, and then find they are unable to proceed.
Health & Safety			
Reputation	The Shire's Strategic Plan, the RDO Strategic Plan for CKI, the RDO Tourism strategy and other key documents over the years, encourage development. Damage to the Shire's reputation is highly likely if a potential developer spends resources (time and/or money) on a proposal based on strategies, only to find that their development is rejected due to lack of infrastructure.	High (12)	This policy aims to provide clarity for potential developers early in the process. Without a policy, the risk is that developers progress with applications, at some cost to themselves, and then find they are unable to proceed.
Service Interruption			
Compliance			
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 required.

Conclusion

This draft policy is recommended to Council as it provides some guidance and transparency for developers, officers and Council. It has been developed in collaboration with key stakeholders including IOTA representatives, Watercorp's Operational Manager on CKI, CKITA representatives and with input from the Shire's contract planners at the Shire of Dandaragan. The policy may require reviewing and refining as it is put into operation, but it provides a sound starting for decision-making.

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:

1. ADOPT THE COASTAL DEVELOPMENT POLICY AS PRESENTED AND INCLUDE THIS POLICY IN THE SHIRE OF COCOS (KEELING) ISLANDS POLICY MANUAL.
2. REVIEW THE COASTAL DEVELOPMENT POLICY AS PART OF THE ANNUAL REVIEW OF ALL COUNCIL POLICIES.
3. USE ALL AVAILABLE OPPORTUNITIES (E.G. SUBMISSION TO JOINT STANDING COMMITTEE, MEETINGS WITH THE MINISTER AND DEPARTMENT REPRESENTATIVES) TO IMPRESS UPON THE AUSTRALIAN GOVERNMENT THE URGENCY OF PROGRESSING THE COASTAL VULNERABILITY ASSESSMENT AND COASTAL HAZARD AND RISK MANAGEMENT AND ADAPTION PLAN TO PROVIDE A GREATER LEVEL OF CERTAINTY TO POTENTIAL DEVELOPERS IN RELATION TO COASTAL PROCESSES.

COUNCIL RESOLUTION – ITEM NO 10.4.1

MOVED: CR CHARLSTON

SECONDED: CR IBRAM

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 2.7 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995*, RESOLVES TO:

- 1. ADOPT THE COASTAL DEVELOPMENT POLICY AS PRESENTED AND INCLUDE THIS POLICY IN THE SHIRE OF COCOS (KEELING) ISLANDS POLICY MANUAL.**
- 2. REVIEW THE COASTAL DEVELOPMENT POLICY AS PART OF THE ANNUAL REVIEW OF ALL COUNCIL POLICIES.**
- 3. USE ALL AVAILABLE OPPORTUNITIES (E.G. SUBMISSION TO JOINT STANDING COMMITTEE, MEETINGS WITH THE MINISTER AND DEPARTMENT REPRESENTATIVES) TO IMPRESS UPON THE AUSTRALIAN GOVERNMENT THE URGENCY OF PROGRESSING THE COASTAL VULNERABILITY ASSESSMENT AND COASTAL HAZARD AND RISK MANAGEMENT AND ADAPTION PLAN TO PROVIDE A GREATER LEVEL OF CERTAINTY TO POTENTIAL DEVELOPERS IN RELATION TO COASTAL PROCESSES.**

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

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

AGAINST: NIL

10.4.2 CODE OF CONDUCT FOR COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES

Report Information

Date: 22 March 2021
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island:
 Attachments: 10.4.2 Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates; Shire of Cocos (Keeling) Islands Code of Conduct for Council Members, Committee Members and Candidates; Complaint about alleged Breach Form; Local Government (Model Code of Conduct) Regulations 2021

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

This report presents a draft Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct) for Council to consider. The officer's recommendation is that

the Code of Conduct is adopted as presented, along with a specific form for complaints and to authorise complaints officers.

Relevant Documents

Available for viewing at the meeting.

Background

The following regulations took effect on 3 February 2021, implementing the remaining parts of the Local Government Legislation Amendment Act 2019:

- *Local Government (Administration) Amendment Regulations 2021;*
- *Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021;* and
- *Local Government (Model Code of Conduct) Regulations 2021.*

Regarding the Local Government (Model Code of Conduct) Regulations 2021, Local Governments are required to adopt a Code of Conduct for Council Members, Committee Members and Candidates within three (3) months of the Regulations taking effect.

Comment

The Department of Local Government, Sport and Cultural Industries (DLGSC) has produced Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates, which is an attachment to this item. A Model Code has also been developed and the officer's recommendation is that the Model Code is adopted for the Shire of Cocos (Keeling) Islands to ensure compliance with the new regulations. The Code can be amended if required at any stage, noting that local governments may not amend Division 2 (Principles) or Division 4 (Rules of Conduct), but can include additional behaviour requirements in Division 3 (Behaviours) if deemed appropriate by the local government. Any additions must be consistent with the Model Code of Conduct (section 5.104(3) of the Act).

The guidelines state that *"It is the individual responsibility of council members, committee members and candidates to become familiar with the Model Code, these Guidelines and any relevant policies of their local government, and to follow the Code at all times."*

The Regulations state that the Local Government must, in writing, authorise one or more persons to receive complaints and withdrawals of complaints, but they do not specify who that person(s) will be. The Complaints Officer could be:

- President,

- Deputy President (especially for complaints about the President),
- Chief Executive Officer, or
- External Consultant

The officer's recommendation is that the Shire President is the primary complaints officer for all complaints about Councillors and candidates in elections who become Councillors, and that the Deputy Shire President is appointed to deal with complaints by or about the Shire President.

NB: Appointment of a Complaints Officer was required to be implemented within three weeks of the Regulations taking effect – i.e., by 24 February 2021. The CEO was of the impression that Council adopted Complaints Handling and Public Interest Disclosures Policy that designates the CEO as the Complaints Officer would satisfy this requirement until the matter could be properly investigated and brought before Council and contacted WALGA for confirmation. Advice received from WALGA was that the Policy would not suffice and that a specific authorisation would be required. In the interim, the 24 February deadline was missed. This item seeks to remedy that breach as promptly as possible.

The DLGSC has also produced a template complaints form as the Regulations state that complaints are to be made in writing in a form approved by the Local Government. The DLGSC template form is attached, and the officer recommendation is that it is adopted as presented. (See attachment 10.4.2).

Policy and Legislative Implications

- *Local Government Act (WA)(CKI) 1995;*
- *Local Government (Administration) Amendment Regulations 2021;*
- *Local Government Regulations Amendment (Employee Code of Conduct) Regulations 2021*
- *Local Government (Model Code of Conduct) Regulations 2021.*

Financial Implications

Nil

Strategic Implications

Civic Leadership

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	N/A		
Reputation	Non-compliance could result in a disciplinary action against the Shire by the DLGSC	Moderate (6)	This agenda item and associated attachments aims to ensure that the Shire is compliant.
Service Interruption	N/A		
Compliance	That the Code and / or process is non-compliant with the Regulations.	Moderate (9)	The recommended Code and form are based on the models provided by DLGSC and therefore meet compliance requirements.
Property	N/A		
Environment	N/A		
Fraud	N/A		

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Absolute Majority

Conclusion

The officer's recommendation that Council adopts the Model Code of Conduct as presented.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.2

1. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTION 5.104 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995*, RESOLVES TO ADOPT THE CODE OF CONDUCT FOR COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES FOR LOCAL GOVERNMENT ELECTIONS FOR SHIRE OF COCOS (KEELING) ISLANDS, LISTED AS ATTACHMENT 10.4.2 AND PUBLISH THE CODE OF CONDUCT ON THE SHIRE'S WEBSITE
2. THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE LOCAL GOVERNMENT (MODEL CODE OF CONDUCT) REGULATIONS 2021 RESOLVES TO;
 - A. ADOPT THE COMPLAINT ABOUT ALLEGED BREACH FORM, LISTED AS ATTACHMENT 10.4.2;
 - B. AUTHORISE THE FOLLOWING PERSONS TO RECEIVE DIVISION 3 COMPLAINTS AND WITHDRAWALS OF COMPLAINTS RELATING TO COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES:
 - I. THE SHIRE PRESIDENT - FOR ALL COMPLAINTS ABOUT COUNCIL MEMBERS (INCLUDING THE DEPUTY SHIRE PRESIDENT) OR CANDIDATES FOR ELECTIONS THAT BECOME COUNCIL MEMBERS, EXCLUDING THOSE MADE BY THE SHIRE PRESIDENT OR ABOUT THE SHIRE PRESIDENT;
 - II. THE DEPUTY SHIRE PRESIDENT - FOR COMPLAINTS MADE BY OR ABOUT THE SHIRE PRESIDENT.

COUNCIL RESOLUTION – ITEM NO 10.4.2

MOVED: CR IKU

SECONDED: CR LACY

1. THAT COUNCIL, BY ABSOLUTE MAJORITY, PURSUANT TO SECTION 5.104 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995*, RESOLVES TO ADOPT THE CODE OF CONDUCT FOR COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES FOR LOCAL GOVERNMENT ELECTIONS FOR SHIRE OF COCOS (KEELING) ISLANDS, LISTED AS ATTACHMENT 10.4.2 AND PUBLISH THE CODE OF CONDUCT ON THE SHIRE'S WEBSITE
2. THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO THE LOCAL GOVERNMENT (MODEL CODE OF CONDUCT) REGULATIONS 2021 RESOLVES TO;
 - A. ADOPT THE COMPLAINT ABOUT ALLEGED BREACH FORM, LISTED AS ATTACHMENT 10.4.2;
 - B. AUTHORISE THE FOLLOWING PERSONS TO RECEIVE DIVISION 3 COMPLAINTS AND WITHDRAWALS OF COMPLAINTS RELATING TO COUNCIL MEMBERS, COMMITTEE MEMBERS AND CANDIDATES:
 - I. THE SHIRE PRESIDENT - FOR ALL COMPLAINTS ABOUT COUNCIL MEMBERS (INCLUDING THE DEPUTY SHIRE PRESIDENT) OR CANDIDATES FOR ELECTIONS THAT BECOME COUNCIL MEMBERS, EXCLUDING THOSE MADE BY THE SHIRE PRESIDENT OR ABOUT THE SHIRE PRESIDENT;

II. THE DEPUTY SHIRE PRESIDENT - FOR COMPLAINTS MADE BY OR ABOUT THE SHIRE PRESIDENT.

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

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

AGAINST: NIL

10.4.3 DRAFT GROWTH AND ESSENTIAL SERVICES POLICY

Report Information

Date: 22 March 2021
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island: N/A
 Attachments: 10.4.3 Draft Growth and Essential Services Policy

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 purpose of this report is to present a draft policy on matters relating Growth and Essential Service provision for Council consideration.

Relevant Documents

Available for viewing at the meeting.

Background

There is continued pressure for development on the Cocos (Keeling) Islands for tourism projects, holiday homes and for people seeking a lifestyle change from mainland Australia.

Due to the small essential service schemes on both Home and West Islands, any change of land use or new development has the potential to significantly impact the capacity of essential services.

West Island is currently at or near capacity for all essential services (water, wastewater & power). The new water source (a desalination plant proposal) and treatment plant design (upgrade of existing plant) has factored in growth and tourism into the design, and this will allow for additional developments in the future. However, both these upgrades require Australian Government funding to enable these works to be carried out so the timeline on these works is currently unknown.

Home Island has some capacity to support further land use changes and development, however, without knowing the full extent of potential application, it is difficult to predict the impact on service demand. New developments would require further modelling and analysis at the time of application.

Comment

Planning regulations requires that in considering an application for development approval the local government is to have due regard to the following matters to the extent that, in the opinion of the local government, those matters are relevant to the development the subject of the application —

(n) the amenity of the locality including the following —

(iii) social impacts of the development;

(u) the availability and adequacy for the development of the following —

(i) public transport services;

(ii) public utility services;

(x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals;

This draft policy aims to provide:

- guidance to officers in advising potential proponents and in developing reports and recommendations for Council;
- guidance to Council in assessing and making determinations on Development Applications;
- transparency for potential developers prior to making substantial investment into proposals.

The draft policy, if adopted by Council, would require that all development applications involving the use of essential services whether they be for a change of use and/or development works, and regardless of whether the development will be self-sufficient are to show evidence of engagement with and comments from the agencies responsible for providing essential services to the Cocos (Keeling) Islands.

Furthermore, Shire officers will refer all lodged Development Applications to the agencies responsible for providing essential services for a period of 42 days prior to formal submission to Council for a determination.

Policy and Legislative Implications

*Planning and Development (Local Planning Schemes) Regulations 2015;
Schedule 2 Deemed provisions for local planning schemes.*

Financial Implications

While there are no direct implications from adopting this policy, there are potentially significant financial impacts from developments not being able to be progressed due to a lack of capacity in terms of essential services infrastructure. See below – Strategic Implications.

Strategic Implications

Economic Objective: *Lobby to remove impediments to the Islands economic growth.*

The lack of capacity for growth and development is a significant impediment to the Islands' economic growth. Therefore, the officer's recommendation includes lobbying efforts to increase capacity of core services in various forums including in the Shire's submission to the Joint Standing Committee inquiry into and reporting on the challenges, barriers and opportunities for economic, social and environmental sustainability in the Indian Ocean Territories (IOT).

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	Potential developers are deterred from progressing developments.	High (12)	This policy aims to provide clarity for potential developers early in the process. Without a policy, the risk is that developers progress with applications, at some cost to themselves, and then find they are unable to proceed.
Health & Safety	N/A		
Reputation	The Shire's Strategic Plan, the RDO Strategic Plan for CKI, the RDO Tourism strategy and other key documents over the years, encourage development. Damage to the Shire's reputation is highly likely if a potential developer spends resources (time and/or money) on a proposal based on strategies, only to find that their development is rejected due to lack of infrastructure.	High (12)	This policy aims to provide clarity for potential developers early in the process. Without a policy, the risk is that developers progress with applications, at some cost to themselves, and then find they are unable to proceed.
Service Interruption	N/A		
Compliance	N/A		
Property	N/A		
Environment	N/A		
Fraud	N/A		

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple Majority required.

Conclusion

This draft policy is recommended to Council as it provides some guidance and transparency for developers, officers and Council. It has been developed in collaboration with key stakeholders including IOTA representatives, Watercorp's Operational Manager on CKI, CKITA representatives and with input from the Shire's contract planners at the Shire of Dandaragan. The policy may require reviewing and refining as it is put into operation, but it provides a sound starting for decision-making.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.3

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 2.7 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995*, RESOLVES TO:

1. ADOPT THE GROWTH AND ESSENTIAL SERVICES POLICY AS PRESENTED AND INCLUDE THIS POLICY IN THE SHIRE OF COCOS (KEELING) ISLANDS POLICY MANUAL.
2. REVIEW THE GROWTH AND ESSENTIAL SERVICES POLICY AS PART OF THE ANNUAL REVIEW OF ALL COUNCIL POLICIES.
3. USE ALL AVAILABLE OPPORTUNITIES (E.G. SUBMISSION TO JOINT STANDING COMMITTEE, MEETINGS WITH THE MINISTER AND DEPARTMENT REPRESENTATIVES) TO IMPRESS UPON THE AUSTRALIAN GOVERNMENT THE NEED TO UPGRADE AND EXPAND THE CAPACITY OF ESSENTIAL SERVICES, PARTICULARLY WATER, SEWERAGE AND POWER.

COUNCIL RESOLUTION – ITEM NO 10.4.3

MOVED: CR CHARLSTON

SECONDED: CR IKU

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO SECTION 2.7 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995*, RESOLVES TO:

- 1. ADOPT THE GROWTH AND ESSENTIAL SERVICES POLICY AS PRESENTED AND INCLUDE THIS POLICY IN THE SHIRE OF COCOS (KEELING) ISLANDS POLICY MANUAL.**
- 2. REVIEW THE GROWTH AND ESSENTIAL SERVICES POLICY AS PART OF THE ANNUAL REVIEW OF ALL COUNCIL POLICIES.**
- 3. USE ALL AVAILABLE OPPORTUNITIES (E.G. SUBMISSION TO JOINT STANDING COMMITTEE, MEETINGS WITH THE MINISTER AND DEPARTMENT REPRESENTATIVES) TO IMPRESS UPON THE AUSTRALIAN GOVERNMENT THE NEED TO UPGRADE AND EXPAND THE CAPACITY OF ESSENTIAL SERVICES, PARTICULARLY WATER, SEWERAGE AND POWER.**

THE MOTION WAS PUT AND DECLARED CARRIED (6/1)

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

AGAINST: LACY

10.4.4 RESPONSE TO JOINT STANDING COMMITTEE INQUIRIES

Report Information

Date: 22 March 2021
 Location: N/A
 Applicant: The Shire of Cocos (Keeling) Islands
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: A. Selvey, Chief Executive Officer
 Island: N/A
 Attachments: Nil

Authority / Discretion

Definition

<input type="checkbox"/>	Advocacy	<i>When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	Executive	<i>The substantial direction setting and oversight role of the Council. E.g., adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes and policies. Review when Council reviews decisions made by officers.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When Council determines an application / matter that directly affects a person's right and interest. The judicial character arises from the obligations to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licenses, applications for other permits / licenses.</i>
<input type="checkbox"/>	Information	<i>Includes items provides to Council for information purposes only that do not require a decision of Council (i.e. – for noting).</i>

Report Purpose

This report brings a draft submission to the two concurrent Joint Standing Committee inquiries underway at the moment.

Relevant Documents

Available for viewing at the meeting.

Background

Two concurrent Joint Standing Committee inquiries are currently underway. The first is an inquiry into and report on the availability and access to enabling communications infrastructure in Australia's external territories in accordance with the terms of reference referred by the Hon Nola Marino MP, Assistant Minister for Regional Development and Territories; and the second is to inquire into and report on economic, social and environmental sustainability in the Indian Ocean Territories in accordance with the terms of reference referred by the Hon Nola Marino MP, Assistant Minister for Regional Development and Territories.

Submissions addressing the terms of reference were required to be lodged by Wednesday, 31 March 2021. However, the Shire sought an extension to allow this matter to be presented to Council for consideration and formal endorsement prior to a submission being lodged.

Comment

Enquiry One: The Terms of Reference for the inquiry into and report on the availability and access to enabling communications infrastructure to inquire into and report on:

- the availability of, and access to communications technologies and infrastructure in each of the external territories;
- future opportunities in enabling communications technologies and infrastructure in each of the external territories including telecommunications services, submarine cables, satellite capabilities;
- opportunities and barriers arising from current and potential future communications infrastructure in each of the external territories;
- examining the economic benefits of improving the availability of, and access to communications infrastructure in each of the external territories; and
- recommendations for any future communications technologies and infrastructure for each of the external territories.

Shire's Draft Response:

While there are many challenges and opportunities with enabling communication infrastructure, the Shire recognises that the remote location and small population make it a costly and logistically challenging region to serve and appreciates the current level of service. However, in the Shire's view, the single and most pressing telecommunications issue on the Cocos (Keeling) islands is the lack of a mobile phone network.

Currently calls can be made and received using services over the 4G LTE data network, but these services are less reliable and work differently to a mobile phone network, and many users cannot receive calls or text messages to a mainland mobile phone number (starting with 04). It is also very expensive for consumers to access.

This lack of basic communication infrastructure impacts socially and economically. It is detrimental to businesses, tourism and emergency services. Examples include:

1. MyGov – need for users to receive a SMS to be able to access MyGov Services; and
2. Banks require users to enter a code to access some services online. The code is sent via SMS which poses difficulties for CKI residents;
3. While mobile phones are not a primary emergency service comms tool, many Councils issue emergency information via SMS for example fire warnings.

RECOMMENDATION: That the Australian Government supports the implementation of mobile phone services on the Cocos (Keeling) Islands that are comparable to standard mainland mobile phone services. The services should be managed by, and compatible with, a standard commercial service provider, to ensure the support and sustainability offered by a large-scale provider.

Enquiry Two: The Committee has been tasked with inquiring into and reporting on the challenges, barriers and opportunities for economic, social and environmental sustainability in the Indian Ocean Territories (IOT). The specific terms of reference are as follows:

- Encouraging innovation and investment that addresses sustainability challenges and provides economic opportunities. This could include innovative approaches to waste management, and capitalising on the unique environmental qualities that represent the marketing and strategic advantage of the Islands in the long term.
- Building on investments in education and research by encouraging partnerships across the IOT with local, mainland and international organisations with an education, research, biodiversity or sustainability focus to drive investment and innovative economic outcomes.
- Identifying how the community can contribute to citizen science, and capitalise on jobs flowing from government investment, including in education and research.
- Socially responsible development that addresses the social impact of cost of living and geographic isolation; and supports community needs and aspirations.

- Strengthening and diversifying the IOT economies; and identifying future infrastructure needs to support sustainable economic growth.

Shire's Draft Response:

The Shire acknowledges the investments made by the Australian Government in the past and appreciates the challenges of servicing the IOT. The following suggestions are, in the view of the Shire, areas of priority that would address barriers to sustainability.

Priority One: (Addressing ToR 5)

While the scientific community has established that anthropogenic climate change is occurring, uncertainty remains about the magnitude and extent of the impacts from these processes and changes. The risk arising from coastal vulnerability of built assets is of paramount importance to Cocos (Keeling) Islands being a low-lying coral atoll in the middle of the ocean. Our vulnerability is influenced by the level of preparedness and response of the community and its recovery capacity.

Despite the uncertainty, early consideration of coastal hazards and the management of appropriate planning responses can provide economic, environmental, and social benefits. National and international coastal planning practices are increasingly adopting a risk management approach to deal with uncertainty associated with the potential adverse impacts and their timeframes, arising from coastal hazards. This ensures that risks arising from coastal hazards are appropriately factored into decision-making processes for sustainable land use and development in the coastal zone. The Western Australian Government's coastal planning policy, State Planning Policy 2.6 Coastal Planning Policy (SPP 2.6) requires a risk management approach and provides the framework for coastal hazard risk management and adaptation planning (CHRMAP).

The Shire of Cocos (Keeling) Islands is in the process of developing a Coastal Development Policy which will be informed by the Cocos (Keeling) Islands Coastal Vulnerability Study (CVS). This policy will act as an interim guide to possible development while we are awaiting a subsequent Coastal Hazard Risk Management and Adaptation Plan (CHRMAP).

The CVS considers the coastal inundation and erosion hazards across the Cocos (Keeling) Islands, whilst the CHRMAP will provide a holistic approach to manage and mitigate coastal hazard risk and will be developed in consultation with the local community and key stakeholders.

The CHRMAP is a critical body of work that will assist in determining the future direction for the Atoll and we ask the JSC to highlight the importance and priority of the CHRMAP. Without

a CHRMAP, the Shire, the Commonwealth, the Community and potential developers, cannot make informed decisions about future investment on the Cocos (Keeling) Islands.

RECOMMENDATION: That the Coastal Hazard Risk Management and Adaptation Plan (CHRMAP) is completed as a priority.

Priority Two: (Addressing ToR 4 and ToR 5)

A well planned and coherent settlement pattern and careful management of urban growth and change is critical in delivering wider social, economic and environmental objectives. For example, to create liveable, efficient and attractive communities there needs to be (but not limited to) choice in housing and lifestyle opportunities, easy access to employment, services and recreational opportunities for people of all ages and abilities, a strong and shared sense of community, and good urban design and neighbourhood planning.

Planning for new growth should be co-ordinated with the cost-efficient provision of infrastructure and services such as roads, public transport, water supply, sewerage, electricity, telecommunications, drainage, open space, schools, health and recreational facilities.

There is continued pressure for development on the Cocos (Keeling) Islands for tourism projects, holiday homes and for people seeking a lifestyle change from mainland Australia.

Due to the small essential service schemes on both Home and West Islands, any change of land use or new development has the potential to significantly impact the capacity of essential services. West Island is currently at or near capacity for all essential services (water, wastewater & power). The new water source (a desalination plant proposal) and treatment plant design (upgrade of existing plant) has factored in growth and tourism into the design, and this will allow for additional developments in the future. However, both these upgrades require Australian Government funding to enable these works to be carried out so the timeline on these works is currently unknown.

RECOMMENDATION: That the Australian Government be required to provide a timeframe for investment into upgrades to essential infrastructure Services to give some certainty for future development.

Priority Three: (Addressing ToR 1)

Waste Management presents many challenges on CKI. Given the topography of CKI, there is no landfill option. Waste is incinerated where possible or stored for off-island disposal. The Shire operates one incinerator on Home Island. The incinerator is diesel fuelled at an annual plant operation cost of \$165,000. Waste on West Island is open burned.

Examples of waste minimising and recycling currently employed at CKI include:

Glass Crushing – crushed glass is used in road base and as an aggregate in concrete.

Aluminium Can – cans are crushed and stored for off-island disposal.

Putrescible waste – currently attempting to obtain relevant licence to commence composting.

Batteries – stored for off-island disposal. In 2020, batteries accumulated over many years were disposed of off island, via Christmas Island Phosphates, at a cost of \$78,961 to the Shire of CKI.

Other waste streams such as asbestos and scape metal are currently stored in anticipation that the Department of Defence Runway Upgrade project will result in backhaul of waste. However, at this stage there has been no funding allocated for the backhaul of waste. Not progressing with this project during the Runway Upgrade project would result in an opportunity lost and one that may not present itself again in the near future.

RECOMMENDATION: That the Australian Government funds the removal of waste from CKI as backhaul during the Runway Upgrade project.

Priority Four: (Addressing ToR 5)

There is limited insurance available to homeowners and businesses on the Cocos (Keeling) Islands for property. This impacts the full spectrum of economic drivers from homeownership to business future and succession planning, to major business and land development.

This matter has been explored in previous inquiries and was raised in the Committee's Report on the visit to the Indian Ocean Territories, 21-25 October 2012. In that report, the then Committee recommended the Australian Government urgently address the insurance problems facing the communities of the Indian Ocean Territories. At that time the recommendation was not supported by the Australian Government, citing a number of remote communities experiencing similar issues of insurance affordability and availability, and considering the issue to be market driven. The Australian Government response also noted that in similar situations some communities have engaged in cooperative action to gain access to insurance and increase coverage.

In November 2020, the Australian Competition and Consumer Commission issued its Northern Australia Insurance Inquiry Final Report. It should be noted that despite its geographical position the IOT are not considered to be part of Northern Australia by the Australian Government and so fell outside of scope for this Inquiry. Although out of scope, DITRDC provided a submission to this inquiry regarding the IOT. The RDO would commend this submission to the Committee.

RECOMMENDATION: That the lack of home / building insurance availability on CKI, due to market failure, be addressed by the Australian Government.

Priority Five: (Addressing ToR 4)

The Australian Government underwrites the air service between Perth and CKI as it is not a commercially viable route. There is no domestic market competition and fluctuations in demand result in pressures on freighting goods into the IOT.

Freight, which includes basic food and postal deliveries are subject to the cost and reliability of air services. Frequent flight disruptions have resulted in mail and fresh produce not being delivered to CKI for weeks. In some cases, mail, even when posted priority, does not reach CKI for months. Mail is regularly off-loaded.

Sea freight to CKI while somewhat more reliable is also subject to weather and other logistic delays. The cost structure for sea freight places pressure on any project, in some projects are not viable due to freight costs. The lack of reliability combined with the excessive cost of freight is a major barrier for local businesses and economic development.

RECOMMENDATION:

Options for more reliable and cost-effective air and sea freight services are considered and made available to residents and businesses on CKI.

Policy and Legislative Implications

S3.18 Local Government Act (WA)(CKI) 1995

Financial Implications

There are no direct financial implications arising from these proposed submissions.

Strategic Implications

Civic Leadership

Risk Implications

Risk Category	Description	Rating (consequence x likelihood)	Mitigation Action
Financial	N/A		
Health & Safety	N/A		
Reputation	Not making a submission could reflect poorly on the Council as leaders and	Moderate (9)	Lodging a submission that addresses strategic issues for the community.

	undermine their ability to advocate on behalf of the community.		
Service Interruption	N/A		
Compliance	N/A		
Property	N/A		
Environment	N/A		
Fraud	N/A		

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple Majority

Conclusion

These inquiries provide an opportunity for the Shire and other interested agencies and community members to inform policy and Australian Government priorities for the Indian Ocean Territories. The Shire's position and recommendations as outlined in this report aims to focus on those issues of highest priority and which could have the most impact on this community in the longer term.

OFFICER'S RECOMMENDATION – ITEM NO 10.4.4

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO S.3.18 OF *THE LOCAL GOVERNMENT ACT (WA)(CKI) 1995* RESOLVES TO:

1. LODGE A SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES INQUIRY INTO ON THE AVAILABILITY AND ACCESS TO ENABLING COMMUNICATIONS INFRASTRUCTURE IN AUSTRALIA'S EXTERNAL TERRITORIES AS OUTLINED IN THE BODY OF THIS REPORT; AND

2. LODGE A SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES INQUIRY INTO ECONOMIC, SOCIAL AND ENVIRONMENTAL SUSTAINABILITY IN THE INDIAN OCEAN TERRITORIES.

COUNCIL RESOLUTION – ITEM NO 10.4.4

MOVED: CR LACY

SECONDED: CR CHARLSTON

THAT COUNCIL, BY SIMPLE MAJORITY, PURSUANT TO S.3.18 OF THE *LOCAL GOVERNMENT ACT (WA)(CKI)* 1995 RESOLVES TO:

1. LODGE A SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES INQUIRY INTO ON THE AVAILABILITY AND ACCESS TO ENABLING COMMUNICATIONS INFRASTRUCTURE IN AUSTRALIA'S EXTERNAL TERRITORIES AS OUTLINED IN THE BODY OF THIS REPORT; AND
2. LODGE A SUBMISSION TO THE JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES INQUIRY INTO ECONOMIC, SOCIAL AND ENVIRONMENTAL SUSTAINABILITY IN THE INDIAN OCEAN TERRITORIES.

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

10.5.1 MINUTES FROM EXTERNAL PKNPCMC COMMITTEE MEETINGS TO BE RECEIVED AND APPOINTMENT OF A SHIRE NOMINATED COMMUNITY REPRESENTATIVE

Report Information

Date: 22 March 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 24 February 2021. Cr Jamil Ibram is the Council appointed Elected Member representative on this Committee.

In addition to the Councillor representative on the PKNPCMC Committee, under the Terms of Reference for this Committee, the Shire will nominate for their vacancies, and Parks Australia for theirs, through an Expression of Interest (EOI) in the Atoll. In late last year Parks Australia advertised an EOI and had one response.

As a result, the PKNPCMC considered suitable members and directly approached Thomas Battcher (Shire Parks and Gardens Officer), Wak Udin, Nek Neng, Lanif Yakin (Visitors Centre Senior Support Officer) and Larissa Powell (CKI School - self-nomination) to invite them to nominate. As a result, Larissa Powell was appointed as the Parks Australia representative. The Shire now has the option of running another Eol or of appointing one of the nominees as the Shire's community representative (not to be confused with the position held by the Elected Member representative). At the last Council meeting held 24 February 2021, Council endorsed the officer's recommendation that the Shire supports the nomination from Thomas Battcher given his interest, experience and current formal studies in the area of horticulture.

Policy and Legislative Implications

Nil

Financial Implications

The Officer's recommendation 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:

1. RECEIVE THE MINUTES OF THE PKNPCMC COMMITTEE MEETING HELD ON THE 24 FEBRUARY 2021.

COUNCIL RESOLUTION – ITEM NO 10.5.1

MOVED: CR HAMIRIL

SECONDED: CR IKU

THAT COUNCIL BY SIMPLE MAJORITY PURSUANT TO SECTION 3.18 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO:

- 1. RECEIVE THE MINUTES OF THE PKNPCMC COMMITTEE MEETING HELD ON THE 24 FEBRUARY 2021.**

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

FOR: ANTHONY, CHARLSTON, HAMIRIL, 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

14.2.1 APPLICATION TO ENTER INTO NEW LEASE – MARSHALL PAINTING SERVICES

Report Information

Date: 23 March 2021
 Location: Lot 24, West Island
 Applicant: Marshall Painting Services
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: L Sloan Asset & Property Management Coordinator
 Island: West Island
 Attachments: 14.2.1 Proposal from Marshall Painting Services

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 Marshall Painting Services to enter into new lease agreement for Part Lot 24 to Council for consideration. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the 1984 Land Trusts as the Land (Part Lot 24) 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 *“the benefit, advancement and wellbeing of Cocos (Keeling) Islanders resident in the Territory on land owned by the Council”* 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

Marshall Painting Services is formally requesting the lease of Trust land at Part Lot 24 West Island in the proximity of the Shire’s three LIA sheds. The proponent is seeking to lease land to construct a storage shed for essential equipment and materials for the business. (See Map on page 2 of the Proposal from Marshall Painting Services.)

The site area is zoned industrial and has been identified as most suitable for the proponent. It is the correct zoning for the use proposed by Marshall Painting Services and collocates similar type businesses.

In their application, Marshall Painting Services has used the template provided by the Shire for smaller commercial leases (see attachment 14.2.1) to address issues previously queried by Council on similar proposals.

Comment

The proponent is a small local business which has been in operation for over 11 years, providing ongoing services and maintenance of residential, Commonwealth and Shire assets and infrastructure.

The proponent has agreed to pay the square metre rate for the annual lease fee at \$1.98 per square metre, 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 10 year with a further 10-year option. However, to be consistent with other leases recently awarded, the officer’s recommendation is for a 5-year plus 5-year option.

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 24) 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. This is anticipated to be approx. \$1,050 based on the square metre rate. In addition, the lessee would be required to pay the shire rate, providing additional revenue for the Land Trust and for 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 an important small business on Island.	Moderate (8)	This item is being progressed as quickly as possible, while still observing legislative requirements.
Service Interruption	N/A	N/A	N/A
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 used in a manner that is 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 is presented to the Trust for consideration and the officer's recommendation is that the request is approved based on supporting a successful small business on Island and on the financial return from the lease to the Land Trust and the Shire.

OFFICER'S RECOMMENDATION – ITEM NO 14.2.1

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 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 24 TO MARSHALL PAINTING SERVICES 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 OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;

- c. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL CONNECTION OF UTILITIES AS REQUIRED;
- d. THE LEASE TERM BEING FOR 5 YEARS WITH 5 YEAR OPTION;
- e. THE PURPOSE OF THE LEASE IS TO PROVIDE ESSENTIAL STORAGE FOR PLANT AND MACHINERY FOR MARSHALL PAINTING SERVICES BUSINESS TO OPERATE AND THAT THE FOLLOWING MILESTONES BE INCLUDED IN THE LEASE:
 - I. A DEVELOPMENT APPLICATION FOR THE SHEDS TO BE LODGED WITHIN 12 MONTHS OF THE LEASE BEING SIGNED.
 - II. LODGE A BUILDING PERMIT WITHIN 6 MONTHS OF THE DATE OF ISSUE OF THE DEVELOPMENT APPLICATION.
 - III. COMMENCE WORK ON THE SHEDS WITHIN 6 MONTHS FROM THE DATE OF ISSUE OF BUILDING PERMIT.
 - IV. THE MARSHALL PAINTING SERVICES BUSINESS COMMENCES OPERATION FROM THE SHED WITHIN 2 YEARS OF THE LEASE BEING SIGNED.
2. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD, AUTHORISE THE CEO TO ENTER THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;
3. THAT IF OBJECTIONS ARE RECEIVED, CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;
4. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN.

COUNCIL RESOLUTION – ITEM NO 14.2.1

MOVED: CR CHARLSTON

SECONDED: CR IKU

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 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 24 TO MARSHALL PAINTING SERVICES 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 OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;**
 - c. **THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL CONNECTION OF UTILITIES AS REQUIRED;**

- d. THE LEASE TERM BEING FOR 5 YEARS WITH 5 YEAR OPTION;
- e. THE PURPOSE OF THE LEASE IS TO PROVIDE ESSENTIAL STORAGE FOR PLANT AND MACHINERY FOR MARSHALL PAINTING SERVICES BUSINESS TO OPERATE AND THAT THE FOLLOWING MILESTONES BE INCLUDED IN THE LEASE:
 - I. A DEVELOPMENT APPLICATION FOR THE SHEDS TO BE LODGED WITHIN 12 MONTHS OF THE LEASE BEING SIGNED.
 - II. LODGE A BUILDING PERMIT WITHIN 6 MONTHS OF THE DATE OF ISSUE OF THE DEVELOPMENT APPLICATION.
 - III. COMMENCE WORK ON THE SHEDS WITHIN 6 MONTHS FROM THE DATE OF ISSUE OF BUILDING PERMIT.
 - IV. THE MARSHALL PAINTING SERVICES BUSINESS COMMENCES OPERATION FROM THE SHED WITHIN 2 YEARS OF THE LEASE BEING SIGNED.
2. THAT SHOULD NO OBJECTIONS BE RECEIVED DURING THE PUBLIC NOTICE PERIOD, AUTHORISE THE CEO TO ENTER THE LEASE AS PER THE SHIRE'S STANDARD COMMERCIAL LEASE TEMPLATE AND WITH THE CONDITIONS AS OUTLINED ABOVE;
3. THAT IF OBJECTIONS ARE RECEIVED, CONSIDER ALL PUBLIC SUBMISSIONS AT THE FIRST ORDINARY MEETING OF COUNCIL FOLLOWING THE CLOSE OF THE PUBLIC SUBMISSION PERIOD;
4. THAT REGULAR INSPECTIONS OF COMMERCIAL TENANCY WILL BE UNDERTAKEN.
5. THAT THE LEASE AREA BE FENCED AND THIS IS INCLUDED AS PART OF THE DEVELOPMENT APPLICATION.

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

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

AGAINST: NIL

REASON FOR AMENDMENT

Council is of the view that marking the property with fencing will help determine boundaries and prevent encroachment.

14.2.2 APPLICATION TO RENEW LEASE FOR PART LOT 24 WEST ISLAND – THOMSON CONSTRUCTION – CONCRETE BATCHING PLANT

Report Information

Date: 17 March 2021
 Location: Part Lot 24 West Island – Thomson Construction – Concrete Batching Plant
 Applicant: Ian Thomson - Thomson Construction
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Leasing Officer
 Island: Home Island
 Attachments: 14.2.1 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 Thomson Construction to renew the lease for Part Lot 24 West 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 24) 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.

Relevant Documents

Available for viewing at the meeting.

Background

Thomson construction have held this lease since 1 January 2011. The Shire wrote to the lessee advising the lease had expired and to seek their intentions moving forward. They have subsequently submitted their request on 7 February 2021 to enter into a new lease agreement.

Comment

The proponent is one of the builders on Cocos Island and have supplied concrete to various construction site on the Island. They employ local contractors when there is a need for this service.

A revaluation has been 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 one (1) year with a further one (1) year option lease.

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 24) 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 \$1,595.76 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 valued 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 is presented to the Trustee 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 1984 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 24 TO THOMSON CONSTRUCTION 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 OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;
 - c. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;
 - d. THE LEASE TERM BEING FOR 1 YEAR WITH 1 YEAR OPTION;
 - e. THAT A CLEAN UP OF THE EXISTING LEASE AREA IS FIRST UNDERTAKEN AND DISUSED MATERIALS REMOVED FROM THE SITE
2. THE PURPOSE OF THE LEASE IS TO CONTINUE OPERATION OF THEIR CONCRETE BATCHING PLANT SERVICE.

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. TO 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 14.2.2

MOVED: CR IKU

SECONDED: CR CHARLSTON

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 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 24 TO THOMSON CONSTRUCTION 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 OF PROPERTY WILL BE FOR "AS IS WHERE IS" BASIS;
 - c. THAT THE PROSPECTIVE LESSEE IS ADVISED THAT THEY WILL BE RESPONSIBLE FOR ALL MAINTENANCE OF THE BUILDING;
 - d. THE LEASE TERM BEING FOR 1 YEAR WITH 1 YEAR OPTION;
 - e. THAT A CLEAN UP OF THE EXISTING LEASE AREA IS FIRST UNDERTAKEN AND DISUSED MATERIALS REMOVED FROM THE SITE
2. THE PURPOSE OF THE LEASE IS TO CONTINUE OPERATION OF THEIR CONCRETE BATCHING PLANT SERVICE.
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. TO ADVISE THE PROSPECTIVE LESSEE THAT, SHOULD ANY OUTSTANDING MONIES BE OWING TO THE SHIRE, THEY ARE TO BE PAID IN FULL.

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

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

Cr Lacy declared Financial interest on item 14.2.3 and left the meeting room at 4.32pm.

14.2.3 EXPRESSIONS OF INTERESTS - RETAIL CENTRE LOT 18

Report Information

Date: 25 March 2021
 Location: Part Lot 18 – Home Island Retail Centre
 Applicant:
 File Ref:
 Disclosure of Interest:
 Reporting Officer: Asset and Property Management Coordinator
 Island: Home Island
 Attachments: 14.2.3 EOI Applications Received
 Retail Precinct Floor Plan

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 to Council for consideration.

Relevant Documents

Available for viewing at the meeting.

Background

The expansion and renovation of the Home Islands Retail Precinct has been in the planning since 2008 and over many years the Shire has continued efforts to secure funding to initiate the project. The purpose of undertaking the project is to provide current retailers with a fit for purpose facility, as well as maintain economic sustainability and development on the islands to meet current but also future economic growth.

In 2020 with the financial support from the Australian Government Economic Stimulus Package, the Shire finally was awarded with the required funding to commence the project. Construction works began in February with an anticipated completion date being December 2021.

In preparation for completion of the expansion to the HI Retail Precinct the Shire advertised in the Atoll Newsletter 11th December 2020 Edition seeking Expressions of Interest for four

new business opportunities as part of the redevelopment of the Home Island Retail Centre.

TENANCY NUMBER	BUSINESS	AREA FOR LEASE	INCLUSION	LEASE VALUE	COMMENTS
1	LAUNDROMAT	16.5 M ²	3 Commercial washing machines; 2 commercial dryers 1 Sink No air conditioner but can be considered if required (pending business model)	Annual lease fee to be determined by an independent market valuation.	A great opportunity for someone wanting to run a customised laundry service for residents and for commercial customers.
2	HAIRDRESSER/ BEAUTICAN	16 M ²	Sink not identified but can be considered if required (pending business) Air conditioner	Annual lease fee to be determined by an independent market valuation.	An ideal opportunity for single business owner or could be offered on a share-base to two or more individuals.
3	BAKERY	22.7 M ²	Sink Air conditioner	Annual lease fee to be determined by an independent market valuation.	
4	RETAIL SPACE	22.8 M ₂	Air conditioner	Annual lease fee to be determined by an independent market valuation.	An open retail space that can be used for a variety of purposes. The Shire is seeking ideas from the community noting that strong preference will be given to new and innovative services and / or retail that creates economic development and supports diversification.

The following new business opportunities were advertised as follows:

Comment

At the end of the submission period eight proposals were received from five applicants. (please refer to attached for each proposal received).

Officers reviewed all the EOI's received and assessed them with the following criteria:

- a. Does this lease further the purpose of the 1979 Trust? 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'.
 1. Will the business increase employment?
 2. Will the business encourage and generate new revenue into the community?

3. Is the service being offered something that is needed? Is there a demand for this service?
4. Has the applicant demonstrated the necessary skills to make this business a success?

All expressions of interest for each tenancy were assess against the above criteria by a working group of Shire Officers. The working groups recommendation for each tenancy is outlined below:

Tenancy 7 – Four applications received.

For the general retail space officers suggest that the proposal from Thomas Battcher and Ummerah Dollar for a gift shop best meets the criteria used for evaluation. The applicant provided a more robust and substantial proposal which better demonstrated their capabilities of running a business than some of the proposals. The product offerings that they outlined are different to product offerings currently available in other shops in the centre and more broadly on Home Island. Their products will target both the local and tourist market with their proposal indicating the sourcing of locally handmade souvenirs not only showcasing local arts and craft but also engaging local artisans, providing economic opportunities to the wider community.

Tenancy 8 – Two application received.

For the bakery space officers suggest that the proposal from Siti Az-Zahra Azah and Azah Badlu best meets the criteria used for evaluation. The applicant provided very thorough, professional and comprehensive proposal. The applicant can also better demonstration the necessary skills for this business with one of the applicants currently completing formal qualifications in this area.

Laundromat – Two applications received.

For the laundromat space officers suggest that the proposal from Muhammad Rawlinson and Suzie Bulka best meets the criteria used for evaluation. The applicants have demonstrated experience running a small business and their proposal for the laundromat was more comprehensive.

Tenancy 3 – Two applications received.

As there were no expressions of interest received for the Hairdresser/Beautician (Tenancy 3), but four received for the general retail space officers looked at those applications to see if any of those could be accommodated in this space. This tenancy has the smallest floor space of any tenancy in the building. When evaluating the three unsuccessful proposals for tenancy seven officers felt that the Community Resource Centre (CRC) application for a “Hot Office”

best meets the criteria used for evaluation. The CRC’s proposal was able to demonstrate existing demand for this service with emails of support from many other agencies.

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.”*

The recommendation to council seeks to begin the formal lease negotiations with each successful applicant and a leasing proposal using the Shire’s template headings will be brought back to council for each tenancy with further details on each lease proposal.

Policy and Legislative Implications

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

Financial Implications

Progressing the Expressions of Interest to formal lease arrangements will result in extra revenue to the trust as determined by the valuations from a registered valuer.

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	No clear process with selecting applicants	Minor (6)	Selection criteria to be clear with selection panel
Service Interruption	N/A	N/A	N/A
Compliance	N/A	N/A	N/A
Property	N/A	N/A	N/A
Environment	N/A	N/A	N/A
Fraud	N/A	N/A	N/A

Risk Matrix

Consequence / Likelihood	Insignificant (1)	Minor (2)	Medium (3)	Major (4)	Extreme (5)
Almost Certain (5)	Moderate (5)	High (10)	High (15)	Extreme (20)	Extreme (25)
Likely (4)	Low (4)	Moderate (8)	High (12)	High (16)	Extreme (20)
Possible (3)	Low (3)	Moderate (6)	Moderate (9)	High (12)	High (15)
Unlikely (2)	Low (2)	Low (4)	Moderate (6)	Moderate (8)	High (10)
Rare (1)	Low (1)	Low (2)	Low (3)	Low (4)	Moderate (5)

Voting Requirements

Simple majority

Conclusion

The 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 14.2.3

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 FORMAL LEASE NEGOTIATIONS WITH THE FOLLOWING APPLICANTS FOR THE FOLLOWING TENANCIES AT THE HOME ISLAND SMALL BUSINESS CENTRE:
 - a. COCOS (KEELING) ISLANDS CRC – TENANCY 3 FOR THE PURPOSE OF A HOT OFFICE
 - b. MUHAMMAD RAWLINSON AND SUZIE BULKA – LAUNDROMAT TENANCY
 - c. THOMAS BATTCHER AND UMMERAH DOLLAR – TENANCY 7 FOR THE PURPOSE OF A GIFT SHOP.
 - d. SITI AZ-ZAHRA AZAH AND AZAH BADLU – TENANCY 8 FOR THE PURPOSE OF BAKERY.

COUNCIL RESOLUTION – ITEM NO 14.2.3

MOVED: CR IBRAM

SECONDED: CR HAMIRIL

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 FORMAL LEASE NEGOTIATIONS WITH THE FOLLOWING APPLICANTS FOR THE FOLLOWING TENANCIES AT THE HOME ISLAND SMALL BUSINESS CENTRE:**
 - a. COCOS (KEELING) ISLANDS CRC – TENANCY 3 FOR THE PURPOSE OF A HOT OFFICE**
 - b. MUHAMMAD RAWLINSON AND SUZIE BULKA – LAUNDROMAT TENANCY**
 - c. THOMAS BATTCHER AND UMMERAH DOLLAR – TENANCY 7 FOR THE PURPOSE OF A GIFT SHOP.**
 - d. SITI AZ-ZAHRA AZAH AND AZAH BADLU – TENANCY 8 FOR THE PURPOSE OF BAKERY.**

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

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

AGAINST: NIL

Cr Lacy returned to the meeting room at 4.36pm.

14.3 TRUSTS FINANCE

Nil

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

15.1 COCOS BORONIA RESORT - APPLICATION TO SEEK EXTENSION OF DEADLINE TO EXECUTE LEASE FOR PORTION OF LOT 103, DIRECTION ISLAND

Report Information

Date: 31 March 2021
 Location: Portion of Lot 103 Direction Island
 Applicant:
 File Ref:
 Disclosure of Interest: Nil
 Reporting Officer: Acting Chief Executive Officer
 Island: Direction Island
 Attachments: 14.2.3 Cocos Boronia Resort Pty Ltd letter

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 from Cocos Boronia Resort (CBR) in which CBR seeks an extension to the timeframe for executing the lease on a portion of Lot 103, Direction Island. It should be noted that Council, in this instance, is acting in its capacity as the Trustee of the 1984 Land Trusts as the Land (part Lot 103) 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 *“the benefit, advancement and wellbeing of Cocos (Keeling) Islanders resident in the Territory on land owned by the Council”* 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

Cocos Boronia Resort initially approached the Shire with a concept for a resort on Direction Island in November 2017. Late in 2018, Mr Blakeman once again approached the Shire to discuss options and the process. The matter was considered by Council formally in January 2019 and the Council resolution to commence negotiations triggered a community and stakeholder engagement process and the development of a full business plan.

After many months of deliberation that considered information from stakeholders and the community, Council, at its Ordinary Meeting on 25 March 2020, resolved to proceed with a lease, subject to various strict conditions.

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 LAND TRUST BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE LOCAL GOVERNMENT ACT 1995 (WA) (CKI) RESOLVES TO:

- 1. RECEIVE THE PUBLIC SUBMISSIONS LODGED IN RESPONSE TO STATUTORY ADVERTISING OF THE INTENT TO DISPOSE (BY LEASE) OF A PORTION OF LOT 102 DIRECTION ISLAND;**
- 2. NOTE THAT NO SUBMISSIONS WERE RECEIVED IN RESPONSE TO THE ADVERTISED BUSINESS CASE;**
- 3. DISPOSE (BY LEASE) OF A PORTION OF LOT 102 DIRECTION ISLAND GIVING A TOTAL LEASE AREA OF 16.116 HECTARES TO COCOS BORONIA RESORT FOR THE PURPOSE**

OF DEVELOPING A LUXURY ECO-RESORT AS PER THE FOLLOWING LEASE CONDITIONS:

A. LEASE PAYMENTS AS PER THE FOLLOWING SCHEDULE:

- i. \$100,000 ONCE-OFF UPFRONT PAYMENT AT THE COMMENCEMENT OF THE PRE-CONSTRUCTION PHASE. PRE-CONSTRUCTION IS DEFINED AS THE PERIOD FROM THE DATE THE LEASE IS EXECUTED UNTIL THE DATE THE SHIRE ISSUES A BUILDING PERMIT UP TO A MAXIMUM OF 18 MONTHS AFTER WHICH A \$5,000 MONTHLY FEE WILL BE ALSO PAYABLE;**
- ii. \$10,000 PER MONTH DURING THE CONSTRUCTION PERIOD;**
- iii. \$225,000 PER ANNUM LEASE FEE POST CONSTRUCTION AS DETERMINED BY THE INDEPENDENT PROFESSIONAL VALUATION BY OPTeon AND SUBJECT TO ANNUAL CPI OR MARKET REVIEW;**

B. LEASE TERM OF 40 YEARS PLUS 20 YEARS PLUS 20 YEARS;

C. THE LEASE APPLICATION IS MADE BY COCOS BORONIA RESORT PTY LTD, A WHOLLY OWNED SUBSIDIARY OF INDIAN OCEAN LEISURE PTY LTD;

D. NOTE THAT COMMONWEALTH SANCTION WILL BE REQUIRED PRIOR TO THE LEASE BEING EXECUTED.

4. SUBJECT TO POINT 'D' ABOVE (BEING THE RECEIPT OF COMMONWEALTH SANCTION FOR THE LEASE) EXECUTE THE LEASE WITHIN 9 MONTHS FROM THE DATE OF THIS COUNCIL RESOLUTION OR WITHIN TWO WEEKS OF THE OVER THE WATER LEASE BEING SECURED, WHICHEVER IS THE SOONER.

5. FORMALLY APPROACH THE ASSISTANT MINISTER OF THE TERRITORIES TO PROVIDE THE SHIRE WITH A LEASE FOR THE OVER THE WATER SECTION OF 7.110 HECTARES FOR THE SHIRE TO SUB-LEASE TO COCOS BORONIA RESORT PTY LTD ALLOWING THE SHIRE TO MANAGE THE WHOLE PROPOSAL.

Condition Number 4 requires that CBR and the Shire execute the lease within nine months of the Council resolution on 25 March – i.e. by 25 December 2020 or within two weeks of the over the water lease being secured, whichever is the sooner. At the December 2020 Ordinary Council Meeting Council granted an extension to the deadline to execute the lease in response to a commitment by the Department of Infrastructure, Transport and Regional Development to have the over water lease finalised by Q1 2021.

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 LAND TRUST DEED, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO APPROVE THE REQUEST FROM COCOS BORONIA RESORT FOR AN EXTENSION FOR THE EXECUTION OF THE LEASE FOR FOUR MONTHS FROM 9 DECEMBER 2020 (I.E. THE DATE OF THIS COUNCIL MEETING) MAKING 9 APRIL 2021 THE NEW DEADLINE FOR THE LEASE TO BE EXECUTED.

Comment

The Shire and CBR have discussed this approaching deadline several times over the past months. The Shire is aware that CBR has also made several attempts to progress this matter via the Department of Infrastructure, Transport and Regional Development (Department). On 9 November, the Assistant Secretary wrote to the Shire President in relation to the deadline and advised that the Department is progressing the various relevant legal and administrative processes for the over the water component but that the matter is complex. The letter stated that the Department anticipates that the process will be finalised by the first quarter of 2021.

The Shire has been in communication with the Department as the end of Q1 2021 comes to a close. The Shire was verbally advised that a meeting on the 15th of March was taking place to progress the matter. An email was received from the Assistant Secretary of the IOT Branch of the Department on the 15th of March advising that whilst a decision had been made they needed to wait for formal sign off by the Chair of the operations committee to be able to communicate the decision but that this should only take a few days.

No communication had been received by the Shire by the 29 March so an update was requested. A teleconference was held on the 31 March with the Assistant Secretary which confirmed that the Department would not be in a position to finalise the over water lease by the end of Q1 2021 as originally anticipated. Whilst the Shire have received no formal communication as yet as to when finalisation is likely to occur it was advised that there are still a number of stages to progress through before a lease can be executed for the overwater portion and this is likely to take some time.

The Shire notes this delay with disappointment particularly as the initial discussions regarding the potential over water lease commenced in at least September 2019. Noting the importance of economic stimulus to mitigate the impact of Covid-19 on the economy of the IOT, it would be reasonable to expect a large private sector investment in the CKI economy would have been given some priority and not required an extension. However, the requirement for an extension is supported by the officer in recognition that the matter is beyond the control of CBR.

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

While there are financial implications and benefits arising from the potential lease as outlined below, the delay will not have an impact on the Shire's finances as funds were not included in the expected revenue for the 2020/21 financial year.

Land Trust:

The Land Trust would receive \$225,000 per annum once the resort is constructed and \$10,000 per month while it is under construction. During the pre-construction period the trust would receive a \$100,000 up front payment while in the due diligence phase of the project capped at 18 months with \$5,000 / month payments thereafter if due diligence extends past this period.

Shire:

The Shire would raise rates based on a valuation from the Valuer General from the time the lease is executed. The Shire would potentially also receive additional revenue for community programs in years that a target occupancy threshold is met.

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	That the project does not proceed if the water area lease is not approved in a timely manner, thus losing this revenue for the Trust and the Shire.	Moderate (6)	The Shire continues to proactively engage with the Assistant Minister to progress these items.
Health & Safety	N/A	N/A	N/A
Reputation	Should the project not proceed or fail, the Shire's reputation could be damaged.	Low (3)	Clear communication that the project is not guaranteed, and that the due diligence is a legitimate step to

			assess the project's viability.
Service Interruption	N/A	N/A	N/A
Compliance	Any deviation from legislation will expose the Shire and the project.	Low (3)	Process to-date has been compliant and there are processes in place to ensure compliance with legislation.
Property	N/A	N/A	N/A
Environment	The project has a negative impact on the environment.	Low (4)	The project will require full Environmental assessments and approvals before proceeding.
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 an extension to the period for the execution of the lease is presented to Council for consideration and the officer's recommendation is that the request is approved as the delay is of no fault of CBR.

OFFICER'S RECOMMENDATION – ITEM NO 15.1

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 LAND TRUST DEED, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI)* 1995 RESOLVES TO EXTEND THE DEADLINE FOR THE EXECUTION OF THE LEASE FOR TWELVE

MONTHS FROM 31 MARCH 2021 (I.E. THE DATE OF THIS COUNCIL MEETING) MAKING 31 MARCH 2022 THE NEW DEADLINE FOR THE LEASE TO BE EXECUTED.

COUNCIL RESOLUTION – ITEM NO 15.1

THAT COUNCIL ACTING IN ITS CAPACITY AS TRUSTEE OF THE 1984 LAND TRUST DEED, BY SIMPLE MAJORITY, PURSUANT TO SECTION 3.58 OF THE *LOCAL GOVERNMENT ACT (WA) (CKI) 1995* RESOLVES TO EXTEND THE DEADLINE FOR THE EXECUTION OF THE LEASE FOR TWELVE MONTHS FROM 31 MARCH 2021 (I.E. THE DATE OF THIS COUNCIL MEETING) MAKING 31 MARCH 2022 THE NEW DEADLINE FOR THE LEASE TO BE EXECUTED.

MOVED: CR LACY

SECONDED: CR CHARLSTON

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

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

AGAINST: NIL

