

DIS062: PETITIONS RELATING TO THE GAZETTAL OF LAKE MULLOCULLUP FOR WATER SKIING (RESERVE 16367)

Land Description	: City of Albany Managed Reserve 16367 (Lake Mullocullup).
Proponent / Owner	: City of Albany (Land vested in the care and control of the City of Albany).
Attachments	: <ul style="list-style-type: none">• Management Order• CALM Report 1980
Report Prepared By	: Manager Governance & Risk (S Jamieson) Executive Director Infrastructure & Environment (M Thomson)
Responsible Officers:	: Executive Director Infrastructure & Environment (M Thomson)

STRATEGIC IMPLICATIONS

1. This item relates to the following elements of the City of Albany Strategic Community Plan or Corporate Business Plan informing plans or strategies:
 - **Themes:** 1: Leadership & 3: Clean, Green and Sustainable
 - **Objectives:**
 - 1.3: To engage effectively with our community.
 - 3.1: To protect and enhance our natural and built environment in a changing climate.
 - **Community Priorities:**
 - 1.3.1: Develop structures and processes that engage the community and engender community confidence, and trust that their input is valued and used to inform decisions and priorities.
 - 3.1.2: Sustainably protect and enhance our iconic coastline, reserves flora and fauna by delivering projects and programs that reflect the importance of our coastline and natural reserves.

In Brief:

- To note further information in relation to petitions and submissions received objecting to the gazettal of Lake Mullocullup for water skiing.

Maps and Diagrams:



Lake Mullocullup – off Warriup Road, Green Range

RECOMMENDATION

DIS062: RESPONSIBLE OFFICER RECOMMENDATION

THAT the Responsible Officers Report be NOTED.

BACKGROUND

2. On 22 August 2017 Council resolved:

“THAT Council SUPPORT the gazettal of Lake Mullocullopp by the Department of Transport for the purpose of allowing the operation of speed boats, excluding jet skis, subject to the following:

- That the City monitor the use of the lake and review the requirement for a permit system twelve months after gazettal;*
- That City staff consult with the local Noongar Community and adequately address any concerns raised concerning the use of the lake;*
- An annual environmental monitoring program be developed by the City. The results of the monitoring shall be reviewed every two (2) years;*
- That Council temporarily permit the use of Speed Boats (excluding jet skis) pending the Department of Transport gazettal process being undertaken.”*

3. Subsequent to this resolution, Council has received submissions and petitions objecting to the proposed gazettal.

4. On 31 October 2017 Council resolved:

“THAT:

- The Petition lodged with the City of Albany by Ms Carole Pettersen objecting to the proposed gazettal of Lake Mullocullopp, and requesting suspension of any further move to have Lake Mullocullopp gazetted for motorised water vehicles be RECEIVED;*
- The submission signed by 25 members of the public opposing gazettal of Lake Mullocullopp be NOTED; and*
- The Petition lodged with the City of Albany by VJ Van Den Berg to rescind the resolution of Council to gazette Lake Mullocullopp to allow power boats and water skiing be RECEIVED.”*

5. The first petition lodged by Ms Carol Pettersen, a local Noongar Elder and signed by 21 other ‘Old Peoples’ with ancestral connections, cited the following concerns:

- The Councillors had not been fully informed of the connection the Noongar peoples have to the lake and its surrounds.*
- The term ‘meeting place’ used by Councillors, due to the lake being used for skiing for 30 years, could be misinterpreted and misleading.*
- No satisfactory or full consultation was undertaken with the local Noongar community.*

6. The second petition was lodged by VJ Van Den Berg and 45 others who consist of land owners, environmental specialists and members of the public expressed the view that Council:

- Have been ill informed of the history of the reserve and Lake Mullocullopp.*

- *Is in breach of the Land Administration Act 1997 as the reserve is currently gazetted for camping and conservation of flora and fauna. Historically the lake has been used for water and camping for the movement of stock.*
- *Do not have management plan for the reserve and the conservation, environmental and heritage issues have not been considered relating to the use for water skiing which presents an unacceptable threat to the environment of the land and reserve as a whole.*

DISCUSSION

7. Reserve (16367) is vested in the City of Albany's care and control in accordance with the listed land uses detailed on the Management Order (copy attached).
8. The City Officers believe there is no current legal impediment for allowing water skiing on the body of water located on the Mullocullup Nature Reserve (16367) as it is consistent with its existing land use.
9. This land use has been documented as being used for water skiing for many years (see CALM reported dated 1980 attached).
10. On 10 November 2017, the City was advised by the Department of Planning, Lands and Heritage:

“The Office of the Minister for Lands has received a number of submissions on Council’s resolution with respect to seeking to manage water skiing/motorised watercraft activities within the reserve. My comments below reflect the position taken by the Department in providing information to the Minister on those submissions.

I note that in some documents reference is made to the reserve purpose being “Camping and Conservation of Flora and Fauna”. The current designated purpose of the reserve is “Water, Camping and Conservation of Flora and Fauna”.

The Land Administration Act 1997 (LAA) enables a management body (in this case the City) to manage a reserve for the designated purpose and for purposes ancillary or beneficial to that purpose. Given the overall purpose of the reserve, recreation is viewed as an ancillary use and is considered appropriate. The Department acknowledges it is clear the City is attempting to manage a recreational use that has occurred unrestricted over many years.

In responding to individual approaches it receives the Department will encourage those parties to work with the City in seeking appropriate management arrangements which can limit the impact on conservation, heritage and other values of the reserve while enabling the ongoing access to and use and enjoyment of the reserve by the community.

It seems appropriate that going forward the City at some stage consider the development of a management plan for the reserve (if that does not already exist) which guides the longer term management of the site.”

11. In respect to the concerns raised in the petitions the following comments are provided for information:

a. Noongar Consultation:

- In accordance with Council’s resolution, City officers are bound to conduct consultation with local Noongar people and address concerns raised.

- At the time of writing this report the City Officers are in the process of engaging an independent consultant to facilitate this consultation.
- The outcome of this consultation will inform the process as to whether to proceed with the gazettal.

b. Assertion of Council not being informed:

- Councillors have been presented with multiple reports and have had the opportunity to attend a site visit.

c. Compliance with *the Land Administration Act 1997*:

- The City Offices have formerly requested clarification from the Department of Lands concerning the reserves purpose.
- The purpose of this letter is to seek clarification from the Department, to ensure there are no current legal or other impediments (i.e. Native Title) that would preclude the gazettal process from being advanced.
- It is agreed that a management plan for the reserve is required, however until the City has conducted appropriate environmental monitoring, a management plan is not likely to be well informed.

GOVERNMENT & PUBLIC CONSULTATION

12. Detailed in discussion section of the report.

STATUTORY IMPLICATIONS

13. There are no statutory requirements related to this item.

POLICY IMPLICATIONS

14. Not applicable to this report.

RISK IDENTIFICATION & MITIGATION

15. It is acknowledged that it is vital for Councils establish a framework to effectively, efficiently and transparently manage areas of public land vested in their care and control.
16. There are no risks associated with Council noting this report.
17. The risk identification and categorisation relies on the City’s Enterprise Risk and Opportunity Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Financial & Community:</i> <i>Non consideration of the subject reserves first use and current use could result in inappropriate or unmanageable conditions, which may expose the City to being legally and physically challenged.</i>	<i>Likely</i>	<i>Moderate</i>	<i>High</i>	<i>Note the concerns raised.</i> <i>City staff to follow up on the actions as previously resolved and report back to Council if there matters which cannot be addressed.</i>

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
Reputation: Considering the concerns raised in the petitions and submissions in isolation may be perceived negatively by some community members.	Likely	Moderate	High	Note the concerns raised and acknowledge that Crown Land Management is an emotive issue that generates significant community interest. City staff to follow up on the actions as previously resolved and report back to Council if matters raised cannot be addressed.
Opportunity: The opportunity to clarify and seek an independent assessment of the City actions will inform both Council and staff.				

FINANCIAL IMPLICATIONS

18. Not applicable.

LEGAL IMPLICATIONS

19. Not applicable.

ENVIRONMENTAL CONSIDERATIONS

20. Noting previous reports on this matter, there are no additional or new environmental implications.

ALTERNATE OPTIONS

21. This report is for information only, therefore there are no alternate options.

CONCLUSION

22. The petitions and submissions raise a range of concerns concerning water skiing activities on Lake Mullocullop.

23. Council's previous resolution addresses the concerns through consultation and monitoring.

24. The City has sought advice and has confirmed that it has not breached the reserve purpose and non-compliance with the *Land Administration Act 1997*.

Consulted References	:	<ul style="list-style-type: none"> • <i>Land Administration Act 1997</i> • <i>Local Government Act 1995</i> • Management Order • CALM Reports
File Number (Name of Ward)	:	CR.COC.42 (Kalgan Ward)
Previous Reference	:	OCM 22 August 2017, Resolutions DIS035 & DIS036