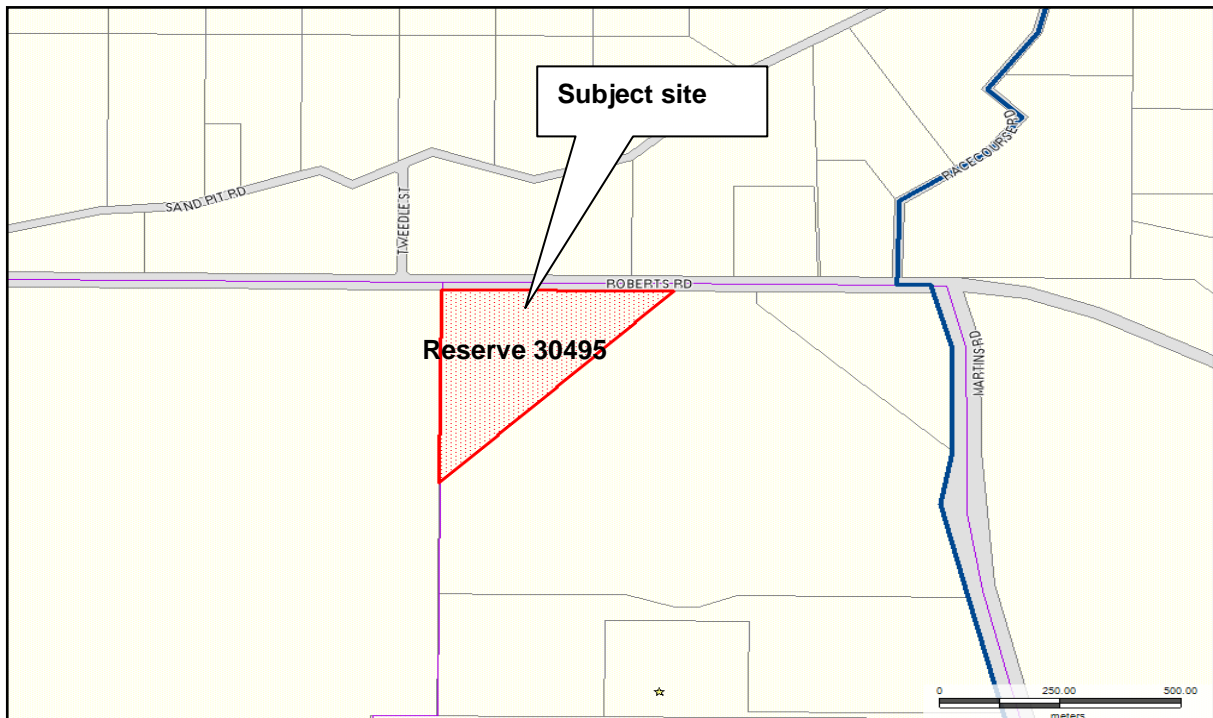


2.3: ALBANY MOTORCYCLE CLUB INC – SURRENDER LEASE OVER RESERVE 30495 AND NEW LEASE OVER PORTION OF RESERVE 1947

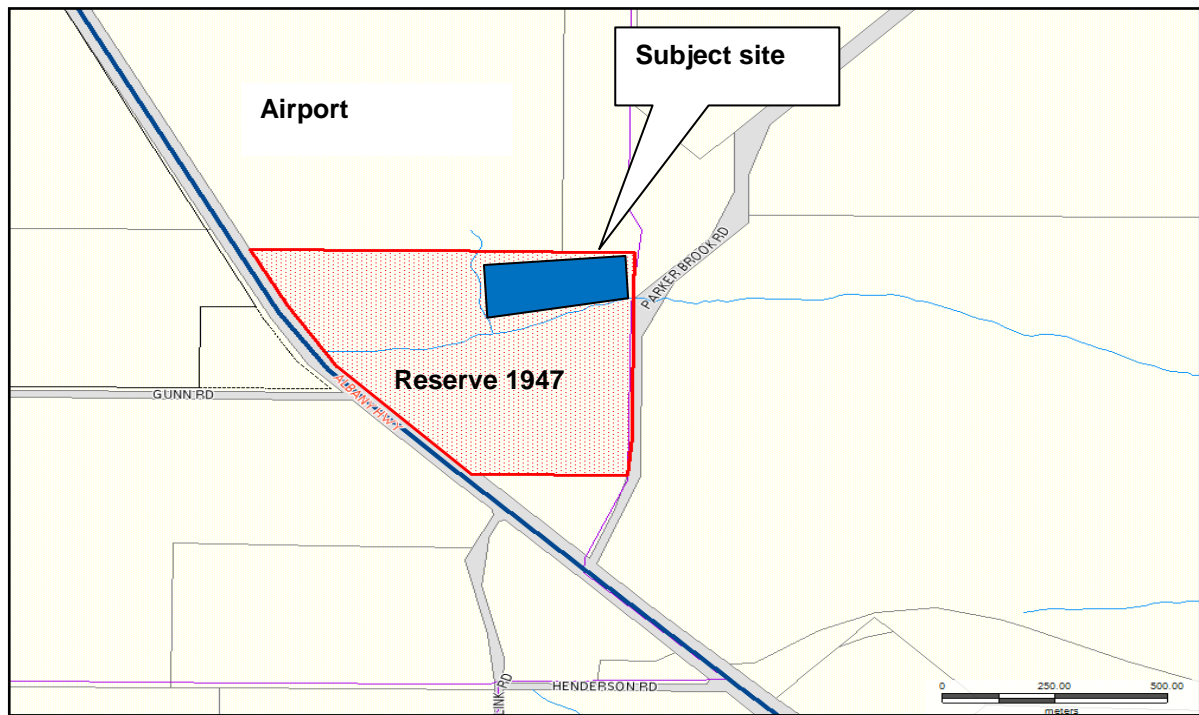
- Land Description** : Lot 7153 on Plan 210841 and being whole of land contained in Certificate of Title LR3082 Folio 763 – Reserve 30495 Roberts Road, Robinson
Lot 8122 on Plan 26510 and being whole of the land contained in Certificate of Title LR3124 Folio 121 – Crown Reserve 1947 Parker Brook Road, Willyung
- Proponent** : Albany Motorcycle Club Inc.
- Owner** : Crown
- Attachment(s)** : Letter of Request – Albany Motorcycle Club Inc.
- Appendices** : Great Southern Motorplex concept plan
- Responsible Officer** : Acting E/Director Corporate & Community Services (P Wignall)

Maps and Diagrams



CEO:

RESPONSIBLE OFFICER:



IN BRIEF

- Consider request to surrender existing lease for Albany Motorcycle Club Inc. over Reserve 30495 located at Roberts Road, Robinson.
- Consider request for a new lease for Albany Motorcycle Club Inc. over portion of Reserve 1947 located at Parker Brook Road, Willyung.
- Lease term to be 10 years for purpose of establishment of grounds suitable for the riding of motorcycles and conducting motorcycle events.

ITEM 2.3: RESPONSIBLE OFFICER RECOMMENDATION

The request from the Albany Motorcycle Club Inc. to surrender existing lease over Reserve 30495 and a new lease over portion of Reserve 1947 be **SUPPORTED** subject to:

1. Lease surrender date to be as soon as practical.
2. Lease surrender subject to remediation of Reserve 30495 to the satisfaction of the City of Albany.
3. All costs associated with the remediation of Reserve 30495 to be payable by the proponent.
4. Lease term being 10 years commencing as soon as practical.
5. Lease purpose being establishment of grounds suitable for the riding of motorcycles and conducting motorcycle events.
6. Lease rental being equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.
7. All relevant approvals including Planning Scheme Consent being obtained prior to development or riding activities within the leased area.
8. Lease area being approximately 5 hectares, and not encroaching on Aboriginal Heritage listed creek site.

9. The Club received the approval of the appropriate Departments (State and Commonwealth) regarding usage of land next to an Aboriginal Heritage listed site.
10. Lease is subject to a 5 metre access easement for Grange Resources pipeline.
11. Lease special condition will provide for the relinquishment of the lease once the Great Southern Motorplex Group has obtained all necessary approvals and is in a position to undertake the responsibility for the lease and management over the entire Reserve 1947 for development of the Motorsport complex.
12. Section 3.58 of the *Local Government Act 1995*, advertising requirements.
13. Section 18 of the *Lands Administration Act 1997*, Minister for Lands consent.
14. All costs associated with the development, maintenance and operations of the leased area to be payable by the proponent.
15. All costs associated with the development, execution and completion of the surrender and new lease to be payable by the proponent.

ITEM 2.3: RESOLUTION (Responsible Officer Recommendation)

MOVED: COUNCILLOR SUTTON

SECONDED: COUNCILLOR WOLFE

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 10-0

BACKGROUND

1. Reserve 30495 is under a Management Order H645992 and Reserve 1947 is under a Management Order H680343 issued to the City of Albany (the City) with the power to lease, sub-lease or licence for the purpose of "Recreation" for any term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. Reserve 30495 is located at Lot 7153 Roberts Road, Robinson and is west of the Albany Town centre. The surrounding area is predominately rural in nature with houses well spread out.
3. Reserve 1947 is located at Lot 8122 Parker Brook Road, Willyung, adjacent to, and south of, Albany Regional Airport. The surrounding area is also rural in nature with houses well spread out.
4. In 1992 the former Shire of Albany granted a new lease to the Albany Motorcycle Club Inc. (the Club) over Reserve 30495 for the purpose of the establishment of grounds suitable for the riding of motorcycles and conducting other motorcycle events.
5. The leased area is commonly referred to as Miniup Park.
6. The lease term of 21 years commencing 1 July 1992 and expiring 30 June 2013 returns a nominal rental of \$10.00 per annum.

7. The Club developed the motocross track and infrastructure upon the Reserve. This includes the 1.7 km riding track, toilet block, timing tower and canteen facilities with undercover patio. Both timing tower and canteen are designed so that they are easily demountable.
8. In recent years the City has received numerous complaints regarding various aspects of the Club's operations. Several of those complaints related to noise.
9. In 2008 the City, with the support of the Department of Environment and Conservation undertook noise measurements of the Club's motocross activities. On the basis of the results the City issued the Club with an Environment Protection Notice (EPN) on 14 November 2008.
10. The EPN prevents the Club from using the site and the Notice provisions required the Club to reduce noise emissions so that they meet the requirements of the *Environmental Protection (Noise) Regulations* by way of preparation and implementation of a plan to abate noise and monitor the effectiveness of the actions taken.
11. The Club appealed the Notice to the Minister for Environment, the Minister in determining the appeal allowed the Club to operate for ten days in the 2009 calendar year. This provided the opportunity for the Club to further monitor noise and to prove to the City and Minister that the Club's activities could be carried out in compliance of the regulations.
12. The report provided on by Lloyd George Acoustics Pty Ltd in December 2009 on further noise monitoring confirmed earlier investigations by the City that the level of noise emanating from the site is well in excess of the noise levels prescribed under the regulations.
13. The EPN remains in force until the Notice is removed or complied with.
14. At OCM 20 April 2010, Council supported the Club operating a further ten days in the 2010 calendar year on the same basis as 2009.
15. In January 2011, the Club wrote to the City requesting approval to hold two non-complying events under Regulation 18 of the *Environmental Protection (Noise) Regulations 1997* within their existing lease area on Reserve 30495, Roberts Road, Robinson.
16. Council considered the request at OCM 15 February 2011 and resolved to undertake community consultation with residents and property landowners within a radius of 1.5km. This matter will be reported to this Council meeting under separate Planning and Development Services Item 1.9.
17. Following a meeting with City staff and subsequent discussions with the Great Southern Motorplex Group, on 21 February 2011 the City received written correspondence from the Club formally requesting a new lease over portion of Reserve 1947 for a term of 10 years and the surrender the existing lease over Reserve 30495. The date of surrender of the lease will be subject to the outcome of Council Item 1.9 decision regarding the two non-complying events being held in 2011 on the existing lease area.
18. Pursuant to the existing lease obligations the Club will be required to remediate the lease area including removal of infrastructure, tyres and revegetate the site prior to lease being

surrendered. The Club is aware of this obligation and have been in discussion with City staff on this matter.

19. The Club has requested the new lease area of approximately 5 hectares be in accordance with the Great Southern Motorplex concept plan which was supported by Council at OCM 15 February 2011.
20. The Club have advised that the proposed lease area will not encroach on the Aboriginal Heritage listed creek site which runs through the middle of Reserve 1947 from Albany Highway to Parker Brook Road boundaries. Planning Scheme Consent condition will require the Club to consult with the Department of Indigenous Affairs and gain approval under Section 18 of the *Aboriginal Heritage Act 1972*, if required.
21. The Albany City Kart Club lease area is currently located partially over the Aboriginal Heritage listed creek site. Minister for Indigenous Affairs approval under Section 18 of the *Aboriginal Heritage Act 1972* forms part of the Planning Scheme Consent P2105312 conditions, issued by the City's Planning team on 22 February 2011.
22. At OCM 15 February 2011, associated resolution of Council approved, subject to Minister for Lands consent, the Albany City Kart Club Inc. surrender of their existing lease over the whole of Reserve 1947 and simultaneously replace with a new lease over a portion of Reserve 1947 for a term of ten years. The Albany City Kart Club must obtain all approvals prior to commencing any track extension works.
23. The Albany City Kart Club surrender of lease over the whole of Reserve 1947 facilitates the relocation of the Albany Motorcycle Club from their existing location on Reserve 30495 to Reserve 1947, subject to conditions and Council and Minister for Lands consent.
24. Both the Albany City Kart Club and Albany Motorcycle Club agree to relinquish their leases over Reserve 1947 once the Great Southern Motorplex Group Inc. has obtained all necessary approvals and is in a position to undertake the responsibility for the lease and management over the entire Reserve for development of the Motorsport complex.
25. The Great Southern Motorplex Group Inc. is a incorporated body consisting of the following four motorsport entities:
 - i. Albany City Kart Club Inc.
 - ii. Albany Motorcycle Club Inc.
 - iii. Great Southern Street Machine Association Inc.
 - iv. Albany Motorsport Group Inc.
26. Council in 2009 provided in-principle support for the concept of the development of the Motorsport Complex subject to achievement of conditions and Council's satisfaction. This support was again confirmed at OCM 15 February 2011.

DISCUSSION

27. Any new lease for the Albany Motorcycle Club and proposed future Great Southern Motorplex Group will include a provision for a 5 metre access easement that is required over the northern boundary of Reserve 1947 for the approved Grange Resources pipeline.

28. The Albany Motorcycle Club and Great Southern Motorplex Group have been made aware of and agree to this requirement.
29. In addition, the proposed new lease to the Albany Motorcycle Club will be subject to Minister for Lands consent and City of Albany as local authority Planning Scheme Consent approval.
30. Planning Scheme Consent will also address all of the following conditions resolved by Council at OCM 17 February 2009 and confirmed at OCM 15 February 2011:
 - a. *'Environmental Noise Impact Assessment' demonstrating the design and management/ operational measures required and the ability of the concept to meet:*
 - *Environmental Protection Authority (EPA) Environmental Impact Assessment Requirements;*
 - *Requirements of the Environmental Protection Act 1986; and*
 - *Requirements of the Environmental Protection (Noise) Regulations 1997.*
 - b. *Site Design and Full 'Environmental Management Plan' of sufficient detail to be submitted to the EPA for Environmental Impact Assessment Approval.*
 - c. *Approval of the Site Design and 'Environmental Management Plan' by the EPA.*
 - d. *A facility/ operational management plan specifying and demonstrating the sustainable operation of the facility including but not limited to:*
 - *operation and functionality of the site management group*
 - *responsibilities and entitlements of co-located tenants*
 - *driver education and training facilities*
 - *noise management*
 - *waste management*
 - *water management*
 - *facility access and security management*
 - *asset maintenance and management*
 - *reserve flora and fauna management*
 - *principles for major event management at the site*
31. The Club has been advised that no development and or riding of motorcycles within the new lease area will be allowable until all approvals and Planning Scheme Consent conditions have been satisfied and the lease has been agreed and executed by all parties.
32. After reviewing the Reserve it was determined that it is preferable for the Albany Motorcycle Club to access the proposed new lease area from Parker Brook Road as the Albany City Kart Club Inc. will retain lease access from their existing front access off Albany Highway. This reduces the traffic directly from and to Albany Highway and avoids any sharing of access roads and gates
33. The proposed new lease will be negotiated in line with Council's Policy – Property Management – Leases for this category of lease.

PUBLIC CONSULTATION / ENGAGEMENT

34. Section 3.58 of the Local Government Act 1995 deals with the disposal of property including leased land and buildings.

35. This Section requires there to be local public notice of the proposal for a period of two weeks inviting submissions from the public. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes.
36. Section 30 of the *Local Government (Functions & General) Regulations 1996* deals with dispositions to which the advertising requirements of section 3.58 of the Act does not apply. Section 30 (2) (b) (i & ii) states that Section 3.58 of the Act is exempt if:
 - (b) *The land is disposed of to a body, whether incorporated or not –*
 - (i) *the object of which are charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and*
 - (ii) *the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;*
37. The Albany Motorcycle Club is a not for profit sporting association, therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.
38. However, given the nature of the request and implications for residents and landowners within the vicinity it is recommended the proposed lease be advertised for a period of two weeks inviting submissions from the public. Any submissions received will be considered by Council.
39. An application for Planning Scheme Consent for a permitted use does not require advertising however public comments can be sought if deemed appropriate.

STATUTORY IMPLICATIONS

40. Section 18 (1) of the *Land Administration Act 1997* states that a person must not, without the prior approval in writing of the Minister assign, sell, transfer or otherwise deal with interests on crown land.
41. As this is Crown land, under a Management Order H680343 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Recreation", Minister for Lands consent will be required.
42. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
43. Under the City's Town Planning Scheme 3, the area is zoned "Parks and Recreation". The proposed use for motorcycle riding activities and events is permitted use in accordance with the Scheme.
44. The Western Australian Planning Commission (WAPC) consent is not required as this is Crown land.

FINANCIAL IMPLICATIONS

45. All costs associated with the development, execution and completion of the new lease documentation including but not limited to legal, advertising, survey and market valuation (if required) will be borne by the proponent.
46. The new lease rental fee will be equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.
47. The new lease rental will be directed to COA 190430 Income – Other Leases.

POLICY IMPLICATIONS

48. Council adopted a Property Management - Leases Policy in 2007. This policy aims to ensure that all requests for leases, for whatever purpose, will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.
49. The Policy section relevant to this category of lease – Sporting Associations requires the following:
 - Crown Reserve leases with or without City owned buildings on site, will incur a rental based on minimum land rate as set by Council per annum;
 - Must be Incorporated bodies and a copy of their Articles of Association/Constitution be provided;
 - Lease to be for a term not greater than 21 years;
 - Rental/Sublease agreements must be approved by the landlord;
 - Must have appropriate insurance pertaining to their particular sport, as a minimum; and
 - Maintenance of grounds/leased area is to be undertaken by the Lessee at the Lessee's cost.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

50. Council has the following options in relation to this item, which are:
 - a. Approve the request for a new lease over portion of Reserve 1947 subject to Planning Scheme Consent conditions being satisfied; and
 - b. Approve the request to surrender the existing lease over Reserve 30495 subject to lease obligations to remediate the lease area being fulfilled; or
 - c. Decline the request for a new lease; and
 - d. Decline the request to surrender the existing lease.
51. Council has previously provided in-principle support for the Motorsport Complex proposal on Reserve 1947 which requires the relocation of the Albany Motorcycle Club to this site subject to conditions.
52. Should Council decline the request for a new lease, the Albany Motorcycle Club could request Council to approve additional limited use of the existing track subject to community consultation, however this option does not provide the Club with sufficient use for rider training and events.

53. The Club has indicated if a new lease is not approved they may be forced to disband as the EPN prevents the Club from using the Miniup Park track and remains in force until removed or complied with.
54. Should Council decline the request to surrender the existing lease, the Albany Motorcycle Club Inc lease would remain static until expiry on 30 June 2013, however the Club is prevented from using the track.

SUMMARY CONCLUSION

55. Given Council has previously provided in-principle support for Motorsport Complex, which provides for the relocation of the Albany Motorcycle Club to Reserve 1947 and the opportunity for the Club to be situated in a more suitable location, the Albany Motorcycle Club Inc. request to surrender the existing lease over Reserve 30495 and a new lease over portion of Reserve 1947 for a term of 10 years is recommended, subject to conditions.

Consulted References	<ul style="list-style-type: none">• Council's Policy – Property Management – Leases• <i>Local Government Act 1995</i>• <i>Land Administration Act 1997</i>
File Number (Name of Ward)	PRO176 (West & Kalgan Ward)
Previous Reference	OCM 01.07.1992 OCM 17.02.2009 Item 12.8.2 Recommendation 6 OCM 16.06.2009 Item 18.2 OCM 16.02.2010 Item 13.6.1 Recommendation 4 OCM 24.04.2010 Item 19.5 OCM 15.02.2011 Item 2.6