

**5.3: RESERVE 23579 HAY RIVER AND MORLEY BEACH UNALLOCATED  
CROWN LAND - DRAFT MEMORANDUM OF UNDERSTANDING  
(VERSION 2)**

- Land Description** : Reserve 23579 Hay River and Morley Beach unallocated Crown land (UCL) area on eastern foreshore of Wilson Inlet.
- Proponent** : Department of Environment and Conservation (DEC)
- Owner** : Crown
- Attachment** :
  - Crown Reserve 23579 and portion of Morley Beach UCL
  - Map of subject site
  - Letter from DEC dated 29 March 2011, including Draft Memorandum of Understanding
- Councillor Workstation** : Letter from DEC dated 14 November 2007  
Letter from City dated 3 August 2009  
Letter from DEC dated 11 May 2010  
Letter from Albany Bird Group dated 19 May 2010  
City of Albany resolution 17 February 2009  
City of Albany resolution 21 July 2009  
Shire of Denmark resolution 24 March 2009  
Shire of Denmark resolution 22 September 2009  
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- Responsible Officer(s)** : Executive Director Works and Services (K Ketterer)

**MAP**

- See Attachment.

**IN BRIEF**

- The Department of Environment and Conservation is seeking the City's support in vesting Reserve 23579 Hay River, and the unallocated Crown land area on the eastern foreshore of Wilson Inlet with the Conservation Commission of WA as a 'conservation park'.
- Council previously resolved that the City was prepared to take the management order for the portion of R23579 east of the Hay River, and to prepare a management plan for the reserve in consultation with DEC.
- DEC is again seeking the City's support for the proposal, and has presented a draft Memorandum of Understanding for the City's consideration for signing.

|             |                             |
|-------------|-----------------------------|
| <b>CEO:</b> | <b>RESPONSIBLE OFFICER:</b> |
|-------------|-----------------------------|

**ITEM 5.3: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT:**

- i) Council ADVISE the Department of Environment and Conservation that it is prepared to sign the Memorandum of Understanding between the Department of Environment and Conservation, the City of Albany and the Shire of Denmark in relation to the management of Crown Reserve 23579, Hay River.**
- ii) The Draft Memorandum of Understanding is AMENDED to state that Keith Rd is to be gazetted as a public road, for management by the City of Albany.**

**BACKGROUND**

1. The City received a letter (dated 14 November 2007) from the DEC, asking whether Council agrees to Reserve 23579 being vested with the Conservation Commission of WA as a conservation park. The Shire of Denmark also received a similar letter, as this reserve is located on both sides of the Hay River, which is the boundary between the two local government areas.
2. Reserve 23579 is currently unvested (i.e. no agency holds the Management Order).
3. Due to an administrative oversight by a previous member of staff, this issue was not immediately addressed by the City.
4. An item (Item 11.4.1) went before Council at the OCM held 17 February 2009. Council resolved:  
  
“THAT Council notifies landowners adjacent to Reserve 23579 of the proposal by the Department of Environment and Conservation to have the management order for Reserve 23579 transferred to the Conservation Commission of WA with the purpose of the reserve being changed to “Conservation Park”, and considers any submissions at a subsequent meeting of Council prior to providing its response to the DEC.”
5. Council was also informed that the Shire of Denmark Council resolved at their OCM held 24 March 2009:  
  
“That Council advise the Department of Environment and Conservation that:
  - i) It is prepared to have the Management Order for that portion of the Reserve A23579 west of the Hay River transferred to the Denmark Shire and that the portion of the reserve west of the Hay River to remain as “Recreation and Camping”.
  - ii) In the event of the Management Order reverting to Council, Council will actively pursue funding for a Management Plan over that portion of the reserve west of the Hay River to better manage the said reserve. “

6. Another item (Item 15.3.3) went before Council at the OCM held 21 July 2009. This item reported that letters were sent to 23 landholders adjacent to and near Reserve 23579 to notify them of the proposal and to ask for submissions. One submission was received (see below):

| <b>SCHEDULE OF SUBMISSIONS</b> |   |   |
|--------------------------------|---|---|
| No.                            | Name and Address of Submitter                       | Summary of Submission   |
| 1                              | Peter Buxton<br>PO Box 802<br>Denmark<br>WA<br>6333 | <ul style="list-style-type: none"> <li>• Keith Road has been the major access for the five locations along the Hay River since 1898.</li> <li>• The reserve is a very popular area for recreation.</li> <li>• Tourists regularly camp on the River free of charge.</li> <li>• The Reserve is the gateway to the City of Albany on Highway 1 from the west. A major information bay should be established at that point.</li> <li>• The 3 or 4 camp sites along the river could be developed with composting toilets, fee collection, revegetation and track closures.</li> <li>• Reserve 23579 should be vested with the City of Albany.</li> </ul> |

7. An item (Item 15.3.3) went before Council at the OCM held 21 July 2009. Council resolved:

“THAT Council ADVISE the Department of Environment and Conservation (DEC) that:

- i) It is prepared to have the management order for that portion of the reserve 23579 east of the Hay River transferred to the City of Albany for the purposes of ‘Public Recreation’; and
  - ii) In the event of receiving the management order for the Reserve Council will actively pursue the preparation of a Management Plan in consultation with the DEC for the Reserve.”
8. The City sent a letter to DEC (dated 3 August 2009) advising it of the Council's resolution.
9. The City received an email from DEC on 30 August 2009 indicating that DEC is awaiting comments from DEC's Albany office in response to the Council resolution before considering a response to the matters raised in the letter.

10. The Shire of Denmark Council resolved at their Ordinary Council Meeting held 24 March 2009:

“That Council advise the Department of Environment and Conservation that it supports the vesting of R23579 in the Conservation Commission of WA for the purpose of a Conservation Park and subject to the department entering into a Memorandum of Understanding with the Shire of Denmark addressing but not limited to the following:

- i) Development of a public consultation process to refine usage of the reserve for recreational use.
- ii) In consultation with the Shire of Denmark develop a management plan which incorporates
  - a) Appropriate public recreational use which recognises current and future usage and provides facilities for such uses as vehicle access, bank fishing, boat launching, wildlife and fauna observation;
  - b) A reserve access plan that upgrades and consolidates current access to the foreshore and river bank and includes fire access routes;
  - c) Rehabilitate and protect important biodiversity assets of the reserve including rare and endangered flora, migratory shorebird habitat and endemic shorebird nesting sites and maintain current corridor linkages;
  - d) Provides for adequate educational signage in relation to reserve recreational usage as well as biodiversity assets and threats such as *Phytophthora dieback*; and
  - e) Prioritise recommendations to enable urgent on-ground works to be implemented in the short-term.
- iii) That the draft memorandum of understanding be reported back to Council for its adoption.
- iv) The Shire of Denmark to participate in an advisory capacity in relation to ongoing management of the reserve.”

11. State Land Services advised the City in October 2009, that “The land occupied by ‘Keith Road’ remains part of Class A Reserve 234579 and will need to be excised prior to dedication as a road. Once the City of Albany, Shire of Denmark and the Department of Environment and Conservation have resolved the management issue, then matters can be discussed as to what changes need to be implemented to Class A Reserve 24579, including excisions for roads.”

12. A letter was received from DEC (dated 11 May 2010) in response to the Council's resolution, indicating that DEC seeks further discussions with the City about this proposal, and the possible development of a Memorandum of Understanding with the City of Albany.
13. The City requested a response to the Council's resolution from DEC in February 2010, and was advised that DEC was liaising with the Shire of Denmark, and would provide a response to the City once negotiations with Denmark were completed.
14. DEC received a letter from the Albany Bird Group (dated 19 May 2010) in support of Morley Beach unallocated Crown land area on the eastern foreshore of Wilson Inlet, also being managed by State Government for the purpose of nature conservation (migratory shorebirds). DEC commenced assessing whether Morley Beach unallocated Crown land should be included in their previous proposal to manage R23579.
15. Various phone calls and emails were initiated by the City seeking further negotiations with DEC to resolve the issue, during August 2010 (EF1019268) and November 2010 (LT1040157). The City was aware that DEC was still undertaking further investigations, particularly in relation to including the Morley Beach unallocated Crown land area in the proposal.
16. DEC sent a letter to the City (dated 29 March 2011) to indicate that they are still seeking to have the vesting of Reserve 23579, including the Morley Beach unallocated Crown land along the eastern foreshore of the Wilson Inlet, transferred to the Conservation Commission of Western Australia as a conservation park. A Draft Memorandum of Understanding that sets out the terms of a cooperative and complementary management framework between DEC, the Shire of Denmark and the City of Albany for the future management of Reserve 235790 and the area of UCL (see Attachment).

## **DISCUSSION**

17. Reserve 23579 was set aside in 1952 as an "A" class reserve for the purpose of "Camping and Recreation". The reserve comprises an area of 304.8 hectares and it straddles the Hay River for a distance of approximately 6.6km within the City of Albany and 8.7km within the Shire of Denmark. It also borders the northern shores of Wilson Inlet within the Shire of Denmark for a length of approximately 4km.
18. R23579 has the following characteristics:
  - i) valuable conservation corridor linking Wilson Inlet to Mt Lindesay National Park;
  - ii) protects lower Hay River and Wilson Inlet;
  - iii) majority of vegetation is in excellent condition;
  - iv) contains areas of the Jarrah, Mt Lindesay vegetation complex which has been identified in the Regional Forest Agreement as being under-represented in conservation reserves; and

- v) management issues due to high degree of use long boundary and large number of abutting properties.
19. R23579 is a popular location for local residents wishing to undertake passive recreational activities and for fishing. Sections of the river reserve are inaccessible due to the extensive vegetation or having private property adjoining the reserve boundary. Those sections of the reserve where Keith Road runs parallel and adjacent to the foreshore are heavily degraded due to human pressure.
  20. R23579 is at the eastern extremity of the Walpole Wilderness Area and it provides an important conservation link between that area and the local reserve network.
  21. R23579 is currently not actively managed as it is unvested. However, the City of Albany does maintain the gravel road (i.e. Keith Rd; 3 km) that passes through Reserve 23579 (connecting South Coast Highway with Hunwick Rd), having spent \$3,300 in 2009/10 and \$1,800 in 2010/11.
  22. The parcel of unallocated Crown land known as Morley Beach is an area of 106 Ha on the eastern foreshore of the Wilson Inlet.
  23. Wilson Inlet has been acknowledged as one of the top 118 wetlands of significance for migratory birds in Australia (Bamford *et al* 2008). Data of bird use of Morley Beach (Albany Bird Group) has been collated over many years and indicates that the area qualifies as a wetland of international significance because at least three wader bird species, more than 1% of the population of that species has been observed to utilise the wetland at one time.
  24. Threats to Morley Beach include disturbance and physical damage to shore birds and their habitat from off road vehicles. Additional threats include predators such as dogs, foxes and cats.
  25. The Draft Memorandum of Understanding states that “DEC will consult the City of Albany, the Shire of Denmark and the community to canvas the views of the community in respect to the management of the Reserve and the development of the management plan.” It also states that “Appropriate recreational uses will be permitted subject to the management plan. Permission will take into consideration customary recreational uses of the reserves. Camping will not be permitted in the Reserve.”
  26. The Draft Memorandum of Understanding does not specifically mention the gravel road that passes through the reserve (i.e. Keith Rd). However, given Keith Rd is currently used by the local community as access between South Coast Highway and Hunwick Rd, the City’s preference is for the gravel road to be gazetted as a public road, for management by the City.

## **GOVERNMENT CONSULTATION**

27. Government agency consultation undertaken on this request is coordinated by the Department of Regional Development and Lands.
28. The process of changing the reserve purpose from “Camping and Recreation” to “Conservation Park” will require parliamentary scrutiny and it will be subjected to Native Title review.

## **PUBLIC CONSULTATION / ENGAGEMENT**

29. Apart from the letters the City sent to adjacent and nearby landholders, no other public consultation has been undertaken by the City.
30. The Albany Bird Group and Wilson Inlet Management Advisory Group have both documented their support for Morley Beach to be managed by State Government for the purpose of nature conservation.
31. DEC informed the City on 20 April (EF1135924) that no formal public consultation has been undertaken. However, DEC has consulted with the Shire of Denmark and has had discussions with the Albany Bird Group.

## **STATUTORY IMPLICATIONS**

32. The process of altering the reserve purpose and issuing the management order for an “A” class reserve is covered under the Land Administration Act 1997. More particularly, the following sections apply:
  41. *Minister may reserve Crown land*  
*Subject to section 45(6), the Minister may by order reserve Crown land to the Crown for one or more purposes in the public interest.*
  - 42(2) *A Class A reserve retains a purpose specified in the relevant order made under section 41 until that purpose is changed under this section.*
  - 42(4c) *Subject to subsection (5) and section 45, if the Minister proposes - to cancel, or change the purpose or classification of, a class A reserve, the Minister must cause that proposal to be laid before each House of Parliament and section 43(1) then applies.*
  46. *Placing of care, control and management of reserves*
    - (1) *The Minister may by order place with any one person or jointly with any 2 or more persons the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under section 41 and for the purposes ancillary or beneficial to that purpose and may in that order subject that care, control and management to such conditions as the Minister specifies.*

- (2) *The Minister may, with the consent of the management body of a reserve and of the holders of any interests within the reserve, by order vary any condition to which the care, control and management of the reserve is subject.*
- (5) *An order made under subsection (1), (2), (3) or (3a) does not create any interest in Crown land in the relevant reserve in favour of the management body of that reserve.*
- (6) *If Crown land reserved under section 41 for purposes of recreation is leased or subleased under a power conferred under subsection (3), the lessee or sublessee may unless the terms of the management order or the lease or sublease otherwise provide, restrict public access to the area leased.*
- (7) *A person with whom the care, control and management of a reserve is placed by order under subsection (1) has, by virtue of this subsection, the capacity, functions and powers to hold and deal with the reserve in a manner consistent with the order, any order conferring power on that person under subsection (3)(a) and this Act to the extent that the person does not already have that capacity or those functions and powers*

### **STRATEGIC IMPLICATIONS**

33. In accordance with Albany Insight ~ Beyond 2020 Strategic Plan, this item directly relates to:

*Item 1 Lifestyle & Environment*

*Albany will be Western Australia's Regional City of first choice offering a diverse range of healthy and active lifestyle opportunities, with energy efficient housing and development that reflect our environment.*

### **POLICY IMPLICATIONS**

34. Council has formally considered this matter on two previous occasions, being at its Ordinary Council Meetings on 17 February 2009 (Item 11.4.1) and 21 July 2009 (Item 15.3.3).
35. If this reserve was to come under City management, it would be managed under the Reserves Asset Management Plan (Natural) – Synergy Reference NS 1013699. Under this management plan, all natural reserves (480 plus reserves) will be assessed and prioritised by the end of the 2011/12 financial year. Only those reserves of highest priority, and those reserves, into which the City has already invested substantial time and money, will be actively managed in the first instance. Although this reserve is likely to rank quite high against other City natural reserves, there is no guarantee that this reserve would receive the high level of management it requires in the immediate future.



**RISK IDENTIFICATION & MITIGATION**

36. The risk identification and categorisation relies on the City's Risk management Framework.

| <b>Risk</b>  | <b>Likelihood</b> | <b>Consequence</b> | <b>Risk Analysis</b> | <b>Mitigation</b>   |
|--|-------------------|--------------------|----------------------|---|
| Uncoordinated management of reserve, where the nature conservation values could be compromised.  | Possible          | Minor              | Medium               | DEC to manage both sides of the Hay River, and Morley Beach.  |
| Less unrestricted access within reserve, if managed by DEC.  | Possible          | Minor              | Medium               | Agreed Memorandum of Understanding between DEC and the City and the Shire of Denmark, which indicates that a management plan will be developed by DEC in consultation with the two local Governments. |
| If managed by the City, the reserve may not immediately receive the management it requires, as it needs to fit under the Reserves Asset Management Plan (Natural). | Possible          | Minor              | Medium               | The City's Natural Reserve budget and relevant service budgets (bins, toilets and rangers) would need to be adjusted accordingly to ensure that the reserve is adequately managed and serviced.       |

**FINANCIAL IMPLICATIONS**

37. Given the City already maintains Keith Rd, this proposal has no additional financial implications upon the City of Albany.
38. Should Council decide that it wishes to pursue the management order for the reserve, costs will be incurred in the provision of services and infrastructure on the reserve.
39. It is not possible to predict the initial and on-going costs to manage this area, until the management requirements for Reserve have been determined. However, works required could include, but are not restricted to:
- weed control (e.g. Watsonia);
  - track maintenance and rehabilitation of unnecessary tracks;
  - erosion control along the banks of the River;
  - signage (including interpretive signage, regulations and visitor risk);
  - City ranger patrols;
  - installation and on-going servicing of toilets and bins;
  - picking up of dumped rubbish; and
  - maintenance of boat ramps.

### **LEGAL IMPLICATIONS**

40. Not applicable.

### **ALTERNATE OPTIONS**

41. The Council must be aware of the short or long term ramifications of any alternate decisions.
- i) Council has the option of denying the request in which case, the land will remain as unallocated Crown land without an effective manager of the land. This action may produce a reduction in environmental values on the river foreshore, but allow unrestricted access to this area for the general public.
  - ii) Council could agree to the proposal and gain a commitment from the Conservation Commission of WA that the City and the community will be actively involved in the preparation of the management plan for the reserve through the Memorandum of Understanding (this approach was adopted when Council agreed to transfer the Mt. Martin reserve to the Conservation Commission of WA).
  - iii) Council could pursue the Management Order for the portion of Reserve 23579 east of the Hay River. The City of Albany would then be responsible for the management of the subject reserve.

### **SUMMARY CONCLUSION**

42. The nature conservation value of the subject portions of land cannot be overstated. The Hay River Reserve 23579 is a valuable conservation corridor linking Wilson Inlet to Mt Lindesay National Park, and Morley Beach is a nationally and internationally significant site for migratory shore birds. Given the conservation values of these areas, the changing of their purpose to 'conservation park' is appropriate, as is the Conservation Commission being the appropriate Department to manage these areas.
43. It is recognised that the subject areas are also important recreational areas for the community and visitors to the South Coast of WA. The Draft Memorandum of Understanding will allow for the use and enjoyment of Reserve 23579 by providing appropriate recreational opportunities whilst protecting the significant and important biological values of the land, water and inlet. In addition, the Management Plan to be developed for the new reserve will be developed in consultation with the City and the community, and the City's endorsement of the Plan will be sought before it is finalised.
44. With Keith Rd gazetted as a public road, the community will have continued access through and into the reserve along the Hay River, between South Coast Highway and Hunwick Rd.

45. The City already has over 480 (continuously increasing in number) natural reserves being prioritised and managed, under the Council adopted Asset Management Plan Reserves (Natural). The addition of another large, high maintenance reserve to the list will put significant pressure on the resources available for the management of natural reserves under City management.
46. The process of changing the reserve purpose from “Camping and Recreation” to “Conservation Park” will require parliamentary scrutiny and it will be subjected to Native Title review. Some concern may be expressed within the community over the perceived loss of this reserve for passive recreational use, but the long term lack of management of the reserve will ultimately reduce its value for that purpose.

|                                   |   |
|-----------------------------------|---|
| <b>Consulted References</b>       | Bamford M, Watkins D, Bancroft W, Tischle G and Wahl J. 2008. Migratory Shorebirds of the East Asian-Australasian Flyway: Population Estimates and Internationally Important Sites. Wetlands International. |
| <b>File Number (Name of Ward)</b> | GR.STL.24 (West Ward)   |
| <b>Previous Reference</b>         | OCM 17/02/09 – Item 11.4.1<br>OCM 21/07/09 – Item 15.3.3  |