

4.4: FINAL APPROVAL OF LEASE – ALBANY MOTORCYCLE CLUB INC. OVER PORTION OF RESERVE 1947 PARKER BROOK ROAD, WILLYUNG

Land Description	: 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)	: Copy of OCM 15.03.2011 – Item 2.3 Schedule of Submissions
Councillor Workstation	: Copy of Submissions
Responsible Officer	: Acting Executive Director Corporate Services (P Wignall)
Maps and Diagrams	



IN BRIEF

- The proposal for a new lease to the Albany Motorcycle Club Inc. over portion of Reserve 1947 located at Parker Brook Road, Willyung was supported at OCM 15.03.2011 subject to conditions including advertising seeking public comment.
- Council is now required to consider the submissions received and determine whether to grant the final lease approval.

CEO:

RESPONSIBLE OFFICER:

- It is recommended that final lease approval be granted to the Albany Motorcycle Club Inc. subject to obtaining all remaining approvals and complying to all conditions detailed in OCM 15 March 2011 Council resolution and satisfying all conditions of the Planning Scheme Consent.

TEM 4.4: RESPONSIBLE OFFICER RECOMMENDATION**THAT Council:**

- 1) **NOTES its previous resolution (OCM 15.03.2011 – Item 2.3 – Attachment A).**
- 2) **GRANTS the final lease approval to the Albany Motorcycle Club Inc. over portion of Reserve 1947 Parker Brook Road, Willyung subject to the Club obtaining all remaining approvals and complying to all conditions detailed in OCM 15 March 2011 Council resolution and satisfying all conditions of the Planning Scheme Consent prior to any development and riding activities within the lease area.**

BACKGROUND

1. Reserve 1947 is 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” for any term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. Reserve 1947 is located at Lot 8122 Parker Brook Road, Willyung, adjacent to, and south of, the Albany Regional Airport. The surrounding area is rural in nature with houses well spread out.
3. In 1992 the former Shire of Albany granted a new lease to the Albany Motorcycle Club Inc. over Reserve 30495 for the purpose of the establishment of grounds suitable for the riding of motorcycles and conducting other motorcycle events.
4. The leased area is commonly referred to as “Miniup Park”.
5. The lease term of 21 years commencing 1 July 1992 and expiring 30 June 2013 currently returns a nominal rental of \$10.00 per annum.
6. 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.
7. In recent years the City has received numerous complaints regarding various aspects of the Club’s operations. Several of those complaints related to noise.
8. In response 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.
9. 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.

10. 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.
11. 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.
12. The EPN remains in force until the Notice is removed or complied with.
13. 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.
14. 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.
15. 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 was reported to OCM 15 March 2011 Item 1.9 by Planning and Development Services team and Council resolved to approve the two non-complying events.
16. 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 Albany Motorcycle Club Inc. 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.
17. At OCM 15 March 2011 Council considered the request and resolved:

"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.”*
18. Council in 2009 also provided in-principle support for the concept of the development of the Motorsport Complex on Reserve 1947 Parker Brook Road, which provides for the relocation of the Albany Motorcycle Club Inc. to this site. This support was again confirmed at OCM 15 February 2011.

DISCUSSION

19. In addition to OCM 15 March 2011 Item 2.3 Council resolution conditions, once received the Planning Scheme Consent application will require the proponent, the Albany Motorcycle Club Inc. to address all of the following conditions that were resolved by Council at OCM 17 February 2009 and confirmed at OCM 15 February 2011 for all future occupants of Reserve 1947 Parker Brook Road, Willyung:
- 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.”*
20. 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.
21. The Club has been liaising with City Planning staff regarding the application for Planning Scheme Consent and it is anticipated this application will be received by the City for processing in June 2011.
22. The new lease will be negotiated in line with Council’s Policy – Property Management – Leases for this category of lease.

GOVERNMENT CONSULTATION

23. Under Section 18 (1) of the *Land Administration Act 1997* the Department of Regional Development and Lands has been consulted and in-principle Minister for Lands consent has been provided to the Deed of Partial Surrender of Lease on Crown Reserve 33103.
24. Under Section 18 of the *Aboriginal Heritage Act 1972* as there is a registered aboriginal site on Reserve 1947, approval from the Minister for Indigenous Affairs will be required.
25. South West Aboriginal Land and Sea Council (SWALSC) has been consulted for any considerations under the *Native Title Act 1993* and given in-principle consent subject to the Club using the existing access road to the Reserve off Parker Brook Road.

PUBLIC CONSULTATION / ENGAGEMENT

26. Section 3.58 of the Local Government Act 1995 deals with the disposal of property including leased land and buildings.
27. 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;*
28. 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*.
29. However, given the nature of the request and implications for residents and landowners within the vicinity it was recommended the proposed lease be advertised for a period of two weeks inviting submissions from the public.
30. The proposed lease was advertised in the local paper and placed on the City of Albany web site under public comment section for a period of two weeks commencing 15 April 2011.
31. A total of three submissions were received. The submissions are summarised and discussed with a recommendation for each submission in the attached Schedule of Submissions.
32. All three submissions agree there is a need for such a Club as the Albany Motorcycle Club, however raise concerns regarding the suitability of location Reserve 1947 Parker Brook Road and noise pollution. The matters raised will be addressed as part of the Planning Scheme Consent application by the Albany Motorcycle Club Inc.
33. Once the Club's application for Planning Scheme Consent for their proposed use is received by the City, public consultation on the application will be undertaken. Although the application would not require formal advertising under the Town Planning Scheme requirements, in this instance it would be appropriate for this application to be advertised for public comment for the standard three week period.

STATUTORY IMPLICATIONS

34. All leases undergo a statutory process in accordance with the *Land Administration Act 1997* and *Local Government Act 1995*.
35. 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.
36. As this is Crown land, under 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.
37. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings advertising requirements.
38. The Albany Motorcycle Club Inc. lease is exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995* pursuant to Section 30 of the *Local Government (Functions & General) Regulations 1996* as the Club is categorised as a not for profit sporting association, however the proposed lease was advertised seeking public comment .
39. As this is Crown land, South West Aboriginal Land and Sea Council consideration and consent under the *Native Title Act 1993* for the new lease will be required.
40. Under Section 18 of the *Aboriginal Heritage Act 1972* as there is a registered aboriginal site on Reserve 1947, approval from the Minister for Indigenous Affairs will be required
41. 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.
42. The Western Australian Planning Commission (WAPC) consent is not required as this is Crown land.

STRATEGIC IMPLICATIONS

43. This item directly relates to the following elements from the Albany Insight ~ Beyond 2020 Corporate Plan...

Community Vision:

Nil

Priority Goals and Objectives:

Goal 4: Governance... The City of Albany will be an industry leader in good governance and service delivery.

Objective 4.3 Deliver excellent community services that meet the needs and interests of our diverse communities.

City of Albany Mission Statement:

At the City of Albany we are accountable and act as a custodian with respect to Council Assets.

POLICY IMPLICATIONS

44. 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.
45. 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.

RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Rating	Mitigation
New lease not approved	Possible	Medium	High	Seek to negotiate terms to Council satisfaction Collaborate closely with Albany Motorcycle Club Inc. to assure them that the City will work towards mutually agreeable outcomes

FINANCIAL IMPLICATIONS

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

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

49. Council has the following two options in relation to this item, which are:
- a. GRANT the new lease to the Albany Motorcycle Club Inc. on portion of Reserve 1947 Parker Brook Road, Willyung subject to all remaining approvals being obtained and complying to all conditions of the OCM 15 March 2011 Item 2.3 Council resolution and Planning Scheme Consent.

- b. DECLINE the new lease to the Albany Motorcycle Club Inc. on portion of Reserve 1947 Parker Brook Road, Willyung.
50. Council has previously provided in-principle support for the Motorsport Complex proposal on Reserve 1947 Parker Brook Road which provides for the relocation of the Albany Motorcycle Club Inc. to this Reserve site.
51. Council at OCM 15.03.2011 supported the new lease to the Albany Motorcycle Club Inc. on portion of Reserve 1947 Parker Brook Road, Willyung subject to conditions.
52. Should Council decline to grant the final lease approval, 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 satisfactorily provide the Club with sufficient long term use for rider training and events.
53. The Club has indicated if a new lease is not granted 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 to grant the final lease approval, 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 Inc. to Reserve 1947 Parker Brook Road, Willyung and supported the new lease at OCM 15.03.2011 subject to the Club complying with all imposed conditions the lease for a term of 10 years for the purpose of establishment of grounds suitable for the riding of motorcycles and conducting motorcycle events, granting the final lease approval is recommended.

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 (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 OCM 15.03.2011 Item 2.3