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1.7: GREAT SOUTHERN MOTORPLEX GROUP INC. PROPOSAL AND REQUEST FOR LEASE OVER CROWN 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** : Great Southern Motorplex Group Inc.
- Owner** : Crown
- Appendices** : Meeting Notes 27 June 2007
 Resolution of Council 19 August 2008 Item 12.8.1
 Resolution of Council 16 December 2008 Item 12.8.2 including Motor Sport Complex Feasibility Study Project Brief
 Resolution of Council 17 February 2009 Item 12.8.2 with Motor Sport Complex Feasibility Study and appendices
 Resolution of Council 16 June 2009 Item 18.2
 Resolution of Council 10 November 2009 Item 6.2.15
 Resolution of Council 15 February 2011 Item 2.6 including updated Great Southern Motorplex Group Design Study
 Resolution of Council 15 March 2011 Item 2.7
 Great Southern Motorplex Group Inc. letter of request seeking lease and other requirements 14 September 2011
 Department of Environment and Conservation Clearing Permit CPS 3968/1
 Resolution of Council 15 March 2011 Item 1.9
 Resolution of Council 15 March 2011 Item 2.3
 Resolution of Council 21 June 2011 Item 4.4
 Albany Motorcycle Club Noise Management Plan
 Airport fact sheet – Lighting in the vicinity of Aerodromes
- Responsible Officer** : Chief Executive Officer (F James)

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Maps and Diagrams :**IN BRIEF**

- In 2009, Council received the Motor Sport Complex Feasibility Study and supported the concept of the development of a Motor Sport Complex on Crown Reserve 1947 Parker Brook Road, Willyung.
- The 2009 resolution specified that Council's support was subject to achievement of, and Council's satisfaction with, numerous conditions and approvals including but not limited to an Environmental Noise Impact Assessment, a Site Environmental Management Plan and an Operational Management Plan. Sufficient external funding and the attainment of Planning Scheme Consent were also required prior to executing a lease.
- Council's support was affirmed at the Ordinary Council Meeting 15 February 2011, with Council resolving to affirm its support for the concept plan, subject to achievement of and Council's satisfaction with the following:
 - a. Environmental Noise Impact Assessment including Environmental Protection Authority (EPA) Assessment, requirements of the Environment Protection Act 1986 and the Environmental Protection (Noise) Regulations 1997.
 - b. Site Design and Full Environmental Management Plan to be submitted to the EPA for 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.
 - e. The availability of sufficient external funding by the Great Southern Motorplex Group to undertake each stage of the proposal.
 - f. A new/amended lease over the site containing provisions relating to EPA approval etc.
 - g. Community consultation occurring and Council considering that feedback.

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- As the Great Southern Motorplex Group Inc. (Motorplex) has recently received a Department of Environment and Conservation (DEC) Clearing Permit, subject to conditions, over Crown Reserve 1947 they are now seeking a lease over the Reserve.
- Motorplex is also seeking in-principle consent to display third party signage viewable from Albany Highway. Council's Signage Policy and Main Roads Policy would not permit the third party signage envisaged by the Motorplex.
- Motorplex is also seeking the City's undertaking not to approve or permit any new development within the vicinity of Reserve that may compromise Motorplex activities.
- Crown Reserve 1947 is affected by a registered Aboriginal Heritage site that passes through the Reserve.
- This report provides a collated history and other information on the Motor Sport Complex proposal and asks Council to holistically reconsider the many issues surrounding the implementation of the Motor Sport Complex.

ITEM 1.7: RESOLUTION**VOTING REQUIREMENT: SIMPLE MAJORITY****MOVED: COUNCILLOR CALLEJA****SECONDED: COUNCILLOR GREGSON**

1. **THAT Council notes the Officer's Report detailing the history and other information on the Great Southern Motorplex Group Inc. proposal and the suitability of Crown Reserve 1947 for Motor Sport activities;**
2. **THAT Council directs the CEO and Councillors Sutton, Hammond and Calleja to meet with the four key stakeholder groups of:**
 - Albany Motorcycle Club;
 - Albany City Kart Club;
 - Great Southern Street Machine Association; and
 - Albany Motorsport Group.

To further discuss progression of a Motor Sport Complex at a site that is more appropriate as quickly as possible and taking into account the immediate needs of particular clubs for their upcoming events.

CARRIED 12-0

BACKGROUND

1. Since the publishing of this paper on the City of Albany Website, a further submission from Mr Ken Loughton of Loughton and Patterson has been received. The submission is attached to this report.
2. Crown 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 a term not exceeding 21 years, subject to the consent of the Minister for Lands.
3. Crown Reserve 1947 is located at Lot 8122 Parker Brook Road, Willyung, adjacent to, and south of, the Albany Regional Airport. Land to the west of the subject site, on the opposite side of Albany Highway is zoned for Special Rural development, with the surrounding area being rural in nature.
4. The development of a Motor Sport Complex in Albany has been considered periodically since 2004. Preliminary investigation came about as a response to potential solutions to “hoon” problems in Albany.
5. The project was initially postponed by Council due to concerns regarding the magnitude of this project, the infrastructure required, the financial commitment by Council and how the venue would be managed.
6. There is a registered Aboriginal Heritage site (No. 21837) on the subject site following the creek traversing the Reserve. Further, one of the tributaries for the creek is situated within the subject site.
7. The impact of a registered site within the Motor Sport Complex presents various challenges. The proposed Motorplex design will significantly impact on the registered site and will require referral to the Department of Indigenous Affairs and South West Aboriginal Land and Sea Council for consideration.
8. In June 2007, the City of Albany facilitated a meeting with stakeholders regarding a potential Motor Sport Complex. The stakeholders at this meeting were representatives from the Albany Motorcycle Club, Albany City Kart Club, Great Southern Street Machine Association, the Department of Water and the Water Corporation.
9. At the Ordinary Council Meeting 19 August 2008 under Item 12.8.1, Council ratified the Community and Economic Development Strategy and Policy Committee minutes of 16 July 2008 that determined that the need and location of a motor sport facility be assessed as part of the Recreation Planning Strategy and Recreation Masterplan process and that the City undertakes a motor education and training complex feasibility study.
10. The feasibility study of the Motor Sport Complex and driver education and training facility was developed ‘in-house’ by the City’s Manager of Community Development and the Recreation Planning Officer.

11. As part of that work, site options were investigated. Crown Reserve 1947 was identified as the preferred site for the proposed Motor Sport Complex for the following reasons:
 - Existing Reserve purpose 'Recreation'.
 - Albany City Kart Club currently occupy site for kart racing activities.
 - A Motor Sport Complex design could be implemented with minimal impact on the environment of the Reserve.
 - A portion of the Reserve is currently allocated in the Airport Noise Buffer Zone with the Speedway Noise Buffer Zone ceasing a minimal distance to the south of the Reserve.
12. The following factors were also considered during the assessment phase of determining the suitability of Crown Reserve 1947 as the preferred site for the proposed Motor Sport Complex:
 - The Albany Motorcycle Club had been previously operating on Crown Reserve 1947 but due to noise issues was relocated to Crown Reserve 30495, Roberts Road Robinson in 1992.
 - Residents noise concerns and the need to ensure any future proposal could meet the EPA *Noise Regulations 1997*.
 - Environmental concerns, particularly the clearing of vegetation within the Reserve.
 - Developers' concerns regarding the impact of the Motor Sport Complex on rural subdivision on the opposite side of Albany Highway (Lot 2 Gunn Road) which will result in the creation of around 70 lots.
13. The noise impact on surrounding land owners of the proposed Motor Sport Complex has always been considered the most important issue that required addressing.
14. An environmental noise impact assessment/noise management plan for the site to satisfy the EPA conditions for noise, has consistently been recognised by Council as a prerequisite to determine the suitability of the Motor Sport Complex at the subject site.
15. At the Ordinary Council Meeting 16 December 2008 Council ratified the Community and Economic Development Strategy and Policy Committee minutes of 25 November 2008 Committee Recommendation that considered the scoping minutes and the Motor Sport Complex Feasibility Study Project Brief and resolved:

"THAT Council ADOPT the concept of a co-located Motor-Sport facility in the current Go-Kart lease area".
16. In 2008, in response to noise complaints regarding the Albany Motorcycle Club activities on Crown Reserve 30495 Roberts Road, Robinson, the City with the support of the Department of Environment and Conservation (DEC) 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.
17. 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*. The City required the preparation and implementation of a plan to abate noise and monitor the effectiveness of the actions taken.

18. 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 provide evidence to the City and the Minister that the Club's activities could be carried out in compliance of the regulations.
19. The EPN remains in force until the Notice is removed or complied with. At the Ordinary Council Meeting 20 April 2010, Council supported the Club operating a further ten days in the 2010 calendar year on the same basis as 2009.
20. At the Ordinary Council Meeting 15 March 2011 Council supported a request to allow two non-complying events to be held within the 2011 calendar year.
21. The Albany City Kart Club currently leases Crown Reserve 1947 Parker Brook Road for the purposes of Recreation for a term of ten years which commenced on 1 November 2002 and is to expire on 31 October 2012.
22. The Albany Motor Sport Facility Feasibility Study recommended that Council **does not support** the construction of separate facilities for the purpose of driver training as research indicated that it is not economically or environmentally sustainable, due to the capacity of the infrastructure and the amount of land required.
23. The completed Motor Sport Complex Feasibility Study was considered at the Community and Economic Development Strategy and Policy Committee meeting on 18 January 2009.
24. At the Ordinary Council Meeting 17 February 2009 Council ratified the Community and Economic Development Strategy and Policy Committee minutes of 18 January 2009 (Item 5.4) and resolved:
 - "A) THAT Council RECEIVES the 'Motor sports Complex Feasibility Study' and supports the concept of the development of a Motor-Sport Complex on Parker Brook Reserve (reserve 1947), subject to achievement of and council's satisfaction with the following:
 1. '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.
 2. Site Design and Full 'Environmental Management Plan' of sufficient detail to be submitted to the EPA for Environmental Impact Assessment Approval.
 3. Approval of the Site Design and 'Environmental Management Plan' by the EPA.
 4. 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
 5. The achievement of sufficient external funding to undertake each stage of the

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proposal.

6. A new/ amended lease over the site containing provisions that the facility is constructed and operated in accordance with EPA approval, council determinations in relation to the items above and any other relevant council strategies, policies, procedures and determinations.

(B) The feasibility study is handed over to the 'Great Southern Motorplex Group' consisting of City of Albany, Albany Motorcycle Club, Great Southern Street Machine Association and Albany City Kart Club who will:

- lead and undertake responsibility for the development of the project (including but not limited to the items in recommendation A).
- undertake responsibility for the lease and management of the site.

(C) Council funding, if any, towards the project being directed towards the components of the driver training and education."

25. The Great Southern Motorplex Group Inc. is a not-for-profit incorporated organisation consisting of the following four motor sport 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. At the Ordinary Council Meeting dated 16 June 2009 Council appointed Mayor Evans and Cr Wolfe as Council representatives to the Great Southern Motorplex Group committee and confirmed the terms of reference for Council's role in the Great Southern Motorplex Group committee as:

"Elected representatives:

- a. To act in an advocacy capacity for the Motorplex project; and
- b. To report back to Council in relation to the status of the proposal and outcomes discussed at the Great Southern Motorplex Group.

City Staff representatives:

- c. To provide technical, procedural and scheduling advice specific to the Motorplex project proposals."

27. At the Special Council Meeting 10 November 2009 Council nominated Mayor Evans and Cr Sutton to the Great Southern Motorplex Group Committee.

28. To date that Committee has not actively met with Council representatives.

29. In August 2010, Motorplex applied to DEC for a permit to clear vegetation from Crown Reserve 1947, Parker Brook Road as they were not prepared to enter into a lease without clear indication that the Reserve would be able to be cleared in the manner required.

30. In February 2011, Motorplex, the Albany Motorcycle Club and the Albany City Kart Club were advised by the City of the requirement for a future easement within the northern boundary of Crown Reserve 1947 for the Grange Resources pipeline. The easement will form part of any new lease over this area. The Albany City Kart Club lease area is not impacted by the easement, although other areas of the site may be.

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31. At Ordinary Council Meeting 15 February 2011, Council resolved to affirm its previous support for the Motorplex Design Study concept plan for the development of Crown Reserve 1947 Parker Brook Road, subject to achievement of, to Council's satisfaction, a number of conditions (being the same conditions as set out in Council's resolution 17 February 2009).
32. Additionally at the 15 February 2011 Council meeting, Council considered an Officer's Recommendation to refuse the Motorplex request for funds of \$4,730 to complete a Fauna Assessment and Site Environmental Management Plan (required by DEC to assess August 2010 Motorplex clearing application) as there was no budget allocation for this proposal and such funding allocation would not align with Council's previous decision in relation to funding
33. An alternate motion by Cr Sutton at the time, to lay the matter on the table for one month to allow further investigation by Council of funding options, was carried 11-0.
34. Also at the February 2011 meeting, Council considered an Officer's Recommendation to support the surrender of the Albany City Kart Club Inc. existing lease over the entire Crown Reserve 1947 and replace it with a new ten year lease over portion of the Reserve subject to certain conditions.
 - a. *That the Albany City Kart Club will surrender their new lease over a portion of Reserve 1947, Parker Brook Road when the Great Southern Motorplex Group Inc. have received all available approvals and funding in order to develop Reserve 1947, Parker Brook Road, for the purposes of Motorsport as detailed in the Design study Motorplex concept plan; and*
 - b. *The Albany City Kart Club Inc. obtain **all relevant planning and construction approvals before commencing** any alterations to their existing track and/or site."*
35. The Albany City Kart Club Inc. surrender of lease and new lease documents are currently being executed by all parties. Once completed the lease documents will be forwarded to the Minister for Lands for endorsement of consent.
36. The City staff under delegation granted approval to the Albany City Kart Club for extensions to its existing track (under application P2105312) on 22 February 2011. The planning consent requires the submittal of a noise management plan and evidence that a clearing permit and aboriginal heritage approval has been received. The Club is aware of these requirements and is attending to these three matters.
37. At the February 2011 meeting, Council also considered Officer's Recommendation regarding the Albany Motorcycle Club's request to operate two non-complying events at the Roberts Rd site on Crown Reserve 30495 and resolved that:
 - "1. *The Council note that in relation to the request by the Albany Motorcycle Club to hold two non-complying events on Reserve 30495, Roberts Road, community consultation will be undertaken with residents and property landowners within a radius of 1.5km;*
 3. *Where objections are received as a result of the community consultation the request shall be considered at the March Ordinary Council Meeting;*
 4. *Where no objections are received Council notes that the CEO will grant approval for the two non-complying events in accordance with Regulation 18 of the Environmental Protection (Noise) Regulations 1997."*
38. At the Ordinary Council Meeting 15 March 2011 Council considered community members submissions received regarding the Albany Motorcycle Club request to operate two non-complying events at the Roberts Road site on Crown Reserve 30495 and resolved:

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“THAT Council GRANT the Albany Motorcycle Club Inc approval to hold two non-complying events under Regulation 18 of the Environmental Protection (Noise) Regulations 1979 conditional on no further breaches of the Environmental Protection Notice previously served on the Albany Motorcycle Club Inc. Should further breaches occur this approval will be withdrawn.”

39. At the Ordinary Council Meeting 15 March 2011 Council considered Motorplex’s funding request to complete a Fauna Assessment and Site Environmental Management Plan (required by DEC to assess the August 2010 Motorplex clearing application) and resolved:

“THAT Council AGREE to provide \$4,730 to the Great Southern Motorplex Group for the preparation of the Fauna Assessment and Site Environmental Management Plan of the Parker Brook reserve (Reserve 1947).”

40. At the Ordinary Council Meeting 15 March 2011 Council also considered the request from the Albany Motorcycle Club Inc. to surrender the existing lease over Crown Reserve 30495 located at Roberts Road, Robinson and a new ten year lease over portion of Crown Reserve 1947 Parker Brook Road, Willyung 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.”*

41. At Ordinary Council Meeting 21 June 2011 Item 4.4 Council considered the three submissions received regarding the Albany Motorcycle Club surrender and new lease and resolved:
- “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.”*
42. The Albany Motorcycle Club lease documents are currently being drafted prior to forwarding to the Club for review.
43. An application for Planning Scheme Consent (P2115122) has been made by the Albany Motorcycle Club for a motorcycle track facility on Crown Reserve 1947 and is currently being assessed by the City. This proposal is on advertising with the submission period closing on 3 November 2011.
44. These submissions will be made available to the public and Councillors prior to the November Council Meeting.
45. Submissions have been sought from the public and relevant government agencies such as the Department of Water, Department of Environment and Conservation, Main Roads WA and the Department of Indigenous Affairs.
46. The noise management plan as submitted by the Albany Motorcycle Club’s acoustic consultant has identified that for the ‘Seniors Race’ noise levels are likely to be as high as 60dB at two adjacent dwellings which would exceed the *EPA Noise Regulations 1997*. The *EPA Noise Regulations 1997* require noise levels affecting premises do not exceed:
- 40dB for more than 10% of the time on Sundays between 9am and 7pm (ie.1 hour);
 - 50dB for more than 1% of the time on Sundays between 9am and 7pm (ie. six minutes);
 - 65 dB at no time on Sundays between 9am and 7pm.
47. Notwithstanding the above, Council will need to consider the overall merits of the Albany Motorcycle Club proposal and has the ability to approve non-complying events if such events are deemed by Council to be an overall benefit to the community. The Club has proposed to restrict the number of events to 14 events per year and training of 3 days per week. The surrounding landowners have received a copy of the noise management plan which identifies the events and training days proposed.
48. There are concerns that the Motorplex car racing will generate similar or greater noise levels and if operated concurrently with other motor sport activities (motorcycle and kart events) the accumulative noise impact further impacts the amenity of existing residents.
49. No overall noise management plan has been prepared for the entire Motorplex proposal by the site users.

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50. The Motorplex has recently been granted clearing permit number CPS 3968/1 over Crown Reserve 1947 subject to following conditions prior to clearing:
- Vegetation management – construct a fence enclosing the areas not to be cleared.
 - Fauna management – area to be inspected by fauna specialist to identify, remove and relocate fauna.
 - Dieback and weed control – minimise risk of the introduction and spread of weeds and dieback.
 - Wind erosion management – shall not clear unless construction begins within one month of clearing.
 - Retain vegetative material and topsoil, revegetation and rehabilitation – stockpile the vegetative material and topsoil for rehabilitation.
 - Records must be kept and reporting undertaken – to be submitted to DEC annually on or before 30 June.
51. The Motorplex seeks to lease Crown Reserve 1947 as detailed in a letter received by the City on 14 September 2011.
52. The Albany Motorcycle Club and the Albany City Kart Club have been made aware of the Motorplex Design Study and the requirement to agree not to carry out permanent works or install infrastructure that may prevent or impede the future development as indicated in the Design Study.
53. The Albany Motorcycle Club will also be made aware of and be provided with a copy of the City's Airport requirements for lighting in the vicinity of Aerodromes.

DISCUSSION

54. Given the Motorplex requirements detailed in the letter received by the City on 14 September 2011 and the numerous approvals and funding required to satisfy conditions set out in Council's resolution of 17 February 2009, City representatives including the Mayor and CEO and Motorplex representatives met on 15 September 2011 to discuss the matters in the letter.
55. At that meeting, Motorplex advised that the single most significant factor in determining its financial ability to progress with development of the site was the right to display third party signage on this site, such signage being viewable from outside of the site along Albany Highway.
56. Council's Signage Policy does not allow third party signage (signage where products and services associated with the advertisement are not available from the site). Motorplex have indicated that a singular large sign or a series of signs along the entire frontage, which is around 870 metres in length, will be sought.
57. A planning application has not yet been lodged with the City by Motorplex for the signage. If received this application will need to be considered by Council as it is outside of Council's adopted policy position.
58. Several years ago the Council set a precedent regarding signage by taking action against all landowners fronting Albany Highway and Chester Pass Roads to remove third party signage. This directive resulted in a loss of revenue to such landowners. The removal was based on concerns regarding visual amenity and driver safety. Around fifty signs were removed as part of the enforcement action.

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59. In assessing any application for signage the proposal would also need to be referred to Main Roads WA. Main Roads WA need to be consulted for any signage within 50 metres of the Albany Highway road reserve to ensure that any signage due to size and positioning does not pose a distraction to motorists and compromise traffic safety.
60. The Motorplex is also seeking a City of Albany undertaking not to approve or permit any new development within the vicinity of the Reserve that may compromise Motorplex activities.
61. Acceptance of this request is unachievable unless the City imposes a noise buffer via a scheme amendment or local planning policy over adjacent land parcels. Without the preparation of a holistic noise management plan for all activities identified in the Motorplex proposal such a buffer could not be identified.
62. Furthermore should the City commence such action, which results in development restrictions on land owners, the City would be liable to claims for compensation. Such a buffer is likely to impact on several adjacent lots, including the special rural subdivision on the opposite side of Albany Highway (the imposition of a buffer could impact on the ability of this developer to sell those lots).
63. The current rateable value of the new development land is \$633,000.
64. It was discussed and acknowledged at the meeting on 15 September 2011 that the Motorplex Design Study concept plan will also significantly impact on the registered Aboriginal Heritage creek site (No. 21837) traversing Crown Reserve 1947.
65. In City staff's experience when dealing with *Aboriginal Heritage Act 1972* and *Native Title Act 1993* matters the preference is that any development plans be modified to avoid damaging or altering any site, and Motorplex at this stage has not considered how it will address such matters.
66. In order to avoid committing an offence under the *Aboriginal Heritage Act 1972* Motorplex will require a Section 18 Notice approach under the Act from the Minister of Indigenous Affairs. Consent will be required prior to any development/activity on the site.
67. Any new lease request will be referred to both the South West Aboriginal Land and Sea Council and the Department of Indigenous Affairs for any considerations under the *Native Title Act 1993* and the *Aboriginal Heritage Act 1972* respectively.
68. Taking into consideration the numerous approvals and external funding required by Motorplex in the immediate future, rather than entering into a lease, an Agreement to Lease with the Motorplex is more appropriate. The Agreement to Lease will detail all conditions that must be satisfied by Motorplex prior to executing a lease.
69. The Agreement to Lease eliminates the cost implications of terminating the existing Albany City Kart Club and in progress Albany Motorcycle Club leases on the Reserve and associated costs should Motorplex not be able to satisfy all of the required conditions.
70. An Agreement to Lease should provide the Motorplex with the security of tenure that is required by funding bodies when pursuing funding.
71. When considering all of the above, it is questionable whether Crown Reserve 1947 is the most suitable site for the Motor Sport Complex.

GOVERNMENT CONSULTATION

72. Nil.

PUBLIC CONSULTATION / ENGAGEMENT

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

74. This Section requires there to be local public notice of any lease 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.

75. 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;*

76. Motorplex is a recreational association, therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

77. However, in this instance given:

a) the nature of the proposed lease;

b) implications for residents and landowners within the vicinity;

c) that the Motorplex intends to seek significant commercial sponsorship; and

d) that the City may be required to pay compensation to affected landowners.

it is recommended that any Agreement to Lease be advertised for a period of at least two weeks inviting submissions from the public. Any submissions received will be considered by Council at the next available meeting.

78. The subject land is identified as a Reserve under Town Planning Scheme No. 3. Whilst any proposals for motor sport activities should be consistent with the purpose of the Reserve and advertising is not specifically required under the Scheme, the City has the power to seek public comments if deemed appropriate.

STATUTORY IMPLICATIONS

79. In addition to the statutory obligations stated above, all leases undergo a statutory process in accordance with the *Land Administration Act 1997* and *Local Government Act 1995*.

80. 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.

81. 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.

82. Under the City's Town Planning Scheme No. 3, the area is zoned "Parks and Recreation". The proposed use for motor sport activities is permitted use in accordance with the Scheme.

STRATEGIC IMPLICATIONS & ALIGNMENT TO COPORATE PLAN

83. This item relates to the following elements of the City of Albany Strategic Plan (2011-2021):

Key Focus Area

Lifestyle and Environment.

Community Priority

A built environment for active lifestyles.

Proposed Strategies

Nil.

POLICY IMPLICATIONS

84. Council adopted a Property Management - Leases Policy in 2008. 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.

RISK IDENTIFICATION & MITIGATION

85. The risk identification and categorisation relies on the City's Risk Management Framework.

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|-------------------|--------------------|----------------------|--|
| Council withdraw their support of the Motorplex on Crown Reserve 1947 – Reputational | Possible | High | Medium | Work with stakeholders to meet needs |
| Non-compliance with conditions attached to Council resolution 17 February 2009 Item 12.8.2 – Operational and community impact | Almost Certain | Extreme | Extreme | Council continued support by possible investigation of alternatives |
| Non-compliance with lease (assuming lease is issued after all conditions have been met) – Environmental | Possible | High | Extreme | City resources applied for monitoring and compliance |
| Approval of Motorplex third party signage viewable from Albany Highway may set precedent for other landowners to apply for such signage. Landowners that were required to remove their signage due to enforcement action of Council could express | Likely | Medium | High | Council to consider these aspects should an application for third party signage be received. |

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| dissatisfaction and seek recompense/ restitution with perceived 'double standards'. | | | | |
| City undertaking to restrict development within the vicinity of the Reserve via Scheme Amendment of Local Planning Policy – claims for compensation by affected landowners could be made. | Likely | High | Extreme | Council to consider these aspects should the Motorplex propose a policy or scheme amendment to impose a noise buffer on surrounding private landholdings. |
| Non-compliance with EPA Noise Regulations 1997 – compliance burden on Council staff should complaints be received. | Almost Certain | High | Extreme | Continual monitoring of noise levels at adjacent noise sensitive premises – where ongoing breaches occur enforcement action under the EPA Noise Regulations 1997 may be required, requiring increased City resources. |

FINANCIAL IMPLICATIONS

86. All costs associated with the development, execution and completion of any new Agreement to Lease and lease documentation including but not limited to legal, advertising, valuation and survey will be borne by the proponent, the Motorplex.
87. Any new lease rental will be determined by Council based on the category of lease. For community leases rent for true not-for-profit with little commercial sponsorship opportunity, is the equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.
88. Where there is a significant commercial sponsorship or lease conditions, rent is determined by current market valuation.
89. Previous Council expenditure of \$4,520.00 (incl GST) for Motorplex Fauna Assessment and Site Environmental Management Plan in May 2011, and other work on this matter is being funded from staff time within existing budgets.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

90. Council has the following options in relation to this item, which are:

Option A

To continue its support for Motor Sport Complex proposal over Crown Reserve 1947, Parker Brook Road, Willyung although it is highly unlikely EPA and Council conditions can be satisfied.

15/11/2011

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Option B

To continue its support for the Motor Sport Complex proposal with investigations for a possible alternate suitable site commencing.

91. Should Council continue its support for Motorplex's occupancy of Crown Reserve 1947, it is recommended an Agreement to Lease with Motorplex be agreed requiring Motorplex to satisfy all conditions prior to executing a lease.

SUMMARY CONCLUSION

92. Over a period of three years Council has taken action to support use of Crown Reserve 1947 for the use of a Motor Sport Complex. However, given noise nuisance issues, possible compensation claims against the City and other issues relating to approvals it is questionable if this site is appropriate.
93. Motorplex wish to proceed with their project having received a DEC Clearing Permit. Motorplex are now seeking a lease over Crown Reserve 1947 for motor sport activities.
94. Motorplex has numerous approvals and funding requirements as defined in resolution of Council 17 February 2009 to be satisfied prior to executing a lease on the Reserve. It is questionable whether these terms can be satisfied.
95. Should the Council determine to proceed with this site, an Agreement to Lease is the most appropriate mechanism to enable Motorplex to pursue funding opportunities and to allow time for Motorplex to meet all conditions required prior to entering into a lease.

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|-----------------------------------|---|
| 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) | PRO384 (Kalgan Ward) |
| Previous Reference | OCM 19.08.2008 Item 12.8.1 OCM 16.12.2008 Item 12.8.2 OCM 17.02.2009 Item 12.8.2 OCM 16.06.2009 Item 18.2 SCM 10.11.2009 Item 6.2.15 OCM 15.02.2011 Item 2.6 OCM 15.03.2011 Item 1.9 OCM 15.03.2011 Item 2.3 OCM 15.03.2011 Item 2.7 OCM 21.06.2011 Item 4.4 |