

21/02/2012

REFER DISCLAIMER

4.7: PROPOSED REVOCATION OF MANAGEMENT ORDER OVER CROWN RESERVE 5200 – LOT 122 No 18 STIRLING STREET, ROBINSON

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| Land Description | : Lot 122 No 18 Stirling Street, Robinson (Crown Reserve 5200) |
| Proponent | : City of Albany, the Department for Regional Development and Lands and Albany MenShed Incorporated |
| Owner | : Crown |
| Responsible Officer(s) | : Acting Executive Director Corporate Services (P Wignall) |

Maps and Diagrams:



IN BRIEF

- Council is requested to consider the revocation of the Management Order for Crown Reserve 5200 to the Department for Regional Development and Lands (DRDL). This will facilitate the DRDL granting of the Management Order to Albany MenShed Incorporated to enable the land to be developed as the site of MenShed community activities.
- The DRDL has also sought Council's support to amend the purpose of the reserve from 'Drainage' to 'Community Purposes'.

ITEM 4.7: RESOLUTION**VOTING REQUIREMENT: SIMPLE MAJORITY****MOVED: COUNCILLOR CALLEJA****SECONDED: COUNCILLOR BOWLES****THAT Council:**

- i) **AGREES** to revoke the Management Order for Reserve 5200 held by the City of Albany, pursuant to section 50 of the *Land Administration Act 1997*.
- ii) **AGREES** to the purpose of Reserve 5200 being amended from 'Drainage' to 'Community Purposes', pursuant to section 51 of the *Land Administration Act 1997*.
- iii) **SUPPORTS** the granting of a Management Order for Reserve 5200 to Albany MenShed Incorporated, pursuant to section 46 of the *Land Administration Act 1997*.

CARRIED 12-0**BACKGROUND**

1. In June 2011, the Albany MenShed Incorporated (MenShed) approached the DRDL seeking suitable Crown land to establish a dedicated purpose built facility for MenShed activities.
2. Albany MenShed Incorporated is a not for profit association, established in 2006, to promote men's wellbeing in the community by providing a facility for woodwork, metal work and hobby activities. They have approximately 25 members, though support and membership is growing rapidly.
3. MenShed are currently located (on a temporary basis) in a shed at Centennial Oval managed by the Albany Agricultural Society, pending the establishment of their own dedicated community facility.
4. The DRDL in investigating MenShed request for suitable Crown land in the Albany area identified that Reserve 5200 located at Lot 122 No 18 Stirling Road, Robinson may be a possible option. This reserve is currently vested with the City of Albany under Management Order (H604662) for the purpose of 'Drainage'.
5. It was the intent of the DRDL and MenShed to approach the City to determine their requirement for this reserve and if surplus to City requirements, the Management Order for the reserve would be revoked, subject to Council approval, and then granted to MenShed.
6. The DRDL then sought information from the City on the past use of the reserve to determine whether it had ever been used for its designated purpose of drainage.
7. City staff, to facilitate the DRDL request, inspected the reserve and determined that the drainage reserve has not been utilised and is surplus to the City's requirements. This outcome was communicated to both the DRDL and MenShed.

8. As the outcome was acceptable to both the DRDL and MenShed, to progress the matter the DRDL requested the City to undertake a preliminary site investigation to determine whether the site was contaminated. The *Contaminated Sites Act 2003*, the *Land Administration Act 1997* and the DRDL's Crown Land Practice Manual require completion of a preliminary site investigation, prior to allowing the revocation of the Management Order.

DISCUSSION

9. At this stage, prior to progressing the DRDL request, City staff undertaking due diligence identified the following summarised options for the reserve being:
- Revoke the management order to DRDL to facilitate the granting to MenShed; or
 - City of Albany leasing the reserve to MenShed.
10. After consideration of all factors associated with both options, including but not limited to the following, it was determined that the preferred option would be to continue to facilitate the revocation of the Management Order for Reserve 5200:
- City of Albany initial costs and resources required to resolve the outstanding matters prior to leasing (including liaising with the DRDL to amend the Management Order purpose and resolving the constraint of the Telstra easement running through the reserve and lease negotiations), would exceed those costs associated with the preliminary site investigations required by the DRDL prior to revoking the Management Order.
 - Costs associated with ongoing lease management such as rent reviews, rent collection, site inspections and lease insurance compliance would exceed any future lease revenue to the City.
 - The DRDL's previous expertise and success with removing the Telstra easement from land adjoining the reserve.
 - The Telstra easement would be a matter to be resolved between the DRDL and MenShed as part of the future Management Order.
 - The DRDL and MenShed request being to revoke the Management Order.
11. In September 2011, the City engaged Aurora Environmental to undertake the preliminary site investigation at a total cost of \$5,384 inclusive of GST. The MenShed contributed \$1,000 towards the consultant costs to prepare the preliminary site investigation, with the City bearing the remaining cost of \$4,384. Budget line item 154470 provides for sundry lease property expenses such as these.
12. The preliminary site investigation was completed in December 2011 and consisted of a desktop study, site assessment and soil sampling. The study concluded there are no contamination concerns for Reserve 5200.
13. The preliminary site investigation report was forwarded to the DRDL for review who have since advised that they consider the outcomes of the preliminary site investigation acceptable.

14. Following the completion of the preliminary site investigation, the DRDL now seek:
 - Council's resolution to revoke the Management Order for Reserve 5200;
 - Council's support to amend the purpose of the reserve from 'Drainage' to 'Community Purposes' to reflect the proposed use of the land;
 - Council's support for the Management Order of Reserve 5200 being granted to the MenShed; and
 - That the City sign a statutory declaration pursuant to the *Contaminated Sites Act 2003* to confirm the outcomes of the preliminary site investigation and that there is no evidence that the land has been contaminated.
15. MenShed representatives have advised that they are agreeable to their possible location at Reserve 5200 and are willing to accept the Management Order for this land.
16. There is an existing easement in favour of Telstra running through the middle of the reserve that may be considered a constraint to future development. However, the DRDL verbally advised MenShed they have previously been successful in removing Telstra easements from adjoining properties.
17. The Telstra easement will be a matter to be resolved between the DRDL and MenShed, as part of the future Management Order being granted for the land and does not require any further action by the City.
18. Once Council has revoked the Management Order for the reserve, the DRDL will be responsible for future negotiations with MenShed to grant this body the Management Order for the reserve.
19. The subject land is currently zoned Noxious Industry under the *City of Albany Town Planning Scheme No 3*. While the MenShed is a community workshop style facility and the site will eventually accommodate the clubrooms for this group, it can be argued that the actual use of the land will be more consistent with a workshop or light industrial uses, which are permitted uses in this zone.

GOVERNMENT CONSULTATION

20. This matter was initiated by the DRDL as a result of a community group query from Albany MenShed Incorporated. The City has consulted with the Department throughout the process of identifying an appropriate site for this community facility. No other government agency has been contacted.

PUBLIC CONSULTATION / ENGAGEMENT

21. While City staff have worked in conjunction with Albany MenShed Incorporated throughout the process of finding a suitable site for their activities, no other public consultation has occurred.

STATUTORY IMPLICATIONS

22. Section 41 of the *Land Administration Act 1997* allows the Minister for Lands to reserve Crown land for one or more purposes in the public interest.
23. Section 46 of the *Land Administration Act 1997* allows the Minister for Lands to place the care, control and management of a reserve in a person or management body, subject to any conditions the Minister may specify.
24. Section 50 of the *Land Administration Act 1997* allows the Minister for Lands to revoke a management order for a Crown Reserve where the management body agrees that it should be revoked. The City of Albany is currently the management body for Reserve 5200.
25. Section 51 of the *Land Administration Act 1997* allows the Minister for Lands to cancel, change the purpose or amend the boundaries of a reserve.
26. Section 13 of the DRDL's Crown Land Practice Manual states that the Department will not lease or transfer any land without clear knowledge and appropriate memorials on land title regarding the past use and potential contamination of land. This responsibility is passed to City of Albany as the management body of the reserve.
27. The *City of Albany Town Planning Scheme No 3* sets out the land uses that are permitted in the Noxious Industry zone. In this table, the use of 'Industry – Light' is specified as a 'P' use, which means it is a permitted use in this zone.
28. Under the *City of Albany Town Planning Scheme No 3*, the use of 'Community Purpose' is not listed or defined within the Scheme. However, Clause 3.2 of the Scheme allows Council to consider uses that are not contained in the Use Class table, where the use is consistent with the objectives of the zone.
29. Under the new *City of Albany Local Planning Scheme No 1*, the land is proposed to be zoned for Parks and Recreation Reserve. The proposed Scheme allows the consideration of uses consistent with a Parks and Recreation Reserve. As the proposed use is a community facility, it could be argued that this is a recreational activity and is therefore acceptable.

STRATEGIC IMPLICATIONS

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

Key Focus Area

Organisational Performance

Community Priority

Policy and Procedures

Proposed Strategies

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

POLICY IMPLICATIONS

31. There are no policy implications relevant to this item.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|---|------------|---------------|---------------|---|
| Council does not support the revocation of the Management Order and the reserve remains under the management of the City. | Possible | Insignificant | Low | City to retain the Management Order and work with MenShed to use Reserve 5200 under a lease |

FINANCIAL IMPLICATIONS

33. Previous Council expenditure in November 2011 of \$4,384 for the environmental consultant to prepare the preliminary site investigation, and all staff time working on this matter is being funded within the existing 2011/12 budget COA 154470 Expenditure – Lease Expenses.

34. City staff analysed both options and determined that the expenditure of \$4,384 to facilitate the revocation of the Management Order for the reserve was preferable to the anticipated higher costs associated with the leasing option.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

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

- a) Agree to revoke the Management Order over Reserve 5200 held by the City of Albany;
or
- b) Not agree to revoke the Management Order over Reserve 5200 and the reserve will remain under the care, control and management of the City of Albany.

36. Should Council not agree to the revoke the Management Order, the City will be responsible for resolving all of the outstanding matters including liaising with the DRDL to amend the purpose of the reserve to reflect the proposed use of the land for community purposes, all dealings with the DRDL and Telstra regarding the easement on the land, negotiations with the MenShed to lease the land and ongoing lease management.

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37. Once all of the outstanding matters had been finalised, a new community lease to MenShed approved by Council would return a rental of \$760 plus GST per annum (being the equivalent to Minimum Land Rate as set by Council per annum) in accordance with Council's Leasing Policy.

SUMMARY CONCLUSION

38. As Reserve 5200 Lot 122 No 18 Stirling Street, Robinson is not used or required by the City for the designated purpose of drainage, the revocation of the Management Order over the reserve to support the community MenShed facility is recommended.

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| Consulted References | City of Albany Town Planning Scheme No 3 <i>Land Administration Act 1997</i> <i>Contaminated Sites Act 2003</i> |
| File Number (Name of Ward) | PRO384 |
| Previous Reference | No previous references |