

4.6: NEW LEASE – LOWER KING COMMUNITY ASSOCIATION INC. – CROWN RESERVE 24154, LOWER KING

Land Description	: Crown Reserve 24154 and being Lot 6097 on Plan 4854 and being the whole of land contained in Certificate of Title Volume LR 3082 Folio 390, Lower King
Proponent	: Lower King Community Association Inc.
Owner	: Crown
Attachment(s)	: Nil
Responsible Officer	: Executive Director Corporate Services (G Adams)
Maps and Diagrams	



IN BRIEF

- Council is requested to consider a new lease for the Lower King Community Association Inc. over the area it currently occupies on Reserve 24154, known as Gomm Recreation Park Reserve, Lower King.
- Lease term being 21 years for the purpose of Community Hall site, Croquet Grounds and Tennis Courts.
- The Lower King Community Association Inc. proposes to undertake hall extensions and improvements to the property. The Association has received Lotterywest grant funding to assist with completing the improvements.
- Council is requested to consider an application from the Lower King Community Association Inc. to waive the legal costs associated with the preparation, execution and completion of a Deed of Lease of \$600 plus GST plus disbursements (if applicable).

**ITEM 4.6: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council APPROVE the request from the Lower King Community Association Inc. for a new lease over Crown Reserve 24154 and being Lot 6097 on Plan 4854, Lower King subject to:

- 1. Lease term being 21 years commencing 21 August 2012.**
- 2. Lease rental being a peppercorn rate of \$10.00 plus GST annum.**
- 3. Lease area being approximately 12,219 square metres.**
- 4. Lease purpose being Community Hall site, Croquet Grounds and Tennis Courts.**
- 5. Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent is obtained.**
- 6. All costs associated with the development, maintenance and operations of the lease area to be payable by the proponent.**
- 7. All legal costs associated with the preparation, execution and completion of the Deed of Lease to be payable by the City of Albany, in recognition of the substantial improvements to the property.**
- 8. Lease being consistent with Council Policy – Property Management – Leases and Licences.**

BACKGROUND

1. Crown Reserve 24154 is under a Management Order H639953 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Recreation and Hall Site" for a term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. Crown Reserve 24154, known as Gomm Recreation Park Reserve, an area of approximately 12.20 hectares is located at 648 Lower King Road, Lower King.
3. In March 1986 the former Shire of Albany granted a new lease to the Lower King Croquet, Progress and Recreation Association Inc. over Crown Reserve 24154 for the purpose of the development of croquet grounds and tennis courts plus ancillary requirements.
4. The lease term of 21 years commenced 1 March 1986 for an initial nominal rental of \$4.00 per annum for the first two years, with an option for a further five year term. The lease agreement provides that rent be reviewed every two years and upon the option for a further term being exercised in 2007.
5. The Lower King Croquet, Progress and Recreation Association registered a change of incorporated name to Lower King Community Association Inc. with the Department of Consumer and Employment Protection on the 8 August 2002.
6. In September 2006 the Association exercised the option for a further five year term. At that time, the Association raised concern regarding possible increase to annual lease rent as detailed in the existing lease agreement clause 9B.

7. The City advised the Association that a peppercorn rental of \$10.00 plus GST would remain during the 5 year extension expiring on 28 February 2012. However, the Association was further advised that any new lease considered in 2012 would attract a rental being the equivalent to minimum rate as set by Council per annum. It was recommended to the Association that they commence planning to allow for an increased rental in 2012.
8. A Deed of Extension and Variation of Lease commencing 1 March 2007 was entered into between the City and the Lower King Community Association Inc.
9. On the 20 February 2012 the City wrote to the Association informing them the further five year term was expiring on the 28 February 2012, and requesting the Association to advise the City of their intentions with regard to applying for a new lease over Reserve 24154. The City further advised the Association that a new lease rental of \$760.00 plus GST per annum (the equivalent of minimum rate set by Council per annum) would be applied.
10. On the 20 March 2012, a formal request was received from the Lower King Progress Association Inc. for a new lease over Reserve 24154. The Association raised concerns with the City as to their ability to meet rental payments and lease development costs.
11. Taking into consideration the Association's comments regarding the proposed lease rent and that staff were in the process of reviewing Council's Policy Property Management – Leases and Licences and likely implications for community Lessees, the Chief Executive Officer instructed that all community group requests for new leases and extensions be placed on hold pending the finalisation of the policy review.
12. The Association continue to occupy the leased area on a holding over basis as month to month tenant. The conditions of the tenancy preserve the terms and conditions of the lease, except in respect of the term of the lease.
13. The revised Council Policy Property Management – Leases and Licences is being submitted by the Audit and Finance Committee to this OCM 18.09.2012 Item 1.1 as a separate item in the agenda. The Audit and Finance Committee recommendation being that the finalised Property Management – Leases and Licences Policy be endorsed by Council.
14. The finalised policy provides that rent for Community groups, such as the Lower King Community Association Inc., leasing land for community purposes will be a peppercorn rent of \$10.00 plus GST per annum.
15. The Association has substantially developed the lease area by constructing croquet grounds and tennis courts with clubhouse facilities.
16. The Association maintains all of the buildings and infrastructure upon the leased area of Crown Reserve 24154, at no cost to Council.

DISCUSSION

17. The Lower King Croquet, Progress and Recreation Association Inc. was established in 1986 by a group of enthusiastic croquet players.
18. In 2002, the Lower King Croquet, Progress and Recreation Association changed its name to the Lower King Community Association Inc.
19. The Lower King Community Association Inc. is the Management Committee for the Gomm Park Croquet Association, Lower King Progress Association and the Lower King Tennis Club. The Association has over 100 members within the different association groups.
20. Since 1986 the Association through grant funding, fundraising and voluntary work has completed substantial improvements to the property including:
 - Construction of four croquet lawns.
 - Construction of three tennis courts.
 - Extensions to the hall incorporating kitchen facilities and store room.
 - Internal upgrade to hall incorporating relining the walls and painting.
 - Installation of a deck area.
 - Installation of an access ramp.
 - Construction of a car park and landscaping.
 - Installation of a universal access toilet block.
21. If the proposed new lease is approved the Association has committed to further improvements to the property including but not limited to:
 - Extension to the existing hall including insulation.
 - Installation of a new store room.
 - Installation of a new meeting room.
 - Covered ramp access to hall.
 - Improvements to drainage.
22. An application for grant funding has been recently approved by Lotterywest to assist the Association with hall extensions and improvements to the property.
23. The Association has sought and received City of Albany, as Landlord, permission for the proposed improvements subject to all Building and Planning Authority and other approvals including Council approval of a new lease being obtained prior to commencement of works.
24. The proposed new lease will be negotiated in line with Council's Policy – Property Management – Leases and Licences within the category of Community Leases.

GOVERNMENT CONSULTATION

25. Under Section 18 (1) of the *Land Administration Act 1997* the Department of Regional Development and Lands has been consulted. Minister for Land's consent will be sort for the proposed new Deed of Lease on Crown Reserve 24154.

26. The proposed improvements as part of a development application will be referred to the South West Aboriginal Land & Sea Council, the Department of Indigenous Affairs and the Department of Regional Development and Lands for land and heritage consideration.

PUBLIC CONSULTATION / ENGAGEMENT

27. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings. The Act requires the following:
- a. A local government must give local public notice of the proposed lease inviting submissions from the public, for a period of two weeks;
 - b. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes; and
 - c. A local government can then proceed with the lease.
28. Section 30 of the *Local Government (Functions & General) Regulations 1996* defines the dispositions to which the advertising requirements of Section 3.58 of the Act do 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;*
29. The Lower King Community Association Inc. is an incorporated, not for profit sporting and community association, therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

STATUTORY IMPLICATIONS

30. 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.
31. As this is Crown land, under Management Order H639953 issued to the City of Albany with the power to lease, for the purpose of "Recreation and Hall Site", Minister for Land's consent will be required.
32. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
33. Under the City's Town Planning Scheme 1A, the subject land is reserved "Parks and Recreation". The proposed use of croquet and tennis sporting activities and community activities are an approved use in accordance with the Scheme.
34. The Western Australian Planning Commission (WAPC) consent is not required as this is Crown land.

STRATEGIC IMPLICATIONS & ALIGNMENT TO CORPORATE PLAN

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

Key Focus Area

- *Organisational Performance.*
- *Lifestyle and Environment.*

Community Priority

- *Policy and Procedures.*
- *A built environment for active lifestyles.*

Proposed Strategies

- *Develop clear processes and policies and ensure consistent, transparent application across the organisation.*
- *Incorporate into future plans, infrastructure in parks that encourages activity for all ages and abilities.*

POLICY IMPLICATIONS

36. Council adopted a Property Management – Leases Policy in 2008. A revised Property Management – Leases and Licences Policy has been recommended for endorsement under a separate Agenda Item 1.1 to this Council meeting by the Audit and Finance Committee.
37. This Policy aims to ensure that all requests for leases/licences, for whatever purpose, will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.
38. The Policy section relevant to this category of Community lease – requires the following:
- Rent for Community groups leasing land for community purposes will be a peppercorn rent of \$10.00 plus GST per annum.
 - Lessee must be an Incorporated body and a copy of their Articles of Association/Constitution be provided.
 - Lease to be for a term not greater than twenty one years.
 - Rental/Sublease agreements must be approved by the Landlord.
 - Lessee must have appropriate insurance pertaining to their particular sporting activities, as a minimum, and
 - Lessee will be responsible for all maintenance of the leased property at the Lessee's costs.
39. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Council does not approve a new lease – reputational loss to the City</i>	<i>Unlikely</i>	<i>Major</i>	<i>Medium</i>	<i>Seek to negotiate terms to Council satisfaction Collaborate closely with Lower King Community Association Inc. to ensure mutually agreeable outcomes</i>
<i>Council does not approve a new lease – loss of premises for the Association, they would need to seek new grounds</i>	<i>Unlikely</i>	<i>Major</i>	<i>Medium</i>	<i>Seek to negotiate terms to Council satisfaction Collaborate closely with Lower King Community Association Inc. to ensure mutually agreeable outcomes.</i>

FINANCIAL IMPLICATIONS

41. Council could determine to waive the legal costs associated with the preparation, execution and completion of a Deed of Lease of \$600 plus GST plus disbursements (if applicable).
42. The new lease rental will be peppercorn rent of \$10.00 plus GST per annum.
43. The new lease rental will be directed to COA 190430 Income – Other Leases.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

44. Council has the following options in relation to this item, which are:
- a. Approve the Association's request for a new lease, or
 - b. Decline the request.
45. Should Council decline the request, the Lower King Community Association Inc. would be required to vacate the property and find an alternate location should they wish to continue providing community facilities and associated activities.

18/09/2012

REFER DISCLAIMER

46. Council could then invite expressions of interest to lease Crown Reserve 24154 for the designated purpose only of “Recreation and Hall Site”.
47. Alternatively Council under Section 51 of the *Land Administration Act 1997* could apply to the Minister for Lands to change the purpose of the reserve, subject to City Town Planning Scheme compliance, to allow a lease for a different purpose.

SUMMARY CONCLUSION

48. The Lower King Community Association Inc. is seeking a new lease over an area they have occupied since 1986 on Crown Reserve 24154.
49. The Lower King Community Association Inc. has requested that Council consider waiving the legal costs associated with developing the lease agreement.
50. The Lower King Community Association Inc. has previously completed substantial improvements to the property and met the obligations of their previous lease.
51. The Lower King Community Association Inc. has received grant funding from Lotterywest to assist with further improvements to the property subject to a new lease being approved. The improvements will be beneficial to both the Association and the community.
52. The lease request to allow the Lower King Community Association Inc. to continue to provide community facilities and associated activities is supported.

Consulted References	<ul style="list-style-type: none"> • Council Policy – Property Management – Leases and Licences • <i>Local Government Act 1995</i> • <i>Land Administration Act 1997</i>
File Number (Name of Ward)	PRO228, A64933 (Kalgan Ward)
Previous Reference	Nil