

15.1 LAND ASSEMBLY PROPOSAL - PORTION OF PARK AND RECREATION RESERVE 36458 AND PORTION OF BALMORAL ROAD RESERVE

File No:	P3138
Responsible Executive Officer:	Director Development, Regulatory Services and Infrastructure Services
Reporting Author:	Lands Officer
Date of Report:	4 March 2013
Applicant/Proponent:	Taylor Burrell Barnett [TBB] on behalf of Kununurra Properties Pty Ltd
Disclosure of Interest:	Nil
Attachment(s)	<ol style="list-style-type: none">1. Council Resolution 15091 portion Reserve 36458 supported for excision2. Aerial Plan of proposed Hotel development with car park3. Proposed Hotel and Car Park with realigned drain4. LandCorp proposed Balmoral Road reconfiguration5. Preliminary Draft Pre and Post Drainage Diversion Flood Modelling

PURPOSE

The purpose of this report is to consider and make determination on a request received from Taylor Burrell Barnett [TBB] on behalf of Kununurra Properties Pty Ltd to assemble the following land areas:

- a) Lease with option to renew or purchase 4730m² of Crown Reserve 36458 for the purposes of a car park associated with a hotel and mixed use development proposal on adjoining land;
- b) Lease for a 25 year period with option to renew of 232 m² of Balmoral Road Reserve for the purposes of an alfresco café area;
- c) Lease for a 25 year period with option to renew or purchase of 548 m² of Balmoral Road Reserve for the purposes of car parking associated with the hotel and mixed use development proposal.

Please note that at this stage the Council is being asked to consider a land assembly proposal and all matters regarding possible future lease, licence or land disposal arrangements will be dealt with at a later stage and will be the subject of a further report for council's consideration..

BACKGROUND

Crown Reserve 36458 known as lot 501 Hillview Road Pegs Creek is vested in the Shire of Roebourne for the purposes of 'Parks and Recreation' with its current primary function being stormwater drainage.

At the Ordinary Council Meeting of 19 April 2010 Council resolved in part (Resolution 15091) to support the excision of the drainage reserve as follows:

That Council –

1. Support the excision of the portion of Reserve 36458 and forward a request to the Department of Regional Development and Lands [RDL] to consider the proposal and commence negotiation with the proponent for its purchase subject to the proponent undertaking a comprehensive hydrological study of the drainage catchment to determine that the proposed design of the car park culvert will satisfactorily dispose of stormwater.

Attachment 1 shows the portion of Reserve 36458 that was the subject of the 2010 Council resolution is shown in correspondence to RDL dated 9 June 2011 enacting Resolution 15091.

On 7 November 2012 consultants TBB on behalf of Kununurra Properties Pty Ltd wrote to the Chief Executive Officer requesting Council consideration of an expanded area across the Parks and Recreation Reserve to enable construction of a decked car park above the drainage channel for a proposed hotel and mixed used development to be located on adjoining land west of the intersection with Warambie Road.

This request was considered at the Ordinary Council Meeting of 17 December 2012 where Council resolved (Resolution 152345) to lay the item on the table pending further information. In support of the deferral, the Chief Executive Officer advised Council that further negotiations of land leasing were being held and as such, it may be premature for Council to set a formal position on this matter.

The outcome of these discussions was that the Chief Executive Officer successfully negotiated with RDL for the Shire to be able to lease directly with Kununurra Properties in order to ensure the management and maintenance of the portion of the Parks and Recreation reserve and the effective functioning of the drainage channel and associated floodplain.

On 3 January 2013, consultants TBB [the applicant] on behalf of Kununurra Properties Pty Ltd [the proponent] lodged a planning application for a hotel and mixed use development principally located on freehold land Lot 2638 Balmoral Road. This application is currently scheduled to be heard by the Joint Development Assessment Panel on 27 March 2013.

The current proposal

On 3 March 2013, in correspondence to the Shire's Lands Officer, consultants TBB further refined the request for use of reserved lands as follows:

Area a): Lease with a purchase option of 4730m² of Crown Reserve 36458 shown as Area a) in Attachment 2, for the purposes of a car park associated with the hotel and mixed use development proposal on adjoining land. This adds a further 2230 m² to the land area considered by Council in Resolution 15091.

The proponent is proposing to realign the existing drainage channel in the Reserve for a length of 280 metres (to the west) around the proposed new car park and associated

works including rock batters, landscaping and footpaths along the edge of the proposed new drain alignment for drainage, aesthetic and pedestrian circulation purposes.

Area b): Lease for a period of 25 years, with option to renew of 232 m² of the Balmoral Road Reserve for an alfresco dining space to service the proposed hotel development and activate and promote good surveillance of the adjacent public realm. The proponent is proposing to remove the existing culvert and reinstate a crossover and other drainage works along Balmoral Road.

Area c): Lease for a period of 25 years, with option to renew or purchase of 548m² portion of Balmoral Road Reserve is sought for car parking purposes. The proponent is proposing the removal of the existing culvert under Balmoral Road and construction of a new culvert located to the west, and relocation of the Balmoral along the current alignment of Balmoral Road. This is shown as Area c) in Attachment 2.

Original Reserve area): Relinquishment of option over previous portion of Reserve 36458 approved by Council under Resolution 15091.

Attachment 2 also summarises the works proposed to be undertaken by the proponent in the Reserve 36458 and Balmoral Road Reserve.

The lands matters described in the December 2012 Agenda Report should now be set aside to avoid confusion as it describes a recently abandoned plan.

LEVEL OF SIGNIFICANCE

The decision is considered significant having regard to CE8 – Significant Decision Making Policy.

COUNCILLOR/OFFICER CONSULTATION

Consultation has occurred with Departments in the Development, Regulatory & Infrastructure Services Directorate. Preliminary legal advice has been obtained from McLeod's regarding the lands matters set out in this report.

COMMUNITY CONSULTATION

Community consultation has occurred on the original planning application for a decked car parking and hotel and mixed use development.

The applicant's current proposal represents a substantial change to the planning application that was publicly advertised. The major variations are realignment of the drainage channel closer to residences and construction of an at-grade car park rather than decked car park over Reserve 36458, together with an extension of car parking and drainage works into the Balmoral Road Reserve [shown in Attachment 3]. This change in planning application is normally re-advertised.

If Council resolves to dispose of the properties as requested, under the *Local Government Act 1995* the disposal of lands must to be advertised. This is further addressed in Statutory Implications.

The Shire consulted with LandCorp regarding the works in Balmoral Road intended for implementation of the Karratha City Centre Road layout and for the proposed development of a Karratha Health Campus opposite the proposed hotel and mixed use development.

STATUTORY IMPLICATIONS

Key legislation provisions:

Land Administration Act 1997

- Section 18 of the *Land Administration Act 1997* gives Local Government the power, with the Minister's approval, to grant licenses for Crown land under the *Local Government Act 1995*.
- Section 46 (2) allows the Minister to vary Management Orders at the request of a managing body to enable a power to lease.
- Section 57 allows the Minister to grant a lease in respect of land above or below a road.
- Section 58 may apply if the leasing of a portion of a Road Reserve being the road verge is regarded as a road closure.
- Section 79 sets out provisions for general lease.
- Section 80 sets out provisions of a conditional purchase lease.
- Section 89 A leasee of Crown land may apply direct to the Minister for Lands to purchase the fee simple interest of the Crown Land currently being held in leasehold, subject to conditions prescribed under Regulation 14 of the *Land Administration Regulations 1998*.

Local Government Act 1995

- Section 3.58 sets out provisions for disposal of Shire assets, which includes land vested in the Shire.

As indicated at the outset to this report, the Council is being asked to consider a land assembly proposal and all matters regarding possible future lease, licence or land disposal arrangements will be dealt with at a later stage and will be the subject of a further report for council's consideration.

POLICY IMPLICATIONS

Karratha City of the North Plan [KCN]:

The KCN Plan envisages the development of senior's services to retain older aged people in Karratha and places significant emphasis on health services, including development of a new hospital in an integrated Health Campus, accommodation for health service providers and clients, and the co-location of health services. While the KCN plan sees a Health and Well Being Centre Campus located on or near the current hospital site, the area north of Balmoral Road is currently envisaged for the location of a senior's health facility and the relocation of the Nickol Bay Hospital as the home for a new City Centre Health campus. Commercial developments in this area should not impede these longer term KCN development proposals.

Karratha City Centre Road Layout implications of the proposed use of Balmoral Road Reserves

LandCorp's preliminary concept sketch for the works in Balmoral Road along the proposed hotel and mixed use development road area are provided in Attachment 4. LandCorp have substantial concerns regarding the applicant's request to lease the Balmoral Road Reserve for outdoor dining and car parking, particularly given the intended realignment of Balmoral Road, proposed access points for the Karratha Health Campus opposite the hotel access point, the lack of setbacks from Balmoral Road of the outdoor dining area and the need to ensure utilities under the road reserve and footpath area are accessible for servicing.

DP 18 City Centre Car Parking Policy

Preliminary analysis of parking requirements for the planning application indicate the hotel and mixed use development requires car parking that is beyond the capacity of the freehold land area on which it is to be constructed. This lack of on-site capacity is underpinning the applicants request to assemble additional land areas for parking and other purposes.

Provision and maintenance of open space in the Karratha City Centre

Karratha Open Space Strategy Draft 2008

The Karratha Open Space Strategy Draft 2008 provides a framework for the provision of public open space in the urban areas of Karratha. The strategy also assists Council to rationalise its open space system within the context of overall need, function and operation. In addition to technical and hydrological assessment of the proposed drainage channel realignment, further assessment is required of the impact of the request to use additional portions of Reserve 36458 for car parking considering the standards for open space per hectare set out in the Karratha Open Space Strategy Draft 2008 and responses to the 2013 Community Survey relevant to open space and recreation.

Karratha City Centre Master Plan:

Reserve 36458 runs in a north-south direction in Pegs Creek, adjacent to the City Centre boundary. The Karratha urban footprint is drained by a series of short trunk drainage courses, generally running in a north-south direction. The drainage channel the subject of TBB's request plays a critical role in drainage functions for a wide area of Pegs Creek and the City Centre.

The City Centre Master Plan proposes the upgrade of the key drainage reserves that currently bisect the town centre as underutilised open space. Whilst it is important for these reserves to perform their intended function, high quality landscape treatments will transform the reserves into key garden links through the town centre. By encouraging development to front these links, the drainage reserves become part of the city rather treating drainage as a problem to be hidden away. Attachment 2 summarises the works proposed to be undertaken by the proponent in the Reserve 36458 and Balmoral Road Reserve.

FINANCIAL IMPLICATIONS

There are potential significant positive financial implications. A considerable revenue stream for the Shire may be received if it is a direct party to any lease or licence agreement for any of the land area for the hotel and mixed use development. The Shire's Chief Executive Officer has negotiated with RDL in principal agreement for the Shire to enter into a lease or licence arrangement with Kununurra Properties Pty Ltd directly if the Shire prefers to do so. This will require a formal resolution of Council and a request to the Minister for Lands to action. Land tenure matters will be the subject of a further report to Council at a later stage.

As parts of its annual maintenance programme the Shire clears the drains which involves slashing of weeds and brush through to more major earthworks to reshape drainage channels. The proponent would need to set out provisions for ongoing maintenance of the realigned drainage channel and of any associated infrastructure. The Shire's maintenance program may thereby be reduced in the specific portions of Reserve 36458 covered by a lease or licence agreement.

Conversely, there are potential cost impacts including amenity impacts of loss of recreation and open space land area, and potential risks of drainage channel failures or road reserve impacts. These risk implications are canvassed further below.

STRATEGIC IMPLICATIONS

This item is relevant with the Council's approved Strategic Community Plan 2012-2022 and Corporate Business Plan 2012-2016. In particular the Operational Plan 2012-2013 provided for this activity:

Our Services:	1.b.1.2.2	Assess and facilitate approvals for major development proposals in the public and private sector.
Our Service:	1.a.2.4.2	Maintain and renew drainage infrastructure.
Our Program:	2.a.3.1	Continue to support tourism and visitor centre development.
Our Program:	2.b.1.1	Identify demand for industrial, residential, community and commercial purposes and facilitate development of land for industrial, residential, community and commercial purposes.
Our Program:	3.a.1.3	Provide expert advice to Government Agencies regarding matters relating to lands including native vegetation, mining leases and land tenures
Our Services:	3.a.1.3.1	Respond to requests for Shire position and provide information on crown land and related matters
Our Services:	3.a.1.3.1	Respond to requests for Shire position and provide information on crown land and related matters

RISK MANAGEMENT CONSIDERATIONS

Need for further technical data and analysis

Preliminary drainage modelling provided by consultants TBB [see Attachment 5] has been positive, indicating the drainage channel realignment may improve stormwater and drainage management in the area and may potentially provide greater flood risk management than at present for adjoining residents and property owners.

At the time of writing this report, the applicant has provided incomplete engineering studies to demonstrate the concept of diverting the drain around a new car park. Attachment 5 shows preliminary draft pre and post drainage channel realignment flood modelling. While it is yet to be complete, preliminary advice indicates that drainage functionality will be substantially improved.

Similarly portions of Balmoral Road Reserve are proposed to be disposed of for car parking, drainage and an alfresco area and this loss of road reserve has to be considered against traffic engineering principles that are evolving with the new alignment of Balmoral Road and emerging plans for the Karratha Health Campus.

Council's determination should require the provision of key data including hydrological modelling and engineering assessments, and its full assessment in order to inform Council's final decision on the applicant's request.

Maintenance of the drainage functions:

The ongoing maintenance of the drainage functions of this Reserve 36458 during overland flood or storm surge events is of paramount importance to the Shire. As the drainage function is a Shire responsibility, the Shire's ongoing control of the overall drainage functions and associated drainage infrastructure in leased lands must be clearly spelt out.

If Council considers it acceptable for the floodplain to be used as a car park, then any associated risks can best be managed via a direct tenure agreement with the proponent specifying indemnities for all key risk areas and who pays for ongoing maintenance and any other outgoings and costs.

Coverage for structural damage risks and maintenance costs

Constructions within drainage reserves raise risks including potential Shire liability for structural failure, drainage blockages arising from structures in the reserve, and third party damages. A direct lease or licence relationship between the Shire and the proponent enables appropriate indemnities and financial protections to be incorporated protecting the Shire's interests at the developer's cost.

Any agreement to divert the drainage channel itself would need to demonstrate to the Shire's satisfaction, that the proposal would not affect pre-development drainage functions, and be conditional upon frequent qualified structural engineer certification of all structures; the monitoring of effectiveness of the structure during storm events; and.

Development would need to be conditional on the proponent indemnifying the Shire in event of any public liabilities including structural failures or drainage system failures. Such indemnities should apply to development of both the area resolved by Council in 2010, and any extension of the Reserve area made available to the developer should Council agree to extend the area as requested.

Access to, protection or removal of other infrastructure in the reserve

It must be noted that sewer and water infrastructure are also located in the areas targeted for lease. It is anticipated that relocation of this infrastructure would be required by these authorities if the land area was sold or permanent structures were located above the infrastructure.

Public Liabilities

The Shire will need to consider the public liability insurance risk for any accidents / injuries that occur within all reserve lands.

IMPACT ON CAPACITY

There is considerable work required for Technical Services and Planning Services to assess the hydrological modelling and proposed engineering works, to document the legal lease or licence instruments, to facilitate the resolution of these land assembly issues including managing public advertising and assessment of submissions.

RELEVANT PRECEDENTS

Council resolution 15091 previously supported excision of a 2500m² portion of Reserve 36458. This land assembly was smaller in size and a purchase option rather than a lease option was approved by Council.

VOTING REQUIREMENTS

Simple and Absolute Majority

OPTIONS:

Option 1

As per Officer's recommendation.

Option 2

That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to:

- a) REFUSE the request for leasing a 4730m² portion of Park and Recreation Reserve 36458;
- b) REFUSE the request to lease 232m² of the Balmoral Road Reserve for alfresco dining; and
- c) REFUSE the request to lease 548m² portion of the Balmoral Road Reserve for car parking and drainage.

CONCLUSION

Taylor Burrell Barnett's on behalf of Kununurra Properties Pty Ltd request on 3 March 2013 for Council consent for the proponent to enter into long term lease with options to renew or purchase various portions of Crown Reserve 36458 (which is currently vested in the Shire for the purposes of Parks and Recreation) and portions of Balmoral Road Reserve (which is a Shire managed road) raises some complex technical, policy and legal issues and financial implications which have been covered in detail in the body of this report.

Continuing to support land assembly matters is consistent with the previous resolution in 2010. It will provide business confidence to developers and potentially be facilitative in attracting a major multi storey mixed use development. Clarifying land extent and tenure is important to facilitate the proposed development.

Financial and economic benefits need to be tempered with the Shire being assured that the drainage functions of the Reserve and the potential risks will not be compromised in any resolution of the requests for use of portions of Reserve 36458 and Balmoral Road Reserve.

Finally, it is noted that the land assembly matters dealt with in this report are deemed to be facilitative in nature only and do not pre-empt any decision in relation to the multi storey hotel and mixed use development which is subject to the independent Joint Development Assessment Panel determination.

OFFICER'S RECOMMENDATION

1. That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to:

- a) AUTHORISE the CEO to write to the Minister for Lands requesting the power for Council enter into a lease or licence directly with the proponent for the designated areas; and
- b) AUTHORISE the Chief Executive Officer do all things necessary to investigate and report to Council on the following matters:
 - i. hydrological modelling for drainage channel realignment and floodplain usage for car parking purposes and associated engineering works;
 - ii. traffic engineering;

- iii. risk management;
- iv. legal issues;
- v. policy implications;
- vi. alternative means of meeting parking requirements;
- vii. financial and statutory implications; and
- viii. the overall costs and benefits of entering into lease or licence agreements with the proponent over Reserve 36458 and Balmoral Road Reserve and report to Council.

2. That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to APPROVE in principal the request to dispose of Council assets in relation to:

Area a) 4,730 m² of Reserve 36458 and works for drainage channel diversion in Reserve 36458;

Area b) 232 m² of the Balmoral Road Reserve for alfresco dining; and

Area c) 548 m² of the Balmoral Road Reserve for car parking and drainage;

subject to the following:

- a) The applicant providing all technical, risk management and other documentation relating to:
 - i. the assured integrity of the drainage channel and associated flood plain in Reserve 36458;
 - ii. the assured integrity of the Balmoral Road Reserve;
 - iii. the consideration of alternative parking areas;
 - iv. the assured integrity of and ongoing access to the utilities and infrastructure within these Reserves; and
 - v. to the satisfaction of the Chief Executive Officer
- b) The proponent entering into a heads of agreement to lease or licence the subject lands including a specification of all works to be completed by the proponent as no cost to the Shire of Roebourne;
- c) The proponent agreeing to provide appropriate rental remunerations and indemnities to the satisfaction of the Chief Executive Officer;
- d) The agreement from the Minister for Lands to the Shire entering into such lease or licence arrangements for the designated areas; and
- e) Conclusions from the report from the Chief Executive Officer set out in resolution 1.

3. That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to APPROVE in principal the additional land area for parking provision and drain diversion in Parks and Recreation Reserve 36458 and APPROVE the land area for car parking and Drainage and alfresco area in the Balmoral Road Reserve subject to:

- a) The applicant providing all technical, risk management and other documentation relating to:
 - i. the assured integrity of the drainage channel and associated flood plain in Reserve 36458;

- ii. the assured integrity of the Balmoral Road Reserve;
 - iii. the consideration of alternative parking areas; and
 - iv. the assured integrity of and ongoing access to the utilities and infrastructure within these Reserves to the satisfaction of the Chief Executive Officer

 - b) The proponent entering into a heads of agreement to lease or licence the subject lands including a specification of all works to be completed by the proponent as no cost to the Shire of Roebourne;

 - c) The proponent agreeing to provide appropriate rental remunerations and indemnities to the satisfaction of the Chief Executive Officer;

 - d) The agreement from the Minister for Lands to the Shire entering into such lease or licence arrangements for the designated areas; and

 - e) Conclusions from the report from the Chief Executive Officer set out in resolution 1.
4. That Council by SIMPLE Majority pursuant to Section 3.18 of the *Local Government Act 1995* RESOLVES to REQUEST that the CEO bring back a further report to Council that address all matters with regards to any lease, licence or land disposal arrangements for the land areas a, b and c as defined.