



MINUTES OF SPECIAL MEETING OF COUNCIL

HELD ON 22 DECEMBER 2008

I hereby certify that the Minutes of the Special Meeting of Council held are a true and accurate record of the proceedings contained therein.

Shire President Confirmed

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SHIRE OF WYNDHAM-EAST KIMBERLEY

MINUTES OF THE SPECIAL COUNCIL MEETING HELD ON MONDAY 22 DECEMBER, AT 6:00 PM

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Shire President declared meeting open at 6pm.

2. RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Cr F Mills	Shire President
Cr R Addis	Deputy President
Cr D Ausburn	Councillor
Cr R Boshammer	Councillor
Cr J Moulden	Councillor
Cr J Parker	Councillor
Cr K Torres	Councillor
Cr K Wright	Councillor
A Douglas	Acting Chief Executive Officer
K Tripp	Environment Officer

PUBLIC GALLERY

A total of 28 members of the public attended.

3. DECLARATION OF INTEREST:

There were no declarations of interest presented at the commencement of the meeting.

Cr R Boshammer declared a Financial Interest in two motions put during the meeting in relation to Item 7.1 (Minute No. 8497 and 8500) , as he is a Director/Shareholder of a company that leases part of Reserve 41812.

4. RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

5. PUBLIC QUESTION TIME

Nil

6. APPLICATIONS FOR LEAVE OF ABSENCE

Nil

7. BUSINESS OF MEETING

Prior to the item being presented the Shire President referred to the statements made at the Ordinary Meeting held on 16 December 2008 whereby the Council resolved to defer the item until a Special Meeting, being today's meeting.

The Shire President advised the members of the public gallery that the information that had been referred to had been investigated and had been determined to not affect the basis on which Council should consider the matter of the lease.

7.1 Proposed Lease - Diversion Cruises & Hire, Part of Reserve 41812 (8495) (8496) (8497) (8498) (8499) (8500)

DATE:	22 December 2008
PROPONENT:	Diversion Cruises
LOCATION:	Lily Creek Lagoon, Reserve 41812
AUTHOR:	Peter Stubbs, Chief Executive Officer
REPORTING OFFICER:	Alex Douglas, Acting Chief Executive Officer
FILE NO:	66.20.02
ASSESSMENT NO:	N/A

PURPOSE

For Council to consider public comment consistent with Section 3.58 of the Local Government Act, in relation to the proposed lease by private treaty over a portion of reserve 41812 to Diversion Cruises/Celliston Nominees.

BACKGROUND

1. In February 2005 Council resolved to establish a 3 year lease with D. Spackman of Diversion Cruises for a portion of reserve 41812. (Minute No 7068)
2. The intent of the lease with no option of renewal was that a short term lease was appropriate to allow time for an alternative leased site to be identified.
3. This lease expired in May 2008. Notwithstanding that, the Lessee has paid the required fee a year in advance, and is therefore regarded as tenant and will until the end of January 2009.
4. Reserve 41812 is co vested to the Shire of Wyndham east Kimberley and Department of Water, with the power to lease for no more than 21 years.
5. Any lease requires the agreement of both co-vestees and the Minister for Water.
6. Mr D. Spackman is associated with two businesses Diversion Cruise and Hire and Celliston Nominees which records indicate have been used interchangeably over the course of time on this lease issue.
7. At a Special Meeting of Council, 5 June 2007, Council noted under confidential cover its legal advice in relation to the situation with regard to the Diversion Cruise lease and leasing of part of Reserve 41812.

8. At the Special Meeting of Council, 5 June 2007, Council resolved to advise the Department of Water that in agreed principle to amending the terms of Diversion Cruise lease to a 10 Year lease with a 10 year option of extension. The Department of Water advised it would not agree to this without a public expression and or tender process for the proposed lease.
9. At an Ordinary Council Meeting, 19 June 2007, Council (minute No 7776) resolved to advise the Minister for Water, Department of Water and Diversion Cruises that it wished for a new 10 year lease with a 10 year extension option at full commercial rental. This could not be progressed because the Department of Water advised it would not agree to this without public expression and or tender process for the proposed lease.
10. Council was to advertise this new lease immediately upon the Lessee providing evidence that the department of Water and Minister consented to a longer tenure by private treaty as required by Council Minute 7776, AND that Diversion Cruises provide revised development plans to support consideration of a longer tenure by private treaty as required in Council Minute 7776.
11. Diversion has not met these criteria set by Council, and therefore the advertising was not undertaken.
12. At an Ordinary Council Meeting, 18 March 2008, Council resolved to support the existing lease at the time and offer a 1 year lease with a 1 year extension until such time as an alternative site could be agreed upon Department of Water. The Department of Water agreed to this proposed lease arrangement.
13. In May 2008 Diversion Cruises was provided with a proposed new one year lease with extensions has agreed by the Council and Department of Water. This was not progressed or put to public comment, as Diversion Cruises would not confirm it if accepted the Lease Offer.
14. At the Ordinary Council Meeting 18 August 2008 Council resolved to offer by Private Treaty a new 21 year lease to Diversion Cruises/Celliston Nominees being the alternative site (between swim beach and ski beach) for Diversion Cruises to operate its business from and to be located in close proximity to other commercial business operating on Lake Kununurra.
15. Diversion Cruises did not accept that lease offer hence the matter could not be progressed.
16. At the Ordinary Council meeting, 21 October 2008, Council resolved (Minute No 8245) to offer Celliston Nominees a 10 year lease with a 10 year lease extension with the following conditions;
 - Rental to be at the current rate with adjustments on an annual basis by the State CPI.
 - All previous development approvals granted by the Shire and still current are to continue.
 - Lease purpose to be for tourism and commercial purposes.
17. The Department of Water was advised on this Council resolution and agreed to the public advertising proceeding.

18. This proposed lease was advertised for public comment in the Kimberley Echo newspaper 30 October 2008, with public comment closing 27 November 2008.
19. Public comments were collated and circulated to elected members 28 November 2008 in them the Elected Briefing session held on 2 December 2008.
20. Public comments are attachment to this agenda item (file 60.20.02)

STATUTORY IMPLICATIONS

1.1.1. LOCAL GOVERNMENT ACT 1995 - SECT 3.58 DISPOSING OF PROPERTY

(1) In this section —

dispose includes to sell, lease, or otherwise dispose of, whether absolutely or not;
property includes the whole or any part of the interest of a local government in property, but does not include money.

(2) Except as stated in this section, a local government can only dispose of property to —

(a) the highest bidder at public auction; or

(b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

(3) A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —

(a) it gives local public notice of the proposed disposition —

(i) describing the property concerned;

(ii) giving details of the proposed disposition; and

(iii) inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;

and

(b) it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

(4) The details of a proposed disposition that are required by subsection (3)(a)(ii) include —

(a) the names of all other parties concerned;

(b) the consideration to be received by the local government for the disposition; and

(c) the market value of the disposition as ascertained by a valuation carried out not more than 6 months before the proposed disposition.

(5) This section does not apply to —

(a) a disposition of land under section 29 or 29B of the [Public Works Act 1902](#) ;

(b) a disposition of property in the course of carrying on a trading undertaking as defined in [section 3.59](#);

(c) anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or

(d) any other disposition that is excluded by regulations from the application of this section.

[Section 3.58 amended by No. 49 of 2004 [s. 27.](#)]

POLICY IMPLICATIONS

Nil

FINANCIAL IMPLICATIONS

Council stands to gain revenue from any lease, the amount dependant on the lease finally agreed too. Revenue is proposed to be used better manage the Lily Creek Lake Kununurra environment and to assist implement the Lake Kununurra Foreshore Plan.

STRATEGIC IMPLICATIONS

Lily Creek lagoon and Lake Kununurra are unique assets to Kununurra. How they are used, developed, and managed is important to the future of Kununurra.

COMMUNITY CONSULTATION

This proposed lease was advertised for public comment in the Kimberley Echo newspaper 30 October 2008, with the public comment closing 27 November 2008.

Comments submitted were in the form of emails, letter and petitions. The petitions were not in the standard petition format. Notwithstanding and structural deviation from the normal petition template that the intent of the petitions is clear, and they should be considered.

In summary, there were 165 submissions, with 16 being in support of the proposed lease and 149 being opposed to it in current form.

A review of the submission summary has been undertaken to check the number of submissions and signatures, and the following information is provided: -

Number of submissions received:	64
Total number of signatories:	165
Opposing:	48 submissions/ 149 signatories
Supporting:	16 submissions/ 16 signatories

Please note that all of the above submissions were received but names were only counted once, therefore if more than one submission was made by an individual only the first was counted and not the subsequent submissions.

COMMENT

1. At the Ordinary Council meeting 21 March 2006 it was recommended to Council that in keeping with the original 3 years lease with no lease extension there be no new lease by private treaty, but rather a public tender process be used to determine any future commercial use of the that portion of Reserve 41812.
2. This approach was again recommended to Council at the Ordinary Council meeting 20 March 2007.
3. On both occasions Council has opted for a new lease to be established by private treaty.
4. It is the exception rather than the rule that there is substantial public comment on an issue
5. It remains the recommendation of the Officer that the best interests of the community are served by disposal of this portion of Reserve 41812 by a public process – expression of interest and or tender, if this land is to be used for commercial purposes.

6. A public tender process allows the community and Council to consider the full context of any commercial proposals and to comment on that. It represents the best course of action to secure the best outcome from commercial use in the local economy.
7. Alternatively if the land is not to be used for commercial purposes it is recommended that the no new lease be established, and the present infrastructure be removed at Council's expense and land be returned to public open space.
8. Passions run high on this issue in the community. In that environment good governance is easily corrupted or overlooked. It is therefore recommended that any tender process, if that is supported by Council be managed externally to Kununurra to enhance public confidence in that process and ensure proper process.
9. These recommended approaches are consistent with previous recommendations to Council and much of the public comment received.
10. It is noted that some views are put forward that the proposed lessee cannot hire paddle craft from the alternative offered site between Swim Beach and Ski Beach on Lake Kununurra, due to proximity of powered craft etc. There is a clear precedent to manage and accommodate this. Council has already issued a licence for paddle craft to operate by a different business from Celebrity Tree Park. Licenses as opposed to a lease area are sufficient to accommodate this style of business operation. And are commonly used on Water front for similar business' around Australia.

ATTACHMENTS

Public Comments Reference (File 66.20.02)

VOTING REQUIREMENT

Simple Majority

Three Councillors required to support any rescission motion before it can be considered.

OFFICER'S RECOMMENDATION 1

That Council note the public submissions received during the submission period.

OFFICER'S RECOMMENDATION 2

That Council rescind Minute 8425 to offer Celliston Nominees a 10 year lease with a 10 year lease extension.

OFFICER'S RECOMMENDATION 3

That Council request;

1. The support of the Minister and Department of Water to call on expressions of interest/tender process for the proposed commercial use of the portion of Reserve 41812, formerly used by Diversion Cruises and Hire and or Celliston Nominees.

2. That subject to above support the Western Australian Local Government Association tender Bureau service be commissioned to manage any expression or interest/tender process, so assist build confidence into that project.

ALTERNATE OFFICER'S RECOMMENDATION 4

Should recommendation 3, for commercial use of the portion of Reserve 41812 not be supported, then Council adopt to remove the current infrastructure owned by Diversion Cruises and or Celliston Nominees, at Council's expense, returning materials to Diversion Cruises and or Celliston Nominees, and returning that portion of Reserve 41812 to public open space.

COUNCIL DECISION

Moved:Cr K Wright

That Council having noted the public submissions received during the submission period reconfirm Minute 8425 from the Council meeting held on Oct 21 2008.

MOTION LAPSED DUE THE WANT OF A SECONDER

Minute No. 8495

Moved:Cr R Addis

Seconded:Cr P Caley

That Council note the public submissions received during the submission period.

CARRIED: (8/1)

Cr K Wright requested the votes be recorded

Cr F Mills, J Parker, K Torres, D Ausburn R Addis, J Moulden, R Boshhammer and P Caley voted for the motion

Cr K Wright voted against the motion

Three Councillors required to support rescission motion

- Cr D Ausburn, Cr P Caley, and Cr R Addis

Minute No. 8496

Moved:Cr R Addis

Seconded:Cr P Caley

That Council rescind Minute Number 8425 to offer Celliston Nominees a 10 year lease with a 10 year lease extension .

CARRIED: (8/1)

Cr R Addis requested the votes be recorded

Cr F Mills, J Parker, K Torres, D Ausburn R Addis, J Moulden, R Boshhammer and P Caley voted for the motion

Cr K Wright voted against the motion

Cr R Boshhammer declared a financial interest in the following motion, and left the meeting at 6:34pm.

Minute No. 8497

Moved:Cr K Wright

Seconded:Cr R Addis

That this Council call for an independent inquiry by either the Corruption & Crime Commission or another body as delegated by the Corruption & Crime Commission into the leasing and administration of Reserve 41812 which is jointly vested in the Shire of Wyndham East Kimberley and the Department of Water.

Further that such inquiry should encompass all matters related to;

- 1. current leases within this reserve,***
- 2. planned leases within this reserve,***
- 3. development, expansion and planned development of or for any facility within the area of Reserve 41812 or immediately adjacent to Reserve 41812,***
- 4. matters related to information supplied, information passed on, any other information related to or associated with Reserve 41812 and the administration thereof,***
- 5. all emails and other communications related to or associated in any way to Reserve 41812***

The date from which such inquiry will commence shall be the earlier of either the date of joint vesting between the Shire of Wyndham East Kimberley and the Department of Water (or predecessors of the Department of Water) or the date of the first lease on Reserve 41812 duly authorised and signed by all parties covering such lease

LOST: (3/5)

Cr K Wright requested the votes be recorded

Cr F Mills, J Moulden, and Cr K Wright voted for the motion

Cr D Ausburn, Cr K Torres, Cr P Caley, Cr J Parker, Cr R Addis voted against the motion

Cr R Boshammer returned to the meeting at: 6:41pm

Minute No. 8498

Moved:Cr J Moulden

Seconded:Cr J Parker

That Council, with the approval of the co-vestee Dept. of Water, will offer Celliston Nominees a lease over the portion of Reserve 41812, to expire on 30th September 2009. The lease is conditional on: -

- 1. no further development occurring on the site, including connection to effluent disposal and electricity, but does not prevent the lessee undertaking works to render the site safe, and***
- 2. the lessee will pay a rent of \$3825. No additional or further lease payments by or on behalf of Celliston Nominees will be accepted by Council, and***

3. *at the expiration of this lease, Council will remove, at its expense, any building or development remaining on the site, returning all materials to Celliston Nominees and returning that portion of Reserve 41812 to public open space, and*
4. *the lease on Reserve 41812 to be duly authorised and signed by all parties covering such lease*

CARRIED: (5/4)

Cr K Wright requested the votes be recorded

Cr R Addis, Cr K Torres, Cr J Parker, Cr P Caley, Cr J Moulden voted for the motion

Cr K Wright, Cr F Mills, Cr D Ausburn, Cr R Boshammer voted against the motion

Cr R Boshammer declared a financial interest in the following motion, and left the meeting at 6:48pm.

Moved:Cr R Addis

Seconded:Cr K Wright

That Council request that the Dept. of Local Government to undertake an independent review of council leases in reserve 41812 including:

- ***Efficiency of Council decision making process;***
- ***Assessment of lease arrangements in terms of delivering financial and community benefits;***
- ***Conduct of councillors and staff in relation to these leases, and***
- ***that the review to be completed by end of February 2009 or as soon as practical after this date.***

Minute No. 8499

Moved: Cr P Caley

Seconded: J Moulden

That the motion be put to the vote.

CARRIED: (8/0)

Minute No. 8500

That Council request that the Dept. of Local Government to undertake an independent review of council leases in reserve 41812 including:

- ***Efficiency of Council decision making process;***
- ***Assessment of lease arrangements in terms of delivering financial and community benefits;***
- ***Conduct of councillors and staff in relation to these leases, and***
- ***that the review to be completed by end of February 2009 or as soon as practical after this date.***

CARRIED: (8/0)

NOTE: The Council did not state the reason to differ from the officers recommendation however it is assumed that the resolutions better presented the outcome sought by Councillors as a result of the public submissions.

Cr Boshammer did not return to the meeting prior to the close of the meeting.

8. CLOSURE

With all business having been completed The Shire President wished all Councillors and Staff a safe and happy festive season and closed the meeting at 7.00pm.