



City of Busselton
Geographe Bay

LATE ITEMS

Council Agenda

27 January 2016

ALL INFORMATION AVAILABLE IN VARIOUS FORMATS ON REQUEST

CITY OF BUSSELTON

LATE ITEMS FOR THE COUNCIL MEETING TO BE HELD ON 27 JANUARY 2016

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12. COMMUNITY AND COMMERCIAL SERVICES REPORT

12.1 BUSSELTON FORESHORE LAND RATIONALISATION - SURRENDER OF HEAD LEASE LOT 431

SUBJECT INDEX:	Busselton Jetty and Foreshore Revitalisation
STRATEGIC OBJECTIVE:	A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.
BUSINESS UNIT:	Corporate Services
ACTIVITY UNIT:	Legal Services
REPORTING OFFICER:	Legal Services Coordinator - Cobus Botha
AUTHORISING OFFICER:	Director, Finance and Corporate Services - Matthew Smith
VOTING REQUIREMENT:	Simple Majority
ATTACHMENTS:	Nil

Due to ongoing review and modification of the Busselton Foreshore Master Plan, it has not been practical to finalise and implement the Busselton Foreshore land rationalisation strategy any earlier. Implementation of the first stage of the land rationalisation strategy without any further delay is however essential for delivering the Busselton Foreshore redevelopment project and associated new leases such as the Equinox Café lease in a timely fashion. Therefore this matter is presented for consideration by way of a late report proposed for acceptance at the Council meeting of 27 January, 2016.

PRÉCIS

Implementation of the City's Busselton Foreshore Master Plan requires rationalisation of land tenure within the Busselton Foreshore precinct. The first stage of this rationalisation process requires surrender of an existing lease between the State of Western Australia (as lessor) and the City of Busselton (as lessee) of Lot 431 on Deposited Plan 190978 (**Lot 431**) which is located within Reserve 38558 on the Busselton Foreshore, and variation of the existing Management Order in respect of Reserve 38558.

This report seeks Council's authorisation for surrender of the abovementioned lease and Council's resolution to seek a variation of abovementioned Management Order.

BACKGROUND

The Busselton Foreshore Masterplan, which was adopted by Council on 28 March 2012 and has since been reviewed and updated, guides development of the Busselton foreshore into the future. It identifies a series of complementary precincts where visitors and the community alike can enjoy active and passive recreation interspersed with existing and proposed commercial developments from which lease income can be derived to contribute towards substantial ongoing maintenance costs for both the Busselton jetty and the redeveloped Busselton foreshore area.

Reserve 38558 is located on the Busselton Foreshore in an area bordered by Queen Street to the west, Marine Terrace to the south and Geographe Bay Road to the east. Management and control of Reserve 38558 vest in the City of Busselton for recreation and community purposes, including the power to lease, sublease or licence any portion of the reserve for any term not exceeding 21 years. Reserve 38558 is the main focus of the Busselton Foreshore redevelopment project. Land tenure arrangements within Reserve are essential for the successful implementation of the Busselton Foreshore Master Plan in this area, as this will form the basis for commercial developments such as cafes, restaurants and short stay accommodation as well as providing tenancies for community groups such as Busselton Jetty Environmental and Conservation Association (**BJECA**), Margaret River/Busselton Tourism Association (**MRBTA**) and Surf Life Saving Australia.

As part of the implementation of the Busselton Foreshore Master Plan, the City and Department of Lands developed a land rationalisation strategy for the Busselton Foreshore, which, due to practical

and legal considerations, will be implemented in various stages. The first stage of this process requires the follow action (which is discussed in more detail below):

- Surrender of an existing lease between the State of Western Australia (as lessor) and the City of Busselton (as lessee) of Lot 431 (**Head Lease**); and
- Variation of the existing Managing Order in terms of which management and control of Reserve 38558 vest in the City for purposes of recreation and community purposes (**Management Order**).

Surrender of Head Lease

Lot 431 is a 6,589m² block of land located within Reserve R38558. By Lease I26939 (registered on 11 February 1993) the State of Western Australia leased Lot 431 to the City for a term of 50 years, which allowed the City to sub-lease Lot 431 to David and Jenny Couch for purposes of developing the Nautical Lady amusement park. For purposes of implementing the Busselton Foreshore Master Plan, the City has since acquired Couch's leasehold interest in Lot 431. However the term of the Head Lease only expires 7 January 2043.

In terms of the Busselton Foreshore Master Plan the area where Lot 431 is currently located, is earmarked for various different uses, which include a portion of a road, landscaped areas and (potentially) a future amphi-theatre and commercial development. Department of Lands advised that the first stage of the Busselton Foreshore land rationalisation process requires surrender of the Head Lease in order for the area where Lot 431 is located, to be retained as part of Reserve 38558. This will result in this portion of land being brought under the City's management and control as part of Reserve 38558 and will allow for land tenure arrangements which will form the basis of abovementioned future development.

Variation of Management Order

The Railway House project, which is part of the Busselton Foreshore redevelopment project, comprises of construction of Railway House on Reserve 38558 and leasing the premises to BJECA and MRBTA. Pursuant to Council resolution C1511/338 (made on 25 November 2015) a contract was awarded for design and construction of Railway House. The indicative date for completion of the Railway House building is 30 November 2016.

In accordance with Council endorsed Memoranda of Understanding between the City and respectively BJECA and MRBTA, negotiations at officer level between the parties resulted in 'in principle' agreements on 42 year lease terms for the Railway House tenancies. These lease arrangements will be presented to Council for formal approval under separate reports. However in terms of the Management Order the City's power to lease or licence any portion of land within Reserve 38558 is limited to a maximum term of 21 years. Department of Lands indicated support for increasing the City's power to lease and licence for terms up to 42 years, which is consistent with what has been agreed 'in principle' with BJECA and MRBTA. This will however require variation of the Management Order which, on advice from Department of Lands, should happen as part of the first stage of the land rationalisation process and has to be actioned by way of a formal request from Council to vary the Management Order accordingly.

STATUTORY ENVIRONMENT

Section 46 of the Land Administration Act 1997 (LAA) specifies that the Minister for Lands may, by order, place the care, control and management of a reserve with a management body (in this instance the City of Busselton). Subsequent provisions of the LAA confer on the management body a power to grant a lease (or sublease or licence) over a reserve. The land rationalisation strategy for the Busselton Foreshore and in particular the Officer Recommendation in this report is considered to be consistent with the relevant requirements under the LAA.

RELEVANT PLANS AND POLICIES

Surrender of the Head Lease is consistent with the Busselton Foreshore Masterplan which provides for the future development of this area into a combination of roads, park/landscaped areas and potential commercial sites.

FINANCIAL IMPLICATIONS

The City will be responsible for payment of Department of Lands' costs for preparation and registration of the surrender of the Head Lease which will not exceed \$463.00. Other than these costs the surrender of the Head Lease and variation of the Management Order will have no further financial implications.

STRATEGIC COMMUNITY OBJECTIVES

Surrender of the Head Lease will facilitate implementation of the Busselton Foreshore Master Plan, which aligns with the City of Busselton's Strategic Community Plan 2013 as follows:

A City of shared, vibrant and well planned places that provide for diverse activity and strengthen our social connections.

The Busselton Foreshore redevelopment project is a direct consequence of the abovementioned Community Objective.

RISK ASSESSMENT

The surrender of the Head Lease and variation of the Management Order does not involve any significant changes from current strategies or practices and is therefore considered low risk with no risks identified as "low" or greater.

CONSULTATION

The Busselton Foreshore land rationalisation strategy is the result of extensive, ongoing consultation between City officers and Department of Lands with regards to implementation of the Busselton Foreshore Master Plan.

OFFICER COMMENT

Implementation of the Busselton Foreshore Masterplan and delivery of the Busselton Foreshore redevelopment project is to a large extent dependent on the rationalisation of land tenure within the relevant area. Continuation of the Head Lease is of no commercial value or practical use for the City. Surrendering of the Head lease will allow for the land which comprises of Lot 431 to be integrated into Reserve R38558, bringing it under the City's management and control for recreation and community purposes, which in turn will allow redevelopment of this area in accordance with the Busselton Foreshore Masterplan.

Seeking variation of the Management Order to allow for leasing, sub-leasing and licencing any portion of Reserve 38558 for terms up to 42 years will provide the City with the ability to provide community groups like BJECA with sufficient security of tenure to make significant contributions towards the cost of redeveloping then Busselton Foreshore.

CONCLUSION

Implementation of the land rationalisation strategy developed by City officers and Department of Lands is required for successfully delivering the Busselton Foreshore redevelopment project in accordance with the Busselton Foreshore Master Plan. The first stage of this land rationalisation process, which requires surrender of the Head Lease and variation of the Management Order in accordance with the Officer Recommendation, have to proceed without any delay in order to allow for the redevelopment project to be implemented in a timely fashion.

OPTIONS

Council may consider not seeking surrender of the Head Lease which could provide Council with the option to sublease the relevant portion of land for the remaining term of the Head Lease (approximately 27 years). This will however be inconsistent with Council's strategy for the Busselton foreshore redevelopment and require modification of the Busselton Foreshore Masterplan and is therefore not recommended.

TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION

Should Council resolve to surrender the Head Lease of Lot 431 as recommended, the formal Surrender of Lease will in all likelihood be lodged and registered with Landgate by the end of February 2016.

Variation of the Management Order to allow for the City to lease, sub-lease or licence any portion of Reserve 38558 for terms up to 42 should be finalized within a 3 month timeframe.

OFFICER RECOMMENDATION

That the Council:

1. Surrender Lease I126939, between the State of Western Australia as the Lessor and the City of Busselton as Lessee in respect of Lot 431 on Deposited Plan 190978; and
2. Request the Minister for Lands to revoke the existing Management Order for Reserve 38558 and replace it with a new Management Order granting the City of Busselton the power to lease (or sublease or licence) the whole or any portion of the Reserve for the designated purpose for a term not exceeding 42 years.