

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

This is the report in full that was present to the OCM 28 October 2015 – Item 11.2

RESERVE 49809 - COMMON
RES49809

AUTHOR
CHIEF EXECUTIVE OFFICER

DISCLOSURE OF ANY INTEREST

Declaration of Interest:

Nature of Interest:

Moved Cr (Cr to nominate which option when moving the motion)
Seconded Cr

Officer Recommendation

That Council:

1. **Note the administration's actions in regard to the Council Resolution of September 2015 concerning the application from Mrs Hargreaves in relation to a licence to occupy a portion of Reserve 49809.**

Option 1

Instruct the administration to further assist Mrs Hargreaves in preparing an Application to occupy a section of Reserve 49809 including a valid Public Liability Policy to the value of \$10 million to be submitted to Council at the Ordinary meeting to be held on 25 November 2015 for consideration.

Or

Option 2

Instruct the administration to issue an infringement to Mrs Hargreaves under Section 3.13(i) (o) of the Shire of Shark Bay Local Government Property Local Law and commence subsequent action in accordance with Councils Local Laws section 10 enforcement.

Or

Option 3

Instruct the administration to further explore the option of seeking personal indemnification from Mrs Hargreaves that indemnifies the Council from any accident or injury arising due to the occupation of reserve 49809 under a licence issued by the Council in accordance with the Management Order.

BACKGROUND

The Shire council at the ordinary meeting held on 26 August 2015 resolved the following

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

Instruct the administration to further assist Mrs Hargreaves in preparing an Application to occupy a section of Reserve 49809 to be submitted to Council at the Ordinary meeting to be held on 30 September 2015 for consideration.

This instruction was undertaken which resulted in a report being presented to the 30 September 2015 meeting at which the Council resolved as follows:

That a licence to occupy an area of 2.52 Hectares of the Reserve 49809 – Common as depicted on map attached and in line with the configuration submitted by Mrs M Hargreaves be further considered by Council at the October 2015 meeting of Council and subject to the submission of a valid Public Liability Policy to the value of \$10 million.

Correspondence was sent to Mrs Hargreaves on the 5 October 2015 advising of the Council Resolution, at the time of writing this report the following response has been received:

Shire of Shark Bay

Commonage issues – Mrs. M.A.Hargreaves

Public liability - \$10,000.00

I refer to your recent communications & in particular the subject of my being expected to take out Public Liability Insurance to the value of \$10,000.00

1. My husband is currently pursuing the matter of possible corruption on the part of the Administrative staff of the Shire of Shark Bay which in turn – if proven - the Council will be held responsible for.
2. Until this matter is cleared up I will not be involved in any dialogue with the Shire where it comes to such questions of Public liability.
3. **On this subject I advise the Council members that with the removal of the gate first installed by the this Shire deterring public access to the Public the business of acquiring Public liability is extremely hard.**
4. Additional obstacles faced revolve around the age of the horse who is 36 years of age. An extract from the 6th lot of Insurance Brokers we have approached – without any chance of effecting cover – runs as follows:

*Further to my phone message I just left for you, it would seem that we will not be able to place the Liability insurance for your horse.
I had a look at some options and it would seem that you are unable to get the Liability insurance without first insuring the horse itself. Due to the age of your horse, this does indeed pose some problems.*

One option would be if you have a farm insurance policy somewhere, it may be able to be extended to cover the liability for the horse...etc.

You will be contacted by the appropriate Gov't Dept. in due course & in the meantime please conduct any such communications you have in mind with my husband.

Thank you.

Mrs M.A. Hargreaves
4.30 pm 19th Oct. 2015

COMMENT

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A copy of the two previous reports that were presented to the August 2015 and September 2015 meeting of Council are attached at the end of this report. The Council at the August 2015 meeting was presented with the following options and resolved to adopt option 1.

Option 1

Instruct the administration to further assist Mrs Hargreaves in preparing an Application to occupy a section of Reserve 49809 to be submitted to Council at the Ordinary meeting to be held on 30 September 2015 for consideration.

Or

Option 2

Instruct the administration to issue an infringement to Mrs Hargreaves under Section 3.13(i) (o) of the Shire of Shark Bay Local Government Property Local Law and commence subsequent action in accordance with Councils Local Laws section 10 enforcement.

The administration carried out the Council's Resolution which resulted in the presentation of the application from Mrs Hargreaves at the September meeting of Council and the subsequent resolution that required the application to have evidence of a valid Public Liability Policy to the value of \$10 million.

As indicated by Mrs Hargreaves correspondence she has not provided evidence of the required Public Liability Policy.

The Council if it considers that additional time may result in the submission of the required Public Liability Policy consider allowing further time to meet the conditions or consider the adoption of recommendation to which will be the commencement of legal action in accordance with Council Local Laws.

The Council could also consider waiving the requirement of external public liability insurance and seek private indemnification from the applicant that they will be responsible for any accident or injury that occurs to any other party due to their occupation of a portion of the reserve.

This may be an option to further explore however it may not fully protect the Council from any possible liability claims as joint negligence may be claimed as contributing to any accident or injury.

The Council would need to be confident that it had taken all reasonable steps to require the applicant to have an adequate insurance policy or the means to ensure any risk would be adequately addressed.

The Council may also consider the information that Mrs Hargreaves has included in her correspondence that the horse is 36 years old and perhaps consider a reduced tenure on the licence to occupy.

The minimum tenure is one (1) year with a maximum up to five (5) years.

LEGAL IMPLICATIONS

The Council has a Management Order for Reserve 49809 in accordance with the *Land Administration Act 1997*.

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The conditions of the Management Order

- (i) To be used for its designated purpose of “Common “only
- (ii) Power to license for the designated purpose is granted for the whole or any portion thereof for any term not exceeding five (5) years from the date of license subject to the approval in writing of the Minister of lands being first obtained to each and every licence pursuant also to the provisions of section 19 of the *Land administration Act 1997*.

The Management Order enables the Council to grant individual licences and impose conditions in regard to the licence, which are then reviewed and ratified or amended by the Minister or their delegated officer.

The Shire of Shark Bay Local Government Property Local Law in part states:

2.1 Determinations as to Use of Local Government Property

- (1) The Local Government may make a determination in accordance with Clause 2.2 -
 - (a) setting aside specified Local Government property for the pursuit of all or any of the activities referred to in Clause 2.7,

The council has made the following determination

Animals on local government property

- a. Unless authorised by a written law, or by a permit or a determination, a person must not tether any animal to a tree, shrub, tree guard, wall or fence or permit any animal to enter on or into any local government property.
- b. This clause does not apply to a guide dog used for the assistance of visually impaired persons.
- c. Pursuant to clause 3.13(1)(o) of the local law, subject to the person in charge of the animals concerned obtaining a permit beforehand and compliance with any conditions listed in the permit or this determination, the following areas of local government property may be used to depasture, take on to, or allow to enter or remain upon, any animal as permitted:
 - i. Reserve 49809, known as the Denham Town Common.

3.1 Application of Part

This Part does not apply to a person who uses or occupies Local Government property under a written agreement with the Local Government to do so.

3.2 Application for Permit

- (1) Where a person is required to obtain a permit under this Local Law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this Local Law shall -
 - (a) be in the form determined by the Local Government,
 - (b) be signed by the applicant,
 - (c) provide the information required by the form, and
 - (d) be forwarded to the Chief Executive Officer together with any fee imposed and determined by the Local Government under and in accordance with Sections 6.16 to 6.19 of the Act.

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- (3) The Local Government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The Local Government may require an applicant to give local public notice of the application for a permit.
- (5) The Local Government may refuse to consider an application for a permit which is not in accordance with subclause (2).

3.3 Decision on Application for Permit

- (1) The Local Government may -
 - (a) approve an application for a permit unconditionally or subject to any conditions, or
 - (b) refuse to approve an application for a permit.
- (2) If the Local Government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the Local Government.
- (3) If the Local Government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

3.4 Conditions which may be Imposed on a Permit

- (1) Without limiting the generality of Clause 3.3(1) (a), the Local Government may approve an application for a permit subject to conditions relating to -
 - (a) the payment of a fee,
 - (b) compliance with a standard or a Policy of the Local Government adopted by the Local Government,
 - (c) the duration and commencement of the permit,
 - (d) the commencement of the permit being contingent on the happening of an event,
 - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application,
 - (f) the approval of another application for a permit which may be required by the Local Government under any written law,
 - (g) the area of the district to which the permit applies,
 - (h) where a permit is issued for an activity which will or may cause damage to Local Government property, the payment of a deposit or bond against such damage, and
 - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the Local Government.
- (2) Without limiting Clause 3.3(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire Local Government property may be issued -
 - (a) when fees and charges are to be paid,
 - (b) payment of a bond against possible damage or cleaning expenses or both,
 - (c) restrictions on the erection of material or external decorations,
 - (d) rules about the use of furniture, plant and effects,
 - (e) limitations on the number of persons who may attend any function in or on Local Government property,
 - (f) the duration of the hire,

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- (g) the right of the Local Government to cancel a booking during the course of an annual or seasonal booking, if the Local Government sees fit,
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Licensing Act 1988*,
- (i) whether or not the hire is for the exclusive use of the Local Government property,
- (j) the obtaining of a policy of insurance in the names of both the Local Government and the hirer, indemnifying the Local Government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the Local Government property by the hirer, and
- (k) the provision of an indemnity from the hirer, indemnifying the Local Government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the Local Government property by the hirer.

3.13 Activities Needing a Permit

- (1) A person shall not without a permit -
 - (m) make any excavation on or erect or remove any fence on Local Government property,
 - (o) depasture, take on to, or allow to enter or remain upon Local Government property, any horse, sheep, cattle, goat, camel, ass or mule, unless the Local Government has made a determination under Clause 2.1(1) of this Local Law, in which event the provisions of the determination shall prevail

The penalty for not complying with clause 3.13(i) (o) of the local law is currently \$100.00.

In the event that an individual does not comply with the local law and continues the offence part 10 enforcement section of the local law can be applied

10.1 Offence to Fail to Comply with Notice

Whenever the Local Government gives a notice under this Local Law requiring a person to do anything, if a person fails to comply with the notice, that person commits an offence.

10.2 Local Government May Undertake Requirements of Notice

Where a person fails to comply with a notice referred to in Clause 10.1, the Local Government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

10.3 Offences and General Penalty

- (1) Any person who fails to do anything required or directed to be done under this Local Law, or who does anything which under this Local Law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this Local Law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

FINANCIAL IMPLICATIONS

The Council recently imposed a fee of \$100 per annum for an approved licence for a section of the Reserve 49809.

In relation to the occupation of Reserve 49809 without the necessary approvals the initial action would be to issue a \$100 infringement.

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In the event that the infringement is not paid and complied with there would be costs associated with any ongoing court action.

It is difficult to estimate the cost of any court action or action required to remove any structures in place on Council reserve that do not have the required approvals.

The court costs may be in the vicinity of \$7,500 - \$10,000 and some of these costs may be recoverable.

The costs to remove any structures would be incorporated into the operation costs associated with the management of Council reserves and in accordance with the Local Laws would be recoverable from the person on whom the notice was given.

STRATEGIC IMPLICATIONS

There are no strategic implications relevant to this report

RISK MANAGEMENT

There are a number of risk factors associated with the licencing of areas of reserve to individuals for the keeping of animals.

This includes the environmental degradation of the licenced area, however given that the confinement of any animal will cause degradation of the environment, the licenced area could be viewed as the sacrificial site.

The issue of free roaming stock is also a risk factor, however Council would be mitigated due to the requirements of the policy and conditions of licence. The responsibility for wandering stock outside of the designated licence is a breach of Council Local Laws and would be the responsibility of the owner of the stock.

VOTING REQUIREMENTS

Simple Majority Required

SIGNATURES

Chief Executive Officer

P Anderson

Date of Report

16 October 2015

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FAX NUMBER:

Reserve 49809-Common, Use

Please provide a short description of the activities that you wish to undertake at Reserve 49809 - Common. Eg: Stock tenure.

keeping & exercising 1 pony

List the vehicles which will be used to access to Common?

S.B. 3
S.B. 7777

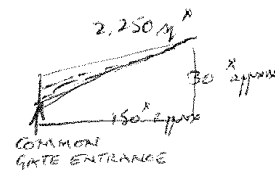
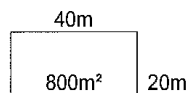
What infrastructure or stock control devices will be utilised?

Please tick appropriate box.

Shed Caravan Shade structure Internal fences Gates

Location and Area in m² to be fenced

Example:



Or None of the above

Length of time you wish to utilize the Common within a period of 5 years?

5 years

2

Shire of Shark Bay

Application for Use of portion of Reserve 49809 - Common

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Stock Application

I hereby apply for permission to occupy a portion of the Shire of Shark Bay Reserve 49809 Common for the following stock:-

- (/) horse/s
() cattle 1 YOUNG GOAT, AND POULTRY, HAVE DISAPPEARED
() sheep SINCE CATTLE REMOVAL, BY SHIRE
() camels
() chickens
1 OLD GOAT (APPROX 20? YEARS)

Other considerations that may be applicable? Eg: Special Circumstances.

On receipt of your application it will be placed in the Agenda for the upcoming Council meeting for approval of your licence. Once approved by the Shire of Shark Bay Council the licence will then be referred to the Minister of Land pursuant to the provisions of Section 20 of the *Land Administration Act 1997*. I accept that Annual fees will apply to this licence in accordance with Council's Fees and Charges.

I have read and understood all parts of the application for use of porting of Reserve 49809 - Common and am fully aware of all that is required of me as a lessee. I agree to abide by the Licence to Occupy once approved by the Minister of Lands. I have attached a copy of my Public Liability Insurance certificate. NO PUBLIC LIABILITY.

Signed By Lessee

Print full name: MARGARET HARGREAVES
Signed: M. Hargreaves - mobile address Date: 22nd / 08 / 15

➤ How to lodge this application

BY POST;

Address the application to: The Chief Executive Officer
Shire of Shark Bay
PO Box 126
Denham WA 6537

Courier or personal Delivery: Shire Offices
65 Knight Terrace
Denham WA 6537

Electronically: admin@sharkbay.wa.gov.au

Contact the Shire offices on:

Phone: 08) 9948 1218
Fax: 08) 9948 1237
E-mail: admin@sharkbay.wa.gov.au
Web: www.sharkbay.wa.gov.au

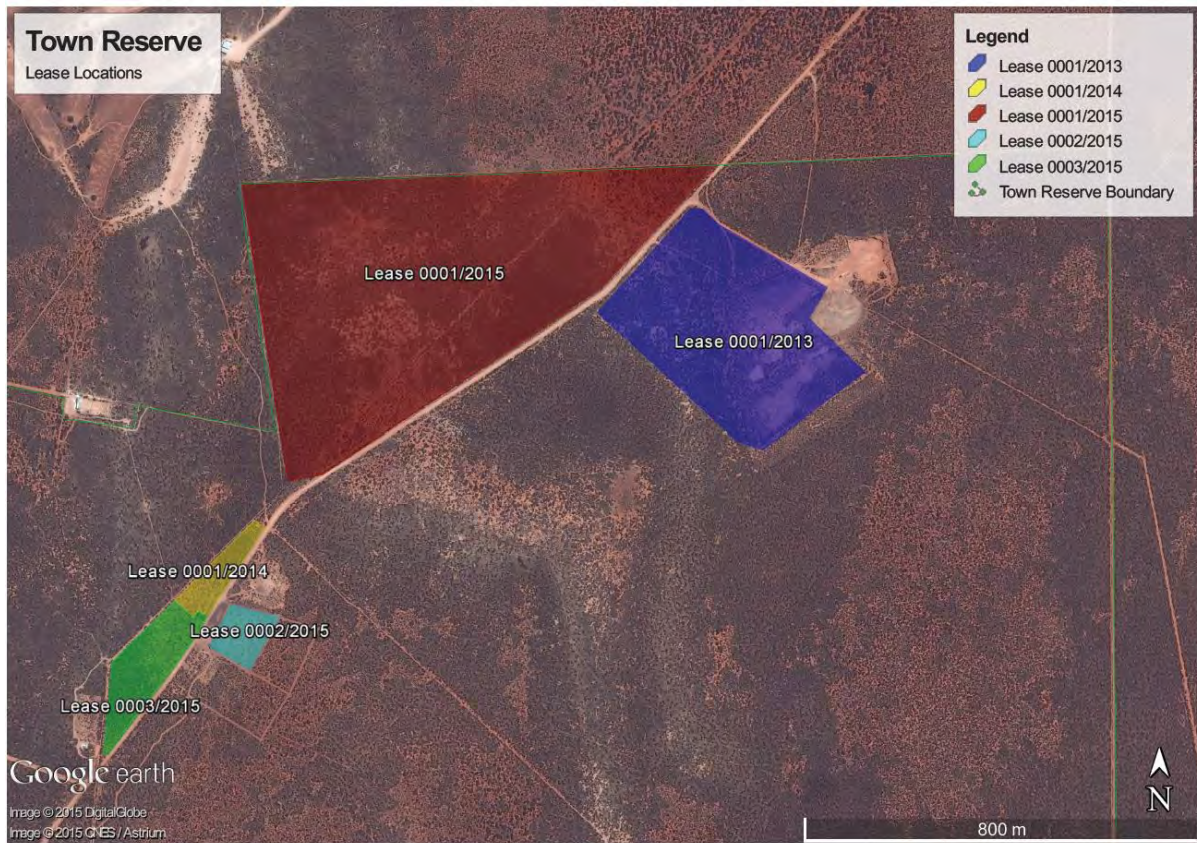
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Licence is subject to General Policy Statement upon and for the duration of occupation-

- *All occupiers of the Common will observe basic requirements for its occupation.*
- *All occupiers of the Common will ensure that all of their activities conform to any relevant legislation or other statutory requirement.*
- *Illegal activities of any nature are not to take place at the Common.*
- *The Shire of Shark Bay, its officials, employees and agents shall not be held responsible for personal injuries or damages sustained or property or stock lost or stolen on the Common.*
- *Activities are to be controlled and maintained to ensure long term environmental sustainability and ultimate re-instatement of its land use.*
- *Occupiers are to be responsible for any damages caused to the Common other than general deterioration of the site.*
- *The Common will be left clean and tidy; all rubbish etc is to be removed.*
- *Due respect is to be observed to other occupiers of the Common with regard to mutual required services and infrastructure.*
- *Occupiers are asked to contribute to a positive relationship with other Common users.*
- *The area utilized must have a stock control measure in place to secure their stock.*
- *Stock numbers must be maintained within the license approval. Any additional stock must be approved by Council.*
- *Activity infrastructure will be required to be set back a specified distance from the access road as determined by the Shire.*
- *Speed limits will be observed on the access and external road within the Common.*
- *Occupiers of the Common are required to address issues of concern directly to the Shire and not to other occupiers.*
- *Proof of current Public Liability Insurance to \$10,000,000.*

Failure to comply with these provisions may result in the cancellation of the licence to occupy.

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ORDINARY COUNCIL MINUTES

26 AUGUST 2015

11.2 RESERVE 49809 - COMMON

RES49809

AUTHOR

CHIEF EXECUTIVE OFFICER

DISCLOSURE OF ANY INTEREST

NIL

Officer Recommendation

That Council:

1. Note the administrations correspondence to Mrs Hargreaves in regard to ongoing occupation of Reserve 49809 and from Mr Hargreaves in relation to Reserve 49809.

Option 1

Instruct the administration to further assist Mrs Hargreaves in preparing an application to occupy a section of Reserve 49809 to be submitted to Council at the Ordinary meeting to be held on 30 September 2015 for consideration.

OR

Option 2

Instruct the administration to issue an infringement to Mrs Hargreaves under Section 3.13(i) (o) of the Shire of Shark Bay Local Government Property Local Law and commence subsequent action in accordance with Councils Local Laws section 10 enforcement.

Moved: Cr Ridgley

Seconded: Cr Wake

Council Resolution

That Council:

Note the administrations correspondence to Mrs Hargreaves in regard to ongoing occupation of Reserve 49809 and from Mr Hargreaves in relation to Reserve 49809.

Instruct the administration to further assist Mrs Hargreaves in preparing an application to occupy a section of Reserve 49809 to be submitted to Council at the Ordinary meeting to be held on 30 September 2015 for consideration.

6/0 CARRIED

BACKGROUND

The Shire has a Management Order for Reserve 49809 with a current purpose classified as common. The area of the reserve is 1,139.223 hectares. The classification of current purpose as "common" appears to be based on a historical use.

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

The definition of common in the Australian concise oxford dictionary is:
belonging to, open to or affecting the whole community or the public (common land).

The Council in 2008 advised the Department of Lands that the use of the reserve referred to as the common would as follows;

Predominately the common will be only be for de-pasturing of animals under "license to occupy" however a small portion of the common has been used for material extraction by the Shire for Local Government requirements

Subsequently the Shire in July 2008 received a Management Order with the following conditions:

To be used for its designated purpose of "Common "only
Power to licence for the designated purpose is granted for the whole or any portion thereof for any term not exceeding five (5) years from the date of license subject to the approval in writing of the Minister of lands being first obtained to each and every licence pursuant also to the provisions of section 19 of the *Land administration Act 1997*.

The Council in 2009 to ensure there was a consistent approach to the use and controls of the common considered a policy and advertised the policy for comment.

It is unclear if the policy was formally adopted, however the principles of the policy appeared to have been put into place and it is now referred to as a Management Statement.

The following conditions are contained within the licences that are granted by Council

*All occupiers of the town common will observe basic requirements for its occupation.
All occupiers of the common will ensure that all of their activities conform to any relevant legislation or other statutory requirement.*

*Illegal activities of any nature are not to take place at the town common.
The Shire of Shark Bay, its officials, employees and agents shall not be held responsible for personal injuries or damages sustained or property or stock lost or stolen on the town common.*

Activities are to be controlled and maintained to ensure long term environmental sustainability and ultimate re-instatement of its land use.

Occupiers are to be responsible for any damages caused to the Town Common other than general deterioration of the site.

The common will be left clean and tidy; all rubbish etc. is to be removed.

Due respect is to be observed to other occupiers of the town common with regard to mutual required services and infrastructure.

Occupiers are asked to contribute to a positive relationship with other town common users.

*The area utilized must have a stock control measure in place to secure their stock.
Stock numbers must be maintained within the license approval. Any additional stock must be approved by council.*

Activity infrastructure will be required to be set back a specified distance from the access road as determined by the shire.

Speed limits will be observed on the access and external road within the town common.

Occupiers of the town common are required to address issues of concern directly to the shire and not to other occupiers.

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

The following is the Management Statement that was reviewed by the Council.

Management Statement for the Occupation and use of the Common

The shire is to maintain a register of all occupiers of the common along with the following base data;

The area and location of land being utilised along with the specific infrastructure thereon.

The number of stock being grazed.

Other activities that are being undertaken. E.g., sand extraction, trail bike riding etc.

Occupiers of the town common

All occupiers of the common will require a licence to be granted for the designated purpose of occupation of the common for a term not exceeding (5) years and be subject to the approval in writing from the Minister for Lands.

The approved licence will specify all current activities undertaken pursuant to the licence and detail any conditions of approval relative to that occupation.

Reporting Requirements

A report will be provided to council on an annual basis detailing current occupiers of the common that includes their infrastructure, stock details, cubic metres of sand removed and other details of change that may have occurred.

General Management Statement for Occupiers

All occupiers of the common will observe basic requirements for its occupation.

Activities are to be controlled and maintained to ensure long term environmental sustainability and ultimate re-instatement of its land use.

Due respect is to be observed to other occupiers of the common with regard to mutual required services and infrastructure.

Activity infrastructure will be required to be set back a specified distance from the access road as determined by the shire.

An area stock control device will be required to access the common.

Speed limits will be specified on the access road within the common.

Occupiers of the common are required to address issues of concern directly to the shire and not to other occupiers.

That "General Management Statement for occupiers" includes licensed occupiers of the common are to ensure that all activities conform to any relevant legislation/statutory requirements.

Given the area is Reserve vested in the Council, the Council Property Local Laws can also be applied to this area.

The following licenses have been issued and approved by the Minister for use of an area of the common:

Mrs Alison McLean
Licence issued 1 June 2013 expires 31 May 2018
Area 4.2 Hectares

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26 AUGUST 2015

Ms Tracey Weiss
Licence issued 01 September 2014 expires 31 August 2019
Area approx. 1.5 Hectares

Mr Gary Desmond and Mr Harold Hoult
Licence approved by council May 2015 expiring June 2019
Area 15 Hectares

These licences have been finalised and have the approval of the Minister.

Mr Henk Van Eek
Licence conditionally approved by council July 2010 expiring June 2015
Area 5 Hectares

This licence has been conditionally approved by Council at the July 2015 meeting and has been forwarded to the Minister for consideration.

There is only one other occupant of the common at present being:

Mrs Margaret Hargreaves
Licence conditional approved by council July 2010 expired June 2015
Area 1,500m²

The process that was applied to these licences has been reviewed due to some recent issues and the fact that these licences are approaching their end date of 30 June 2015.

Correspondence (attached) has been sent to Mrs Hargreaves on the following dates 18 August 2014, 16 January 2015, 2 June 2015, 3 July 2015 and 27 July 2015 advising that the licence to occupy a section of Reserve 49809 was expiring on 30 June 2015 and the process that was required to submit an application for consideration.

There has been one response from Mrs Hargreaves received on the 27 July 2015, however no application has been submitted from Mrs Hargreaves in response to the correspondence previously sent by the administration.

COMMENT

Mrs Hargreaves has been advised on 18 August 2014, 16 January 2015, 2 June 2015, 3 July 2015 and 27 July 2015 in regard to the expiry of the current licence to occupy a section of Reserve 49809 and the correct procedures to apply to the Council for consideration to occupy a section of Reserve 49809.

There has been a response from Mrs Hargreaves on the 27 July 2015 and an email from Mr Hargreaves (attached) on 14 April 2014, however there has been no application received in the correct format for Council to consider.

Council is aware that Mr Hargreaves has expressed an opinion on the Reserve and provided information regarding the history of the common and Reserve 49809. Mr Hargreaves has requested further information to prepare a submission which has not yet been received.

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

Given the opinions and the stance that has previously been taken in regard to this matter the administration has deferred to Council before taking any action which may result in ongoing legal action.

The Council may consider the following options:

instruct the administration to further assist Mrs Hargreaves in preparing an application to occupy a section of Reserve 49809 which can then be submitted to Council at the Ordinary meeting to be held on 30 September 2015 for consideration.

Instruct the administration to issue an infringement to Mrs Hargreaves under section 3.13(i) (o) of the Shire of Shark Bay Local Government Property Local Law and commence subsequent action to in accordance with Councils Local Laws section 10 enforcement.

Option 1 would be in recognition of the ongoing occupation of an area of the Reserve 49809 and given the administration would be assisting it may be assumed by Mrs Hargreaves that Council would then approve the application.

This may create an incorrect expectation that assistance from the administration with the application would ensure approval from the Council.

The Council has the statutory ability to delegate authority for the issuing of permits and licences to the Chief Executive Officer, it has been the Chief Executive Officer's practise to refer matters of this nature to the Council for consideration.

The majority of the compliance issues previously experienced with the utilisation of Reserve 49809 by approved occupiers have been addressed with the removal of the gate, grid and fencing and erection of signage to access the reserve.

The gate, grid and fencing had previously been used by occupiers as a means to not comply with the Council's management regulation that required the licenced occupiers to maintain stock control measures in the area allocated that kept their stock contained within the area.

There is also a number of structures that have been erected on the area that is occupied by Mrs Hargreaves that were not noted on the original application.

Option 2 would be in acknowledgement that Mrs Hargreaves has refused to comply with numerous requests to apply for a licence to occupy a section of Reserve 49809 and taking into consideration Mr and Mrs Hargreaves previous stance that he has conveyed to Councillors via email on this matter.

This option may result in extensive ongoing action in accordance with Council's Local Laws section 10 enforcement or result in the submission in an application for a section of the common following the issuing of an infringement.

LEGAL IMPLICATIONS

The Council has a Management Order for Reserve 49809 in accordance with the *Land Administration Act 1997*.

The conditions of the Management Order

To be used for its designated purpose of "Common "only

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

Power to license for the designated purpose is granted for the whole or any portion thereof for any term not exceeding five (5) years from the date of license subject to the approval in writing of the Minister of lands being first obtained to each and every licence pursuant also to the provisions of section 19 of the *Land administration Act 1997*.

The Management Order enables the Council to grant individual licences and impose conditions in regard to the licence, which are then reviewed and ratified or amended by the Minister or their delegated officer.

The Shire of Shark Bay Local Government Property Local Law in part states:

- 2.1 Determinations as to Use of Local Government Property
(1) The Local Government may make a determination in accordance with Clause 2.2 - setting aside specified Local Government property for the pursuit of all or any of the activities referred to in Clause 2.7,

The council has made the following determination:

Animals on local government property

Unless authorised by a written law, or by a permit or a determination, a person must not tether any animal to a tree, shrub, tree guard, wall or fence or permit any animal to enter on or into any local government property.

This clause does not apply to a guide dog used for the assistance of visually impaired persons.

Pursuant to clause 3.13(1)(o) of the local law, subject to the person in charge of the animals concerned obtaining a permit beforehand and compliance with any conditions listed in the permit or this determination, the following areas of local government property may be used to de-pasture, take on to, or allow to enter or remain upon, any animal as permitted:

Reserve 49809, known as the Denham Common.

- 3.1 Application of Part
This Part does not apply to a person who uses or occupies Local Government property under a written agreement with the Local Government to do so.
- 3.2 Application for Permit
(1) Where a person is required to obtain a permit under this Local Law, that person shall apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this Local Law shall -
- (a) be in the form determined by the Local Government,
 - (b) be signed by the applicant,
 - (c) provide the information required by the form, and
 - (d) be forwarded to the Chief Executive Officer together with any fee imposed and determined by the Local Government under and in accordance with Sections 6.16 to 6.19 of the Act.

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ORDINARY COUNCIL MINUTES

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- (3) The Local Government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
 - (4) The Local Government may require an applicant to give local public notice of the application for a permit.
 - (5) The Local Government may refuse to consider an application for a permit which is not in accordance with subclause (2).
- 3.3 Decision on Application for Permit
- (1) The Local Government may -
 - (a) approve an application for a permit unconditionally or subject to any conditions, or
 - (b) refuse to approve an application for a permit.
 - (2) If the Local Government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the Local Government.
 - (3) If the Local Government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.
- 3.4 Conditions which may be Imposed on a Permit
- (1) Without limiting the generality of Clause 3.3(1) (a), the Local Government may approve an application for a permit subject to conditions relating to -
 - (a) the payment of a fee,
 - (b) compliance with a standard or a Policy of the Local Government adopted by the Local Government,
 - (c) the duration and commencement of the permit,
 - (d) the commencement of the permit being contingent on the happening of an event,
 - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application,
 - (f) the approval of another application for a permit which may be required by the Local Government under any written law,
 - (g) the area of the district to which the permit applies,
 - (h) where a permit is issued for an activity which will or may cause damage to Local Government property, the payment of a deposit or bond against such damage, and
 - (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the Local Government.
 - (2) Without limiting Clause 3.3(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire Local Government property may be issued -
 - (a) when fees and charges are to be paid,
 - (b) payment of a bond against possible damage or cleaning expenses or both,
 - (c) restrictions on the erection of material or external decorations,
 - (d) rules about the use of furniture, plant and effects,

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- (e) limitations on the number of persons who may attend any function in or on Local Government property,
- (f) the duration of the hire,
- (g) the right of the Local Government to cancel a booking during the course of an annual or seasonal booking, if the Local Government sees fit,
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Licensing Act 1988*,
- (i) whether or not the hire is for the exclusive use of the Local Government property,
- (j) the obtaining of a policy of insurance in the names of both the Local Government and the hirer, indemnifying the Local Government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the Local Government property by the hirer, and
- (k) the provision of an indemnity from the hirer, indemnifying the Local Government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the Local Government property by the hirer.

3.13 Activities Needing a Permit

(1) A person shall not without a permit -

- (m) make any excavation on or erect or remove any fence on Local Government property,
- (o) de-pasture, take on to, or allow to enter or remain upon Local Government property, any horse, sheep, cattle, goat, camel, ass or mule, unless the Local Government has made a determination under Clause 2.1(1) of this Local Law, in which event the provisions of the determination shall prevail

The penalty for not complying with clause 3.13(i) (o) of the Local Law is currently \$100.00.

In the event that an individual does not comply with the local law and continues the offence part 10 enforcement section of the local law can be applied

10.1 Offence to Fail to Comply with Notice

Whenever the Local Government gives a notice under this Local Law requiring a person to do any-thing, if a person fails to comply with the notice, that person commits an offence.

10.2 Local Government May Undertake Requirements of Notice

Where a person fails to comply with a notice referred to in Clause 10.1, the Local Government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

10.3 Offences and General Penalty

(1) Any person who fails to do anything required or directed to be done under this Local Law, or who does anything which under this Local Law that person is prohibited from doing, commits an offence.

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- (2) Any person who commits an offence under this Local Law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

FINANCIAL IMPLICATIONS

The Council recently imposed a fee of \$100 per annum for an approved licence for a section of the Reserve 49809.

In relation to the occupation of Reserve 49809 without the necessary approvals the initial action would be to issue a \$100 infringement.

In the event that the infringement is not paid and complied with there would be costs associated with any ongoing court action.

It is difficult to estimate the cost of any court action or action required to remove any structures in place on Council reserve that do not have the required approvals.

The court costs may be in the vicinity of \$7,500 - \$10,000 and some of these costs may be recoverable.

The costs to remove any structures would be incorporated into the operation costs associated with the management of Council reserves and in accordance with the Local Laws would be recoverable from the person on whom the notice was given.

STRATEGIC IMPLICATIONS

There are no strategic implications relevant to this report

RISK MANAGEMENT

There are a number of risk factors associated with the licencing of areas of reserve to individuals for the keeping of animals.

This includes the environmental degradation of the licenced area, however given that the confinement of any animal will cause degradation of the environment, the licenced area could be viewed as the sacrificial site.

The issue of free roaming stock is also a risk factor, however Council would be mitigated due to the requirements of the policy and conditions of licence. The responsibility for wandering stock outside of the designated licence is a breach of Council Local Laws and would be the responsibility of the owner of the stock.

VOTING REQUIREMENTS

Simple Majority Required

SIGNATURES

Chief Executive Officer
Date of Report

P Anderson
10 August 2015

ORDINARY COUNCIL MINUTES

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RES49809 / O-CR-13748
Paul Anderson
18 August 2014

MARGARET HARGREAVES
14 DURLACHER STREET
DENHAM 6537

Dear Mrs Hargreaves

TOWN COMMON LICENCE

I refer to your conditional approval subject to conditions to occupy the Town Common resolved by Council on 28 July 2010.

Correspondence forwarded to you dated 30 July 2010 stated:

That Council advise the proponent Mrs M.A. Hargreaves that it is prepared to grant conditional approval to occupy the Town Common subject to the following conditions;

- A) Compliance with the requirements and conditions for occupancy of the common which requires;***
- 1) Removal of the existing Caravan within three (3) months of this notice and as previously required.***
 - 2) Activity infrastructure is to be set-back 6.000 metres from the access road. In this regard the sea container will be permitted to remain, but when it is replaced it must be placed 6.000m from the road verge as per the policy.***
 - 3) The approval of the Minister for Lands.***

While I appreciate you have been in occupation of the site prior to and following the date of the conditional approval was issued your license has not received final approval.

Given that your conditional approval has never been finalised and was based on the maximum five year approval condition only has 9 months to run, it would be prudent to submit a further application including evidence that you have complied with the conditions previously imposed.

These conditions included but were not limited to the following:

Fenced area to be consistent with application and not to be altered without approval.
The area utilised must have a stock control measures in place to secure the stock.

Once this application has been received it can be progressed in the correct manner.

I have attached a copy of your initial application and the Shires Management Statement for the occupation and use of the Town Common.

I look forward to progressing this issue with you.

If you have any further queries in relation to the above matter, please contact Paul Anderson, Chief Executive Officer on 08 99481 218 or email ceo@sharkbay.wa.gov.au.

Yours sincerely
Paul Anderson
CHIEF EXECUTIVE OFFICER

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ORDINARY COUNCIL MINUTES

26 AUGUST 2015

RES49809 / O-CR-14276
Paul Anderson

16 January 2015

MARGARET HARGREAVES
14 DURLACHER STREET
DENHAM 6537

Dear Margaret

TOWN COMMON LICENCE TO OCCUPY

Please refer to Council's correspondence dated the 18 August 2014 requesting you to commence a new application for a licence to occupy the Town Common. A copy of the correspondence is attached for your information.

It would be appreciated if you would now complete the application form to occupy the Town Common.

A copy of your original application has been attached for your information. Also enclosed is a new application form for you to complete and return to the Shire office so that the licence may be progressed in terms with Council's Management Order on the Town Common.

The process, after Council approval has been given and all conditions complied with, is to then seek the Minister for Lands approval for the tenancy.

At present your tenancy on the Town Common is not compliant and you should rectify this with a new application as soon as possible.

Your urgent attention is now required to finalise this matter.

Yours sincerely

Paul Anderson
CHIEF EXECUTIVE OFFICER

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

From: Sharkbay Herald [mailto:sharkbayherald@westnet.com.au]
Sent: Tuesday, 14 April 2015 5:53 AM
To: Rhonda Mettam
Cc: Cowell, Cheryl; Keith Capewell; Greg Ridgley; deben8@bigpond.com;
twintub1@bigpond.com; Hamelin Pool Station; Paul Anderson
Subject: Commonage

Administration
Shire of Shark Bay

Commonage

I have been asked to make a formal submission by the C.E.O. to the Shire Council on the subject of the Common.

To do a proper job I want to get certain facts clearly established from the Shire records.

Thus can you please advise me of the following dates & allied (condensed preferably) details

–
Date the Common was first formally designated as such and
the lines of demarcation and approx. area

The date the approx. one quarter of this designated Common was allocated to a member of the Hoult family and the accompanying details of boundary lines, acreage, datum post, copies of Public Notices advertising intent re-zoning of land etc.

Records of any fees levied for Administration costs or annual charges for the use of the livestock/grazing purposes.

Fees levied & (fees paid) by the current users of the Common proper

e.g. Mr. Garry Desmond,

Mrs. Allison McLean

Mr. Henk van Eek (Camel Safaris)

Mrs Margaret Hargreaves

The date & datum, size of area allocated & proposed fence lines for the one Commercial operation – the Shark Bay Camel Safaris.

In case of need I have previously submitted fairly lengthy submissions in reply to letters from the Shire & have addressed three Council meetings of recent years but have not received replies.

To facilitate matters I conclude this communication with one such letter dated the 27th August 2014

Thank you – Tim Hargreaves

Submission by Mr & Mrs Hargreaves on the subject of the keeping of horses at the Commonage.

Background

In the 1980's the then Shire Council invited my wife & I to apply for land for the purposes of horse grazing in the locality which runs from the back of the Industrial area to Stella Rowley Drive and including the land where this building now stands.

It would have comprised about 100 acres. With the assistance of the Shire and a few *busy bees* water was piped from the Oval & fencing undertaken where required. We were invited to make such application in large measure because the then Shire Clerk, Brett Pollock, had a wife who had two horses & it was evident that such a facility would be of Community benefit to would-be horse owners in the future. Stabling was minimal, essentially for storage of feed

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

& tackle, as, in keeping with normal Conservation policies of the day, a free range grazing policy ensured that no one area would be eaten out.

With the development of the town we were subsequently asked to shift to where the present tip is. There was several thousand acres adjoining that locality. Different horse owners came & went and it was essentially my wife & myself identified with the matter of horses here. Again we fenced where necessary and again it was free range grazing as by now we were part of the World heritage conservation policies. The water itself was free being part of a supply line that ran up to what I recall was referred to as No.1 Bore.

A number of years later when the decision to shift the tip to where it now is, we were again asked to re-locate to the present locality referred to as the Common. That was about 15 years ago.

The area is about 2,000 (?) acres to my knowledge. The immediate fencing put in place was required of by Monkey Mia who controlled the Airport, being necessary to prevent kangaroos, emus, goats etc. from wandering onto the Airstrip.

The then Shire Council & Administration (Mark Hook) was again very co-operative with enabling a grid and gate at the entrance to this 'Common' and we again fenced off at our own cost a small holding paddock and arranged with Speedway to share costs of maintaining the water line that runs out to the Airport. (Water was always free from the Oval bore but the costs of maintaining the line that runs as far as to the Airport has – from the Speedway Club onwards – been borne essentially by my wife & myself. Excluding a part ownership in the Oval pump, the last bill was \$800 for new pipe. The Shark Bay Camel Safaris, Pistol Club, Golf Club, Harold Hoult, Garry Desmond and Airport declined to contribute & have undertaken to cart themselves.)

Over the years it has generally worked well with most horse owners being responsible types & proving co-operative.

The first major problems arose - and are ongoing – with the arrival of a commercial venture in the form of the Shark Bay Camel Safaris. I think most Councillors are aware of the problems associated with this business venture there.

Present situation.

With the advent of a Commercial operation on what was basically an informal horse-owners pursuit, the last Council & Administration were somewhat *forced* into establishing some sort of rules. It became something of a Pandora's Box of complex & questionable legalities: supposed ancient rights of Commonage, the carting of gravel, the opening or otherwise of gates, a supposed gazetted road, the hitherto safe free ranging of horses, delinquent quad bike riders etc. Coupled with this the then Building/Health Inspector (to use the old title) Mr. McKechnie came to certain 'arrangements' with various people, the details of which we were not advised of.

Of these 'arrangements' one involved the land at the far end of what had been designated as Commonage for the community. This was fenced off by a member of the Hoult family and a gate placed across the supposedly gazetted road. As much by hearsay as anything, we understood the deal involved the Golf Club and vacant Crown Land but that's about all we have gleaned, there being no evidence in the Shire Minutes of the process nor public consultation with other users of the Common.

The other 'arrangements' made by Mr. McKechnie were with Mr. van Eek involving some imaginary line(s) running from where the Camels are housed back to the main gate but stretching to where, we have no idea.

No doubt there are some sort of compass bearings & fence lines on record somewhere but in my 40 odd years of varied work including the Main Roads, the building industry & station fencing, I have yet to hear of a 'fence line where there are no markers or signs of where that fence line runs.

I don't know of the circumstances in which Mr. McKechnie & the Shire parted company somewhat abruptly but I do know as a Councillor I made some serious allegations to the

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current CEO (Mr. Anderson) & to the present Shire President (Cnr. Cowell) concerning improprieties involving selective application of the law.

Hoped-for outcome

For our part we want to be left alone without being subjected to new licencing arrangements, fees, ever changing set back rules, etc.

We agree with the other users of the Commonage that the gate should have a padlock but have no problem with the carting of gravel by the Shire or private enterprise or of friends of other horse owners having access to this locality.

A grid is a good idea but to be frank they readily fill in with either sand blown in or borne by water from down the track.

Councillors, my wife & I are in our mid-seventies. We were instrumental in this community amenity coming into being and find the original concepts & ground rules being changed latterly without our knowledge or consent & to our detriment.

If the other horse owners want large paddocks then we have no problem with that (as long as within reason) but as people having lived here for over 40 years we strongly advise against over grazing any one piece of land. With our low rainfall it takes too long for the land to recover. With the low rain fall and resultant fire hazard, free range cropping cuts down on that risk as has been proven at horrendous costs *afterwards* elsewhere in Australia.

We came into Shark Bay when it was a dirt road & have played our part in the establishment & continuity of all manner of organisations - particularly the Emergency Services.

Other groups can have their particular hobby or pleasure type 'clubs' with even Shire financial support. Is it too much to ask that we be afforded like treatment?

Thank you for hearing us out. It goes without saying we will be glad to answer any questions.

Tim & Maggie Hargreaves

In the Shire Chambers 27th August 2014

From: Paul Anderson

Sent: Thursday, 23 April 2015 4:59 PM

To: 'Sharkbay Herald'

Cc: Cowell, Cheryl; Keith Capewell; Greg Ridgley; deben8@bigpond.com;
wintub1@bigpond.com; Hamelin Pool Station; Bobby Hoult; Brian Galvin; Cheryl Wood;

Margaret Prior

Subject: RE: Commonage

Dear Mr Hargreaves

I refer to your email received 14 April 2015 and can advise as follows

In regard to your queries I have endeavoured to provide the information that is readily available in council minutes and I trust that it will assist your understanding.

Date the Common was first formally designated as such and

Reserve 49809 with a current purpose of Common was vested with a management order to the Shire of Shark Bay on 01/08/2008

the lines of demarcation and approx. area

refer attached town planning map reserve 49809
approx. area 1,139 hectares

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The date the approx. one quarter of this designated Common was allocated to a member of the Hoult family and the accompanying details of boundary lines, acreage, datum post, copies of Public Notices advertising intent re-zoning of land etc.

I am unaware of any date to support your assertion. One quarter of reserve 49809 would equate to approx. 284 hectares.

See attached license application presented to council.

It is unclear of what rezoning of what you refer to

Records of any fees levied for Administration costs or annual charges for the use of the livestock/grazing purposes.

No fees or charges have been levied for a license to occupy the reserve

Fees levied & (fees paid) by the current users of the Common proper

e.g. Mr.Garry Desmond,

Mrs.Allison McLean

Mr.Henk van Eek (Camel Safaris)

Mrs Margaret Hargreaves

No fees or charges have been levied for a licence to occupy the reserve.

The date & datum, size of area allocated & proposed fence lines for the one Commercial operation – the Shark Bay Camel Safaris.

License date issued July 2010

Area 5 hectares

I have attached the applications received by Council in 2010 for the following occupiers for your information

Mr Garry Desmond

Mr Henk Van Eek

Mrs Margaret Hargreaves

The additional information you have requested was not provided by the applicants in 2010 which will be required for new applications and will be available in the council minutes.

I refer to my correspondence sent to Mrs Hargreaves dated 18 august 2014 as the occupier of Reserve 49809 (the common) and again advise that the council has the authority with the final approval of the Minister to issue licenses to occupy the common for a maximum five year period.

The license that Mrs Hargreaves applied for in July 2010 had an expiry date of 30 June 2015 and again I would again advise Mrs Hargreaves to submit a new application for a license to occupy a section of reserve 49809 that can then be considered by council.

I can advise that the datum's of the occupiers prior to 2011 are not at hand but will be required for any future applications.

The administration is proposing to council at the April 2015 meeting of council that a project to map and record all areas of the common be undertaken to ensure all occupation areas are

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26 AUGUST 2015

in accordance with license and to ensure proper controls and future allocations are correctly allotted and recorded.

The report to council will also discuss other issues associated with the common, including the ongoing requirement for fencing and gates to access the reserve and to assist councillors in their deliberations I will attach your latest email correspondence.

As I have indicated to Mrs Hargreaves in correspondence dated 18 august 2014 and subsequent correspondence these applications did not receive final approval from the Minister, however the accepted expiry date is 30 June 2015 and a new application is required to be submitted. The correspondence of 18 august 2014 also advised that there were conditions that were required to be complied with, for your assistance I can advise that the condition was as follows

Fenced area to be consistent with application and not to be altered without approval. The area utilised must have a stock control measures in place to secure the stock.

I look forward to a new application to occupy an area of Reserve 49809 or your advice that the area currently occupied is no longer required after the 30 June 2015 .

Regards

Paul Anderson
Chief Executive Officer
Shire of Shark Bay



a: PO Box 126, Denham WA 6537
ph: 08 9948 1218 | fax: 08 9948 1237 | mob: 0427 948 925
w: <http://www.sharkbay.wa.gov.au/>



Please consider the environment before printing this e-mail

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ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

RES49809 / O-CR-14878
Paul Anderson

2 June 2015

MARGARET HARGREAVES
14 DURLACHER STREET
DENHAM 6537

Dear Margaret

LICENCE TO OCCUPY RESERVE 49809 - COMMON

Please refer to Council's correspondence dated the 16 January 2015 and 18 August 2014, requesting you to commence a new application for a licence to occupy part of Reserve 49809 – Common.

Please find attached a new application form which will require evidence of Public Liability Insurance. An annual fee will also be applied to this licence as of 1 July 2015.

As previously advised your current licence will end on the 30 June 2015. In the event that you do not have a valid licence to occupy in accordance with Council's Management Order you may be required to vacate Reserve 49809.

If you have any further queries in relation to the above matter, please contact Paul Anderson, Chief Executive Officer on 08 99481 218 or email ceo@sharkbay.wa.gov.au.

Yours sincerely

Paul Anderson
CHIEF EXECUTIVE OFFICER

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

RES49809 / O-CR-14991
Paul Anderson

3 July 2015

MARGARET HARGREAVES
14 DURLACHER STREET
DENHAM 6537

Dear Mrs Hargreaves

EXPIRED LICENCE TO OCCUPY RESERVE 49809 - COMMON

I refer to Council's correspondence dated the 2 June 2015, 16 January 2015 and 18 August 2014, regarding a licence to occupy part of Reserve 49809 – Common.

I now advise that your licence issued by Council to occupy a portion of Reserve 49809 has now expired.

Can you advise in writing on the application forms that have been previously sent if you wish to apply for a licence to occupy, or advise in writing if you do not intend to apply to renew your licence to occupy.

I would also advise that a response in writing must be received by the 31 July 2015, either applying for a licence to occupy or that you do not intend to apply.

If you have any further queries in relation to the above matter, please contact Paul Anderson, Chief Executive Officer on 08 99481 218 or email ceo@sharkbay.wa.gov.au .

Yours sincerely

Paul Anderson
CHIEF EXECUTIVE OFFICER

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

To - The Shire of Shark Bay
Denham,
W.A. 6537

Your ref. RES 4809/O - CR 14261 & 14991
Of 13 Jan 2015 & 3 July 2015

RECEIVED

27 JUL 2015

SHIRE OF SHARK BAY

Town Common - Application for a Licence

Please note I have been out of the country for the past two months & have only just got round to dealing with all my mail.

This confirms - under duress - I have paid in the appropriate fee for the continued stabling of my horse out at the Common which with my husband I established some 10 years ago.

I notice the cattle grid & gate installed at the entry point to the Common by the Shire of that day for reasons of safety of the Public and of the horses have been removed by orders of the present CEO/ Council.

I also notice there is only one other horse owner occupying land out there - Mrs. McLean.

Miss Weiss has abandoned her paddock, Mr. Desmond having shifted his horse(s) into the fenced off & padlocked gated area allocated - without Public notice - to a member of the Hoult family. This area comprises approx. 1/3rd of the some 2,000 acres originally allocated for Town Common purposes to which public access is now denied.

Yours sincerely
Mrs. Hargreaves
27th July 2015

M. Hargreaves

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

R49809 / O-CR-15038
Paul Anderson

27 July 2015

MARGARET HARGREAVES
14 DURLACHER STREET
DENHAM 6537

Dear Mrs Hargreaves

APPLICATION FOR A LICENCE TO OCCUPY PART RESERVE 49809 - COMMON

Thank you for your letter dated 27 July 2015 advising of payment for the annual fee for Reserve 49809 – Common.

I have attached correspondence that was sent relative to this matter and have attached copies for your reference.

3 July 2015 – O-CR-14991
2 June 2015 – O-CR-14878
16 January 2015 – O-CR-14276
18 August 2014 – O-CR-13748

Please be advised that the application form still needs to be filled out and for Council to consider the application, if Council resolves to support the application it is then forwarded to the Minister for Lands for his authorisation as per the Management Order of the Reserve.

Please find attached a copy of the Application to Occupy Part of Reserve 49809 – Common and ask that it be filled out and returned to the administration office so that the Council can consider your application.

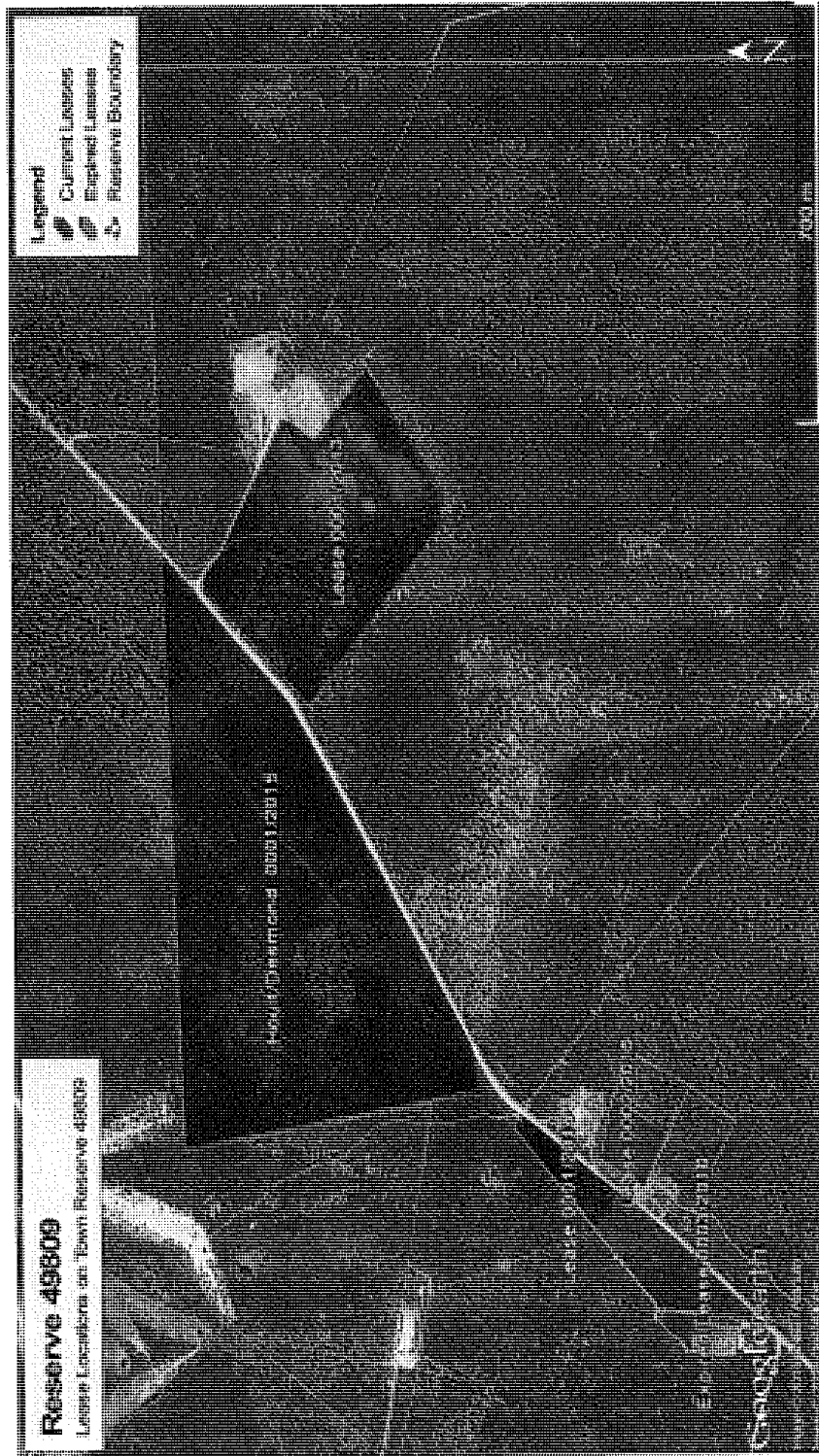
I can advise that without the licence to occupy the Council Reserve, you will be in breach of council's Local Government Property Law section 3.13 (1)(O).

If you have any further queries in relation to the above matter, please contact Paul Anderson, Chief Executive Officer on 08 99481 218 or email ceo@sharkbay.wa.gov.au.

Yours sincerely

Paul Anderson
CHIEF EXECUTIVE OFFICE

ORDINARY COUNCIL MINUTES
26 AUGUST 2015



ORDINARY COUNCIL MINUTES

26 AUGUST 2015

SHIRE OF SHARK BAY

65 Knight Terrace
Denham WA 6537
PO Box 126 Denham WA 6537

RES11667



Res 11667
1-AP-6089
RECEIVED
17 JUL 2009
Shire of Shark Bay
Telephone (08) 9948 1218
Facsimile (08) 9948 1237
Email admin@sharkbay.wa.gov.au
All correspondence to the
Chief Executive Officer

APPLICATION FOR USE OF TOWN COMMON

As a condition of the license approval for the use of Town Common, the Applicant acknowledges and agrees that:

- Occupation of the common will require that all activities conform with any relevant legislation or other statutory requirements, including the Town Common Policy;
- License approval will be granted with the acknowledgment and agreement that the Shire of Shark Bay, its officials, employees and agents shall not be held responsible for personal injuries or damages sustained or property or stock lost or stolen on the Town Common;
- The Shire of Shark Bay reserves the right to refuse the issue of a license for an activity that is not considered appropriate to the Town Common.

(Electronic: please fill out grey areas, save and return via email)

SIGNATURE: _____ **DATE:** _____
PLEASE PRINT FULL NAME: _____ **TELEPHONE NUMBER:** _____
ADDRESS: _____

* The person signing this application on behalf of an organization must have the authority to sign on behalf of said group or organization, and by signing this certifying that he/she has such authority.*

CONTACT DETAILS

| | |
|-----------------------------|------------------------|
| FIRST NAME: | MARGARET |
| LAST NAME: | HARGREAVES |
| BUSINESS/ORGANISATION NAME: | NOSE BAG PONY CLUB |
| POSTAL ADDRESS: | Box 50, SHARK BAY P.O. |
| HOME PHONE NUMBER: | 08. 99. 481. 338 |
| WORK PHONE NUMBER: | PER 0429. 481. 338 |
| FAX NUMBER: | 08. 99. 481. 338 |

1
Shire of Shark Bay
Application for Use of Town Common

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

Town Common Use

Please provide a short description of the activities that you wish to undertake at the Town Common. Eg: Stock tenure.

AS HAS BEEN IN PRACTICE FOR THE LAST 15 (?) YEARS I.E. THE STABLING OF EITHER ONE OR TWO HORSES WITH A HOLDING Paddock (DIMENSIONS BELOW) + RIDING OF SAID HORSE(S) OVER THE COMMONAGE.

List the vehicles which will be used to access to Common?

EITHER MY UTILITY OR MY HUSBANDS UTILITY

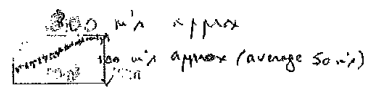
What infrastructure or stock control devices will be utilised?

Please tick appropriate box.

Shed Caravan Shade structure Internal fences Gates

Location and Area in m² ^{orally} fenced

Example:



Or None of the above

1,500 sq. m approx

Length of time you wish to utilize the Common ~~at a period of 3 yrs~~ ON GOING

2

Shire of Shark Bay
Application for Use of Town Common

ORDINARY COUNCIL MINUTES

26 AUGUST 2015

Stock Application

I hereby apply for permission to occupy the Shire of Shark Bay Town Common for the following stock:-

- () horse/s
- () cattle
- () sheep (OCCASIONAL SHEEP - ONE OF
- () camels
- () chickens (OCCASIONAL ROOSTER)

Other considerations that may be applicable? Eg: Special Circumstances. OCCASIONALLY WE HAVE A CREATURE SUCH AS A GOAT OR SHEEP BROUGHT TO US FOR SAFE-KEEPING/RECOVERY.

On receipt of your application it will be placed in the Agenda for the upcoming council meeting for approval of your licence. Once approved by the Shire of Shark Bay Council the licence will then be referred to the Minister of Land pursuant to the provisions of Section 20 of the Land Administration Act 1997.

.....
I have read and understood all parts of the application for use of the common and am ^{NOT} fully aware of all that is required of me as a lessee. I agree to abide by the Licence to Occupy once approved by the Minister of Lands. /NEED TO SEE THE CONDITIONS OF OCCUPANCY FIRST

Signed By Lessee

Print full name: MARGARET ANNE HAYGRENES (CURRENTLY OISENS)

Signed: [Signature] Date: 17 JULY '09

➤ How to lodge this application

BY POST;
Address the application to: The Chief Executive Officer
Shire of Shark Bay
PO Box 164
Denham WA 6537

Courier or personal Delivery: Shire Offices
65 Knight Terrace
Denham WA 6537

Electronically: admin@sharkbay.wa.gov.au

Contact the Shire offices on:
Phone: 08) 9948 1218
Fax: 08) 9948 1237
E-mail: admin@sharkbay.wa.gov.au
Web: www.sharkbay.wa.gov.au

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

UNCONFIRMED MINUTES ORDINARY COUNCIL MEETING

30 SEPTEMBER 2015

11. ADMINISTRATION REPORT

11.1 APPLICATION FOR USE OF PORTION OF RESERVE 49809 - COMMON RES49809

Author

Chief Executive Officer

Disclosure of Any Interest

Nil

Officers Recommendation

Option 1

That a licence to occupy an area of 2.52 Hectares of the Reserve 49809 - Common as depicted on map attached and in line with the configuration submitted by Mrs M Hargreaves be further considered by Council at the October 2015 meeting of Council and subject to the submission of a valid Public Liability Policy to the value of \$10 million.

Or

Option 2

Note: Council to indicate the period of approval i.e. up to 5 years maximum.

That a licence to occupy an area of 2.52 Hectares of the Reserve 49809 - Common as depicted on map attached and in line with the configuration submitted by Mrs M Hargreaves be consented to and submitted to the Minister of Lands for final approval for a period of (1-5 years) expiring on 31 July 2020 and ongoing occupation be conditional on the following:

1. Ongoing compliance with the guidelines of the Shire's Management Statement for Reserve 49809 - Common.
2. The allocated area being suitably fenced and maintained to ensure stock is contained within the approved area.
3. The submission of valid public liability insurance policy to the value of \$10 million on annual basis.

Moved Cr Capewell
Seconded Cr Laundry

Councillor Recommendation

That a licence to occupy an area of 2.52 Hectares of the Reserve 49809 - Common as depicted on map attached and in line with the configuration submitted by Mrs M Hargreaves be consented to and submitted to the Minister of Lands for final approval

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

UNCONFIRMED MINUTES ORDINARY COUNCIL MEETING

30 SEPTEMBER 2015

for a period of 5 years expiring on 31 July 2020 and ongoing occupation be conditional on the following:

4. Ongoing compliance with the guidelines of the Shire's Management Statement for Reserve 49809 - Common.
5. The allocated area being suitably fenced and maintained to ensure stock is contained within the approved area.
6. The submission of valid public liability insurance policy to the value of \$10 million on annual basis.

0/5 LOST

Moved Cr Capewell
Seconded Cr Laundry

Council Resolution

That a licence to occupy an area of 2.52 Hectares of the Reserve 49809 - Common as depicted on map attached and in line with the configuration submitted by Mrs M Hargreaves be further considered by Council at the October 2015 meeting of Council and subject to the submission of a valid Public Liability Policy to the value of \$10 million.

5/0 CARRIED

Background

The Shire of Shark Bay has a Management Order on Reserve 49809 which has a current purpose classified as Common. The area of the reserve is 1,139.223 hectares.

The management order authorises Council to issue licenses for designated area for a maximum period of 5 years with the approval of the Minister. The Council also has a management statement for the occupation of the common that applies to the license holders. The licence allows for an applicant to apply for a term of up to five (5) years.

The following licences have been issued by Council and approved by the Minister for use of the common:

Mrs Alison McLean
Licence number: 1/2013
Licence issued 1 June 2013 and expires 31 May 2018
Area 4.2 Hectares
Stock – 4 horses

Ms T Weiss
Licence number 1/2014
Licence issued 1 September 2014 and expires 31 August 2019
Area 609 m²
Stock – three horses, one goat

Mr H Hoult & Mr G Desmond
Licence number: 1/2015
Licence issued 4 June 2015 and expires 30 April 2020

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Area 34.113 ha
Stock – 8 horses

Mr H Van Eek
Licence Number 2/2015
Licence issued 1 July 2015 and expires 30 June 2020

Comment

A request for an area of the Reserve 49809 - Common has been submitted by Mrs M Hargreaves (attached at end of this report) for a five year period.

The application is for the maximum five year period and council has no obligation to grant a license of this duration and can consider any period from one to five years.

Mrs Hargreaves was originally approved by Council in July 2010, subject to conditions, to occupy an area of the common, this application also required the approval of the Minister which due to an administration error was not sought.

As council is aware there has been some concern expressed by Mr T Hargreaves and resistance by Mrs Hargreaves regarding the requirement to apply for license approval.

This matter was addressed in a report to council at the ordinary meeting in August 2015

The area originally applied for and considered by Council in May 2010 was for 2,250 square metres. The conditions of licence required the approved area to be suitably fenced to contain the applicants stock.

The Works Manager has verified the licenses issued by council and has indicated that the fenced area occupied by Mrs Hargreaves is currently 2.52 hectares.

The council resolved in April 2015 to instigate a progressive program to remove any fences, grids and gates on reserve 49809 not associated with areas that are subject to valid licenses issued in accordance with council management order.

This action has required all occupiers of the reserve to ensure their fences are in a condition that prevents their stock wandering in areas not approved by license or wandering beyond the boundaries of the reserve.

This enables the use of the reserve by the general public and does not interfere with the other users of the reserve while the animals are under the care and control of the owner with the owner present.

The requirement of a public liability policy for approval also provides a degree protection for the shire in the unfortunate incidence that there is an accident due to the negligence of the occupier in maintaining the area allocated in accordance with the approval.

Mrs Hargreaves has been contacted regarding the requirement to have a public liability policy as a condition of approval. At the time of writing this report no evidence of a public liability insurance policy has been submitted to council.

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This area occupied has been verified by the administration and is adequately fenced and maintained to contain the large stock in accordance with Council's Management Statement.

The fencing however would not appear adequate to contain the old goat or poultry as indicated on the application.

The location of the area allocated on Reserve 49809 is indicated in Green on the attached map titled – Map occupied areas and is Lease # 003/2015.

There is also some other facilities on the section of reserve being applied for (sea container and old caravan) that are being utilised for equipment and food storage.

These could be considered as being ancillary to the application, but are required to facilitate the wellbeing of the animal, while the facilities are kept in good condition and the area in a tidy condition, in the opinion of the shire, there would appear to be no immediate concern to them remaining in place.

Legal Implications

The Council has a Management Order for Reserve 49809 in accordance with the Land Administration Act. The management order enables Council to issue licences for a term not exceeding five years with the final approval of the Minister for areas of the reserve.

The council has also recently introduced the requirement for applicants to provide details of a public liability insurance to the value of \$10 million dollars.

Policy Implications

There are no policy implications applicable to this report.

Financial Implications

In accordance with Council resolution an annual fee of \$100 will be applied in the first year.

Strategic Implications

There are no Strategic Implications associated with this item.

Risk Management

It has been assessed that there is a minimal risk associated with this application.

Voting Requirements

Simple Majority Required

Signatures

Chief Executive Officer

P Anderson

Date of Report

9 September 2015

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

UNCONFIRMED MINUTES ORDINARY COUNCIL MEETING

30 SEPTEMBER 2015

Management Statement for the Occupation and use of Reserve 49809 Common

- a) The shire is to maintain a register of all occupiers of the common along with the following base data;
1. The area and location of land being utilised along with the specific infrastructure thereon.
 2. The number of stock being grazed.
 3. Other activities that are being undertaken. E.g., sand extraction, trail bike riding etc.
- b) Occupiers of Reserve 49809 Common
1. All occupiers of the common will require a license to be granted for the designated purpose of occupation of the town common for a term not exceeding (5) years and be subject to the approval in writing from the minister for lands.

The approved licence will specify all current activities undertaken pursuant to the licence and detail any conditions of approval relative to that occupation.
- c) Reporting Requirements
1. A report will be provided to council on an annual basis detailing current occupiers of the Common that includes their infrastructure, stock details, cubic metres of sand removed and other details of change that may have occurred.
- d) General Management Statement for Occupiers
- 1) All occupiers of the town common will observe basic requirements for its occupation.
 - 2) Activities are to be controlled and maintained to ensure long term environmental sustainability and ultimate re-instatement of its land use.
 - 3) Due respect is to be observed to other occupiers of the town common with regard to mutual required services and infrastructure.
 - 4) Activity infrastructure will be required to be set back a specified distance from the access road as determined by the shire.
 - 5) An area stock control device will be required to access the town common.
 - 6) Speed limits will be specified on the access road within the town common.
 - 7) Occupiers of the town common are required to address issues of concern directly to the shire and not to other occupiers.
- B) That "General Management Statement for occupiers" includes licensed occupiers of the common are to ensure that all activities conform to any relevant legislation/statutory requirements.

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FAX NUMBER:

Reserve 49809-Common, Use
Please provide a short description of the activities that you wish to undertake at Reserve 49809 - Common. Eg: Stock tenure.

keeping & exercising 1 pony

List the vehicles which will be used to access to Common?

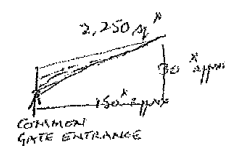
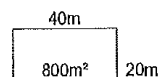
| |
|---------|
| S.B 3 |
| S.B 777 |
| |
| |

What infrastructure or stock control devices will be utilised?
Please tick appropriate box.

Shed Caravan Shade structure Internal fences Gates

Location and Area in m² to be fenced

Example:



Or None of the above

Length of time you wish to utilize the Common within a period of 5 years?

5 years

Shire of Shark Bay

Application for Use of portion of Reserve 49809 - Common

ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

UNCONFIRMED MINUTES ORDINARY COUNCIL MEETING

30 SEPTEMBER 2015

Stock Application

I hereby apply for permission to occupy a portion of the Shire of Shark Bay Reserve 49809 Common for the following stock:-

(/) horse/s
() cattle / YOUNG GOAT, AND POULTRY, HAVE DISAPPEARED
() sheep SINCE CATTLE REMOVAL; BY SHIRE
() camels
() chickens
/ OLD GOAT (APPROX 20? YEARS)

Other considerations that may be applicable? Eg: Special Circumstances.

On receipt of your application it will be placed in the Agenda for the upcoming Council meeting for approval of your licence. Once approved by the Shire of Shark Bay Council the licence will then be referred to the Minister of Land pursuant to the provisions of Section 20 of the *Land Administration Act 1997*. I accept that Annual fees will apply to this licence in accordance with Council's Fees and Charges.

I have read and understood all parts of the application for use of porting of Reserve 49809 - Common and am fully aware of all that is required of me as a lessee. I agree to abide by the Licence to Occupy once approved by the Minister of Lands. I have attached a copy of my Public Liability Insurance certificate. NO PUBLIC LIABILITY.

Signed By Lessee

Print full name: MARGARET HARGREAVES
Signed: M. Hargreaves Date: 29th / 08 / 15

➤ How to lodge this application

BY POST;

Address the application to: The Chief Executive Officer
Shire of Shark Bay
PO Box 126
Denham WA 6537

Courier or personal Delivery: Shire Offices
65 Knight Terrace
Denham WA 6537

Electronically: admin@sharkbay.wa.gov.au

Contact the Shire offices on:

Phone: 08) 9948 1218
Fax: 08) 9948 1237
E-mail: admin@sharkbay.wa.gov.au
Web: www.sharkbay.wa.gov.au

3
Shire of Shark Bay
Application for Use of portion of Reserve 49809 - Common

UNCONFIRMED MINUTES ORDINARY COUNCIL MEETING

30 SEPTEMBER 2015

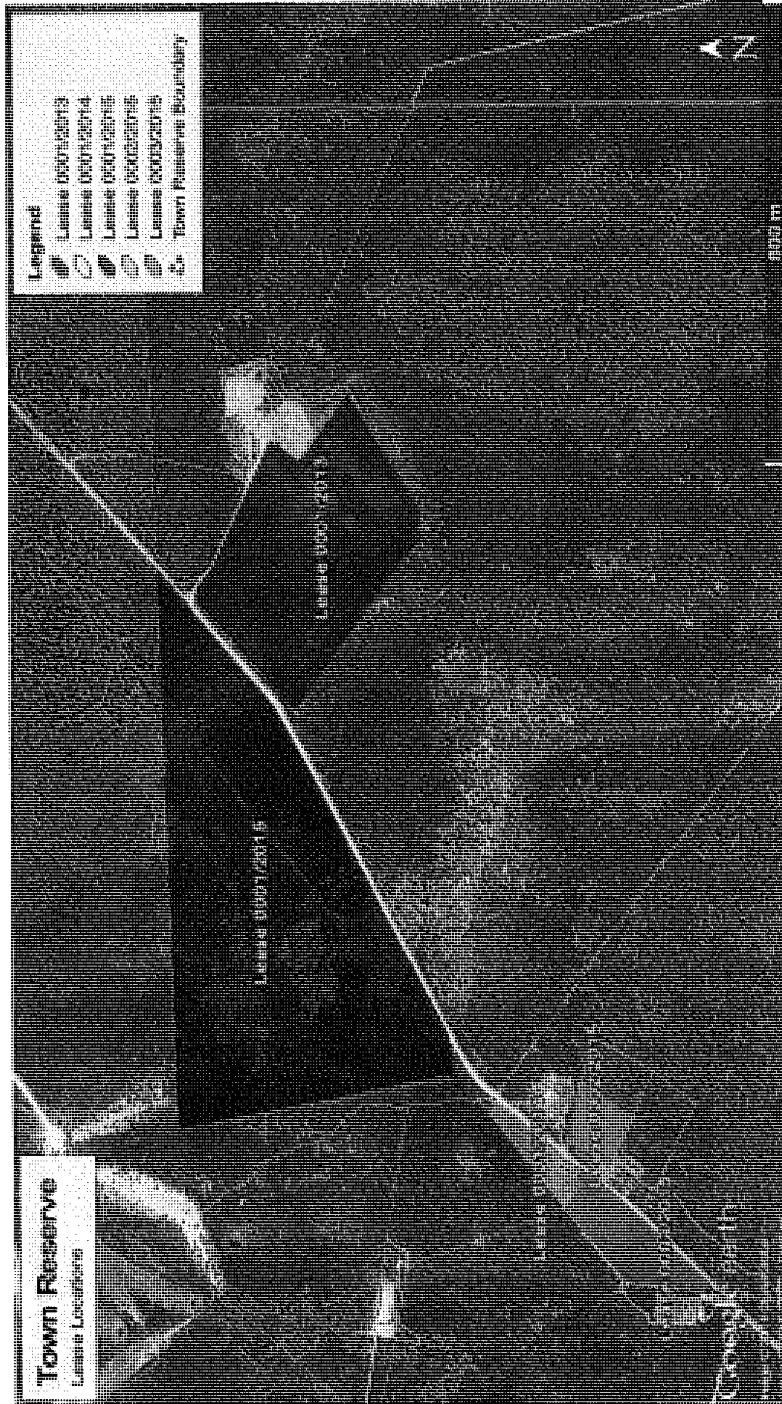
Licence is subject to General Policy Statement upon and for the duration of occupation-

- *All occupiers of the Common will observe basic requirements for its occupation.*
- *All occupiers of the Common will ensure that all of their activities conform to any relevant legislation or other statutory requirement.*
- *Illegal activities of any nature are not to take place at the Common.*
- *The Shire of Shark Bay, its officials, employees and agents shall not be held responsible for personal injuries or damages sustained or property or stock lost or stolen on the Common.*
- *Activities are to be controlled and maintained to ensure long term environmental sustainability and ultimate re-instatement of its land use.*
- *Occupiers are to be responsible for any damages caused to the Common other than general deterioration of the site.*
- *The Common will be left clean and tidy; all rubbish etc is to be removed.*
- *Due respect is to be observed to other occupiers of the Common with regard to mutual required services and Infrastructure.*
- *Occupiers are asked to contribute to a positive relationship with other Common users.*
- *The area utilized must have a stock control measure in place to secure their stock.*
- *Stock numbers must be maintained within the license approval. Any additional stock must be approved by Council.*
- *Activity infrastructure will be required to be set back a specified distance from the access road as determined by the Shire.*
- *Speed limits will be observed on the access and external road within the Common.*
- *Occupiers of the Common are required to address issues of concern directly to the Shire and not to other occupiers.*
- *Proof of current Public Liability Insurance to \$10,000,000.*

Failure to comply with these provisions may result in the cancellation of the licence to occupy.

UNCONFIRMED MINUTES ORDINARY COUNCIL MEETING

30 SEPTEMBER 2015



ATTACHMENT FOR ITEM 11.4 OCM 25 NOVEMBER 2015

UNCONFIRMED MINUTES ORDINARY COUNCIL MEETING

30 SEPTEMBER 2015

12. FINANCE REPORT

12.1 SCHEDULE OF ACCOUNTS PAID TO BE RECEIVED CM00017

Author

Finance Officer / Accounts Payable

Disclosure of any interest

Nii

Moved Cr Laundry

Seconded Cr Prior

Council Resolution

That the cheques and electronic payments as per the attached schedules of accounts for payment totalling \$520,279.80 be accepted.

5/0 CARRIED

Comment

The schedules of accounts for payment covering - Municipal fund account cheque numbers 26775 to 26779 totalling \$19,239.42

Municipal fund account electronic payment numbers MUNI EFT 18055 to 18209 totalling \$351,937.11

Municipal fund Direct Debits to Council account for August 2015 totalling \$19,616.77

Municipal fund account for August 2015 payroll totalling \$106,224.00

Trust fund account cheque numbers 1061 totalling \$50.00

Trust fund Police Licensing for August 2015 cheque # 151602 totalling \$22,189.50 and

Trust fund account electronic payment numbers 18110 to 18208 totalling \$1,023.00

The schedule of accounts submitted to each member of Council on 24 September 2015 has been checked and are fully supported by vouchers and invoices. All vouchers and invoices have been duly certified as to the receipt of goods and services and the cost of goods and services received.

Voting Requirements

Simple Majority Required

Signature

Author *C Wood*

Chief Executive Officer *P Anderson*

Date of Report 9 September 2015