

18. Officer's Reports – Deputy Chief Executive – Late Item

18.1 Marina Berth Request to Transfer

Report Title: Marina Berth Request to Transfer
Date of Meeting: 8 October 2013
Author & Title: Lyndon Prior, Deputy Chief Executive
Attachments: Copy of Correspondence

PURPOSE

To provide Council with a copy of a request to transfer the Lease pertaining to Marina Berth 10, this berth located on the commercial arm of the marina.

RECOMMENDATION

That the District Council of Robe having considered Report No 18.1 “Marina Berth Request to Transfer” provides its consent to the request to the transfer and expressly advises the purchaser through their agent of the covenants of Item 7 of the Schedule to the Underlease which permits only commercial fishing boats to be moored in this berth.

BACKGROUND

The District Council of Robe is the Lessee of the Robe Marina precinct under a Headlease granted by The Minister for Transport. Council has care and control of the area and is responsible for the comprehensive management of the area including leasing and licensing marina berths. Council's power to assign, transfer and sublease by way of granting under-leases is provided pursuant to Clause 5.23 of the head lease.

DISCUSSION

Council has received a written request from the current owner [via their agent] of Berth A10 seeking Council's consent to transfer their Underlease by way of sale by private treaty pursuant to Clause 2.15 of the underlease document.

Council cannot withhold its consent to a request of assignment unreasonably.

Whilst the intended use of the berth by the prospective purchaser cannot be determined at this time it is prudent that Council advise them of the covenants contained within Item 7 of the Schedule to the Underlease, an extract of which is produced here;

“Item 7: Permitted Use: For use as a berth for the mooring of a commercial fishing vessel and not for any other purpose and in particular not for the mooring of a recreational vessel.”

Council is currently investigating the options to remove the restrictive wording contained within Item 7, pending community consultation and feedback from the Robe Professional Fishers Association.

As previously reported, Council is not permitted to alter the terms and conditions of the underlease without firstly obtaining the written consent of the Head Lessor, The Minister for Transport, as the current underlease document is in the standard approved form which has previously been endorsed by the Minister. The Minister's consent may be sought to amend all under-leases current and future, or may be sought on a case-by-case basis.

POLICY IMPLICATIONS

Nil

BUDGET IMPLICATIONS

Nil.

STRATEGIC PLAN

Council's consideration of this matter will comply with the following strategic objective listed in Council's Strategic Plan 2009-2013.

- *To ensure the delivery of sustainable, high quality, corporate governance for the District Council of Robe.*
- *To ensure the District provides for the lifestyle needs of its community in a financially & environmentally sustainable and responsible manner.*

COMMUNITY CONSULTATION

N/A.

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OUR REF: PRW:FEH:15365

YOUR REF:

24 September 2013

The Chief Executive Office
The District Council of Robe
PO Box 1
ROBE SA 5276

DC of Robe	
For Action By: Lyndon	
Received: 26.09.13	
Letter No: C02013 14837	File No: 16.51.2

Dear Sir,


re: Proposed Sale of Marina Berth A10
RL Vonbertouch to Debruin Nominees Pty Ltd

I have been instructed to prepare a contract for the sale and purchase of Marina Berth No A10 between the above parties.

The transfer of the Marina Berth requires Councils consent as the underlessor of the berth.

Would you please advise whether Council has any objection to this transfer at your earliest opportunity as settlement is due on 30/10/13.

Yours faithfully,


Peter R. Westley

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