



MINUTES

SPECIAL MEETING OF COUNCIL

Held on
Tuesday 6 December 2011
6.30 pm
City of Albany Council Chambers

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1.0 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The Mayor declared the meeting open at **6.32PM**

ITEM 1.0: RESOLUTION

MOVED: COUNCILLOR HOLDEN

SECONDED: COUNCILLOR DUFTY

THAT Council:

- **SUSPEND Standing Order clause 3.1 to allow recording of proceedings;**

CARRIED 11-0

2.0 OPENING PRAYER

The Mayor read the opening prayer.

“Heavenly Father, we thank you for the beauty and peace of this area. Direct and prosper the deliberations of this Council for the advancement of the City and the welfare of its people. Amen.”

3.0 PUBLIC QUESTION AND STATEMENT TIME

Council’s Standing Orders Local Laws provide that each Ordinary Meeting of the Council shall make available a total allowance of 30 minutes, which may be extended at the discretion of Council, for residents in attendance in the public gallery to address clear and concise questions to His Worship the Mayor on matters relating to the operation and concerns of the municipality.

Such questions should be submitted to the Chief Executive Officer, **in writing, no later than 10.00am** on the last working day preceding the meeting (the Chief Executive Officer shall make copies of such questions available to Members) but questions may be submitted without notice.

Each person asking questions or making comments at the Open Forum will be **LIMITED** to a time period of **4 MINUTES** to allow all those wishing to comment an opportunity to do so.

There were no members of the public in attendance.

4.0 RECORD OF ATTENDANCE/APOLOGIES/LEAVE OF ABSENCE (PREVIOUSLY APPROVED)

Mayor

D Wellington

Councillors:

Breaksea Ward	R Hammond
Breaksea Ward	V Calleja
Frederickstown Ward	Vacant
Frederickstown Ward	G Stocks
West Ward	J Gregson
West Ward	D Dufty
Kalgan Ward	C Holden
Vancouver Ward	D Bostock
Vancouver Ward	S Bowles
Yakamia Ward	R Sutton
Yakamia Ward	A Hortin

Staff:

Chief Executive Officer	F James
Acting Executive Director Corporate Services	P Wignall
Manager Finance	D Olde
Senior Leasing Officer	T Catherall

Minutes	J Williamson
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Public Gallery and Media:

1 member of the media was in attendance.

Apologies/Leave of Absence:

Kalgan Ward	Y Attwell
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5.0 DECLARATION OF INTEREST

[Elected members of Council and staff are asked to use the forms prepared for the purpose, aiding the proceedings of the meeting by notifying the presiding member prior to the conduct of the meeting]

Name	Item Number	Nature of Interest
Councillor Bowles	6.1	Impartiality. Councillor Bowles is a member of Great Southern Factor Inc which was named as a referee for one of the proponents for the lease of the former Calamari's site. Councillor Bowles remained in the Chamber and participated in the discussion and vote.

RESOLUTION

**MOVED: COUNCILLOR CALLEJA
SECONDED: COUNCILLOR HOLDEN**

THAT Item 6.2 of the Agenda be dealt with prior to the meeting going behind closed doors to discuss Item 6.1.

CARRIED 11-0

6.1: NEW LEASE – COMMERCIAL CAFE AND RESTAURANT (FORMERLY CALAMARI'S) – RESERVE 26149, MIDDLETON BEACH

ITEM 6.1: RESOLUTION

**MOVED: COUNCILLOR HOLDEN
SECONDED: COUNCILLOR BOWLES**

THAT the City of Albany employees, Manager of Finance and Senior Leasing Officer, remain in the Chamber as the meeting moved behind closed doors.

CARRIED 11-0

ITEM 6.1: RESOLUTION

**MOVED: COUNCILLOR CALLEJA
SECONDED: COUNCILLOR BOWLES**

THAT the meeting move behind closed doors to discuss Item 6.1.

CARRIED 11-0

ITEM 6.1: RESOLUTION

MOVED: COUNCILLOR DUFTY

SECONDED: COUNCILLOR CALLEJA

THAT Standing Order 4.4 Order of Debate, be SUSPENDED to allow discussion.

CARRIED 11-0

Councillor Dufty left the meeting at 6.58pm.

ITEM 6.1: RESOLUTION

MOVED: COUNCILLOR SUTTON

SECONDED: COUNCILLOR HOLDEN

THAT Council come out from behind closed doors.

CARRIED 10-0

ITEM 6.1: RESOLUTION

MOVED: COUNCILLOR CALLEJA

SECONDED: COUNCILLOR HOLDEN

THAT Council APPROVE a new lease to The Marwick Family Trust for the purpose of commercial cafe and restaurant on portion of Crown Reserve 26149 and being portion of Lot 651 on Deposited Plan 191343, Middleton Beach subject to:

- 1. Lease term being twenty one years.**
- 2. Lease commencement date being 14 December 2011.**
- 3. Initial lease rental as determined by a current market valuation provided by an independent Certified Practising Valuer (currently valued at \$68,000 plus GST per annum).**
- 4. Lease rent reviews being every five years by market valuation with Consumer Price Index applied for intervening years. (Next market valuation due 2016 year).**
- 5. Lease area being approximately 1174 square metres.**
- 6. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent is obtained.**
- 7. All costs associated with the operations and maintenance of the lease premises (other than structural and electrical wiring maintenance) and variable outgoings to be payable by the lessee.**
- 8. All costs associated with the development, execution and completion of the Deed of Lease are met by the lessee.**
- 9. Lease being consistent with Council Policy – Property Management – Leases.**

**CARRIED 8-2
ABSOLUTE MAJORITY**

Record of Voting

Against the Motion: Councillors Hammond and Bostock

COMMERCIAL IN CONFIDENCE

**6.1: NEW LEASE – COMMERCIAL CAFE AND RESTAURANT
(FORMERLY CALAMARI'S) – RESERVE 26149, MIDDLETON
BEACH**

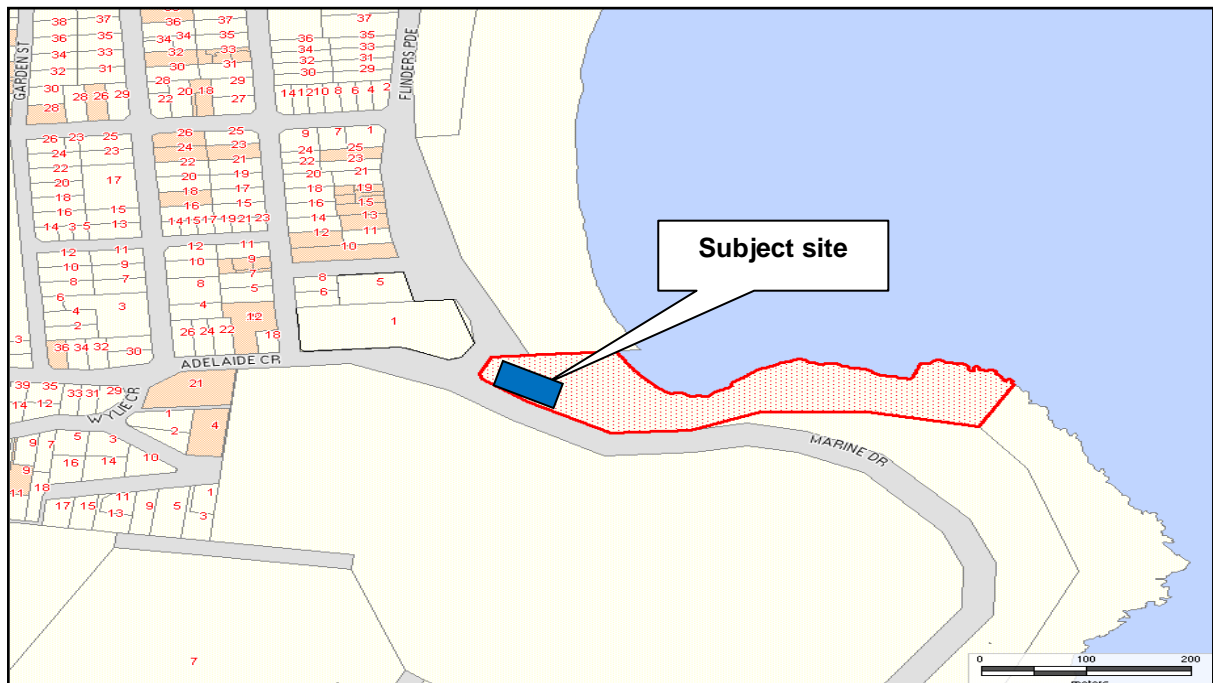
Land Description : Portion of Crown Reserve 26149 and being portion of Lot 651 on Deposited Plan 191343 and the whole of land contained in Certificate of Title Volume LR3119 Folio 892

Proponent : The Marwick Family Trust

Owner : Crown

Responsible Officer : Acting Executive Director Corporate Services (P Wignall)

Maps and Diagrams



IN BRIEF

- New lease to be issued for commercial cafe and restaurant on portion of Crown Reserve 26149, Middleton Beach.
- Lease term being twenty one years.
- Initial lease rental as determined by current market valuation (currently \$68,000 plus GST per annum).

COMMERCIAL IN CONFIDENCE

ITEM 6.1: RESOLUTION

**MOVED: COUNCILLOR HOLDEN
SECONDED: COUNCILLOR BOWLES**

THAT the Manager of Finance and Senior Leasing Officer remain in the Chamber as the meeting moved behind closed doors.

CARRIED 11-0

ITEM 6.1: RESOLUTION

**MOVED: COUNCILLOR CALLEJA
SECONDED: COUNCILLOR BOWLES**

THAT the meeting move behind closed doors to discuss Item 6.1.

CARRIED 11-0

ITEM 6.1: RESOLUTION

**MOVED: COUNCILLOR DUFTY
SECONDED: COUNCILLOR CALLEJA**

THAT Standing Order 4.4 Order of Debate, to allow discussion.

CARRIED 11-0

Councillor Dufty left the meeting at 6.58pm.

ITEM 6.1: RESOLUTION

**MOVED: COUNCILLOR SUTTON
SECONDED: COUNCILLOR HOLDEN**

THAT Council come out from behind closed doors.

CARRIED 10-0

COMMERCIAL IN CONFIDENCE

RECOMMENDATION

ITEM 6.1: RESOLUTION

MOVED: COUNCILLOR CALLEJA

SECONDED: COUNCILLOR HOLDEN

THAT Council APPROVE a new lease to The Marwick Family Trust for the purpose of commercial cafe and restaurant on portion of Crown Reserve 26149 and being portion of Lot 651 on Deposited Plan 191343, Middleton Beach subject to:

- 1. Lease term being twenty one years.**
- 2. Lease commencement date being 14 December 2011.**
- 3. Initial lease rental as determined by a current market valuation provided by an independent Certified Practising Valuer (currently valued at \$68,000 plus GST per annum).**
- 4. Lease rent reviews being every five years by market valuation with Consumer Price Index applied for intervening years. (Next market valuation due 2016 year).**
- 5. Lease area being approximately 1174 square metres.**
- 6. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent is obtained.**
- 7. All costs associated with the operations and maintenance of the lease premises (other than structural and electrical wiring maintenance) and variable outgoings to be payable by the lessee.**
- 8. All costs associated with the development, execution and completion of the Deed of Lease are met by the lessee.**
- 9. Lease being consistent with Council Policy – Property Management – Leases.**

**CARRIED 8-2
ABSOLUTE MAJORITY**

Record of Vote

Against the Motion: Councillors Hammond and Bostock

COMMERCIAL IN CONFIDENCE

BACKGROUND

1. Crown Reserve 26149 is under a Management Order H633658 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of “Recreation” for a term not exceeding twenty one years and subject to the consent of the Minister for Lands.
2. The lease premises area of approximately 1174 square metres on portion of Crown Reserve 26149 is located at street address 2 Flinders Parade, Middleton Beach.
3. The City of Albany owns the building located within the lease area. The City of Albany is responsible for all structural maintenance including electrical wiring of the lease premises with the Lessee responsible for all other repairs and maintenance.
4. In August 1997, the former Town of Albany granted a twenty year lease for the premises at 2 Flinders Parade, Middleton Beach for the purpose of beachside cafe and restaurant. The lease commenced on 1 August 1997 and would have expired on 31 July 2017.
5. The lease was assigned from Henry, Corinne and David Flick to Colleen and Jack Woodhams in February 2001 for the remainder of the term. The lease was further assigned to Skatt (WA) Pty Ltd ACN 119 560 913 as Trustee for the MacKenzie Family Trust with Donald and Heather MacKenzie as Guarantors in June 2007 for the remainder of the term till 31 July 2017.
6. Since Skatt (WA) Pty Ltd (the Company) assuming the lease in June 2007 the Company has experienced difficulty in meeting its lease commitments.
7. Since 2007 the City has been very accommodating in supporting the Company by phasing in commercial lease rental increases and agreeing to variable lease payment arrangements requested by the Company.
8. In accommodating the Company, at the Ordinary Council Meeting 20 April 2010 Council agreed to surrender the existing lease and replace with a new twenty one year lease for Skatt (WA) Pty Ltd, as the Company advised it needed a longer lease term to justify capital expenditure on the premises.
9. Subsequent to the April OCM resolution, signed acceptance of current lease surrender and new lease conditions was sought from the Company. The Company did not provide this consent to the City. This matter was followed up with the Company with no response received by the City.
10. By November 2010, the City became concerned that the Company would not proceed with new lease terms nor pay overdue lease rent and outgoings or agree to a definitive repayment schedule.
11. With the Company having been in default under the lease for several months failing to pay rent and outgoings a Notice of Default was issued by the City to Skatt (WA) Pty Ltd and its Guarantors.

COMMERCIAL IN CONFIDENCE

12. To remedy the Notice of Default and manage the recovery of the outstanding debt of (at this stage) \$10,922.33 a payment plan was finally negotiated and agreed by the parties in January 2011.
13. In March 2011, the Company requested a variation from that agreed payment plan. Given the history of the matter, the City, being extremely concerned about the company's capacity to meet its legal and financial obligations, determined the original agreed payment plan should remain in place and that all other lease charges were also to be paid in full when they fall due.
14. In August 2011, the Company requested a moratorium on payment of rent until November 2011. While the City gave consideration to the request, given the outstanding debt at the time now totalled \$22,862.70 the City was not prepared to agree to a further variation and declined the request. The Company was advised that all outstanding lease charges were to be paid.
15. As outstanding debt remained unpaid on 13 September 2011 a Notice of Default was issued against the Company and its Guarantors for the payment of outstanding debt, plus the City's legal costs of \$880.00, by the deadline of 27 September 2011.
16. The Company then requested the City's permission to assign the lease to another party. The City advised that as the Company was substantially in default under the terms of the lease, the City would only consider reassignment once all defaults had been remedied.
17. On 3 October 2011, City staff met with the Company and a representative of the party seeking the assignment benefit of the lease to discuss the outstanding debt and the assignment. A further seven days was granted to allow the Company and the other party to reach an agreement in relation to the payment to the City of the outstanding debt.
18. On 11 October 2011, the City was advised by the representative of the other party that an agreement could not be reached and that any potential involvement of the other party in assisting the Company in settling the outstanding debt would not occur and the debt would not be paid by the deadline.
19. On 12 October 2011, the City advised both the Company and the other party seeking the lease reassignment that unless the outstanding debt of (by this stage) \$44,744.57 was received by 10am 13 October 2011, the City would proceed to instruct lawyers to terminate the lease and repossess the premises.
20. On 9 November 2011, the City was advised by Sheridans Chartered Accountant that the Company had gone into liquidation.
21. On 10 November 2011, the City posted a Notice of Repossession of Leased Premises at the Leased Premises. A copy of the Notice was served on the Company, the Guarantors and the Company Liquidator. The City then assumed possession of the site.

COMMERCIAL IN CONFIDENCE

22. Advertisements seeking Expressions of Interest to lease the commercial cafe and restaurant were published in the Albany Advertiser on 15 and 17 November, the West Australian on 16 November, the Weekender on 17 November 2011 and on the City's website under Public Notices and Tenders.
23. Expression of Interest Offerors were required to address selection criteria and provide general financial and corporate information. Offerors were also asked to provide a general overview of the Offeror's proposed business structure including (but not limited to) operational philosophy, complaints resolution process, marketing concepts, a broad indication of products and services to be provided and the anticipated hours of operation of the cafe and restaurant.
24. Submissions were required to be submitted to the City by 5pm on Wednesday 30 November 2011.

DISCUSSION

25. The Expression of Interest evaluation criteria used a weighted attribute method (used routinely by the City for tenders). This methodology scores the evaluation criteria and weights their importance to determine an overall point score for each offer. The criteria used were:

Criteria	% Weight
Experience and skills in successfully operating a similar business	40%
Capacity (resources & financial)	30%
Indicative lease terms (including intended use of the premises)	15%
Timeline for commencement of operations	15%
TOTAL	100%

26. To assist Offerors site visits were made available on Monday 21 November and Wednesday 23 November between 10-11am. Eleven people took up the offer and attended the site visits. Non attendance at the site visit was not mandatory and should not prejudice any Offeror.
27. A total of eleven Expression of Interest documents were distributed with three Expressions of Interest submissions being received by 5 pm on 30 November 2011 deadline. There were no "late" Offerors.
28. The letter of offer received from Mr Michael Anderson on 24 November 2011 was deemed as non-conforming by the City's Procurement Officer due to its failure to meet all of the requirements of the Expression of Interest documentation. The letter did not form part of the evaluation.

COMMERCIAL IN CONFIDENCE

29. The remaining two submissions from Nasconed Pty Ltd as Trustee for the Delli-Benedetti Family Trust, the current owner and operator of Nonna's Restaurant and The Marwick Family Trust the current lessee and operator of the Emu Point Cafe.
30. The Emu Point Cafe premises is an existing lease with the City of Albany expiring on 14 December 2013.
31. The Expression of Interest evaluation panel consisted of the Manager Finance, the Manager Tourism Development and Services, and the Senior Property Officer with final approval of the panel's recommended assessment by the Chief Executive Officer.
32. On reviewing Nasconed Pty Ltd submission it was noted that both Items 3.23 Trusts and 3.2.4 Financial Position were marked with "To Be Advised". The Offeror was contacted and given the opportunity to provide the required Financial Statements and Trust information.
33. The Companies Trading and Profit and Loss Accounts for years 2009 and 2010 were made available for review. It is noted that no Balance Sheet or Financial Referees were provided and that the Company's offer of rent payable was \$37,600 plus GST per annum.
34. In further discussions with Mr Michael Delli-Benedetti, Director of Nasconed Pty Ltd regarding the commercial rent for the lease premises it was confirmed by Mr Michael Delli-Benedetti that the Company was not prepared to pay the current commercial rent of \$68,000 plus GST per annum and that the Company's offer of rent of \$37,600 plus GST per annum remains static.
35. The following table details the evaluation ratings as scored on the weighted selection criteria and the resulting overall evaluation score applicable to each submission. These scores are based on the submission information provided only.

Offeror	Total Evaluation Score
Mr Michael Anderson	Non-conforming
Nasconed Pty Ltd as trustee for the Delli-Benedetti Family trust	685
The Marwick Family Trust	795

36. Nasconed Pty Ltd scored highest in experience criteria with The Marwick Family Trust scoring highest over the remaining criteria.
37. As part of the due diligence process, three of the Trust financial referees were contacted for comment. They unanimously expressed that they were good operators and paid accounts on time with good credit history. There were no payment of account concerns.
38. In addition, the Trust accountant was contacted who advised they were well prepared, had detailed plans with previous experience in operating a food business. The accountant was confident in their ability to operate the lease premises with adequate financial capacity and resources to cover both businesses and future development.

COMMERCIAL IN CONFIDENCE

39. The evaluation panel concludes that both Offerors have the capacity to undertake the lease for the commercial cafe and restaurant. However given Nasconed Pty Ltd were unwilling to accept the commercial rent and that the The Marwick Family Trust have confirmed their acceptance of the commercial rent, therefore approving the lease to The Marwick Family Trust is recommended.

GOVERNMENT CONSULTATION

40. Pursuant to Section 18 (1) of the *Land Administration Act 1997* the Department of Regional Development and Lands has been consulted and in-principle Minister for Land's consent has been provided to the proposed Deed of Lease on portion of Crown Reserve 26149.
41. As this lease proposal does not require land works or changes to land title there are no *Native Title Act 1993* and the *Aboriginal Heritage Act 1972* implications.

PUBLIC CONSULTATION / ENGAGEMENT

42. Section 3.58 of the *Local Government Act 1995* requires there to be public notice of the Expression of Interest for lease of commercial cafe and restaurant inviting submissions from the public, for a period of two weeks.

STATUTORY IMPLICATIONS

43. Section 18 (1) of the *Land Administration Act 1997* states that a person must not, without the prior approval in writing of the Minister assign, sell, transfer or otherwise deal with interests on Crown land.
44. As this is Crown land, under Management Order H633658 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Recreation", Minister for Land's consent will be required.
45. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
46. Under the City's Town Planning Scheme 1A, the subject land is reserved as "Parks and Recreation". A commercial cafe and restaurant is an approved use in accordance with the Scheme.

COMMERCIAL IN CONFIDENCE**STRATEGIC IMPLICATIONS**

47. This item relates to the following elements of the City of Albany Strategic Plan (2011-2021):

Key Focus Area

- Organisational Performance
- Sustainability and Development

Community Priority

- Policy and Procedures
- Tourism Development

Proposed Strategies

- Develop clear processes and policies and ensure consistent, transparent application across the organisation.
- Improve and expand tourism infrastructure and attractions.

POLICY IMPLICATIONS

48. Council adopted a Property Management – Leases Policy in 2008. This Policy aims to ensure that all requests for leases/licences, for whatever purpose, will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures. The Officer's Recommendation is consistent with Council Policy.

49. The Officer's recommendation is consistent with Council Policy.

RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Rating	Mitigation
New lease not approved by Council because of dissatisfaction with terms	Unlikely	Major	Medium	Approve lease after collaborating closely with proposed new lessee to ensure mutually agreeable outcomes
Organisational instability of new lessee – service interruption	Unlikely	Severe	High	Approve lease terms to ensure service stability in this tourist precinct
New lease not approved – reputational loss to the City	Unlikely	Severe	High	Approve lease to demonstrate the City's commitment to the tourist precinct and businesses servicing the community
Non-compliance with lease – financial default	Possible	Major	High	Risk Treatment Plan with strict controls (with elevation to Audit &

COMMERCIAL IN CONFIDENCE

(assuming lease is approved)				Finance Committee as required) to manage financial default
Non-compliance with lease – legal and compliance	Possible	Moderate	Medium	Lease conditions adequate to provide City with mechanism to address default

FINANCIAL IMPLICATIONS

50. All costs associated with the ongoing operations (inclusive of rent and all outgoings such as rates, insurance, public toilet usage contribution and insurance) of the commercial cafe and restaurant will be borne by the new lessee.
51. All costs associated with the development, execution and completion of the new lease documentation including but not limited to legal, advertising, valuation and survey will be borne by the new lessee.
52. The lease rental determined by a current market valuation on 24 November 2011 provided by an independent Certified Practising Valuer is \$68,000 plus GST per annum. A new valuation will be required in 2016.
53. The lease rental revenue will be directed to COA 140530 Income – Misc Commercial.
54. Since the Company has been declared in administration, Council expenditure of approximately \$18,500 (incl GST) has been necessary to prepare the premises for a new lessee, including expenditure on disposal of perishable goods, removing of rubbish, cleaning, and some electrical and fixture maintenance. This expenditure has predominantly resulted from the Company not fulfilling its obligations under Clause 7.5 of the prior lease to “make good” the premises to the same state and condition as at the beginning of the lease.
55. All costs incurred by the City to “make good” the lease premises will be added to the City’s claim against the company, which currently amounts to approximately \$71,000 (incl GST).

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

56. Council has the following options in relation to this item:
 - a. Approve a new lease to The Marwick Family Trust on portion of Crown Reserve 26149 for purpose of a commercial cafe and restaurant.
 - b. Reject the submission and decline the proposed lease.
 - c. Liaise with The Marwick Family Trust and/or other parties for alternate lease arrangement.

COMMERCIAL IN CONFIDENCE

57. Should Council reject the submission and decline the proposed lease, depending on the reason, Council may:
1. Direct staff to clarify some aspects of the submissions and/or provide further information.
 2. Undertake a new Expression of Interest process, with possibly different evaluation criteria.
 3. The premises will remain closed until a new lease is approved by Council.

SUMMARY CONCLUSION

4. Given Councils' desire to have the Middleton Beach tourist precinct serviced with a cafe and restaurant as soon as practically possible and preferably before 17 December 2011 (date of Christmas Pageant and Family Concert in the cove) and or the beginning of the tourist season in December, and that the evaluation team assessed as soon as possible concluding The Marwick Family as being the most suitable Offeror under an equitable, transparent process, approving the new lease is recommended.

Consulted References	<ul style="list-style-type: none">• Council Policy – Property Management – Leases• <i>Local Government Act 1995</i>• <i>Land Administration Act 1997</i>
File Number (Name of Ward)	PRO070 (Frederickstown Ward)
Previous Reference	OCM 21.04.2010 Item 13.1 OCM 21.04.2010 Item 14.11.1

6.2: EXTRAORDINARY ELECTION – FREDERICKSTOWN WARD AMENDMENT

Attachments : Nil
Responsible Officer : Chief Executive Officer (Faileen James)

RECOMMENDATION

ITEM 6.2: RESOLUTION
VOTING REQUIREMENT: ABSOLUTE MAJORITY

MOVED: COUNCILLOR DUFTY
SECONDED: COUNCILLOR GREGSON

THAT Council:

1. **DECLARE**, in accordance with section 4.20(4) of the *Local Government Act 1995*, the Electoral Commissioner to be responsible for the conduct of all elections until the end of 2012.
2. **DECIDE**, in accordance with section 4.61(2) of the *Local Government Act 1995* that the method of conducting the elections will be postal.
3. **REQUEST**, in accordance with section 4.9(2) of the *Local Government Act 1995*, the Electoral Commissioner hold an extraordinary election for the Frederickstown Ward on Friday 24 February 2012.

CARRIED 11-0
ABSOLUTE MAJORITY

BACKGROUND

1. As a result of a serving member of Council being elected as the popularly elected Mayor, there is a requirement for the City to conduct an extraordinary election for the Frederickstown Ward.

DISCUSSION

2. After discussion with the Electoral Commissioner and having obtained the written agreement of the Commissioner, to ensure compliance with legislation the election date requires to be postponed by one day to Friday 24 February 2012.
3. Declaring the Electoral Commissioner to be responsible for the conduct of all elections until the end of 2012 is appropriate to ensure that Council does not need to go through this process again should a further vacancy arise this year.

GOVERNMENT CONSULTATION

4. Consultation has been conducted with Western Australian Electoral Commission, and the appropriate processes have been reconfirmed.

PUBLIC CONSULTATION / ENGAGEMENT

5. There is no requirement to conduct public consultation for this item.

STATUTORY IMPLICATIONS

6. Section 4.61 of the *Local Government Act 1995*, states in part as follows:

“4.61 Choice of methods of conducting the election

(1) The election can be conducted as a –

“Postal election” which is an election at which the principal method of casting votes is by posting or delivering them to an electoral officer on or before the election day, or

“voting in personal election” which is an election at which the principal method of casting votes is by voting in person on election day, or posted and delivered, in accordance with regulations.

(2) The local government may decide to conduct the election as a postal election.*

****Absolute majority required***

7. Section 4.20 (4) of the Act states as follows:

(3) A local government may, having first obtained the written agreement of the Electoral Commissioner, declare the Electoral Commissioner to be responsible for the conduct of an election, or all elections conducted within a particular period of time, and, if such a declaration is made, the Electoral Commissioner is to appoint a person to be the returning officer of the local government for the election or elections.*

****Absolute majority required***

8. There is no option under the *Local Government Act 1995* to have the vacancy remain unfilled.

STRATEGIC IMPLICATIONS

9. Filling of all vacant ward seats links to the City's Vision and Values (2011-2021), being: Results: Strive for business excellence and continuous improvement.

Key Focus Areas

- **Organisation Performance:** Local Government standards must be ethical, transparent and include democratic decision making.
- **Community Focussed Organisation**
Ensure representation of all ratepayers on Council

POLICY IMPLICATIONS

10. Nil.

RISK IDENTIFICATION & MITIGATION

11. The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>Council does not support appointing the WAEC to conduct the election.</i>	<i>Unlikely</i>	<i>Medium</i>	<i>Medium</i>	<i>The Extraordinary Election would be run by City of Albany staff.</i>
<i>Council does not support the proposed extraordinary election date.</i>	<i>Unlikely</i>	<i>Low</i>	<i>Low</i>	<i>The date will be set by the Western Australian Electoral Commissioner at a time not of Council's choosing.</i>

FINANCIAL IMPLICATIONS

12. The cost for the WAEC to conduct the election will be based on the following assumptions;
- 3,634 electors
 - Response rate of approximately 47%
 - Count to be conducted in Albany
13. An accurate cost at this time is not know but could be as much as \$15,000.
14. Costs not incorporated in the estimate include (approx \$2 000);
- Non statutory (i.e. additional advertising in community newspapers and promotional advertising
 - One local government staff member to work in the polling place on Election Day
15. The cost of running the extraordinary election has not been budgeted for, but can be accommodated within the Q2 review.

LEGAL IMPLICATIONS

16. There are no legal implications related to this item except for compliance with specific provisions of the *Local Government Act 1995*.

6/12/2011

REFER DISCLAIMER

ALTERNATE OPTIONS

17. Council can choose to set the proposed date, and have the City of Albany conduct the extraordinary election.

Consulted References	<i>Local Government Act 1995</i>
File Number (Name of Ward)	All Wards
Previous Reference	OCM 15/11/2011 Item 1.8 OCM 11/10/2011 Item 1.8

7.0 CLOSURE OF MEETING

ITEM 7.1: RESOLUTION

MOVED: COUNCILLOR HOLDEN

SECONDED: COUNCILLOR CALLEJA

THAT Standing Order 3.1 be RESUMED to stop recording of proceedings.

CARRIED 10-0

There being no further business the Presiding Member closed the meeting at 7.07PM.

(Unconfirmed Minutes)

Dennis W Wellington
MAYOR