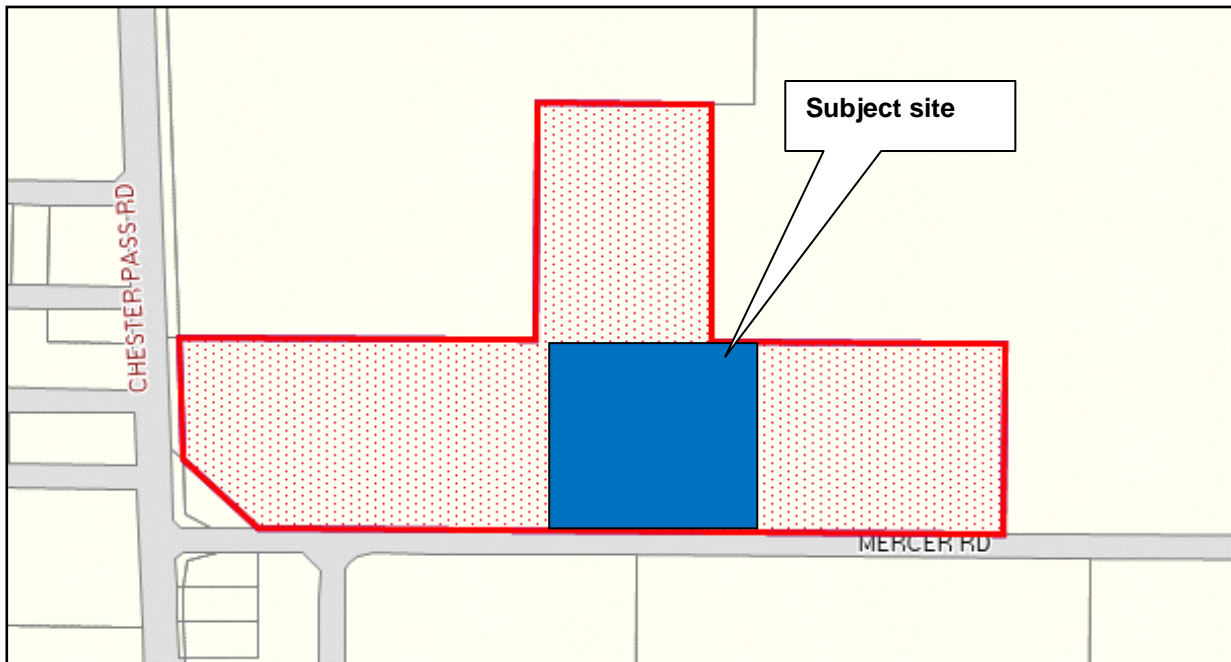


2.3: SOUTH COAST NATURAL RESOURCE MANAGEMENT INC. – SURRENDER AND NEW LEASE WITH SUBLEASE AT 39 MERCER ROAD, WALMSLEY

Land Description	: Lot 5 on Diagram 59369 and being whole of land contained in Certificate of Title Volume 1633 Folio 591 – 39 Mercer Road Walmsley
Proponent	: South Coast Natural Resource Management Inc, a Not For Profit Organisation
Owner	: City of Albany
Appendices	: Lease survey plan
Responsible Officer	: Acting Executive Director Corporate Services (P Wignall)

Maps and Diagrams:**IN BRIEF**

- Consider request to surrender existing lease and simultaneously replace with a new lease to South Coast Natural Resource Management Inc. over portion of Lot 5 Mercer Road, Walmsley.
- Lease term being one year and eight months commencing 21 May 2011 with an option for a further five year term.
- Consider request to sublease 40 square metre area situated in the enclosed rear car park within the leased area to Centre of Excellence in Natural Resource Management (“CENRM”) for the purpose of storage.
- Sublease term in line with head lease being one year and eight months commencing 21 May 2011 with an option for a further five year term.

ITEM 2.3: RESPONSIBLE OFFICER RECOMMENDATION

The request from South Coast Natural Resource Management Inc. to surrender existing lease and simultaneously replace with a new lease and sublease over portion of Lot 5 on Diagram 59369 be APPROVED subject to:

1. Lease surrender date being 20 May 2011.
2. Lease term being one year and eight months commencing 21 May 2011, with an option for a further five years term.
3. Lease purpose being Office and Natural Resource Management Community Information Network and Learning Centre.
4. Lease rental being \$86,130.00 plus GST per annum as determined by current market rental valuation provided by independent Certified Practising Valuer, Albany Valuation Services - Opteon.
5. Lease area being 2.903 hectares incorporating the entire building and land (excluding the dog pound area).
6. Continuous access to the Dog Pound being maintained.
7. All necessary approvals, including Development Approval under Town Planning Scheme No 3, a Building Licence under the Building Code of Australia, being obtained prior to development of the leased area.
8. All costs associated with the development, maintenance and operations of the leased area to be payable by the proponent.
9. All costs associated with the development, execution and completion of the surrender and new lease with sublease to be payable by the proponent.

ITEM 2.3: RESOLUTION (Responsible Officer Recommendation)

MOVED: COUNCILLOR SUTTON

SECONDED: COUNCILLOR DUFTY

THAT the Responsible Officer Recommendation be ADOPTED.

CARRIED 12-0

BACKGROUND

1. In January 2008 the City of Albany entered into a lease agreement with South Coast Natural Resource Management Inc. ("South Coast NRM") over the former City of Albany Mercer Road Administration building and grounds located on portion of Lot 5 Mercer Road, with street address being 39 Mercer Road, Walmsley.
2. The City of Albany retained a 66 square metre area in the west wing of the building for storage and the dog pound area located within Lot 5 Mercer Road. Access to these areas was protected through lease conditions.
3. The existing lease for a term of five years with an option for a further five year term commenced on 21 January 2008 and expires on 20 January 2013 with rental being \$76,231.94 plus GST per annum.

4. South Coast NRM currently sublease a 40 square metre area situated in the enclosed rear car park within the leased area to CENRM for the purpose of storage for a rental of \$1200.00 plus GST per annum.
5. In May 2009, South Coast NRM approached the City to advise they were proposing to seek Lottery West grant funding under the Federal Government Jobs Fund Initiative to renovate and refurbish the leased premises at 39 Mercer Road to incorporate a Natural Resource Management Community Information Network and Learning Centre.
6. The grant funding was subject to South Coast NRM securing a longer term lease over the entire building for a term of 10 years with an option for a further 5 year term. This included the 66 square metre area currently utilised by the City for storage.
7. In discussions with South Coast NRM, City staff advised they would investigate alternate storage options for items currently being stored in this area. South Coast NRM also gave a commitment to house any of the storage items within the redeveloped building if the City could not find alternate appropriate storage.
8. In February 2010, Council resolved to surrender the existing lease and simultaneously replace with a new lease to South Coast NRM over the entire building and land (excluding the dog pound) for a term of 10 years with an option for a further five year term subject to:
 - The rental being determined by current market valuation prior to commencement of the new lease;
 - Rent reviews in line with Council's Policy - Property Management – Leases for this category of lease;
 - All costs associated with the proposed renovations, refurbishment and upgrade of premises be payable by South Coast NRM;
 - All costs associated with the preparation and implementation of the surrender and new lease be payable by South Coast NRM; and
 - Should Lottery West grant funding not be approved the existing lease will remain static until expiry.
9. In accordance with Council resolution a current market valuation was undertaken to determine the rental prior to commencement of the new lease.
10. The valuation determined the new rent to be \$84,150 plus GST per annum (excluding the 66 square metres City storage area).
11. Following meetings with City staff to discuss the increase in rental, South Coast NRM in September 2010 formally requested Council to consider delaying the introduction of the new lease rental until 21 January 2013 instead of applying upon commencement of the new lease.
12. At OCM 16 November 2010 Council declined South Coast NRM request to delay the introduction of new lease rental.
13. The surrender and new lease was put on hold pending further instructions from South Coast NRM.
14. In March 2011, South Coast NRM advised they wished to continue with the surrender of the remaining term in favour of a new lease but with an amendment to the term. South Coast NRM seek to vary the previously approved term of ten years with an option for a further five year term to one year and eight months with an option for a further five year term.

15. The reduced term request is a consequence of Lottery West advising that extended tenure is no longer an essential requirement of receiving funding and due to South Coast NRM overall funding arrangements they would prefer to retain the lease term in the existing agreement.
16. As a sublease cannot continue once a head lease has been surrendered South Coast NRM also seek consent to sublease a 40 square metres area in the rear undercover car parking area to CENRM for the purpose of storage. The term being in line with the head lease of one year and eight months with an option for a further five year term.
17. The CEO has delegated authority to process applications for a sublease, where there is a current lease in place. In this instance for transparency the South Coast NRM request has been submitted to Council for consideration in its entirety including the sublease request.

DISCUSSION

18. South Coast NRM is the leading regional organisation for natural resource management on the south coast of Western Australia with funding provided by the Australian and Western Australian Governments.
19. South Coast NRM provides activities and services associated with natural resource management and the emerging field of Green Business which incorporates environmental management, climate change and energy efficiency.
20. The organisation is currently involved in a range of activities which support communities across the South Coast region in on-ground work, information provision and community engagement activities relating to the Australian Government's 'caring for our Country' priority areas and covering Coastal marine, Land, Water, Biodiversity, Cultural Heritage and Regional Capacity.
21. It is anticipated the proposed Natural Resource Management Community Information Network and Learning Centre would become a one-stop-shop that provides information, services and education activities related to the care of the natural environment and associated Green Business preparedness
22. The centre would provide the facilities to enable South Coast NRM to offer a broader range of services to assist the communities across the South Coast Region and beyond.
23. South Coast NRM has successfully secured Lottery West funding inclusive of \$178,500 for improvements to the conference rooms, the library and reception areas of the building.
24. As the market rental valuation provided by Albany Valuation Services – Opteon in April 2010 to determine rent expired after 6 months, a current valuation has been provided at no additional cost to South Coast NRM.
25. Albany Valuation Services have updated their valuation and determined the rental as at 18 March 2011 to be \$86,130.00 plus GST per annum. This includes the 66 square metre storage area and excludes the dog pound area.
26. South Coast NRM has been made aware of the surrender and new lease process and has confirmed their agreement to the current market rental valuation of \$86,130.00 plus GST per annum.
27. The proposed new lease will be negotiated in line with Council's Policy – Property Management – Leases for this category of lease.

GOVERNMENT CONSULTATION

28. No government consultation is required.

PUBLIC CONSULTATION / ENGAGEMENT

29. Section 3.58 of the Local Government Act 1995 deals with the disposal of property including leased land and buildings.
30. This Section requires there to be local public notice of the proposal for a period of two weeks inviting submissions from the public. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes.
31. Section 30 of the *Local Government (Functions & General) Regulations 1996* deals with dispositions to which the advertising requirements of section 3.58 of the Act does not apply. Section 30 (2) (b & c) states that Section 3.58 of the Act is exempt if:
- (b) *The land is disposed of to a body, whether incorporated or not –*
 - (i) *The object of which are charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and*
 - (ii) *The members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;*
 - (c) (i) *a department, agency, or instrumentality of the Crown in right of State or the Commonwealth; or*
32. South Coast NRM is a not-for-profit organisation funded by the State and Federal Government to provide information, services and education, therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

STATUTORY IMPLICATIONS

33. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
34. Under the City's Town Planning Scheme 3, the land is 'Civic and Cultural'. The proposed use for Office and Natural Resource Management Community Information Network and Learning Centre is in accordance with the Scheme.

STRATEGIC IMPLICATIONS

35. This item directly relates to the following elements from the Albany Insight ~ Beyond 2020 Corporate Plan...

Community Vision:
Nil

Priority Goals and Objectives:
Goal 4: Governance... The City of Albany will be an industry leader in good governance and service delivery.

Objective 4.3 Deliver excellent community services that meet the needs and interests of our diverse communities.

City of Albany Mission Statement:
At the City of Albany we are accountable and act as a custodian with respect to Council Assets.

POLICY IMPLICATIONS

36. Council adopted a Property Management - Leases Policy in 2007. This policy aims to ensure that all requests for leases, for whatever purpose, will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.
37. The relevant section of Policy in relation to this Policy are:
- Commercial leases will be offered at a rental determined by an independent Valuer taking into account the current values of the business and rental structured in a way which provides maximum return to Council.
 - If a Lessee requests a variation to a lease, Council reserves the right to consider the variation only as part of a new lease for the enterprise.
 - The Lessee will reimburse all Council's costs associated with the development and implementation of the lease.
 - No sub-leasing arrangements are to be entered into without prior Landlord consent.
 - The City will insure the buildings that it owns and recover the cost of the premium from the Lessee.
38. The recommendation is consistent with Council's Policy.

RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Rating	Mitigation
New lease not approved	Possible	Major	High	Seek to negotiate terms to Council satisfaction Collaborate closely with South Coast NRM to assure them that the City will work towards mutually agreeable outcomes Seek alternative Lessee as last resort
New sublease not approved	Unlikely	Insignificant	Low	Collaborate closely with South Coast NRM to assure them that the City will work towards mutually agreeable outcomes

FINANCIAL IMPLICATIONS

39. All costs associated with the development, execution and completion of the surrender and new lease with sublease documentation including but not limited to legal, survey and market rental valuation will be borne by the proponent.
40. The new lease rental being \$86,130.00 plus GST per annum as determined by current market valuation provided by independent Certified Practising Valour, Albany Valuation Services – Option. Rent reviews being CPI applied annually with market valuation at the beginning of the option for a further five year term.
41. The new lease rental will be directed to COA 140530 Income – Misc Commercial.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

42. Council has the following options in relation to this item, which are:
 - a. Approve the South Coast NRM request to surrender and simultaneously replace with a new lease over portion of Lot 5 Mercer Road; and
 - b. Approve the request to sublease a 40 square metre area to CENRM for the purpose of storage, or
 - c. Decline the request to surrender and replace with new lease; and
 - d. Decline the request to sublease to CENRM.
43. Council has previously resolved to approve South Coast NRM request to surrender and replace with a new lease over the entire building and land (excluding the dog pound area) for a term of ten years with an option for a further five year term.
44. The difference between the previous Council resolution and current 2011 request being only the lease term and sublease consent.
45. Should Council decline the request to surrender and replace with a new lease for the reduced term, South Coast NRM may revert to previous Council resolution of 16 February 2010 and progress the new lease with approved term of ten years with an option for a further five year term.
46. Alternatively South Coast NRM may decide that the existing lease and sublease remain static and continue to operate under the existing terms and conditions until expiry of head lease on 20 January 2013.
47. Should Council decline the request to sublease South Coast NRM could resubmit the request once the surrender and new lease have been executed. The sublease request would be processed under delegated authority, however staff would recommend in accordance with Council's previous decision on the matter.

SUMMARY CONCLUSION

48. Given Council has previously resolved to approve South Coast NRM request to surrender and replace with a new lease and the opportunity to improve the amenity and community use of the building at no cost to Council, the request to surrender and replace with a new lease and sublease is recommended.

Consulted References	<ul style="list-style-type: none">• Council's Policy – Property Management – Leases• <i>Local Government Act 1995</i>
File Number (Name of Ward)	PRO351 Yakamia Ward)
Previous Reference	OCM 20.11.2007 Item 13.5.1 OCM 19.05.2009 Item 18.2.1 OCM 15.12.2009 Item 15.2.1 OCM 16.02.2010 Item 14.11.3 OCM 16.11.2010 Item 14.11.1