

## 2.4: WESTERN AUSTRALIAN MUSEUM – SURRENDER AND NEW LEASE WITH SUBLEASE OVER PORTION OF RESERVE 4156

<b>Land Description</b>	: Lot B41 on Plan 213192 and being land contained in Certificate of Title LR3121 Folio 610 – Reserve 4156 Parade Street, Albany
<b>Proponent</b>	: Western Australian Museum
<b>Owner</b>	: Crown
<b>Appendices</b>	: Lease survey plan
<b>Responsible Officer</b>	: 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 Western Australian Museum over portion of Reserve 4156 located at Lot 2 Parade Street, Albany.
- Consider Western Australian Museum request to sublease 90 square metre area of Residency Museum building for purpose of cafe.

**ITEM 2.4: RESPONSIBLE OFFICER RECOMMENDATION**

The request from the Western Australian Museum to surrender the existing lease and simultaneously replace with a new lease and sublease over portion of Reserve 4156 be **APPROVED** subject to:

1. Lease surrender date being 31 May 2011.
2. Lease term being 21 years commencing 1 June 2011.
3. Lease purpose being for Museum and Cafe Operation.
4. Lease rental for the Museum area being equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.
5. Lease rental for cafe area to be determined by current market rental valuation provided by an independent Certified Practising Valuer.
6. Lease area being approximately 1132 square metres and being building footprints and car park only.
7. Western Australian Museum be responsible for maintenance of all of the buildings, improvements and infrastructure within the leased area.
8. All necessary approvals, including the Heritage Council of Western Australia, Development Approval under Town Planning Scheme No 1A, a Building Licence under the Building Code of Australia, and licensing / compliance under the Food Act 2008 being obtained prior to development of leased area.
9. Section 18 of the *Lands Administration Act 1997*, Minister for Lands' consent.
10. All costs associated with the development, maintenance and operations of the leased area to be payable by the proponent.
11. All costs associated with the development, execution and completion of the surrender and new lease with sublease to be payable by the proponent.

**ITEM 2.4: RESOLUTION (Responsible Officer Recommendation)**

**MOVED: COUNCILLOR DUFTY**

**SECONDED: COUNCILLOR WELLINGTON**

**THAT the Responsible Officer Recommendation be ADOPTED.**

**CARRIED 12-0**

**BACKGROUND**

1. Reserve 4156 is under Management Order H603418 issued to the City of Albany with the power to lease, sublease or licence for the purpose of "Museum & Park" for any term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. Reserve 4156 is located at 2 Parade Street, Albany and is adjacent to the Central Business District, overlooking Princess Royal Harbour.
3. In 1992 the former Town of Albany granted a lease to the Western Australian Museum over portion of Reserve 4156 for the purpose of Museum Operations.
4. The lease area incorporates the building footprints and car park within the Amity Heritage Precinct. The buildings include the Residency Museum building, Eclipse building, Police

cottages, Mount Barker Cooperative demountable building, Torbay One Teacher School demountable building and car park.

5. The existing lease for a term of 21 years commenced on 14 April 1992 and expires on 13 April 2013 with rental being a nominal fee of \$10.00 plus GST per annum.

6. The Western Australian Museum maintains all of the buildings and infrastructure upon the leased portion of the Reserve.
7. The City of Albany is responsible for all the maintenance of all infrastructure, grounds and pathways not included in the leased area.
8. Western Australian Museum have requested to surrender the remaining lease term in favour of a new lease term for 21 years over 1132 square metre portion of reserve 4156 and a sublease a 90 square metre to allow a five year sublease term to be offered for cafe operations.
9. Western Australian Museum also holds an existing 21 year lease with the City over portion of Reserve 4156 for purpose of construction and maintenance of Albany Welcome Walls.
10. The lease commenced 1 August 2010 and expires 31 July 2031 returning a rental being the equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.
11. Western Australian Museum also leases the 634 square metre area of corridor land from Public Transport Authority of Western Australia ("PTAWA") for a term of 10 years commencing 1 January 2006.

## **DISCUSSION**

12. The subject site has been awarded an 'A+' level of heritage significance within the City's Municipal Heritage Inventory. It is a permanent entry on the State Register of Heritage Places maintained by the Heritage Council of Western Australia. The site is also listed on the Register of the National Estate maintained by the Australian Heritage Commission. Any action on this site must consider the high level of heritage significance it holds.
13. The Western Australian Museum has recently redeveloped the main galleries within the Residency Museum building.
14. To further improve the facilities of the Museum and the Amity Heritage Precinct overall, the Museum wishes to incorporate a cafe development on the site.
15. The Amity Heritage Precinct Master Plan adopted by the Council in 2007 recommends, in the short term, the development of a cafe facility within the precinct.
16. The proposed sublease area of 90 square metres for cafe operations would be located in the western end of the Residency Museum building with both internal and external seating areas, including the use of the large deck recently created as part of the Welcome Wall lease.
17. The Museum has begun dialogue with the Heritage Council of Western Australia and is working with Howard & Heaver Architects in the development of the cafe area to ensure appropriate heritage approvals are obtained.
18. The subject site is zoned 'Clubs and Institutions' under the City of Albany Town Planning Scheme No 1A. The proposed cafe would fall under the definition of a restaurant, which is incidental to the predominant use of the land 'IP' within this zone. As such, the cafe use may be permitted.

19. While Council has been requested to reconsider the lease arrangements for the site, no application for planning consent or building approval has been lodged at this time.
20. The proposed cafe would also need to obtain the appropriate approvals for Food Premises under the *Food Act 2008*.
21. The Museum has been made aware of the surrender and new lease process including the requirement of a current market valuation to determine rental for the cafe area. The Museum has confirmed their agreement to these terms.
22. It is recommended the City of Albany continue to be responsible for maintenance of all grounds, infrastructure and pathways not included within the leased area in this vicinity due the location of the City's existing utilities including reticulation system and to maintain continuity of standards of the grounds given significance of the area as a tourist destination.
23. The Western Australian Museum will be responsible for maintenance of all of the buildings, improvements and infrastructure within the leased area.
24. The proposed new lease will be negotiated in line with Council's Policy – Property Management – Lease for this category of lease.

### GOVERNMENT CONSULTATION

25. 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.
26. As this is Crown land, under a Management Order H603418 issued to the City of Albany with the power to lease, sublease or licence for the purpose of "Museum & Park", Minister for Lands consent will be required.

### PUBLIC CONSULTATION / ENGAGEMENT

27. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property including leased land and buildings.
28. This Section requires there to be local public notice of the proposal for a period of 2 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.
29. 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*
30. The Western Australia Museum is a State Government organisation and therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

**STATUTORY IMPLICATIONS**

31. 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.
32. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
33. The subject land has a current zoning as 'Clubs and Institutions' under the Town Planning Scheme No 1A. The subject land is also identified as a local reserve in the Albany Local Planning Strategy.
34. The Western Australian Planning Commission consent is not required as this is Crown land.

**FINANCIAL IMPLICATIONS**

35. 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.
36. The new lease rental will be equivalent to Minimum Land Rate as set by Council per annum. This is currently \$725.00 plus GST per annum.
37. The new lease rental for the cafe area to be determined by current market rental valuation provided by an independent Certified Practising Valuer.
38. The new lease rental will be directed to COA 190430 Income – Other Leases.

**STRATEGIC IMPLICATIONS**

39. 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**

40. 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.

41. Relevant sections of the Policy in relation to this item are:
- Crown Reserve leases with or without City owned buildings on site, will incur a rental based on minimum land rate as set by Council per annum.
  - Lease to be for a term not greater than 21 years.
  - Maintenance of leased area is to be undertaken by the Lessee at the Lessee's cost.
  - No subleasing arrangements are to be entered into without prior Landlord consent.
  - Commercial leases will be offered at a rental determined by an independent Valuer taking into account the current value of the business and rental structured in a way which provides maximum return to Council.
42. The recommendation is consistent with Council's Policy.

#### RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Rating	Mitigation
New lease not approved	Unlikely	Moderate	Medium	Seek to negotiate terms to Council satisfaction  Collaborate closely with Western Australian Museum to ensure them that the City will work towards mutually agreeable outcomes which supports Council's commitment to tourism
New sublease not approved	Unlikely	Insignificant	Low	Collaborate closely with Western Australian to ensure them that the City will work towards mutually agreeable outcomes which supports Council's commitment to tourism

#### ALTERNATE OPTIONS & LEGAL IMPLICATIONS

43. Council has the following options in relation to this item, which are:
- a. Approve the Western Australian Museum request to surrender and simultaneously replace with a new lease over portion of Reserve 4156; and
  - b. Approve the request to sublease a 90 square metre area for the purpose of cafe, or
  - c. Decline the request to surrender and replace with new lease; and
  - d. Decline the request to sublease for cafe.
44. Should Council decline the request to surrender and replace with a new lease, the Western Australian Museum would remain static and continue to operate under the existing terms and conditions of the existing lease until expiry on 13 April 2013.
45. The Western Australian Museum would not be able to offer a cafe operator a minimum five year lease term which is required under the *Tenancy Act 1985*.

46. Should Council decline the request to sublease for cafe operations, the Western Australian Museum would not be able to offer a cafe operator a sublease.

#### SUMMARY CONCLUSION

47. In view of the service and tourism benefit provided by the Western Australian Museum facilities to the Albany, Great Southern and wider communities at no cost to Council, the Western Australian Museum request to surrender existing lease and simultaneously replace with a new lease and sublease over portion of Reserve 4156 is recommended.

<b>Consulted References</b>	<ul style="list-style-type: none"><li>• Council's Policy – Property Management – Leases</li><li>• Amity Heritage Precinct Master Plan</li><li>• <i>Local Government Act 1995</i></li><li>• <i>Land Administration Act 1997</i></li></ul>
<b>File Number (Name of Ward)</b>	PRO098 (Frederickstown Ward)
<b>Previous Reference</b>	OCM 01.01.1992