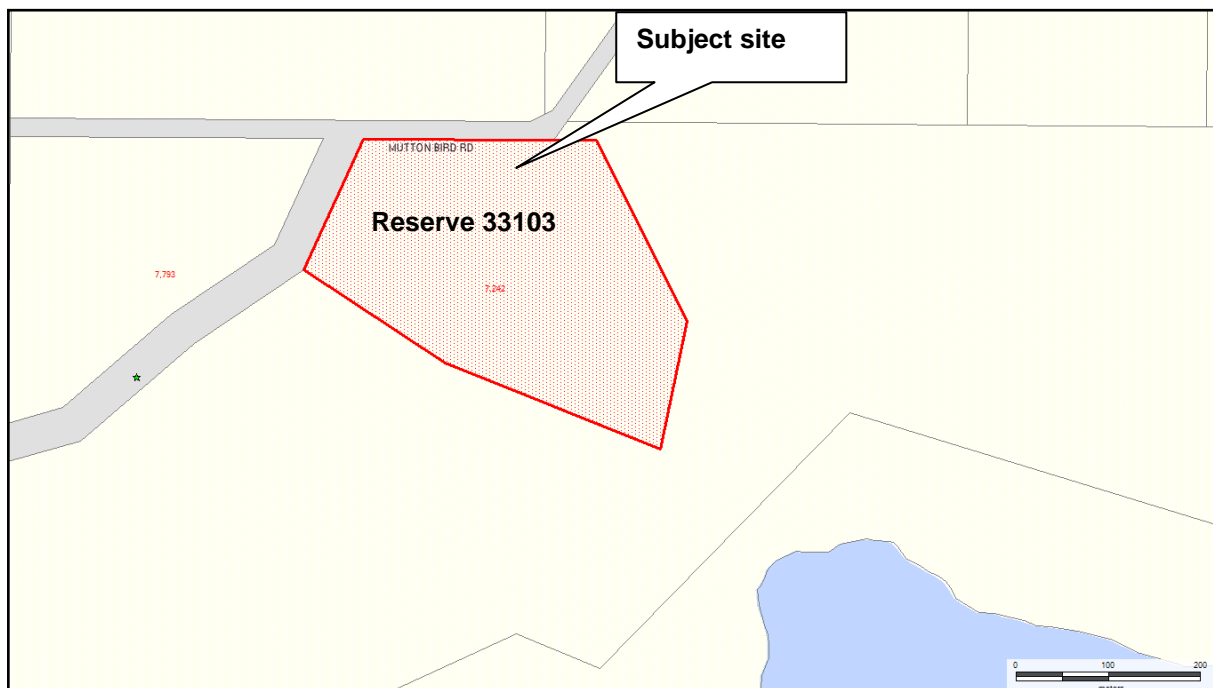


### 4.3: SPORTING SHOOTERS ASSOCIATION OF AUSTRALIA (ALBANY,WA BRANCH) INCORPORATED – PARTIAL SURRENDER OF LEASE OVER RESERVE 33103, MUTTON BIRD ROAD ELLEKER

<b>Land Description</b>	: Lot 7242 on Plan 180937 and being whole of land contained in Certificate of Title 3082 Folio 850 – Reserve 33103 Mutton Bird Road, Elleker
<b>Proponent</b>	: Sporting Shooters Association of Australia (Albany, WA Branch) Incorporated
<b>Owner</b>	: Crown
<b>Attachment(s)</b>	: Letter of Request – Sporting Shooters Association of Australia (Albany, WA Branch) Incorporated
<b>Appendices</b>	: Sporting Shooters Association of Australia (Albany, WA Branch) Incorporated Committee Minutes held on 24 May 2011
<b>Responsible Officer</b>	: Acting Executive Director Corporate Services (P Wignall)
<b>Maps and Diagrams</b>	

#### 10.17PM COUNCILLOR PAVER LEFT THE CHAMBER



#### IN BRIEF

- Sporting Shooters Association of Australia (Albany, WA Branch) Incorporated (“SSAA Albany”) request partial surrender of lease area of approx 1400 square metres on Reserve 33103, Mutton Bird Road, Elleker, that forms part of the Bibbulmun Track and which is within the lease area currently used by walkers.
- It is recommended the request be approved to remove the risks associated with the use of the Bibbulmun Track within the SSAA Albany lease area, given it is a live firing range.

**ITEM 4.3: RESPONSIBLE OFFICER RECOMMENDATION**

The request from the Sporting Shooters Association (Albany, WA Branch) Incorporated to partial surrender of existing lease area on Reserve 33103, Mutton Bird Road, Elleker be **APPROVED** subject to:

1. Deed of Partial Surrender of Lease date to be as soon as practical.
2. Surrender portion being approx 1400 square metres to be confirmed by survey plan.
3. All relevant approvals including *Aboriginal Heritage Act 1972* and *Native Title Act 1933* being obtained prior to realignment of lease boundary and the new boundary fence being constructed.
4. Under Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent be obtained.
5. All costs associated with the development, execution and completion of the Deed of Partial Surrender of Lease and new lease boundary fence to be shared equally between the City of Albany and the Department of Environment and Conversation given they are the main beneficiaries of the lease surrender.

**ITEM 4.3: RESOLUTION (Responsible Officer Recommendation)**

**MOVED: COUNCILLOR WOLFE**

**SECONDED: COUNCILLOR DUFTY**

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

**CARRIED 11-0**

**BACKGROUND**

1. Reserve 33103 is under a Management Order H611902 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Recreation, Small Arms Range" for any term not exceeding twenty one years and subject to the consent of the Minister for Lands.
2. Reserve 33103, an area of 9.0942 hectares is located at Lot 7242 Mutton Bird Road, Elleker.
3. In 1992 the former Shire of Albany granted a new lease to SSAA Albany over Reserve 33103 for the purpose of Recreation Small Arms Range.
4. The lease term of ten years commenced 1 July 1990 and expired 30 June 2000, returning a rental of \$165.00 per annum over that time.
5. Upon expiry of the lease in 2000 the City of Albany (at its OCM 11 April 2000 Item 13.2.1) granted a new lease to SSAA Albany for the purpose of Recreation Small Arms Range.

6. The lease term of twenty one years commenced 1 July 2000 (and expires 30 June 2021) returning a current rental of \$725.00 plus GST per annum, being the equivalent to Minimum Land Rate as set by Council per annum.
7. Following consultation between the former Conservation and Land Management (CALM) and the former Shire of Albany it was resolved at OCM 18 April 1995 to agree to the use of City Reserves and Road Reserves for CALM ( now Department of Environment and Conservation (DEC)) and the Bibbulmun Track.
8. The Bibbulmun Track is a long distance walk trail that runs from Kalamunda, east of Perth to Albany and is 963km long. The Track in its current form was opened in September 1998.
9. It was agreed by the Shire of Albany and other stakeholders to align the Track to the rear of the SSAA Albany lease area on Reserve 33103 following the northern boundary fence. The Track enters the lease area through a gate on the eastern boundary and follows the firebreak area along the northern boundary fence approximately 350 metres along and exits on the western boundary on Mutton Bird Road with the Track continuing through adjacent Reserve 4732.
10. In February 2011 meetings were held with City staff and DEC to discuss formalising the use of the Bibbulmun Track for walkers through the City Reserves, including the SSAA Albany lease area on Reserve 33103.
11. DEC prepared a Deed of Licence for City of Albany approval, as landlord of the SSAA Albany's leased area.
12. City staff were concerned that from a risk management perspective, a lease was granted for "Small Arms Range" use, and also for a walking track which are fundamentally incompatible in respect of safety.
13. Upon review of the Deed the City determined several amendments including a provision to fully indemnify the SSAA Albany, City of Albany and Minister for Lands from risk associated with the Track's use should be incorporated into the Deed.
14. The Deed was forwarded to SSAA Albany Insurer for consideration. That Insurer advised that having a walking Track through a live firing range raised significant concerns for it, particularly given the risk of walkers deviating from the track and being shot or hit by ricochet.
15. SSAA Albany's Insurer is of the opinion that the Deed of Licence Indemnification clause would not fully cover SSAA Albany and recommended the risk be totally removed as this is an uncontrolled exposure on the SSAA Liability cover and something the Insurer is not prepared to bear. The Insurer also strongly recommended SSAA Albany seek separate legal advice on this matter.
16. Lawyers acting on behalf of SSAA Albany advised the City and DEC on 12 May 2011 that given the risk of injury/death, their client has no option other than to immediately close the access gates to the Range and to withdraw any consent it may have given, either express or

implied for Track users to traverse the Range inside the northern boundary fence of the leased area.

17. The Lease does not contain any provision requiring SSAA Albany to provide access to the Range for users of the Bibbulmun Track.
18. DEC offered to indemnify SSAA Albany from any liability in relation to the use and maintenance of the Track and the onus would be solely on the wandering individuals who deviate from the Track if they were to ignore signs and be injured.
19. While DEC relied on the *Civil Liability Act 2002* provisions with regards to the voluntary assumption of risk, legal advice determined this provision did not extend to young children, or indeed any person who would be deemed unable to voluntarily assume the risk, therefore DEC's assurances of indemnity were not absolute.

## DISCUSSION

20. Members of the public previously had unfettered access to the portion of the Track that traverses the Range, including periods when live firing was being conducted.
21. SSAA Albany has since reported incidences where walkers have suddenly appeared on the Range and they have concerns regarding the potential for serious injury.
22. Following further discussions between all parties the agreed preferred approach is to remove the Track from the SSAA Albany leased area and a new fence be erected to reflect the new lease boundary so that the Track runs outside of the leased area. This will eliminate the risk faced by SSAA Albany in regard to having the Bibbulmun Track passing through a live firing range.
23. Subject to Council approval, DEC has agreed to share all costs equally associated with the Deed of Partial Surrender of Lease documentation, and the new fence construction with the City of Albany. Estimate of these costs would:

Action	Cost
Legal costs for preparation of the Deed of Partial Surrender of Lease document and registration with Landgate	\$ 500.00 plus GST plus disbursements
Survey plan	\$ 400.00 plus GST
Fence materials, relocation of existing SSAA Albany access gates, labour and widening of firebreak	\$2,790.00 plus GST
Total	\$3,690.00 plus GST plus disbursements

24. In the interim, while permanent arrangements are being made to accommodate walkers outside of the SSAA Albany lease area, DEC have requested temporary access to the current Bibbulmun Track within the SSAA Albany lease area on Reserve 33103.

25. In consideration of SSAA Albany permitting DEC temporary use for purpose of Bibbulmun Track walkers, DEC agreed to construct a temporary wire fence along the fire break to delineate the walking Track and prevent walkers from straying beyond it and indemnify SSAA Albany from any liability in respect to the use of the Track.
26. The SSAA Albany Executive Committee has considered but declined DEC's proposal in regard to the temporary fence arrangements. Consequently the entry gates to the Range for the Track remain locked until the construction of a permanent fence on the realigned leased area.
27. The City has received written correspondence from SSAA Albany formally requesting a partial surrender of lease area of approx 1400 square metres ( 4 metres width x approx 350 metres in length) that forms the Bibbulmun Track currently situated within Reserve 33103.

### GOVERNMENT CONSULTATION

28. Under 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 Deed of Partial Surrender of Lease on Crown Reserve 33103.
29. South West Aboriginal Land and Sea Council (SWALSC) has been consulted for any considerations under the *Native Title Act 1993* and consent has been given for the construction of a temporary fence should this proceed and be agreed by SSAA Albany. SWALSC are considering the proposed realignment of the lease boundary and associated new permanent boundary fence, subject to Council approval.

### PUBLIC CONSULTATION / ENGAGEMENT

30. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property including leased land and buildings.
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) (i & ii) 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;*
32. SSAA Albany is a not for profit sporting association, therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

**STATUTORY IMPLICATIONS**

33. 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.
34. As this is Crown land, under Management Order H611902 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of “Recreation, Small Arms Range”, Minister for Land’s consent will be required.
35. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
36. As this is Crown land, South West Aboriginal Land and Sea Council consideration and consent under the *Native Title Act 1993* for the construction of a new fence will be required.
37. As there is no registered aboriginal site on Reserve 33103, approval from the Minister for Indigenous Affairs under Section 18 of the *Aboriginal Heritage Act 1972* is not required.
38. Under the City’s Town Planning Scheme 1, the subject land is zoned “Parks and Recreation”. SSAA Albany use for Recreation, Small Arms Range is permitted use in accordance with the Scheme.

**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. The Policy section relevant to this category of lease – Sporting Associations requires the following:

- 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;
- Must be Incorporated bodies and a copy of their Articles of Association/Constitution be provided;
- Lease to be for a term not greater than 21 years;
- Rental/Sublease agreements must be approved by the landlord;
- Must have appropriate insurance pertaining to their particular sport, as a minimum; and
- Maintenance of grounds/leased area is to be undertaken by the Lessee at the Lessee's cost.

### RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Rating	Mitigation
Partial surrender of lease not approved	Unlikely	Severe	High	Seek to negotiate terms to Council satisfaction  Collaborate closely with SSAA Albany and DEC to ensure mutually agreeable outcomes

### FINANCIAL IMPLICATIONS

42. All costs associated with the development, execution and completion of the Deed of Partial Surrender of Lease documentation and the new lease boundary fence will be shared equally between the City of Albany and DEC.
43. Indicative costs to implement the recommendation will be approximately \$3,690.00 plus GST plus disbursements with the City's share being \$1,845.00 plus GST and disbursements (if any).
44. The cost can be accommodated in the current budget General Ledger Account Number 154470 - Lease Expenses.
45. SSAA Albany has independently funded legal advice on this matter. It is not seeking reimbursement of those fees from any entity.

### ALTERNATE OPTIONS & LEGAL IMPLICATIONS

46. Council has the following options in relation to this item, which are:
  - a. Approve SSAA Albany's request for a partial surrender of approx 1400 square metres lease area on Reserve 33103 to remove the Bibbulmun Track and risks associated with the use of the Track from the lease area; or
  - b. Decline the request.

47. Should Council decline the request for a partial surrender of lease to remove the Bibbulmun Track and the associated risk from SSAA Albany lease area, Council may direct City staff to further negotiate with all parties to reconsider the Deed of Licence with required amendments to use the Track for recreational walking track.
48. The Deed of Licence would require amendment including provision to secure full indemnity for SSAA Albany, City of Albany and Minister for Lands with regards to the use of the Bibbulmun Track prior to providing agreement to the Licence.
49. The Deed would require agreement between all parties, SSAA Albany, DEC and Council and will also be subject to Minister for Land's consent.

**SUMMARY CONCLUSION**

50. SSAA Albany's request to partial surrender of lease area of approx 1400 square metres on Reserve 33103 located at Mutton Bird Road, Elleker (currently used by Bibbulmun Track walkers), will move the Track so that it doesn't pass through a live firing range with the associated risks.

<b>Consulted References</b>	<ul style="list-style-type: none"> <li>• Council's Policy – Property Management – Leases</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>	PRO208 (West Ward)
<b>Previous Reference</b>	OCM 11.04.2000 Item 13.2.1 OCM 18.04.2006 Item 13.4.1