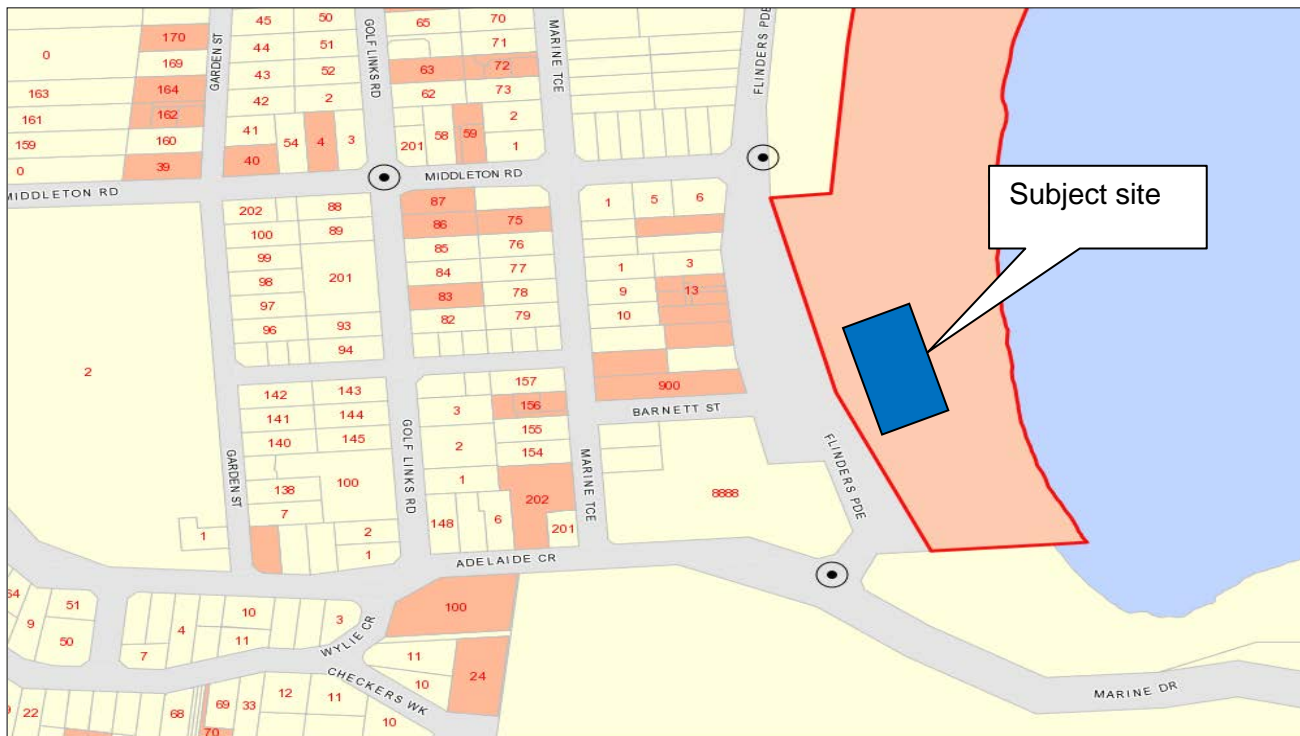


4.6: VARIATION OF LEASE – ALBANY SURF LIFE SAVING CLUB INC. – CROWN RESERVE 14789, MIDDLETON BEACH

This Report has a Confidential Attachment, which discloses funding information secured by a community group for building improvements.

Land Description	: Crown Reserve 14789 and being Lot 1474 on Deposited Plan 219850 and the whole of land contained in Certificate of Title Volume LR3111 Folio 83, Middleton Beach
Proponent	: Albany Surf Life Saving Club Inc.
Owner	: Crown
Attachment(s)	: Grant approval letters
Responsible Officer	: Executive Director Corporate Services (G Adams)

Maps and Diagrams



IN BRIEF

- Council is requested to consider a variation of lease for the Albany Surf Life Saving Club Inc. to accommodate stage 2 of the Club’s building redevelopment project. The variation of lease to include the following:
 - a. Increase to lease area – The Lessee seeks to expand the existing lease area from 1279 square metres to approximately 1901 square metres (subject to completed survey). The existing Licence area of 237 square metres is to remain unchanged.
 - b. Development works – A development clause dealing with the works required to be completed.
 - c. Lessee to be responsible for the satisfactory completion of works – The Club has secured grants to fund the entire stage 2 building development costs. Should the

Club fail to complete the works they will be required to do all things necessary to transfer the grants to the City to enable completion of the project. The funding runs with the project.

- d. Lessee to be responsible for all structural maintenance and repairs and shared services associated with alterations to the lease premises – The Club is proposing to construct an upper storey above the City's public toilets located on the southern side of the City's building.
- e. Rent abatement – It is proposed to abate the rent while the building is unable to be occupied to a maximum of annual lease rent of \$760 plus GST per annum (equivalent to minimum rate).

RECOMMENDATION

ITEM 4.6: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR CALLEJA

SECONDED: COUNCILLOR DUFTY

THAT Council APPROVE the variation of lease for the Albany Surf Life Saving Club Inc. over portion of Crown Reserve 14789 and being Lot 1474 on Deposited Plan 219850, Middleton Beach subject to:

1. Increase lease area to approximately 1901 square metres (subject to completed survey plan).
2. Development Works clause being included in the lease.
3. Lessee to be responsible for the satisfactory completion of the works.
4. Lessee to be responsible for structural maintenance and shared services associated with alterations to the lease property.
5. Lease rent to abate while the building is unable to be occupied to a maximum of annual rent of \$760 plus GST.
6. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent is obtained.
7. All approvals including but not limited to Planning Scheme Consent, Building Licence and Aboriginal Heritage being obtained prior to commencing works.
8. All costs associated with the preparation, execution and completion of the Deed of Variation of Lease to be payable by the City of Albany, in support of the project. It is anticipated these costs will be approximately \$900 plus GST.
9. All costs associated with the ongoing operations of the lease property to be payable by the Lessee.

CARRIED 12-0

BACKGROUND

1. Crown Reserve 14789 is under a Management Order H611905 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 21 years and subject to the consent of the Minister for Lands.
2. The existing lease area of 1261 square metres and licence area of 237 square metres over portion of Crown Reserve 14789 is located at street address 4 Flinders Parade, Middleton Beach.
3. The City of Albany owns the building located within the lease area. The building incorporates the City’s public toilets area of 65 square metres. 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. At Council Meeting 16 September 2008 Council approved the surrender of the existing lease and granted a new lease and licence to the Albany Surf Life Saving Club Inc. for a 21 year term over an increased area to accommodate stage 1 of the Club’s building redevelopment project.
5. Stage 1 development works include:
 - a. Internal toilet upgrade;
 - b. First Aid room;
 - c. Extension to kitchen;
 - d. Extension to boat shed;
 - e. New observation deck above the boat shed; and
 - f. Removal of one Norfolk Island pine tree (on the eastern side of the building).
6. To support stage 1 of the project the City contributed \$100,000 towards the redevelopment from the 2008/09 budget.
7. At Council meeting 21 July 2009 Council supported the Club’s application for Planning Scheme Consent (P295119) for stages 1 and 2 redevelopment, including the construction of the upper storey, subject to conditions.
8. Planning Scheme Consent (P295119) conditions included:
 - a. The design, materials and colours harmonising with the surrounding environment;
 - b. The area shown as training/education not be leased to any third party for commercial gain without prior Council consent;
 - c. Plans for stormwater to be approved; and
 - d. The removal of one Norfolk Island pine tree (on the eastern side of the building) subject to conditions to protect the remaining pine trees.
9. The Norfolk Island pine trees on Flinders Parade are listed on the City of Albany Municipal Heritage Inventory. As such the application was referred to the City’s Regional Heritage Advisor for comment with the removal of the Norfolk Island pine tree supported.

10. Stage 1 of the Club's redevelopment project was successfully completed in March 2011.
11. In April 2012 the Club submitted an amended application for Planning Scheme Consent to modify the stage 2 upper storey design to create an additional observation deck and further internal modifications.
12. The amended plans were approved (under delegation) with all conditions contained within original approved Planning Scheme Consent dated 21 July 2009 (P295119) to continue to apply.
13. On 29 June 2012 the Club submitted an application for Planning Scheme Consent (P2120133) to remove a further two Norfolk Island Pine trees from the western side of the building and prune another Norfolk Island pine tree located near the City's public toilets and barbeque area, to accommodate stage 2 building improvements. The application is currently being assessed by the City's Planning Team.
14. The Lessee seeks to vary the lease to amend the lease area from the existing 1261 square metres to approximately 1901 square metres to accommodate stage 2 improvements to the property. It is noted that the additional lease area for the upper storey totals approximately 608 square metres.
15. Stage 2 development works include:
 - Ground Floor**
 - a. Removal of the existing roof, verandah posts and make good the existing paving;
 - b. Removal of the existing ground floor doors and windows and install a double brick wall and replace windows;
 - c. Creation of a new building entrance;
 - d. Installation of an internal stairwell to the upper storey;
 - e. Installation of a lift. This will require removing a portion of the existing slab;
 - f. Replace the verandah on the south side of the building adjoining the public toilets and first aid room;
 - g. Installation of two service yards on the west side of the building. One will house two rainwater tanks with the other used for storage gas bottles and rubbish bins;
 - h. Installation of a new fire service main from Flinders Parade across the car park to the northern side of the building and install a fire hydrant; and
 - i. Removal of two Norfolk Island pine trees (western side of the building) and the pruning of another one Norfolk Island pine tree located near the City's public toilets and barbeque.
 - Upper Storey**
 - j. Construction of an upper storey. This will house a training, education and computer centre, store/future kitchen, female/male and disabled toilet; and
 - k. Installation of an external observation deck over the existing ground floor building footprint with access from existing external stairs.
16. The Club's current membership is currently around 300 of which 140 are juniors and nippers. There are 120 active patrolling members providing a safe beach environment for swimmers and beach goers at Middleton Beach.

17. The Club seeks to extend its facilities to cater for their growing membership and to continue providing the following community services:
 - a. Emergency search and rescue;
 - b. Preventative programmes of beach patrols, surveillance, first aid and safe swimming areas;
 - c. Surf safety information through community education programmes;
 - d. Youth development programmes; and
 - e. Healthy lifestyle programmes.

DISCUSSION

18. Given the significance of the project on the City's building located in a popular tourist precinct, proposed restricted access to the City's public toilets and that the Club's plans for stage 2 being outside of the existing lease area, City staff met with the Club's representatives to discuss and clarify project matters.
19. The City advised the Club that a variation to the lease would be required to formalise the lease arrangements to accommodate stage 2 improvements to the property and all lease variations are presented to Council for consideration. It was further advised that all lease matters need to be resolved prior to a Building Licence being accepted by the City.
20. Other project matters discussed:
 - a. Project funding – Club to provide evidence that funding has been secured for the entire project costs of \$1,319,449. The Club has since provided grant approval letters to the satisfaction of the City (Confidential attachment).
 - b. Public toilets –The closure of the toilets located on the southern side of building during the entire project was not acceptable to the City. It was agreed that these toilets could be closed for a maximum 6-8 week period during September to November 2012. The toilets will opened in time for the summer holiday season. The Club is to provide a plan for City consideration detailing alternate toilet facilities during the toilet closure period and address public safety matters. It was further agreed that due to the location of the public disabled toilet located on the western side of the building, that this toilet would remain closed until the works were completed.
 - c. Utilities – The Club was made aware that power in this location also services the reserves for lighting, including the board walk, jetty and barbeques. The water supply also services the Ellen Cove toilets.
 - d. Fire Hydrant – The Club raised the Building Code of Australia 2012 (BCA E1.3) requirement for the installation of an external fire hydrant accessible to fire brigade personnel. The matter was referred to the City's Building Team who confirmed the fire hydrant requirement. The building codes are not retrospective and will now apply in response to the Club's development with all costs borne by the Club.
 - e. Pedestrian Management Plan – The City requested a plan, for consideration, addressing pedestrian control as access to the footpath within the vicinity of the building through the reserve will be restricted.
 - f. Insurance – The City requested a copy of the Club's builders insurance for review and approval by the City's insurers. The City currently insures the building and recoups the premium cost from the Lessee.

- g. Community notice – The City will assist the Club with developing a communication schedule to provide consistent and timely messages to the community regarding the project and the proposed public toilet closures. This will incorporate community consultation, community notices, location signage and distribution of information through local media.
21. The City requires a new clause in the lease, under the heading “Development Works”, dealing with the works required to be completed. This clause will include:
- a. Nature, scope and standard of works;
 - b. Time for completion;
 - c. Costs to be borne by the Lessee;
 - d. Abatement of rent while the building cannot be occupied;
 - e. Consequences of non-completion of works;
 - f. Improvements to form part of the property; and
 - g. Remediation of the surrounding reserve.
22. The increased lease area can be dealt with by way of a lease variation provided the lease is not being registered with Landgate. The Landgate procedure for a variation to a lease area is to surrender the existing lease and grant a new lease including the additional area.
23. The City has committed to meeting all legal costs associated with the Deed of Variation of Lease in support of the project given the benefits accrue to both the Lessee and the City of Albany, as property owner.
24. The Lessee has committed to be responsible for all building costs of \$1,319,449.

GOVERNMENT CONSULTATION

25. Pursuant to Section 18 (1) of the *Land Administration Act 1997* the Department of Regional Development and Lands has been consulted. Minister for Land’s consent has been sort for the proposed Deed of Variation of Lease on portion of Crown Reserve 14789.
26. The proposed development has been referred to the South West Aboriginal Land & Sea Council, the Department of Indigenous Affairs and the Department of Regional Development and Lands for land and heritage consideration.

PUBLIC CONSULTATION / ENGAGEMENT

27. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings. The Act requires the following:
- a. A local government must give local public notice of the proposed lease inviting submissions from the public, for a period of two weeks;
 - b. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes; and
 - c. A local government can then proceed with the lease.

28. Section 30 of the *Local Government (Functions & General) Regulations 1996* defines the dispositions to which the advertising requirements of section 3.58 of the Act do not apply. Section 30 (1 & 2) (a & b) (i & ii) and states that Section 3.58 of the Act is exempt if:
- (a) *The land is disposed of to an owner of adjoining land (the transferee) – and*
 - (i) *its market value is less than \$5,000; and*
 - (ii) *the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee;*
 - (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 from the body's transactions,*
29. The additional area of land has been valued by Opteon Property Advisors who confirm that the market value of the additional land is less than \$5,000.
30. The additional area of land is being leased to an existing Lessee in agreement with the City and is valued under \$5,000 and therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.
31. The Albany Surf Life Saving Club Inc. is an incorporated, not for profit and recreational organisation and therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

STATUTORY IMPLICATIONS

32. 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.
33. As this is Crown land, under Management Order H611905 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.
34. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings.
35. Under the City's Town Planning Scheme 1A, the subject land is reserved as "Parks and Recreation". The existing use of clubrooms is an approved use in accordance with the Scheme.

STRATEGIC IMPLICATIONS

36. 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

37. The Council's Policy Property Management – Leases adopted in 2008 applies to the proposed variation of lease.
38. A revised Council Policy Property Management – Leases and Licences Policy was considered at the Special Audit and Finance Committee meeting on 7 June 2012. The revised Policy has been provided to stakeholders for information and comment.
39. Any comments received will be presented at the next available Audit and Finance Committee meeting for consideration in finalising the revised Policy and subsequently noting a recommendation to Council.
40. This Policy aims to ensure that all requests for leases and licences, 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 recommendation is consistent with Council's existing and revised Policy.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>Additional lease area not approved by Council</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Liaise with Lessee to gain agreement on additional lease area to proceed with development</i>
<i>Variation of lease – financial abatement of rent is not approved by Council</i>	<i>Unlikely</i>	<i>Insignificant</i>	<i>Low</i>	<i>Council propose alternate financial method to support the community group to proceed with development</i>
<i>Variation of lease – financial completion of works</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Lease clause to transfer funding to City to enable completion of works</i>

FINANCIAL IMPLICATIONS

43. It is proposed to abate the lease rental owed by the Lessee for the period that the building is unable to be occupied, to a maximum of the annual rent of \$760.00 plus GST.
44. All costs associated with the building development will be payable by the Lessee.
45. All legal costs associated with the preparation, execution and completion of the variation of lease documentation will be payable by the City, in support of the project. It is anticipated these costs will be approximately \$900 plus GST.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

46. Council has the following options in relation to this item:
- Approve the variation of lease.
 - Decline the variation of lease.
47. Should Council decline the variation of lease, the development may not proceed and the original lease terms will continue.
48. Should Council decline the variation of lease, depending on the reason, Council may direct staff to clarify some aspects of the proposal and/or provide further information.

SUMMARY CONCLUSION

49. The Lessee seeks to undertake stage 2 of the redevelopment project to the property owned by the City.
50. The variation of lease will formalise the lease arrangements for the proposed development.

51. Council has previously supported the application for Planning Scheme Consent (P295119) dated 21 July 2009 for stages 1 and 2 of the redevelopment, including the upper storey, subject to conditions.
52. The development will be beneficial to both the Lessee, the Albany Surf Life Saving Club Inc. and to the property owned by the City of Albany.
53. All buildings or improvements permanently fixed to the lease premises or constructed by the Lessee and approved by the City will form part of the leased premises and will vest absolutely with the City.

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)	PRO040, A90251 (Frederickstown Ward)
Previous Reference	OCM 16.09.2008 Item 13.5 OCM 21.07.2009 Item 13.1.2