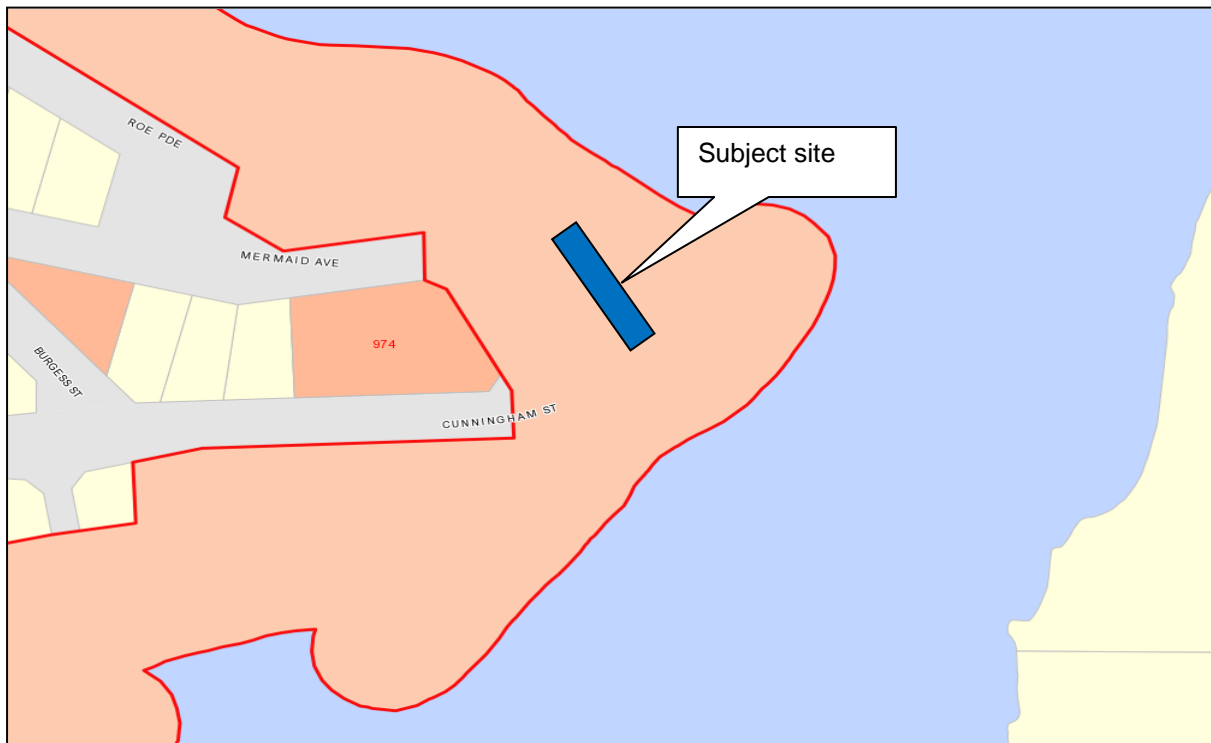


**4.8:SURRENDER OF LICENCE – MATTHEW BRIAN GAULL AND
NATALIE ELIZABETH GAULL – PORTION CROWN RESERVE 22698,
EMU POINT**

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|----------------------------|---|
| Land Description | : Crown Reserve 22698 and being Lot 1461 on Deposited Plan 21977 being part of the land contained in Certificate of Title Volume LR 3110 Folio 171, Emu Point |
| Proponent | : Matthew Brian Gaull and Natalie Elizabeth Gaull |
| Owner | : Crown |
| Attachment(s) | : Aerial Photograph |
| Responsible Officer | : Executive Director Corporate Services (G Adams) |
| Maps and Diagrams | |



IN BRIEF

- Council is requested to consider Matthew and Natalie Gaull request for surrender of licence area of approximately 1095 square metres on portion of Crown Reserve 22698 Emu Point.
- Matthew and Natalie Gaull, Proprietors of the Emu Point Boat Hire business have ceased operating and seek to surrender the licence to formalise the winding up of the business.

**ITEM 4.8: RESOLUTION
VOTING REQUIREMENT: SIMPLE MAJORITY**

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

THAT Council APPROVE the request from Matthew and Natalie Gaull for surrender of the licence for short term boat hire on portion of Crown Reserve 22698 and being Lot 1461 on Deposited Plan 21977, Emu Point subject to:

- i) Deed of Surrender of Licence date to be as soon as practical.**
- ii) All costs associated with the preparation, execution and completion of the Deed of Surrender of Licence to be met by the proponent.**

CARRIED 12-0

BACKGROUND

1. Crown Reserve 22698 is under Management Order H224437 to the City of Albany with power to lease, sub lease or licence for the purpose of "Recreation and Associated Business Purposes" for a term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. Crown Reserve 22698, an area of 27.28 hectares is located at Lot 1461 Mermaid Avenue Emu Point.
3. In August 1995 Council entered into a licence agreement with Ronald William Black, Kathleen Loraine Black and Kevin Alan Black for a term of six years with an option for a further six year term, expiring in September 2007.
4. The purpose of the licence being to operate a business on an area of approximately 1350 square metres of the Emu Point foreshore for the purpose of boat hire, during the holiday periods and summer months.
5. The licence does not give exclusive use of the area to the Licensee however provides the security of tenure at the site to operate the boat hire business and allows for public use of the area.
6. At Council meeting 18 September 2007 Council approved a further licence to the Black family for a term of six years with an option for a further six year term, expiring in September 2013.
7. At Council meeting 20 January 2009 Council approved the surrender of the licence to allow for the sale of the business, as the licence was not transferable.
8. At that meeting, Council also approved a new licence to the new owners of the business known as Emu Point Boat Hire, Matthew and Natalie Gaull, for a term of six years with an option for a further six year term commencing 27 February 2009.

9. When the Emu Point Boat Hire business was purchased by Matthew and Natalie Gaul, the business hired out dinghies, canoes, aqua bikes, kayaks, and pedal boats, to residents, tourists and visitors to the area for short term hire at half hourly and hourly rates.
10. With the introduction of "Skippers Tickets" requirements being imposed by the Department of Transport in 2009, the business was prohibited from hiring the motorised dinghies to the general public unless the hirer held a current and valid Recreational Skippers ticket.
11. The hiring of the motorised dinghies had provided the majority of the business income. Consequently the proprietors sought alternative methods to compensate this loss of income.
12. The City received correspondence from the Licensee in November 2009 seeking Landlords' permission to update the licence water craft schedule. The Licensee requested the amendment to include an additional four kayaks, four wind craft and fishing rods and to remove the canoes and aqua bikes.
13. This request was due to the age and outdated condition of the canoes and aqua bikes, and to address the loss of income resulting from the Skippers Ticket regulation applied to the hiring of motorised dinghies.
14. On the 13 January 2010 the Licensee requested an additional amendment to allow the business to provide banana Boat rides. This request was in response to an increased public demand seeking a faster, more thrilling ride upon the water.
15. The City approved the amendment to include additional kayaks, wind craft and fishing rods for the purpose of hiring to members of the public, and to delete canoes and aqua bikes. This approval also allowed the Licensee to pursue the provision of banana boat rides subject to all approvals being obtained including the Department of Transport marine safety regulations and licence conditions.
16. In March 2012 the City received a formal request from the Licensee, Matthew and Natalie Gaul, proprietors of Emu Point Boat Hire, to surrender the licence over foreshore land at Emu Point.

DISCUSSION

17. The Emu Point Boat Hire business had become unviable and had been operating at a loss each year so has ceased operating. The business name, ABN and TFN have been de-registered for Emu Point Boat Hire business.
18. The various craft used by the business have been sold off separately for private use with appropriate notification provided to the Department of Transport.

19. The Licensee cited for the following reasons contributing to their decision to wind up the boat hire business:
 - Compulsory Recreational Skipper's Ticket requirement for all motorised hired watercraft, which provided the majority of the income for the business.
 - Restriction to paddleboat and kayak hire, both being limited in their operation by weather conditions.
 - Identified erosion at Emu Point has reduced the licence area available for use and impacted on the beach access.
20. The business was listed for sale for an 18 month period with no significant interest shown, due to the poor financial figures provided.
21. Due to the invariable up-coming business operating fees due in December 2011, the business was closed entirely and the proprietors "cut their losses".
22. The Licensee seeks to surrender the licence to formalise the closure of the business.
23. If approved by Council, a formal Deed of Surrender of Licence will be developed by the City's solicitor with all costs associated with the Deed being payable by the proponent.

GOVERNMENT CONSULTATION

24. Pursuant to Section 18 (1) of the *Land Administration Act 1997* the Department of Regional Development and Lands (RDL) has been consulted. RDL advises that Minister for Land's consent is not required as the surrender of licence on portion of Crown Reserve 22698 does not confer an interest in land.
25. As this surrender of licence 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

26. Section 3.58 of the *Local Government Act 1995* defines the disposal of property including leased land and buildings advertising requirements.
27. The surrender of the licence does not constitute a disposal of property and therefore the advertising requirements of Section 3.58 do not apply.

STATUTORY IMPLICATIONS

28. 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.

29. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.

STRATEGIC IMPLICATIONS & ALIGNMENT TO CORPORATE PLAN

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

Key Focus Area

- *Organisational Performance.*

Community Priority

- *Policy and Procedures.*

Proposed Strategies

- *Develop clear processes and policies and ensure consistent, transparent application across the organisation.*

POLICY IMPLICATIONS

31. The Council's Policy Property Management – Leases adopted in 2008 applies to the existing licence.
32. A revised 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.
33. 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.
34. 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 accountable methodology and in line with statutory procedures.
35. The recommendation is consistent with Council's existing and revised Policy.

RISK IDENTIFICATION & MITIGATION

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

| Risk | Likelihood | Consequence | Risk Analysis | Mitigation |
|--|-------------------|--------------------|----------------------|---|
| <i>Council does not approve surrender of licence</i> | <i>Unlikely</i> | <i>Minor</i> | <i>Low</i> | <i>Seek to negotiate terms to Council satisfaction.</i> |

FINANCIAL IMPLICATIONS

37. Any costs associated with the development, execution and completion of the Deed of Surrender of Licence documentation will be borne by the proponent, Matthew Brian Gaull and Natalie Elizabeth Gaull.
38. Loss of licence rental income of \$846.15 plus GST from COA 140530 – Commercial Lease Income.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

Council has the following options in relation to this item, which are:

- a. Approve the request to surrender the licence, or
 - b. Decline the request.
39. Should Council approve the request for a surrender of licence the current Licensee will be in a position to finalise the winding up of their business.
40. Council may then advertise the vacant area and may direct City staff to negotiate with new Licensee's acceptable required amendments to the licence area to enable operation of a similar recreational business type to operate within the Emu Point tourist precinct. Based on the information supplied this may prove an unviable option within the current licensed area.
41. Should Council decline the request the current Licensee would be advised that licence terms will continue until expiry in 2015. The licence area would remain vacant and it is unlikely the City will regain this recreational activity within this tourist precinct.

SUMMARY CONCLUSION

42. The Licensee seeks to surrender their licence over portion of foreshore land at Emu Point as the Emu Boat Hire business has ceased operations due to the business being unviable and operating at a loss.
43. The surrender of licence will formalise the winding up of the Emu Point Boat Hire business.

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|-----------------------------------|--|
| 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) | PRO050, A205773 (Breaksea Ward) |
| Previous Reference | OCM 20.01.2009 Item13.5.2 OCM 18.09.2007 Item 13.5.1 |