

4.4: EXTENSION AND VARIATION OF LEASE – THE NAVY LEAGUE OF AUSTRALIA – RESERVE 35137, ALBANY

Land Description	: Crown Reserve 35137 and being Lot 1305 on Deposited Plan 182455 and the whole of land contained in Certificate of Title Volume LR3009 Folio 600 and being Lot 1323 on Deposited Plan 183114 and the whole of the land contained in Certificate of Title Volume LR3009 Folio 720
Proponent	: The Navy League of Australia
Owner	: Crown
Attachment(s)	: Nil
Responsible Officer	: Executive Director Corporate Services (G Adams)
Maps and Diagrams	



IN BRIEF

- Council is requested to consider the option to renew the lease for a further 11 year term and the lease variation to amend the rental method from a market valuation to a peppercorn rent for the existing Community Lessee, The Navy League of Australia.
- This request is subject to Council endorsement of the revised Property Management – Leases and Licences Policy being considered as a separate Item 1.1 in this agenda.

RECOMMENDATION

ITEM 4.4: RESPONSIBLE OFFICER RECOMMENDATION

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council APPROVE the extension and variation of lease for The Navy League of Australia over portion of Crown Reserve 35137 and being Lot 1305 on Deposited Plan 182455 and Lot 1323 on Deposited Plan 183114 subject to:

- 1. Lease extension term being 11 years commencing 1 March 2012.**
- 2. Lease rental being a peppercorn rate of \$10.00 plus GST per annum.**
- 3. All costs associated with the preparation, execution and completion of the Deed of Extension and Variation to be payable by the Lessee, The Navy League of Australia.**
- 4. All costs associated with the ongoing operations and maintenance of the leased property to be payable by the Lessee.**
- 5. Deed of Extension and Variation of Lease being consistent with Council Policy – Property Management – Leases and Licences.**

BACKGROUND

1. Crown Reserve 35137 is under a Management Order H663291 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of “Sea Cadets” for a term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. The existing lease area of approximately 1124 square metres over Crown Reserve 35137 is located at 1A Parade Street, Albany adjacent the Amity Heritage Precinct.
3. In March 1981 a lease was entered into between the former Town of Albany and The Navy League of Australia, for a period of 21 years with an annual rental of \$3,100. The lease provided that the Town had the right to review the annual rental by market valuation every three years.
4. This lease expired on 28 February 2002 and a new lease was entered into on 1 March 2002 for a period of ten years, with an option for a further 11 year term. Annual rent was valued at \$1,404.00 per annum by a Certified Valuer at that time.
5. Lease rental reviews have been conducted every three years by a Certified Valuer, with current rent being valued at \$1,700.00 plus GST per annum.
6. The City of Albany provided community financial assistance to eligible community groups upon application for a range of community purposes, including rental and rate assistance.
7. The Navy League of Australia received annual community financial assistance from the City to assist with the payment of the annual rent for the leased property.

8. In 2010, Council placed a moratorium on community financial assistance for the 2010/2011 and 2011/2012 financial years, due to financial constraints. This moratorium is currently under review.
9. As the lease agreement provided for an option for a further 11 year term commencing 1 March 2012, the City wrote to the Navy League requesting their intention with regards to exercising the option for the further term.
10. The Navy League has validly exercised its option for a further term. The League has further advised that the moratorium on the availability of community financial has placed a financial burden on them to meet rental costs of \$1,700.00 plus GST per annum.
11. It is noted that the rental method of market valuation applied to the Community Lessee, The Navy League highlights the current inconsistency and inequity between community group leases.
12. The Navy League is keen to progress the extension of lease to continue to provide activities associated with Navy Cadets.
13. However the League seeks to vary the lease to amend the rental method applied from market valuation to peppercorn rent of \$10.00 plus GST. This would assist to alleviate the financial burden placed on the League due to the moratorium on the City's community financial assistance program.
14. Taking into consideration the League's comments regarding the lease rent and that the Property Management – Leases and Licences Policy was in the process of being reviewed with likely implications for Community Lessees, the Chief Executive Officer instructed that all community group requests for new leases and extensions be placed on hold pending the finalisation of the policy review and subsequent endorsement by Council.
15. The League continues to occupy the leased property on a holding over basis as a month to month tenant. The conditions of the tenancy preserve the terms and conditions of the lease, except in respect of the term of the lease.
16. The revised Council Policy Property Management – Leases and Licences is being submitted by the Audit and Finance Committee to this OCM 18.09.2012 as a separate Item 1.1 in the agenda. The Audit and Finance Committee recommendation being that the finalised Property Management – Leases and Licences Policy be endorsed by Council.
17. The revised Council Leases and Licences Policy provides that rent for Community groups, such as The Navy League of Australia, leasing land for community purposes be a peppercorn rent of \$10.00 plus GST per annum.
18. The Navy League of Australia has constructed and maintains all of the buildings and infrastructure located on the leased property on Crown Reserve 35137, at no cost to Council.

19. The Navy League of Australia has indicated that the Commonwealth of Australia as represented by the Department of Defence has expressed an interest in sub-leasing the property to provide assistance to the League.

DISCUSSION

20. The Navy League of Australia, a not for profit organisation, provides social and educational welfare of youth to help develop them in character, a sense of patriotism, self-reliance, citizenship and discipline.
21. The training syllabus includes seamanship, boat handling – sail and power, navigation, physical training, rifle shooting, signalling, rope splicing, general sporting activities and a variety of other subjects. Instructional camps are arranged for Navy Cadets.
22. If Navy Cadets are interested in pursuing a maritime career, then they are given every assistance to join the Royal Australian Navy, Mercantile Marine or such other maritime career they choose.
23. The Albany branch of The Navy League of Australia is also commonly referred to as the TS Vancouver Navy Cadets.
24. The finalised policy provides that the rent for Community groups, such as The Navy League of Australia, leasing land for community purposes will be peppercorn rent of \$10.00 plus GST per annum.
25. The Lessee has committed to meeting all costs associated with the Deed of Extension and Variation of Lease.

GOVERNMENT CONSULTATION

26. Section 18 (1) of the *Land Administration Act 1997* the Department of Regional Development and Lands has been consulted. Minister for Land's consent will be sought for the proposed Deed of Extension and Variation of Lease on Crown Reserve 35137.
27. As the lease extension and variation proposal does not refer to land works or changes to the land title there are no *Native Title Act 1993* and the *Aboriginal Heritage Act 1972* implications.

PUBLIC CONSULTATION / ENGAGEMENT

28. 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 local government must give local public notice of the proposed lease inviting submissions from the public, for a period of two weeks;
 - Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes; and
 - A local government can then proceed with the lease.

29. 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 (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 is not entitled or permitted to receive any pecuniary profit from the body's transactions;*

30. The Navy League of Australia is a community group, 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. As this is Crown land, under Management Order H633291 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Sea Cadets", Minister for Land's consent will be required.
33. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
34. Section 5.42 of the *Local Government Act 1995* enables Council to delegate some powers and duties to the Chief Executive Officer to facilitate the many services it provides to the community. At OCM 14.12.2010 Item 4.3.15 Council delegated to the CEO the authority to APPROVE requests to take up a lease option on a current lease or sub-lease, subject to there being no variation to the lease. Given the request is for an extension and variation of lease this matter is referred to Council for consideration.
35. Under the City's Town Planning Scheme 1A, the subject land is reserved as "Club's and Institutions". The Navy League activities are 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.*

Community Priority

- *Policy and Procedures.*

Proposed Strategies

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

POLICY IMPLICATIONS

37. Council adopted a Property Management – Leases Policy in 2008. A revised Property Management – Leases and Licences Policy has been recommended for endorsement under a separate Agenda Item 1.1 to this Council meeting by the Audit and Finance Committee.
38. This Policy aims to ensure that all requests for leases/licences, for whatever purpose, will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.
39. The Policy section relevant to this category of Community lease – requires the following:
- Rent for Community groups leasing land for community purposes will be a peppercorn rent of \$10.00 plus GST per annum.
 - Lessee must be an Incorporated body 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.
 - Lessee must have appropriate insurance pertaining to their particular activities, as a minimum, and
 - Lessee will be responsible for all maintenance of the leased property at the Lessee's costs.
40. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>Variation of lease – rental method varied to peppercorn not approved</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Council propose an alternate method to assist this organisation on a financial level.</i> <i>Liaise with Lessee to gain agreement on rental.</i>
<i>Variation of lease – rental method varied to peppercorn not approved – reputational loss to City</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Liaise with Lessee to gain agreement on rental.</i>

FINANCIAL IMPLICATIONS

42. All costs associated with the preparation, execution and completion of the Deed of Extension and Variation of Lease documentation will be payable by the Lessee.

43. The lease rental will be a peppercorn rent of \$10.00 plus GST per annum.
44. The rental will be directed to COA 190430 Income – Other Leases.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

45. Council has the following options in relation to this item:
- a. Approve the extension and variation of lease.
 - b. Decline the request.
46. Council is bound to accept any request to exercise option for a further lease term provided the Lessee has:
- a. Exercised the option in the manner and timeframe specified in the lease; and
 - b. Complied with terms and conditions under the lease during the lease term.
47. The Navy League has validly exercised its option for a further term and complied with all lease obligations.
48. Should Council decline the variation of lease to amend the rental method from market rental to a peppercorn rent, the League will have to consider other options to assist with the payment of lease rent.

SUMMARY CONCLUSION

49. The Navy League of Australia has validly exercised its option for a further 11 year term.
50. The Navy League of Australia is seeking to vary the lease to amend the rental method from market valuation to a peppercorn rent of \$10.00 plus GST per annum.
51. The request for an extension and variation of lease in line with Council Policy – Property Management – Leases and Licences is supported.

Consulted References	<ul style="list-style-type: none"> • Council Policy – Property Management – Leases and Licences • <i>Local Government Act 1995</i> • <i>Land Administration Act 1997</i>
File Number (Name of Ward)	PRO072, A96429 (Frederickstown Ward)
Previous Reference	OCM 18.09.2001 Item 12.2.3