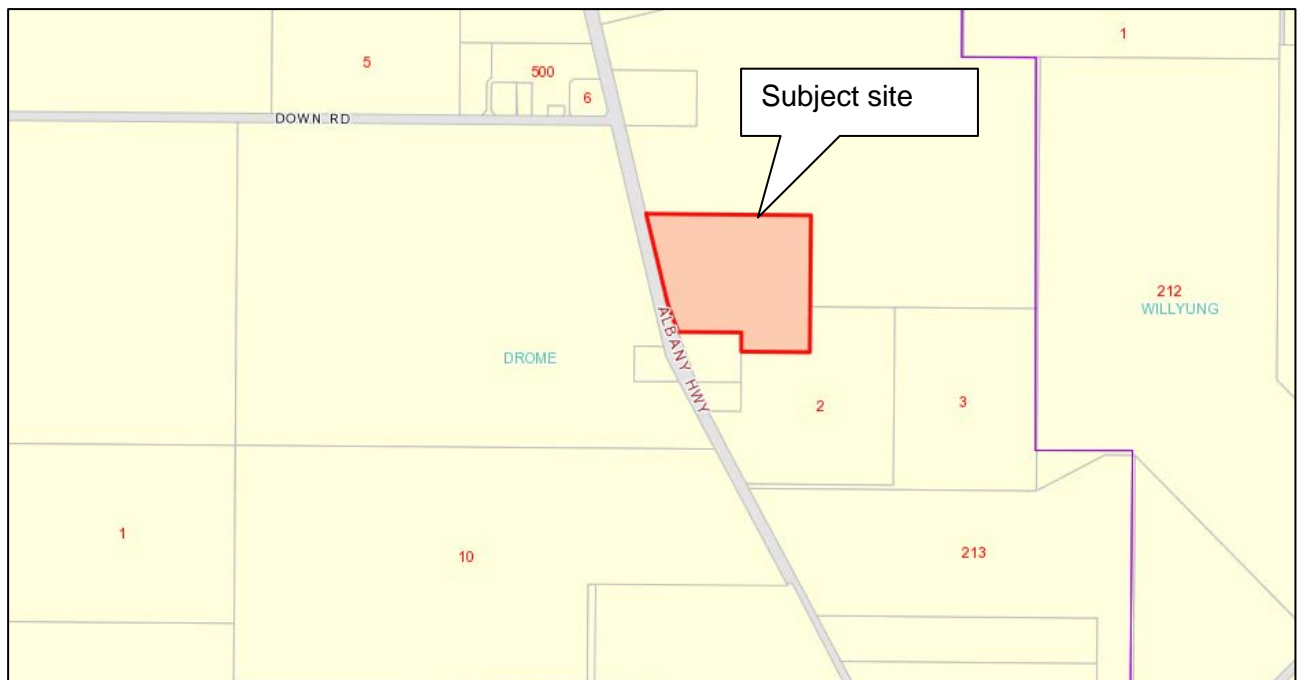


4.5: EXTENSION AND VARIATION OF LEASE – APEX CLUB OF ALBANY INC. – RESERVE 1948, DROME

Land Description	: Crown Reserve 1948 and being Lot 8075 on Plan 160500 and the whole of land contained in Certificate of Title Volume LR3118 Folio 600, Drome
Proponent	: Apex Club of Albany Inc.
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 five year term and the lease variation to amend the rental method from minimum rate to peppercorn rent for the existing Community Lessee, Apex Club of Albany Inc.
- 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 4.5: RESPONSIBLE OFFICER RECOMMENDATION

VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council APPROVE the extension and variation of lease for Apex Club of Albany Inc. over portion of Crown Reserve 1948 and being Lot 8075 on Deposited Plan 160500, subject to:

- 1. Lease extension term being 5 years commencing 1 November 2011.**
- 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 of Lease to be payable by the Lessee, Apex Club of Albany.**
- 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 1948 is under a Management Order H523021 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of “Recreation and State Emergency Service Radio Facility” for a term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. The existing lease area of approximately 36.99 hectares over Crown Reserve 1948 is located at Lot 8075 Albany Highway, Drome and is located north of the Albany Regional Airport.
3. Reserve 1948, also known as “Apex Acres” is currently being leased to Albany Apex Club Inc. for the purpose of cattle grazing, as a source of fund raising. The State Emergency Services local radio network transmitter aerial is also located within the reserve.
4. The Albany Apex Club have been utilising Crown Reserve 1948 since the early 1960’s under an informal arrangement which allowed the Club to graze horses and cattle on the reserve during the holding of the annual Manypeaks Rodeo.
5. This arrangement was varied in the early 1980’s to allow the Club to graze cattle, which are subsequently sold, with the proceeds helping to finance their many community projects. An annual peppercorn rental of \$10.00 plus GST was applied at that time.
6. Following the City being issued with a management order over Crown Reserve 1948 with the power to lease from the former Department of Land Administration a lease was formalised with the Club.

7. At the Ordinary Council Meeting 18 September 2001 Council granted a new lease to the Apex Club of Albany Inc. for a term of ten years commencing 1 November 2001, with an option for a further five year term commencing 1 November 2011. The rental method being the equivalent to minimum rate was applied.
8. It was considered advantageous to Council for the Club to continue grazing on the reserve to prevent fire hazards, and for the Club to be responsible for firebreaks, fencing and fence maintenance on the reserve, at no cost to Council.
9. In 2008 the Club was given Landlord and Local Authority permission to erect an 8 x 5m shed on the leased property adjacent the cattle handling yards near the main gate.
10. As the lease agreement provided for an option for a further five year term commencing 1 November 2011, the City wrote to the Apex Club requesting their intention with regards to exercising the option for the further term.
11. The Club has validly exercised its option for a further term, however advised they would have difficulty in continuing to meet rent costs of \$760.00 plus GST per annum for 2011. The Club requested financial assistance from the City to meet rent and costs associated with the lease extension documentation.
12. The Club seeks to vary the lease to amend the rental method applied from minimum rate to peppercorn rent of \$10.00 plus GST. This would greatly assist the Club to reduce their administrative costs and allow them to direct profits directly back into the community.
13. Taking into consideration the Club'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.
14. The Club 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.
15. 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.
16. The revised Council Leases and Licences Policy provides that rent for Community groups, such as the Apex Club of Albany Inc., leasing land for community purposes be a peppercorn rent of \$10.00 plus GST per annum.
17. The Club maintains all of the buildings and infrastructure including fencing and fire breaks on the leased property on Crown Reserve 1948, at no cost to Council.

DISCUSSION

18. The Apex Club of Albany was founded in 1952. The Club is established for young men and women who wish to work with their peers for the good of the community. The Club's preference is to conduct a hands on approach with members volunteering their time free of charge to assist the community, in lieu of fundraising and donations.
19. The Club has undertaken many community projects since 1952 including but not limited to:
 - The construction of Apex Drive in 1954 and ongoing development including a Lookout.
 - The building of the original Youth Centre (Middleton Road).
 - Various community gazebos (Eyre Park, Lower King bridge area).
 - Annual Carols by Candlelight for over 60 years.
 - Teenage Fashion Awards – proposed.
 - Various smaller community projects including assistance to the Albany Hospice and Albany Hospital, St John's Ambulance and PCYC.
20. The Club has been using Reserve 1948 for grazing purposes since the 1980's. Costs associated with this venture have risen over the years, along with seasonal changes necessitating the Club to purchase feed for cattle and the costs of maintaining the fences and firebreaks has invariably reduced the Club's profit capacity.
21. Over the years the Club has been in decline and the financial burden on running the Club has increased. The Apex Club of Albany is now the only Apex Club still remaining in the South Coastal region. The Club hosts a membership of up to 20 volunteers.
22. The revised Council Leases and Licences Policy provides that the rent for Community groups, such as the Apex Club of Albany Inc., leasing land for community purposes will be peppercorn rent of \$10.00 plus GST per annum.
23. The Lessee has committed to meeting all costs associated with the Deed of Extension and Variation of Lease.

GOVERNMENT CONSULTATION

24. 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 1948.
25. 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

26. 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.
27. 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 are not entitled or permitted to receive any pecuniary profit from the body's transactions;*
28. The Apex Club of Albany Inc. is an incorporated, not for profit community group, therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

STATUTORY IMPLICATIONS

29. 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.
30. As this is Crown land, under Management Order H523021 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Recreation and State Emergency Service Radio Facility", Minister for Land's consent will be required.
31. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
32. 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.
33. Under the City's Town Planning Scheme 3, the subject land is reserved as "Parks and Recreation". The continued use of the land for cattle grazing is in accordance with the Scheme.

STRATEGIC IMPLICATIONS

34. 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

35. 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.

36. 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.

37. 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.

38. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

RISK IDENTIFICATION & MITIGATION

39. 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

40. 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.
41. The lease rental will a peppercorn rent of \$10.00 plus GST per annum.
42. The lease rental will be directed to COA 190430 Income – Other Leases.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

43. Council has the following options in relation to this item:
- a. Approve the extension and variation of lease, or
 - b. Decline the request.
44. 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.
45. The Club has validly exercised its option for a further term and complied with all lease obligations.
46. Should Council decline the variation of lease to amend the rental method from minimum rate to a peppercorn rent, the Club have indicated they may be forced to relinquish the lease due to financial reasons.
47. Should the Club relinquish the lease the Club may be required to remove all of the Lessees fitting and fixtures and make good any damage to the property in doing so.

48. Council could then invite expressions of interest to lease Crown Reserve 1948 for the designated purpose of only “Recreation and State Emergency Service Radio Facility”.
49. Alternatively Council under Section 51 of the *Land Administration Act 1997* could apply to the Minister for Lands to change the purpose of the reserve, subject to City Town Planning Scheme compliance, to allow a lease for a different purpose.
50. Until a new lease was granted the City would be responsible for maintaining the reserve including fences, weed control and fire breaks.

SUMMARY CONCLUSION

51. The Apex Club of Albany Inc. has validly exercised its option for a further five year term.
52. The Apex Club of Albany Inc. is seeking to vary the lease to amend the rental method from being the equivalent to minimum rate to a peppercorn rent of \$10.00 plus GST per annum.
53. 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)	PRO285, A173817 (Kalgan Ward)
Previous Reference	OCM 18.09.2001 Item 12.2.5