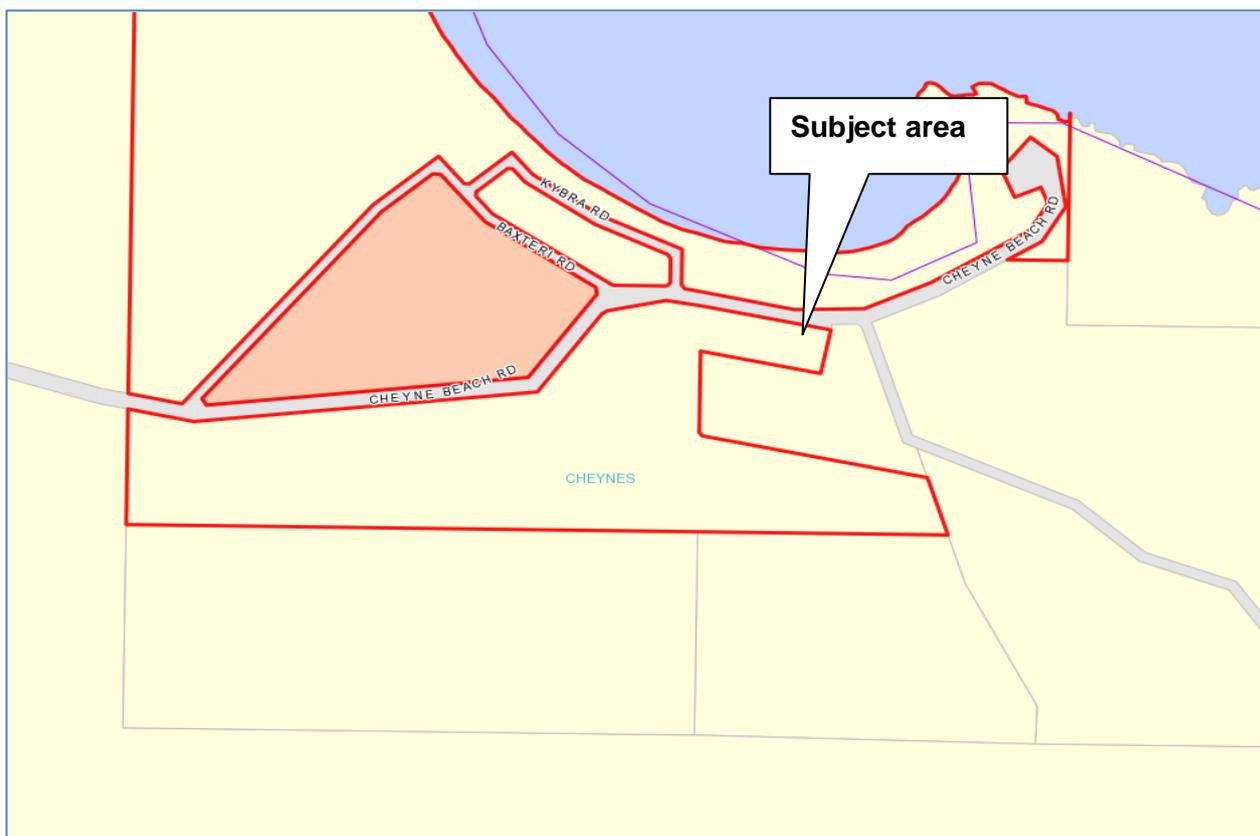


4.3: NEW LEASE – TERRY HULKES – CROWN RESERVE 878 - CHEYNE BEACH ROAD, CHEYNES

Land Description	: Crown Reserve 878 and being Lot 7442 on Plan 214689 and being the whole of land contained in Certificate of Title Volume LR3141 Folio 874 Cheynes
Proponent	: Mr Terry Hulkes
Owner	: Crown
Attachment(s)	: Nil
Responsible Officer	: Executive Director Corporate Services (G Adams)
Maps and Diagrams	

**IN BRIEF**

- Council is requested to consider a new lease for Mr Terry Hulkes over portion Lot 7442 (Lot 10), Reserve 878 Cheyne Beach Road, Cheynes.
- Lease term being 5 years for the purpose of Accommodation Associated with the Fishing Industry.

ITEM 4.3: RESOLUTION
VOTING REQUIREMENT: SIMPLE MAJORITY**MOVED: COUNCILLOR SUTTON**
SECONDED: COUNCILLOR DUFTY

THAT Council APPROVE the request from Mr Terry Hulkes for a new lease for the purpose of Accommodation Associated with the Fishing Industry over portion Crown Reserve 878 and being portion of Lot 7442 (Lot 10) on Deposited Plan 214689, Cheynes subject to:

- 1. Lease term being 5 years.**
- 2. Lease rental fee to be determined by a current market valuation provided by an independent certified Practising Valuer being \$2,250.00 plus GST per annum.**
- 3. Rent to be reviewed every three years by market valuation with CPI applied for intervening years.**
- 4. Lease area being approximately 1,826 square metres.**
- 5. Any relevant approvals to be received prior to development of Lot 10 Reserve 878.**
- 6. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent is obtained.**
- 7. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.**
- 8. All costs associated with the development, maintenance and operations of the lease area to be payable by the proponent.**
- 9. All legal costs associated with the preparation, execution and completion of the Deed of Lease to be payable by the proponent.**
- 10. Lease being consistent with Council Policy – Property Management – Leases and Licences.**

CARRIED 10-0**BACKGROUND**

1. Crown Reserve 878 is under a Management Order H359478 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Recreation, Camping, Holiday Accommodation, Accommodation Associated with the Fishing Industry and Fire Station " for a term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. Crown Reserve 878, an area of approximately 115 hectares is located at Cheynes approximately 63 kilometres east of Albany at the southern end of Hassell Beach. The location is also commonly referred to as "Cheynes Beach".
3. Crown Reserve 878 currently hosts 29 Holiday Accommodation leases, 6 Accommodation Associated with the Fishing Industry leases and one Fishing licence.
4. There are currently 16 surveyed lots with Crown Reserve 878 gazetted for the purpose of accommodation associated with the Cheynes Beach fishing industry. The City of Albany fire shed is situated on Lot 15 within this gazetted area. Only Lots 2 and 3 are located on the waterfront.

5. The surveyed lots gazetted for the Cheynes Beach Fishing Accommodation are located along Cheyne Beach Road. Cheynes Beach Holiday Accommodation leases are located along Baxteri Road, Cheynes.
6. A Lease agreement may be entered into with commercial fisherman seeking fisherman accommodation at Cheynes Beach, on the provision that they are actively engaged in the fishing industry and hold a current commercial fishing licence.
7. In December 1995 the former Shire of Albany approved the first Fishing licence and Accommodation for the Fishing Industry lease enabling Cheynes Beach commercial fishermen to formalise their fishing arrangements and fishing accommodation needs within the Cheyne Beach precinct. Commercial fishermen have been fishing the Cheyne Beach area for up to 60 years, utilising the current lease sites for their needs prior to formalising these arrangements.
8. The Shire of Albany granted the existing leases to commercial fisherman allowing them to construct buildings and infrastructure on the leased land to support them in their commercial fishing activity.
9. The Lessee's are responsible for collection of rain water and connection of power and septic systems.
10. Upon expiry, pursuant to the lease, unless otherwise agreed with the Landlord the Lessee's are required to remove buildings and improvements and restore the land to its original condition.
11. At the September OCM Council adopted the Property Management – Leases and Licences Policy, wherein Policy Principle 46 pertaining to Commercial Fishing Accommodation Leases and Licences was revised.
12. Council adopted that no new Commercial Fishing Accommodation leases or licences will be granted on waterfront property, and existing waterfront Commercial Fishing Accommodation leases and licences will be reviewed 12 months prior to expiry allowing environmental protection to be considered prior to any lease or licence renewal.
13. The City of Albany submitted an application to the Regional Development Assistance Program (RDAP) to undertake feasibility assessments into expanding residential land and associated services onto Crown land at Cheynes Beach in March 2011.
14. LandCorp have recently confirmed this application is still "active", and is due to be presented to the Board for their consideration late 2012. Although this application is directed towards the Cheynes Beach Holiday Accommodation lease sites, the proposed ramifications to the fishing industry accommodation leases should be taken into consideration.
15. The current Cheynes Beach commercial Fishing Accommodation leases are due to expire between 2015 and 2017. It is expected that current Lessees will apply for new leases upon expiry. Given the RDAP application is still being assessed, the proposed lease term of five years will retain consistency with the existing fishing accommodation leases should these leases be impacted by the RDAP assessment.

16. On the 13 February 2012, an enquiry was received from Mr Terry Hulkes with regard to the possibility of a new lease over portion of Lot 7442 being Lot 10 Cheyne Beach Road, Reserve 878, to enable him to continue his commercial fishing activities.
17. Taking into consideration that staff were in the process of reviewing Council's Policy Property Management – Leases and Licences and the likely implications for the Cheynes Beach Fishing Lessees, the Chief Executive Officer instructed the request be placed on hold until such time the reviewed Policy was adopted.

DISCUSSION

18. Mr Hulkes has been operating his commercial fishing licence from Cheynes Beach for approximately 9 years. A copy of his current Fishing Boat Licence number 2281 has been supplied to the City.
19. Mr Hulkes currently resides at the Cheynes Beach Caravan Park whilst the fishing season is current, and has found this arrangement is not suitable to his needs.
20. The storing of his fishing equipment and the early hours he requires to commence preparing his fishing equipment are not suited to the caravan park environment.
21. The following equipment is stored on site to enable Mr Hulkes to fish commercially:
 - Trailer
 - Fishing boat
 - Fishing boat trailer
 - Fish tubs
 - Fishing nets
 - Four wheel drive motor vehicle
 - Ancillary fishing equipment
22. It is proposed small sleeping accommodation and a storage shed be constructed on Lot 10 to accommodate Mr Hulkes and his deckhands whilst carrying out fishing activities. All relevant approvals are to be received prior to any commencement of the development of Lot 10 Cheyne Beach Road.
23. Subject to weather conditions, Mr Hulkes currently operates commercial fishing on an average of twenty days per month. Species of fish caught are governed by his commercial fishing licence and include squid and scale fish, consisting of snapper, herring, whiting, leather jackets and garfish.
24. The proposed new lease will be negotiated in line with Council's Policy – Property Management – Leases and Licences within the category of Commercial Fishermen's Accommodation Leases.

GOVERNMENT CONSULTATION

25. 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 sort for the proposed new Deed of Lease on Crown Reserve 878.
26. The proposed development will be 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.

Any proposed new lease will be advertised locally to comply with the requirements of Section 3.58 of *the Local Government Act 1995*.

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. As this is Crown land, under Management Order H359478 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Recreation, Camping, Holiday Accommodation, Accommodation Associated with the Fishing Industry and Fire Station", Minister for Lands consent will be required.
30. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
31. Under the City's Town Planning Scheme 3, the subject land is reserved "Parks and Recreation". The Scheme requires that any of use of the Reserve must meet the intended purpose of the Reserve. The Reserve purpose includes "Accommodation Associated with the Fishing Industry", therefore this proposal meets the City's Town Planning Scheme 3 requirement.
32. The Western Australian Planning Commission (WAPC) consent is not required as this is Crown land.

STRATEGIC IMPLICATIONS & ALIGNMENT TO CORPORATE PLAN

33. 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

34. Council adopted a revised Property Management – Leases and Licences Policy in September 2012.
35. 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.
36. The Policy section relevant to this category of Commercial Fishing Accommodation Leases and Licences – addresses the following:
- No new Commercial Fishing Accommodation Leases or Licences will be granted on waterfront property.
 - All existing Leases and Licences will be reviewed twelve months prior to expiry balancing environmental protection and prevention of degradation of coastal foreshores with need prior to considering any renewal.
 - Any renewal of existing Leases and Licences on waterfront property will be for a maximum five year term.
37. The proposed lease site, being portion of Lot 7442, Lot 10 Cheyne Beach Road, is not classified as waterfront property.
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 Analysis	Mitigation
<i>Council does not approve a new lease – reputational loss to the City</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction</i> <i>Collaborate with proponent to ensure mutually agreeable outcomes</i>
<i>Council does not approve a new lease – proponent to seek alternative premises</i>	<i>Unlikely</i>	<i>Insignificant</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction</i> <i>Collaborate with proponent to ensure mutually agreeable outcomes</i>

FINANCIAL IMPLICATIONS

40. All costs associated with the development, execution and completion of the new lease documentation including but not limited to legal, advertising, and valuation will be borne by the proponent.
41. The new lease rental will be determined by current market valuation provided by an independent Certified Practising Valuer.
42. The new lease rental will be directed to COA 140530 Income – Misc Commercial.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

43. Council has the following options in relation to this item, which are:
- a. Approve the request for a new lease, or
 - b. Decline the request.
44. Should Council decline the request, Mr Hulkes would be required to find an alternate location for his fishing accommodation needs, should he wish to continue commercial fishing activities at Cheynes Beach.

SUMMARY CONCLUSION

45. Given the opportunity to lease portion of Lot 7442 Reserve 878 as per Council Policy, and rectify the problems associated with the current accommodation situation at no cost to Council, the request for a new lease for a term of 5 years is recommended.

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)	PRO389, A174625 (Kalgan Ward)
Previous Reference	Nil