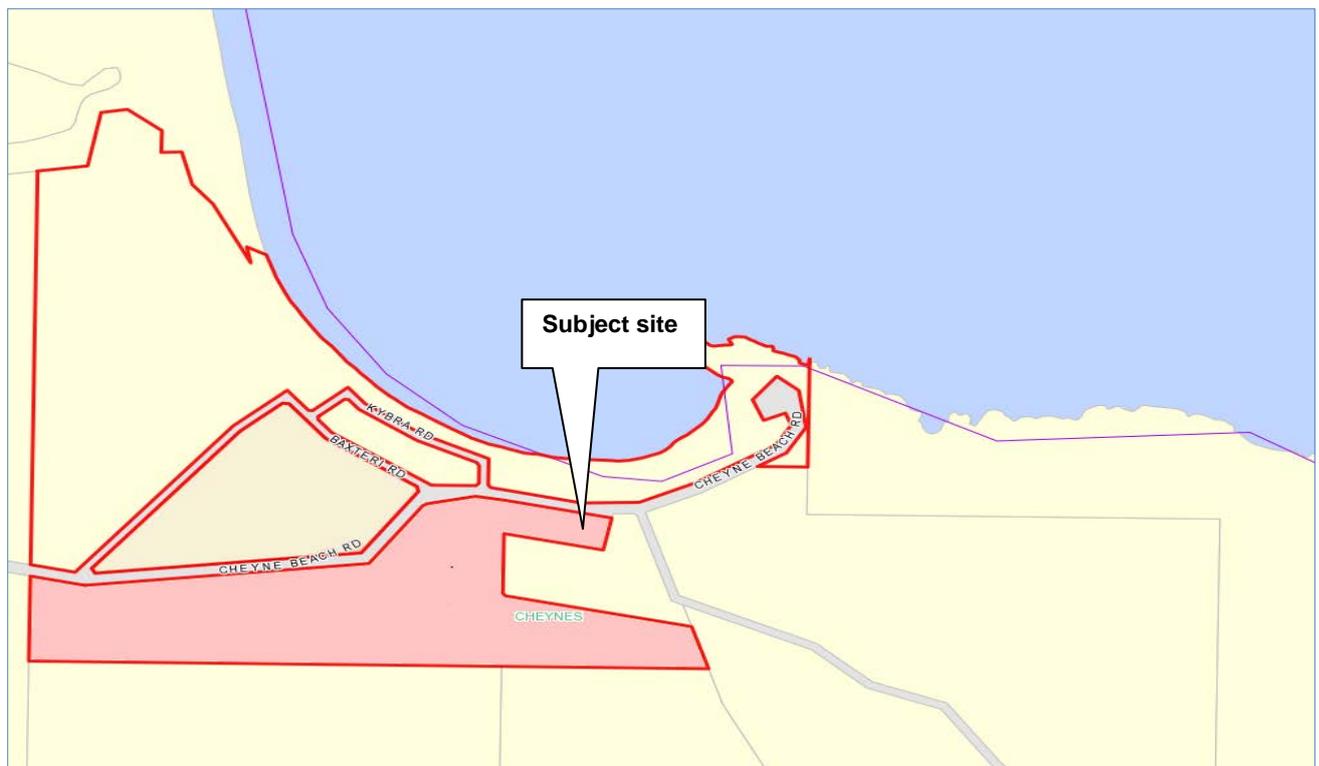


**4.3: FINAL APPROVAL FOR NEW LEASE – MR TERRY CHARLES HULKES – CHEYNE BEACH ROAD, CHEYNES**

<b>Land Description</b>	: Crown Reserve 878 and being Lot 7442 on Plan 214689 being the whole of land contained in Certificate of Title Volume LR3141 Folio 874 Cheynes
<b>Proponent</b>	: Mr Terry Charles Hulkes
<b>Owner</b>	: Crown
<b>Attachments</b>	: <ul style="list-style-type: none"><li>• Copy of resolution of Council 20/11/2012 Item 4.3</li><li>• Schedule of Submissions</li></ul>
<b>Councillor Workstation Responsible Officer(s)</b>	: Copy of Submissions received Executive Director Corporate Services (G Adams)
<b>Maps and Diagrams:</b>	



**IN BRIEF**

- The proposal for a new lease to Mr Terry Charles Hulkes over site 10 being portion of Lot 7442 on Reserve 878 Cheyne Beach Road, Cheynes for the purpose of accommodation associated with the fishing industry was approved at OCM 20/11/2012 Item 4.3 subject to relevant approvals including an application for Planning Scheme Consent and advertising seeking public comment.
- Council is requested to consider the public comment submissions received during the advertising period and determine whether to grant the final lease approval.

**ITEM 4.3: RESPONSIBLE OFFICER RECOMMENDATION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council:**

1. **Notes its previous resolution (OCM 20/11/2012 – Item 4.3).**
2. **Notes the granting of Planning Scheme Consent P2130022.**
3. **GRANTS the final lease approval to Mr Terry Charles Hulkes over site 10 being portion of Lot 7442 Reserve 878 Cheyne Beach Road, Cheynes for a term of 5 years for the purpose of accommodation associated with the fishing industry subject to Mr Hulkes obtaining all relevant approvals.**

**BACKGROUND**

1. Crown Reserve 878 is 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” 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. The City currently has 29 leases for holiday accommodation purposes located along Baxteri Road, six leases and one licence for accommodation associated with fishing industry located along Cheyne Beach Road within Crown Reserve 878.
4. It is noted there are 16 surveyed sites within Crown Reserve 878 for the purpose of accommodation associated with the fishing industry with seven sites currently occupied for this permitted use. Only Lots 2 and 3 are located on the waterfront.
5. The City of Albany fire shed is situated on Lot 15 within this reserve.
6. A lease agreement may be entered into with commercial fisherman seeking fisherman accommodation at Cheyne Beach, provided they are actively engaged in the fishing industry and hold a current commercial fishing licence issued by the Department of Fisheries Western Australia.
7. Commercial fishermen have been fishing the Cheyne Beach area for up to 60 years utilising the current lease sites for their needs. The initial fishing accommodation lease and licence commencing in December 1995 was issued by the former Shire of Albany to formalise the commercial fisherman use 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.

**\*\*REFER DISCLAIMER\*\***

9. At OCM 20/11/2012 Item 4.3 Council approved the request from Mr Hulkes to lease site 10 Cheyne Beach Road for the purpose of accommodation associated with the fishing industry for a 5 year term with an annual rental of \$2,250.00 plus GST subject to relevant approvals including advertising requirements.
10. The proposed lease was advertised for a period of two weeks commencing 29 November 2012 in the local paper and placed on the City of Albany web site inviting submissions from the public. A total of two submissions were received in response to the advertising.
11. Council approval was also subject to all other relevant approvals being obtained prior to any development of site 10 on the reserve. It is noted that Planning Scheme Consent approval P2130022 has been granted from the City as local planning authority.

## **DISCUSSION**

12. The two submissions received regarding the proposed lease raised concerns that allowing other fisherman into the area may adversely impact on the existing fisheries and status quo of the area. Additional concerns were raised regarding the clearing of site 10 to accommodate the proposed development and the possible impact on flora and fauna.
13. Mr Hulkes lodged an application for Planning Scheme Consent in January 2013 detailing the proposed development incorporating a single storey house and outbuilding on the proposed lease area.
14. The City's Planning team as part of the assessment of the planning application considered the submissions and referred the planning application to all relevant agencies including the Department of Environment and Conservation (DEC) for comment.
15. DEC acknowledged that site 10 Cheyne Beach Road is largely vegetated; however they advised they have no objection to the planning application.
16. On 4 April 2013 the City of Albany granted Planning Scheme Consent to Mr Hulkes over site 10 Cheyne Road, Cheynes for the purpose of constructing a small basic single storey single bedroom dwelling and an outbuilding, both for the use in connection with the fishing industry subject to conditions.
17. In summary the following planning conditions are:
  - External material colours and finishes to be approved by the City.
  - Vehicle parking and circulation areas being constructed and drained to City satisfaction.
  - The installation of appropriate effluent disposal in line with the City's health team requirements.
  - All runoff from impervious surfaces being contained within the property and disposed of in line with City's Development Guidelines.
  - Upon lease expiry all buildings and infrastructure developed on site be removed to City satisfaction unless otherwise agreed in writing by the City.
  - All development is required to comply with Building and Health regulations.

**\*\*REFER DISCLAIMER\*\***

18. Mr Hulkes has provided the City with a copy of his current Fishing Boat Licence issued by the Department of Fisheries for the use of commercial fishing and is entitled to fish from the Cheyne Beach area.
19. Mr Hulkes advised the City that he has been operating his commercial fishing licence from Cheyne Beach for approximately 9 years.
20. During the fishing season Mr Hulkes currently resides at the Cheyne Beach Caravan Park. The storing of his fishing equipment and the early hours he commences preparing his fishing equipment are not suited to the caravan park environment.
21. 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.
22. Mr Hulkes has acknowledged his agreement in writing that the lease term is for 5 years and upon expiry of the lease term that all buildings and infrastructure will need to be removed unless otherwise agreed by the City.
23. The proposed new lease will be negotiated in line with Council's Policy – Property Management - Leases and Licences within the category of Commercial Fisherman Accommodation Leases.

#### **GOVERNMENT CONSULTATION**

24. Pursuant to 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 provided for the proposed Deed of Lease on portion of Crown Reserve 878.
25. The application for Planning Scheme Consent was referred to the Department of Environment and Conservation (DEC) for comment. DEC advised they have no objection to the planning application.
26. The proposed improvements as part of a development application will be referred to the South West Aboriginal Land & Sea Council and the Department of Indigenous Affairs for consideration and comment.

#### **PUBLIC CONSULTATION / ENGAGEMENT**

27. The proposed new lease was advertised locally in line with the requirements of Section 3.58 of the *Local Government Act 1995* by placement of an advertisement within the Great Southern Weekender on the 29 November 2012 inviting submissions concerning the proposed new lease.
28. A total of two submissions were received, both of which opposed the granting of the lease. These are summarised and discussed with a recommendation for each submission in the attached Schedule of Submissions.

### **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 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.
31. Section 3.58 of the *Local Government Act 1995* defines the requirements for disposing of property, including leased land and buildings. The proposed new lease was advertised.
32. Under the City's Town Planning Scheme 3, the subject land is reserved “Parks and Recreation”. The Scheme requires that any use of the Reserve must meet the intended purpose of the reserve. The reserve purpose includes “Accommodation Associated with the Fishing Industry” and therefore this proposal meets the City's Town Planning Scheme 3 requirement.
33. Under Section 18 of the *Aboriginal Heritage Act 1972* the Department of Indigenous Affairs and South West Aboriginal Land & Sea Council will be consulted.

### **STRATEGIC IMPLICATIONS**

34. This item relates directly 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 revised Property Management – Leases and Licences Policy in September 2012.
36. The 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.

37. 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 will be for a maximum five year term.
38. The proposed lease site<sup>10</sup> being portion of Lot 7442 Cheyne Beach Road, is not considered as waterfront property.
39. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>Council does not endorse the final approval of the 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. Further negotiate with proponent to reach a mutually agreeable outcome.</i>
<i>Council does not endorse the approval of the 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. Further negotiate with proponent to reach a mutually agreeable outcome.</i>

### FINANCIAL IMPLICATIONS

41. All costs associated with the preparation, execution and completion of the new lease documentation including but not limited to legal, advertising, and valuation will be borne by the proponent, Mr Terry Hulkes.
42. The new lease rental determined by market valuation provided by a Licensed Valuer. The initial rental being \$2,250.00 per annum plus GST.
43. The new lease rental will be directed to COA 140530 Income – Misc Commercial.

### LEGAL IMPLICATIONS

44. The proposed new Deed of Lease will be prepared by the City's lawyers.

**ALTERNATE OPTIONS**

45. Council may:
- a. Decline the final approval for the new lease to Mr Hulkes; or
  - b. Grant Council’s final approval for the new lease.
46. Should Council decline to grant the final lease approval Mr Hulkes would need to seek alternative accommodation arrangements to continue commercial fishing activities at Cheynes.

**SUMMARY CONCLUSION**

47. Council has previously approved a new lease to Terry Charles Hulkes over site 10 being portion of Lot 7442 Cheyne Beach Road, Cheynes at OCM 20/11/2012 Item 4.3 for the purpose of accommodation associated with the fishing industry subject to all relevant approvals.
48. The proposed new lease was advertised with a total of two submissions received objecting to the new lease.
49. The City as local planning authority has considered the submissions and referred the planning application to all relevant agencies including DEC for comment. DEC have no objection to the planning application.
50. The City granted Planning Scheme Consent (P2130022) on 4 April 2013 for the proposed development of lease site 10 Cheyne Beach Road, Cheynes.
51. Mr Hulkes holds a current commercial fishing licence and has been fishing commercially from within the precinct of Cheyne Beach for a period of approximately 9 years.
52. The proposed new lease is in accordance with the Management Order H359478 over Crown Reserve 878 and Council’s Property Management – Leases and Licences Policy.

<b>Consulted References</b>	<ul style="list-style-type: none"> <li>• Council Policy – Property Management – Leases and Licences 2012</li> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Land Administration Act 1997</i></li> </ul>
<b>File Number (Name of Ward)</b>	PRO389, A174625 (Kalgan Ward)
<b>Previous Reference</b>	OCM 20/11/2012 Item 4.3

20/11/2012

\*\*REFER DISCLAIMER\*\*

**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**

## Proposed Deed of Lease – Mr Terry Hulkes – Site 10 Cheyne Beach Road, Cheynes

## Schedule of Submissions

Submission	Summary of Submission	Comment	Response
Submission 1	<p>The following comments were provided in relation to the proposed new lease:</p> <p>a) There are already 5 families involved with commercial fishing operations at Cheyne Beach and have been fishing in the area for over 50 years.</p> <p>b) Concerned increased numbers of commercial fisherman in the area will add tension between the commercial fishermen in this locality.</p> <p>c) Concerned increased numbers of commercial fisherman in the area will inflame relations between commercial and amateur fisherman in this locality.</p>	<p>a) It is noted that historically families have been associated with fishing activities at Cheyne Beach over a lengthy period of time.</p> <p>b) It is understood that the proponent has been fishing from Cheyne Beach for a period of 9 years.</p> <p>c) These issues are more relevant to the issuing of fishing licences than they are to the granting of an accommodation lease.</p>	Council to consider each request for a lease for fishing accommodation on a case by case basis.
Submission 2	<p>The following comments were provided in relation to the proposed new lease:</p> <p>a) Concern over the clearing of site 10 due to existing stands of the Australian Christmas Tree and the frequent habitation of a Noisy Scrub Bird within this site.</p> <p>b) There are several other sites set aside for fishing leases that will cause less habitat destruction.</p> <p>c) Advice the proponent is not associated with the current long standing professional salmon and herring operation his current accommodation arrangements are adequate for his needs.</p>	<p>a) Department of Environment and Conservation advised they had no objection to the proposed development.</p> <p>b) Site considered suitable by City and proponent.</p> <p>c) The proponent advised he has been fishing from Cheyne Beach for a period of 9 years.</p>	Support Planning Scheme Consent granted 4 April 2013.