

**4.6: NEW LEASES – OCEAN FOODS INTERNATIONAL PTY LTD –
PORTION CROWN RESERVE 42964, EMU POINT**

Land Description	: Lot 501 on Deposited Plan 64940 and the whole of the land contained in Certificate of Title Volume LR3159 Folio 265 portion of Crown Reserve 42964, Emu Point
Proponent	: Ocean Foods International Pty Ltd
Owner	: Crown Land, vested in the City of Albany
Attachments	: Nil
Responsible Officer(s)	: Executive Director Corporate Services (G Adams)
Maps and Diagrams:	



IN BRIEF

- Council is requested to consider Ocean Foods International Pty Ltd request for two new leases over existing lease areas A and B on portion of Reserve 42964, Emu Point that the Company has occupied since May 1992.
- Lease terms being five years with an option for a further five year term for the purpose of shellfish farming, production, sales and associated activities.

ITEM 4.6: RESPONSIBLE OFFICER RECOMMENDATION

VOTING REQUIREMENT: SIMPLE MAJORITY

That Council **APPROVE** two new leases for Ocean Foods International Pty Ltd over portion of Crown Reserve 42964 and being Lot 501 on Plan 64940, Emu Point subject to:

1. Lease term being five years with an option for a further five year term.
2. Lease rental fee to be determined by a current market valuation provided by a licensed Valuer.
3. Rent to be reviewed every three years by market valuation with CPI applied for intervening years.
4. Lease Area A being approximately 4,224 square metres.
5. Lease Area B being approximately 1,372 square metres.
6. Lease purpose being shellfish farming, production, sales and associated activities.
7. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent is obtained.
8. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.
9. All costs associated with the preparation, execution and completion of Deed of Lease being payable by the Proponent.
10. All costs associated with the ongoing operations of lease premises being payable by the Proponent.
11. Lease being consistent with Council Policy – Property Management – Leases and Licences.

BACKGROUND

1. Crown Reserve 42964 is under Management Order H755179 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of “Marine and Associated Purposes” for a term not exceeding 50 years subject to the consent of the Minister for Lands.
2. Crown Reserve 42964, an area of approximately 3.5 hectares located on Swarbrick Street Emu Point is commonly referred to as the Emu Point Marina.
3. The City currently has nine leases on the reserve consisting of five commercial leases and two community leases. All leases are associated with marine purposes.
4. In May 1992, the former Town of Albany approved a new lease to Ocean Foods International Pty Ltd over an area of 4,224 square metres (referred to as Lease Area A) over what was historically Crown Reserve 22698 for a term of 21 years. The lease area for portion of Crown Reserve 22698 is now incorporated within Crown Reserve 42964.
5. Additionally in May 1992, the former Town of Albany approved a sub-lease to Ocean Foods International Pty Ltd over an area of 1,372 square metres (referred to as Lease Area B) for portion of Crown Reserve 42964 for a term of 21 years. The Head Lessee being the Emu Point Sporting Association Inc.

****REFER DISCLAIMER****

6. Ocean Foods International Pty Ltd activities are located to the north of the reserve. Lease Area A houses the factory, tanks and associated infrastructure with the office being located on Lease Area B.
7. The rental at that time, as determined by market valuation for Lease Area A was \$2,150.00 per annum and Lease Area B was \$1,200.00 per annum. Rent reviews by market valuation were due in 2004, 2008 and 2011 with CPI applied every second year for both lease areas during the term of the lease.
8. The Head Lease for Lease Area B was surrendered by the Emu Point Sporting Association Inc. on 1 July 2003 as new lease arrangements were entered into with the former Town of Albany. Subsequently the sub-lease to Ocean Foods was formerly surrendered at this time.
9. On 1 July 2003 the City of Albany entered into a new lease with Ocean Foods over the area they had previously held a sub-lease arrangement. This new lease was for a term of nine years and ten months, expiring on the 30 April 2013.
10. Ocean Foods have developed the lease area to accommodate the business requirements as a shellfish supplier. Approval to sell shellfish directly from the Emu Point premises was requested by Ocean Foods and granted by the City as local authority in 1994.
11. The following Planning Scheme Consents and Building Licences have been issued to Ocean Foods by the City of Albany as local authority, over the current lease areas:
 - Depot and Boat Wharf (10/10/1991)
 - Oyster farm (01/07/1992)
 - Oyster Tanks (28/01/1993)
 - Sale of Shellfish (03/06/1994)
 - Storage Shed / Oyster Nursery (06/10/1997)
 - Brick and Tile Office (29/11/1991)
 - Factory (09/01/1998)
12. Ocean Foods maintains all of the buildings and infrastructure upon the leased areas, at no cost to the City.
13. The current rent payable to the City for Lease Area A is \$17,029.75 plus GST per annum and Lease Area B is \$5,531.43 plus GST per annum.
14. Ocean Foods has, at times during the term of the lease, experienced difficulties in meeting the lease rental payments. Notices of Default were issued on two occasions with all outstanding monies paid in full by the required date to fulfil Notice obligations.
15. Ocean Foods International Pty Ltd has fulfilled all other lease obligations.
16. On the 8 March 2013, a formal request was received from Ocean Foods International Pty Ltd for a new lease over both areas they currently occupy within Crown Reserve 42964.

17. Ocean Foods International Pty Ltd continues to occupy the leased area on a holding over basis as a month to month tenant. The conditions of the tenancy preserve the obligations of the lease, except in respect of the term of the lease.

DISCUSSION

18. Ocean Foods International Pty Ltd commenced farming shellfish operations in the Albany region in the early 1990's. They provide local employment and tourism opportunities.
19. In addition to the Emu Point site, Ocean Foods operate a hatchery on Murray Road in Torndirrup.
20. The shellfish products produced by Ocean Foods are Sydney Rock Oysters and Blue Mussels. They are grown and cultured, which incorporates growing the shellfish, a hatchery process and harvesting of the crop. This entire process takes approximately three years.
21. Ocean Foods operate four water lease areas. Three are located within Oyster Harbour and issued by the Department of Transport. The other being located in King George Sound issued by the Albany Port Authority.
22. Licences to operate aquaculture activities within these areas are issued by the Department of Fisheries.
23. Ocean Foods operate one of the largest water leases and are the only operating oyster farm in Western Australia. They are Australian Quarantine and Inspection Services Accredited and Export registered. This gives the business the ability to export directly from the Emu Point premises, which has enabled them to establish trade relations.
24. Produce is also sold locally, interstate and intra state, as well as exported internationally.
25. Being the only oyster farm in Western Australia has proven to be a tourist attraction for the Albany business. Ocean Foods works with Tourism WA and other media sectors to promote their produce and the Albany region. Tours of the premises were previously held and may be considered again for the future.
26. Ocean Foods advise the current site in the Emu Point Marina is an ideal location for the business for the following reasons:
 - Direct access to their water lease areas within Oyster Harbour and King George Sound from this site reduces travelling time and improves efficiencies.
 - Direct access to harbour water is required as part of the process of farming oysters.
 - The convenience of close proximity to ancillary marine services including marine repair and maintenance facilities and the slipway services.
 - Being located within the Emu Point Tourism Precinct provides both sales and promotional opportunities.
27. The proposed new lease will be negotiated in accordance with Council Policy Property Management – Leases and Licences within the category of Commercial Leases.

GOVERNMENT CONSULTATION

28. Under 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 new leases on portion Crown Reserve 42964.

PUBLIC CONSULTATION / ENGAGEMENT

29. 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.
 - c. A local government can then proceed with the lease.
30. The proposed new leases will be advertised to comply with the 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 deal with interests on Crown land, including lease or licences, without the prior approval in writing of the Minister of Lands.
32. As the subject land is Crown land vested in the City of Albany, Minister for Lands consent will be required.
33. Section 3.58 of the *Local Government Act 1995* defines the requirements for disposing of property, including leased land and buildings.
34. Under the City of Albany Town Planning Scheme 1A, the subject land is zoned "Parks and Recreation". The existing use benefits from valid Planning Scheme Consent P91453 and is in accordance with the Management Order for the Reserve which is vested to the City of Albany for the purpose of "Marine and Associated Purposes".

STRATEGIC IMPLICATIONS

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

Key Focus Area

- *Organisational Performance.*
- *Sustainability and Development.*

Community Priority

- *Policy and Procedures.*
- *A diversified industrial base.*

Proposed Strategies

- *Develop clear processes and policies and ensure consistent, transparent application across the organisation.*
- *Advocate to protect primary production, farming and agriculture as viable industries.*

POLICY IMPLICATIONS

36. Council adopted a revised Property Management – Leases and Licences Policy in September 2012.
37. The Policy aims to ensure that all requests for leases and licences will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.
38. The recommendation is consistent with Council Policy – Property Management – Leases and Licences for Commercial Leases.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>Council does not approve the request for a new lease – reputational loss to the City</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Further negotiate with Lessee to reach a mutually agreeable outcome.</i>
<i>Council does not approve the request for a new lease – loss of premises for the Lessee</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>Further negotiate with Lessee to reach a mutually agreeable outcome.</i>

FINANCIAL IMPLICATIONS

40. All costs associated with the preparation, execution and completion of the new lease documentation including but are not limited to legal, advertising, survey and valuation will be borne by the proponent, Ocean Foods.
41. Ocean Foods have agreed to cover all costs.
42. The new lease rental will be determined by current market valuation provided by a licensed Valuer.
43. The new lease rental will be directed to COA 180730 Income – Emu Point Maritime Leases.

LEGAL IMPLICATIONS

44. All Deed of Leases will be prepared by the City's lawyers.

ALTERNATE OPTIONS

45. Council may:
- a. Approve the request for new leases; or
 - b. Decline the request.
46. Should Council decline the request, Ocean Foods would be required to vacate the premises and find an alternative location to carry out their shellfish business activities. They would be required to remove their buildings, fixtures and fittings and restore the leased premises to the City's satisfaction.
47. The City could then invite expressions of interest to lease the area for marine and associated purposes.

SUMMARY CONCLUSION

48. Ocean Foods International Pty Ltd is seeking two new leases over areas they have occupied since 1992 on portion of Crown Reserve 42964, Emu Point. They will continue to occupy the site pending the outcome of Council decision.
49. Ocean Foods have invested substantial capital to extensively develop the area to specifically meet the needs of the commercial business of shellfish farming, production and sales. The location of this area is strategic to their operations.
50. It is noted that during the term of the previous lease Ocean Foods have been issued Notices of Default for non-payment of rent. However, all outstanding monies were paid in full by the required date to fulfil Notice obligations. All other previous lease obligations have been fulfilled.
51. Ocean Foods International Pty Ltd is a Albany based business that provides local employment and contributes to the Emu Point Tourism Precinct.
52. Given the proposed new leases are in accordance with the Management Order for Crown Reserve 42964 and consistent with Council Policy – Property Management – Leases and Licences, it is recommended that Council support this request.

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)	PRO074, PRO075, A150655 (Breaksea Ward)
Previous Reference	OCM 15/07/2003 Item 12.2.3