

**CSF034: NEW LEASE – MR TERRY CHARLES HULKES – CHEYNE  
BEACH ROAD, CHEYNES – CROWN RESERVE 878**

<b>Land Description</b>	: Crown Reserve 878 and being Lot 7442 on Deposited Plan 214689 and being the whole of the land comprised in Certificate of Title Volume LR3141 Folio 874 Cheynes
<b>Proponent</b>	: Terry Charles Hulkes
<b>Owner</b>	: Crown
<b>Attachments</b>	: Copy of resolution of Council 20/11/2012 Item 4.3 Copy of resolution of Council 21/05/2013 Item 4.3
<b>Responsible Officer(s)</b>	: Executive Director Corporate Services (G Adams)

<b>Responsible Officer's Signature:</b>	
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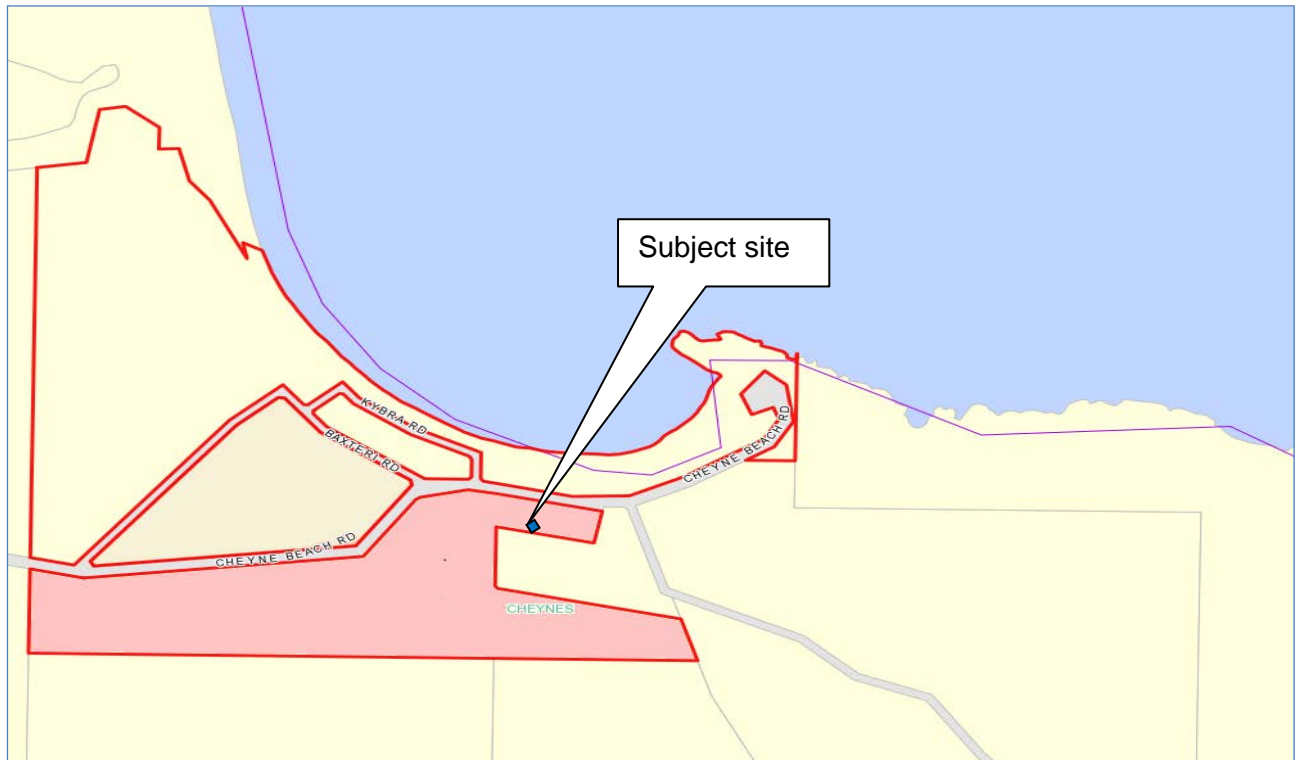
**STRATEGIC IMPLICATIONS**

1. This item relates directly to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2013-2017:
  - a. **Key Theme:** Civic Leadership.
  - b. **Strategic Objective:** 5.1 To establish and maintain sound business and governance structures.
  - c. **Strategic Initiative:** 5.1.2 Systems Development and Improvement: Improve leased property management.

**IN BRIEF**

- Council is requested to consider a new lease to Mr Terry Charles Hulkes over alternate site 17 on portion of Lot 7442 on Reserve 878 Cheyne Beach Road, Cheynes.
- Lease term being five years.
- Lease purpose being for accommodation associated with the fishing industry.
- At OCM 21/05/2013 Item 4.3 Council approved the proposal for a new lease to Mr Hulkes over site 10 subject to all relevant approvals.
- South West Aboriginal Land and Sea Council (SWALSC) have since advised that the lease proposal over site 10 was "not supported" because of the potential for the development to disturb Aboriginal cultural heritage materials, which would constitute an offence under the *Aboriginal Heritage Act 1972*.
- Site 17 has been agreed by Mr Hulkes and is considered suitable as it has been previously leased and amended Planning Scheme Consent, inclusive of Department of Parks and Wildlife and Department of Environment Regulation and Aboriginal heritage approvals, granted for this site.
- The recommendation proposes that Council now approve the new lease for alternate site 17.

## Maps and Diagrams



### CSF034: COMMITTEE RECOMMENDATION VOTING REQUIREMENT: SIMPLE MAJORITY

That Council **APPROVE** the request from Mr Terry Charles Hulkes for a new lease over site 17 being portion of Lot 7442 Cheyne Beach Road, Cheynes on Crown Reserve 878, subject to :

1. Notes its previous resolution (OCM 20/11/2012 – Item 4.3)
2. Notes its previous resolution (OCM 21/05/2013 – Item 4.3)
3. Notes the granting of amended Planning Scheme Consent P2130022 for site 17 Cheyne Beach Road.
4. Lease term being 5 years.
5. Lease area being approximately 2,178 square metres.
6. Lease purpose being accommodation associated with the fishing industry.
7. Lease rental fee being determined by a current market valuation provided by a licensed Valuer.
8. Any relevant approvals to be received prior to the development of site 17 Reserve 878.
9. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent is obtained.
10. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.
11. All costs associated with the preparation, execution and completion of the Deed of Lease and ongoing operations being payable by the proponent.

CSF034: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR SUTTON  
SECONDED: COUNCILLOR CALLEJA

That Council APPROVE the request from Mr Terry Charles Hulkes for a new lease over site 17 being portion of Lot 7442 Cheyne Beach Road, Cheynes on Crown Reserve 878, subject to :

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5. Lease area being approximately 2,178 square metres.
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7. Lease rental fee being determined by a current market valuation provided by a licensed Valuer.
8. Any relevant approvals to be received prior to the development of site 17 Reserve 878.
9. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent is obtained.
10. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.
11. All costs associated with the preparation, execution and completion of the Deed of Lease and ongoing operations being payable by the proponent.

CARRIED 12-0

CSF034: RESPONSIBLE OFFICER RECOMMENDATION

That Council APPROVE the request from Mr Terry Charles Hulkes for a new lease over site 17 being portion of Lot 7442 Cheyne Beach Road, Cheynes on Crown Reserve 878, subject to :

1. Notes its previous resolution (OCM 20/11/2012 – Item 4.3)
2. Notes its previous resolution (OCM 21/05/2013 – Item 4.3)
3. Notes the granting of amended Planning Scheme Consent P2130022 for site 17 Cheyne Beach Road.
4. Lease term being 5 years.
5. Lease area being approximately 2,178 square metres.
6. Lease purpose being accommodation associated with the fishing industry.
7. Lease rental fee being determined by a current market valuation provided by a licensed Valuer.
8. Any relevant approvals to be received prior to the development of site 17 Reserve 878.
9. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent is obtained.
10. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.
11. All costs associated with the preparation, execution and completion of the Deed of Lease and ongoing operations being payable by the proponent.

## **BACKGROUND**

2. 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.
3. 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.
4. There are currently 16 sites within Reserve 878 for the purpose of accommodation associated with the fishing industry. Seven of these sites are currently occupied for this permitted use. Only sites 2 and 3 are located on the waterfront.
5. The City currently has 29 holiday accommodation leases located along Baxteri Road, a fire shed located on site 15 Cheyne Beach Road and a lease with Telstra within Reserve 878.
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. Lessees are permitted to construct buildings and infrastructure on the leased land to support them in their commercial fishing activity. The Lessees are responsible for collection of rain water, connection to power and effluent disposal systems.
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 advertising requirements and all relevant approvals.
10. The proposed lease was advertised with two submissions received in response to the advertising. These were considered at OCM 21/05/2013 Item 4.3 and granted final approval for a lease to Mr Hulkes to lease site 10 Cheyne Beach Road subject to Mr Hulkes obtaining all relevant approvals.

## **DISCUSSION**

11. As a part of the development application approval process, the proposal was referred to the South West Aboriginal Land & Sea Council (SWALSC) and the Department of Aboriginal Affairs for consideration and comment.

12. The City received written advice from SWALSC advising the development proposal on site 10 Cheyne Beach Road was “not supported” as it was not considered consistent with reserve purpose and conflicts with underlying Native Title rights and interests. SWALSC further advised a heritage survey would be required in any event.
13. Following on from SWALSC advice, the City staff provided SWALSC evidence Reserve 878 was vested with the City of Albany for the purpose of “Accommodation associated with the fishing industry”. Also that Mr Hulkes holds a current commercial fishing licence issued by the Department of Fisheries, which entitles Mr Hulkes to fish from Cheyne Beach.
14. Mr Hulkes has previously advised the City that he has been operating his commercial fishing licence from Cheyne Beach for approximately 9 years.
15. While a heritage survey was sought by SWALSC, it is noted that a survey of this scale is estimated to cost \$8,000.00 to \$10,000.00 and could take up to 9 - 12 months to complete and seek Ministerial approval if deemed necessary.
16. It was considered appropriate that City staff and two Noongar elders visit the site. Both Elders raised significant objection to the clearing of the land and a stone artefact was found on the land. Both Elders believed that additional artefacts would be found in the heavily vegetated area, as the area was previously used for camping.
17. Following discussion with regard to acceptable alternative site options, it was agreed that sites 16 and 17 would provide better options for the proposed accommodation as this land had previously been cleared and the regrowth vegetation was full of weeds. It is noted that site 17 had been previously leased and as a result, the ground has been previously disturbed.
18. City staff sought further comment from SWALSC with regard to the site visitation and alternate sites 16 and 17. No further comment has been received from SWALSC, other than informal verbal advice to say that no significant objection had been noted to the alternate sites 16 and 17.
19. While no definitive advice has been received it is considered that the City has observed its due diligence process with respect to Aboriginal heritage matters and that the development of site 17 is assessed as low risk.
20. The City met with Mr Hulkes to provide an update on the lease progress. Mr Hulkes was advised that development over site 10 would not be approved due to Aboriginal heritage significance without observing a lengthy and costly heritage survey process. Mr Hulkes was offered the alternative of moving his development to either site 16 or 17. Mr Hulkes expressed his interest in site 17.
21. Amended Planning Scheme Consent (P2130022) for site 17 Cheyne Beach Road has been granted to Mr Hulkes.

22. Mr Hulkes proposes to construct a small one bedroom single storey dwelling and outbuilding on the proposed lease site 17 to accommodate him while undertaking commercial fishing at Cheynes.
23. The new lease will be negotiated in line with Council Policy – Property Management – Leases and Licences.

#### **GOVERNMENT & PUBLIC CONSULTATION**

24. Under Section 18 (1) of the *Land Administration Act 1997* the Department of Lands has been consulted. Minister for Land's consent will be sought for the proposed new lease on portion of Crown Reserve 878.
25. The application for Planning Scheme Consent was referred to the Department of Parks and Department of Environment Regulation for comment who advised they have no objection to the development application.
26. The proposed development has been referred to the South West Aboriginal Land & Sea Council and the Department of Aboriginal Affairs for comment.
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.
  - c. A local government can then proceed with the lease.
28. The proposed new lease will be advertised to comply with the 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 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 Land's consent will be required.
31. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings.

32. Under the City’s current 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. Section 5 of the *Aboriginal Heritage Act 1972* protects any matter or place of Aboriginal cultural heritage significance, whether known or unknown. Consultation with the Department of Aboriginal Affairs and South West Aboriginal Land & Sea Council occurs to ensure the City takes every precaution to observe compliance with the provisions of the *Aboriginal Heritage Act 1972*.

**POLICY IMPLICATIONS**

34. Council adopted a revised Property Management – Leases and Licences Policy in September 2012.
35. 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.
36. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

**RISK IDENTIFICATION & MITIGATION**

37. The risk identification and categorisation relies on the City’s Risk Management Framework:

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Rating</b>	<b>Mitigation</b>
<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. Further negotiate with proponent to reach a mutually agreeable outcome.</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>

**FINANCIAL IMPLICATIONS**

38. 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.
39. The new lease rental determined by market valuation provided by a Licensed Valuer.
40. The new lease rental will be directed to COA 14053 Income – Misc Commercial.

**LEGAL IMPLICATIONS**

41. The agreement with Terry Charles Hulkes will be a formal Deed of Lease which grants an interest in the land with enforceable conditions and will be prepared by the City's lawyers.

**ENVIRONMENTAL IMPLICATIONS**

42. Site 17 has less existing vegetation than site 10 and has been previously cleared. As such the development of site 17 is considered to have less environmental impact.

**ALTERNATE OPTIONS**

43. Council may:
- a. Approve the request for a new lease, or
  - b. Decline the request.
44. Should Council decline to grant the lease approval for site 17 Mr Hulkes would need to seek alternative accommodation arrangements to continue commercial fishing activities at Cheynes.

**SUMMARY CONCLUSION**

45. Council has previously approved a new lease to Terry Charles Hulkes over site 10 being portion 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.
46. As part of the approval process the proposed development was referred to Department of Aboriginal Affairs and South West Aboriginal Land & Sea Council for comment. SWALSC advised they did not support the development application for site 10.
47. The alternate site 17 Cheyne Beach Road was identified as being suitable for development as the site had been previously leased and the ground previously disturbed.
48. Amended Planning Scheme Consent (P2130022) has been granted for the development of site 17 with Department of Parks and Wildlife and SWALSC support noted for this site.
49. 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.
50. 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.
51. The lease request from Mr Terry Charles Hulkes to lease alternative lease site 17 Cheyne Beach Road, Cheynes for the development of accommodation associated with the fishing industry for a term of five years is supported.

<b>Consulted References</b>	<ul style="list-style-type: none"> <li>• Council Policy – Property Management – Leases and Licences</li> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Land Administration Act 1997</i></li> <li>• <i>Aboriginal Heritage Act 1972</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 OCM 21/05/2013 Item 4.3