

City of Albany
Policy

Property Management (Leases and Licences)



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CONTENTS

| | |
|--|----|
| Objectives | 4 |
| Policy Statement | 4 |
| A. Essential Principles applied by the City of Albany when granting a Lease or Licence over Property | 5 |
| Type of Agreement | 5 |
| Term | 5 |
| Lessee | 5 |
| Planning, Consent & Approvals | 5 |
| Format and Conditions | 6 |
| Rates, Taxes & Outgoings | 6 |
| Registration | 6 |
| Encumbrances | 6 |
| Variation | 6 |
| Sub-letting | 6 |
| Assignment | 7 |
| Risk Management & Insurance | 7 |
| Maintenance | 8 |
| Environmental | 8 |
| Works | 8 |
| Access & Inclusion | 8 |
| Further Term | 9 |
| Vacant Possession and Expiry of Term | 9 |
| Vacant Property | 9 |
| Costs | 9 |
| B. Special Principles relating to certain categories of Property | 10 |
| Commercial Leases | 10 |
| Retail Shop Leases | 10 |
| Telecommunication Leases and Licences | 10 |
| Commercial Fishing Accommodation Leases and Licences | 11 |
| Cheyne Beach Holiday Accommodation Leases | 11 |
| Community Leases | 11 |
| Lotteries House Leases | 12 |
| Residential Leases | 12 |
| Scope | 13 |
| Legislative and Strategic Context | 13 |
| Review Position and Date | 13 |
| Associated Documents | 13 |
| Definitions | 13 |
| Schedule 1 - City Managed Leased Buildings | 16 |

Objectives

- To provide principles to ensure that all requests to lease or licence City of Albany owned, managed or controlled Property, including Crown land, are dealt with in a fair, consistent and equitable manner.
- To minimise the risk to the City of Albany and to maximise the overall return to the community for City of Albany assets.
- To ensure compliance with the *Local Government Act 1995*.

Policy Statement

The City of Albany as legal owner of Property may from time to time choose to enter into a Lease or Licence agreement with a third party. The disposal of land is covered under the Local Government Act 1995 and the Local Government (Functions and General) Regulations 1996.

The City of Albany also manages some Reserves which are available for leasing and licensing purposes for specific periods and purposes as set by the Crown.

The Policy recognises the variety and diversity of Leases and Licences and seeks to ensure that all Lessees and prospective Lessees have an understanding of the underlying elements of the Policy.

All requests for a Lease or Licence will be determined:

- in a fair, consistent and transparent way; and
- in a manner that complies with statutory principles and policy.

The City of Albany will seek at all times to comply with the following principles in dealing with Property, bearing in mind that variation may be required given the varying nature of each property and Lessee.

The City of Albany reserves its right to exercise its discretion in all circumstances and remains bound by all applicable Laws and Regulations.

A. Essential Principles applied by the City of Albany when granting a Lease or Licence over Property.

| Item | Policy | Principle |
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| 1. | Type of Agreement | <p>A Lease will be entered into where the intention is to grant exclusive possession of the property or part of the property.</p> <p>A Licence will be entered into where the intention is to grant non- exclusive possession of the property or part of the property.</p> |
| 2. | Term | <p>The <u>maximum tenure</u> of a Lease or Licence granted by the City on Crown land will be 21 years including any further term option/s.</p> <p>The <u>maximum tenure</u> of a Lease or Licence granted by the City on freehold land will be at the discretion of Council.</p> |
| 3. | | <p>The term will depend on many factors :</p> <ul style="list-style-type: none"> a. The needs of Council and Council Plan objectives. b. The needs of the Community. c. The Lessee. d. The Business. e. The ongoing need for the Property or the provided use. f. Substantial contributions to capital or structural works by the Lessee. g. The sustainability of the Lessee. h. The sustainability of the Property. i. The Management Order for the Property (if Crown land) and the requirements of the Minister for Lands. |
| 4. | Lessee | <p>The City may enter into a Lease or Licence with the following entities:</p> <ul style="list-style-type: none"> a. Individuals. b. Partnerships (i.e. more than 1 individual or entity). c. Incorporated Associations. d. Companies. e. The Crown / a Statutory Authority / other Government body. f. Trusts, by their trustee (usually an individual or a company). <p>Some entity types may require guarantor or other types of additional security (see below).</p> |
| 5. | Planning, Consent & Approvals | <p>Planning Scheme Consent / Approval (if required) must be obtained from the City as the local planning authority prior to a request for a Lease or Licence.</p> |
| 6. | | <p>Where the City manages Crown land, grant of the Lease or Licence and each renewal, if any, will be conditional on Minister for Lands approval.</p> |

| Item | Policy | Principle |
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| 7. | | The Lessee or Licensee is solely responsible for obtaining all approvals, licenses and authorities necessary to conduct the proposed activities on any premises. The City makes no representation that a premises is suitable for any activity, whether permitted or otherwise. |
| 8. | Format and Conditions | Leases and Licences will normally only be granted by the City on its standard terms and conditions for the type of Lease or Licence sought, and in accordance with the relevant Guidelines. Amendments to standard agreements may be made in appropriate circumstances. |
| 9. | | Lease and Licence agreements will be supplied by the City's nominated lawyers at the Lessee's cost (unless prohibited by the Commercial Tenancy (Retail Shops) Act 1985). |
| 10. | Rates, Taxes & Outgoings | The Lessee must pay the relevant authority directly for all outgoings including rates, charges and taxes levied against the Property. User charges including but not limited to water, sewerage, waste disposal, telephone, gas and electricity are generally paid directly to the relevant service provider by the Lessee. |
| 11. | Registration | A Lessee may procure registration of the Lease (where possible) with Landgate at the Lessee's cost. Licenses are not registrable with Landgate. |
| 12. | Encumbrances | A Lessee may lodge a "subject to claim" caveat to protect the Lessee's interest. A Lessee must not lodge any other caveat against the Property without the City's prior written approval. Lessee will appoint the City as power of attorney for removal purposes. |
| 13. | | A Lessee must not mortgage its interest in Property without the City's prior written approval, which approval may be withheld by the City in its absolute discretion. |
| 14. | Variation | If a Lessee requests a variation to a Lease or Licence, the City may grant a variation on condition that the variation is achieved by surrender of the existing Lease or Licence and the grant of a new Lease or Licence with additional conditions the City considers appropriate, at the Lessee's cost. |
| 15. | Sub-letting | A Lessee must not sub-Lease, sub-Licence or part with possession of Property that is the subject of a Lease or Licence without the City's prior written consent. The Lessee will be required to prove the suitability of a sub-Lessee. |

| Item | Policy | Principle |
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| 16. | | Sub-Leases and sub-Licences must be consistent with the head Lease or Licence purpose. If the purpose is inconsistent, a variation to the head Lease or Licence will be required to accommodate the sub-Lease or sub-Licence purpose. |
| 17. | | If sub-Leasing or sub-Licensing City managed buildings, the Lessee cannot charge a rent for the sublet area that is pro-rata higher than the rent payable under the head Lease or Licence. |
| 18. | | If sub-Leasing or sub-Licensing buildings constructed by the Lessee on City owned and or City managed land, the Lessee can determine the sub-Lease or sub-Licence rental. |
| 19. | Assignment | A Lessee must not assign a Lease or Licence without the City's prior written consent, which may be withheld in the City's absolute discretion. Assignors continue to be liable for the remainder term of the Lease and will be required to prove suitability of an assignee. |
| 20. | Risk Management & Insurance | The City requires that all Leases and Licences contain appropriate risk management measures including an obligation on the Lessee to: <ul style="list-style-type: none"> a. indemnify the City (and the Minister for Lands if on Crown land) for loss or damage to persons or Property, wherever occurring; b. maintain adequate public liability insurance; c. ensure that appropriate documentation and insurance is in place for the hired use of the Property; d. carry appropriate worker's compensation insurance commensurate with activities; and e. be responsible for emergency and evacuation procedures. |
| 21. | | A Lessee must maintain a minimum of \$20 million public liability insurance per occurrence during the term. If activities undertaken on the Leased or Licensed Property are considered high risk, a higher level of public liability insurance may be required by the City. |
| 22. | | The City will arrange insurance for the buildings listed in Schedule 1, and recover the cost of insurance premiums from the Lessee as an outgoing. A Lessee will reimburse the City for any excess in respect of any claim. |
| 23. | | A Lessee must insure the Lessee's personal Property (including contents) and those buildings not listed in Schedule 1 for their full replacement value. |

| Item | Policy | Principle |
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| 24. | | A Lessee will be required to provide the City with a copy of certificates of currency before possession is granted under the Lease or Licence commences and annually thereafter. |
| 25. | Maintenance | <p>The City will be responsible for structural maintenance and electrical wiring of the buildings listed in Schedule 1, provided that such maintenance is not required as a result of wilful or negligent actions of the Lessee.</p> <p>Maintenance resulting from Lessee wilful or negligent actions will be the responsibility of the Lessee.</p> |
| 26. | | A Lessee will be responsible for all maintenance of whatever type to the Property, including buildings not listed in Schedule 1. |
| 27. | | The City will conduct regular inspections of the Property. City and City agents may enter the Property at any reasonable time after giving the Lessee at least 14 days' notice to conduct the inspection. City and City agents may enter the Property without notice in the case of emergency, including imminent loss. |
| 28. | Environmental | A Lessee must not clear vegetation on the Property without the City's prior written consent. |
| 29. | | A Lessee must cooperate with the City in controlling declared weeds and pests in accordance with the City's Environmental Weed Strategy for Reserves and the Biosecurity and Agriculture Management Act 2007. |
| 30. | | A Lessee must, at its cost, comply at all times with the City's Fire Management requirements. |
| 31. | Works | <p>A Lessee may only undertake works on the Property in accordance with the City's Environmental Code of Conduct for Works on Council Controlled Land and related procedures, and only with the City's prior written consent.</p> <p>A Lessee will also be responsible for any planning or building approvals that may be required. All works are to be conducted in a safe and professional manner.</p> |
| 32. | Access & Inclusion | A Lessee will consider the City's Strategy Access & Inclusion Plan, as amended. |

| Item | Policy | Principle |
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| 33. | Further Term | If a Lease or Licence provides for a further term, the City will grant the Lessee an extension of the Lease or Licence if the Lessee is not or has not been in default and complies with the procedures in the Lease or Licence for renewal. |
| 34. | Vacant Possession and Expiry of Term | Removal of a Lessee's effects, buildings or infrastructure, apparent cessation of activities, or the continued vacancy of premises, without notice, may be deemed a surrender of Lease or Licence without notice. |
| 35. | | If a Lessee remains in occupation of Property after expiry of the Term, with the consent of the City, it will do so from month to month unless the Lease/Licence or City otherwise provides different holding over arrangements. |
| 36. | | On expiry or termination of a Lease or Licence, a Lessee must remove all Lessees' improvements at the Lessees' cost, unless otherwise directed by the City. If a Lessee fails to remove its improvements by the end of the Lease or Licence, or removes its improvements when directed not to do so, then the Lessee will forfeit the improvements and the City may retain them or remove them and restore the Property at the Lessee's cost. |
| 37. | | A Lessee must make good damage caused by removal of its improvements and restore the Property to the same condition as at the beginning of the term. |
| 38. | Vacant Property | Unless extenuating circumstances are deemed by the City to apply, the City will conduct an Expression of Interest (EOI) process to determine a suitable Lessee for vacant City Property. |
| 39. | | <p>The decision to conduct an EOI process will be based on factors including but not limited to:</p> <ul style="list-style-type: none"> a. The size of the Property b. The location of Property c. The value of Property d. The expected rental return e. The likelihood of multiple interested users f. Ensure the Lessee delivers specific services g. Allow for innovative or flexible solutions for the property |
| 40. | Costs | Lessees must reimburse the City for all reasonable costs associated with the development and implementation of the Lease or Licence (unless prohibited by the Commercial Tenancy (Retail Shops) Act 1985). These costs include legal fees, advertising, and valuation and surveyor fees. |

B. Special Principles relating to certain categories of Property

| Item | Policy | Principle |
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| 41. | Commercial Leases | Rent for Commercial Leases or Licences will be determined by Market Valuation. |
| 42. | | The costs of obtaining a Market Valuation (provided by a licensed Property Valuer) for the initial Lease or Licence rental assessment and during the term of the Lease or Licence will be paid by the Lessee. |
| 43. | | The licensed Property Valuer will be appointed by the City. |
| 44. | | Rent reviews will be conducted on the anniversary date of the Lease or Licence by Market Valuation every three years and by the most recently published Consumer Price Indexation, All Groups (Perth) for intervening years. |
| 45. | | The Lessee/Directors, will be required to provide a personal guarantee if the lease is through a company or trust. |
| 46. | | The Lessee will be required to provide a bank guarantee or security bond (in the discretion of the City) equivalent to three months rent plus GST and outgoings (unless waived by the City or otherwise prohibited by the Commercial Tenancy (Retail Shops) Act 1985). |
| 47. | Retail Shop Leases | If the Act applies, Leases will be prepared in accordance with the Commercial Tenancy (Retail Shops) Act 1985). |
| 48. | | Rent for Retail Shop Leases will be Market Valuation and/or rent based on turnover, with Consumer Price Indexation, All Groups (Perth) adjustment in intervening years. |
| 49. | | A minimum term of 5 years will be granted. The term can be in a combination of initial term and options totalling 5 years. |
| 50. | Telecommunication Leases and Licences | Leases and Licences will take into consideration the Telecommunication Act 1997. |

| Item | Policy | Principle |
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| 51. | Commercial Fishing Accommodation Leases and Licences | <p>No new Commercial Fishing Accommodation Leases or Licences will be granted on waterfront Property.</p> <p>All existing Leases and Licences may be reviewed 12 months prior to expiry balancing environmental protection and prevention of degradation of coastal foreshores with need prior to considering any renewal.</p> <p>Any renewal of existing Leases and Licences will be for a maximum 5 year term.</p> |
| 52. | Cheyne Beach Holiday Accommodation Leases | <p>Rent will be based on the unimproved land rental value assessed by a licensed Property Valuer.</p> <p>Permitted use of the Property is for temporary holiday accommodation. The Property must not be used as the primary place of residence of any person.</p> <p>The Lessee must not rent, hire, sub-lease or let the property whether for consideration or not.</p> <p>Buildings are the sole responsibility of Lessees.</p> |
| 53. | Community Leases | <p>Community, sporting or recreation associations must be incorporated to enter into a Lease or Licence with the City.</p> |
| 54. | | <p>Prospective Community Lessees, upon request, must be able to demonstrate to City's satisfaction that the Lessee will provide sufficient community benefit to justify the Lease or Licence.</p> |
| 55. | | <p>A Community Lease or Licence term will be for a maximum of 10 years for community groups leasing City managed buildings listed in Schedule 1. A longer term may be considered (at the discretion of Council) for properties that are primarily funded by the community group taking the following factors into account:</p> <ol style="list-style-type: none"> a. Level of capital investment b. Long term planning c. Extent the property is used for multi-purpose activities and co-location d. Council Plan objectives and relevant strategies e. Level of maintenance of buildings and infrastructure f. History of satisfactory performance <p>The maximum term for Community Leases and Licences will be 21 years.</p> |

| Item | Policy | Principle |
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| 56. | | <p>Rent for Community groups leasing land for community purposes will be at a subsidised peppercorn rent of \$10.00 plus GST per annum.</p> <p>Rent for Community groups leasing land and City managed buildings listed in Schedule 1, for community purposes will be the equivalent to the annual minimum rate as set by Council each year.</p> |
| 57. | | <p>Community Leases and Licences can be assigned at the absolute discretion of the City, to an entity with similar suitable community intent.</p> |
| 58. | | <p>Community Lessees may make the Property available for casual hire for a period no greater than 24 consecutive hours where appropriate for a sole community purpose and does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. The hirer must also enter into a hire agreement on terms and conditions agreed by the City. A breach of hirer may be deemed to be a breach of the Lease or Licence and will require rectification.</p> |
| 59. | Lotteries House Leases | <p>Lotteries House Leases will be charged rent as determined annually by the Lotteries House Management Committee, as delegated under the Deed of Trust agreement between the Lotteries Commission of WA and the City for the Property.</p> |
| 60. | Residential Leases | <p>Residential Lessees will be in accordance with the Residential Tenancies Act WA and be charged rent as determined by a current rental valuation provided by a Licensed Real Estate Agent engaged by the City.</p> |

Scope

The Policy applies to the leasing and licensing of all Property owned, managed or controlled by the City of Albany, including Crown land.

Legislative and Strategic Context

This Policy relates to:

- Part 3 of the *Local Government Act 1995* which describes how Local Government is to dispose of land;
- Part 6, section 30 of the *Local Government (Functions and General) Regulations 1996*;
- Part 6 of the *Land Administration Act 1997* that determines Sales, Lease and Licences of Crown land;
- The City of Albany Strategic Community Plan; and
- The City of Albany Corporate Business Plan.
 - **Key Focus Area:** Organisational Performance.
 - **Community Priority:** Policy and Procedures.
 - **Strategies:** Clear processes and policies and ensure consistent, transparent application across the organisation.

Review Position and Date

This policy and procedure is to be reviewed by the document owner every two years.

Associated Documents

- Schedule 1 – City Managed Leased Buildings

Definitions

In this Policy, the following definitions apply:

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| Act | The Local Government Act 1995 as amended. |
| Cheyne Beach Holiday Accommodation Lease | A legally binding agreement granted to Lessees for the purpose of private holiday accommodation only, on portion of Crown Reserve 878 located at Cheyne Beach. |
| City | The City of Albany. |
| Commercial Lease | In this Policy, a legally binding agreement, relating to all Leases other than a Cheyne Beach Holiday Accommodation Lease, Community Lease, Lotteries House Lease or Residential Lease. |
| Community Lease | A legally binding agreement granted to community, sporting or recreation associations and government bodies or other organisations that provide services solely for the benefit of the community. |

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| Consumer Price Index | The weighted average cost of a standard basket of retail goods expressed in relation to a base period for Perth (All groups). |
| Crown Land | Land owned by the Crown and vested in the City of Albany through the granting of a Management Order by the Department of Regional Development and Lands. |
| Delegated Authority | In accordance with the provisions of Section 5.42 of the Local Government Act 1995, Council may delegate authority to the Chief Executive Officer to exercise certain powers or duties to enable the continued working of Council without the necessity for reporting to an Ordinary Council Meeting. |
| Incorporated | A group of people who are recognised as a legal entity, separate from individual members as defined under the Associations Incorporation Act (1987). |
| Lease | A legally binding agreement by which one party (Lessor) in consideration of rent, grants exclusive use and possession of real Property to a third party (Lessee) for a specified purpose and term. A Lease creates an interest in the Property. |
| Lease or Licence Variation | The addition, removal or change of one or more of the Lease or Licence provisions. |
| Lessee | An authorised third party that has entered into a Lease or Licence with the City of Albany for the use of City of Albany owned or managed real Property and pays rent to occupy the Property (and where the context permits includes a Licensee). |
| Lessor | The City of Albany being the owner or management body of Property with power to Lease or Licence to a third party (Lessee). |
| Licence | Permits a person to occupy Property, or part thereof on particular conditions. The main feature that distinguishes a Licence from a Lease is that a Licence does not permit exclusive use of the Property. A Licence does not create an interest in the Property. |
| Licensee | A person that holds an approved Licence. For the purpose of this document (where context permits) a Licensee will also be referred to as “Lessee”. |
| Lotteries House Lease | A legally binding agreement granted to eligible organisations as defined by section 19 of the Lotteries Commission Act 1990 charitable or benevolent organisations, for use by them exclusively for accommodation. |
| Management Order | An authorisation provided by the Crown giving the City of Albany both the power and authority to manage a parcel of land on behalf of the Crown. |

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| Market Valuation | A valuation determined by a licensed Valuer registered with the Australian Property Institute taking into consideration a range of factors to determine the current market rental value of a Property. |
| Minimum Rate | The rate set annually by Council in its absolute discretion as the minimum rate chargeable for rateable Property. |
| Planning Scheme Consent | Local Planning Authority requirement if proposing to change a land use, develop or use any land including the erection, construction or alteration of any building, excavation or other works on any land. |
| Property | The Property that is subject to or intended to be subject to a Lease or Licence. |
| Regulations | Local Government (Functions and General) Regulations 1996. |
| Retail Shop Lease | A legally binding agreement granted in accordance with the Commercial Tenancy (Retail Shops) Agreements Act 1985 as amended. |
| Reserve | A defined area of land belonging to the Crown which has been vested in the City of Albany by way of a Management Order. |
| Residential Lease | A legally binding agreement granted for a residential (housing) purpose. |

Schedule 1 - City Managed Leased Buildings

| Asset ID | Assessment Number | Building | Crown Reserve (vested with City of Albany) | Property Address | Locality |
|----------|-------------------|---|--|----------------------------------|-----------------|
| B2002 | A175708 | Wellstead Resource Centre | 46802 | Lot 49 Windsor Road | Wellstead |
| B2007 | A136289 | Albany Leisure and Aquatic Centre - Albany Swim Club & Kiosk | | 52 - 70 Barker Road | Centennial Park |
| B2009 | A193726 | Mt Melville Lookout Telecommunication Facility | 2681 | 179 - 87 Serpentine Road | Mt Melville |
| B2010 | A104446 | Senior Citizens Centre | | 126 - 40 Grey Street | Albany |
| B2012 | A102082 | Infant Health Clinic | | 145 - 49 Grey Street | Albany |
| B2014 | A125717 | Infant Health Clinic | | 4 Parker Street | Lockyer |
| | A161523 | All Breeds Dog Club - Foundation Park | | 23 - 35 Parade Street | Albany |
| B2050 | A64802 | Airport Terminal - Car Hire, Virgin & Cafe | | 35615 Albany Highway | Drome |
| B2051 | A64802 | Airport Residence | | 35615 Albany Highway | Drome |
| B2057 | A64802 | Airport (former Bureau of Meteorology building) – Albany Historical Society | | 35615 Albany Highway | Drome |
| B2101 | A96893 | Old Gaol - Albany Historical Society | 22375 | 255 - 267 Lower Stirling Terrace | Albany |
| B2102 | A97368 | Women's Rest Centre | 19464 | 176 Lower Stirling Terrace | Albany |
| B2103 | A181595 | Old Post Office - UWA & Spectrum Theatre | | 33 - 39 Stirling Terrace | Albany |
| B2104 | A140446 | Bond Store - Model Railway | 42792 | 57 -77 Proudlove Parade | Albany |
| B2013 | A110445 | Depression Support & Albany Historical Society | 26860 | 11 - 13 Nind Street | Spencer Park |
| B2122 | A133837 | Three Anchors | 26149 | 2 Flinders Parade | Middleton Beach |
| B2123 | A124369 | Girl Guides Association | 34088 | 17 - 21 Parker Street | Lockyer |
| B2124 | A140428 | Albany Visitors Centre & Transwa | 42793 | 45 - 55 Proudlove Parade | Albany |
| B2137 | A152433 | Emu Point Cafe | 22698 | 1 Mermaid Avenue | Emu Point |
| B2125 | A123434 | Lockyer Community Kindergarten | 25383 | 3 -7 Leschenault Street | Lockyer |
| B2126 | A150439 | Lotteries House | | 211 - 217 North Road | Centennial Park |

| Asset ID | Assessment Number | Building | Crown Reserve (vested with City of Albany) | Property Address | Locality |
|----------|-------------------|---|--|-----------------------|-----------------|
| B2127 | A110445 | Coolangarra's Barmah Kindergarten | 26860 | 11 - 13 Nind Street | Spencer Park |
| B2128 | A14825 | South Coast Natural Resource Management (former Shire of Albany building) | | 39 Mercer Road | Walmsley |
| B2136 | A134005 | Albany Volunteer Fire Brigade | | 4 North Road | Centennial Park |
| B2177 | A157578 | Carlyle's Function Centre | 38226 | 7 Forts Road | Mt Clarence |
| B2180 | A171322 | Garrison Cafe, Restaurant & Takeaway | 38226 | 7 Forts Road | Mt Clarence |
| B2327 | A90251 | Surf Life Saving Club | 14789 | 4 Flinders Parade | Middleton Beach |
| B2490 | A12493 | Bornholm Telecommunication Facility | | Lot 117 Mountain Road | Bornholm |
| B2492 | A188652 | Willyung Hill Telecommunication Facility | 43591 | Rocky Crossing Road | Willyung |