

4.3: VODAFONE HUTCHINSON AUSTRALIA PTY LTD – NEW LICENCE – PORTION OF RESERVE 2681 MOUNT MELVILLE

Land Description : Lot 1469 on Plan 219955 and being the whole of land contained in Certificate of Title Volume 3136 Folio 355 – Reserve 2681 Serpentine Road, Mount Melville

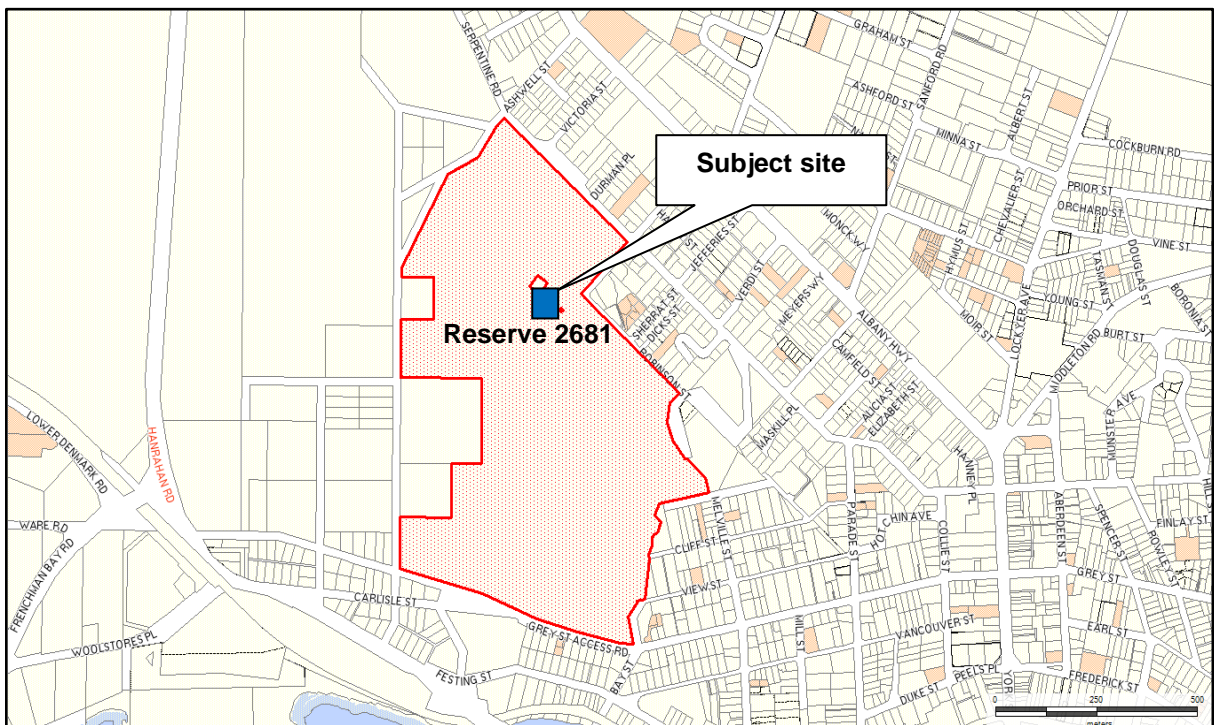
Proponent : Vodafone Hutchinson Australia Pty Ltd

Owner : Crown

Attachment(s) : Nil

Responsible Officer : Acting Executive Director Corporate Services (P Wignall)

Maps and Diagrams



IN BRIEF

- Vodafone Hutchinson Australia Pty Ltd request a new licence on portion of Crown Reserve 2681 for the purpose of continuing the Paging Satellite System.
- Licence term being three years with an option for two further three year terms.
- Approval will allow Vodafone Hutchinson Australia Pty Ltd to continue servicing current paging service clients such as Hospitals, Emergency Services, Trades and Corrective Services.

RECOMMENDATION

ITEM 4.3: RESPONSIBLE OFFICER RECOMMENDATION

MOVED: COUNCILLOR WELLINGTON

SECONDED: COUNCILLOR DUFTY

THAT the request from Vodafone Hutchinson Australia Pty Ltd for a new licence on portion of Crown Reserve 2681, Serpentine Road, Mount Melville be APPROVED subject to:

- 1. Licence term being three years with an option for two further three year terms.**
- 2. Licence commencement date being retrospective from 1 June 2011.**
- 3. Licence rental being determined by a current market valuation provided by an independent Certified Practising Valuer.**
- 4. Licence rent reviews being every three years by market valuation with Consumer Price Index applied for intervening years.**
- 5. Licence area being 0.36 square metres.**
- 6. Licence purpose being a Paging Satellite System.**
- 7. Licensee will not impact on or cause interference to any other user of telecommunications equipment or any other infrastructure or persons or service within or outside of the Mount Melville Lookout telecommunication facility.**
- 8. All relevant approvals including *Aboriginal Heritage Act 1972* and *Native Title Act 1933* being obtained.**
- 9. Under Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent is obtained.**
- 10. Section 3.58 of the *Local Government Act 1995* advertising requirements being met.**
- 11. All costs associated with the operations and maintenance of the licence area to be payable by the proponent.**
- 12. All costs associated with the development, execution and completion of the Deed of Licence are met by the proponent.**
- 13. Licence being consistent with Council Policy – Property Management – Leases.**

CARRIED 10-0

BACKGROUND

- 1. The City of Albany owned JA Barnesby Memorial Lookout with telecommunication tower located on Reserve 2681 is commonly referred to as the Mount Melville Lookout or the Spark Plug.**
- 2. Reserve 2681 is under a Management Order H603437 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Public Park and Telecommunications" for any term not exceeding twenty one years and subject to the consent of the Minister for Lands.**
- 3. Reserve 2681 an area of 54.185 hectares is located at Lot 1469 Serpentine Road, Mount Melville.**

4. In 1996 the former Town of Albany granted a new licence to Tarossa Pty Ltd trading as Microelectronic Technical Services over portion of Crown Reserve 2681 on the Mount Melville Lookout telecommunication facility for the purpose of a Paging Satellite System.
5. Upon expiry of that licence in 2001 the City of Albany (at its OCM 5 June 2001 Item 12.2.3) granted a further new licence to Tarossa Pty Ltd over the existing area for same purpose of a Paging Satellite System .
6. Upon expiry of that licence in 2006 the City of Albany (at its OCM 19 September 2006 Item 13.5.2) granted a further new licence to Tarossa Pty Ltd over the existing area on the Mount Melville Lookout telecommunication facility for the same purpose and for another 5 year term commencing 1 June 2006 and expiring on 31 May 2011 with a rental of \$1000.00 plus GST per annum.
7. In February 2011, the City contacted Tarossa Pty Ltd advising that the licence was due to expire on 31 May 2011. In response Mr Ted Kutrzyk, Director of Tarossa Pty Ltd trading as Microelectronic Technical Services advised they would not be seeking to renew the licence as they have been managing the licensed site for Vodafone Hutchinson Australia Pty Ltd.
8. Mr Ted Kutrzyk further advised that Microelectronic Technical Services have been contracted by Vodafone Hutchinson Australia Pty Ltd to provide annual maintenance and ongoing support to the equipment installed at the Mount Melville facility.
9. A request has since been received from Vodafone Hutchinson Australia Pty Ltd for a new licence over the existing 0.36 square metre area currently occupied on the Mount Melville Lookout telecommunication facility.
10. Council has at present the following licences and leases at the Mount Melville Lookout telecommunication facility:

	Licensee/Lessee	Term	Rent per annum
1.	Albany Business Telephones	3 years with option for a further 3 year term	\$2,000.00 plus GST
2.	Belcap Investments Pty Ltd	5 years with option for a further 5 year term	\$1,350.00 plus GST
3.	Fire & Emergency Services	5 years with option for a further 5 year term	\$10.00 plus GST
4.	Optus Mobile Pty Ltd	5 years with option for 3 further 5 year terms	\$1,345.50 plus GST
5.	Vodafone Network Pty Ltd	5 years with option for 3 further 5 year terms	\$1,416.21 plus GST
6.	Water Corporation	5 years with option for 3 further 5 year terms	\$1,200.00 plus GST

11. Together with the proposed Lessee, Vodafone Hutchinson Australia Pty Ltd, the above Licensees and Lessees are using the two utility rooms located on the ground floor of the facility to capacity.

DISCUSSION

12. The Mount Melville telecommunication tower was constructed by Optus Mobile Pty Ltd on top of the City owned Mount Melville Lookout in 1995. Upon completion, the ownership of the telecommunication tower was transferred to the City of Albany (formerly Town of Albany) with the agreement that all new requests by a third party to use, enter or install equipment on the tower will be presented to Optus Mobile Network Pty Ltd for consent (which approval shall not be unreasonably withheld).
13. Optus Mobile Network Pty Ltd advise they have no objections to the Vodafone Hutchinson Australia Pty Ltd licence request given the equipment is existing and has been operating on at the site since 1996.
14. Vodafone Hutchinson Australia Pty Ltd equipment consists of a transmitter box which is approximately a metre in height, 500mm in width and 200mm in depth and a 2.5 metre wide folded dipole antenna.
15. Vodafone Hutchinson Australia Pty Ltd provides a commitment that all equipment will be maintained in accordance with the manufacturer's specifications and will not impact or cause interference to any other user of telecommunications equipment or any other infrastructure or persons or service within or outside of the land area.
16. In Australia, Vodafone is operated by Vodafone Hutchinson Australia Pty Ltd, a 50:50 joint venture between Vodafone Group Public Limited Company and Hutchinson 3G Australia.
17. All costs associated with the operations, ongoing maintenance and repairs of its equipment and power usage will be met by Vodafone Hutchinson Pty Ltd.
18. The new licence will be negotiated in line with Council Policy – Property Management – Leases.

GOVERNMENT CONSULTATION

19. 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 provided to the proposed Deed of Licence on Crown Reserve 2681.
20. The licence request will be referred to both the South West Aboriginal Land and Sea Council and the Department of Indigenous Affairs for any considerations under the *Native Title Act 1993* and the *Aboriginal Heritage Act 1972* respectively.

PUBLIC CONSULTATION / ENGAGEMENT

21. Section 3.58 of the *Local Government Act 1995* requires there to be local public notice of the proposed licence inviting submissions from the public, for a period of 2 weeks. Any submissions are to be considered by Council and their decision with regard to those submissions, to be recorded in the minutes.

22. The proposed new licence will be advertised to comply with the requirements of Section 3.58 of the *Local Government Act 1995*.

STATUTORY IMPLICATIONS

23. 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.
24. As this is Crown land, under Management Order H603437 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of “Public Park and Telecommunications”, Minister for Land’s consent will be required.
25. Section 3.58 of the *Local Government Act 1995* deals with the disposal of property, including leased land and buildings.
26. As this is Crown land, the licence request will be referred to both the South West Aboriginal Land and Sea Council and the Department of Indigenous Affairs for any considerations under the *Native Title Act 1993* and the *Aboriginal Heritage act 1972* respectively.
27. Under the City’s Town Planning Scheme 1, the subject land is zoned “Parks and Recreation”. A telecommunication facility is an approved use in accordance with the Scheme.

STRATEGIC IMPLICATIONS

28. This item directly relates to the following elements from the Albany Insight ~ Beyond 2020 Corporate Plan...

Priority Goals and Objectives:

Goal 4: Governance... The City of Albany will be an industry leader in good governance and service delivery.

Objective 4.3 Deliver excellent community services that meet the needs and interests of our diverse communities.

POLICY IMPLICATIONS

29. Council adopted a Property Management – Leases Policy in 2008. 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.
30. The operational guidelines used to apply the Policy for Commercial leases/licences include the following:
- Commercial leases/licences on Crown Reserve require preliminary approval from the Minister for Lands prior to agreement to lease/licence.
 - Rental to be set using market valuation at intervals of five years unless otherwise agreed to by Council.
 - Rental increments for intervening years to be set by applying Consumer Price Index, All Groups (Perth).

- Rental Agreements involving third parties are to have prior Council approval.
- Lessees must have business insurance, public liability and workers compensation insurances as minimum.

31. The recommendation is consistent with Council Policy – Property Management – Leases.

RISK IDENTIFICATION & MITIGATION

Risk	Likelihood	Consequence	Risk Rating	Mitigation
New licence not approved - paging service not available to paging customers	Unlikely	Minor	Low	Seek to negotiate terms to Council satisfaction Collaborate closely with Vodafone Hutchinson Pty Ltd to ensure mutually agreeable outcomes
New licence not approved - no rental	Unlikely	Insignificant	Low	Seek to negotiate terms to Council satisfaction Collaborate closely with Vodafone Hutchinson Pty Ltd to ensure mutually agreeable outcomes Seek alternate Licensee as last resort

FINANCIAL IMPLICATIONS

32. All costs associated with the development, execution and completion of the new licence documentation including but not limited to legal, advertising and survey will be borne by the proponent, Vodafone Hutchinson Pty Ltd.
33. The licence rental will be determined by a current market valuation provided by an independent Certified Practising Valuer.
34. The licence rental will be directed to COA 140530 Income – Misc Commercial.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

35. Council has the following options in relation to this item, which are:
- a. Approve Vodafone Hutchinson Pty Ltd request for a new licence on Mount Melville Lookout telecommunication facility on portion of Crown Reserve 2681 for purpose of a Paging Satellite System.
 - b. Decline the request.
36. Should Council decline the request, Vodafone Hutchinson Pty Ltd will be required to remove their equipment and return the site to its original condition.
37. Council could then invite expressions of interest to licence a portion of area on the Mount Melville Lookout telecommunication facility.
38. Vodafone Hutchinson Pty Ltd would have to find an alternate location should they wish to continue providing the paging service.

SUMMARY CONCLUSION

39. Given Council has previously approved the licence purpose and associated equipment, the benefit of the paging service being provided to the Albany community at no cost to Council, the Vodafone Hutchinson Pty Ltd request for a licence on the Mount Melville Lookout telecommunication facility located on portion of Crown Reserve 2681 for the continued purpose of a Paging Satellite System for a term of three years with an option for two further three year terms is recommended.

Consulted References	<ul style="list-style-type: none">• Council Policy – Property Management – Leases• <i>Local Government Act 1995</i>• <i>Land Administration Act 1997</i>
File Number (Name of Ward)	PRO381 (Frederickstown Ward)
Previous Reference	OCM June 1996 OCM 05 June 2001 Item 12.2.3 OCM 19 September 2006 Item 13.5.2