

4.7: NEW LEASE – TELSTRA CORPORATION LIMITED – PORTION OF RESERVE 44720, MT CLARENCE

Land Description	: Crown Reserve 44720 and being Lot 1377 on Plan 7800 and being whole of the land contained in Certificate of Title Volume LR3123 Folio 620, Mt Clarence
Proponent	: Telstra Corporation Limited
Owner	: Crown
Responsible Officer(s)	: Executive Director Corporate Services (G Adams)
Maps and Diagrams	



IN BRIEF

- Council is requested to consider Telstra Corporation Limited's (Telstra) request for a new lease on portion of Crown Reserve 44720 over area it currently occupies for the purpose of continuing Telstra mobile phone and wireless broadband services for the Albany area.
- Lease term being five years with an option for three further five year terms.

**ITEM 4.7: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council APPROVE the request from Telstra Corporation Limited for a new lease over portion of Crown Reserve 44720 and being Lot 1377 on Plan 7800, Mt Clarence subject to:

- 1. Lease term being five years with an option for three further five year terms.**
- 2. Lease commencement date being retrospective from 21 October 2011.**
- 3. Lease rental being determined by a current market valuation provided by an independent Certified Practicing Valuer.**
- 4. Lease rent reviews being every three years by market valuation with Consumer Price Index applied for intervening years.**
- 5. Lease area being 130 square metres.**
- 6. Lease purpose being the operation and maintenance of telecommunication facilities.**
- 7. Lessee 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 Mt Clarence telecommunication facility.**
- 8. Section 18 of the *Lands Administration Act 1997*, the Minister for Land's consent is obtained.**
- 9. Section 3.58 of the *Local Government Act 1995* advertising requirements.**
- 10. All costs associated with the operations and maintenance of the lease area to be payable by the proponent.**
- 11. All costs associated with the development, execution and completion of the Deed of Lease to be payable by the proponent.**

BACKGROUND

1. Crown Reserve 44720 is under a Management Order H696344 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Community and Telecommunications" for a term not exceeding 21 years and subject to the consent of the Minister for Lands.
2. Crown Reserve 44720, an area of 886.68 square metres is located at Lot 1377 Forts Road Mt Clarence.
3. The Mt Clarence telecommunications facility was initially constructed by the Albany Port Authority for communications equipment. At Council Meeting 23 January 1996 (of the former Town of Albany), Council resolved to support the application from Telstra to replace the Albany Port Authority communications equipment on Mt Clarence and approve a new lease.
4. Telstra removed the existing Port Authority infrastructure and replaced it with a 35m high slimline tower, plus three ground mounted equipment cabinets which do not exceed 2 metres in height.
5. The lease term of ten years commenced 21 October 1996 with a further five year term offered, expiring on 20 October 2011.

6. A sub-lease commenced on the 21 October 1996 between Telstra and Albany Port Authority. No rental payment was requested. This sub-lease agreement expired on 19 October 2011.
7. In September 2011 the City contacted Telstra advising that the lease was due to expire on 20 October 2011. The Lessee has been allowed to continue occupancy at the site on a month to month tenancy.
8. On the 21 December 2011 a formal request was received from Jones Lang LaSalle, acting as the Property Service provider for Telstra, for a new lease over the existing lease area currently occupied by Telstra on Mt Clarence.
9. It is noted that the *Telecommunications Act 1997* provides statutory powers to licensed carriers to enter land if agreement cannot be reached with the landowner, although this is not the favoured course of action.
10. The new lease negotiations have previously been delayed due to staff leaving Jones Lang LaSalle employment.

DISCUSSION

11. Telstra's telecommunications facility on the reserve comprises a fenced area of approximately 130 square metres and includes:
 - One x 35m Monopole.
 - One x Equipment Shelter (2.4m x 3.85m)
 - Sixteen Antennas in total:
 - Four Omni Antennas
 - Six Panel Antennas
 - Six Panel Antennas (Shared)
 - Associated Cabling
12. The telecommunications facility is part of Telstra's "Next G Network" servicing Telstra's mobile phone and wireless broadband customers for the Albany area.
13. The telecommunications facility also hosts equipment for the WA Department of Fisheries and the Albany Port Authority.
14. WA Police have approached both the City of Albany and Telstra with regard to establishing a sub-lease within this Telstra lease area and co-locating on the tower. Telstra have provided their approval to the WA Police request subject to their new lease being endorsed by Council.
15. The City has made Telstra aware of the proposed upgrade to the Princess Royal Fortress in preparation for the 2014 ANZAC Centenary commemorations, as this will impact the lease area on Crown Reserve 44720. Telstra has been provided with a concept plan for the area for information.
16. It is anticipated that the existing gate access to the lease site will need to be altered to accommodate the concept plan, plus fencing of the leased area will need to be upgraded.

Telstra has advised they have no issue with the concept plan proposal, and will liaise with the City in regards to the gate alteration and fence upgrade.

17. Telstra has met the obligations of their previous lease including payment of rent and outgoings.
18. All costs associated with the operation, ongoing maintenance and repairs of its equipment and power usage will be met by Telstra.

GOVERNMENT CONSULTATION

19. 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 has been sort for the proposed new lease on Crown Reserve 44720.
20. As this lease proposal does not require land works or changes to land title there are no *Native Title Act 1993* and the *Aboriginal Heritage Act 1972* implications.

PUBLIC CONSULTATION / ENGAGEMENT

21. 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; and
 - c. A local government can then proceed with the lease.
22. The proposed new lease 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 H696344 issued to the City of Albany with the power to lease, sub-lease or licence for the purpose of "Community 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. The *Telecommunications Act 1997* provides statutory powers to licensed carriers to enter land if agreement cannot be reached with the landowner, although this is not the favoured course of action.

27. Under the City's Town Planning Scheme 1A, the subject land is reserved for "Parks and Recreation". A telecommunication facility is classified as a public utility and can be considered as a permitted use in accordance with the Scheme with planning approval.

STRATEGIC IMPLICATIONS & ALIGNMENT TO CORPORATE PLAN

28. This item relates to the following elements from 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

29. The Council's Policy Property Management – Leases adopted in 2008 applies to the proposed new lease.
30. A revised Property Management – Leases and Licences Policy was considered at the Special Audit and Finance Committee meeting on 7 June 2012. The revised Policy has been provided to stakeholders for information and comment.
31. Any comments received will be presented at the next available Audit and Finance Committee meeting for consideration in finalising the revised Policy and subsequently noting a recommendation to Council.
32. This 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 accountable methodology and in line with statutory procedures.
33. The recommendation is consistent with Council's existing and revised Policy.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
<i>New lease not approved – mobile phone service and wireless broadband will be limited to customers</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction. Collaborate closely with Telstra to ensure satisfactory agreeable.</i>
<i>New lease not approved – financial, no rental income to Council</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction</i>
<i>New lease not approved – Telstra enter site using statutory powers</i>	<i>Likely</i>	<i>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction Collaborate closely with Telstra to ensure mutually agreeable outcomes</i>

FINANCIAL IMPLICATIONS

35. All costs associated with the development, execution and completion of the new lease documentation including but not limited to legal, advertising and survey will be borne by the proponent, Telstra.
36. The lease rental will be determined by a current market valuation provided by an independent Certified Practising Valuer.
37. The lease rental will be directed to COA 140530 Income – Misc Commercial.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

38. Council has the following options in relation to this item, which are:
- a. Approve Telstra request for a new lease on Mt Clarence over portion of Crown Reserve 44720 for purpose of continuing its occupation on the site for telecommunications facilities.
 - b. Decline the request.
39. Should Council decline the request, Telstra may enter the site using statutory powers under the *Telecommunications Act 1997* that allows licensed carriers to enter land if agreement cannot be reached with the landowner, although this is not the favoured course of action.

21/08/2012

REFER DISCLAIMER

SUMMARY CONCLUSION

40. The Lessee seeks to renew their lease over land currently occupied for a term of five years with an option for three further five year terms to continue providing mobile phone and wireless broadband services for the Albany area.
41. The Lessee has met the obligations of their previous lease including payment of rent and outgoings.
42. The lease request to allow Telstra to continue servicing the Albany area, at no cost to Council, is supported.

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)	PRO093, A136801 (Frederickstown Ward)
Previous Reference	OCM 23.01.1996