

**4.3: VARIATION AND ASSIGNMENT OF LEASE – AVIS ALBANY –
ALBANY REGIONAL AIRPORT TERMINAL**

Land Description : Lot 5643 on Deposited Plan 157458 and Lot 4861 on Deposited Plan 157338 the whole of the land contained in Certificate of Title Volume LR2088 Folio 492 at 35615 Albany Highway, Drome

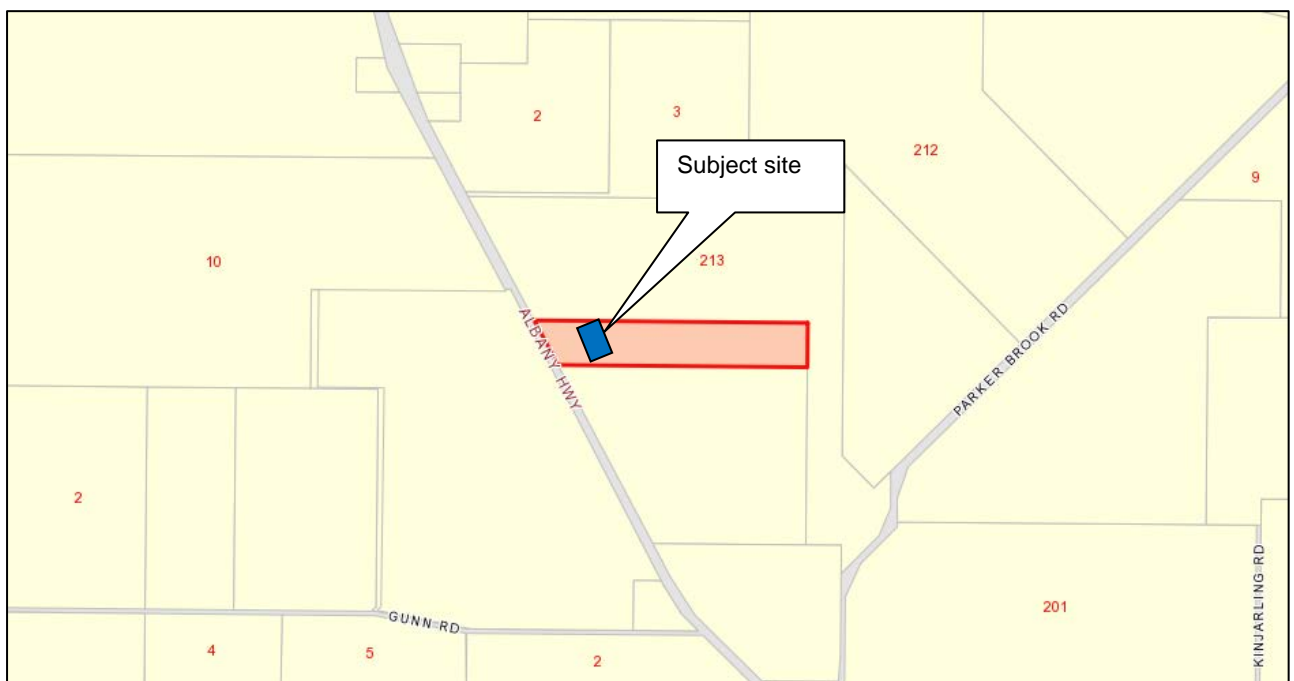
Proponent : Michael Fletcher Crawshaw and Elizabeth Jeffers

Owner : City of Albany

Attachments : Nil

Responsible Officer(s) : Executive Director Corporate Services (G Adams)

Maps and Diagrams:



IN BRIEF

- **Variation of Lease:**
Incorporate Trust provisions within the lease, being the “Warranties in Respect of the Trust” to allow the lease to be assigned to the new partnership entity.
- **Assignment of Lease:**
The existing Lessee, the partnership entity of Michael Fletcher Crawshaw and Elizabeth Jeffers (owners of Avis Albany), seek to assign the lease to the new owners of Avis Albany being the partnership entity of Michael Fletcher Crawshaw and Elizabeth Anne Jeffers as Trustee for the Michael Crawshaw and Elizabeth Jeffers Family Trust and Donald Roy Perfrement and Cathy Perfrement as Trustee for the Perfrement Family Trust trading as Avis Albany.

ITEM 4.3: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR DUFTY

SECONDED: COUNCILLOR SUTTON

That Council APPROVE the variation and assignment of lease for Michael Fletcher Crawshaw and Elizabeth Anne Jeffers, for car hire lease situated on portion of Lot 5643 on Plan 157458 at Albany Regional Airport, Drome subject to:

- 1. Lease variation to incorporate trust provisions being the “Warranties in Respect of the Trust”.**
- 2. Assignment of the existing lease from the partnership of Michael Fletcher Crawshaw and Elizabeth Anne Jeffers trading as Avis Albany to the new partnership of Michael Fletcher Crawshaw and Elizabeth Anne Jeffers as Trustee for the Michael Crawshaw and Elizabeth Jeffers Family Trust and Donald Roy Perfrement and Cathy Perfrement as Trustee for the Perfrement Family Trust trading as Avis Albany.**
- 3. All other terms of the original lease to apply.**
- 4. All costs associated with the preparation, execution and completion of the Deed of Variation and Assignment of Lease being payable by the Proponent.**
- 5. All costs associated with the ongoing operations of the lease premises being payable by the Proponent.**

CARRIED 11-0

BACKGROUND

1. In 2001 the City of Albany called for expressions of interest for three car hire sites at the Albany Regional Airport to formalise car hire operations at the Airport.
2. Avis Albany was one of the successful applicants, and Avis Albany continues to operate car hire from the kiosk located within the Albany Regional Airport Terminal building at 35615 Albany Highway, Drome.
3. The Avis Albany car hire leased premises, an area of approximately 5.2 square metres, consists of kiosk area with a customer service desk. The lease also provides four parking bays for the exclusive use of the Lessee.
4. The City of Albany owns the land and the Terminal building which the lease area is located within. There are two other car hire businesses that operate from the Airport Terminal, being Budget Rent a Car Albany and Hertz Albany.
5. In December 2001, Council approved a new lease to Wayne and Judith Robbins trading as Avis Albany, for the purpose of car hire operations for a term of 5 years, expiring on the 30 November 2006.
6. In December 2003, the City of Albany approved an assignment of the lease to Michael Fletcher Crawshaw and Elizabeth Anne Jeffers for the remainder of the term. This agreement expired in November 2006, and the current Lessee’s were invited to continue

their business on a monthly tenancy basis (as permitted under the terms of the lease) until the Business Plan for the airport was completed.

7. On 20 November 2007, Council approved a new lease to the partnership of Michael Fletcher Crawshaw and Elizabeth Jeffers trading as Avis Albany with an annual rental of \$5,200.00 plus GST, for a 5 year term with an option for a further 5 year term expiring 20 November 2017.
8. The Lessee has validly exercised the option to renew the lease.

DISCUSSION

9. During the development of the Deed of Extension of Lease for the further term for the current Lessee, Michael Fletcher Crawshaw and Elizabeth Jeffers in partnership, it became apparent this partnership entity no longer owned Avis Albany and that ownership had been transferred to a new partnership entity, on the 1 July 2009.
10. The City sought advice from the City's Solicitor to determine the process necessary to regularise these dealings. It was agreed that prior to progressing with the Deed of Extension of Lease the current partnership entity is required to assign the lease to the new partnership.
11. Pending determination of these matters by Council, the City has allowed the Lessee to remain at the property on a holding over basis as a month to month tenant. The conditions of the tenancy preserve the terms of the original lease, except in respect to the term of the lease.
12. The Lessee has been advised that the Deed of Variation and Assignment of Lease must be formalised prior to the Deed of Extension being finalised. The Lessee provided agreement to the process and associated legal costs to finalise the matter.
13. The Lessee is seeking to assign the lease to the new partnership of Michael Fletcher Crawshaw and Elizabeth Anne Jeffers as Trustee for the Michael Crawshaw and Elizabeth Jeffers Family Trust and Donald Roy Perfrement and Cathy Perfrement as Trustee for the Preferment Family Trust trading as Avis Albany.
14. To comply with Clause 7.2 of the Lease the Lessee has been advised that the assignment will be considered and will not be unreasonably withheld subject to the Lessee providing details to the City's satisfaction of the financial respectability of the incoming Assignee and all partners who will be guaranteeing the obligations under the lease.
15. As part of the due diligence process the accountant acting for the partnership and the trusts confirmed that the new partnership entity was the current owner of Avis Albany. The new partnership agreement was forwarded to the City for information.
16. The new partnership differs from the previous partnership as the new partnership is between two family trusts, and the previous partnership was between two individuals.

17. The accountant is confident that the current owner of Avis Albany has the ability to continue to operate the lease premises, given the previous years of experience operating a successful car hire business.
18. The new partnership entity has technically been operating the lease area for “Avis Albany” since July 2009, and has met the annual rental obligations.
19. The original lease provided for a market rent review in November 2012. This market review was completed with rent determined at \$6,000.00 plus GST per annum. Consumer Price Index review is applied on the anniversary of the commencement date each year, including any extension of the term.
20. The current lease does not provide for trust provisions. A variation to the lease is required to incorporate trust provisions including the “Warranties in Respect of the Trust”.
21. It is noted that Council Officers do not have delegated authority to approve any variation to lease for whatever reason, and that all such requests be referred to Council for determination.

GOVERNMENT CONSULTATION

22. No Government consultation is required as lease area is located within City of Albany owned land.

PUBLIC CONSULTATION / ENGAGEMENT

23. No consultation with the public for the variation and assignment of lease is required as the original lease complied with advertising requirements.

STATUTORY IMPLICATIONS

24. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings.
25. Under the City’s Town Planning Scheme 3, the subject land is currently zoned “Rural”. Provision for Car Hire Operators was detailed within the Airport Terminal approved plans; therefore, the car hire business of Avis Albany has consent under this approval.

STRATEGIC IMPLICATIONS

26. 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.*
- *Tourism Development.*

Proposed Strategies

- *Develop clear processes and policies and ensure consistent, transparent application across the organisation.*
- *Improve and expand tourism infrastructure and attractions.*

POLICY IMPLICATIONS

27. Council adopted a revised Property Management – Leases and Licences Policy in September 2012.
28. The 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.
29. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

RISK IDENTIFICATION & MITIGATION

30. 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 variation of lease to allow for trust provisions – reputational loss to the City</i>	<i>Unlikely</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 variation and assignment of lease – loss of business premises for the Lessee</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Further negotiate with Lessee to reach a mutually agreeable outcome.</i>

FINANCIAL IMPLICATIONS

31. All costs associated with the preparation, execution and completion of the Deed of Variation and Assignment of Lease being payable by the proponent.

LEGAL IMPLICATIONS

32. The agreement with the Lessee is a formal Deed of Lease which grants an interest in the land and buildings with enforceable conditions. It is good practice, when amending Deed provisions to be by way of a Deed of Variation of Lease.
33. The proposed Deed of Variation and Assignment of Lease will be prepared by the City's lawyers.

ALTERNATE OPTIONS

34. Council may:
- a. Refuse the request to vary the lease to incorporate the trust provisions / “Warranties in Respect of the Trust”; or
 - b. Approve the request.
35. Should Council refuse the request, the Lessee would not be in a position to assign the lease to the current owners of Avis Albany, and may be deemed to be in breach of their lease as per lease Clause 7.2 of the current lease agreement. They would then be required to remove their fixtures and fittings and vacate the property.
36. Council could then invite expressions of interest to lease the kiosk area for car hire operations.

SUMMARY CONCLUSION

37. The existing car hire lease with Michael Fletcher Crawshaw and Elizabeth Jeffers expired on the 20 November 2012, with an option of a 5 year further term.
38. The Lessee has requested a Deed of Variation and Assignment of Lease be developed to enable the Lessee to assign the lease to the new partnership entity of Michael Fletcher Crawshaw and Elizabeth Anne Jeffers as Trustee for the Michael Crawshaw and Elizabeth Jeffers Family Trust and Donald Roy Perfrement and Cathy Perfrement as Trustee for the Perfrement Family Trust trading as Avis Albany.
39. Subject to Council Resolution, upon completion of the Deed of Assignment and Variation of Lease, the option for the 5 year further term will be progressed.

Consulted References	<ul style="list-style-type: none"> • Council Policy – Property Management – Leases and Licences 2012 • <i>Local Government Act 1995</i> • <i>Local Government (Functions and General) Regulations 1996</i>
File Number (Name of Ward)	PRO184, A210239 (Kalgan Ward)
Previous Reference	OCM 20/11/2007 Item 13.5.3