

16/07/2013

REFER DISCLAIMER

4.4: NEW LEASE – ALBANY COMMUNITY RADIO INC. AT LOTTERIES HOUSE

Land Description	: Lot 211 on Diagram 94113 being whole of land contained in Certificate of Title Volume 2172 Folio 740, Centennial Park (Lotteries House)
Proponent	: Albany Community Radio Inc.
Owner	: City of Albany and the Lotteries Commission
Responsible Officer	: Executive Director Corporate Services (G Adams)

Maps and Diagrams



IN BRIEF

- Council is requested to consider a new lease at Lotteries House for Albany Community Radio Inc., over the area it has occupied since June 2009.
- Lease term being three years commencing 1 July 2013.

**ITEM 4.4: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

That Council APPROVE a new lease to Albany Community Radio Inc. at Lot 211 on Diagram 94113 known as Lotteries House subject to:

- 1. Lotteries House Tenant Management Committee approval.**
- 2. Lease term being three years, commencing 1 July 2013.**
- 3. Lease area being 101 square metres.**
- 4. Lease rental being \$12,516.30 plus GST per annum as determined by the Lotteries House Tenant Management Committee.**
- 5. Lease purpose being office space.**
- 6. Lease rent reviews being carried out annually on 1 July by the Lotteries House Tenant Management Committee.**
- 7. Costs associated with the preparation and implementation of the lease documentation, if any, to be payable by the proponent.**

BACKGROUND

1. In September 1996 a Deed of Trust was entered into between the former Town of Albany and the Lotteries Commission for the management of Lotteries House, located at 211-217 North Road, Albany.
2. The Deed required a Management Committee to be formed to oversee the management of the premises. The Lotteries House Tenant Management Committee for Albany is comprised of tenant representatives, community volunteers and a City officer.
3. The City of Albany ("the Trustee") through the administration of the Management Committee is to make and keep available the property for eligible organisations defined in Section 19 of the *Lotteries Commission Act 1990* to use exclusively for accommodation for benevolent or charitable purposes.
4. Albany Lotteries House provides secure and affordable accommodation for not-for-profit community organisations in a community service profile building. The Lotteries House conference room is hired out for workshops, meeting and other community gatherings.
5. At Ordinary Council Meeting 16 June 2009, the City of Albany with approval from Lotteries House Tenant Management Committee resolved to enter into a new lease with Albany Community Radio Inc. for a term of 1 year with no option for a further term as requested by the Proponent, commencing on 1 July 2009 and expiring on 30 June 2010.
6. At Ordinary Council Meeting 15 June 2010, the City of Albany with approval from Lotteries House Tenant Management Committee resolved to enter into a new lease with Albany Community Radio Inc. for a term of 3 years as requested by the proponent, commencing on 1 July 2010 and expiring on 30 June 2013.

7. The existing lease area of approximately 101 square metres at Lotteries House currently returns a rental of \$12,157.64 plus GST per annum. This is based on a rate per square metre of \$120.37 plus GST.
8. The City of Albany has received a written request from Albany Community Radio Inc. for a new lease at Lotteries House over the area it currently occupies for a term of 3 years commencing 1 July 2013 for the purpose of Community Radio operations.
9. The Albany Community Radio Inc. new lease request was considered and approved by the Lotteries House Tenant Management Committee at the last Committee meeting held on 12 June 2013.
10. The Lotteries House Tenant Management Committee is responsible for setting the rents to be charged per square metre of leased area. The Committee determines the rental rate by:
 - a. Reviewing the rents charged by other Lotteries House Tenant Management Committees;
 - b. Reviewing current lease rents for similar type buildings; and
 - c. Reviewing operational expenditure costs of the building and projecting operating expenses for the financial year.
11. The new rate for rent is then adopted by the Committee and applied to leases annually from 1 July. The new rate for the 2013/14 financial year is \$123.93 plus GST per square metre.
12. Under the Deed of Trust for the building, any surplus rent generated annually is placed in trust for Lotteries House major building maintenance projects. The balance of the trust account as at the end of financial year 30 June 2012 was \$54,336.00. This balance will not alter until the 30 June 2013 when end of year financial adjustments are made.
13. The City of Albany currently has eight other leases with benevolent or charitable organisations at Lotteries House.
14. Ownership of the Lotteries House building is on an undivided share basis between the Lotteries Commission and the City of Albany as Trustee.
15. The City in accordance with the Deed of Trust is responsible for structural maintenance of the entire building and the cleaning, gardening and minor maintenance of common areas. The Lessees are responsible for the cleaning and minor maintenance of their individual lease areas.

16. The City in accordance with the Deed of Trust insures the buildings, plate glass and City owned fixtures, fittings and contents. The indicative cost for 2013/2014 financial year is \$3,325.00. Additionally the City is also responsible for the Public Liability Insurance over the common areas. As the City's Public Liability Insurance contribution is based on the whole of the City of Albany and its entire activities the individual cost to Lotteries House cannot be determined.
17. The Lessees are responsible for insuring their own individual fixtures, fittings and contents and are required to hold a minimum of not less than \$10 million Public Liability Insurance. The Lessee provides to the City a copy of insurance policies prior to the commencement of the lease, and annually upon request.

DISCUSSION

18. Albany Community Radio Inc. is a not-for-profit organisation operated by a team of volunteers providing a community based radio station with a diverse range of programming to cater for the greater community including Ethnic and Religious groups, Sports, Disability, Schools and Seniors Interests.
19. Albany Community Radio Inc. are also involved in a number of outside broadcasts for events including:
 - ANZAC Day Service and Parade.
 - Agricultural Show.
 - Carols by Candlelight.
 - Rotary Radio Auction.
20. The proposed new lease will be consistent with Council's Policy – Property Management – Leases and Licences for this category of lease.

GOVERNMENT CONSULTATION

21. No government consultation is required.

PUBLIC CONSULTATION / ENGAGEMENT

22. 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.
23. Section 30 of the *Local Government (Functions and General) Regulations 1996* defines the dispositions to which the advertising requirements of Section 3.58 of the Act do not apply. Section 30 (2) (b) (i & ii) states that Section 3.58 of the Act is exempt if:

- (b) The land is disposed of to a body, whether incorporated or not –
- (i) The object of which are charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature, and
 - (ii) The members of which are not entitled or permitted to receive any pecuniary from the body's transactions,
24. Albany Community Radio Inc. is a not-for-profit charitable organisation and therefore exempt from the advertising requirements of Section 3.58 of the *Local Government Act 1995*.

STATUTORY IMPLICATIONS

25. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings.
26. Under the City of Albany Town Planning Scheme 1A, the land is zoned 'Clubs and Institutions'. The proposed use for office space is in accordance with the Scheme.

STRATEGIC IMPLICATIONS

27. This item relates to the following elements of the City of Albany Strategic Plan (2011-2021):

Key Focus Area

- *Organisational Performance.*
- *Community Focussed Organisation.*

Community Priority

- *Policy and Procedures.*
- *Support for Community Groups.*

Proposed Strategies

- *Develop clear processes and policies and ensure consistent, transparent application across the organisation.*
- *Support community groups by identifying funding opportunities.*

POLICY IMPLICATIONS

28. Council adopted a revised Property Management – Leases and Licences Policy in September 2012.
29. 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 and accountable methodology and in line with statutory procedures.
30. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>Council does not approve a new lease – reputational loss to the City</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Seek to negotiate terms to Council satisfaction.</i>
<i>Council does not approve proposed new lease – loss of operating income for Lotteries House</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Seek to negotiate terms to Council satisfaction. Seek alternative Tenant as last resort.</i>
<i>Council does not approve proposed new lease – Albany Community Radio Inc. will need to seek alternative premises</i>	<i>Unlikely</i>	<i>Major</i>	<i>Medium</i>	<i>Seek to negotiate terms to Council satisfaction.</i>

FINANCIAL IMPLICATIONS

32. Any costs associated with the preparation and implementation of the new lease documentation will be borne by the proponent.
33. All rental collected is used for Lotteries House operating expenses, including a \$5,000.00 annual service fee paid to the City to cover the City's Officers time for managing the property on behalf of the Lotteries House Tenant Management Committee.
34. There is no cost to the City to operate Lotteries House other than the City's Officers time and the indicative insurance cost of \$3,325.00 per annum for 2013/2014 financial year.
35. The new lease rental income of \$12,516.30 plus GST per annum will be directed to COA 120930 – Lotteries House Income.

LEGAL IMPLICATIONS

36. The agreement with the Lessee is a formal Deed of Lease which grants an interest in the land and buildings with enforceable conditions.

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ALTERNATE OPTIONS

37. Council may:
- a. Approve the request for a new lease, or
 - b. Decline the request.
38. Should Council decline the request, the proponent would be required to find alternative premises to continue community radio activities. If they are not able to do so, they may need to discontinue the service delivered to Albany and the wider community.
39. The City could then invite expressions of interest to lease the area and may risk a loss of rental during this process that may impact negatively on the operations of Lotteries House.

SUMMARY CONCLUSION

40. Albany Community Radio Inc. are seeking a new lease over 101 square metres of office space at Lotteries House, an area they have occupied since June 2009.
41. Albany Community Radio Inc. has fulfilled all previous lease obligations including payment of rent and outgoings.
42. In view of the community service provided by the Albany Community Radio Inc. to the wider community, the request for a new lease at Lotteries House is supported.

Consulted References	<ul style="list-style-type: none"> • Council Policy – Property Management – Leases and Licences • <i>Local Government Act 1995</i> • <i>Lotteries Commission Act 1990</i> • Lotteries House Tenant Management Committee Minutes – June 2013
File Number (Name of Ward)	PRO383, A150439 (Frederickstown Ward)
Previous Reference	OCM 16/06/2009 Item 12.11.2 OCM 15/06/2010 Item 14.11.4