

**CSF036: NEW LEASE AND LICENCE – ABTWA PTY LTD AS TRUSTEE
FOR ABT TRUST TRADING AS ALBANY BUSINESS
TELEPHONES – PORTION OF RESERVE 2681, MT MELVILLE
LOOKOUT**

Land Description	: Portion of Reserve 2681 and being Lot 1469 on Deposited Plan 219955 and being the whole of the land comprised in Certificate of Title Volume 3110 Folio 839 Mt Melville
Proponent	: ABTWA Pty Ltd as Trustee for ABT Trust trading as Albany Business Telephones
Owner	: Crown
Attachments	: Nil
Responsible Officer(s)	: Executive Director Corporate Services (G Adams)

Responsible Officer's Signature:



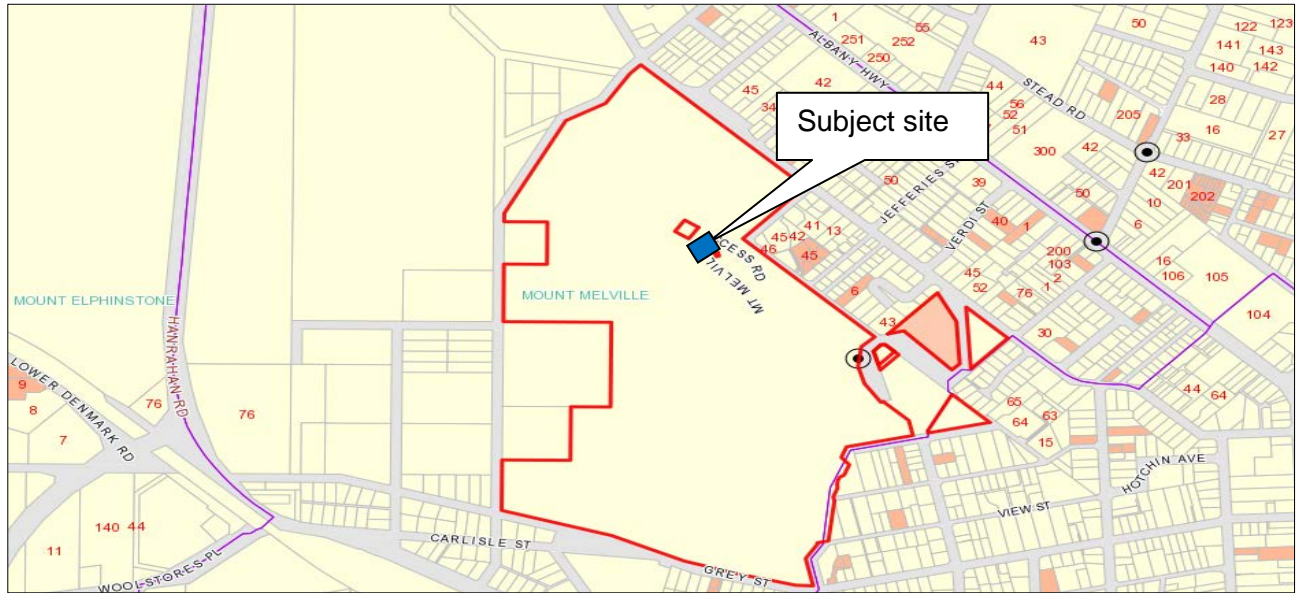
STRATEGIC IMPLICATIONS

1. This item relates directly to the following elements of the City of Albany Strategic Community Plan 2023 and Corporate Business Plan 2013-2017:
 - a. **Key Theme:** Civic Leadership.
 - b. **Strategic Objective:** 5.1 To establish and maintain sound business and governance structures.
 - c. **Strategic Initiative:** 5.1.2 Systems Development and Improvement: Improve leased property management.

IN BRIEF

- Council is requested to consider a new lease and a new licence for ABTWA Pty Ltd as Trustee for ABT Trust trading as Albany Business Telephones over the existing licence area and a reduced lease area currently occupied by the business on Mt Melville Lookout on portion of Crown Reserve 2681.
- City of Albany will occupy the vacated one square metre area within the bunker on the ground floor of the lookout (previously leased by Albany Business Telephones) to accommodate the City's current and future telecommunication requirements.
- Lease term being three years with an option for a further three year term.
- Lease purpose being for telecommunication facilities and services.

Maps and Diagrams



CSF036: COMMITTEE RECOMMENDATION VOTING REQUIREMENT: SIMPLE MAJORITY

That Council APPROVE the request from ABTWA Pty Ltd as Trustee for ABT Trust trading as Albany Business Telephones for a new lease and new licence on land situated at Lot 1469 Serpentine Road, Mt Melville being portion of Crown Reserve 2681, subject to:

- 1. Lease term being three years commencing 21 November 2013, with an option for a further three year term.**
- 2. Lease and licence rental fee being determined by a current market valuation provided by a licensed Valuer.**
- 3. Lease area being approximately five square metres located within the bunker area at the base of the Mt Melville Lookout.**
- 4. Licence area being portion of tower located on top of Mt Melville Lookout. Licence (non-exclusive) area being within the bottom eight metres from the base of the telecommunications tower.**
- 5. Lease purpose being telecommunication facilities and services.**
- 6. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent is obtained.**
- 7. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.**
- 8. All costs associated with the preparation, execution and completion of the Deed of Lease and Licence and ongoing operations being payable by the Lessee.**

CSF036: COMMITTEE RECOMMENDATION

MOVED: COUNCILLOR CALLEJA
SECONDED: COUNCILLOR GREGSON

That Council APPROVE the request from ABTWA Pty Ltd as Trustee for ABT Trust trading as Albany Business Telephones for a new lease and new licence on land situated at Lot 1469 Serpentine Road, Mt Melville being portion of Crown Reserve 2681, subject to:

1. Lease term being three years commencing 21 November 2013, with an option for a further three year term.
2. Lease and licence rental fee being determined by a current market valuation provided by a licensed Valuer.
3. Lease area being approximately five square metres located within the bunker area at the base of the Mt Melville Lookout.
4. Licence area being portion of tower located on top of Mt Melville Lookout. Licence (non-exclusive) area being within the bottom eight metres from the base of the telecommunications tower.
5. Lease purpose being telecommunication facilities and services.
6. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent is obtained.
7. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.
8. All costs associated with the preparation, execution and completion of the Deed of Lease and Licence and ongoing operations being payable by the Lessee.

CARRIED 12-0

CSF036: RESPONSIBLE OFFICER RECOMMENDATION

That Council APPROVE the request from ABTWA Pty Ltd as Trustee for ABT Trust trading as Albany Business Telephones for a new lease and new licence on land situated at Lot 1469 Serpentine Road, Mt Melville being portion of Crown Reserve 2681, subject to:

1. Lease term being three years commencing 21 November 2013, with an option for a further three year term.
2. Lease and licence rental fee being determined by a current market valuation provided by a licensed Valuer.
3. Lease area being approximately five square metres located within the bunker area at the base of the Mt Melville Lookout.
4. Licence area being portion of tower located on top of Mt Melville Lookout. Licence (non-exclusive) area being within the bottom eight metres from the base of the telecommunications tower.
5. Lease purpose being telecommunication facilities and services.
6. Pursuant to Section 18 of the *Lands Administration Act 1997*, the Minister for Lands consent is obtained.
7. Pursuant to Section 3.58 of the *Local Government Act 1995* advertising requirements.
8. All costs associated with the preparation, execution and completion of the Deed of Lease and Licence and ongoing operations being payable by the Lessee.

BACKGROUND

2. Reserve 2681 is 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" for any term not exceeding twenty one years and subject to the consent of the Minister for Lands.
3. Reserve 2681 an area of 56.32 hectares is located at Lot 1469 Serpentine Road, Mt Melville.
4. The City owned JA Barnesby Memorial Lookout with telecommunication tower located within Reserve 2681 is commonly referred to as the Mt Melville Lookout or Sparkplug.
5. In 2006 the City of Albany agreed to allow Albany Business Telephones to place an aerial on the Mt Melville tower, with connecting infrastructure in the base of the tower, on a temporary basis for 12 months, to monitor the efficiency of the site for its requirements.
6. The agreement permitted period was 12 months, after which a formal lease arrangement would be required, with Council approval, if Albany Business Telephones wished to remain on the site.
7. At Ordinary Council Meeting 20 November 2007, Council granted a new lease and licence to John Charles Dent as Trustee for ABT Trust trading as Albany Business Telephones for a term of three years with an option for a further three year term for the purpose of installation and operation of telecommunication facilities and services.
8. The lease area incorporated a six square metre bunker area at the base of the Mt Melville Lookout, with the non-exclusive licence area within 8 metres from the base of the tower.
9. The lease commenced on the 21 November 2007 and expired on the 20 November 2010, with an annual rental of \$1,000.00 per annum plus GST.
10. Albany Business Telephones exercised the option for a further term of three years, commencing 21 November 2010 with an annual rental of \$2,000.00 plus GST, expiring 20 November 2013.
11. In response to recent City correspondence advising the current lease and licence area are due to expire on 20 November 2013, Mr Dent requested a new lease and licence over the area currently occupied on the Mt Melville Lookout telecommunication facility.
12. The City currently has radio link equipment located on the tower with network equipment located within the public toilet plumbing duct area. This arrangement has to date been satisfactory however due to proposed equipment upgrades for radio equipment and Disaster Recovery site requirements the City is seeking suitable rack space in the bunker area currently leased to Mr Dent.
13. City staff met with Mr Dent to discuss the City's telecommunication requirements at this site. It was mutually agreed that Mr Dent would reduce the requested lease area in the bunker from six square metres to five square metres to allow for City equipment.

14. The one square metre bunker area is sufficient to accommodate the City's current and future telecommunication requirements.
15. Currently, the seven Lessees and Licensees located within the Mt Melville telecommunication facility are utilising the two utility rooms located on the ground floor of the lookout, adjacent the bunker area, and the former kiosk area to capacity.

DISCUSSION

16. The Mt Melville telecommunication tower was constructed by Optus Mobile Pty Ltd on top of the City owned Mt Melville Lookout in 1995.
17. Upon completion of the tower, the ownership 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).
18. Optus Mobile Network Pty Ltd have no objections to the proposed new lease and licence for Albany Business Telephones given the equipment is existing and that the Lessee has been operating from the site since 2007 without issues.
19. Albany Business Telephones provides a commitment that all Lessee equipment 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.
20. Albany Business Telephones also provides a commitment that all existing equipment and any future equipment will not adversely impact on the structural integrity of the Mt Melville tower.
21. All costs associated with the operations, ongoing maintenance and repairs of its equipment and power usage will be met by Albany Business Telephones.
22. Albany Business Telephones has, on three occasions during the term of the current lease, requested payment plans in order to fulfil lease rental payments. All outstanding monies were paid in full by the required date to meet the payment plan obligations.
23. The new lease and licence will be negotiated in line with Council Policy – Property Management – Leases and Licences.

GOVERNMENT & PUBLIC CONSULTATION

24. Under Section 18 (1) of the *Land Administration Act 1997* the Department of Lands has been consulted. Minister for Land's consent will be sought for the proposed new lease and licence on portion of Crown Reserve 2681.
25. 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.
26. The proposed new lease will be advertised to comply with the requirements of Section 3.58 of the *Local Government Act 1995*.

STATUTORY IMPLICATIONS

27. 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.
28. 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.
29. Section 3.58 of the *Local Government Act 1995* defines the requirements for the disposal of property, including leased land and buildings.
30. Under the City's current Town Planning Scheme 1A, the subject land is zoned "Parks and Recreation". The existing use of telecommunication facility was approved in 1995 under Building Licence T95057 under delegation, in accordance with the Scheme.

POLICY IMPLICATIONS

31. Council adopted a revised Property Management – Leases and Licences Policy in September 2012.
32. The Policy aims to ensure that all requests for leases and licences will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.
33. The recommendation is consistent with Council Policy – Property Management – Leases and Licences.

RISK IDENTIFICATION & MITIGATION

34. 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>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction.</i>
<i>Council does not approve a new lease – loss of rental income in short term</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Seek to negotiate terms to Council satisfaction.</i>
<i>Council does not approve a new lease – telecommunication services will be limited to customers</i>	<i>Unlikely</i>	<i>Moderate</i>	<i>Medium</i>	<i>Seek to negotiate terms to Council satisfaction.</i>

FINANCIAL IMPLICATIONS

- 35. All costs associated with the preparation, execution and completion of the new lease and licence documentation including but are not limited to legal, advertising, survey and valuation will be borne by the proponent, Albany Business Telephones.
- 36. The new lease rental will be determined by a current market valuation provided by a licensed Valuer.
- 37. The new lease rental will be directed to COA 14053 Income – Misc Commercial.

LEGAL IMPLICATIONS

- 38. The agreement with Albany Business Telephones will be a formal Deed of Lease and Licence which grants an interest in the land and building with enforceable conditions and will be prepared by the City's lawyers.

ENVIRONMENTAL IMPLICATIONS

- 39. Nil

ALTERNATE OPTIONS

- 40. Council may:
 - a. Approve the request for a new lease and licence ; or
 - b. Decline the request.
- 41. Should Council decline the request, the Lessee would be required to remove their equipment and return the site to its original condition.

42. Council could then invite expressions of interest to lease this site with Council considering any new lease or licence for the vacated area.
43. Albany Business Telephones would have to find an alternative location should they wish to continue providing telecommunications services.

SUMMARY CONCLUSION

44. The current Lessee, Albany Business Telephones is seeking a new lease and a new licence over an area currently occupied at the Mt Melville telecommunication facility to continue providing telecommunication services to the Albany area.
45. Mr Dent has agreed to a reduced lease area in the bunker on the ground floor of the lookout, from six square metres to five square metres, to accommodate City required telecommunication equipment, and a non-exclusive licence area to use the tower.
46. The City will now occupy the vacated one square metre within the bunker area to accommodate current and future telecommunication equipment.
47. The Lessee has occupied this site for the past six years and has met the obligations of the previous lease including payment of rent and outgoings, at no cost to Council.
48. The lease and licence request to allow Albany Business Telephones to continue its telecommunications services to the Albany area, at no cost to Council, is supported.

Consulted References	<ul style="list-style-type: none"> • Council Policy – Property Management – Leases and Licences • <i>Local Government Act 1995</i> • <i>Land Administration Act 1997</i>
File Number (Name of Ward)	PRO360, A193726 (Frederickstown Ward)
Previous Reference	OCM 20/11/2007 Item 13.5.4