

# COMMUNITY LEASING OF LAND

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## 1. OBJECTIVES

1. To establish a standard, transparent and equitable approach to the leasing of City owned and managed property.
2. To ensure consistency and fairness with regard to lease terms, rent, fees and maintenance responsibilities.
3. To provide clear criteria for the selection of tenants.
4. To provide guidance to City Officers when negotiating and interpreting leases and licences by applying a consistent approach.
5. To provide an appropriate return to the City.
6. To ensure responsible, effective use and management of City property, consistent with the City's Strategic Community Plan and Corporate Business Plan.
7. To ensure compliance with all applicable legislation (includes *Local Government Act 1995, Local Government (Functions & General) Regulations 1996, Land Administration Act 1997, Commercial Tenancy (Retail Shops) Agreements Act 1985*).

## 2. SCOPE

This policy applies to real property owned and managed by the City of Karratha that is available for disposal by way of a lease or licence.

This policy does not apply to commercial leases which are part of a land transaction or commercial undertaking or residential properties or employee housing.

This policy does not apply to indemnity agreements, access agreements, management agreements, heads of agreements, memoranda of understanding, level of service agreements or ad hoc venue hire arrangements. However, if a lease is to follow on from one of the above-listed types of agreement, the latter should be drafted in a way that is consistent with this policy.

## 3. PRINCIPLES

The City has a significant portfolio of land holdings which include:

- Freehold land, leasehold property and Crown Land under a Management Order;
- Vacant land, land and buildings, building complexes and residential property.

It is incumbent on the City as custodian to ensure that property surplus to its own needs is utilised appropriately to provide services that benefit the community and in accordance with the principles outlined in this policy.

A decision to lease City premises should be based on the achievement or promotion of positive social, economic, sustainability and environmental outcomes and the most advantageous use of the site.

### 3.1 Equity

Where multiple applications are received from prospective tenants in relation to leasing a City property, City Officers must demonstrate fairness and equity in assessing these applications considering what each applicant has to offer.

For each applicant, the City must consider the:

- a) benefit of their occupancy to the community;
- b) purpose of the organisation;
- c) potential to attract investment and enhance amenities in the district;
- d) effect on employment in the area;
- e) effect on tourism in the area;
- f) economic return to the City; and
- g) social, environmental, sustainability and economic impact on the community.

The above list is non-exhaustive but demonstrates some factors which should be considered when selecting the most suitable tenant.

### 3.2 Transparency

The City must clearly indicate the criteria used in assessing any submissions and in the selection of tenants deemed appropriate for any given property.

In evaluating an application, City Officers should consider:

- a) the nature of the tenant entering into the agreement;
- b) proposed use of the facility and how it benefits the community;
- c) rent payable and how it was determined;
- d) term (initial and extended); and
- e) any relevant special conditions.

### 3.3 Consistency

The City must endeavour to apply consistent rules when disposing of comparable properties and to similar tenants. Standard terms and conditions should apply as far as possible.

## 4. OTHER CONSIDERATIONS

### 4.1 Return on disposal

In disposing of a property, the City must consider the value of the disposition (rent or licence fee attainable, ascertained by a market valuation if required) and in the first instance, seek payment of the full market rental value. Any reduction in rent granted to a tenant can be viewed as a potential loss of income to the City.

### 4.2 City's Entitlement to Lease

Lease terms and conditions will vary based on the nature of the City's interest in the property:

Nature of City's Interest	Impact on lease terms
City has freehold ownership	Increased flexibility to negotiate terms
Crown land where the City has a Management Order or Vesting Order.	<ol style="list-style-type: none"> <li>1. The lease must be consistent with the terms of the Management or Vesting Order. Maximum lease tenure usually limited to 21 years (or 42 years for the Airport).</li> <li>2. The land must be used in accordance with the purpose of the Reserve.</li> <li>3. Approval is required from the Minister for Lands under Section 18 of the <i>Land Administration Act 1997</i>.</li> </ol>
City is a lessee and authorised to sublease	<ol style="list-style-type: none"> <li>1. The sublease must be consistent with the terms of the head lease.</li> <li>2. Approval may be required from the head lessor.</li> </ol>

### 4.3 Type of property

Lease terms and conditions will also vary on the type of property being leased:

Type of Property	Impact on lease terms
Vacant Land	<ol style="list-style-type: none"> <li>1. Building maintenance clauses will not apply. If the tenant builds, they are 100% responsible for all future maintenance to the building structures.</li> <li>2. Planning and Development clauses will be included.</li> </ol>
Land and building	<ol style="list-style-type: none"> <li>1. Building maintenance clauses will take on increased importance.</li> <li>2. Tenant will be solely responsible for connection and payment of services and utilities.</li> </ol>
Complex or shared facilities	<ol style="list-style-type: none"> <li>1. Building maintenance clauses will include provision for common areas and sharing of tenant responsibilities.</li> <li>2. Tenant on-charged pro-rated costs of services and utilities based on a rate per m<sup>2</sup>.</li> <li>3. Standard terms and conditions should apply across the board to each tenant in any specific complex or facility without variation.</li> </ol>

### 4.4 Type of Agreement

The City may dispose of property to a potential tenant by way of a lease or licence. A determination on the type of agreement is required:

Features of a Lease	Features of a Licence
Exclusive use and occupation of an area of property.	Non-exclusive occupation of an area of property.
Grants an interest in the land which may be registered or assigned.	Does not grant an interest in the land.
More formal arrangement.	Less formal arrangement, easier to terminate.

### 4.5 Category of Tenant

Lease and licence terms and conditions will vary based on the characteristics of the tenant and use of the property. The types of tenants may include:

- Community groups and sporting groups (incorporated under *Associations Incorporations Act 2015*) and
- Not For Profit organisations (registered with ACNC).
- Commercial enterprises, retail shops, franchisees (must have ABN or ACN).
- Government departments/agencies.

### 4.6 Rental Consideration

Assessment of rental applications prior to any negotiation of lease terms will be based on categories using a tiered structure under the *Associations Incorporation Act 2015*. Where an organisation comprises a larger principal or parent body which governs or funds smaller satellite branches or program providers, the entire organisation's financial records will be assessed, not just that of the local team or division.

Within each category, the City should endeavour to maintain consistency of lease terms and conditions, while allowing variations between the categories.

Category 1		Category 2		Category 3		Category 4	
Incorporated small Community Groups		Incorporated larger Community Groups with a community purpose		Commercial Enterprises, retail shops, franchisees, all tenants at Karratha Airport		Government Departments	
With a gross annual revenue of less than \$250k		With a gross annual revenue of \$250k - \$1m		With a gross annual revenue of more than \$1m			
Peppercorn rate		50% of full market rent - in keeping with Policy CS-04 City's Community Facilities Hire and Use Charges Policy		Full market rent		Full market rent	

If an Incorporated Community Group has a change in revenue during a lease period, they can apply to the City for their category and subsequent rental terms to be reviewed.

#### 4.7 Subleasing

In the case where a Category 1 or 2 tenant paying a peppercorn or reduced rent seeks to sublease the whole or part of City premises, the City reserves the right to re-negotiate the rent for the following reasons:

A sublease may result in increased income to the tenant and higher capacity to pay; and

Any business or other commercial activities carried out on the premises may no longer be in keeping with the tenant's purpose or category description.

#### 4.8 Appeals

Requests for exemptions to this policy can be submitted to the Council of the City of Karratha for consideration.

### 5. CONSEQUENCES

This policy represents the formal policy and expected standards of the City of Karratha. Appropriate approvals need to be obtained prior to any deviation from the policy. Employees are reminded of their obligations under the Code of Conduct to give full effect to the lawful policies, decisions and practices of the City of Karratha.

### 6. ROLES AND RESPONSIBILITIES

Facility Manager (or authorised officers) – responsible for liaising and negotiating with prospective tenants. Provides instructions to Governance on negotiated terms and conditions in the lease. Standard terms to remain unchanged as much as possible.

Director (responsible for facility) – must endorse all negotiated proposed terms and conditions (other than standard) and keep other directors informed of any contentious or unusual issues regarding the disposition.

Governance Officer Leasing – responsible for drafting and facilitating execution of lease documents, obtaining Ministerial consent and liaising with external Government Departments if necessary, ensuring compliance with legislative requirements and City policy and procedures.

Chief Executive Officer and Director Corporate Services have delegated authority to approve dispositions and to execute lease and licence documents.

## 7. REFERENCES TO RELATED DOCUMENTS

- Delegations Register
- Execution of Documents policy (CG-10)
- Community Facilities Hire and Use Charges policy (CS-04)
- Execution of Documents – Operational Guidelines
- Leasing of Land – Operational Guidelines

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*This policy takes effect from the date of adoption by Council and shall remain valid until it is amended or deleted.*