



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 encourage consistency and fairness regarding lease terms, rent, fees and maintenance responsibilities.
3. To provide guidance 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 leases which are part of a land transaction or commercial undertaking under section 3.59 of the *Local Government Act 1995*, leasing residential properties or employee housing, such as Karratha Airport and The Quarter.

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.

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) 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">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).2. The land must be used in accordance with the purpose of the Reserve.3. Approval is required from the Minister for Lands under Section 18 of the <i>Land Administration Act 1997</i>. |
| City is a lessee and authorised to sublease | <ol style="list-style-type: none">1. The sublease must be consistent with the terms of the head lease.2. Approval may be required from the head lessor. |

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">1. Building maintenance clauses will not apply. If the tenant builds, they are 100% responsible for all future maintenance to the building structures.2. Planning and Development clauses will be included. |
| Land and building | <ol style="list-style-type: none">1. Building maintenance clauses will take on increased importance.2. Tenant will be solely responsible for connection and payment of services and utilities. |
| Complex or shared facilities | <ol style="list-style-type: none">1. Building maintenance clauses will include provision for common areas and sharing of tenant responsibilities.2. Tenant on-charged pro-rated costs of services and utilities based on a rate per m².3. Standard terms and conditions should apply across the board to each tenant in any specific complex or facility without variation. |

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. Categories of tenants include:

- Community 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 Term of Lease

The City's standard lease term would apply to all new leases however alternate lease terms may be offered based on:

- Length of previous term (if renewing existing tenants lease) or the recognition of previous length of term with previous lessor
- Consistent approach when disposing of comparable properties and to similar tenants
- Uniqueness of facility at specific locations
- Recognition of previous performance as a community organisation
- Demand for the facility
- Provision of a unique service to the community

4.7 Rental Consideration

Assessment of rental applications prior to any negotiation of lease terms will be based on classification using a tiered structure.

Financial statements may be interrogated further to allow removal of abnormal one-off items or income received to deliver a specific purpose (e.g. Grant Funding committed to specific expenditure) or 'pass through' of fees. This may include the removal of any 'pass through' and / or 'one-off' funding that has a direct expenditure equivalent.

Monetary thresholds are outlined within the Leasing of Land – Operational Guidelines and shall be linked and adjusted annually by CPI.

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.

Childcare rental consideration for Not-for-Profits will be calculated on percentage of child care fees received, as the discounted rate. Commercial childcare providers rental consideration will be calculated as per the classification table.

4.8 Recognition of City's Funding

All tenants that receive a reduced rent for Council's facilities will be required to acknowledge the City of Karratha's support.

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).

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. LEASING OF LAND - OPERATIONAL GUIDELINES

Operational guidelines, which accompany this policy, translate the policy into specific, actionable steps and procedures. These guidelines are developed to provide the necessary instructions and standards for City Officers to follow in their day-to-day application of this policy.

8. 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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|-------------------------|---|
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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.