

COMMUNITY LEASING OF LAND

Purpose

The purpose of this policy is to:

- a) ~~To~~ establish a standard, transparent and equitable approach to the leasing and licensing of City owned and managed property.
- b) ~~To~~ encourage consistency and fairness regarding lease terms, rent, fees and maintenance responsibilities.
- c) ~~To~~ provide guidance criteria for the selection of tenants.
- d) ~~To~~ provide guidance to City Officers when negotiating and interpreting leases and licences by applying a consistent approach.
- e) ~~To~~ provide an appropriate return to the City commensurate with the nature of use and community benefit.
- f) ~~To~~ ensure responsible, effective use and management of City property, consistent with the City's Strategic Community Plan and Corporate Business Council Plan.
- ~~f) Ensure all leasing decisions align with applicable statutory planning frameworks, including Local Planning Schemes, State Planning Policies, Structure Plans and Local Development Plans.~~
- g) ~~To~~ ensure compliance with all applicable legislation ~~(includes including the Local Government Act, planning, building and environmental health)1995, Local Government (Functions & General) Regulations 1996, Land Administration Act 1997, Commercial Tenancy (Retail Shops) Agreements Act 1985).~~

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 applies only where the proposed use of land or buildings is permissible under:

- the City's Local Planning Scheme
- reserve purpose (for Crown land under Management Order)
- any relevant planning approvals.

This policy does not apply to leasing residential properties or employee housing, or to leases which are part of a land transaction or commercial undertaking under section 3.59 of the Act 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.

Definitions

The **Act** means the *Local Government Act 1995*.

City means the City of Karratha.

Development Approval means any approval, consent, or determination required under the *Planning and Development Act 2005* and associated regulations (including Local Planning Schemes) to lawfully commence or change the use or development of land, including development approval granted by a local government or the Western Australian Planning Commission.

Management Order (Crown Land) means an order made by the Minister for Lands under the *Land Administration Act 1997* that vests the care, control and management of Crown land in a management body (including a local government), subject to specified conditions, purposes and statutory limitations.

Permissible Use means a land use or activity allowed on a parcel of land under the applicable Local Planning Scheme, including uses classified as permitted ("P"), discretionary ("D" or "A") or otherwise allowable subject to approval, as defined in the *Planning and Development (Local Planning Schemes) Regulations 2015* and the relevant zoning table.

Policy Principles

The City ~~has~~ manages a significant portfolio of ~~land holdings~~ property which includes:

- Freehold land,
- ~~L~~leasehold property, and
- ~~and~~ Crown ~~Reserve~~ Land under a Management Order.

• ~~—~~ The land varies in nature, with a mix of ~~V~~vacant land, land and buildings, ~~building complexes~~ commercial developments, community buildings, 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, health, wellbeing, sustainability and environmental outcomes and the most advantageous use of the site.

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; and
- h) compliance with Local Planning Scheme zoning and land use permissibility and alignment with structure plans, precinct plans, or place-based planning frameworks.

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

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.

Consistency

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

OTHER CONSIDERATIONS

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 should~~ be viewed-recognised as an opportunity cost to the City, representing foregone revenue in support of broader economic and community outcomes. ~~potential loss of income to the City.~~

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.	- 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). - The land must be used in accordance with the purpose of the Reserve. - 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	- The sublease must be consistent with the terms of the head lease. - Approval may be required from the head lessor.

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	• BuildingFacility maintenance clauses will not apply. If the tenant builds, they are 100% responsible for all future maintenance to the building structures. • Planning and Development clauses will be included.<u>Planning and Development clauses will be included, including requirements to obtain development approval where required and comply with zoning and land use permissibility.</u>
Land and building	• BuildingFacility maintenance clauses will take on increased importance. • Tenant will be solely responsible for connection and payment of services and utilities. • <u>Planning and Development clauses will be included, including requirements to obtain development approval where required and comply with zoning and land use permissibility.</u>
Complex or shared facilities	• BuildingFacility maintenance clauses will include provision for common areas and sharing of tenant responsibilities. • Tenant on-charged pro-rated costs of services and utilities based on a rate per m². • Standard terms and conditions should apply across the board to each tenant in any specific complex or facility without variation.

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.

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.

Term of Lease

The City's standard lease terms 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
- Measure of Community benefit and demand for services provided by the Lessee
- Planned renewal or maintenance of the property impacting the tenant.

Rental Consideration

The Leasing of Land – Operational Guidelines (Operational Guidelines) set out the tiered assessment framework for leasing entities. Assessment of rental applications prior to any negotiation of lease terms will be based on classification using a tiered structure.

Before lease terms are negotiated, each rental application will be assessed and classified under this tiered framework.

Financial statements may be ~~interrogated further to allow removal of~~ reviewed in detail to exclude abnormal one-off items, ~~or income received to deliver are restricted to a~~ specific purpose (e.g. ~~Grant Funding such as grant funding committed to specific defined~~ expenditure), ~~and/or 'pass-through' of fees or funding with an equivalent direct expense.~~ This may include the removal of any 'pass through' and/or 'one-off' ~~funding that has a direct expenditure equivalent.~~

~~Monetary~~ The applicable financial thresholds are outlined within ~~specified in~~ the *Leasing of Land – Operational Guidelines*, ~~and shall be linked and adjusted annually by CPI.~~

~~Where If an Organisation comprises a larger principal or parent body which governs or funds smaller satellite branches or program providers, applicant has related parent or subsidiary entities, the entire Organisation's financial records for all related entities~~ City will be assess the financial records of all related entities, not only those of the proposed lessee, not just that of the local team or division.

~~Childcare rental consideration ff~~ For Not-for-Profits childcare providers, discounted rent ~~will be calculated on as a~~ percentage of child-care fees ~~received income, as the discounted rate.~~ Rent for Commercial childcare providers will be determined under ~~rental consideration will be calculated as per~~ the classification table in the Operational Guidelines.

Legislative Compliance

All community leasing arrangements must comply with the:

- Planning and Development Act 2005 and applicable Local Planning Scheme;
- Land Administration Act 1997, where land is subject to a Management Order; and
- Public Health Act 2016 and Building Act 2011 requirements, where relevant.

Recognition of City’s Funding

All tenants that receive a reduced rent for ~~Council’s City owned or managed~~ facilities will be required to acknowledge the City’s ~~of Karratha’s~~ support.

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.~~

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 are 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, Director Community Experience and Director Corporate Service~~All disposals and s
~~have delegated authority to approve dispositions disposals and to execute lease and licence documents.~~

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.~~

Related Documents

Legislation & Local Laws	<u>Local Government Act 1995</u> <u>Local Government (Functions and General) Regulations 1996</u> <u>Commercial Tenancy (Retail Shops) Agreements Act 1985</u> <u>Land Administration Act 1997</u> <u>Planning and Development Act 2005</u> <u>Planning and Development (Local Planning Schemes) Regulations 2015</u>
Strategies & Plans	
Alignment to Council Plan	This policy is relevant to the Council’s approved Council Plan 2025-2035 Goal: Our community is welcoming, connected, vibrant, healthy, and safe Objective/s: 2.2 Provide community centres, spaces and facilities to cater for diverse groups and needs Priority Focus Area: Community infrastructure
Procedures, Documents & Forms	Leasing of Land – Operational Guidelines

Policy Owner

Directorate	Corporate Services
Department	Governance

Review Management

Next review due: 2031

Version Management

Version	Date	Council Resolution Number	Description
1.0	June 2022	155028	Adopted
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