

## 1 PURPOSE

The purpose of this policy is to establish clear and consistent processes and a transparent framework for the issue of long-term (10 or more years) leases on City of Darwin owned facilities, including land.

- 1.1 To support, through the granting of leases and licenses, the undertaking of commercial activities that underpin their use and activation.
- 1.2 To provide a consistent and equitable framework for the establishment and management of leasing and licensing arrangements for Council:
  - 1.2.1 Satisfies the principles of Council’s strategic and corporate policies, specifically (as may be amended from time to time):
    - Strategic Plan
    - Management Strategy
    - City Policy
    - City Strategy
    - Asset Management Policy
    - Master Plans
  - 1.2.2 Applies processes that are equitable and transparent.
  - 1.2.3 Complies with all legislative requirements

## 2 SCOPE

City of Darwin has an extensive property portfolio comprising freehold, public open space, and road reserves, which it issues various leases, licenses, and permits for periods of occupation.

This policy deals with the issue of long-term leases beyond (10) ten years in relation to Council freehold property, in a transparent manner obtaining the best value for money and outcome for community. Proposals may include “Unsolicited Proposals” as prescribed within Council’s policy number 088.

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### 3 POLICY STATEMENT

#### 3.1 Background

A lease is a right granted by City of Darwin to another to have exclusive possession of a parcel of land or part thereof for a fixed duration in return for a negotiated consideration.

Only in exceptional circumstances will a lease extend beyond this period, some of which may include additional investment by the current lease holder and or express approval by council.

#### 3.2 Long Term Lease Policy

As a general rule, City of Darwin (as custodian of public assets) would provide a long-term lease on all property through an open market format to ensure due probity of process and optimal financial return (and minimal risk).

However, one of City of Darwin's roles of participating in the marketplace via property ownership is to facilitate desired goals and objectives to ensure the growth and prosperity of the City, which if left to the private marketplace alone, may not be achievable.

This Policy applies to any form of contract which legally binds the City of Darwin council (or potentially binds Council) and includes formal contracts and other forms of contractual arrangements including heads of agreement, in principle agreement, options to purchase, leases etc.

A long-term lease is one which will exceed a period of 10 years at the time of negotiation inclusive of any renewal options. It does not take into consideration any retrospective periods of the lease which may have already expired.

#### 3.3 Circumstances for an Alternative Process

City of Darwin may undertake an alternative process for the long term lease where in City of Darwin's opinion, an alternative lease approach will achieve greater benefits to the ratepayers than could be achieved through a public process and will entertain direct negotiations to the exclusion of a public process.

The circumstances which give rise to an alternative approach include: -

- a) Where the total cost of the public process will exceed the expected community benefit. For example, where the annual lease has no significant commercial value
- b) Where there is only one identifiable lessee. For example, where a site is not large enough for development or lease in its own right and is surrounded by public roads on all sides other than the adjoining owner
- c) Where City of Darwin is bound by a contractual obligation. For example, a tenant with a first right of refusal
- d) Where a long-term lease is nearing the end of its term and implementing an open market process would impose either:

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- e) A significant and commercially undesirable reversionary cost (or risk of such cost) to City of Darwin or,
- f) An unsatisfactory capital investment scenario which will impact (or is at risk of impacting) the achievement of the Goals and Objectives of City of Darwin.
- g) the term of the extension of lease should be commensurate with a period required to satisfactorily reduce such risks or costs to City of Darwin
- h) The sitting lessee has a special interest in the land and no other similar party can be identified (i.e. a unique community-based club, education use etc.).
- i) Long term lease to adjoining owners or persons with an option over adjoining land where City of Darwin’s land is required as part of a larger scheme of development.
- j) Long term lease of land to the NT Government to facilitate a strategic project.
- k) Long term lease to a government or utility authority for the purpose of infrastructure provision.
- l) Where a public marketing process which has been undertaken in accordance with this Policy has failed to achieve the desired outcome.
- m) In response to a proposal which achieves specific policy goals of City of Darwin. This exclusion aims to allow City of Darwin to respond to an approach for the development of a unique project. Any such proposal must comprise a concept plan and description of the project and clear demonstration of the achievement of specific policy and strategic goals and objectives of City of Darwin.
- n) Where a sitting lessee or adjoining occupant propose a commercial arrangement, which is of benefit to City of Darwin. City of Darwin may take into consideration current market conditions, future investment commitments, the pre-existing relationship with the lessee and other associated risk profiles.”

#### 4 DEFINITIONS

**Commercial operation/use** means one delivered by the private sector which provides some public benefit and contributes to people.

**Community sport** is that organised by groups within the general population without unreasonable limitations on participation. Such activity may include operations of a commercial nature such as kiosks and social functions, but which are aimed at supporting the sporting activity in a not-for-profit capacity.

**Community Use** means use of a facility by the community including members of a club, institution, association, or incorporated body who has a lease/license or sub-lease/license over the facility. The level of community use of (or access to) a facility is measured by the level of usage that occurs, irrespective of whether that usage is structured or unstructured.

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**Lease** means an exclusive contractual right to a lessee to use the land, whereby the lessee facilitates access via an appropriate means (e.g. membership, sub-lease, casual booking, and entry ticket). A lease is generally provided for buildings that require a level of security of tenure however a lease may also be secured over land i.e. a ground lease. May also apply to an outdoor sports facility or field that is fully fenced.

**Licence** means a non-exclusive contractual right to occupy the licensed area and is generally provided for playing fields and grants first right of use to the licensee but allows general public access when not in use by the licensee (and any sub-licensees).

**Current Market Review** Means the highest rent obtainable for the premises taking into account all the relevant market evidence and variables on the basis of occupation of the Premises on substantially the same terms and conditions as in the lease but excluding and disregarding any cash payment or other payment, goodwill, lessee's fixtures and fittings on the premises, allowance, abatement or other concession paid or offered to the lessee under the lease or offered to lessee's of comparable premises.

## 5 LEGISLATIVE REFERENCES

S. 26(1) of the Local Government Act ("the Act") provides as follows:

A council acts:

- a) through local boards, council committees, officers, staff, and agents to whom the council has delegated powers or authorised to act on its behalf; or
- b) through officers or other persons authorised by this Act (or a by-law) to act on the council's behalf; or
- c) under its common seal.

*Note:*

*It follows that a contract will be made by a council under its common seal or by an officer or other agent of the council with authority to act on its behalf.*

Section 182(1) of the Local Government Act 2008 provides that, "Subject to the Minister's guidelines, a Council may deal with or dispose of property of which the council is the owner."

## 6 PROCEDURES / RELATED DOCUMENTS

Economic Development Strategy 2030  
Land Acquisition and Disposal Policy - 010  
Unsolicited Proposal Policy – 088

## 7 RESPONSIBILITY / APPLICATION

The General Manager Innovation, Growth and Development Services is responsible for ensuring that this Policy is adhered to and understood by Council and Council Staff.

The General Manager Innovation Growth and Development Services is responsible for the strategic oversight and management of Council's property and assets and the implementation of this policy

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