

Title:	Long Term Lease
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1	20\2501	23/02/10	Adopted
2	21\2043	16/04/2014	Revision Adopted
3	21\3649	25/08/15	Revision Adopted

1 Policy Summary

The Policy establishes clear processes for the issue of long term leases.

2 Policy Objectives

To establish a process for long term leases which is considered, fair and transparent to ensure Council obtains the best outcomes and price.

3 Background

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".

4 Policy Statement

Long Term Lease Policy

As a general rule, Council (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 Council'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 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

Circumstances for an Alternative Process

Council may undertake an alternative process for the long term lease where in Council'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:-

- i) 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
- ii) 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
- iii) Where Council is bound by a contractual obligation. For example, a tenant with a first right of refusal
- iv) Where a long term lease is nearing the end of its term and implementing an open market process would impose either:
 - A significant and commercially undesirable reversionary cost (or risk of such cost) to Council or,
 - An unsatisfactory capital investment scenario which will impact (or is at risk of impacting) the achievement of the Goals and Objectives of Council.

the term of the extension of lease should be commensurate with a period required to satisfactorily reduce such risks or costs to Council.

v) 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).

vi) Long term lease to adjoining owners or persons with an option over adjoining land where Council's land is required as part of a larger scheme of development. Long term lease of land to the NT Government to facilitate a strategic project.

vii) Long term lease to a government or utility authority for the purpose of infrastructure provision.

viii) Where a public marketing process which has been undertaken in accordance with this Policy has failed to achieve the desired outcome.

ix) In response to a proposal which achieves specific policy goals of Council. This exclusion aims to allow Council 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 Council.

x) Where a sitting lessee or adjoining occupant propose a commercial arrangement which is of benefit to Council. Council may take into consideration current market conditions, future investment commitments, the pre-existing relationship with the lessee and other associated risk profiles”

5 Legislation, terminology and references

Legislation

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.

7 Evaluation and review

Council can alter this Policy or replace it with a new policy at any time so long as it does not affect a process which has already commenced.