



## FINANCE – LEASING POLICY

Type:	Council Policy		
Owner:	Director Corporate Services		
Responsible Officer:	Administration Manager		
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Legislation Reference:	Part 37 of the <i>Local Government Act 2019</i>		

### 1 PURPOSE

Katherine Town Council must implement the principles of sound financial management. These include managing financial risks, pursuing spending and policies that are consistent with a reasonable degree of stability, ensuring decisions are made with future generations in mind and openly disclosing financial information through publishing annual financial statements.

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

This policy outlines the key elements of Council's management of long-term leases and provides Council with a framework to support the equitable, efficient and effective management of Council owned and managed buildings and public land.

### 2 SCOPE

The policy applies to all Elected Members and Council employees with responsibility for making decisions about leasing Council buildings and public land.

This Policy applies to leasing of Council buildings and public land for periods of more than 12 months. It does not cover licences of occasional or short-term hire or non-exclusive use that have separate charges as set out in Fees and Charges Schedule.

### 3 DEFINITIONS

**Goods and Services Tax (GST)** means a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia.

**Lease** means a right granted by Katherine Town Council to another to have exclusive possession of building or parcel of land or part thereof for a fixed duration in return for a negotiated consideration. A lease enables exclusive use over a particular building or piece of public land for a specified term and outlines the rights and obligations of both parties to the occupancy.

**Lessee** means a person or organisation that holds the lease granted by Katherine Town Council for a building or piece of public land.

**Market rent** means the annual rent that can be reasonably expected to be paid in the open market for a property or space within a property. The market rent is determined by comparing premises/land of comparable use in which advice will be sought by a licensed real estate agent.

**Public land** means any land (including a public reserve) vested in or under the control of the Council and can include a natural area, a sportsground, a park or reserve, an area of cultural significance, or an area for general community use. However, public land does not include a road or land to which the *Crown Lands Act 1992* applies (that is, land that Council controls but which is owned by the Northern Territory Government).

## 4 DETAILS

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Council may enter into leases of buildings or public land owned or controlled by Council to provide for the exclusive access to a facility by a private individual or community group. Council officers will encourage users of the facility to provide access to other community user groups and the general public.

Leases enable Council to encourage optimal use of Council buildings and public land to cater for a range of user groups while obtaining a contribution from users for the costs of providing the facilities. This helps to facilitate economic development and encourage and support investment and employment opportunities in Katherine.

Generally, Council (as custodian of public assets) provides leases through an open market format to ensure probity of process, optimisation of financial return and to minimise risk. However, there may be occasions where Council can facilitate desired goals and objectives to ensure the growth and prosperity of Katherine, which if left to the private marketplace alone, may not be achievable.

While Council seeks to provide the best value to the community through seeking a market rent return on leased property, Council recognises the social, cultural and recreational benefits of services and activities organised and provided by community groups and not-for-profit organisations and it may subsidise rent for these groups where Council agrees it is appropriate.

Council recognises that many user groups and organisations have a strong historical affiliation with the facilities or public land they use and have contributed funds and in-kind to their development. However, past contributions of funds or in-kind by user groups and organisations do not convey permanent or preferential access to that facility or public land.

All new leases will require formal Council resolution and must be signed by the Chief Executive Officer. Any new lease must be executed by the lessee within 120 days (unless agreed by Council) from the date of the Council resolution approving the lease.

The purpose of any lease must be compatible with the permitted use prescribed by the *Planning Act 1999* within zoning under the Northern Territory Planning Scheme.

## COMMUNITY CONSULTATION

Leasing of buildings and public land in control and management of Council will be undertaken in full consultation with major stakeholders including community representatives and in accordance with relevant legislation.

If Council proposes to grant a lease on Council buildings or public land, the proposal will undergo a period of community consultation. The consultation will include:

- information sufficient to identify the buildings and/or land concerned
- the purpose for which the buildings and/or land will be used under the proposed lease
- the term of the proposed lease (including options for renewal), and

- the name of the person/organisation to whom it is proposed to grant the lease.

Submissions about the proposed lease can be made in writing to Council within a period of 28 days of community consultation commencing.

## LEASE AGREEMENT

A Lease Agreement is a legally binding contract used to commit to the terms of a lease, subject to certain conditions occurring.

### Term of agreement

The term of the lease agreement can range from one year up to 12 years, including options for renewal.

Leases for more than five years, or for a first term and option period/s totalling more than 5 years, must be determined by tender in accordance with the Procurement Policy, except if the lessee is a non-profit organisation.

Leases of public land cannot be longer than 12 years (including the period of any options to renew) in accordance with the *Planning Act 1999*, excluding the lease of part of a building.

### Renewal of agreement

Where a current lease or other formal agreement exists, it will be honoured until its expiry and on the conditions permitted within the existing agreement.

While Council supports the continued occupation of buildings and public land by particular groups and organisations, it will encourage shared multi-use where it does not currently occur. A review of usage and management options for leased Council buildings and public land will be undertaken within the last six months of the lease agreement period. This review will consider existing usage, the potential for multi-users and any changing community needs.

The lessee must seek a renewal of the lease agreement between nine and no later than six months before expiry of the agreement. Renewal will be considered if rental payments have been on time and the lessee has complied with the terms of the lease agreement.

Renewal of any lease agreement will require approval from the Chief Executive Officer.

### Expired agreement

Within nine months, and no later than six months prior to the expiry date of the agreement, the lessee will be required to provide written notification to Council outlining their position and interest to renew the lease agreement or intention to allow it to terminate at expiry.

If notification is not received within the nominated timeframe, Council will deem that the lease agreement is to be terminated.

Council officers will notify the lessee of the notification requirement, seven months prior to the expiry date.

## RENTAL VALUE

For a leased property, Council seeks to recover rent at market value although in some cases a rental subsidy may be applied.

Market rental assessments will be obtained for all Council's buildings and public land proposed for lease, by suitably qualified real estate agent and will be updated on an annual basis. In certain circumstances a rental assessment may be required from an independent suitably qualified valuer.

If the assessed market value is not agreed upon with the proposed lessee, the applicant is entitled to obtain their own independent valuation by a suitably qualified valuer. If a significant difference in value applies, the valuer will be required to meet with the Chief Executive Officer to determine a resolution on the market value.

Where it is clear a proposed lessee has an ability to pay a market rental or fee, the rental/fee payable shall be the market rate as determined by the assessment.

### Provision of rental subsidies – community group or not-for-profit organisation

Council recognises that some community groups or not-for-profit organisations may not have the ability to pay market rent. In these circumstances, the organisation can apply for a rental subsidy. The extent of the rental subsidy will be determined according to Council's objectives and using the established criteria which forms part of this policy and is shown in Attachment 1.

Proposed lessees will need to apply to Council for a rental subsidy, including evidence of registration as a community group or not-for-profit organisation and the most recent audited annual financial statements.

Subsidised rental will be subject to a review if Council becomes aware that applicable criteria elements have changed. The lessee will be required to annually submit copies of audited financial statements through the term of the lease agreement.

Council seeks to ensure that the cost to Council for the provision of rental subsidies is transparent. As Council is offering an annual subsidy this should be noted as an "in-kind donation" in Council's aggregate record of donations to the community. All subsidies made under the policy, are made as "in-kind donations" in the form of the use of the facility for a lesser amount in return for the services that they offer to the community as well as the maintenance responsibilities that they may undertake on the property.

If the proposed lessee is not satisfied with the level of rental subsidy determined, the process will be reviewed by a panel which will consist of Director Community Services, Director Corporate Services and the Administration Manager. If considered appropriate, an independent member, internal or external to Council will be invited to participate in the review process.

Council resolution will be required for the application of any rental subsidy.

### Provision of rental subsidies – commercial

From time to time, Council may wish to negotiate a reduced rate of rent for commercial lessees in situations where:

- significant capital contribution is made by the lessee to upgrade the building/public land
- the lessee is providing a service which Council considers will benefit the community
- the building/public land is in a prominent position and leaving it empty would undermine the economic vibrancy of an area, or
- leaving a building empty may invite anti-social behaviour and result in the building being vandalised.

In these cases, Council may consider a reduced rate of rent, in a manner which preserves the commercial interests of both parties.

### Rental review

Rental rates will be subject to an annual review and increased either by the Consumer Price Index (CPI) rate at the time of the review or a fixed percentage, as specified in the lease agreement.

Leases extending beyond a five-year term will have a market rental assessment review applied six months prior to the anniversary of the commencement date of the fifth year. The new rent will be negotiated in accordance with the terms of the agreement and this policy.

### Goods and Services Tax (GST)

All lessees must pay GST on rent. GST is payable in addition to the rent calculated, unless otherwise stated.

## MAINTENANCE, IMPROVEMENTS AND PRESENTATION

Responsibilities in relation to maintenance, improvements and presentation of leased buildings and public land will be fully detailed in the lease agreement. The following general rules will apply:

- Unless otherwise determined, Council is responsible for the external structural integrity of Council buildings. A lessee, however, is responsible for maintaining the external building in its existing condition and this may include painting, graffiti removal, etc. The responsibilities will be detailed in the lease agreement.
- Unless otherwise determined, the lessee of the facility will be responsible for the internal maintenance of the facility.
- Where a lessee voluntarily undertakes extensions or improvements to the exterior of a facility (e.g. pergola, sunshade), they are responsible for the maintenance and presentation of those improvements. No alterations or modifications are to be undertaken without Council consent and planning approval, if applicable. Preparation of any Development Applications is the responsibility of the lessee, but Council will be required to sign the Development Application as the landowner. (Council granting owners consent to the application does not imply or guarantee development consent, as an assessment of the proposal will need to be made under the *Planning Act 1999*).

Facility fit-out improvements undertaken by the lessee will remain the property of the lessee.

Structural modifications, additions and improvements undertaken with the consent of Council will remain the property of Council as owner of the facility or public land.

## OUTGOINGS

The lessee will be responsible for all outgoings as they apply to the leased building or public land. Responsibilities in relation to outgoings will be fully documented within the lease agreement. In general, the following outgoings will be the responsibility of the lessee:

- telephone and internet
- commercial waste, sanitary, sewerage and cleaning charges
- insurance premiums (although not building insurance for Council-owned buildings)
- fire protection
- charges for gas, electricity, oil and water separately metered and consumed in or on the leased facility or public land, and
- all other charges and impositions by any public utility or authority for the supply of any service separately metered or supplied to the premises.

This is not an exclusive list and there may be other outgoings that relate to specific buildings and/or public land uses.

## OBLIGATIONS OF LESSEE

Lessees of Council buildings and public land are expected to comply with the terms of the lease. If a lessee breaches an agreement, Council officers may serve a Notice to Remedy a Breach of Agreement requiring rectification of the breach or payment of compensation of the breach.

If a lessee does not comply with a Notice to remedy a breach or to pay compensation or if the lessee continues to commit breaches of the agreement, the lease agreement can be terminated by the Chief Executive Officer.

The cost of complying with statutory requirements or advertising costs incurred during the community consultation period are to be met by the proposed lessee.

All new agreements and those requiring renewal will attract a document preparation fee on a cost recovery basis including reasonable Council administration costs.

Council reserves the right to engage a legal representative to prepare lease documentation. Accordingly, the lessee shall be responsible for the payment of the 'reasonable' costs of Council or its legal representative in relation to the preparation of the lease agreement. Prior to engaging legal representation, a quote shall be obtained and provided to the proposed lessee/licensee.

## 5 ASSOCIATED POLICIES/DOCUMENTS

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Financial Management Practice Handbook

Fees and Charges Schedule

Procurement Policy

## 6 REFERENCES AND RELATED LEGISLATION

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*Local Government Act 2019*

*Crown Lands Act 1992*

*Planning Act 1999*

Northern Territory Planning Scheme

### Revision History

Version	Approval date	Details of change	Responsible officer
1	2020	Created	CEO
2	14/04/2023	Revision for compliance with new <i>Local Government Act 2019</i>	Director, Corporate Services

## MATRIX CRITERIA FOR DETERMINING LEVEL OF RENTAL SUBSIDY FOR LEASES FOR COMMUNITY GROUPS AND NOT-FOR-PROFIT ORGANISATIONS

Criteria	Each Answer is worth 4 points	Each Answer is worth 3 points	Each Answer is worth 2 points	Each Answer is worth 1 point
<b>Organisational status and structure</b>	The organisation is locally based, stand alone and not-for-profit. It has a voluntary management committee, comprised mainly of local area representatives.	The organisation is locally based, has a regional focus, is stand alone and not-for-profit. It has a voluntary management committee, comprised partly of local area representatives.	The organisation is a locally based service outlet or project that is part of a larger not-for-profit organisation, it has a voluntary advisory committee, comprised partly of local area representatives.	The organisation is a locally based service, outlet or project that is part of a larger not-for-profit organisation. There is limited or no local area representation on the advisory committee or similar.
<b>Capacity to undertake range of administrative and management responsibilities</b>	Depends on assistance from volunteers for all administrative and management functions.	Paid staff undertake some of the administrative and management functions and volunteers assist with the other tasks.	Staff undertake majority of administrative and management functions with additional assistance provided by umbrella organisation.	Umbrella organisation carries out majority of administrative and management functions.
<b>Extent of service provided by the organisation</b>	The broader community is a beneficiary of services established by the organisation.	Service is significantly used by number of specific sections of the local community.	While the organisation provides a direct service to only a small number in the local community, it forms a part of a larger service provision.	Service is only used by a small number of the local community.
<b>Extent of accessibility of facility to community</b>	Facilities are accessible to many in the local community (managed by Council).	Facilities are generally accessible to the local community (managed by Council).	Facilities have limited accessibility to others in the local community (any fees charged for use come to Council).	Facilities not accessible to others in the local community or limited access with funds (if charged) going to lessee.
<b>Numbers/ type of services providers</b>	A unique service (only one of its kind).	One of a number of providers of a community service.	One of a number of providers meeting a less critical community need (in terms of Council's identified targets) or meeting an identified recreation need.	Providers meets social or recreational needs only.
<b>Social and Community benefit</b>	Service is unique and specific and meets high level of need, or service meets identified social/community needs, with most service users from low socio-economic or disadvantaged backgrounds.	Service meets identified social/community needs, with service users from a range of socio-economic backgrounds.	Service meets a broad social / community need.	Service is valued by the community but it is not focused on meeting an identified social/community need.

Criteria	Each Answer is worth 4 points	Each Answer is worth 3 points	Each Answer is worth 2 points	Each Answer is worth 1 point
Capacity to charge fees and generate revenue	Limited or no ability to generate revenue.	Some ability to generate revenue and charge fees which may be varied to reflect ability of clients to pay.	Has capacity to charge fees and generate revenue.	Operates on a profit basis.
Access to other sources of funding	No access to other sources of funding.	Limited access to other sources of funding (no more than 5% total).	Access to other sources of funding – federal, NT and/or local funding which provides between 5-30% of total funding.	Access to other sources of funding – federal, NT and/or local funding which provides more than 30% funding.
Direct competition with commercial ventures?	No. Main activity is not a commercial activity.	While business is not a commercial activity, some aspects of the business are in direct competition with other organisations or businesses.	While they are in direct competition with commercial providers, they provide added or differentiated service to users.	In direct competition with commercial providers.
Reactive and ongoing maintenance	Will take responsibility for internal and external reactive maintenance as detailed in the lease agreement including full cleaning of the facility.	Will take responsibility for almost all the internal and external reactive maintenance as detailed in the lease agreement including majority of cleaning of the facility.	Will take responsibility for some of the internal and external reactive maintenance as detailed in the lease agreement including minor cleaning of the facility.	Will not take responsibility for the internal and external reactive maintenance including no cleaning of the facility.

### Calculating the Subsidy

The level of subsidy is based on the number of points. To calculate the subsidy, add up all the points for each criteria and apply to the categories in the table (right):

Subsidy will be based on the following equation:

- Market Rental = assessed per square metre value x actual value square metres of the building
- Assessed subsidised rental = Market Rental X % Subsidy

Category	A	B	C	D
Points of Range	34-40	23-33	12-22	11
Range of Subsidy	77-100%	52-76%	27-51%	Zero