

# LEASING OF LAND

## OPERATIONAL GUIDELINES

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*This guideline takes effect from the date of approval by the Executive Management Team and shall remain valid until it is amended or deleted.*

## CONTENTS

1. PURPOSE.....	3
2. BACKGROUND .....	3
3. DEFINITIONS .....	3
4. LEGISLATIVE REQUIREMENTS.....	4
5. CLASSIFICATION OF TENANT .....	4
6. PREMISES.....	5
7. TERM OF LEASE .....	6
8. CALCULATION OF RENT .....	8
9. SUBLEASING.....	9
10. SECURITY DEPOSIT .....	10
11. GST.....	10
12. DEVELOPMENT .....	10
13. MAINTENANCE.....	11
14. ASSESSMENT OF COSTS AND OUTGOINGS .....	13
15. INSURANCE.....	14
16. REGISTRATION OF LEASES.....	15
17. RECOGNITION OF CITY'S FUNDING .....	15
18. COMMUNITY BENEFIT DISCOUNT MATRIX .....	16

## 1. PURPOSE

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The purpose of these Guidelines is to assist City Officers in the negotiation of lease terms with prospective tenants in accordance with our Leasing of Land Policy (CS-25) and applicable legislation, ensuring equity, transparency and consistency.

### 1.1 Application

- a) These Guidelines apply to all City Officers involved in the leasing of property on behalf of the City.
- b) This document is in addition to the City's Leasing of Land Policy, SharePoint instructions, Promapp processes and templates available to City Officers for the purpose of negotiating and effecting a lease on behalf of the City.

### 1.2 Inconsistency

In the event of any inconsistency between these Guidelines and a Council Policy, the Council Policy takes precedence.

## 2. BACKGROUND

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The City seeks to bring all leases into conformity with the objectives and principles espoused in its Leasing of Land Policy.

## 3. DEFINITIONS

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In these Guidelines the following words have these meanings:

<b>Charity</b>	A charity must operate for a charitable purpose as evidenced by its purpose or objects, activities, annual reports, financial statements and governing and corporate documents. Must be registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC). Charitable organisations may manage commercial activities within a not-for-profit model. This is not a Commercial Enterprise.
<b>City</b>	The City of Karratha
<b>City Officer</b>	City of Karratha employee.
<b>Commercial Enterprise</b>	Any for-profit business activity.
<b>Community Group</b>	An incorporated association of members with a shared interest or purpose, working together to provide a specific benefit or service to the community.
<b>Community Benefit Matrix</b>	Matrix developed to measure broader range of Community Benefits against the City's strategic priorities
<b>Government Department</b>	Any Australian Commonwealth, State or Local Government department.
<b>Guidelines</b>	City of Karratha's Leasing of Land Operational Guidelines.

<b>Not-for-profit (NFP)</b>	A not-for-profit (NFP) is an organisation that does not operate for the profit, personal gain or other benefit of particular people (e.g., members, staff, friends or relatives). May be registered with the ACNC, or as an incorporated association.
<b>Peppercorn rent</b>	Currently \$10 per annum, exclusive of GST.
<b>Pass Through Funding</b>	Refers to a financial arrangement in which a funding source, typically a government agency or organisation, provides funds to one entity with the expectation that these funds will be passed through to another specified recipient or beneficiaries for a specific purpose or project. This may include any income that is has a direct expenditure equivalent.
<b>Tenant</b>	An organisation that has the occupation or temporary possession of City Lands. May also refer to a proposed tenant.
<b>Turnover Rent</b>	A percentage of business turnover (gross income) that a tenant pays to a landlord. May be in addition to a base rent.

In these Guidelines, the word 'lease' should be interpreted to include a licence.

#### 4. LEGISLATIVE REQUIREMENTS

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All City Officers must dispose of City property in accordance with *Section 3.58 or 3.59 of the Local Government Act 1995* and all applicable regulations.

Where the City proposes to lease Crown land in accordance with a management order, approval must be sought from the Minister of Lands pursuant to *Section 18 of the Land Administration Act 1997*.

Leases which fall under the purview of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* must comply with the requirements of that Act.

A Community Group will be incorporated under the *Associations Incorporation Act 2015*.

The City's Governance Officer (responsible for leasing) will ensure compliance with all applicable legislative requirements.

#### 5. CLASSIFICATION OF TENANT

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##### 5.1 Classification Criteria

When assessing a rental application and/or prior to negotiating lease terms, the City Officer must place the prospective tenant into one of the following classes.

Within each class, the City should endeavour to maintain consistency of lease terms and conditions, while allowing variations between the class where appropriate.

Class	Description
1	<ul style="list-style-type: none"> <li>Small Community Groups, NFPs staffed by <b>unpaid</b> members and volunteers, locally based.</li> </ul>
2	<ul style="list-style-type: none"> <li>Incorporated large Community Groups, NFPs, with <b>paid</b> employed administrators</li> </ul>
3	<ul style="list-style-type: none"> <li>Commercial Enterprises, retail shops and franchisees</li> </ul>
4	<ul style="list-style-type: none"> <li>Government Departments</li> </ul>

## 5.2 What to check when classifying a tenant

- Tenant's constitution or other incorporating documents.
- Tenant's audited financial statements for the previous financial year.  
(Allowing for figures to be further interrogated via removal of any abnormal one-off items, income classed as "Pass Through" funding or specific reviews of financials for audited programs and/or services)
- Activity undertaken or proposed to be undertaken by the tenant.

## 5.3 Other classification considerations

City Officers will need to balance the service provided by a tenant against its capacity to pay. They will also consider the City's interest in securing or retaining a tenant. A high rent for a business may make the tenancy less attractive.

City Officers may negotiate the rental amount and other lease terms if reasons are justifiable and endorsed by the appropriate delegated authority. To do this, Officers must refer to the Community Benefit Matrix to determine the tenant's suitability for a potential further discount.

# 6. PREMISES

## 6.1 What to check before offering a lease of City premises:

- Does the City have freehold ownership of the land?
- Is it Crown land?
- Does the City have a management order?
- Does the management order permit the City to lease the land?
- Is the land subject to a reserve purpose?
- What does the tenant intend to do on the land?
- Is the tenant's activity in keeping with the reserve purpose?

**Always check the certificate of title and management order prior to negotiating a lease. This information can be sourced via Records, Governance and/or Planning.**

The City must comply with any conditions shown on a management order and try to avoid a situation where the proposed use is not in keeping with the reserve purpose.

The City may make an application to the Department of Planning, Lands and Heritage (DPLH) to have a management order varied or reserve purpose changed however these applications may take many months, delaying the grant of the lease and potentially frustrating the tenant's intended purpose or activity on the site.

## 7. TERM OF LEASE

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The duration of a lease can be for one substantial term or an initial term with additional optional further terms.

### 7.1 Minimum Term – All leases: 12 months

Given the time and effort spent in negotiating, drafting, and implementing a lease, it is preferable to avoid short term leases under 1 year duration.

### 7.2 Standard Term: 5 years

The City's default lease term is 5 years, with the option of a further 5 years at the City's sole discretion.

### 7.3 Maximum Term: 20 years

For Crown land where the City has a management order, the maximum permitted term is generally 21 years. However, for a lease term exceeding 20 years, the City may be required to make an application to the Western Australian Planning Commission (WAPC) under *Section 136 of the Planning and Development Act 2005*. To avoid a further application, the maximum lease term is capped at 20 years (including all optional terms). For consistency, the cap also applies to freehold land.

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 tenant 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

The following Term of Lease Assessment Matrix will be used to determine the term of lease to be offered to a tenant

## Term of Lease Assessment Matrix

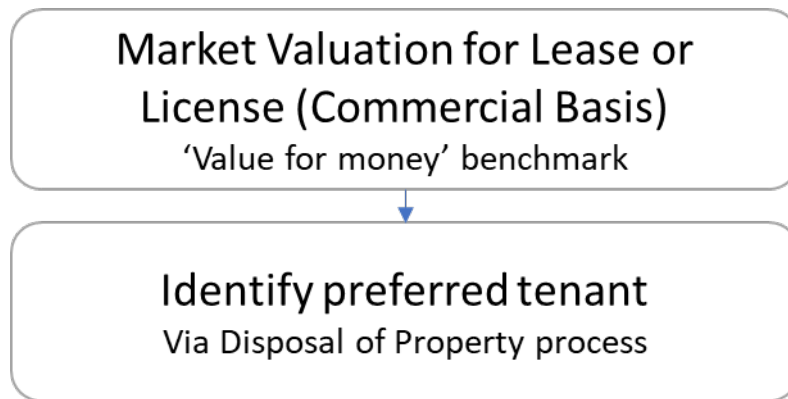
	0	1	3	5
Length of Previous Term with City of Karratha	N/A	No Previous Lease	Previous short-term lease	Longevity of previous lease
Or Length of Term with Previous Lessor (other than City of Karratha)	N/A	No Previous Lease	Previous short-term lease	Longevity of previous lease
Consistency with other like for like tenants (eg. Comparison to other City tenants that offer similar services)	N/A	No comparison	Moderate similarities	Similar / like for like
Uniqueness of Facility at specified location	N/A	No alignment with the purpose and location of the facility	Moderate alignment with the purpose and location of the facility	Services align with the purpose and location of the facility
Recognition of Previous Performance as Community Organisation (eg. good governance, financially sound)	N/A	Poor	Moderate	Excellent
Demand for the facility	N/A	High Demand	Moderate Demand	Low Demand
Provision of a unique service to the community	N/A	Low Demand	Moderate Demand	High Demand

	SCORE
Does not meet standard – opportunity to reduce length of term (min. 12 months)	0 - 12
Meets the standard term (5 terms)	13 - 24
Exceeds the standard – opportunity to increase length of term (max. 20 years)	15 - 30

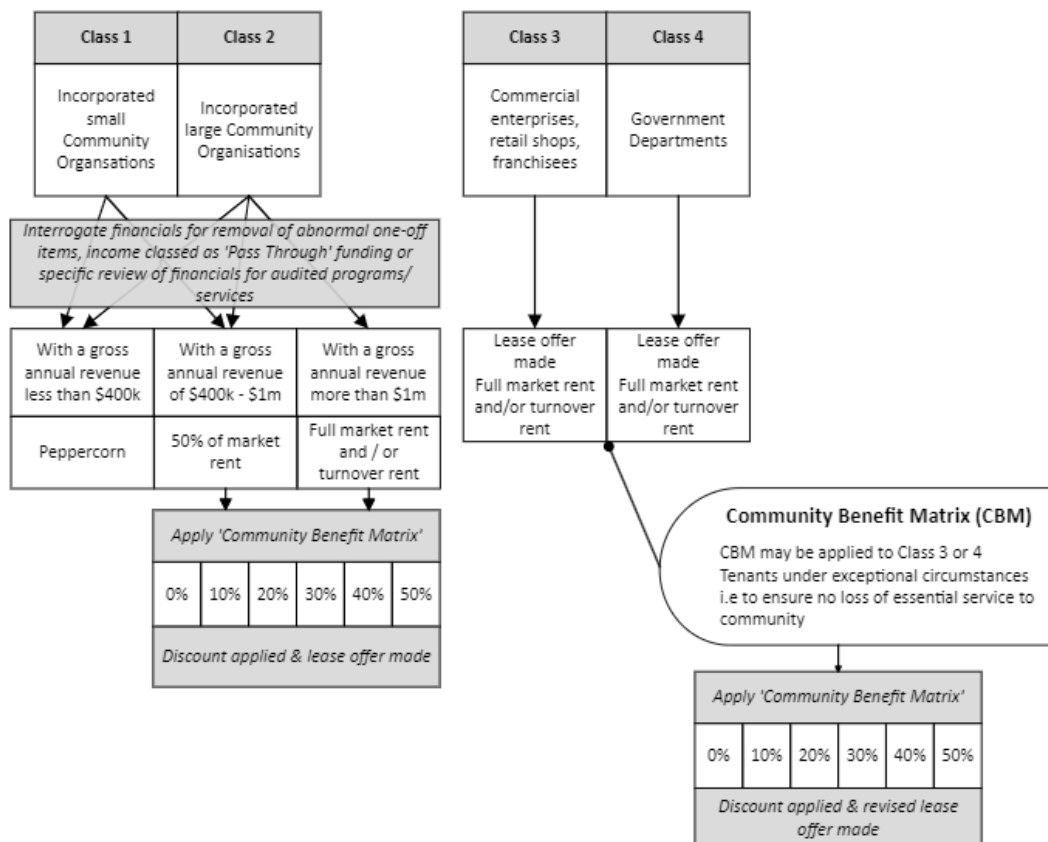
## 8. CALCULATION OF RENT

Initially the officer will determine the commercial lease or licence value, to be used as a benchmark for decision making.

The preferred tenant will be selected through a fair and transparent 'disposal' process, such as an Expression of Interest (EOI) process.



The officer will then consider the financials, proposed tenant classification and community discount matrix. In cases of substantial fluctuation in revenue, an average of the last 3 years financial figures may be accepted for consideration.





## **LEASE FEE OPTIONS**

### **Class 1**

- a) Adjusted income is below \$400k - Peppercorn Lease Fee
- b) Adjusted income between \$400k and \$1million - a Maximum Lease fee is 50% of market value, potential further discounted in 10% increments by Community Benefits Matrix.

### **Class 2**

- a) Adjusted income is below \$400k - Peppercorn Lease Fee
- b) Adjusted income between \$400k and \$1million - a Maximum Lease fee is 50% of market value, potential further discounted in 10% increments by Community Benefits Matrix.
- c) Adjusted income over \$1million - full market value, potential further discounted in 10% increments by Community Benefits Matrix – (To a max of 50% discount).

### **Class 3 & 4**

- a) Full market rental value.
- b) In exceptional circumstances - Potential further discounted in 10% increments by Community Benefits Matrix - (To a max of 50% discount).

The City Officer should always start negotiations with reference to the market rental value and any decrease in that amount must be justifiable on a case-by case basis.

In some cases, the City may also include a proportionate approach to applying outgoings on an agreed basis, for example on floor size basis. This is most appropriate where the leased space is an unmetered portion of a larger complex and there are shared common areas etc.

Lease fees for all categories shall be linked and adjusted annually by CPI (Unless otherwise agreed this will be the annualised Perth metro CPI for the March quarter).

## **9. SUBLEASING**

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In all cases, the City will need to approve sub-leasing and may request changes to rent and outgoings and may apply additional conditions.

Any changes to the rent or special conditions (regarding the sublease) agreed between the tenant and the City must be reflected in a deed of variation to the lease.

## **10. SECURITY DEPOSIT**

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### **10.1 Class 1**

For Class 1 tenants no security deposit is required.

### **10.2 Class 2 & 3**

All Class 2 & 3 tenants will be required to pay a security deposit of 2 months' rent unless reason can be shown it is not required.

### **10.3 Class 4**

Not deemed to be a financial risk.

### **10.4 For all tenants, a security deposit must be requested where:**

- a) The tenant's business is new and there is uncertainty regarding their ability to pay.
- b) The tenant has a history of financial difficulty or is in debt at the start of the lease.
- c) There are concerns about potential damage to or the tenant's maintenance of the property.

GST is not applied to the security deposit.

## **11. GST**

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All negotiated amounts must be exclusive of GST.

Any amounts appearing in the lease which do not expressly state that GST is included or excluded will be deemed to be exclusive of GST.

## **12. DEVELOPMENT**

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The tenant must seek the written consent of the City prior to commencing work on a City-owned property.

All works will be at the tenant's sole cost and must only be undertaken by licensed contractors and/or tradespersons approved by the City.

The tenant is responsible for seeking and complying with all planning and development approvals.

The City shall stipulate whether the improvements shall remain and ownership transfer to the City or if the improvements are to be removed at the tenant's cost.

In the event of a land lease where the tenant has developed or improved the land, all maintenance and repairs (including structural) are the responsibility of the tenant.

## 13. MAINTENANCE

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### 13.1 The City

Generally, the City is only responsible for servicing, repairing, or replacing items in a **City owned or managed building** and includes:

- a) Structural defects e.g., roof, walls, floors.
- b) Major services and works involving electrical, plumbing and gas services e.g., re-wiring and replacement of pipes.
- c) Major appliances e.g., air conditioning units and hot water or water filtration/softening systems.
- d) Major fixtures e.g., door frames and fixed cabinetry.
- e) Security services, systems, and locks
- f) External painting and decorating.
- g) Statutory testing requirements e.g., fire safety equipment, emergency lighting, electrical RCDs, backflow devices.
- h) Control of termites and Singapore ants (*Trichomyrmex destructor*).

### 13.2 Tenants

Tenants in all categories are required to repair and maintain:

- a) Minor items (e.g., smoke detectors, light globes, blocked drains, leaking taps).
- b) Cleaning, including air conditioner filters.
- c) Landscaping (except in shared facilities).
- d) General pest control.
- e) All the tenant's structures, fixtures and property.
- f) Graffiti removal and other vandalism.
- g) All damage caused by the tenant or its invitee.

As a rule, the City will maintain major items and the tenant is responsible for general upkeep. There may be some variation to the examples given above on a case-by-case basis if necessary. Allocated maintenance items on a City building as shown in the table below, are included in the schedule of each City lease, with as few deviations as possible.

All variations from the standard should be approved by the City's Building Maintenance team prior to final agreement with the prospective tenant.

All items listed may not apply to every property leased.

Maintenance of Premises	Lessor	Lessee
<b>Air conditioning</b>		
- Repair, service & end of life replacement	X	
- Cleaning of filters		X
<b>Lighting</b>		
- Changing light globes and tubes		X
- Changing smoke detector batteries		X
- Testing and tagging of Lessee's appliances		X
<b>Major services &amp; works</b>		
- Electrical	X	
- Plumbing	X	
Structural repairs	X	
Maintain fixtures (including smoke alarms)		X
Minor plumbing/drainage maintenance (dripping/leaking taps, blocked drains, cisterns, basins)		X
Water filtration/softening systems installed by Lessor	X	
Minor reticulation maintenance and repairs (minor leaks, damage, vandalism)		X
Major reticulation (significant leaks)	X	
Cleaning		X
Removal of rubbish (in addition to weekly pick up)		X
Security services/systems/locks	X	
Removable cabinetry e.g.) doors/windows panes and frames		X
Replacement of plate glass due to any cause		X
Floor coverings		X
Decorating/painting (internal) compulsory at end of lease - colour/design to be approved by Lessor, products/materials used to be of an equal or higher standard than existing.		X
Statutory testing requirements (Fire safety equipment, emergency lighting, electrical RCDs, backflow devices)	X	
Fencing		
- Structural (fair wear and tear)	X	
- Minor damage (day to day maintenance and tenant damage)		X
<b>Pest Control</b>		
- Termites and Singapore ants (Trichomyrmex destructor)	X	
- All other		X

### 13.3 Alterations

Tenants may request permission to make alterations to our assets. Alterations may be approved in accordance with, and subject to, the below.

- City of Karratha require a formal proposal, design, quotes and any relevant information to be submitted for approval prior to any works being undertaken.
- Works must be approved by Building Maintenance and Facility Manager
- Works to be carried out by a suitably competent and qualified person
- Works are required to meet any relevant and application Australian Standards
- Any costs borne by the works are the full responsibility of the tenant.

- Works will need to be reversed and any damages rectified upon vacate at the sole cost of the tenant, unless otherwise approved at the sole discretion of the City of Karratha.

## **14. ASSESSMENT OF COSTS AND OUTGOINGS**

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### **14.1 Rates**

All tenants, regardless of status, will pay Council Rates and Emergency Services Levy. A tenant claiming an exemption under *Section 6.26 of the Local Government Act 1995* may apply for Rate Exemption or Concession.

### **14.2 Land Tax**

Land Tax is assessed and levied by the Department of Finance directly. The City does not have the authority to exempt a tenant or to contract with a tenant to avoid payment of Land Tax. Accordingly, all City leases state that the tenant is liable to pay Land Tax however not all tenants are charged. Further information is available from the Department of Finance.

### **14.3 Strata Fees**

The tenant of any property subject to strata fees will be on-charged those fees in relation to the leased area.

### **14.4 Water and Drainage Service Charges**

Tenants who own the building they occupy on City land are responsible for payment of all water and drainage service charges.

Tenants who are the sole occupants of a City owned building are responsible for payment of all water and drainage service charges.

Tenants who occupy a portion of a City owned building may be on-charged the pro-rated cost of water and drainage services or a flat rate included in the rental amount.

### **14.5 Water Usage Charges**

All tenants are responsible for to pay their usage charges. If the leased area is individually metered, the tenant is responsible for the total cost.

If the leased area is part of a larger shared area, the tenant may be on-charged the pro-rated cost or an agreed flat rate included in the rental amount.

### **14.6 Power/Electricity Costs**

Tenants who own the building they occupy on City land are responsible for payment of all meter connection and usage fees and charges.

Tenants who are the sole occupants of a City owned building are responsible for payment of all usage charges. Likewise, if the tenant shares a building or facility but the leased area is individually metered, the tenant is responsible for payment of all usage charges.

Tenants who occupy a portion of a City owned building may be on-charged the pro-rated cost of electricity usage or an agreed flat rate included in the rental amount.

#### **14.7 Telephone and Internet**

All tenants are responsible for costs for the connection and usage of telephone and internet services to the leased area.

#### **14.8 LPG Gas**

Should any tenant require LPG gas to fuel stoves, hot water systems or any other appliance, the tenant is responsible for all charges relating to installation and usage.

#### **14.9 Legal and other Administrative Costs**

Both the tenant and the City pay their own legal costs in relation to establishing a lease. The City provides its standard lease to the tenant at no cost.

Landgate registration of a lease is not automatic and is at the tenant's cost.

Should a tenant breach an existing lease with the City, causing the City to incur enforcement costs, these costs may be on-charged to the tenant.

#### **14.10 Trade waste and/or additional waste services**

The City provides a regular weekly bin collection for general waste (green lid) and fortnightly bin collection for recycling (yellow lid).

All tenants are responsible for costs for the collection of waste as per Council's adopted fees and charges. Class 1 & 2 tenants will be charged the Residential Waste Management charges.

It is the responsibility of the tenant to arrange any specific (e.g., biohazardous waste) or additional waste management services required directly with Cleanaway, and to pay all costs of these services.

### **15. INSURANCE**

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#### **15.1 Tenant**

The tenant is required to have the following insurances:

- a) public liability insurance.
- b) contents insurance for all the tenant's property.
- c) building insurance (where the tenant owns the building).
- d) volunteer personal accident insurance (where applicable).
- e) workers' compensation insurance required under *Workers' Compensation and Injury Management Act 1981* (where applicable).
- f) product liability insurance (where applicable); and
- g) any other professional insurance related to or standard for the operation of the tenant's business or service.

Certificates of currency must be provided to the City on request.

#### **15.2 The City**

The City insures all its buildings. In some commercial tenancies, the tenant may be required to pay a pro-rated sum towards the cost of the building insurance.

## **16. REGISTRATION OF LEASES**

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It is the City's policy **not** to register its leases with Landgate unless:

- a) The tenant specifically requests registration for the purpose of obtaining finance or such other reason as agreed between the parties; and
- b) The lease term is of significant duration (more than 12 months)

Registration will be at the cost of the tenant.

The tenant will be responsible for removing registration of the lease on termination.

The reason for this is to avoid numerous encumbrances on City properties if registration is not necessary. Tenants have previously neglected to remove their registered interests from the land title after termination of the lease, leaving the City to make these applications and rectifications down the track.

## **17. RECOGNITION OF CITY'S FUNDING**

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All tenants that are a recipient of discounts for Council's facilities will be required to acknowledge the City of Karratha's support.

## 18. COMMUNITY BENEFIT DISCOUNT MATRIX

COMMUNITY BENEFIT DISCOUNT MATRIX							
		No score	Minimal	Limited	Moderate	High	Highest
a)	Organisation Structure	Organisation operates regionally/nationally, local presence serves as part of a larger entity, top down approach	Organisation operates regionally/nationally, functions independently with minimal local representation	Organisation is locally based and functions as part of a larger entity, limited local representation	Organisation is locally based and operates as its own entity, moderate local representation	Organisation is locally based and operates as its own entity, has active local representation	Organisation is locally based, operates as its own entity, solely made up of local representation
		0	1	2	3	4	5
b)	Ability to fulfil administration and management responsibilities	Over-reaching larger organisation carries out majority of administration tasks, no volunteer involvement	Administrative tasks and responsibilities are managed by a combination of local employee/s and an over-arching organisation	Volunteers provide input into administrative tasks conducted primarily by locally employed staff	Administration tasks are shared between volunteers and locally employed staff	While primarily volunteer driven, organisation occasionally has external assistance for certain administration tasks	Administrative tasks and responsibilities are entirely management by volunteers within the organisation
		0	1	2	3	4	5
c)	Breadth of services provided to community	Service does not reach the community, provides no benefit	Service is only used by small portion of community, serves a narrow audience	Service has a limited reach, benefits a moderate section of the community	Service covers a reasonable range of community needs, meeting some demands effectively	Service offers a broad reach, benefits majority of the community and addresses various community needs	Service significantly benefits the community and makes a substantial positive impact
		0	1	2	3	4	5
d)	Ability to generate income through fees or membership	Strong financial sustainability, significant income is made through membership and/or fees, operates at a profit	Large portion of income is made through membership and/or fees, external funding is an added benefit, sound financial sustainability	Moderate ability to generate income through fees and/or membership, external funding is still sourced though not heavily relied upon	Limited ability to generate income, income through fees and/or membership plays a minor role in financial planning, external funding still plays a larger part	Minimal capability to generate income, occasionally has income through fees or membership however minimal cost, heavily reliant on external funding	Unable to generate income, relies entirely on external funding, does not charge membership fees, free service
		0	1	2	3	4	5
e)	Alignment with City's Strategic Community Plan	No alignment to the Strategic Community Plan, undermines goals	No clear alignment to the Strategic Community Plan	Some alignment with the Strategic Community Plan, can be linked with at least one outcome	Moderate alignment with the Strategic Community Plan, can be linked with at least two outcomes	Well-aligned with the Strategic Community Plan, can be linked with at least three outcomes	Significant alignment with the Strategic Community Plan, can be linked with at least four or more outcomes
		0	1	2	3	4	5
f)	City's previous attempts in attracting and retaining a tenant	City has had no difficulty in attracting and retaining a tenant for this space	City has had minor challenges but has generally been successful in attracting and retaining a tenant, disposal was only advertised once	City has encountered some difficulties in attracting and retaining a tenant but following a second advertisement	City has experienced a moderate level of difficulty in attracting and retaining a tenant having sought disposal once previously in the last financial year	City has experienced a number of challenges in attracting and retaining a tenant, having sought disposals twice in the last two financial years	City has experienced significant difficulty in attracting and/or retaining a tenant
		0	1	2	3	4	5
g)	Community need and impact on service delivery to community	Organisation service is no longer relevant or necessary to community, community needs have evolved and organisation's role is no longer a need	Organisation addresses needs in community already adequately met, while service is beneficial, its absence would not significantly impact the community	Organisation meets some needs in community though impact relatively minor, other resources/services could partially or fully compensate its absence	Organisation plays a valuable role in community though not indispensable, provides service and support that enhances quality of life in community	Organisation fulfills significant and important role in community, its absence would lead to notable challenges impacting overall well-being of community	Organisation addresses an urgent and essential need within the community, without service community would suffer greatly, vital services lacking
		0	1	2	3	4	5
SCORE / DISCOUNT APPLIED							
0-5		No Discount					
6-11		10% discount					
12-17		20% discount					
18-23		30% discount					
24-29		40% discount					
30-35		50% discount					