

## LEGAL TERM SHEET

### Lot 8434 Town of Darwin – Request for Proposals (RFP)

**IMPORTANT:** This document is intended for information purposes only and does not create a legal relationship between the Territory and any Proponent.

This document does not constitute an offer capable of acceptance.

Proponents will be required to detail in the Returnable Schedules any proposed changes to the terms set out in this Legal Term Sheet.

The Territory's expectation is that the Crown lease and other legal documentation which is proposed to be entered into with the successful Proponent will be drafted during negotiations but predominately will be based upon the Legal Term Sheet and the Proposal of the successful Proponent as accepted by the Territory.

No contract exists or will arise between the Territory and any other person unless and until the final written contract and any other required legal documentation are executed between them.

#### **CROWN LEASE AND OTHER LEGAL DOCUMENTATION**

The legal documentation required to be entered into will comprise a Crown lease and other legal documentation (e.g. a development agreement) as is required by the Territory to bind the successful Proponent to undertake the development in accordance with the Proponent's Proposal as accepted by the Territory.

Any Crown lease granted will be interdependent with any other contractual documentation required to bind the successful Proponent to undertake the development in accordance with the Proponent's Proposal as accepted by the Territory. A breach of either will constitute a breach of the other, and any termination of either will automatically and without further notice terminate the other.

The Crown lease granted will be subject to all relevant provisions of the *Crown Lands Act* and associated legislation, including (but not limited to) provisions relating to general conditions, variation, reservations, breach, forfeiture, term and improvements.

#### **PARTIES**

The Crown lease will be granted to the successful Proponent in accordance with the *Crown Lands Act* and the parties to the other legal documentation required to be entered into by the Territory will be the Northern Territory of Australia and the successful Proponent.

Where after lodgement of a Proposal the Proponent requests that a substitute entity (e.g. an incorporated special purpose vehicle) be granted the Crown lease and enter into any other legal documentation required by the Territory, this request will only be approved on the condition that each entity of the successful Proponent as assessed under the RFP

Process guarantees the performance of the substitute entity, provides additional security if requested, and complies with any other conditions as may be required by the Territory.

## **SITE**

Lot 8434 Town of Darwin as identified on the Locality Plan and Survey Plan S2012/173 at Attachment A.

The successful Proponent must accept the Site “as is”.

## **PERMITTED USE**

The successful Proponent will not be permitted to use the Site for any purpose other than for the development of the Site in accordance with the successful Proponent’s Proposal as accepted by the Territory.

## **COMMERCIAL RETURN TO TERRITORY**

The Territory requires the successful Proponent to pay any agreed Consideration in relation to the Site (if any) within five (5) business days of the grant of the Crown lease, unless an alternative time for payment is agreed between the Territory and the successful Proponent.

## **DEVELOPMENT**

Any development of the Site must be carried out at the cost and risk of the successful Proponent and must be carried out in proper workmanlike manner and in compliance with industry and Australian standards and the reasonable directions of the Territory and all laws in force in the Northern Territory from time to time.

Development of the Site must also be in accordance with plans and specifications and a timeline to be agreed to by the Territory.

Timeframes for the commencement and completion of development as set out in the RFP will be included in any contractual documentation relating to the development, with appropriate consequences for failure to meet them.

The scope of the successful Proponent’s works will be subject to the Proponent’s Proposal as accepted by the Territory however they are expected to include (without limitation):

- (a) the undertaking of all clearing, construction, building, remediation, rectification;
- (b) obtaining of all approvals and clearances;
- (c) registration of easements;
- (d) all necessary co-operation with the Territory, authorities and any other person in the provision of the works and the development;
- (e) the delivery of:-
  - buildings;

- roads;
- carparking;
- bicycle ways;
- footpaths;
- earth mounds;
- open space;
- stormwater drains;
- water pipes;
- sewers;
- electrical and associated facilities;
- pedestrian pavements;
- telephone and other telecommunication infrastructure and services;
- those facilities required to irrigate certain areas of land (whether grassed or not);
- landscaping;
- soil conservation, erosion control and other environmental protection measures;
- street lighting;
- street name signs;
- subsurface ducting or conduits for any purpose;
- fencing;
- clearing;
- the maintenance of existing tracks and/or the provision and maintenance of their functional equivalent; and
- all things required by or considered necessary by any relevant authorities for the purpose of the development of the Site.

The successful Proponent must ensure that the works are carried out in such a way that they do not create any undue noise, nuisance, dust or hazard to any members of the public passing by or living in the vicinity of the Site. The working hours and days will be 7.00 am to 6.00 pm Monday to Saturday inclusive and cannot be varied without the approval of the Territory.

Completion of the works will be subject to the issue of certificates of occupancy, certificates from relevant authorities that the works have been accepted by them and certificates from independent engineers that the works have been completed in accordance with requirements of the legal documentation with the Territory.

#### **DEVELOPMENT TIMETABLE**

The successful Proponent will be required to complete the development within specific timeframes which will be outlined in a development timetable (or equivalent) in the legal documentation with the Territory.

Other than the timeframes set by the Territory in the RFP, the timeframes for the development will be as agreed between the Territory and the successful Proponent based upon the successful Proponent's Proposal as accepted by the Territory.

If the successful Proponent is unable to meet a deadline specified in the development timetable this will constitute a material breach and will be a ground for termination of the legal agreements with the Territory.

#### **SECURITY DEPOSITS**

The Territory may require the payment of security deposits as security against the risk presented to the Territory in respect of non-payment of the purchase price (if any), non-completion of the development and any other default by the successful Proponent in the performance of its obligations. The total amount of the security deposits will be in the order of 7% of overall construction costs. The amounts of the security deposits will be determined by the Territory based upon the successful Proponent's Proposal.

The Territory will require security to be paid in the form of a bank guarantee, cash deposit or insurance bond on terms acceptable to the Territory.

#### **WORKS TO BE CARRIED OUT BY TERRITORY**

The Territory will not be carrying out any works on the Site, and will not contribute financially or otherwise to development of or on the Site.

#### **TERM OF CROWN LEASE AND TENURE**

The length of the Crown lease will be negotiated between the Territory and the successful Proponent.

#### **APPROVALS**

The successful Proponent will be required to obtain all necessary development approvals from the relevant authorities in order to undertake the works relating the development (e.g. Development Consent Approval and a Development Permit). The successful Proponent must obtain the approval of the Territory prior to lodging any development application, or commencing any works in any way relating to any development application.

All approvals required to commence construction must be obtained by the successful Proponent within 12 months of the grant of the Crown lease. If the approvals are not obtained within this timeframe then either the Territory or the successful Proponent may terminate the arrangements between them, and neither party will have any claim on the other for compensation or damages of any kind.

#### **REQUIREMENTS OF AUTHORITIES**

The successful Proponent must, in the design and construction of the works, comply with all requirements of the relevant authorities, and all applicable standards and laws as are in force from time to time in the Northern Territory.

#### **SERVICES**

The successful Proponent will be responsible for the provision, construction and connection of all services necessary to support the development of the Site including without limitation, any sewerage system, trunk water mains, water reticulation system or stormwater drainage system, telecommunications system, electrical infrastructure or gas infrastructure to any network system.

The successful Proponent will also be responsible for disconnecting and decommissioning (if required) of any existing sewerage system, trunk water mains, water reticulation system or stormwater drainage system, telecommunications system, electrical infrastructure or gas infrastructure not required for the development.

#### **ACCESS TO THE SITE**

The Territory will have the right to access the Site at any time on reasonable notice during the Crown lease term.

#### **RENT**

Rent and rent reviews will be a matter for negotiation between the Territory and the successful Proponent.

#### **INSURANCE**

The successful Proponent will be required to maintain a minimum cover of \$20 million (for any one occurrence and unlimited in the aggregate) public liability insurance, and insurance as required under the *Return to Work Act* at all times during the development.

Other insurances that may be required, depending on the nature of the successful Proponent's Proposal, include:

- (a) business risks policies for all potential liability arising from construction and/or operation;
- (b) construction all risks insurance; and
- (c) any other insurances that a prudent entity would ordinarily carry for the conduct of the successful Proponent's Proposal.

The successful Proponent will be required to provide copies of certificates of currency of all required insurances at the commencement of any Crown lease term and promptly on request thereafter throughout the duration of the lease or ongoing arrangements with the Territory.

The Territory must be named or noted as an interested party on any policy of insurance.

### **RISK**

The Site will be at the risk of the successful Proponent from the grant of the Crown lease.

### **INDEMNITY**

The successful Proponent will be required to indemnify the Territory against any actions, proceedings, claims, demands, expenses, damages, costs or losses that may arise from any of the following:

- (a) a breach of the Crown lease or any other legal documentation;
- (b) loss, damage to property, or injury or death of a person that in any way arises out the development of the Site by the successful Proponent;
- (c) the use of the Site and any breach of any health, safety and environmental obligation in relation to the Site or the successful Proponent's use of the Site, including construction of the development on the Site; or
- (d) any action taken by the Territory pursuant to its rights under the Crown lease or any other legal documentation.

The successful Proponent will not be required to indemnify the Territory to the extent any action, claim or loss is caused by a negligent act or omission of the Territory.

The costs covered by the indemnity will be on a solicitor and own client basis and include both costs incurred by or awarded against the Territory.

The indemnity will cover actions, proceedings, claims, demands, expenses, damages, costs or losses whether they arise directly or indirectly.

### **OUTGOINGS**

The successful Proponent will be required to pay all outgoings in respect of the Site or incurred as a result of its use and occupation of the Site.

### **REPAIRS AND MAINTENANCE**

The successful Proponent will be required to repair and maintain the Site, including any building currently or subsequently erected upon, the Site and any other improvements throughout the term of the Crown lease.

### **ASSIGNMENT**

No assignment of the Crown lease term or any other contractual documentation required by the Territory, will be permitted without the prior written consent of the Territory, which consent may be given or withheld in the absolute discretion of the Territory and may be granted on and subject to such conditions as the Territory considers appropriate.

#### **CONDITION OF SITE AND ENVIRONMENT**

The successful Proponent must make its own enquiries in relation to the condition of the Site and must rely upon those enquiries and will be deemed to take any Crown lease with full knowledge of the state and condition of the Site including any faults or defects, either patent or latent, however caused or arising, and including any contamination, pollution or other environmental matter.

The successful Proponent must accept the Site in its condition as at commencement of any Crown lease term, and will be responsible throughout the term for all health, safety and environmental obligations in relation to the use of the Site and any construction proposed to be undertaken.

The Territory will not give any warranties and the successful Proponent must rely on its own enquiries regarding:

- (a) the suitability of the Site for the proposed works and development;
- (b) the requirements of any authority in relation to the Site, the development or the use of the Site for any purpose; and
- (c) the provisions, requirements and restrictions of any town planning or zoning scheme as it affects the Site.

The successful Proponent will be required to acknowledge and agree that it has not relied on any representations or warranties given by the Territory in relation to the Site.

#### **RELEASE**

The successful Proponent will be required to release the Territory from all present and future claims, demands and actions that arise after the grant of the Crown lease in respect of the condition of the Site including (but not limited to):

- (a) the environmental condition of the Site;
- (b) the existence of any contaminants on the Site or on adjacent land including groundwater;
- (c) the existence of any asbestos on the Site; or
- (d) breach or failure to comply with any environmental law.

## **TERMINATION**

The Territory reserves the right to terminate the legal arrangement with the successful proponent if:

- (a) the successful Proponent fails to pay any moneys due on the due date or fails to comply with any other terms of the legal arrangements and does not remedy that breach within 30 days; or
- (b) the successful Proponent has a receiver, official manager, administrator or liquidator within the meaning of the Corporations Act (or an equivalent person placed in control of a Proponent under the Associations Act) appointed over any of its assets, or is placed into liquidation, wound up or dissolved or becomes insolvent.

In the event of a breach by the successful Proponent, the Territory will have the right (but not the obligation) at the expense of the successful Proponent to make good any failure and ensure that the development is completed.

Upon any termination:

- the successful Proponent will be required to cease further works, except for such works as the Territory may specify or any work required to leave the Site in a clean, good and safe condition;
- the Territory will be entitled to retain (or if applicable re-take) possession of the Site;
- the Territory may recover from the successful Proponent as liquidated damages any other expense incurred by the Territory in connection with the successful Proponent's default including (without limitation) expenses related to:
  - (i) retaking possession of the Site;
  - (ii) rectifying any non-compliance with the plans and specifications or other provision of the legal arrangements with the Territory;
  - (iii) negotiating with and engaging another developer to undertake the whole or part of the development works; and
  - (iv) marketing, selling or leasing the Site.

## **YIELDING UP**

Upon the termination, the Site must be returned to the Territory in a safe, clean and tidy state free from rubbish and debris and with all improvements including any improvements made by the successful Proponent in good and substantial repair and condition together with as constructed drawings for all improvements unless the Territory requires any such improvements to be removed.

The Territory will retain the right to require removal of any improvements at its discretion. Any improvements required to be removed must be removed at the sole cost and expense



of the successful Proponent and any improvements not required to be removed will, at no cost to the Territory, become the property of the Territory at expiry of the term of the Crown lease or on any termination.

## **COSTS**

Each party must bear its own costs for the preparation, negotiation and entry into the Crown lease and any other legal documentation required by the Territory.

The successful Proponent must bear the costs of the Territory in respect of the negotiation and execution by the Territory of any legal documentation required specifically by virtue of the successful Proponent's Proposal (e.g. deeds of priority or deeds of step-in required by a Proponent's financier).

## **STAMP DUTY AND TAXES**

All Commonwealth, Territory and local government taxes and charges in relation to the development of the Site will be payable by the successful Proponent including, without limitation, income tax, stamp duty, payroll tax and registration fees.

## **CONFIDENTIALITY**

The final terms and conditions of any legal documentation (other than the Crown lease) will be confidential between the parties. None of the parties may disclose the final legal documentation or any details in relation thereto without the prior written consent of the other save that the Territory may without consent disclose information to a Minister, the Parliament or the Cabinet (including any committee thereof), the Administrator, the Auditor General, Ombudsman or the Information Commissioner.

## **EASEMENTS**

Any easements required from time to time within the Site by the Territory or any authority for purposes including (without limitation) power, water, sewerage, telecommunication or gas infrastructure will be granted to the Territory or such other person as the Territory may direct and the successful Proponent will not be entitled to any compensation or money from the Territory for the successful Proponent's loss of the benefit of the use of, or the right to use, the land the subject of the easement.

## **CAVEATS**

The successful Proponent must not, and must procure that any third party with whom it contracts in respect of the Site does not, place any caveat in respect of the Site.

If required by the Territory, the Territory will be entitled to secure its interest in the Site by requiring the successful Proponent to consent to the Territory registering a non-lapsing caveat in respect of the Site or any dwellings.

## **MORTGAGING**

The successful Proponent must not mortgage, charge or encumber any or all of its rights and interests under the legal arrangements with the Territory without the prior consent of the Territory, such consent not to be unreasonably withheld or delayed (and in the ordinary course such consent will be given in the case of a mortgage, charge or encumbrance granted to an approved deposit taking institution as defined in the Banking Act (Cth)) but may be granted on conditions reasonably required by the Territory, including a condition that the mortgagee enters into a tripartite deed with the Territory on terms satisfactory to the Territory.

#### **ENVIRONMENTAL PROTECTION**

The successful Proponent must comply with all laws of the Territory in respect of protection and conservation of the environment.

#### **INTELLECTUAL PROPERTY RIGHTS**

If the Territory exercises its right to terminate under the legal arrangements with the Territory, the Territory may require the successful Proponent to assign to the Territory all its right, title and interest including in all intellectual property over plans and specifications prepared with respect to the development of the Site.

#### **RESTRICTIONS ON DISPOSAL OF INTEREST IN THE SITE**

The successful Proponent will not be permitted (without the consent of the Territory) to transfer, sell, lease or otherwise dispose of its interest in any part of the Site until the successful Proponent has satisfied all of its obligations under the legal arrangements with the Territory.