

SPECIAL PURPOSES LEASES ORDINANCE 1970

689

No. 87 of 1970

An Ordinance to amend the *Special Purposes Leases Ordinance 1953-1969*

[Reserved 11 December, 1970]

[Assented to 24 December, 1970]*

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:—

1.—(1.) This Ordinance may be cited as the *Special Purposes Leases Ordinance 1970*.

Short title
and citation

(2.) The *Special Purposes Leases Ordinance 1953-1969* is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Special Purposes Leases Ordinance 1953-1970*.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.†

Commencement

3. Section 3 of the Principal Ordinance is amended—

Definitions

(a) by inserting, after the definition of “association”, the following definition:—

“‘Darwin Town Area’ means the land described in the Schedule to the *Darwin Lands Acquisition Act 1945*;” and

(b) by inserting, after the definition of “lessee”, the following definitions:—

“‘municipality’ means a municipality constituted and in existence under the *Local Government Ordinance 1954-1969*;

‘reserve price’, in relation to the right to be granted a lease of a parcel of land, means the minimum amount payable, whether in one sum or by instalments, for the right to be granted a lease of that parcel of land;

* Notified in the *Northern Territory Government Gazette* No. 52 of 30 December, 1970, page 374.
† The date fixed was 1 January, 1971 (see *Northern Territory Government Gazette* No. 52 of 30 December, 1970, page 373).

'right to a lease', in relation to a parcel of land, means right to be granted a lease of that parcel of land;".

Power to
grant leases
for special
purposes

4. Section 4 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (d) of sub-section (1.) the word "and" and inserting in its stead the word "or"; and
- (b) by omitting sub-section (2.) and inserting in its stead the following sub-section:—

"(2.) The Minister shall not grant a lease—

- (a) of land not within the Darwin Town Area, until the proposed lessee has paid the premium (if any) payable for the lease, the first year's rent and such amount as the Administrator determines to be the cost of surveying the land proposed to be leased; or
- (b) of land within the Darwin Town Area, until the proposed lessee has paid the reserve price for the right to the lease and the premium (if any) payable for the lease and, in addition, where the land proposed to be leased is not within a municipality, the first year's rent."

5. Section 5A of the Principal Ordinance is repealed and the following section inserted in its stead:—

Power to
invite
applications
for leases

"5A.—(1.) Subject to this section, the Administrator may, by notice in the *Gazette*, invite applications for the right to a lease of any parcel of unleased land and shall specify in the notice—

- (a) the date on which the applications close;
- (b) the situation and description of the land offered for lease;
- (c) the purposes for which the land may be used;
- (d) the term of the lease;
- (e) in respect of each parcel of land situated within a municipality, that the annual rent payable will be Ten cents, if and when demanded by the Minister;
- (f) in respect of each parcel of land not situated within a municipality—
 - (i) the annual rent payable; and
 - (ii) that the successful applicant will be required to pay rent in advance in respect of a period specified in the notice, being a period of not less than one year;

- (g) in respect of any improvements on the land—
 - (i) a description of them;
 - (ii) the amount payable for them; and
 - (iii) the period within which, and the terms, including interest, upon which, the successful applicant will be required to pay for them; and
- (h) in respect of each parcel—
 - (i) if the parcel is not within the Darwin Town Area, the survey fee, being the survey fee determined by the Administrator, and the unimproved capital value of the land, being the unimproved capital value of the land as determined by the Valuer-General; or
 - (ii) if the parcel is within the Darwin Town Area, the reserve price for the right to the lease, being the amount determined by the Administrator to be the reserve price for the right to the lease.

“(2.) Applications shall be made in such form and contain such particulars and be subject to such conditions as the Administrator directs.

“(3.) An applicant for a lease shall, in his application, state—

- (a) if the land is not within the Darwin Town Area—his estimate of the unimproved capital value of the land; or
- (b) if the land is within the Darwin Town Area—the amount he offers to pay for the right to a lease of the land.

“(4.) Other things being equal, the right to a lease shall be offered to the applicant who, under sub-section (3.) of this section—

- (a) in the case where the land is not within the Darwin Town Area, places the highest estimate of the unimproved capital value of the land; or
- (b) in the case where the land is within the Darwin Town Area, offers an amount for the right that is higher than the amount so offered for the right by any other applicant.

“(5.) If two or more applicants state the same amount under sub-section (3.) of this section and are otherwise equally eligible as lessees, the Administrator may determine by ballot or otherwise the applicant to whom the right to a lease may be offered.

“(6.) Notwithstanding sub-sections (4.) and (5.) of this section, the right to a lease of a parcel of land within the Darwin Town Area shall not be offered to any applicant if the amount offered by him under sub-section (3.) of this section is less than the reserve price for the right to the lease of that parcel as determined by the Administrator and specified by him in the notice inviting applications for the grant of a lease of that parcel.

“(7.) Where an applicant to whom the right to a lease is offered under this section accepts the offer and pays to the Commonwealth—

- (a) if the land is not within the Darwin Town Area the amount by which his estimate of the unimproved capital value of the land exceeds the unimproved capital value of the land specified in the notice referred to in sub-section (1.) of this section; or
- (b) if the land is within the Darwin Town Area—the amount offered by him under sub-section (3.) of this section,

and, in addition, where the land proposed to be leased is not within a municipality, the first year's rent, he shall be informed in writing that the Minister has approved that the lease be granted to him and shall thereupon obtain the right to the lease.

“(8.) At any time before the right to a lease of a parcel of land is obtained under this section, the Administrator may—

- (a) revoke the notice inviting applications for the right to a lease of the parcel; and
- (b) invite fresh applications for the right to a lease of the parcel under the same or other conditions.”.

Auctioning of
leases

6. Section 5AB of the Principal Ordinance is amended—

- (a) by omitting from paragraph (a) of sub-section (2.) the words “for the purpose of payment of rent”;
- (b) by omitting from paragraph (b) of that sub-section the words “on each parcel of land” and inserting in their stead the words “on each such parcel of land”;
- (c) by omitting sub-sections (3.) and (4.) and inserting in their stead the following sub-sections:—

“(3.) Bidding at the auction shall be—

- (a) if the land is not within the Darwin Town Area—by capital sum representing the unimproved capital value of the land; or
- (b) if the land is within the Darwin Town Area—by capital sum representing the value placed by the bidder on the right to be granted a lease of the land.

“(4.) At the auction there shall be—

- (a) if the land is not within the Darwin Town Area—a reserve value, which shall be the amount determined by the Valuer-General to be the unimproved capital value of the land; or
- (b) if the land is within the Darwin Town Area—a reserve price, which shall be the amount determined by the Administrator to be the reserve price for the right to a lease of the land.”.
- (d) by omitting paragraphs (e) to (m), inclusive, of subsection (5.) and inserting in their stead the following paragraphs:—
 - “(e) in respect of each parcel of land situated within a municipality, that the annual rent payable will be Ten cents, if and when demanded by the Minister;
 - “(f) in respect of each parcel of land not situated within a municipality—
 - (i) the annual rent payable; and
 - (ii) that the successful bidder will be required to pay rent in advance in respect of a period specified in the notice, being a period of not less than one year;
 - “(g) in respect of any improvements on the land—
 - (i) a description of them;
 - (ii) the amount payable for them; and
 - (iii) the period within which, and the terms, including interest, upon which, the successful bidder will be required to pay for them; and
 - “(h) in respect of each parcel of land to be offered—
 - (i) if the parcel is not within the Darwin Town Area—the survey fee, being the survey fee determined by the Administrator, and the reserve value of the land; or
 - (ii) if the parcel is within the Darwin Town Area—the reserve price for the right to the lease.”; and

Special Purposes Leases

(e) by omitting sub-section (6.) and inserting in its stead the following sub-sections:—

“(5A.) Where such a notice specifies a parcel of land as land the right to a lease of which is to be offered at an auction, the Administrator may, at any time before the right to a lease of that parcel of land is offered at that auction, direct that it shall not be offered at that auction; and, if he does so, that right shall not be offered at that auction.

“(6.) The successful bidder shall, at the time of the auction, pay to the Administrator—

(a) if the land is not within the Darwin Town Area—
a sum representing the difference (if any) between the reserve value of the land and the unimproved capital value of the land as bid by the successful bidder; or

(b) if the land is within the Darwin Town Area—the amount of the bid that made him the successful bidder and, in addition, where the land proposed to be leased is not within a municipality, the first year’s rent.”.

7. After section 5B of the Principal Ordinance, the following sections are inserted:—

Direct grants
in Darwin
Town Area—
reserve price by
instalments

“5BA.—(1.) Before a lease of land within the Darwin Town Area is granted under section five B of this Ordinance the Administrator shall determine an amount to be the reserve price for the right to the lease.

“(2.) The Administrator may recommend to the Minister that the Minister grant a lease of land within the Darwin Town Area under section five B of this Ordinance to an applicant for such a lease who—

(a) pays one-fourth of the reserve price; and

(b) agrees in writing to pay the remaining three-fourths of the reserve price by instalments, together with interest on so much of the reserve price as remains unpaid from time to time.

“(3.) The Minister shall consider the recommendation and, if he approves it, shall determine the amount of the instalments to be paid, the period over which the remainder of the reserve price is to be paid, and the rate of interest to be paid, and shall inform the Administrator accordingly.

“(4.) The Administrator shall inform the applicant of the Minister’s determination and, on paying one-fourth of the reserve price and agreeing to pay the remainder in accordance with the terms and conditions of the Minister’s determination, the applicant shall have the right to the lease.

"5BB.—(1.) Where an application for a lease of land has been made and the lease, if granted, is to be granted under section five B of this Ordinance, the Administrator may, if he thinks fit, determine an amount to be the premium for the lease; and, if he does so, the applicant shall not obtain the right to the lease until he has paid the premium, in addition to the reserve price.

Direct grants
premiums

"(2.) In the last preceding sub-section, "premium for the lease" means the amount that, in the opinion of the Administrator, would have been the highest bid of the successful bidder for the right to the lease if that right had been offered by auction under section five AB of this Ordinance, less, if the land is within the Darwin Town Area, the amount determined to be the reserve price under sub-section (1.) of section 5BA of this Ordinance.

"5BC.—(1.) Where a lease is granted before the person to whom it is granted has paid in full the amount of the reserve price (if any) for the right to the lease, the lease instrument shall contain a covenant under which the lessee covenants to pay the part of the amount that is unpaid as at the date on which the lease is granted, together with interest thereon, in accordance with the written agreement under which he has undertaken to do so.

Security and
restriction
on transfer,
&c. where part
of reserve
price unpaid
when lease
granted

"(2.) Where, under this Ordinance, a person has obtained the right to a lease without having paid the full amount of the reserve price the lease is not capable of being transferred or assigned either at law or in equity until the full amount of the reserve price has been paid.

"(3.) The last preceding sub-section does not apply so as to prevent a transfer or assignment of a lease or of an interest in a lease—

- (a) by operation of law or by will;
- (b) by way of mortgage; or
- (c) by a mortgagee in pursuance of a power of sale as mortgagee."

8. Section 5c of the Principal Ordinance is amended—

Payment for
improvements

- (a) by omitting paragraphs (a) and (b) of sub-section (2.) and inserting in their stead the following paragraph:—

"(a) where the right to the lease is offered by auction or where applications are invited for the right to the lease—the amount determined as the value of the improvements by the Valuer-General; and";

(b) by omitting from sub-section (3.) the words "the right of the lease" and inserting in their stead the words "the right to the lease"; and

(c) by omitting from paragraph (a) of sub-section (4.) the words "the grant of the lease" and inserting in their stead the words "the right to the lease".

Conversion of
term of lease
to perpetuity

9. Section 8A of the Principal Ordinance is amended by omitting sub-section (10.) and inserting in its stead the following sub-section:—

"(10.) Where the annual rent payable under the new lease is a specified percentage of the unimproved capital value of the land in the lease, the unimproved capital value is as determined by the Valuer-General in accordance with the Administrator's requirement under sub-section (2.) of this section until the unimproved capital value is re-appraised in accordance with section eleven A of this Ordinance."

Rent

10. Section 10A of the Principal Ordinance is amended by inserting in sub-paragraph (ii) of paragraph (b) of sub-section (1.), after the word "determined," the words "an annual rent of".

11. After section 10A of the Principal Ordinance, the following section is inserted:—

Rent of land
within a
municipality

"10B.—(1.) The rent payable in respect of land within a municipality is, in respect of any period during which it is within a municipality, an annual rent of Ten cents if and when demanded by the Minister.

"(2.) The rent payable in respect of land not within a municipality is, in respect of any period during which it is not within a municipality, such rent as is payable in accordance with section ten A of this Ordinance.

"(3.) Where a change occurs in the status of the land, so that land not within a municipality becomes land within a municipality, or land within a municipality becomes land not within a municipality, then the lessee shall be entitled to a refund of rent overpaid, or shall pay rent, as the case requires, in respect of the period from the date of the change to the end of the next succeeding annual or other rental period, the amount of the refund or the rent being calculated as if the rent in respect of the first mentioned period were payable on a day to day basis.

"(4.) Subject to sub-section (5.) of this section—

(a) a provision in a lease determining the rent payable under the lease;

- (b) a covenant by the lessee to pay rent or to pay additional rent under the lease; or
- (c) a covenant by the lessee or the Commonwealth or any mutual covenant by the lessee and the Commonwealth providing for the determination of the lease in the event of the rent payable under the lease remaining unpaid for any period,

shall cease to have any force or effect in respect of any period commencing on or after the date of commencement of the *Special Purposes Leases Ordinance 1970* during which the land comprised in the lease is within a municipality.

“(5.) Nothing in this section prevents the enforcement of any covenant by a lessee to pay rent or additional rent where any amount of rent payable under his lease in respect of a period during which the land subject to the lease is not within a municipality remains unpaid for such period as is specified in the lease.”.

12. Section 11A of the Principal Ordinance is amended—

Re-appraisal
of value of land

- (a) by omitting from sub-section (1.) the words “of land comprised in a lease” and inserting in their stead the words “of land that is not situated within a municipality and is comprised in a lease”;
- (b) by omitting from sub-section (3.) the words “of land comprised in such a lease” and inserting in their stead the words “of such land”;
- (c) by omitting from sub-section (4.) the words “of land comprised in such a lease” and inserting in their stead the words “of such land”;
- (d) by omitting from sub-section (5.) the words “of land comprised in such a lease” and inserting in their stead the words “of such land”; and
- (e) by omitting from sub-section (6.) the words “of land comprised in such a lease” and inserting in their stead the words “of such land”;
- (f) by adding at the end thereof the following sub-section:—

“(7.) In this section, a reference to the date on which the re-appraisal of the unimproved capital value of land comprised in a lease shall take effect shall be read as a reference to the date on which that re-appraisal shall effect a re-appraisal of the rent payable in respect of the land in accordance with sub-section (2.) of section ten A of this Ordinance.”.

Lessee's rights
in improvements

13. Section 19 of the Principal Ordinance is amended by omitting sub-section (6.).

Forfeiture

14. Section 23 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (d) of sub-section (1.) the words "the Minister" and inserting in their stead the words "the Administrator"; and
- (b) by omitting from paragraph (da) of sub-section (1.) the words "the Minister" and inserting in their stead the words "the Administrator".

Transitional
provision—
refund of
certain rent
payments

15. A lessee of land within a municipality who has paid rent in respect of the land comprised in his lease is entitled to a refund of any rent paid by him in respect of the period, calculated from day to day, that commences after the date on which this Ordinance comes into operation and is a quarterly period throughout which the land was within a municipality.

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