
Leasing Policy

Policy Owner:	Property Services
Contact Person:	Manager Property Services
Date of Approval:	12 July 2022 (CS04-07/22)

POLICY STATEMENT

The City of Wanneroo (**City**) is committed to providing a clear and consistent property management framework to guide access to City owned and managed Facilities under a Lease or a Licence.

POLICY OBJECTIVE

The purpose of this Policy is to provide basic principles for leasing arrangements at Facilities and specifically:

- provide a consistent and equitable approach to tenure arrangements;
- identify the categories of Facilities which may be subject to a Lease or a Licence;
- ensure all leased or licensed Facilities:
 - provide an acceptable asset utilisation;
 - provide a return to the City, where appropriate; and
 - are maintained safely and to an appropriate standard, subject to an acceptable allocation of responsibility; and
- align with the City's priorities and community expectations.

SCOPE

This policy applies to leasing of all Facilities, including but not limited to sporting, recreational, community, commercial, industrial, government and residential where the use of the Facility, or land, is not governed by the Facility Hire and Use Policy.

IMPLICATIONS (Strategic, Financial, Human Resources)

Increased asset utilisation balanced with appropriate financial returns and benefits to the community.

IMPLEMENTATION

The following principles guide how the City manages its Facilities to ensure fair and equitable use:

Maximising Usage

- The City will consider Lease proposals from interested groups, clubs or organisations requesting exclusive use of a Facility for a fixed term, other than for use in accordance with the City's Facility Hire and Use Policy. In considering a proposed Tenant that has not previously leased, licensed or hired a Facility, the City will consider factors including:

- the capacity of the proposed Tenant to perform the Lease;
- the community benefit provided by the Tenant;
- the scarcity of land available for the Lease or Licence, including whether the proposed Lease or Licence will exclude other potential users.
- The City may propose a Lease to users of Facilities under an Annual Hire arrangement, where it is considered that transfer to a lease may benefit both parties and/or reflects the actual use of the site (such as where the user enjoys exclusive possession of the site).

Prioritising Local Residents

- The City seeks to protect the interests of its ratepayers by supporting access for residents, community groups and activities based within the City of Wanneroo locality.
- The availability of Facilities for Lease will be responsive to changing needs across local communities by prioritising access for groups highlighted in Council endorsed plans and strategies, to target support where it is needed most.

Promoting Diversity of Use

- The City encourages a range of uses within its Facilities to maximise community participation and provide greater access for a range of local groups and organisations.
- The City considers opportunities for commercial use, which may include business sector partnerships, in order to increase revenue or utilisation of a Facility where there is demonstrated community benefit.
- Wherever practicable, only Tenants in Categories 3 and 4 should lease Freehold Land, unless:
 - the Tenant (if in another Category) is prepared to pay a rent based on market valuation; or
 - that Freehold Land is a dedicated Community Purpose Site.
- All other Categories will be leased on Crown Land, unless under a full commercial rental arrangement. Where revenue is not maximised on Freehold Land the opportunity cost of the Lease will need to be acknowledged in the applicable report to Council.
- Lease incentives may be considered across all Categories with the exception of Residential, in order to assist with establishing new Facilities and/or to attract new businesses, tourism or services to the City.

Affordability and standard lease terms

- The City is committed to employing an affordable leasing structure which reflects a reasonable Tenant contribution towards the cost of maintaining the Facility.
- Any report to Council to approve a Lease or Licence to a Tenant under Category 5 or Category 6 will note the rental value of the Facility, either on a Gross Rental Value (GRV) or market valuation basis.
- Each Tenant shall be classified into a single Category, which will determine the rent and/or Maintenance Fee payable (and the allocation of maintenance responsibility) when negotiating a Lease (subject to any overriding land and legislative compliance requirements).
- Lease tenure for Categories 5 and 6 will not generally be negotiated for a term (including options) longer than ten (10) years.

- Leases longer than ten (10) years may include a break clause with twelve (12) months' notice.
- Where a Tenant invests significant funds or improvements into a Facility and if the Lease is a Land Lease, a longer tenure period may be considered (having regard to the nature of the investment, which may include the scale of investment and the timing for depreciation).
- Any Lease period longer than twenty (20) years may be subject to WAPC approval.
- Leases longer than ten (10) years may include a break clause with twelve (12) months' notice.
- Only in extenuating circumstances will reduction, an abatement period or exemption of rent or Maintenance Fees apply to any Lease/Licence. In such circumstances, the group or organisation making the request will be obliged to provide sufficient evidence and justification, including audited copies of the most recent financial accounts and will be encouraged to explore alternative options such as obtaining a grant. Approval may be determined by the Chief Executive Officer (or other officer in accordance with delegated authority).
- Where exclusive use is provided over a small portion of a building, a simplified Lease (or Licence) may be offered.

Maintenance Responsibilities

- Detailed maintenance obligations specific to the Facility, including a clear determination of responsibilities will be provided in the maintenance schedules of individual Leases. In general, with the exception of Land Leases (which are dealt with below), the City will be responsible for:
 - scheduled inspections of infrastructure servicing the Facility (such as HVAC and fire services);
 - repairs arising from scheduled inspections, unless caused by the Tenant;
 - replacement of infrastructure servicing the Facility, where that infrastructure has reached the end of its useful life, unless this occurs prematurely where caused by the Tenant; and
 - structural and capital repairs and replacement, unless caused by the Tenant,
- The Tenant will be responsible for day-to-day, ongoing and minor maintenance (such as cleaning and consumables).
- Where a maintenance item is not listed in the maintenance schedule of the Lease, this should be assumed to be an obligation of the Tenant.
- Where Annexure A provides that a Maintenance Fee is payable by the Tenant, the fee will be calculated based on the City's estimate maintenance cost for its allocation tasks under the Lease, as at the commencement of the Lease.
- Maintenance Fees will be reviewed annually, including by reference to the City's actual costs for its allocated tasks under the Lease. Consumer Price Index increases may apply.
- Where a Tenant is in a Category that requires payment of a Maintenance Fee, an alternative maintenance arrangement may be permitted whereby the Tenant continues to be responsible for all maintenance, but:
 - maintenance works are undertaken using the City's pre-approved contractors or contractors approved by the City;
 - routine maintenance is to occur using a schedule prescribed by the City;

- the City must be notified of maintenance works; and
- the Tenant must keep a register of its maintenance works (including evidence of the scope of works and the insurance for the works).

Subleasing

- The Sublease rental must not exceed the rental payable under the Head Lease (on a per square metre basis) and the term must expire at least one day prior to that of the Head Lease.
- Where Commercial Activity is undertaken by a subtenant/sub licensee then the Tenant must pay to the City an amount equal to 20% of the rent payable under the Sublease, regardless of whether or not the activity is related to the activity being carried out by the Tenant.
- Where the lease is in Category 1, the tenant is to disclose if it is subleasing to another tenant and if the sub tenant is paying rent. The amount of rent paid by the sub tenant shall not exceed the amount of money the tenant pays the City.

Tenant investment

- Upon the expiry of a Lease, no recognition of prior investment by the Tenant to the capital cost of constructing the Leased Facilities will be considered.
- Where a Tenant is responsible for the construction of a Facility (Land Lease) or makes any structural additions or improvements to a Facility, the Tenant will be responsible for maintaining those structures for the initial term and any option periods (if applicable) of the Tenant's respective Lease, unless agreed otherwise by Variation.
- All Tenant works, whether at the commencement of the Lease or Licence, or subsequently during the term, will be at the Tenant's cost and will be subject to all statutory approvals and conditions required by the City (including in relation to insurance and the manner of carrying out the works). The City may also require an external consultant to review the works (such as where they impact existing improvements or services in the Facility), with this review being at the Tenant's cost.

City Rates

- Section 6.26(1) of the Local Government Act 1995 states that "Except as provided in this section all land within a district is rateable land".
- Section 6.26(2) of the Act provides for circumstances where land is not rateable and more specifically section 6.26(2)(b) provides that land "...owned by the local government and is used for the purposes of that local government ..." would be exempt.
- Accordingly, the use of a Facility by a Tenant is not considered exempt from local government rates. Any specific exemption for an individual Facility or Tenant would be a separate matter for Council.

Execution of Leases

- All Leases will be subject to Council approval unless an appropriate delegation of authority authorises the Chief Executive Officer (or other City officers) to approve the Lease/Licence.
- Variation requests must be received in writing with appropriate justification.

Land/Ground Leases

- The Tenant is responsible for all maintenance and repairs, including those of a structural or capital nature.
- The terms of the Land Lease will provide where the City has a right to stipulate, at the determination of the Lease, that the improvements shall remain and ownership transfer to the City or such improvements shall be removed at the Tenant's cost.

Licence Agreements

- A Licence may be granted by the City where an arrangement for the use of Facilities:
 - does not fall within the characteristics of a Lease, such as where access is non-exclusive or is seasonal; and
 - is not covered under the City's Facility Hire and Use Policy.
- Lease and Licence arrangements may overlap from time to time:
 - portions of a Facility may be under a Lease (for exclusive areas) and other portions may be under a Licence (for non-exclusive areas); and
 - the Licence may share characteristics of a Lease, such as in relation to the payment of a licence fee (similar to rent) and the allocation of maintenance responsibilities to the licence (as Tenant).

ROLES AND RESPONSIBILITIES

The Manager Property Services will be responsible for the implementation of this Policy in collaboration with relevant service unit managers.

Regular property inspections will be undertaken by the City, coordinated by Property Services and with participation by other service units (either directly or by the engagement of appropriate contractors) where further expertise is relevant to the subject matter of the inspection.

DISPUTE RESOLUTION

All disputes relating to the condition of Facilities will be referred to the Manager Asset Maintenance. If the dispute cannot be resolved it will be referred to the Director Assets for a determination.

All disputes related to Lease and tenancy obligations will be referred to the Manager Property Services. If the dispute cannot be resolved it will be referred to the Director Corporate Strategy and Performance for a determination.

EVALUATION AND REVIEW PROVISIONS

- Utilisation of Facilities for Lease and Licence arrangements;
- Facilities provide an appropriate return to the City:
 - based on market value, where the Facility is used for a Commercial Activity, is on Freehold Land, or is occupied by a Tenant under Category 1, 2, 3 or 4; or
 - based on an acceptable cost recovery for the City (such as via a Maintenance Fee), where the Facility is not used for a Commercial Activity or is occupied by a Tenant under Category 5, or 6;

- Leasing documentation in accordance with relevant legislation; and
- Facilities maintained to a safe and acceptable standard.

DEFINITIONS

Annual Hire: Ongoing or regular hire of a Facility which results in more than twelve (12) sessions per financial year.

Category: means the categories of Tenant described in Annexure A.

Commercial Activity: an activity generating income by the Tenant (or its subtenant/licensee) from ongoing activities, or a specific event, that has financial profit as its primary aim or where such activity is conducted by a non-exempt body or organisation under the *Local Government Act 1995*. This is not intended to include clubs undertaking normal fundraising activities for club members (including bar operations).

Crown Land: public land owned by the State of Western Australia and managed by the City pursuant to a Management Order.

Facility/Facilities: land or building owned or managed by the City.

Freehold Land: land owned by the City.

Head Lease: the original Lease between the Tenant/lessee and the landlord/lessor.

Land Lease: also known as a ground lease. A type of Lease, by which:

- a) the improvements on the Land (including buildings and other infrastructure) are built or constructed either in their entirety or predominantly by the Tenant; and
- b) the improvements must be removed at the end of the Lease term or, alternatively, where the City is able to elect whether or not the improvements will be removed or left in situ at the end of the Lease term (and if left in situ, the improvements will revert to the City at no cost).

Lease: a contract by which the City grants exclusive possession of a Facility to another party for a specified time, usually in return for a periodic payment.

Licence: a contract for the non-exclusive use of a Facility not covered under the City's current Facility Hire & Use Policy.

Maintenance Fee: a charge made for maintenance on a Facility, and described within the Lease.

Sublease: a lease or licence by a Tenant of part or all of the Facility to another person/entity, on the basis that the lease or licence is subordinate to the Lease or Licence between the City and the Tenant.

Tenant/s: a person or persons who occupy a Facility, leased or licensed from the City.

Variation: a change, removal or non-material alteration to a Lease or Licence condition/clause.

WAPC means the **Western Australian Planning Commission:** being a statutory authority of the Government of Western Australia that exists to coordinate planning for future land use and transport needs.

RELEVANT POLICIES/MANAGEMENT PROCEDURES/DOCUMENTS OR DELEGATIONS

Leasing Management Procedure
 User-Funded Facility Upgrades Management Procedure
 Joint Development and Shared Use Facilities with the Department of Education Policy
 Strategic Land Policy

REFERENCES

Local Government Act 1995
Land Administration Act 1997
Commercial Tenancy (Retail Shops) Agreements Act 1985
Residential Tenancies Act 1987
Residential Park (Long-stay Tenants) Act 2006 & Regulations
Planning and Development Act 2005

RESPONSIBILITY FOR IMPLEMENTATION

Manager Property Services

Version	Next Review	Record No:
4 – 15 September 2015 (CS05-09/15)	1 January 2018	15/10552
5 – 5 December 2017 (CS06-12/17)	1 February 2022	17/397764
6 – 12 July 2022 (CS04-07/22)	1 July 2025	17/397764[v4]

ANNEXURE 1 – CATEGORIES OF TENANTS

Category No.	Tenant Description	Reference	Method of Calculation of Lease Fees	Tenant Responsibilities
1.	Government	<p>A group or organisation that is either a Statutory body being a Commonwealth, State or Local Government Authority or Agency, or any other body that is grant funded for the purpose of carrying on the activity in question and that body derives a level of income from such activity.</p> <p>In addition, where the lessee is a Child Health Clinic e.g. services provided by community child health nurses, employed by WA Health, then the following alternative conditions will apply.</p> <p>Shared use agreements with the Department of Education (for the use of a Facility by the Department for school purposes, or for the reciprocal use of the Facility and adjacent school land) will be included in this Category.</p>	<p>By Negotiation (Market Valuation discounted by up to 50%)</p> <p>Peppercorn (\$1), subject to review</p> <p>Department will pay a contribution to the maintenance and repair costs for the shared site</p>	<p>Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoing and utility costs associated with the Facility.</p> <p>Maintenance and repairs will be undertaken by the City, in accordance with the maintenance schedule provided in the Lease or Licence.</p>
2.	Charitable/ Religious	<p>A group or organisation that is predominantly grant funded for the purpose of carrying on the activity in question and that body derives a level of income from such activity.</p>	<p>By Negotiation (Market Valuation discounted by up to 50%)</p>	<p>Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoing and utility costs associated with the Facility.</p>
3.	Commercial and Retail	<p>Being non-exempt dispositions under the <i>Local Government Act 1995</i>. Where that activity being undertaken is essentially a profit making venture as distinct from fundraising, regardless of whether the body is incorporated or not.</p> <p>Commercial Tenancy (Retail Shops) Agreements Act 1985 applies, where applicable.</p> <p>Leases at the Wanneroo Raceway are included in this Category.</p> <p>Leases to telecommunications providers are included in this Category.</p>	<p>By Negotiation based on Market Valuation</p>	<p>Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoing and utility costs associated with the Facility, to the extent permitted by law.</p>
4.	Residential	<p>Those tenancy arrangements governed by the <i>Residential Tenancies Act 1987</i> and / or the <i>Residential Park (Long-stay Tenants) Act 2006</i> & Regulations.</p>	<p>By Negotiation based on Market Valuation</p>	<p>Cleaning, consumables and utility costs associated with the Facility, plus any further costs permitted by law.</p>

				Maintenance and repairs will be undertaken, in accordance with the Lease and statutory requirements.
5.	Sporting or Recreational	Being sporting and recreational groups (whether incorporated or not) that would be deemed exempt dispositions under the <i>Local Government Act 1995</i> .	Maintenance fees payable applicable to that Facility	Cleaning, consumables, rates and taxes, insurances and all outgoings and utility costs associated with the Facility. Maintenance and repairs will be undertaken by the City, in accordance with the maintenance schedule provided in the Lease or Licence.
6	Volunteers and Support Services	Community-based groups and organisations (including volunteer-run) that provide essential support services to the Wanneroo community. Typically not-for-profit and generating no or minimal revenue. This category does not apply where a lessee is already within Category 5.	Maintenance fees discounted by 50%	Cleaning, consumables, rates and taxes, insurances and all outgoings and utility costs associated with the Facility. Maintenance and repairs will be undertaken by the City, in accordance with the maintenance schedule provided in the Lease or Licence.

The above describes the City's general principles for an affordable leasing structure which provides a reasonable Tenant contribution. However, due to the specific characteristics of Facilities, individual leases describe the actual calculation of rent and Maintenance Fees, and the scope and allocation of maintenance obligations.

In the case of Land/Ground Leases (under any Category), the lessee will be responsible for development costs (including design, planning, servicing upgrades and construction), maintenance and repair (including structural and capital items) and make good works.