

Council Policy

Leasing



| | |
|---|---|
| Legislation/local law requirements | <i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i> <i>Land Administration Act 1997</i> |
| Relevant Delegation | Please see the City's Delegated Authority Register |
| Related policy procedures and documents | City of Kwinana Strategic Community Plan and Corporate Business Plan |

Introduction

This Policy establishes the principles and guidelines govern the leasing of City of Kwinana (**City**) owned property and facilities. It aims to ensure transparent, consistent and strategically aligned decision-making that maximises community benefit.

The Policy provides a framework to guide negotiations, set appropriate lease terms, and support the use of City properties in a manner that enhances social, cultural, economic and environmental outcomes for the local community.

Purpose

The purpose of this Policy is to:

- ensure decisions regarding the granting of Leases and Licences are made transparently, consistently and in accordance with established criteria; and
- ensure the use of City properties is appropriately optimised and in accordance with the City's Strategic Community Plan and Corporate Business Plan.

Objective

The Policy aims to promote transparent decision-making regarding leasing arrangements, support community organisations and businesses in accessing City facilities, and ensure the financial sustainability of City owned assets through fair and market aligned rental agreements.

Scope

This policy applies to the leasing and licencing of City properties. It does not apply to the short term hiring of City property.

Policy Provisions

1. Definitions

Any word that is not defined below is taken to have its dictionary definition.

Act means the *Local Government Act 1995 (WA)*.

City means the City of Kwinana.

Commercial Organisation means any entity other than a Not-for-Profit Organisation.

Not-for-profit Organisation means an entity that does not operate for the profit, personal gain or other benefit of its members or third parties and which applies all profits to the organisation's purposes.

Property means any property, building, facility (or part thereof) owned or managed by the City and capable of being leased by the City.

Lease means proprietary right to exclusive occupation and use of part or all of a City-owned property, for an agreed period, usually in return for rent. The tenant has exclusive use and occupation of the property, although the City may require the tenant to encourage other use and subletting can occur if mutually agreeable.

Licence means a contractual right to non-exclusive occupation and/or use of part or all of a City-owned property. This may include seasonal licences. It does not confer a right to exclusive possession or occupation of the property. The City may see to grant a licence to enable access to the property by the broader community outside of the licensee's usage times.

Organisation means a Commercial Organisation or Not-for-profit Organisation.

Regulations means the *Local Government (Functions and General) Regulations 1996 (WA)*.

2. Pre-Leasing/Licencing Requirements

A party seeking to enter into a new Lease or Licence in relation to a City property is to:

- submit an Expression of Interest Form;

3. Rent

Standard rent for local government properties must align with a market valuation conducted within the past six months, by a licensed valuer, as required by Section 3.58 of the Local Government Act 1995 (WA).

The City may subsidise rent for eligible Organisations. The eligibility criteria is set out in **Annexure 1** and the features of each category are summarised in **Annexure 2**.

4. Standard Lease or Licence Conditions

The following outlines the standard conditions applicable to the leasing of each City property, unless otherwise agreed).

4.1 The tenant shall be liable for the following payments:

- a) **Rent**; and
- b) **Outgoings** including building insurance, electricity, water, telephone costs other utility costs and rates (if applicable).

4.2 All Leases and Licences will be subject to annual review. These annual reviews will be based on one of the following methods:

- a) CPI
- b) Fixed rate
- c) Market review; or
- d) as outlined in the City's Fees and Charges

4.3 The tenant / licensee must:

- a) take out and maintain public liability insurance (\$20 million) (**Public Liability Insurance**);
- b) be liable for all actions or omissions of subtenant/licensee's employees or volunteers, contractors, guests, invitees and agents (**Liability**);
- c) indemnify the City against all actions, claims and costs made or suffered by the City unless caused by the negligent or wrongful act of the City (**Indemnity**);
- d) keep the Property in good tenantable condition including cleaning, repairing and maintaining. Unless agreed otherwise, the City will be responsible for structural / capital repairs including repairs to air-conditioning, roofs, lifts, building systems etc. Where the Property is shared with the City or other tenants and the City arranges cleaning of the whole of the Property, a cleaning contribution will be required (**Cleaning, Repairs and Maintenance**);
- e) obtain **written consent** from the City before altering, hiring or subleasing the Property. Note: Any alteration will remain the City's property unless otherwise specified in the Agreement or specified as a condition of consent (**Alterations**); and
- f) provide the City, on request, with annual statement of accounts, hirer details and details about the activities occurring on the Property including participation rates, budgets allocated to maintenance and repairs and any other information reasonably required by the City (**Provision of Information**).

- 4.4 In circumstances where the proposed tenant has fully or substantially funded and or constructed a building on the City's Property to be Leased or Licenced, the following conditions will apply:
- a) the tenant will pay a pre-determined agreed rent;
 - b) the tenant will pay all outgoings including building insurance (taken out by the City);
 - c) the tenant will be responsible for all repairs and maintenance of the building (including of a structural nature); and
 - d) when the tenant vacates the Property, the tenant must remove the building or leave the building and or structures in a tenantable condition.

OFFICER USE ONLY

Officers may amend this section without council approval.

| | |
|--------------------------|----------------------------------|
| Responsible Team | Governance and Legal |
| Initial Council adoption | Date: 9 September 2015 Ref#: 562 |
| Reviewed/amended | Date: June 2025 Ref#: 654 |
| Next Review Date | Date: June 2027 |
| Policy Document Number | D14/6994[v6] |

Annexure 1 – Eligibility Criteria for subsidised rent

| Elements | Criteria |
|---------------------------------------|--|
| 1. Not-for-profit Organisation | <ul style="list-style-type: none"> • Is a legal entity incorporated under the <i>Associations Incorporation Act 2015</i> or the <i>Australian Charities and Not-for-Profits Commission Act 2012</i>; • Applies all or any surpluses towards its purposes; • Prohibits dividends/profits from being paid to its members; • Is exempt from paying income tax; and • Is financially viable, demonstrates good financial management, record-keeping practices and maintains records for audit purposes. |
| 2. Use/Activity | <ul style="list-style-type: none"> • Community demand exists for the service or activity offered by the Organisation; • The service or activity will increase social engagement and promote health and wellbeing of the community; • The intended use of the Property is consistent with City objectives and current business plans; and • The service or activity is non-discriminatory and is open to all residents who meet the participation criteria. |

Annexure 2 – Subsidised Rent and Discounted Market Rent

| Category | Annual Rent | Eligibility |
|------------------------|---|--|
| Discounted market rent | A reduction off the market rental valuation of up to 30% | Meets all relevant eligibility criteria in Annexure 1 . |
| Peppercorn rent | As determined annually in the City's Schedule of Fees and Charges | <p><u>Standard Subsidised Rent</u></p> <ul style="list-style-type: none"> • Meets all relevant eligibility criteria in Annexure 1; • Provides significant and extensive community benefit; • Has limited revenue-raising ability (net of cost of service); and • Is run predominantly by volunteers. <p><u>Non-Standard Subsidised Rent</u></p> <ul style="list-style-type: none"> • Building fully or substantially funded or constructed by the proposed Tenant. |

| Category No. | Tenant Description | Reference | Method of Calculation of Rental Payments |
|--------------|------------------------|---|---|
| 1. | Government | 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. | By Negotiation (Market Valuation discounted by up to 30%) |
| 2. | Charitable / Religious | 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. | By Negotiation (Market Value discounted by up to 30%) |

| Category No. | Tenant Description | Reference | Method of Calculation of Rental Payments |
|--------------|---------------------------------|--|--|
| 3. | Commercial and Retail | 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. Commercial Tenancy (Retail Shops) Agreements Act 1985 applies, where applicable. | By Negotiation based on Market Valuation |
| 4. | Residential | 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 | By Negotiation based on Market Valuation |
| 5. | Sporting or Recreational | Being sporting and recreational groups (whether incorporated or not) that would be deemed exempts dispositions under the <i>Local Government Act 1995</i> . | Subsidised rental payment plus maintenance fees payable applicable to that Facility. |
| 6. | Volunteers and Support Services | Community-based groups and organisations (including volunteer-run) that provide essential support services to the community. Typically not-for-profit and / or generating no or minimal revenue. This category does not apply where a lessee is already within Category 5. | By negotiation and selection criteria plus maintenance fees (Market Value discounted by up to 30%) |

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.