



## POLICY

### LEASING OF COMMUNITY FACILITIES



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**This Policy provides a framework for the City to lease and licence its properties. It establishes the minimum community benefits that need to be demonstrated by prospective lessees and sets out the reporting requirements to ensure accountability to Council and recognition of the City's contribution.**

Adopted:	09/09/2015 #562
Last reviewed:	<b>13/04/2016 #162</b>
Legal Authority:	Local Government Act 1995 Section 2.7 – Role of Council
Strategic Community Plan:	Objective 1.5: Actively work with the community to build local capacity.  Strategy 1.5.1: Develop community capacity, encourage self management of shared use facilities and enable access to funding opportunities in order to assist the sustainability of community and sporting groups, activities and events as well as support community networks and partnerships deliver projects and services.

### Policy:

#### 1 Introduction

Community facilities owned and leased or licenced by the City make an important contribution to the City's ability to achieve the objectives of the Strategic Community Plan and Corporate Business Plan. The facilities referred to in this Policy include both land and buildings, but do not include sports facilities, hall hire or facilities that are offered to the public for casual or short term hire. It applies to those premises that are occupied exclusively by commercial entities, community groups, organisations and those lessees providing a service sought after by the community.

For the purpose of this Policy a 'community group' is defined as a not for profit organisation that does not operate for the profit, personal gain or other benefit of particular people. The profits must be applied for the organisations purpose only.

This Policy provides a framework for leasing and licensing of City of Kwinana properties to third parties at peppercorn, discounted and commercial rates of rental. It establishes the requirement for all prospective lessees to demonstrate the community benefits arising from their use of City property and sets out reporting requirements (clause 7) to ensure accountability to Council and recognition of the City's contribution. The Policy establishes the terms and conditions the City will use as the basis for negotiating leases and licences.

This policy will apply to all new leases and licences, including the renewal of leases and licences on expiration of the current leases and licences.

## 2 Aim of Policy

Through implementation of this Policy, the City aims to maximise the benefit to the community whilst ensuring responsible management of community assets, with an equitable methodology for calculating lease and licence charges according to their classification.

## 3 Background

### 3.1 Leasing and Licensing in Kwinana

The City of Kwinana leases or licences a number of facilities to community groups and incorporated organisations at subsidised rates, including use as childcare centres, kindergartens, community centres and scout halls.

### 3.2 Legislative Framework

A number of laws and regulations affect City leases and licences. Of particular relevance are the following Western Australian Acts and Regulations.

- *Local Government Act 1995*: Includes details on the disposition requirements and exemptions and the circumstances requiring leases to be advertised.
- *Local Government (Functions and General) Regulations 1996*: Details the exemptions from section 3.58 of the Local Government Act 1995 for the disposition of land entered into by the City.
- *Occupier's Liability Act 1985*: Details the relationship between lessees and landlords in respect to liability and duty of care.

### 3.3 Community Profile

As the Kwinana population changes, so do demands for services. Projected changes to the community profile will affect the type of facilities that the community requires. This Policy will ensure that access to the City's facilities and assets are not unnecessarily restricted and properties can be redeployed over time to meet changing community needs.

## 4 Policy Objectives

The objectives of this policy are to:

- Ensure City owned facilities are used to meet demonstrated community needs consistent with Council's policies and the Strategic Community Plan;
- Provide accountability for City expenditure on rent subsidies, as they constitute indirect grants;
- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear assessment criteria;
- Ensure lessees pay fair and reasonable rent based on clear eligibility criteria and calculation methodologies;
- Optimise use of the City's community facilities and equitable access by the Kwinana community;
- Increase community access to activities and services, particularly access by disadvantaged and socially isolated groups;
- Enable the City's contribution to be reported to the community;
- Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Kwinana;

- Assist community groups to understand and support the achievement of Council's policies and plans;
- Facilitate a shared approach between Council and the lessee as to the cost of management and maintenance of City-owned facilities;
- Ensure that City-owned facilities are appropriately maintained as City assets;
- Ensure that City assets are maintained, developed and occupied responsibly, having regard to the interests of local communities; and
- Ensure sound financial management and effective administration of community facility leasing and licensing.

## 5 Eligibility for Leasing and Licensing Community Facilities

### 5.1 Eligibility Criteria

Schedule 1 to this Policy sets out eligibility criteria for leasing and licensing community facilities. Prospective lessees as well as those seeking renewal of leases or licences will be required to provide details of how they meet these criteria including financial information. Rent subsidies will have regard to the extent to which organisations meet the essential and desirable criteria (see Section 6.2). There are three categories of criteria:

- **Organisation criteria:** Includes appropriate organisational structure, financial viability and compliance with relevant legislation and Council policies. Community benefit criteria includes use of the facility to meet community needs, number of participants, access for disadvantaged groups, contribution to community wellbeing, and programs and services that are consistent with Council's objectives and goals as articulated in the City's Strategic Community Plan.
- **Facility management and development criteria:** Includes suitability for use on the site and a preparedness to maximise utilisation.
- **Lease/Licence category criteria:** Involves categorising community groups and organisations as eligible for peppercorn, discounted or full market rental.

### 5.2 Reporting against Criteria

All lessees will be required to report against the eligibility criteria on request, and on lease or licence renewal, and advise the City if their organisational status has changed. Lessees will be required to provide the City with a copy of a certificate of currency with respect to its insurance each year or as otherwise requested by the City and a copy of any permit or approval.

New leases and licences will require lessees and licensees to provide a copy of their annual report and financial statements. A lessee that breaches a lease or a licence condition may be required to relinquish the lease or licence. Where the lessee breaches the lease or licence by subletting without Council consent or receives funding or third party rental, Council may require the lessee to pay up to full market rent.

City Officers will assist lessees to comply with the reporting requirements by providing simple reporting formats and checklists, timely information and if necessary briefing or training on how to demonstrate their claims against the criteria.

City Officers may also seek additional information where necessary to better understand activities, the extent of community use and opportunities for facility and service development. Reporting requirements will be based on existing documents, such as annual reports, where possible.

### **5.3 Expression of Interest in Use of Council Property**

Community groups who wish to utilise City property will be required to contact the relevant City department and lodge a written expression of interest outlining the proposed use and addressing the eligibility criteria. The City will consider expressions of interest on their merits when a property becomes available for use.

Existing lessees will be required to define the proposed use and demonstrate their compliance with the eligibility criteria when seeking renewal of their existing lease or licence arrangements. Lessees with a further term under the lease or licence who seek to exercise an option to extend the lease are generally entitled to require that the lease be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the lease or licence documentation).

## **6 Terms and Conditions of Leases and Licences**

### **6.1 Standard Lease and Licences**

The City's standard lease and licence agreements for various types of properties will be applied to all new tenancies including the renewal of existing tenancies and may be varied if essential to the special needs of the property or lessee, as resolved by Council. Lessees with a further term under the agreement who seek to exercise an option to extend the lease or licence are entitled to require that the lease or licence be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the documentation).

### **6.2 Breaches of Lease and Licences**

For the purposes of this Policy, a 'breach' is defined as an act by the lessee, whether intended or not, where the conditions or requirements of a lease or licence have not been met, either by neglect, dereliction, non-observance, violation or in any other manner.

### **6.3 Rent and Review**

#### **6.3.1 Market Rent Value**

The market rental value of each property is determined by a licensed valuer.

#### **6.3.2 Rent Subsidy**

Council may subsidise rent for eligible lessees. There are three categories of rent subsidy based on the extent to which organisations meet the essential and desirable eligibility criteria outlined in Schedule 1. Council will review performance against these criteria and eligibility for rent subsidy annually. The categories are:

- A: Peppercorn rent
- B: Discounted market rent
- C: Market rent

The eligibility criteria for each category are included in Schedule 1 and summarised in Table 1 below:

**Table 1 Rent Subsidy Categories**

Category	Annual Rent	Eligibility
A: Peppercorn rent	As determined annually in the City's Schedule of Fees and Charges	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Meets all relevant eligibility criteria;</li> <li>▪ Provides significant community benefit; <u>and</u></li> <li>▪ Has limited revenue-raising ability (net of cost of service) e.g. community play groups, neighbourhood house</li> </ul>
B: Discounted market rent	Full market rent with a reduction from this rate to be negotiated based on community benefit criteria, level of maintenance responsibility and capital contributions made by lessee, on a sliding scale basis providing discounts of between 30% and 70%	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Has revenue raising capacity or receives external funding assistance (e.g. receives some State Government funding or from its members); and</li> <li>▪ Meets all relevant eligibility criteria.</li> </ul>
C: Market rent	Full market rent	<ul style="list-style-type: none"> <li>▪ Use approved by Council;</li> <li>▪ Meets all relevant eligibility criteria; and</li> <li>▪ Provides services that are not targeted to the Kwinana community; <u>or</u></li> <li>▪ Is substantially funded by other agencies or governments; <u>or</u></li> <li>▪ Operations substantially include commercial activities for profit.</li> </ul>

Council will negotiate discounted market rents with eligible community organisations after consideration of various factors, including but not limited to the following factors:

- Consistency with Council's Strategic Community Plan and Corporate Business Plan
- Community benefit
- Use of volunteers
- Service and program fees
- Access by Kwinana residents
- Extent of external funding
- Track record as a City lessee

**6.3.3 Annual Indexation of Rents**

Rents (other than peppercorn rents) will be indexed annually and the amount payable will be increased by the Perth 'All Groups Consumer Price Index (CPI) (using the percentage change from corresponding quarter of previous year), and using the preceding quarter data of the annual review date, as determined by the Australian Bureau of Statistics.

## **6.4 Maintenance**

Facility maintenance includes minor day-to-day maintenance able to be performed by a non-tradesperson and more significant programmed and non-programmed asset renewal maintenance requiring the services of a qualified tradesperson or experienced maintenance person.

While the City will generally assume some responsibility for facility maintenance costs and reflect this in rental values, the City reserves the right to negotiate structural and other maintenance responsibilities and costs where it is demonstrated to be in the interests of both parties. All maintenance obligations and maintenance standards will be clearly articulated in specific schedules to lease and licence documents.

Each lessee is required to maintain the facility in accordance with the maintenance schedule attached to their lease or licence using the services of registered and qualified tradespeople. The maintenance schedule will specify the City's and the lessee's responsibilities.

### **6.4.1 Maintenance Inspection**

The City reserves the right to inspect the premises each year or more frequently as required. The City will give appropriate notice to the lessee in accordance with the lease or licence conditions.

### **6.4.2 Utilities**

Payment of utilities is the responsibility of the lessee except where the lessee occupies an area that is part of a larger City facility and separate metering is impractical. The requirements and method of payments for utilities will be captured within individual lease agreements.

## **6.5 Term of Lease or Licence**

The term of each lease or licence will be negotiated taking into account the particular circumstances of the facility and the lessee, including capital investment and long-term planning, sustainability of the service and the connection between facility use and the City's Strategic Community Plan.

## **6.6 Use of Licences Rather Than Leases**

Council aims to maximise access and use of community facilities and encourages shared use. Where Council wishes to make a facility available to multiple users, a licence rather than a lease will be the preferred form of agreement. A lease agreement will be used where Council considers that providing exclusive rights to a single lessee is in the best interests of the community or is necessary to recognise financial investment by the lessee or secure the desired use and long-term development of the property.

## **6.7 Use of Premises and Occasional Hire**

Leases and licences will only be available to community groups for approved purposes. All leases and licences will include a statement recognising Council's policy of maximising community use and a commitment by the lessee to support shared and multiple use of the facility by community-based organisations. Any such shared use and multiple use will be subject to Council approval.

It is recommended that lessees should make facilities available for casual hire where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. Hiring agreements, including fees and any restrictions on the property, shall be referred to Council for approval. Fees from casual hire are payable to the lessee, not to the City, as an incentive to maximise utilisation. Where the lessee receives fees for hiring out facilities, Council will be entitled to review the rent to take into account the income received.

### **6.8 Hours of Use**

Council will prescribe the hours of use for all premises, dependent on the nature and proposed conduct of activities or programs and any planning permit conditions.

### **6.9 Sub-leasing**

Lessees may only sub-lease or sub licence with Council permission to approved organisations for approved purposes and may be subject to terms and conditions. Generally, Council may use the same criteria to assess the sub-lease or licence as the head lease or licence.

### **6.10 Rates, Taxes and Outgoings**

Where the lessee has a lease on an entire property, the lessee shall pay for rates (if charged), and any applicable taxes (including GST) or any stamp duty or other taxes payable. Where there is shared use the lessee can be charged outgoings on a proportional basis. This could be applied to a lease or a licence.

### **6.11 Insurance**

Lessees must maintain their own public liability insurance to a value determined by the City, as detailed in the lease or licence document. Generally, the City will fully insure all City-owned improvements on leased or licensed premises. Lessees will be required to insure their own contents. The lessor will also be responsible for public risk insurance with the City's interests indemnified as far as possible.

### **6.12 Gaming and Liquor Licences**

Council in most circumstances prohibits gaming licences in leased or licenced community facilities. Council strongly discourages gaming venues in the City, as it has a commitment to limiting the negative impacts of gambling on the community. The requirements of the *Gaming and Wagering Commission Act 1987* apply.

Council will support community groups carrying out bingo in leased or licenced community facilities where they are the permit holder of the gaming licence. Commercial gaming organisations are prohibited from leasing or having a licence of any community facility.

A permit for a liquor licence requires approval by the City and must be sought through the normal processes required by the City and the *Liquor Control Act 1988*.

### **6.13 Legal Fees**

The payment of any fees and charges including legal costs associated with the establishment of lease or licence agreements will be in accordance with the schedule of fees and charges within the City's annual budget.

### **6.14 Keys and Locks and Security Arrangements**

Lessees must provide keys to the City to enable the City to carry out essential maintenance and emergency services. Lessees must provide the City with information on any other security arrangements undertaken by the lessee in respect of the City's facility, such as security patrols, keypads and alarms. The City would retain a set of keys and would be required to be notified and provided with new keys if locks were changed.

### **6.15 Planning Requirements and Other Permits**

All lessees must adhere to the conditions of any planning, building approvals or other approvals issued by the City or other authorities. Lessees must also obtain any permits or licences in order for the lessee to be able to use the premises for its permitted use.

**6.16 Removal of Assets**

The lessee may remove any assets that have been constructed or installed by them during the term of the lease or licences (unless otherwise part of the agreement), subject to the premises being returned to the City in its original condition. Any improvement not removed at the end of the lease or licence shall remain in the City's ownership.

**6.17 Capital Improvements**

Any capital improvements proposed by the lessee if approved by Council, would generally remain the property of the City unless otherwise specified in the lease or licence. Council will consider the capital contribution by lessees in assessing rent levels and length of lease or licence.

**6.18 Acknowledgment of Council Contribution**

Lessees must acknowledge any contribution by the City in their annual report, brochures and on any signage on the premises and is subject to the approval of the City. Acknowledgement requirements will be specifically detailed in all leases and licences.

**6.19 Nuisance**

Council requires that lessees undertake their permitted activities without adversely affecting the amenity of nearby neighbours. Breaches in this regard may lead to forfeiture of tenancy rights.

**6.20 City Access**

The lessee shall grant access to the City for facility inspection at any time after the City has given the lessee adequate notice (as defined in the lease or licence agreement).

**6.21 Asbestos Hazards**

The City will advise lessees if a facility is listed on the City's asbestos register and, where required, ensure that an associated lease or licence clearly states any lessee or licencees obligations in relation to potential asbestos hazards.

**6.22 Cleaning**

Cleaning will be the responsibility of the lessee. Where facilities are shared and/or the City arranges cleaning, a contribution towards cleaning will be negotiated with the lessee.

**6.23 Additional Requirements**

The lessee must comply with all legislation governing the activities of the lessee, e.g. Occupational Health and Safety, Child Care, Council policies etc. Council reserves the right to require category C (market rent) lessees to pay a security deposit.

**7 Implementation of Policy**

This Policy will apply to all leases and licences developed or renewed following its adoption by Council.

**SCHEDULE 1: Eligibility Criteria for Community Facility Leases/Licences**

Any group wishing to lease or obtain a licence for a City of Kwinana community facility must meet the following criteria

Organisation Criteria		Leasee Category			
		✓ or X	A	B	C
1	The organisation must be an organisation, which applies any surpluses towards its purposes, prohibits any dividends or profits from being paid to its members and is exempt from paying income tax.		E	E	D
2	The organisation is a legal entity incorporated under appropriate legislation (such as the Associations Incorporation Act 1987).		E	E	E
3	The organisation is financially viable and able to demonstrate good financial management and record-keeping practices to the satisfaction of the City.		E	E	E
4	The organisation complies with relevant legislation governing its activities and holds any licences or registration certificates required for it to operate.		E	E	E
5	The organisation has a committee of management and appropriate governance arrangements, with established accountability and reporting methods to members of the organisation and / or to the community, including the capacity to maintain appropriate financial records for audit purposes.		E	E	E
6	The organisation adheres to all relevant Council local laws including the Local Government Property Local Law, Council policies and has complied with the terms of any previous lease or licence and/or grant from the City.		E	E	E
7	Demand exists for the service or activity to be provided through the facility.		E	E	D
8	Facility use is consistent with City objectives and current Business Plan.		E	E	E
9	Use of the facility will increase social engagement and promote health and wellbeing of the Kwinana community.		E	E	D
10	The service or activity is non-discriminatory. It will be open to all residents who meet the criteria for participation that are directly related to the nature of the service or activity or geographic catchment area.		E	D	D
11	Disadvantaged groups can access the service or activity and strategies are in place to review and remove any barriers to participation.		E	E	D

Facility Management and Development Criteria		Lessee Category			
		✓ or X	A	B	C
1	Proposed use of the facility is suitable for the nature of the site and the neighbourhood.		E	E	E
2	The organisation is prepared to maximise utilisation of the facility as requested by the City.		E	E	E
3	The organisation agrees to provide the City with requested information including current and projected opening hours and participant and/or membership numbers.		E	E	E

**Lessee/Licencee Category Criteria**

Council will use the following criteria to determine whether the group is categorised as either:

- A. Peppercorn: Rent determined annually in the Schedule of Fees and Charges.
- B. Discounted market rent: A reduction of 30-70% of the market rental valuation is to be calculated based on a scale of community benefit and other criteria, level of maintenance responsibility and financial contributions made by the lessee.
- C. Full market rent: As determined by market valuation.

When addressing the criteria above, the organisation’s ability to meet the criteria will either be assessed as a tick (✓) in the box, if the requirement for an individual criterion has been met, or a cross (x), if it has not been met.

The final three (Lessee Category) columns show which criterion is Essential (E) and which is Desirable (D) for the three categories of the lessee to meet.

“E” in the column under the lessee category indicates that this is an essential criterion for that category of lessee to meet.

“D” under the lessee category indicates that it is a desirable criterion for that category of lessee to meet.