

Community Facility Lease and Licence/User Agreement Policy

Responsible Division	Works and Infrastructure
Responsible Business Unit	Building Works
Responsible Officer	Community Lease Officer
Affected Business Units	Building Works
ECM Document Set ID	4281523

Purpose

To provide a structured framework and basic principles to ensure a consistent and equitable approach to the management of community lease and licence/user agreements, for the use and tenancy of City owned and managed properties, including land. This policy will provide guidance to City officers to assess and negotiate tenancy agreements.

Scope

This policy applies to all Community Lease and Licence/User Agreements for the use of City owned and managed properties. The policy defines clear tenant categories and associated roles and responsibilities of each party under a tenancy agreement, and provides basic principles for the consistent, equitable and effective management of the City's community leases, licences and user agreements.

Definitions

For the purpose of this policy —

Agreement: a legally binding arrangement between parties, i.e. a Lease, License or User Agreement.

Authorised Contact/s: individuals of a group, organisation or club who have been nominated as the primary contacts for all lease, licence or user agreement correspondence.

City: City of Bayswater.

Council: a body of individuals elected by City ratepayers to manage the affairs of the City

Facility: land or building owned or managed by the City

Lease: a contract by which one party conveys land, property or service to another for a specified time usually in return of periodic payment.

Licence: a contract for the non-exclusive use of a facility.

Licensee: a person, group, club or organisation that holds a licence for the use of a facility.

Lessee: a person, group, club or organisation that holds the lease for the exclusive use of a facility.

Lessor: the owner of an asset that is leased to another party.

Not for Profit: an organisation that does not operate for the financial gain of a group or individual

Public Liability Insurance: a type of insurance that covers an organisation or group against losses or damage to a third party as a result of that group's or organisation's activities.

Sub-tenant: someone who occupies all or part of a premises under a lease agreement with the original/primary tenant of the premises.

Tenant/s: a person or persons who occupy a facility leased from the City, also known as lessee

User Agreement: contractual arrangement outlining the terms and conditions associated with usage, as negotiated.

Policy Statement

1. The City will provide a range of well-maintained and well managed community facilities and enter into agreements with community based not-for-profit organisations and sporting and recreational groups to support community needs and engagement.
2. The City will ensure consistent and fair access to its community facilities for locally based groups/clubs and larger not-for-profit organisations which provide benefit to the community.
3. The City will aim to increase community access to activities and services by ensuring optimal utilisation of City facilities by encouraging multiuse, integration and co-location.
4. Any new tenancy agreements should be negotiated on the terms set out in this policy.
5. For the purposes of tenancy negotiation, all community lease and licences shall be classified into one of the categories as outlined in **Annexure 1**.
6. Council's adopted standard community lease agreement will be applied to all new community leases, including renewals of existing tenants. The standard community lease agreement will not be varied, unless it is required to meet the operational needs of the tenant, and only then will minor variations be made under delegated authority.
7. The City reserves the right in all cases to inspect the premises and ensure lease conditions and Key Performance Indicators are being met.

Types of Agreements

8. The City will enter into one of the following agreements for the use of City owned and managed facilities:
 - a. Lease – provides exclusive use of a facility or a portion of a facility for an agreed term.
 - b. Licence – contractual agreement for the non-exclusive use of a premises under particular conditions, such as permitted access between agreed times only. Generally, will include regular payment as a consideration.
 - c. User Agreement – contractual tenancy agreement which outlines the terms and conditions associated with the usage of the facility. The terms of a user agreement are not usually standard and are negotiated between the two parties.

Advertising a Facility for Lease/Licence and Lease/Licence Applications

9. The City will advertise and seek expressions of interest (EOI's) for consideration, to lease or licence a facility or portion of a facility when:
 - An existing building or space becomes vacant;
 - An existing agreement expires and is not renewed;
 - For reasons, an agreement is terminated by either party; and
 - A new building is constructed on land owned or managed by the City.
10. EOI submissions will be assessed by a panel against the City's Lease Assessment Criteria and presented to Council for consideration.
11. All EOI submissions must demonstrate how they satisfy each of the City's Lease Assessment Criteria and provide a formal proposal including the following:
 - A comprehensive business/organisation plan detailing the applicant's vision for the proposed lease space; and
 - Evidence that the proposed service/activities provides community benefit and/or an identified need of the community.

Lease Administration and Management

12. Lease/licence tenure, fees and charges and all tenant obligations shall be as applicable to the respective tenant category outlined in **Annexure 1**.
13. Where practicable, utility charges will be individually metered for each tenant, otherwise an equitable percentage of the overall site utility charges will be applied.
14. The City will undertake annual property inspections to ensure lease conditions and will provide the tenant with a copy of the inspection report and appropriate feedback. Prior notice of the inspection will be given to the tenants.
15. The tenant is expected to maintain and keep the premises clean and in good repair. Tenants are to report any maintenance, damage, or repair requirements to the City in writing and in a timely manner.
16. All maintenance and repair requests will be considered by the relevant City officer/s and only undertaken if deemed necessary.
17. Approved maintenance or repairs will be undertaken by the City within a reasonable timeframe determined by the level of urgency.
18. Tenants are not permitted to sub-let any part of the leased premises without the written consent from the City and then must use the City's standard sub-lease agreement.

Annual Audit

19. On the anniversary of the tenancy agreement, the City will assess the tenant's annual performance against the City's Lease Key Performance indicators (KPI's) and provide appropriate feedback on their performance. Tenants are required to complete the City's annual audit information request and provide copies of:
- Public Liability insurance with a minimum \$10 million coverage, preference being given to minimum coverage of \$20 million;
 - Pest control certificate;
 - Up to date authorised contacts list;
 - An up to date key register
 - Organisation financials/accounts;
 - AGM Minutes;
 - Playground inspection certificate (if applicable);
 - Any required maintenance records where maintenance is required as part of the lease; and
 - Copies of any required certifications or accreditations associated with the organisation.

Related Legislation

Local Government Act 1995 (WA)

Local Government (Functions and General) Regulations 1996

Residential Tenancies Act 1987 (WA)

Residential Park (Long-Stay Tenants) Act 2006 (WA) & Regulations

Related Documentation

City of Bayswater Community Lease Agreement

City of Bayswater Community and Commercial Lease KPI's and Assessment Criteria

City of Bayswater Breach of Lease Policy

Document details

Relevant delegations EF – D11 Leasing Agreements

Risk evaluation Moderate

Council adoption 19 April 2011

Resolution 11.2.7

Reviewed/modified 1 March 2016

Resolution

9 April 2019

10.1.1

28 June 2022

10.6.1.1

Annexure 1

Category 1a – Small Volunteer Community Groups

<p>Criteria Locally based organisations with a voluntary management committee and are a stand-alone Not-for-Profit organisation/community group (whether incorporated or not). Run solely by volunteers and facilitates programs/activities specifically targeted at local residents. Demonstrates a limited or no capacity to generate revenue through facility use and/or activities. Income is generally limited to low membership fees. Considered 'Exempt Dispositions' from section 3.58 of the <i>Local Government Act 1995</i>.</p>	
<p>Tenancy Term</p>	<p>Lease/Licence Agreement: Minimum term of 2 years – Maximum term of 5 years</p>
<p>Lease Fees and Charges</p>	<p>Annual Rent: \$1.00</p> <p>Outgoings:</p> <ul style="list-style-type: none"> • Emergency Services Levy (<i>exemptions for historical societies</i>) • All utility costs related to the tenants use of the premises (<i>exemptions for historical societies</i>) • Waste charges (<i>exceptions for historical societies</i>) • Annual routine maintenance charges applicable to the facility discounted by 50% (e.g. servicing of air conditioning systems, cool rooms, alarm systems and fire safety systems) <p>*Local Government Rates will not be charged by the City*</p>
<p>Tenant Obligations</p>	<ul style="list-style-type: none"> • Contents, public liability insurance and any other insurances associated with the tenants use of the facility • Internal and external cleaning (including annual carpet cleaning) • Consumables associated with the facility and the tenants use. • Pest control (excluding termite inspections and treatment) • Minor general maintenance of the premises such as the repair and replacement of fittings and fixtures including light globes, taps, toilets, paper towel/roll dispensers and clearing of plumbing blockages caused by the tenants use.
<p>City Obligations</p>	<ul style="list-style-type: none"> • Building insurance • Building structural repairs and maintenance. • Gutter cleaning • External Drainage • Servicing of all inbuilt mechanical systems, security systems and fire safety systems (routine maintenance) with the cost being born by the tenant • Repair and replacement of inbuilt mechanical systems due to failure/end of useful life (not attributed to tenant's misuse or neglect) • Annual termite inspections and treatments as required.

Annexure 1

Category 1b – Not-for-Profit Community Groups and Organisations

Criteria	<p>Locally based Not-for-Profit organisation, club, or community group run by volunteers or paid workers and are incorporated under the <i>Associations Incorporation Act 1987</i>. Servicing a wider catchment than the City of Bayswater District with their primary base of operations located within the City of Bayswater. Demonstrates an affordable membership regime and facilitates programs and activities that add value to the social and community fabric of the City. Has the capacity to generate revenue through membership, use of the premises, or activities consistent with the organisations purpose.</p>
Tenancy Term	<p>Lease/Licence Agreement: Minimum term of 2 years – Maximum term of 5 years</p>
Lease Fees and Charges	<p>Annual Rent: \$1,390 plus GST and indexed annually to CPI Outgoings:</p> <ul style="list-style-type: none"> • Emergency Services Levy • All utility costs related to the tenants use of the premises • Waste charges • Annual routine maintenance charges applicable to the facility (e.g. servicing of air conditioning systems, cool rooms, alarm systems and fire safety systems) <p>*Local Government Rates will not be charged by the City*</p>
Tenant Obligations	<ul style="list-style-type: none"> • Contents, public liability insurance and any other insurances associated with the tenants use of the facility • Internal and external cleaning (including annual carpet cleaning) • Consumables associated with the facility and the tenants use. • Pest control (excluding termite inspections and treatment) • Minor general maintenance of the premises such as the repair and replacement of fittings and fixtures including light globes, taps, toilets, paper towel/roll dispensers and clearing of plumbing blockages caused by the tenants use.
City Obligations	<ul style="list-style-type: none"> • Building insurance • Building structural repairs and maintenance. • Gutter cleaning • External Drainage • Servicing of all inbuilt mechanical systems, security systems and fire safety systems (routine maintenance) with the cost being born by the tenant • Repair and replacement of inbuilt mechanical systems due to failure/end of useful life (not attributed to tenant's misuse or neglect) • Annual termite inspections and treatments as required.

Annexure 1

Category 2 – Sporting Clubs and Recreational Groups

Criteria	Locally based sporting clubs and recreational groups (whether incorporated or not) with a voluntary management committee. Demonstrates an affordable membership regime and facilitates sporting or recreational activities and programs that add value to the social and community fabric of the City. Has the capacity to generate revenue through its use of the property by way of membership, bar/kitchen facilities, or activities consistent with the club/groups purpose. Considered 'Exempt Dispositions' from section 3.58 of the <i>Local Government Act 1995</i> . *Excludes state and national sporting/recreational bodies*
Tenancy Term	Lease/Licence Agreement: Minimum term of 2 years – Maximum term of 5 years
Lease Fees and Charges	<p>Annual Rent: \$1.00</p> <p>Outgoings:</p> <ul style="list-style-type: none"> • Emergency Services Levy • All utility costs related to the tenants use of the premises • Waste charges • Annual routine maintenance charges applicable to the facility (e.g. servicing of air conditioning systems, cool rooms, alarm systems and fire safety systems) <p>*Local Government Rates will not be charged by the City*</p>
Tenant Obligations	<ul style="list-style-type: none"> • Contents, public liability insurance and any other insurances associated with the tenants use of the facility • Internal and external cleaning (including annual carpet cleaning) • Consumables associated with the facility and the tenants use. • Pest control (excluding termite inspections and treatment) • Minor general maintenance of the premises such as the repair and replacement of fittings and fixtures including light globes, taps, toilets, paper towel/roll dispensers and clearing of plumbing blockages caused by the tenants use.
City Obligations	<ul style="list-style-type: none"> • Building insurance • Building structural repairs and maintenance. • Gutter cleaning • External Drainage • Servicing of all inbuilt mechanical systems, security systems and fire safety systems (routine maintenance) with the cost being born by the tenant • Repair and replacement of inbuilt mechanical systems due to failure/end of useful life (not attributed to tenant's misuse or neglect) • Annual termite inspections and treatments as required.

Annexure 1

Category 3 – Community Child Care Centres

<p>Criteria Locally based Not-for-Profit Community Child Care Centres with a voluntary management committee and run by either volunteers or paid workers and are incorporated under the <i>Associations Incorporation Act 1987</i>. Established to provide community services and has the capacity to generate revenue through its use of the property.</p>	
<p>Tenancy Term</p>	<p>Lease/Licence Agreement: Minimum term of 2 years – Maximum term of 5 years</p>
<p>Lease Fees and Charges</p>	<p>Annual Rent: \$1,360 plus GST and indexed annually to CPI</p> <p>Outgoings:</p> <ul style="list-style-type: none"> • Emergency Services Levy • All utility costs related to the tenants use of the premises • Waste charges • Annual routine maintenance charges applicable to the facility (e.g. servicing of air conditioning systems, cool rooms, alarm systems and fire safety systems) <p>*Local Government Rates will not be charged by the City*</p>
<p>Tenant Obligations</p>	<ul style="list-style-type: none"> • Contents, public liability insurance and any other insurances associated with the tenants use of the facility • Internal and external cleaning (including annual carpet cleaning) • Consumables associated with the facility and the tenants use • Pest control (excluding termite inspections and treatment) • Minor general maintenance of the premises such as the repair and replacement of fittings and fixtures including light globes, taps, toilets, paper towel/roll dispensers and clearing of plumbing blockages caused by the tenants use.
<p>City Obligations</p>	<ul style="list-style-type: none"> • Building insurance • Building structural repairs and maintenance. • Gutter cleaning • External Drainage • Servicing of all inbuilt mechanical systems, security systems and fire safety systems (routine maintenance) with the cost being born by the tenant • Repair and replacement of inbuilt mechanical systems due to failure/end of useful life (not attributed to tenant’s misuse or neglect) • Annual termite inspections and treatments as required

Annexure 1

Category 4 – Large Not-for-Profit Organisations, State and National Clubs/Associations and Places of Worship

Criteria Large Not-for-Profit groups that are professional organisations with paid staff and are generally Government funded, externally funded, or generates its own revenue through membership fees, events, venue hire, services, or other means consistent with the organisations purpose.	
Tenancy Term	Lease/Licence Agreement: Minimum term of 2 years – Maximum term of 10 years
Lease Fees and Charges	Annual Rent: 40% of market valuation plus GST, or as otherwise determined by the City following an Expression of Interest Process. Outgoings: <ul style="list-style-type: none"> • Emergency Services Levy • All utility costs related to the tenants use of the premises • Waste charges • Annual routine maintenance charges applicable to the facility (e.g. servicing of air conditioning systems, cool rooms, alarm systems and fire safety systems) *Local Government Rates will not be charged by the City*
Tenant Obligations	<ul style="list-style-type: none"> • Contents, public liability insurance and any other insurances associated with the tenants use of the facility • Internal and external cleaning (including annual carpet cleaning) • Consumables associated with the facility and the tenants use • Pest control (excluding termite inspections and treatment) • Minor general maintenance of the premises such as the repair and replacement of fittings and fixtures including light globes, taps, toilets, paper towel/roll dispensers and clearing of plumbing blockages caused by the tenants use.
City Obligations	<ul style="list-style-type: none"> • Building insurance • Building structural repairs and maintenance. • Gutter cleaning • External Drainage • Servicing of all inbuilt mechanical systems, security systems and fire safety systems (routine maintenance) with the cost being born by the tenant • Repair and replacement of inbuilt mechanical systems due to failure/end of useful life (unless attributed to tenant’s misuse or neglect) • Annual termite inspections and treatments as required

Annexure 1

Category 5 – Child Health Clinics

<p>Criteria Services provided by Community Child Health Nurses which are employed by the Department of Health. Considered 'Exempt Dispositions' from section 3.58 of the <i>Local Government Act 1995</i>.</p>	
<p>Tenancy Term</p>	<p>Informal User Agreement with a maximum term of 2 years</p>
<p>Lease Fees and Charges</p>	<p>Annual Rent: \$1.00</p> <p>Outgoings:</p> <ul style="list-style-type: none"> • Emergency Services Levy • All utility costs related to the tenants use of the premises • Waste charges • Annual routine maintenance charges applicable to the facility (e.g. servicing of air conditioning systems, cool rooms, alarm systems and fire safety systems) <p>*Local Government Rates will not be charged by the City*</p>
<p>Tenant Obligations</p>	<ul style="list-style-type: none"> • Contents, public liability insurance and any other insurances associated with the tenants use of the facility • Internal and external cleaning (including annual carpet cleaning) • Consumables associated with the facility and the tenants use • Pest control (excluding termite inspections and treatment) • Minor general maintenance of the premises such as the repair and replacement of fittings and fixtures including light globes, taps, toilets, paper towel/roll dispensers and clearing of plumbing blockages caused by the tenants use.
<p>City Obligations</p>	<ul style="list-style-type: none"> • Building insurance • Building structural repairs and maintenance. • Gutter cleaning • External Drainage • Servicing of all inbuilt mechanical systems, security systems and fire safety systems (routine maintenance) with the cost being born by the tenant • Repair and replacement of inbuilt mechanical systems due to failure/end of useful life (unless attributed to tenant's misuse or neglect) • Annual termite inspections and treatments as required