



### 1. Objective

To establish a set of standard terms and conditions which apply to all Shire of Waroona managed lease agreements that ensure:

1. conditions are consistent and equitable across all leased Council facilities;
2. the efficient utilisation and management of these properties is maximised; and
3. leased or licensed facilities are maintained safely to an appropriate standard, subject to an acceptable allocation of responsibility.

### 2. Scope

This policy applies to leasing of Shire of Waroona-owned facilities to not-for-profit sporting, recreational, and community groups, or any other body exempt from the requirements of section 3.58 of the *Local Government Act 1995* by regulation 30(2)(b) of the *Local Government (Functions and General) Regulations 1996*.

This policy applies where the use of the facility and premises is not governed by CP009 - Hiring Council Facilities, Reserves and Equipment, or AP006 - Letting of Residential Council Property policies.

### 3. Definitions

**Good repair** means good and substantial tenantable repair and in clean, good working order and condition;

**Land** has the same meaning given in the *Land Transfer Act 1893*.

**Lessor** means the Shire of Waroona, which grants a community group or sporting club the right to occupy and use a property under a lease agreement.

**Lessee** means the community group or sporting club granted the right to occupy and use a leased property under the terms of a lease agreement.

**Not for profit** means sporting, recreational and community groups, whether incorporated or not, that would be deemed exempt dispositions under the *Local Government Act 1995*. (The term Not for Profit generally relates to incorporated bodies. Those bodies are not necessarily precluded from making profits but, are regulated by the *Associations Incorporation Act 2015* so as members of the association are not entitled to share in any pecuniary profits.)

**Party** means the Lessor or the Lessee according to the context;

**Premises** means the whole of the Premises as identified, together with all buildings, structures, alterations, additions and improvements on the Land or erected on the Land during the Term, as

identified and outlined in red on the plan annexed hereto within Annexure 1 of a Shire Lease Agreement.

**Residential** leases are those tenancy arrangements governed by the *Residential Tenancies Act 1987* and/or the *Residential Park (Long-stay Tenants) Act 2006* & associated regulations.

**Residential rubbish collection service** means the supply and weekly servicing of one (1) 240 litre general waste bin and the supply and fortnightly servicing of one (1) 240 litre recycle bin.

#### 4. Statement

A Lease is an agreement between the Shire and a not-for-profit community group or sporting club. This agreement supports the group or club in conducting their activities/services, and in doing so, provides benefits to the wider community. In many cases this arrangement provides a service to the community that would otherwise not be available or would require significant Shire input and funding.

As community benefit is a key objective of this leasing policy, lease agreements should include mechanisms and terms that actively encourage benefit to the community. Lessees can promote community benefits through:

- Operating as per their permitted use and constitution;
- Encouraging membership and participation; and
- Ensuring accessibility where appropriate.

For new facilities the lease agreement acknowledges that the facility is gifted to the Shire, in exchange for exclusive use of the land as per the lease arrangement.

#### 5. Lease Principles

The following key principles provide guidance for the leasing of Shire of Waroona land and facilities:

- Promote equality across all Shire community leases without favour or prejudice to individual groups or clubs;
- Ensure assets leased to community groups or clubs are well maintained to maximise sustainability and community benefit, and promote safety;
- Minimise financial or litigious risk to the Shire, which may result from a lease arrangement; and
- Promote co-location and multipurpose development where practicable, and strategic development of community facilities based on future requirements of the land and community needs.

The Shire of Waroona is committed to ensuring clear and consistent lease arrangements for Shire-owned and managed buildings and facilities, by providing exclusive or non-exclusive use of facilities to a community group or sporting club for a defined period via a lease agreement. This approach helps meet the collective social needs and aspirations of the Waroona community.

## 5.1 Key features of a lease

A lease –

- (a) is a transfer of right to enjoyment (with granted exclusive or non-exclusive possession) of that premise by the lessor to the lessee, and made for a maximum period of five years in consideration of a rental fee subject to the terms set out in the lease agreement;
- (b) creates an interest in the land which can be transferred to the lessee for the period of the lease; and
- (c) is not revocable (other than subject to any conditions set out in the lease (e.g. a redevelopment clause).

The Lessee remains responsible for the whole of the premises, regardless of occupancy by hirers, users or sub-lessees of the premises.

## 5.2 Exclusive rights to buildings

Where the leased premises is a multi-function, purpose-built community facility, exclusive rights shall be removed from the Lessee and the lessee is obliged to hire the leased premises out to any interested party to use in accordance with the facility's permitted purpose.

Despite the granting of exclusive use rights to a premise, these will not override the Shire's ability to use the premises at its discretion where it deems the premise to be needed for emergency purposes.

## 5.3 Lease duration: key considerations

The maximum lease term is limited to five (5) years to ensure flexibility in managing Shire-owned properties, adapt to changing community needs, and align with strategic planning objectives. This approach allows for regular review of lease terms, ensures fair access to facilities, and provides opportunities to adjust terms in response to evolving regulatory, economic, and operational considerations. The lease duration may also be determined, in part, by the Lessee's financial capacity to meet rental obligations.

Council will view favourably the renewal of leases where the Lessee has met their obligations under the lease and/or where the Lessee has raised funds for the premise's capital works and improvements.

## 5.4 Significant lease covenants and responsibilities

Standard lease template clause No.	Covenant	Responsible party		Requirement / Conditions / Notable detail
		Lessor (Shire)	Lessee	
Outgoings				
5.3	Telephone and internet		✓	Lessee to pay to the utility provider, unless otherwise stated in lease agreement.
	Electricity		✓	
	Gas bottles		✓	

	Sanitary Units		✓	Lessee to pay a licensed sanitary waste service provider for provision, cost and regular servicing of sanitary bins.
	Consumables			<i>Example: toilet paper etc.</i> Lessee to provide their own consumables for the proper sanitary provision at the Premises.
	Water consumption and excess water charges		✓	Lessee to pay to the Shire unless otherwise stated in lease agreement.
	Alarm response activation and callout fees		✓	If applicable. Unless the facility is directly managed by the Lessor.
	Alarm monitoring		✓	If applicable. Unless facility is directly managed by the Lessor.
	Additional waste bins provided over and above the standard service.		✓	* Standard rubbish collection service means supply and weekly servicing of one 240L general waste bin and supply and fortnightly servicing of one 240L recycle bin.
	Local government services and other charges	✓		Includes emergency services levy, water service charges and a single residential rubbish collection service - See above.
	Servicing of Shire-owned emergency equipment	✓		
	Annual RCD inspection and testing	✓		Residual Current Devices (RCDs) inspections and servicing in accordance with AS/NZS 3760.
5.7	Water, drainage and sewerage rates, and stormwater disposal charges	✓		
<b>Insurances</b>				
7	Building	✓		Parties to effect and maintain insurance and cover cost of their own premiums and excess, except where building insurance excess payable relates to a

	Contents		✓	building insurance claim for necessary structural maintenance, replacement, or repair caused by any act or omission of or on the part of the Lessee.
	Public liability ≥ \$10 million.		✓	
7.9	Electrical appliance maintenance		✓	Lessee to maintain all electrical devices, equipment and cords in good repair.
Limit of Lessor's Liability				
9	Liability for Loss on premises		✓	The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.
Maintenance and Repairs				
10	Cost of repairs and replacement caused by fair and reasonable wear and tear*	✓		<ul style="list-style-type: none"> <li>Provision of written notice of intended maintenance/repair/ replacement is required from Lessee prior to arranging work.</li> </ul> Only licensed / qualified and insured tradespersons to be used. <i>* Lessee responsible for cost when such maintenance, repair or replacement is necessary because of any damage, act or omission of, or on the part of the Lessee.</i>
	Cost of structural Maintenance, replacement or repair *	✓	✓*	
	Maintenance of appurtenances (air conditioning)		✓	<ul style="list-style-type: none"> <li>Lessee to maintain, replace, repair, clean and keep the Premises, appurtenances (air conditioners, appliances etc.) and surrounds in good repair.</li> </ul>
10.7	Pest Control - Household pests, incl. ants and vermin		✓	Responsibility includes cost of extermination.
	Pest Control - Environmental pests, incl. spiders and termites	✓		
14	Cost of alteration, addition or improvements to or demolish any part of the Premises.		✓	Alterations are not to be made without prior written consent from the Lessor.

### 5.5 Factors affecting payment for outgoings

Where leased facilities are situated on land served by a single main water line or electricity supply line that branches off to multiple buildings, the Chief Executive Officer will determine a fair and equitable method for allocating water and electricity charges among users of the shared supply.

### 5.6 Proportionate charges

Where two leased premises are located on the same metered portion of land, each Lessee will pay a portion of any electricity and/or water consumption charges, being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

### 5.7 Rent and rent reviews

#### *Rent - Waroona Community Resource Centre consulting rooms*

The rent charged for the lease of Waroona Community Resource Centre (CRC) consulting rooms is dependent on the type of lessee –

- (a) Where the lessee is an independent commercial entity, then a commercial rent value shall apply, in line with Council's current Fees and Charges.
- (b) Where the lessee is a not-for-profit community group, then rent is \$110 (including GST) per year.
- (c) Where the lessee is a government-funded community health body that provides a service to the community, such as a child immunisation or health nurse service, no rent is charged.

#### *Rent - All other locations*

Notwithstanding Waroona CRC consulting rooms, rent will be charged at \$110 per year for community leases.

#### *Rent review*

The Shire may initiate a rent review at any time, provided that a rent review was not carried out within the preceding 12-month period. The new rent amount shall apply from the commencement of the following financial year.

### 5.8 Property condition inspections and reports

The Shire shall inspect and record the condition of premises before a new lessee takes occupancy, conduct regular inspections to ensure structural integrity, maintenance, and cleanliness, provide feedback to the lessee as per the lease terms, and complete an Exit Property Condition Report within 14 days of lease termination.

Despite the Shire's inspection program, the lessee shall undertake their own routine inspections and program maintenance and repairs as needed for operational purposes.

### 5.9 Casual hire and sub-letting of premises

- (1) Lessees are permitted to hire out their leased facility on a casual basis and the lessee covenants to remain responsible for all activities that occur within or on the leased premises.
- (2) Sub-letting of leased premises is permitted with the Shire's prior written consent and the preparation and signing of a sub-lease agreement by both parties.
- (3) Lessees may charge a fee similar to or less than Council's determined Fees and Charges for the hiring of a similar facility for not-for-profit hirers, and at its discretion for commercial hirers.
- (4) Lessees may retain the benefit of funds or other considerations raised by or derived from the hire or sub-letting of the Premises.

### 5.10 Indemnity

The Lessee is responsible for the premises as if they were the owner and is liable for the actions of their agents, that being, any person acting on behalf of the lessee. The Lessee must indemnify the Lessor and the Minister for Lands against any claims, losses, damages, or injuries arising from their use or occupation of the premises, any work conducted, business activities, environmental harm caused, or failure to comply with lease obligations.

### 5.11 Use

- (1) The Lessee must use the premises only for the permitted purpose and in compliance with all relevant laws.
- (2) The lessee must not engage in or allow offensive, illegal, or harmful activities, cause nuisance or disturbance, store dangerous substances without approval, or place excessive stress on the premises.
- (3) Signage requires prior approval from the lessor.
- (4) Smoking is prohibited in enclosed areas.
- (5) The Lessee must keep the premises clean, properly dispose of waste, and prevent pollution or contamination.
- (6) Alcohol must not be sold or supplied without the prior written consent of the Lessor and in accordance with the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Licensing Regulations 1989 and any other relevant written law.

### 5.12 Lessor's right of entry

The Lessor has the right to enter the premises without notice in emergencies and with reasonable notice otherwise. Entry may occur at reasonable times, with necessary personnel and equipment, to inspect repairs, conduct surveys or works, comply with legal requirements, or address lease breaches. The Lessor is not obligated to rectify breaches but may do so without waiving other rights.

### 5.13 Holding over

If the Lessee stays in the Premises after the term expires with the Lessor's consent, they become a monthly tenant, paying rent equal to one-twelfth of the previous annual rent, under the same lease terms, subject to necessary consents.

### 5.14 Yield up the premises

Upon termination, the Lessee must peacefully surrender the premises in accordance with lease obligations, return all keys and access devices, and remove their property unless otherwise agreed. Any damage caused by the removal must be repaired to the Lessor's satisfaction. If the Lessee fails to remove their property, the Lessor may do so at the Lessee's expense, with no liability for any damage incurred.

### 5.15 Right to terminate upon notice

Either party may terminate the lease for any reason with four months' written notice, without owing compensation to the other. Any planned events within six months will still be honoured. Upon termination, the Lessee must comply with the requirements outlined in clause 5.13. When a property or facility leased to a community group expires or is cancelled, expressions of interest are to be publicly invited from community groups in the district to lease the facility or property.

### 5.16 Chief Executive Officer's authorisation to act on behalf of the Shire

- (1) The Chief Executive Officer (CEO) is authorised to:
  - (a) Review each lease agreement renewal on a case-by-case basis and exercise discretion in determining whether to approve the renewal, ensuring alignment with the terms set out in this policy;
  - (b) Approve for the Shire of Waroona to enter into a new lease arrangement with an existing lessee and sign and execute all matters relating to the lease agreement;
  - (c) Approve sub-letting arrangements and sign and execute all matters relating to the sub-let agreement; and
  - (d) Approve written requests from lessees to modify, alter, or use the premises contrary to, or in accordance with lease terms, where the lessor (Shire of Waroona)'s consent is required.
- (2) In addition to the CEO's approval and execution of a lease agreement, the Shire President must also sign the lease agreement document to confirm endorsement on behalf of Council, ensuring an additional level of oversight and accountability in the leasing process.
- (3) When more than one expression of interest is received for an available facility, the decision to approve a new lease agreement shall be determined by Council.

### 5.17 Current lease agreement to take precedence

The clauses and provisions of any current Council-approved lease agreement shall take precedence over this policy, unless otherwise amended by the CEO.

## 6. Legislative and Strategic Context

The following legislative instruments and all associated subsidiary legislation provide the broad framework within which this policy operates –

- *Local Government Act 1995*
- *Local Government (Functions and General) Regulations 1996*
- *Contaminated Sites Act 2003 (WA)*
- *A New Tax System (Goods and Services Tax) Act 1999*
- *Duties Act 2008*
- *Property Law Act 1969*
- *Land Transfer Act 1893*



- *Liquor Control Act 1988*
- *Health (Food Hygiene) Regulations 1993*
- *Liquor Licensing Regulations 1989*
- *Commercial Arbitration Act 1985*
- *Associations Incorporation Act 2015*
- *Commercial Tenancy (Retail Shops) Agreements Act 1985*

## 7. Review

This policy is to be reviewed triennially.

## 8. Associated Documents

Nil

## 9. Document Control

Division	Corporate & Governance		
Policy Number	CGP031		
Contact Officer	Director Corporate & Community Services		
Related Legislation	<ul style="list-style-type: none"> <li>• <i>Local Government Act 1995</i></li> <li>• <i>Local Government (Functions and General) Regulations 1996</i></li> <li>• <i>Contaminated Sites Act 2003 (WA)</i></li> <li>• <i>A New Tax System (Goods and Services Tax) Act 1999</i></li> <li>• <i>Duties Act 2008</i></li> <li>• <i>Property Law Act 1969</i></li> <li>• <i>Liquor Control Act 1988</i></li> <li>• <i>Health (Food Hygiene) Regulations 1993,</i></li> <li>• <i>Liquor Licensing Regulations 1989</i></li> <li>• <i>Commercial Arbitration Act 1985</i></li> <li>• <i>Associations Incorporation Act 2015</i></li> <li>• <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i></li> </ul>		
Related Shire Documents	Nil		
File Number	CM.7		
Risk Rating	Moderate	Review Frequency	Triennially
Next Review	August 28	Date Adopted	30/09/2025
OCM Number	OCM25/09/141	Previous Policy No.	Nil

## 10. Amendments

Date	Details of Amendment	Reference	Record Number