

1.42 Property Management (Leases and Licences)

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Objective

To provide principles to ensure that all requests to lease or licence City of Albany-owned, managed or controlled Property, including Crown land, are dealt with in a fair, equitable, and, where possible, consistent manner.

To minimise the risk to the City of Albany and to maximise the overall return to the community for City of Albany assets.

To ensure compliance with the Local Government Act 1995 and any other relevant laws, and consistency with City of Albany policies.

Scope

The Policy applies to the leasing and licensing of all Property owned, managed or controlled by the City of Albany, including Crown land.

Policy Statement

The City of Albany, as legal owner of the Property, may from time to time choose to enter into a Lease or Licence agreement with a third party. The disposal of land is covered under the Local Government Act 1995 and the Local Government (Functions and General) Regulations 1996.

The City of Albany also manages some Reserves which are available for leasing and licensing purposes for specific periods and purposes as set by the Crown.

The Policy recognises the variety and diversity of Leases and Licences and seeks to ensure that all Lessees and prospective Lessees understand the underlying elements of the Policy.

All requests for a Lease or Licence will be determined:

- In a fair, transparent, and where possible, consistent way; and
- In a manner that complies with statutory principles and policy.

The City of Albany will seek at all times to comply with the following principles in dealing with Property, bearing in mind that variation may be required given the varying nature of each property and Lessee and the current state of the leasing and licencing market.

The City of Albany reserves its right to exercise its discretion in all circumstances and remains bound by all applicable Laws and Regulations.

A. Essential Principles applied by the City of Albany when granting a Lease or Licence over Property.

Item	Policy	Principle
1.	Type of Agreement	A Lease will be entered into where the intention is to grant exclusive possession of the property or part of the property. A Licence will be entered into where the intention is to grant non-exclusive possession of the property or part of the property.
2.	Term	The <u>maximum tenure</u> of a Lease or Licence granted by the City on Crown land will be 21 years including any further term option/s. The <u>maximum tenure</u> of a Lease or Licence granted by the City on freehold land will be at the discretion of the Council.

Item	Policy	Principle
3.		<p>The term will depend on many factors, including but not limited to:</p> <ul style="list-style-type: none"> • The needs of the Council and Council Plan objectives. • The needs of the Community. • The Lessee. • The Business. • The ongoing need for the Property or the provided use. • Substantial contributions to capital or structural works by the Lessee. • The sustainability of the Lessee. • The sustainability of the Property. • The Management Order for the Property (if Crown land) and the requirements of the Minister for Lands. • The current state of the leasing and licensing market.
4.	Lessee	<p>The City may enter into a Lease or Licence with the following entities:</p> <ul style="list-style-type: none"> • Individuals. • Partnerships (i.e. more than 1 individual or entity). • Incorporated Associations. • Companies. • The Crown / a Statutory Authority / other Government body. • Trusts, by their trustee (usually an individual or a company). <p>Some entity types may require a guarantor or other types of additional security (see below).</p>
5.	Planning, Consent & Approvals	<p>Planning Scheme Consent / Approval (if required) must be obtained from the City as the local planning authority prior to a request for a Lease or Licence.</p>
6.		<p>Where the City manages Crown land, a grant of the Lease or Licence and each renewal, if any, will be conditional on Minister for Lands approval.</p>
7.		<p>The Lessee or Licensee is solely responsible for obtaining all approvals, licenses and authorities necessary to conduct the proposed activities on any premises. The City makes no representation that a premises or property is suitable for any activity, whether permitted or otherwise.</p>
8.	Format & Conditions	<p>Leases and Licences will normally only be granted by the City on its standard terms and conditions (from time to time) for the type of Lease or Licence sought, and in accordance with the relevant Guidelines. Amendments to standard agreements may be made in appropriate circumstances.</p>
9.		<p>Lease and Licence agreements will be supplied by the City's nominated lawyers at the Lessee's cost (unless prohibited by the <i>Commercial Tenancy (Retail Shops) Act 1985</i>).</p>
10.	Rates, Taxes & Outgoings	<p>The Lessee must pay the relevant authority directly for all outgoings, including rates, charges and taxes levied against the Property. User charges, including but not limited to water, sewerage, waste disposal, telephone, gas and electricity, are generally paid directly to the relevant service provider by the Lessee.</p>
11.	Registration	<p>A Lessee may procure registration of the Lease (where possible) with Landgate at the Lessee's cost. Licenses are not registrable with Landgate.</p>

Item	Policy	Principle
12.	Encumbrances	A Lessee may lodge a “subject to claim” caveat to protect the Lessee’s interest. A Lessee must not lodge any other caveat against the Property without the City’s prior written approval. Lessee will appoint the City as the power of attorney for removal purposes.
13.		A Lessee must not mortgage its interest in Property without the City’s prior written approval, which approval may be withheld by the City in its absolute discretion.
14.	Variation	If a Lessee requests a variation to a Lease or Licence, the City may grant a variation on condition that the variation is achieved by surrender of the existing Lease or Licence and the grant of a new Lease or Licence with additional conditions the City considers appropriate, at the Lessee’s cost.
15.	Sub-letting	A Lessee must not sub-Lease, sub-Licence or part with possession of Property that is the subject of a Lease or Licence without the City’s prior written consent. The Lessee will be required to prove the suitability of a sub-Lessee/sub-Licensee.
16.		Sub-Leases and sub-Licences must be consistent with the head Lease or Licence purpose. If the purpose is inconsistent, a variation to the head Lease or Licence will be required to accommodate the sub-Lease or sub- Licence purpose.
17.		If sub-Leasing or sub-Licensing City managed buildings, the Lessee cannot charge a rent for the sublet area that is pro-rata higher than the rent payable under the head Lease or Licence.
18.		If sub-Leasing or sub-Licensing buildings constructed by the Lessee on City owned and or City managed land, the Lessee can determine the sub-Lease or sub-Licence rental provided that the City is satisfied that such rental is reasonable and in line with the capital investment in the property.
19.	Assignment	Unless prohibited by the Commercial Tenancy (Retail Shops) Act 1985, a Lessee must not assign a Lease or Licence without the City’s prior written consent, which may be withheld in the City’s absolute discretion. Assignors continue to be liable for the remainder term of the Lease and will be required to prove suitability of an assignee.
20.	Risk Management & Insurance	<p>The City requires that all Leases and Licences contain appropriate risk management measures including an obligation on the Lessee to:</p> <ul style="list-style-type: none"> • Indemnify the City (and the Minister for Lands if on Crown land) for loss or damage to persons or Property, wherever occurring; • Maintain adequate public liability insurance; • Ensure that appropriate documentation and insurance is in place for the hired use of the Property; • Carry appropriate worker’s compensation insurance commensurate with activities; and • Be responsible for emergency and evacuation procedures.
21.		A Lessee must maintain a minimum of \$20 million public liability insurance per occurrence during the term. If activities undertaken on the Leased or Licensed Property are considered high risk, a higher level of public liability insurance may be required by the City.

Item	Policy	Principle
22.		The City will arrange insurance for the buildings listed in Schedule 1, and recover the cost of insurance premiums from the Lessee as an outgoing. A Lessee will reimburse the City for any excess in respect of any claim.
23.		A Lessee must "insure" the Lessee's personal Property (including contents) and those buildings not listed in Schedule 1 for their full replacement value.
24.		A Lessee will be required to provide the City with a copy of certificates of currency before possession is granted under the Lease or Licence commences, and annually thereafter.
25.	Maintenance	<p>The City will be responsible for structural maintenance and electrical wiring of the buildings listed in Schedule 1, provided that such maintenance is not required as a result of wilful or negligent actions of the Lessee.</p> <p>Maintenance resulting from Lessee wilful or negligent actions will be the responsibility of the Lessee.</p>
26.		A Lessee will be responsible for all maintenance of whatever type to the Property, including buildings not listed in Schedule 1.
27.		The City will conduct regular inspections of the Property. City and City agents may enter the Property at any reasonable time after giving the Lessee at least 14 days' notice to conduct the inspection. City and City agents may enter the Property without notice in the case of an emergency, including imminent loss.
28.	Environmental	A Lessee must not clear vegetation on the Property without the City's prior written consent.
29.		A Lessee must cooperate with the City in controlling declared weeds and pests in accordance with the <i>City's Environmental Weed Strategy for Reserves and the Biosecurity and Agriculture Management Act 2007</i> .
30.		A Lessee must, at its cost, comply at all times with the City's Fire Management requirements.
31.		Leases or Licences on foreshore reserves will include coastal hazard provisions.
32.	Works	A Lessee may only undertake works on the Property in accordance with the City's Environmental Code of Conduct for Works on Council Controlled Land and related procedures, and only with the City's prior written consent. A Lessee will also be responsible for any planning or building approvals that may be required. All works are to be conducted in a safe and professional manner.
33.	Access & Inclusion	A Lessee will consider the City's Strategy Access & Inclusion Plan, as amended.
34.	Further Term	If a Lease or Licence provides for a further term, the City will grant the Lessee an extension of the Lease or Licence if the Lessee is not or has not been in default and complies with the procedures in the Lease or Licence for renewal.

Item	Policy	Principle
35.	Vacant Possession & Expiry of Term	Removal of a Lessee's effects, buildings or infrastructure, apparent cessation of activities, or the continued vacancy of premises, without notice, may be deemed a surrender of Lease or Licence without notice.
36.		If a Lessee remains in occupation of Property after expiry of the Term, with the consent of the City, it will do so from month to month unless the Lease/Licence or City otherwise provides different holding over arrangements.
37.		On expiry or termination of a Lease or Licence, a Lessee must remove all Lessees' improvements at the Lessees' cost, unless otherwise directed by the City. If a Lessee fails to remove its improvements by the end of the Lease or Licence or removes its improvements when directed not to do so, then the Lessee will forfeit the improvements and the City may retain them or remove them and restore the Property at the Lessee's cost.
38.		A Lessee must make good damage caused by the removal of its improvements and restore the Property to the same condition as at the beginning of the term.
39.	Vacant Property	Unless extenuating circumstances are deemed by the City to apply, the City will conduct an Expression of Interest (EOI) process to determine a suitable Lessee for vacant City Property.
40.		The decision to conduct an EOI process will be based on factors including but not limited to: <ul style="list-style-type: none"> • The size of the Property • The location of Property • The value of Property • The expected rental return • The likelihood of multiple interested users • Ensure the Lessee delivers specific services • Allow for innovative or flexible solutions for the property
41.	Costs	Lessees must reimburse the City for all reasonable costs associated with the development and implementation of the Lease or Licence (unless prohibited by the Commercial Tenancy (Retail Shops) Act 1985). These costs include legal fees, advertising, and valuation and surveyor fees.

B. Special Principles relating to certain categories of Property.

Item	Policy	Principle
42.	Commercial Leases	Rent for Commercial Leases or Licences will be determined by Market Valuation.
43.		The costs of obtaining a Market Valuation (provided by a licensed Property Valuer) for the initial Lease or Licence rental assessment and during the term of the Lease or Licence will be paid by the Lessee.
44.		The licensed Property Valuer will be appointed by the City.

Item	Policy	Principle
45.		Rent reviews will be conducted on the anniversary date of the Lease or Licence by Market Valuation every three years and by the most recently published Consumer Price Indexation, All Groups (Perth) for intervening years.
46.		The Lessee/Directors may be required to provide a personal guarantee if the lease is through a company or trust.
47.		The Lessee may be required to provide a bank guarantee or security bond (in the discretion of the City) equivalent to three months' rent plus GST and outgoings (unless waived by the City or otherwise prohibited by the <i>Commercial Tenancy (Retail Shops) Act 1985</i>).
48.	Retail Shop Leases	If the Act applies, Leases will be prepared in accordance with the <i>Commercial Tenancy (Retail Shops) Act 1985</i> .
49.		Rent for Retail Shop Leases will be Market Valuation and/or rent based on turnover, with Consumer Price Indexation, All Groups (Perth) adjustment in intervening years.
50.		Subject to the Act, a minimum term of 5 years will be granted. The term can be in a combination of an initial term and options totalling 5 years.
51.	Telecommunication Leases & Licences	Leases and Licences will take into consideration the <i>Telecommunications Act 1997 (Cth)</i> .
52.	Commercial Fishing Accommodation Leases & Licences	<p>Subject to a change in City policy, no new Commercial Fishing Accommodation Leases or Licences will be granted on waterfront Property.</p> <p>All existing Leases and Licences may be reviewed 12 months prior to expiry, balancing environmental protection and prevention of degradation of coastal foreshores with need prior to considering any renewal.</p> <p>Any renewal of existing Leases and Licences will be for a maximum 5-year term.</p> <p>Any new lease or licence will require the Lessee to meet the following pre-conditions and will continue throughout the term of this Lease to comply with and meet at least the following requirements:</p> <ul style="list-style-type: none"> • The Lessee is actively engaged in the commercial fishing industry at Cheyne Beach; • The Lessee provides the City of Albany a copy of all catch reports the tenant has lodged with the Department of Primary Industries and Regional Development in the three(3) months prior to the new lease and continues to provide catch reports as requested by the City; • The Lessee holds a current commercial fishing licence and managed fishery licence issued by the Department of Primary Industries and Regional Development, including for the purposes of the activities undertaken at Cheyne Beach; and • The Lessee will use the location for the Permitted Use only.

Item	Policy	Principle
53.	Government Leases	<p>Any lease with Government agencies will be considered a commercial arrangement and a market rental will apply. However, circumstances where it is appropriate to reduce rental payments to align with Community Lease rates under certain circumstances, include:</p> <ul style="list-style-type: none"> a) Where the facility objective aims to create a community hub with allied support services that provide a public benefit to the community; b) Where a Government agency contributes to land or building costs to construct a facility that will provide a public benefit to the community; c) Where a Government agency makes a significant contribution to asset development, management or renewal saving costs for the City; d) Where the facility is to be occupied and used by a Government agency to provide services at reduced fees, clearly below market standards; or e) To reflect any agreements promoting partnerships between State and Local Government.
54.	Cheyne Beach Holiday Accommodation Leases	<p>Rent will be based on the unimproved land rental value assessed by a licensed Property Valuer.</p> <p>Permitted use of the Property is for temporary holiday accommodation. The Property must not be used as the primary place of residence of any person.</p> <p>The Lessee must not rent, hire, sub-lease or let the property whether for consideration or not.</p> <p>Buildings are the sole responsibility of Lessees.</p>
55.	Community Leases	Community, sporting or recreation associations must be incorporated to enter into a Lease or Licence with the City.
56.		Prospective Community Lessees, upon request, must be able to demonstrate to City's satisfaction that the Lessee will provide sufficient community benefit to justify the Lease or Licence.
57.		<p>A Community Lease or Licence term will generally be for a maximum of 10 years for community groups leasing City managed buildings listed in Schedule 1. A longer term may be considered (at the discretion of Council) for properties that are primarily funded by the community group taking the following factors into account:</p> <ul style="list-style-type: none"> • Level of capital investment • Long term planning • Extent the property is used for multi-purpose activities and co-location • Council Plan objectives and relevant strategies • Level of maintenance of buildings and infrastructure • History of satisfactory performance <p>The maximum term for Community Leases and Licences will be 21 years.</p>

Item	Policy	Principle
58.		Rent for Community groups leasing land (not listed in Schedule 1) for community purposes will be at a subsidised peppercorn rent of \$10.00 plus GST per annum. Rent for Community groups leasing land and City managed buildings listed in Schedule 1, for community purposes will be the equivalent to the annual minimum rate as set by Council each year.
59.		Community Leases and Licences may be assigned at the absolute discretion of the City, to an entity with similar suitable community intent.
60.		Community Lessees may make the Property available for casual hire for a period no greater than 24 consecutive hours where appropriate for a sole community purpose and does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. The hirer must also enter into a hire agreement on terms and conditions agreed by the City. A breach of hirer may be deemed to be a breach of the Lease or Licence and will require rectification.
61.	Lotteries House Leases	Lotteries House Leases will be charged rent as determined annually by the Lotteries House Management Committee, as delegated under the Deed of Trust agreement between the Lotteries Commission of WA and the City for the Property.
62.	Residential Leases	Residential Lessees will be in accordance with the <i>Residential Tenancies Act 1987 WA</i> and be charged rent as determined by a current rental valuation provided by a Licensed Real Estate Agent engaged by the City.

Legislative and Strategic Context

This Policy relates to:

- Part 3 of the *Local Government Act 1995* which describes how Local Government is to dispose of land;
- Part 6, section 30 of the *Local Government (Functions and General) Regulations 1996*;
- Part 6 of the *Land Administration Act 1997* that determines Sales, Lease and Licences of Crown land;
- The City of Albany Strategic Community Plan 2032:
 - **Pillar:** Leadership.
 - **Objective:** Provide strong, accountable leadership.

Review Position and Date

This policy and procedure is to be reviewed by the document owner every year.

Associated Documents

Schedule 1 – City Managed Leased Buildings

Definitions

In this Policy, the following definitions apply:

Definition/Term	Description
Act	The Local Government Act 1995 as amended.
Cheyne Beach Holiday Accommodation Lease	A legally binding agreement was granted to Lessees for the purpose of private holiday accommodation only, on a portion of Crown Reserve 878 located at Cheyne Beach.
City	The City of Albany.
Commercial Lease	In this Policy, a legally binding agreement, relating to all Leases other than a Cheyne Beach Holiday Accommodation Lease, Community Lease, Lotteries House Lease or Residential Lease.
Community Lease	A legally binding agreement granted to community, sporting or recreation associations or other organisations that provide services solely for the benefit of the community.
Consumer Price Index	The weighted average cost of a standard basket of retail goods expressed in relation to a base period for Perth (All groups).
Crown Land	Land owned by the Crown and vested in the City of Albany through the granting of a Management Order by the Department of Regional Development and Lands.
Delegated Authority	In accordance with the provisions of Section 5.42 of the <i>Local Government Act 1995</i> , Council may delegate authority to the Chief Executive Officer to exercise certain powers or duties to enable the continued working of Council without the necessity for reporting to an Ordinary Council Meeting.
Government Entity	Any local, state or federal government entity to the extent that it is carrying out a legislative or regulatory role.
Incorporated	A group of people who are recognised as a legal entity, separate from individual members, as defined under the <i>Associations Incorporation Act</i> (1987).
Lease	A legally binding agreement by which one party (Lessor) in consideration of rent, grants exclusive use and possession of real Property to a third party (Lessee) for a specified purpose and term. A Lease creates an interest in the Property.
Lease or Licence Variation	The addition, removal or change of one or more of the Lease or Licence provisions.
Lessee	An authorised third party that has entered into a Lease or Licence with the City of Albany for the use of City of Albany owned or managed real Property and pays rent to occupy the Property (and where the context permits includes a Licensee).
Lessor	The City of Albany being the owner or management body of Property with power to Lease or Licence to a third party (Lessee).

Definition/Term	Description
Licence	Permits a person to occupy Property, or part thereof on particular conditions. The main feature that distinguishes a Licence from a Lease is that a Licence does not permit exclusive use of the Property, and may be used by others. A Licence does not create an interest in the Property.
Licensee	A person that holds an approved Licence. For the purpose of this document (where context permits), a Licensee will also be referred to as “Lessee”.
Lotteries House Lease	A legally binding agreement granted to eligible organisations as defined by section 19 of the <i>Lotteries Commission Act 1990</i> charitable or benevolent organisations, for use by them exclusively for accommodation.
Management Order	An authorisation provided by the Crown gives the City of Albany both the power and authority to manage a parcel of land on behalf of the Crown.
Market Valuation	A valuation determined by a licensed Valuer registered with the Australian Property Institute takes into consideration a range of factors to determine the current market rental value of a Property.
Minimum Rate	The rate set annually by Council in its absolute discretion as the minimum rate chargeable for rateable Property.
Planning Scheme Consent	Local Planning Authority requirement if proposing to change land use, develop or use any land including the erection, construction or alteration of any building, excavation or other works on any land.
Property	The Property that is subject to or intended to be subject to a Lease or Licence.
Regulations	Local Government (Functions and General) Regulations 1996.
Retail Shop Lease	A legally binding agreement granted in accordance with the Commercial Tenancy (Retail Shops) Agreements Act 1985 as amended.
Reserve	A defined area of land belonging to the Crown which has been vested in the City of Albany by way of a Management Order.
Residential Lease	A legally binding agreement granted for a residential (housing) purpose.

Schedule 1 - City Managed Leased Buildings

Asset ID	Assessment Number	Building	Crown Reserve (vested with City of Albany)	Property Address	Locality
B2002	A175708	Wellstead Resource Centre	46802	Lot 49 Windsor Road	Wellstead
B2007	A136289	Albany Leisure and Aquatic Centre - Albany Swim Club & Kiosk		52 - 70 Barker Road	Centennial Park
B2009	A193726	Mt Melville Lookout Telecommunication Facility	2681	179 - 87 Serpentine Road	Mt Melville
B2010	A104446	Senior Citizens Centre – Chorus Australia		126 - 40 Grey Street	Albany
B2050	A64802	Airport Terminal - Car Hire, Virgin & Cafe		35615 Albany Highway	Drome
B2051	A64802	Airport Residence		35615 Albany Highway	Drome
B2101	A96893	Old Gaol - Albany Historical Society	22375	255 - 267 Lower Stirling Terrace	Albany
B2102	A97368	Women's Rest Centre	19464	176 Lower Stirling Terrace	Albany
B2103	A181595	Old Post Office - UWA & Spectrum Theatre		33 - 39 Stirling Terrace	Albany
B2104	A140446	Bond Store - Model Railway & UWA / Wave energy	42792	57 - 77 Proudlove Parade	Albany
B2108	A137623	Co-Operative Building - Regional Development Australia	42401	46 Frederick Street	Albany
B2013	A110445	Community Building Spencer Park - Depression Support & Albany Historical Society	26860	11 - 13 Nind Street	Spencer Park
B2122	A133837	Three Anchors	26149	2 Flinders Parade	Middleton Beach
B2123	A124369	Girl Guides Association	34088	17 - 21 Parker Street	Lockyer
B2124	A140428	Railway Station Building - UWA / Wave Energy	42793	45 - 55 Proudlove Parade	Albany
B2137	A152433	Emu Point Cafe	22698	1 Mermaid Avenue	Emu Point
B2125	A123434	Lockyer Community Kindergarten	25383	3 -7 Leschenault Street	Lockyer

Asset ID	Assessment Number	Building	Crown Reserve (vested with City of Albany)	Property Address	Locality
B2126	A150439	Lotteries House		211 - 217 North Road	Centennial Park
B2127	A110445	Coolangarra's Barmah Kindergarten	26860	11 - 13 Nind Street	Spencer Park
B2177	A157578	Carlyle's Function Centre	38226	7 Forts Road	Mt Clarence
B2180	A171322	Garrison Cafe, Restaurant & Cafe	38226	7 Forts Road	Mt Clarence
B2218	A65147	Wellstead Fire Station - St John Ambulance	28228	Windsor Road	Wellstead
B2327	A90251	Surf Life Saving Club	14789	4 Flinders Parade	Middleton Beach
B2350	A92318	Centennial Stadium - Centennial Stadium Inc.	405	156 Lockyer Avenue	Centennial Park
B2351	A239358	Cricket & Soccer Pavilion - Junior and Senior Soccer & Cricket	31567 & 32469	North Road	Centennial Park
B2453A&B	A114984	Hanrahan Rd Tip Site - Cleanaway		16 Cuming Rd	Albany
B2457	A238982	Cheyne Beach Waste Transfer Structures - Cheyne Beach Caravan Park	878	Lot 7442 Cheyne Road	Cheyne Beach
B2481	A174544	Cape Riche - Caretakers Cottage	1010	1813 Sandalwood Road	Wellstead
B2484	A188652	Willyung Hill Telecommunication Facility	43591	Rocky Crossing Road	Willyung
B2490	A64802	Patient Transfer Building - St John Ambulance		Airport 35615 Albany Highway	Drome
B2492	A161523	All Breeds Dog Club - Foundation Park		23 - 35 Parade Street	Albany
B2495	A96087	Eastern Pavilion - Triathlon Club, Cycling Club & Junior Football		49 - 55 North Road	Centennial Park
BLD258	A74188	Youth Park Club Storage	18552	71 Sanford Road	Centennial Park
BLD297	A74368	Lawley Park Clubrooms & Courtside Pavilion	6596	Lot 1570 Brunswick Road	Albany