

Council Policy CP049 Sporting Group Leases			
Officer	Coordinator Land and Property Services	Owner	Director Treasury and Finance
Review frequency	Biannually	Next review	2014
Council resolution number and date			
Mayor		Chief Executive Officer	

OBJECTIVE

The purpose of this policy is to implement a framework and provide basic principles for Tenancy Arrangements at City owned sporting and recreational facilities (including land):

- are consistent with the outcome of the City's Strategic Community Plan 2011-2021
- provide a consistent and equitable and simple approach to arrangements for all tenants of City's sporting and recreational facilities; and
- provide for the effective use and management of those facilities.

SCOPE

This policy is relevant to all sporting and recreational facilities.

DEFINITIONS

City means the City of Greater Geraldton.

Council means the council of the City of Greater Geraldton.

Councillor means a person who holds the office of councillor on the Council.

Mayor means the mayor elected by electors of the district of the City of Greater Geraldton.

CEO means the chief executive officer of the City.

Asset - A physical component of a facility which has value, enables a service to be provided and has an economic life of greater than 12 months.

Asset Management Plan - A plan developed for one or more assets that combines technical and financial management processes to provide a specified level of service.

Employee means a person employed by the City under section 5.36 of the LGA.

Local government property means anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of the City.

Maintenance - All actions necessary for retaining an asset as near as practicable to its original condition, but excluding rehabilitation or renewal.

Strategic Community Plan means the Strategic Community Plan adopted by the Council.

Act or LGA means the *Local Government Act 1995*.

Association includes society, club, institution or body.

Incorporated association means an association incorporated under the *Associations Incorporation Act 1957*.

Record means any record of information however recorded and includes- anything on which there is writing, a map, plan, diagram or graph, a drawing, pictorial or graphic work, photograph; or anything from which images, sounds or writings can be reproduced.

Not for Profit means sporting, recreational and community groups (including football clubs, soccer clubs, sports and social clubs, surf lifesaving clubs and the like) whether incorporated or not, that would be deemed exempt dispositions under the Local Government Act 1995 and refer to R30 LG Functions & General Regulations

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 1987 so as members of the association are not entitled to share in any pecuniary profits.

Tenancy arrangement means a formal arrangement between the City and a user group, club or organisation, for the use of a City facility. Tenancy arrangements are not considered a disposal pursuant to the LGA.

POLICY

Exclusivity Test

Where the use of a City facility (including land) enjoys exclusive use of either part or all of that facility then that arrangement shall be the subject of an appropriately negotiated lease, subject to Council approval.

At No Cost to the City

In recognition of the benefit to the community provided by Not for Profit groups or organisations the lease fee applicable will be \$1.00 per annum. As a result of the remainder of the lease and conditions will be on a 'No Cost to the City' basis. The lessee will be responsible for cleaning, repairs, maintenance, rates and taxes and all outgoing associated with the facility.

The lessee will generally not be responsible for the structural integrity of the leased premises however, Council may, at its discretion, deem that a Lessee is responsible for structural maintenance if that facility has been constructed entirely, or predominantly, by the Lessee.

That is not to say that the City is responsible for the rectification of any structural defect of the premises or repairs or improvements to the premises of a capital nature. Such situations are to be negotiated and evaluated on a 'case by case' basis.

No recognition of Prior Investment

On the basis that the annual lease fee for Not for Profit user groups under this Tenancy Policy is \$1.00, no recognition of 'Prior Investment' by the Lessee to the capital cost of constructing the leased premises shall be given.

New leases and lease renewals will be determined following a EOI process. Short term leases of up to 5 years is considered suitable for this type of lease with additional options of extensions if considered necessary.

Lease Term

Due to the uncertainties surrounding future land use, economic factors and other longer-term considerations that may impact on the management of the City's leased facilities, lease tenure, other than for the Commercial category, should not generally be negotiated for a total term longer than five (5) years with maximum of 3 additional options of 5 years (totalling 20 years).

Lessees will be required to prepare a Business Plan to cover the term of the proposed new lease or lease renewal.

Where the term of a proposed new lease, or lease renewal, is contemplated beyond five (5) years (including extensions or options to renew) a more comprehensive business plan will be required detailing the longer term plans of the club including financial analysis and developmental and funding plans.

Approval of any extensions to the lease, or options to renew, will be conditional upon the City's satisfaction to the progress achieved towards the initial Business Plan and agreement by the City to a reviewed Business Plan, and the implications of that plan, to be prepared no later than three (3) months prior to the end of the initial term of the lease.

Not for Profit – Lease Terms and Conditions:

The following table outlines the basis for the negotiation of essential terms for lease agreements between the City and Not for Profit users. All arrangements shall be subject to Council approval and shall be entered into under the principle that the use of the facility is to be at 'No cost to the City'

i	Lease Rental	\$1.00 per annum (see variations below where a head Lease of commercial activity exists).
ii	Utilities (water, electricity, gas and telephone etc.)	Payable by Lessee
iii	Rates & Taxes (including Council Rates where rateable under the <i>Local Government Act 1995</i>)	Payable by Lessee
iv	Lease Term	To be negotiated in accordance with the principles that the total term (including options) should generally not exceed five (5) years.
vi	Liquor Licence	Lessee responsibility. City approval in writing required prior to lodgement of application.
vii	Building insurance	Payable by Lessee. Buildings and other land improvements to be insured for the full replacement values. The level of cover and which party is to arrange to be agreed between the City and Lessee during the lease negotiations. An opportunity may exist in CGG providing cover under its blanket policy (cheaper premium, confirmation of building insurance on the asset, council incentive, recoup premium paid by the City).
viii	Repairs and Maintenance of Leased Premises	Lessee Responsibility
ix	Lessee to Make Good	At the expiration or sooner determination of the lease.
x	Statutory/operational compliance	Lessee Responsibility
xi	Legal fees	Payable by the Lessee where the City has incurred external legal costs as part of a lease negotiation and/or preparation of formal documentation.
xii	Key Performance Indicators (KPI)	As set out in this Policy – all leases/licenses require full compliance to the Key Performance Indicators

In instances other than Not for Profit, the relevant lease will be negotiated based on the particular circumstances involved in each application and will also be subject to Council approval.

Council Rates

Section 6.26(1) of the *Local Government Act (1995)* states that “*Except as provided in this section all land within a district is rateable land.*” Section 6.26(2) of the Act provides for circumstances where land is not rateable and more specifically section 6.26(2)(b) provides that land “*.....owned by the local government and is used for the purpose of that local government.....*” would be exempt.

Key Performance Indicators

Binding Key Performance Indicators are to be attached as Schedule A to the Lease/License. These KPI's are to include:

1. *Business Plan to the City of Greater Geraldton on a yearly basis which includes the following:*
 - a. *member numbers and expected numbers for the next 5 years;*
 - b. *youth development programs being offered;*
 - c. *audited financial statements;*
 - d. *proof of a percentage of funds set aside in bank account for asset maintenance/renewal (or funds spent in that period).*
2. *Maintenance schedule and provide updated data of what has been completed (CGG will audit facilities once per year to ascertain schedule of maintenance required);*
3. *Policy Manual which includes:-*
 - a. *anti-discrimination policy, anti-vilification, disability access policy, OS&H policy; and*
 - b. *any other policy that Dept of Sport & Recreation recommend for good governance of sporting clubs.*
4. *Public liability insurance cover to be in place at the City's required level as well as satisfactory building and asset insurance coverage.*

Note the City, through the Club Development Office, will provide templates and support for all Sporting Users lessees in order to facilitate compliance with these KPI's.

Where any Sporting User lessee fails to comply or take reasonable measures to comply the lease may be terminated by Council irrespective of the remaining tenure.

Asset Management

The leased asset portfolio forms part of the City's overall asset portfolio and on that basis, regular inspection (at least annual where applicable) of leased facilities should be undertaken by an officer, or Officers or the City, to ensure the integrity of the facility is retained, and that maintenance obligations of the Lessee are being met.

Inspections should be coordinated by City Officer sand carried out by, property, building maintenance and health staff as required, with appropriate feedback given to the lessee in accordance with the terms of their lease.

Variations

Commercial Activity

Commercial activity by a Not for Profit Lessee will require City approval and in the event that the Lessee does undertake such activity at a lease facility, then the Lease Fee may be negotiable.

Where commercial activity is undertaken by a sub-lessee/sub-licensee then a negotiated lease fee will be payable by the Lessee to the city regardless of whether or not the activity is related to the activity being carried out by the Lessee.

Small Tenancies within a community facility

Where exclusive use is provided to a Not for Profit user over a small portion of a building a standard lease may not be practical. A simplified lease in these instances is considered a more appropriate tenancy arrangement.

Land Leases

Where a lease arrangement is negotiated over City land and the improvements to the land are to be (or have been) constructed either in their entirety or predominantly by the Lessee, and the City has no requirements for such improvements to remain on the land at the expiration or sooner determination of the lease, then the lease shall be a Land Lease.

Licence Agreements

In certain situations, an arrangement for the non-exclusive use of land, or buildings will arise. Given the nature of such arrangements it is appropriate for the City, subject to Council approval, to enter into a licence agreement.

Sub-leases

Where a primary leaseholder of a City owned property enters into a sub-lease with another club, association or group, it will be incumbent upon the primary leaseholder to ensure the conditions of any sub-lease are consistent with, and progress, the City's intent for good governance, accountability and sustainability. Any sub-lease will be subject to consent by Council and, where applicable, the Minister for Lands.

WORKPLACE INFORMATION/REFERENCES

This Policy should be read in conjunction with Council Policy CP048 Sporting Futures.

ROLES AND RESPONSIBILITIES

It is the responsibility of all employees that they observe the highest standards of ethics and integrity and act in an honest and professional manner that supports the standing of the City of Greater Geraldton.