

## 3.21 Community and Commercial Tenancies

### Objective

The purpose of this Policy is to outline the Shire's principles for Tenancing arrangements at Facilities and specifically to:

- provide a consistent and equitable approach to tenure arrangements;
- identify the categories of Facilities which may be subject to a Tenancy Agreement;
- ensure all Tenanted Facilities provide an acceptable asset utilisation;
- provide a commercial return to the Shire, where appropriate and in the public interest to do so; and
- ensure Facilities are maintained safely and to an appropriate standard, subject to an acceptable allocation of responsibility; and
- align with the Shire's priorities and community expectations.

### Background

1. Section 3.58 of the LG Act provides for the method by which a local government can dispose of property, including real property. For the avoidance of doubt, disposal of land includes the sale, lease, license and other such tenure by other parties of real property in the ownership or otherwise under the management of the Shire.
2. The disposal of land, including entering into a Tenancy Agreement is subject to:
  - a. Council approval unless delegated to the Chief Executive Officer in accordance with this Policy; public notification in accordance with section 3.58 of the LG Act; and
  - b. in the case of Crown Lands, approval of the Minister for Lands under section 18 of the *Land Administration Act 1997*.
  - c. This sub numbering can also be used. Use the numbering function in Word.
  - d. Don't forget to ask the Governance for assistance if you get stuck.

### Definitions

**Categories of Tenancy** are defined in the following table:

Category No.	Tenant Description	Reference	Method of Calculation of Tenancy Fees	Tenant Responsibilities (subject to Tenancy Agreement conditions)
1	Government	A group or organisation that is either a statutory body being a Commonwealth, State or Local Government Authority (excluding the Shire of East Pilbara), or any other body that is grant funded for the purpose	By negotiation (market valuation discounted by up to 50%).	Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoings and utility costs associated with the Facility.

		of carrying on the activity in question and that body derives a level of income from such activity.		Facility maintenance and repairs will be undertaken by the Shire in accordance with the maintenance schedule provided in the Tenancy Agreement.
2	Charitable / Religious	A group or organisation that is predominantly grant funded for the purpose of carrying on a charitable activity and that body derives a level of income from such activity.	By negotiation (market valuation discounted by up to 50%).	Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoings and utility costs associated with the Facility.
3	Commercial and retail	Being non-exempt dispositions under the LG Act. Where the activity being undertaken is a for profit venture (not including a fundraising), regardless of whether the Tenant is incorporated or otherwise.  <i>Commercial Tenancy (Retail Shops) Agreement Act 1985</i> applies, where applicable.  Lease to telecommunications providers are included in this category.	By negotiation based on market valuation.	Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoings and utility costs associated with the Facility to the extent permitted by law.
4	Residential (excluding Shire staff housing)	Those tenancy arrangements governed by the Residential Tenancies Act 1987 and / or the Residential Park (Long-stay Tenants) Act 2006, and associated Regulations.	By negotiation based on market valuation.	Cleaning, consumables and utility costs associated with the Facility, in addition to any further costs permitted by law.  Facility maintenance and repairs will be undertaken in accordance with the Tenancy Agreement and statutory requirements.
5	Sporting or Recreational	Being sporting and recreational groups (whether incorporated or otherwise) that would be deemed exempt dispositions under the LG Act.	By negotiation based upon the Tenant's capacity to pay.	Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoings and utility costs associated with the Facility.
6	Volunteers and Support Services	Community based groups and organisations (including volunteer-run) that provide essential support services to the East Pilbara communities. Typically not-for-profit, not government funded to provide a service, which generate no or minimal revenue. This category	By negotiation based upon the Tenant's capacity to pay.	Cleaning, consumables, repairs, rates and taxes, maintenance, insurances and all outgoings and utility costs associated with the Facility.

		does not apply where a Tenant is included in Category 5.		
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**Commercial Tenancy Agreement** includes a **Retail Lease** pursuant to the *Commercial Tenancy (Retail Shops) Agreements Act 1985* or other contractual arrangement between the Shire and a Commercial Organisation that details the terms of occupancy of Real Property.

**Commercial Organisation** means a sole trader (as defined by the Australian Taxation Officer) who, or organisation that can lawfully distribute their funds in excess of operating expenses (including surplus funds or profit), to themselves (in the case of sole traders), owners, directors, members or any other parties. For the purposes of this Policy, Government Agencies, Departments, Organisations and other such public bodies are to be considered Commercial Organisations.

**Community Tenancy Agreement** means a Tenancy Agreement between the Shire and a Community Organisation.

**Community Organisation** includes:

- not-for-profit entities delivering a community social service in and for the communities of the District of East Pilbara with the assistance of government operating grants;
- entities that provide a service or activity for the benefit of the communities of the District of East Pilbara and which do not operate for profit, personal gain or other material benefit of its members or third parties and which applies all proceeds from its activities to the organisation's purposes; and/or
- are registered with the Australian Charities and Not-for-profits Commission and operate in and for the communities of the District of East Pilbara.

**Disposal of property** means the sale, leasing, licensing of real property.

**Facilities** include real property under the control (including directly owned) by the Shire as freehold or under a Management Order under the *Land Administration Act 1997*.

**Further Term** means a term of occupancy beyond that approved in the original lease, whether or not it is exercisable by way of option.

**LG Act** means the *Local Government Act 1995*

**Long-Term** means Tenancy Agreements greater than one year in length.

**Policy** means the Shire of East Pilbara Property Management (Tenancy Agreements) Policy.

**Proponent** means an individual or entity with a proposal to enter into a Tenancy Agreement with the Shire.

**Proposal** means an expression of interest or tender from a Proponent.

**Real Property** means land, unimproved or otherwise owned or managed by the Shire.

**Regulations** means the *Local Government (Functions and General) Regulations 1996*.

**Residential Tenancy Agreement** means an agreement pursuant to the *Residential Tenancies Act 1987*.

**Shire** means the Shire of East Pilbara.

**Short-Term** means Tenancy Agreements of between one month and one year inclusive, unless otherwise prohibited by the *Commercial Tenancy (Retail Shops) Act 1985* or *Residential Tenancy Act 1987*, or there are extenuating circumstances, which must be agreed to by the Council.

**Tenancy Agreement** means any lease, licence, or agreement that provides for the occupation of land.

**Tenant** means an existing or prospective Lessee or Licensee or the holder of some other legal right to occupy Real Property owned or managed by the Shire.

## Policy

The Shire of East Pilbara is committed to providing a clear and consistent property management framework to guide access to Shire owned and managed Facilities under a Tenancy Agreement.

## Scope

This policy applies to the Tenancy of all Facilities, including but not limited to sporting, recreational, community, commercial, industrial, government and residential where the use of the Facility, or land, is not governed by any other policy of the Shire.

## Implementation

The following principles guide how the Shire manages its Facilities to ensure fair and equitable use:

### Optimising Usage

The Shire will consider a proposed Tenancy Agreement from interested groups, clubs or organisations requesting exclusive use of a Facility for a fixed term. In considering a proposal, the Shire will consider factors including but not limited to:

- the capacity of the proposed Tenant to perform the Lease;
- the community benefit provided by the Tenant;
- the scarcity of land available for the Lease or Licence, including whether the proposed Tenancy Agreement will exclude other potential users or the uses of neighbouring land and Facilities.

The Shire may propose a tenancy arrangement to users of Facilities under an Annual Hire arrangement, where it is considered that transfer to a Tenancy Agreement may benefit both parties and/or reflects the actual use of the site (such as where the user enjoys exclusive possession of the site).

### Prioritising Local Residents

The Shire seeks to protect the interests of its ratepayers by supporting access for residents, community groups and activities based within the Shire of East Pilbara locality. The availability of Facilities for Tenancy Agreement will be responsive to changing needs across local communities by prioritising access for groups highlighted in Council endorsed plans and strategies, to target support where it is needed most.

### Promoting Diversity of Use

The Shire encourages a range of uses within its Facilities to maximise community participation and

provide greater access for a range of local groups and organisations.

The Shire considers opportunities for commercial use, which may include business sector partnerships, in order to increase revenue or utilisation of a Facility where there is demonstrated community benefit.

Wherever practicable, only Tenants in Categories 3 and 4 should be granted Tenancy Agreements over Freehold Land, unless:

- the Tenant (if in another Category) is prepared to pay a rent based on market valuation; or
- that Freehold Land is a dedicated Community Purpose Site.

All other Categories will be provided with a Tenancy Agreement over Crown Land, unless under a full commercial rental arrangement is in place. Where revenue is not maximised on Freehold Land the opportunity cost of the Tenancy Agreement will need to be acknowledged in the applicable report to Council.

Lease incentives, including but not limited to discounted rent for a period for the purposes of economic or community development may be considered by Council across all Categories with the exception of Residential Tenancy Agreements, in order to assist with establishing new Facilities and/or to attract new businesses, tourism or services to the Shire.

#### Affordability and standard lease terms

The Shire is committed to employing an affordable Tenancy Agreement structure which reflects a reasonable Tenant contribution towards the cost of maintaining the Facility.

Council supports an equitable approach to the use of Facilities and recognises that community priorities change over time, whilst also acknowledging the need Proponents and Tenants may have for certainty over time. In determining the length of the life of a Tenancy Agreement, the Shire must weigh up any competing priorities and all available facts to make decisions it regards to be in the public interest.

Council will determine the term of occupancy for Community Tenancy Agreements based on a Proposal received from a Proponent and the advice of the Chief Executive Officer, unless the Chief Executive Officer authorises the Community Tenancy Agreement under delegated authority.

Any report to Council to approve a Tenancy Agreement to a Tenant under Category 5 (Sporting or Recreational) or Category 6 (Volunteer and Support Services) will note the rental value of the Facility, either on a Gross Rental Value (GRV) or market valuation basis. Each Tenant shall be classified into a single Category, which will determine the rent and/or Maintenance Fee payable and/or the allocation of maintenance responsibility, when negotiating a Tenancy Agreement (subject to any overriding land and legislative compliance requirements).

Tenancy Agreements for Categories 5 and 6 will not generally be negotiated for a term (including options) exceeding ten (10) years.

#### Tenant investment

Upon the expiry of a Lease, no recognition of prior investment by the Tenant to the capital cost of constructing or improving the Tenanted Facility will be considered.

Where a Tenant is responsible for the construction of a Facility on Tenanted land or makes any structural

additions or improvements to a Facility, the Tenant will be responsible for maintaining those structures for the initial term and any option periods (if applicable) of the Tenant's respective Tenancy Agreement, unless agreed otherwise by Variation. All Tenant works, whether at the commencement of the Tenancy Agreement, or subsequently during the term, will be at the Tenant's cost and will be subject to all statutory approvals and conditions required by the Shire (including in relation to insurance and the manner of carrying out the works). The Shire may also require an external consultant to review the works (such as where such works may impact existing improvements or services in the Facility), with this review being at the Tenant's cost.

All works require the prior land owner's consent of the Shire before proceeding.

## Vacant Land and Premises – Commercial

From time to time, the Shire or a prospective Tenant will identify Real Property for disposal for commercial purposes. This will trigger a process where the Real Property is subject to a competitive public tender process to identify proposals for occupancy. All expressions of interest or tenders will be assessed on the same basis as a tender in accordance with the Council's Purchasing Policy and the prevailing legislative and regulatory regime. As part of that process, the Chief Executive Officer will obtain a market valuation from a suitably qualified independent licensed valuer. Any Commercial Lease will be subject to the approval of Council. For Leases over Crown Land, Leases are also conditional on Ministerial consent in accordance with section 18 of the LG Act.

## Expiring Tenancy Agreements – Commercial

For Long-Term Commercial Tenancy Agreements expiring within six to twelve months, the Shire will undertake a competitive public tender process to be concluded at least six months prior to the expiration of the existing Commercial Lease.

## Vacant Land and Premises – Community

From time to time, the Shire or a prospective Tenant will identify Real Property for disposal for community purposes. This will trigger a process where the Real Property is subject to a competitive expression of interest or public tender process to identify proposals for occupancy. All expressions of interest or tenders will be assessed in accordance with this Policy, which demonstrate how the Community Organisation's activities will address community needs and its internal capacity to meet the terms of a Tenancy Agreement.

## Expiring Tenancy Agreements – Community

For Long-Term Community Tenancy Agreements expiring within six to twelve months, the Chief Executive Officer may undertake a competitive expression of interest to be concluded at least six months prior to the expiration of the existing Community Tenancy Agreement. The Tenant is entitled to have their expression of interest or tender considered should they wish to extend the Tenancy Agreement for a further term. All expressions of interest will be assessed in accordance with the Categories of Tenancy table to demonstrate how the Community Organisation's activities will address community needs and its internal capacity to meet the terms of a Tenancy Agreement.

For Short-Term Community Tenancy Agreements, the Shire will maintain a continuously open competitive expression of interest process and consider proposals as they are received. Upon receipt of a proposal from a Community Organisation other than the Tenant, the Tenant will be advised and provided with the

opportunity to submit an Expression of Interest for twenty-eight days from notification by the Shire of the receipt of the alternative Expression of Interest. The Tenant is entitled to lodge an expression of interest to enter a new Tenancy Agreement at any time during the life of the Tenancy Agreement up until twenty-eight days prior to the expiration of the Tenancy Agreement. Following receipt of an expression of interest to extend the Tenancy Agreement, the Expression of Interest process will remain open for twenty-eight days for other proposals to be received by the Shire. Should consideration of expressions of interest continue beyond the expiration of the Tenancy Agreement, the Tenant shall be entitled to extend the Tenancy Agreement on a month-to-month basis until a new Tenancy Agreement is in place with the successful Proponent.

In all cases, the Tenant is entitled to have their expression of interest or tender considered should they wish to extend the Tenancy Agreement for a new further term.

### Co-location and multiple users

Where practicable, facilities that can support multiple users should be encouraged, with access to be granted on a for-hire basis (in accordance with the Shire's Schedule of Fees and Charges) or by way of licence, to be agreed in accordance with this policy.

### Exceptional circumstances

In exceptional circumstances, Council may at its discretion and in accordance with section 3.58 of the LG Act and regulation 30 of the Regulations, waive the need for a competitive expression of interest process for Community Agreements.

### Rent and Licence Fees

All Commercial Tenancy Agreements will be subject to the payment of an annual rent or licence fee equivalent to at least the market value determined by an independent licensed valuer. All commercial rents and licence fees are subject to annual indexation by three percent or the WA Consumer Price Index, whichever of the two is higher. Prior to the commencement of any Further Term, the rent or licence fee payable will be subject to review of the market valuation.

Council may determine that it is in the public interest that a lower amount be payable, and must publish reasons for such a decision.

Rent and Licence Fees are to be paid at least monthly in advance.

### Further Terms of occupancy

Where a Tenancy Agreement provides for the option of a Further Term, the Tenant will have the discretion to exercise the option provided the Tenant is not or has not been in default of the Tenancy Agreement and the Further Term complies with the terms of the Tenancy Agreement.

### Use of Standard Agreements

The Chief Executive Office is authorised to develop and use a Standard Agreement as the basis of all Tenancy Agreements. A Standard Agreement may include a schedule of specific terms the Tenancy Agreement is subject to. The use of a non-standard agreement must be approved by the Council.

### Variations

Variations to Tenancy Agreements may be considered by the Council unless otherwise provided for in Council's Minor Variations Policy. Council reserves the right to require a Tenant to surrender the existing Tenancy Agreement and grant a new Tenancy Agreement with any additional conditions the Council sees fit, at the Tenant's cost (unless prohibited by law).

## Maintenance

Detailed maintenance obligations specific to the Facility, including a clear determination of responsibilities will be provided in the maintenance schedules of individual Leases. In general, the Shire will be responsible for:

- scheduled inspections of infrastructure servicing the Facility (such as heating, ventilation, and air conditioning and fire services);
- repairs arising from scheduled inspections, unless caused by the Tenant;
- replacement of infrastructure servicing the Facility, where that infrastructure has reached the end of its useful life, unless this occurs prematurely where caused by the Tenant; and structural and capital repairs and replacement, unless caused by the Tenant,

The Tenant will be responsible for day-to-day, ongoing and minor maintenance (such as cleaning and consumables).

Where a maintenance item is not listed in the maintenance schedule of the Lease, this should be assumed to be an obligation of the Tenant.

## Responsibility for Outgoings

Unless otherwise agreed to by Council, the Tenant must pay the relevant supplier directly for all outgoings including rates, charges and taxes levied against the Facility. User charges including but not limited to water, sewerage, waste disposal, telecommunications, gas and electricity are to be met by the Tenant. The Chief Executive Officer is delegated the authority to apportion costs equitably and recover those costs where no separate meter is in place and the Shire is billed for the cost directly by the supplier.

## Payment of Rates

The Tenant is responsible for the payment of all Council Rates in accordance with section 6.26 of the LG Act.

## Insurance

The Tenant must provide evidence of suitable insurance coverage appropriate for the nature of the Tenancy Agreement to the satisfaction of the Chief Executive Officer, who may publish and update from time to time, the minimum insurance requirements. Insurance coverage provided by the Shire is limited to the structure and fabric of any buildings subject to the Tenancy Agreement.

## Costs associated with Tenancy Agreement preparation

Tenants must reimburse the Shire for all reasonable costs associated with the development and implementation of the Tenancy Agreement (unless prohibited by law, or there are extenuating circumstances, which must be agreed to by the Council). These costs include, but are not limited to legal fees, advertising, valuation and survey fees. Council may from time to time set a fee in accordance with the *LG Act* for the preparation of a lease or other legal agreement.

## Assignment and sub-letting

Council may consider and approve assignment, including sub-letting of a Tenancy Agreement, unless otherwise prohibited by law.

## Confidentiality

The Shire will not disclose the details of any proposal received from any Proponent, except in the circumstance of an expression of interest received by the Shire with a respect of Real Property which at the time has a Short-Term Commercial Tenancy Agreement in place. In these cases, the existing Tenant will be advised only that a proposal has been received, so they may be provided the opportunity to lodge an expression of interest in accordance with this Policy. No other details will be disclosed. It is expected that Proponents will also keep the fact of their Proposal confidential unless otherwise agreed by the Shire. The Council reserves the right to reject expressions of interest that have been disclosed to other parties without authorisation by the Chief Executive Officer of the Shire.

## Acknowledgement

A Community Organisation with a Community Tenancy Agreements must acknowledge the Shire's contribution to the tenancy by way of publicity, signage, media event or other similar form as requested by the Shire from time to time. The Shire will bear all associated costs of such acknowledgement.

## Transitional Arrangements

All existing legal arrangements in place at the time this Policy is initially adopted by Council will continue on the terms of those arrangements until they expire. Following their expiration, any future occupancy will be subject to this Policy.

## **Authorisation Details**

<b>References:</b>	<i>Local Government Act 1995</i>		
<b>Authorised by:</b>	Council		
<b>Date:</b>	27 June 2025	<b>Minute No.</b>	2025 / 170
<b>Review/Amendment Date</b>		<b>Minute No.</b>	
<b>Next Review</b>	Annually		
<b>Responsible Directorate</b>	Executive Services		
<b>Responsible Officer</b>	Manager Governance, Risk and Procurement		
<b>File No.</b>			