

Strategic Outcome Supported: 6 – The built environment is responsibly planned and well maintained.

SUNSET CLAUSE

This policy applies to the following Commercial Lease agreements. When the following lease agreements expire this policy will be exhausted.

Lessee	Property Address	Expiry of last Further Term
Donnybrook & Capel Districts Community Financial Services Limited	70 (Lot 58) South Western Highway, Donnybrook	30 June 2023
Ruso Pty Ltd	Reserve 37474 known as Lot 5343 on Deposited Plan 184608 Title LR3080 Folio 495	12 August 2024
Sonic Healthcare Limited	Lot 501 on Deposited Plan 72099 being the whole of the land comprised in Crown Land Title LR3025 Folio 517, being Reserve 52021	30 September 2024
Dental Corporation Pty Ltd (BUPA)	Portion of Lot 20, 116A South Western Highway, Donnybrook WA 6239	31 May 2026
Donnybrook Medical Centre	41 Bentley Street, Donnybrook WA - Lot 501 on Deposited Plan 72099 being the whole of the land comprised in Crown Title LR3025 Folio 517, being Reserve 52021	30 June 2026
Windy Arbor Pty Ltd	Lot 597 Collins Street, Donnybrook (Reserve 47814)	7 June 2031
Great Southern Care Company Pty Ltd (Hall & Prior)	Lot 502 on Deposited Plan 72099, being the whole of the land in Certificate of Crown Land Title Volume LR3025 Folio 518 and known as 30 Allnutt Street, Donnybrook WA	27 June 2042

The Commercial Lease policy will be exhausted after the expiry after 27 June 2042, as per council resolution from the Ordinary Council Meeting 22 March 2023.

COUNCIL RESOLUTION 40/23

“That Council (Commissioner): 1. Endorse the Draft Property Management Framework and Attachments for the purpose of further community consultation. 2. Note that the Shire Administration will undertake further community consultation on the Draft Property Management Framework. 3. Instruct the Chief Executive Officer to consider feedback from consultation and report recommended changes to Council (Commissioner) for consideration.” CARRIED: COMMISSIONER MCGOWAN

1. Policy Objective

- 1.1. The purpose of this policy is to provide a consistent, equitable and simple approach to dealing with commercial lease negotiations.

2. Policy Scope

- 2.1. This policy applies to all commercial leases for Shire owned premises.

3. Policy Definitions

- 3.1. **MV** means Market Valuation

4. Policy Statements

- 4.1. Lease agreements between the Shire of Donnybrook Balingup and a commercial entity will be established in accordance with this policy.

Commercial Lease Rent Methodology

- 4.2. Commercial rent will be based on the market valuation (MV) obtained from an independent certified valuer. Rent will be reviewed annually in accordance with the Perth Consumer Price Index adjustments as stated in the lease. At the commencement of this policy rent will be phased in.

Phasing in - Existing lessee, new lease, MV at least 10% above current rent amount

- 4.3. Where:
 - a. There is an existing lessee at the premises; and
 - b. a new lease is being prepared; and
 - c. the current MV is at least 10% above the current rent amount.
- 4.4. Rent shall increase in equal increments over a three-year period to bring it up to the current MV. After the third year the rent will be reviewed annually in accordance with Consumer Price Index adjustments as stated in the Standard Commercial Lease.

Phasing in - Existing lessee, new lease, MV less than 10% below current rent amount

- 4.5. Where:
 - a. There is an existing lessee at the premises; and
 - b. a new lease is being prepared; and
 - c. the current rent amount is less than 10% below the current MV.

- 4.6. Rent shall increase to the current MV for the first year and will be reviewed annually in accordance with the Perth Consumer Price Index adjustments as stated in the Standard Commercial Lease.

Lease Terms

- 4.7. Terms are to be negotiated by the Chief Executive Officer in accordance with current market conditions with a minimum five-year term for the first term.
- 4.8. Leases terms for retail shops will be in accordance with the *Commercial Tenancy (Retail Shops) Act 1985*.

Lease Renewals

- 4.9. Whenever premises become available, an MV will be obtained, and Expressions of Interest will be sought for commercial lessees.
- 4.10. Where there is an existing lessee at the premises and the lease has expired with no further options, an MV will be obtained, and they will be given the first option of renewal for a new lease.

Standard Commercial Lease

- 4.11. Any new commercial lease, or renewal of an existing lease, shall be based on the Shire's 'Standard Commercial Lease' incorporating the requirements in this policy.
- 4.12. Any variations to the Standard Commercial Lease will be detailed in an Item in the Schedule (Additional Terms and Covenants) of the lease document.
- 4.13. Minor changes, as deemed necessary by the Chief Executive Officer, may be made to the Standard Commercial Lease.

Costs

- 4.14. Commercial leases will be drafted by the Shire's solicitors, 100% of all legal costs incurred will be paid for by the lessee unless the lease is being prepared for a retail shop in which case the Shire will bear all costs in accordance with section 14B *Commercial Tenancy (Retail Shops) Act 1985*.
- 4.15. The costs of obtaining a market valuation in accordance with section 3.58(3)(a) of the *Local Government Act 1995* for the initial lease rental assessment and during the term of the lease for rent reviews will be split 50:50 between the Shire and lessee.

5. Delegation and Authorisation

- 5.1. 1.2.20 Disposing of Property.

COMMERCIAL LEASE

Shire of Donnybrook Balingup Council Policy EXE/CP-1



6. Legislation

- 6.1. Local Government Act 1995
- 6.2. Commercial Tenancy (Retail Shops) Act 1985
- 6.3. Land Administration Act 1997

7. Version Control – Governance

Related Policy(s):	EXE/CP-4 – Document Execution and Application of Common Seal		
Related Procedure(s):	Nil		
Responsible Department(s):	Executive Services		
Review to be conducted by:	Governance Coordinator		
Review frequency:	<input type="checkbox"/> Annual (1 year) <input type="checkbox"/> Biennial (2 years) <input type="checkbox"/> Triennial (3 years)		
Version Date:	08/11/2023	Next Due:	2042

Policy Version Details:				
Ver. #:	Synopsis:	Ver. Date:	Ref.:	Synergy:
1	Initial adoption of policy	25/11/2020	176/20	Nil
2	Amendment to the phasing in 1.2.1 MV at least 10%..., 1.1.2 MV less than 10%..., clause 4 "Standard Community Lease" changed to "Standard Commercial Lease".	24/02/2021	25/21	NPP6689
3	Reformatted and renumbered Sunset clause added	08/11/2023	40/23	NPP10978