



4. ADMINISTRATION POLICIES

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Background and Issues

Reserve 38881 (Lots 12439 and 13304) Windy Harbour is vested in the Shire of Manjimup for the purpose of Recreation, Camping, Caravan Park and Holiday Cottages, with the power to lease designated lease sites for 20 years, subject to obtaining the consent of the Minister for Lands for each lease.

Windy Harbour leases were historically for a term of one year with Council renewing them on an annual basis. In accordance with the Windy Harbour Management Plan, 20 year leases were introduced in 2001.

As the lessee's buildings are situated on Shire managed land, the Shire of Manjimup has a duty of care and a statutory responsibility to ensure these buildings are in a safe, habitable condition and meet health standards. The lease agreements include that the lessee will fulfil the requirements of policies of the Lessor in addition to all statutes, regulations and local laws.

Objectives

The objectives of this policy are to:

- outline Council's requirements for new leases, transfers of leases, continuation of leases and mortgages on leases; and
- ensure lease sites and buildings on Reserve 38881 Windy Harbour are in a satisfactory and habitable condition and meet statutory building requirements, to reduce personal risk or loss of amenity.

Area of Application

All Windy Harbour lease sites on Reserve 38881.

Policy Measures – Leases

1. The preferred lease arrangement at Windy Harbour is for 20 year leases. It is accepted that some existing annual leaseholders may wish to remain on an annual lease term and not enter a 20 year lease, subject to:
 - a) no new annual leases will be issued, except to replace an existing annual lease to the existing leaseholder/s or the executor or beneficiary of their will;

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- b) When an annual leaseholder sells or transfers their leasehold, the annual lease will not be transferred to a new leaseholder, they will be required to enter a 20 year lease; and
 - c) When an annual leaseholder dies and bequeaths their annual lease to a beneficiary, under these circumstances a request to transfer an annual lease will not be refused. However, the beneficiary will be encouraged to enter into a 20 year lease.
2. In the event of a transfer or change with an existing 20 year lease, the lease will either be assigned with the remaining term of the lease or upon request the existing lease may be terminated and a new 20 year lease granted.
3. When a 20 year lease expires, the existing lessee/s will be given first right of refusal for a new lease, provided they are not in default of the lease.
4. Authority is delegated to the Chief Executive Officer to approve new leases and lease transfers and execute the lease documents in accordance with these policy measures and one of the following:
- a) fully executed contract for sale between existing lessee/s and buyer/s;
 - b) written request or agreement to the satisfaction of the Chief Executive Officer, signed by the existing lessee/s and transferee/s, for the gifting of a leasehold, addition or removal of lessee/s or change of tenancy type.
 - c) court order;
 - d) survivorship application from joint tenant/s with evidence of a death certificate;
 - e) transfer to Executor/s or Administrator/s of a deceased estate in accordance with a Grant of Probate or Letters of Administration;
 - f) transfer to beneficiaries in accordance with terms of a will or distribution under the *Administration Act 1903*;
 - g) an annual lease agreement from 1 July 2021 to an existing annual leaseholder with conditions equivalent to the 20 year leases or renewal of that annual lease for a further one year term;
 - h) request for a 20 year lease from an existing annual leaseholder;
 - i) request from existing lessee/s to exercise the option of first right of refusal for a new 20 year lease at the end of a 20 year lease term; or
 - j) request from existing lessee/s to surrender their existing 20 year lease and have a new 20 year lease granted, to support a mortgage over the lease or for other circumstances to the satisfaction of the Chief Executive Officer.

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5. Lease changes, transfers and new leases are subject to the following:
- a) the party seeking the lease arrangement with the Shire will be responsible for the fees and charges adopted by Council;
 - b) lessees are responsible for duties and any other tax or financial implications and seeking their own legal advice regarding any lease changes;
 - c) consent of the Minister for Lands in accordance with Section 18 of the *Land Administration Act 1997*;
 - d) any appropriate additional conditions to the satisfaction of the Chief Executive Officer, including but not limited to resolution of any existing breaches of the lease agreement, outstanding works and boundary encroachments; and
 - e) for professional fisherman leases, the lessee or holder of the fishing licence/s may be a corporation with the related lease or fishing licence/s to a person holding an interest or position in the corporation.
6. Termination of a lease due to the lessee being in default must be referred to Council for determination. In the event that a lease is terminated, the leasehold will be disposed of by way of tender, auction or sale on the open market. The balance of the sale proceeds, less any costs including administrative costs and outstanding monies owed for rates, lease fees or other property related charges, will be paid to the lessee whose lease is terminated.

Policy Measures – Mortgages

Authority is delegated to the Chief Executive Officer to consent to mortgages over Windy Harbour leases, subject to:

- 1. mortgage term being less than the remaining term of the lease where possible or a maximum of 20 years;
- 2. charge for the mortgage being over the applicants lease interest only; not the land;
- 3. terms and conditions of the mortgage being reviewed and agreed to by the Chief Executive Officer;
- 4. consent of the Minister for Lands in accordance with Section 18 of the *Land Administration Act 1997*; and
- 5. the mortgagee being advised that should the Lessee default on the mortgage conditions, the mortgagee must not assign, sublet, charge, part with possession of, transfer or otherwise dispose of the lease without prior written approval of the Shire of Manjimup.

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Policy Measures – Buildings and General Condition Assessments

1. The Shire may conduct building and health inspections on any lease site located within Windy Harbour Reserve 38881 for compliance with the *Building Act 2011* and the *Health (Miscellaneous Provisions) Act 1911* and other relevant legislation.
2. The Shire will undertake general condition assessments of the lease sites at least once in every five years. Any matter arising from a general condition assessment, or otherwise brought to the attention of the Shire, will result in the issue of an appropriate Works Order for it to be rectified with a reasonable timeframe to be completed of up to 90 days.
3. Failure by a lessee to attend to a Works Order in the timeframe specified may subject the lessee to penalties specified in relevant legislation and may also result in the matter being referred to Council for consideration of the termination of the lease.
4. The Chief Executive Officer may grant an extension of up to 90 days to complete a Works Order where there is evidence that a substantial portion of the required works have been completed. Any request for a further extension must be referred to Council for consideration.
5. The Chief Executive Officer may provisionally consent to the transfer of a lease, subject to the completion of outstanding works within a specified period of up to 90 days after the transfer. The completion of the works is the responsibility of the party seeking the lease arrangement with the Shire.
6. The Lessee is responsible for understanding the correct location of the lease site boundaries by reference to the deposited plan and if necessary by engaging a surveyor at the Lessee's expense. The Lessee's land use, buildings and improvements are to be contained within those boundaries and setbacks in accordance with any development approvals, with the exception of improvements specifically identified in the 2007 resurvey.
7. The Lessee will be responsible for ensuring a smoke alarm(s) is installed either in accordance with the *National Construction Code Part 3.7.2* or with a 10 year life battery that cannot be removed in accordance with the *Building Regulations 2012 Part 8 Division 3* and providing a written declaration of this upon request.

Adoption and Date Due for Revision

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The Administration of this Policy is by the Business Division.