

Policy Title: University Premises Leases/Licenses

Policy Owner: Manager, Campus Operations and Resources

Keywords: 1) Lease 2) License 3) Feasibility Assessment

Policy Code: PL126 (fs038)

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1. INTENT

The purpose of this policy is to outline the process for committing Edith Cowan University (the University) to Lease or License premises either in the capacity of a Lessee/Lessor or Licensee/Licensor.

2. ORGANISATIONAL SCOPE

All ECU staff.

3. DEFINITIONS

TERM	DEFINITION
Condition Report	A report which outlines the findings of an inspection of a facility's state of repair including but not limited to building fabric, mechanical, hydraulic and electrical plant, fittings and furnishings.
Delegations Manual	The University guidelines that determine who may approve transactions/agreements up to and beyond stated thresholds.
FSC	Facilities and Services Centre
Initiator	The School or Administrative Centre who identifies the need for a Lease and commences the action of having a commercial contract prepared.
Landgate	The State Government Agency responsible for Western Australia's land and property information.
Lease	A grant of right to the exclusive possession of land given by one

	person (Lessor) to another person (Lessee) for a determinate term.
Lessee (or Licensee)	The tenant.
Lessor (or Licensor)	Registered owner or landlord of the premises.
License	Permission to enter the land and use it for some stipulated purpose or purposes and does not convey a right to exclusive possession or create an interest in the land.
Premises	A building and land or part thereof.
Risk Assessment	The identification, analysis and evaluation of risks.
The University	Edith Cowan University.

4. POLICY CONTENT

4.1 When a School or Administration Centre Requires Off Campus Premises (*ECU as Lessee or Licensee*)

In circumstances where the Initiator wishes to enter into a Lease agreement for the ongoing rental of premises then the following steps are to be undertaken in the process of forming a contractual relationship with the Lessor.

- a) The Initiator who identifies the need for space prepares a feasibility assessment in the prescribed University format. See "Related Documents".

The Feasibility Assessment is to be approved by (i) Dean of School or Director of the Administration Centre and (ii) the Director, Facilities and Services Centre.

- b) Should it be determined that there is not an appropriate space within the University, the Facilities and Services Centre (FSC), in conjunction with the Initiator, will seek to identify suitable premises off campus. FSC will arrange for an independent market review of the proposed rental rates.
- c) Once an appropriate location is identified, FSC will complete an assessment of the target premises. The assessment will include a risk assessment and condition report to determine whether the accommodation is fit for purpose.
- d) Subject to the successful outcome of the condition report and the risk assessment, the Lessor will (in normal circumstances) prepare a draft Lease agreement for consideration by FSC. At this stage, FSC and the University Office of Legal Services, in conjunction with the Initiator, will undertake "due diligence" giving appropriate consideration to proposed rental rates, premises condition; proposed terms and conditions of the Lease and any other issues that might present arise to the University.
- e) Once negotiations regarding the Lease terms and conditions have been finalised, the engrossed Lease will be firstly executed by the Lessor and then by the University. Approved Lease agreements will be executed under the terms of the (University) Delegations Manual.

- f) The Leased space will be allocated as School/Administration Centre Space for space reporting requirements and will be subject to regular utilisation surveys.

4.2 When Edith Cowan University (ECU) Makes Premises Available to a Third Party (ECU as Lessor or Licensor)

Edith Cowan University either owns or controls land and buildings under the *Edith Cowan University Act 1984 (WA) (ECU Act)*. The *ECU Act* conveys the right upon the University to let part of the land provided that the purposes are incidental to the functions of the University. University lands which are under a Management Order are for educational purposes only. In certain circumstances a commercial or strategic benefit may flow to the University from leasing some University premises (either on-campus or off campus) to an external entity. In such circumstances, the Initiator will complete the following steps in order to enter into an agreement with any potential tenant.

- a) The Initiator will liaise with FSC in order to ascertain whether the activity can be accommodated on campus. Should a suitable space be identified, the Initiator will prepare a feasibility assessment in the prescribed University format. See "Related Documents".

The feasibility assessment is to be approved by (i) Dean of School/Director of Administration Centre and (ii) the Director, Facilities and Services Centre.

- b) The granting of a Lease or License may arise as a result of:
 - i. a tender process,
 - ii. a call for expressions of interest,
 - iii. a direct approach from an enterprise, or
 - iv. from an identified need.

The Initiator, in conjunction with FSC and the Office of Legal Services, must undertake a process of completing "due diligence" in relation to the proposed Lessee's or Licensees suitability. Consideration should be given to the operator's experience, expertise, and financial capacity. As part of the due diligence process, company searches, police clearances and industry reference checks may be required to be undertaken.

- c) Following a successful due diligence check, the proposed Lessee/Licensee should be invited to submit an Offer to Lease. The drafting of such a document should be prepared with the assistance of the Office of Legal Services. Following acceptance of the Offer to Lease, the University will issue an acceptance notice. It is important to note that there is not yet a 'Lease' between the parties and the Lessee should not be given possession of the premise until the Lease is finalised.
- d) The Lease/License document will be drafted by the University Office of Legal Services with input from FSC.
- e) Approved Lease or Licence agreements will be executed under the terms of the University Delegations Manual. If the Minister's consent to the Lease is required, a letter is prepared by the Campus Life Manager, following execution and sent to the Minister's office.
- f) In some instances a Lease may be required to be registered with Landgate. Three original documents are required for execution. FSC will assist with this process.

- g) The space leased to a third party will be allocated as School/Administration Centre Space for space reporting requirements and will be subject to regular utilisation surveys.

4.3 Amendments to a Lease

- a) Any amendment made to a Lease/License agreement following execution by the University must be approved in accordance with the (University) Delegations Manual.
- b) Any extension to the initial term by virtue of exercising a further term option in the initial Lease/Licence must be approved by the University in accordance with the Delegations Manual.
- c) Should the initial term and all subsequent extension terms have expired then a new Lease/License agreement will need to be redrafted and approved. In preparing a new Lease, it will be at the discretion of the Director, Facilities and Services to determine whether a new Feasibility Assessment to be completed prior to another Lease being prepared.

4.4 Compliance

The Initiator, in conjunction with FSC, acting in either the capacity of the Lessee or Lessor, will be responsible for ensuring compliance with the documented terms and conditions of the Lease/License for the duration of the Lease term.

4.5 Records and Storage

The original of the executed Lease/License agreement will be stored in the University's official records with one copy of the Lease/License agreement provided to FSC. An original of the Lease/License agreement will be provided to the other party.

5. ACCOUNTABILITIES AND RESPONSIBILITIES

In relation to this policy, the following positions are responsible for:

The Policy Owner has overall responsibility for the content of this policy and its operation in ECU.

Staff are required to comply with the content of this policy and to seek guidance in the event of uncertainty as to its application.

6. RELATED DOCUMENTS:

6.1 The policy is supported by the following Guidelines:

- Delegations Manual
<http://www.ecu.edu.au/GPPS/policies/delegations.html>

- Disability Access Inclusion Plan (DIAP)
http://www.ecu.edu.au/_data/assets/pdf_file/0010/613846/ECU-Disability-Access-and-Inclusion-Plan-2011-2016-FINAL.pdf

6.2 Other documents which are relevant to the operation of this policy are as follows:

- Feasibility Assessment
<http://www.ecu.edu.au/centres/facilities-and-services/forms-and-templates>

7. CONTACT INFORMATION

For queries relating to this document please contact:

Policy Owner	Manager, Campus Operations and Resources
All Enquiries Contact:	Campus Life Manager
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8. APPROVAL HISTORY

Policy Approved by:	Vice-Chancellor
Date Policy First Approved:	25 May 2010
Date last modified:	18 April 2013
Revision History:	April 2013 - Links removed in the body of policy April 2016 – Changes to organisational structure reflected. Links fixed.
Next Revision Due:	April 2019
TRIM File Reference	SUB/16705-2