

**Council Policy 5.1.3 - Lease and Licence Management**

Responsible Directorate	<u>Community Engagement</u>
Responsible Business Unit/s	<u>Community Projects and Facilities Management</u>
Responsible Officer	<u>Director Community Engagement</u>
Affected Business Units	<u>All</u>

Objective

The objective of this Policy is to ~~provide~~implement a framework ~~and provide basic principles for tenancy and guideline for undertaking leasing and licencing~~ arrangements ~~for a at~~ Shire of Serpentine Jarrahdale (the Shire) owned facilities ~~(including land)~~ that:

- ~~Are consistent with~~ linked to the outcome objectives ~~outlined~~ in the Shire's Strategic Community Council Plan;
- Provides guidelines for arrangements with tenants of a Shire facility,
 - ~~a consistent, equitable and simple approach to arrangements for all tenants of Shire facilities;~~
 - ~~and~~
 - ensures the support of the Shire, including peppercorn or rental subsidy or other support is recognised transparently as a community benefit and social impact investment,
 - provides a framework for key lease and license terms, and
 - ensures ~~Provide for~~ the effective use and management of Shire ~~these~~ facilities.

Scope

This Policy applies to all leases and licenses of facilities owned or managed by the Shire.

Policy**Introduction**

This policy applies to all community ~~groups (not for profit), and~~ commercial organisations and government departments that seek to lease or licence a Shire facilities. Any lease or license arrangement will be aligned with the Shire's Council Plan 2023 – 2033 pillars to enable a thriving, liveable and connected community.

This policy ~~It~~ is relevant to all Shire Council facilities including sporting, recreational, community, land, commercial, ~~and residential~~ and agricultural facilities where the use of the facility, ~~or land,~~ is not provided for under the Council Policy 5.1.4

- Facility Hire.

Decisions regarding leasing and/or licensing of Shire properties will take into account economic, social and environmental considerations, whilst also ensuring compliance with relevant legislation or policy requirements.



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Terms

Leases will be undertaken for a maximum of 10 years under a five + five-year arrangement.

Licenses will be for a maximum of three years, with review after two years under a two + one year arrangement.

Any commercial or government purpose lease or licence will be rent reviewed every 12 months in accordance with Consumer Price Index (CPI) increases and at five-year intervals in accordance with valuation by a licenced valuer.

Cost Recovery vs Community Benefit

The leasing and licensing of Shire facilities and land will balance sound financial management, whilst also ensuring facilities and land are utilised for the benefit of the community in line with the Shire's Council Plan 2023 – 2033.

For community (not for profit) lease and license holders, the Shire will use a cost recovery model to recover a portion of operating costs for facilities (where appropriate). Any community lease or licence that is provided for under this model will detail the value of provision by the Shire and the subsequent community benefit the lessee or licensee provides.

For commercial or government lease or licence holders, a market rental valuation assessment will be undertaken. Rent will be market related and negotiated on a case-by-case basis. Commercial purpose leases will be administered to maximise income generation, in alignment with market conditions, as far as is practicable.

Application of Policy

- ~~1. In order to achieve the stated objective that users of Shire facilities shall be treated in a consistent and equitable manner, each user shall fall into a specified category. The type of category will determine the method of dealing when negotiating a tenancy arrangement (Lease/Licence agreement).~~
- ~~2. This policy is intended to provide direction and guidance to Shire officers to assess and negotiate tenancy applications and renewals in a consistent and equitable manner and should be read in conjunction with the accompanying Work Procedure; Leases and Licences – New, Renewal or Extension.~~
- ~~3. Sporting Bodies/Community Groups will be granted a licence to use Council owned facilities in those situations where the body only requires use of the facility for set hours and/or days. A lease will only be entered into when an organisation has the exclusive use of the facility at all times and the facility is designed only for use by that Sporting Bodies/Community Group.~~



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Purpose of use

The lessee or licensee must use the premises for the purpose as outlined within the lease or licence agreement, in a way that is consistent with the purpose of the reserve land and/or the zoning of the land.

Form of Lease or Licence

The Shire's standard lease or licence template will be utilised for all undertakings. The need for specific terms and conditions relative to unique requirements for the leasing or licensing of a Shire facility will be considered on a case-by-case basis.

Redevelopment Clause

All Shire leases and licences will contain a redevelopment clause, whereby if the Shire wishes to carry out significant redevelopment of the facility, the Shire may give six months' written Notice of Termination to enable undertaking of the proposed redevelopment.

Responsibility for Outgoings

All outgoings applicable to the premises are the responsibility of the Tenant. These include but are not limited to local government charges (rates), sewerage, water rates and usage, electrical and fire equipment testing, electricity, telephone and land tax.

If the facilities are on a portion of land which does not have its own meters for services, the charges will usually be calculated based on the extent of the Tenant's area in comparison to the whole land / building known as proportionate usage. This percentage will be detailed in the agreement.

Maintenance

Generally, a Tenant is solely responsible for maintenance and repair of the Premises.

For community agreements the Tenant is expected to maintain and keep the premises clean and in good repair. The tenant would be responsible for any damage and the Shire responsible for fair wear and tear. Maintenance obligations taking in the specific considerations for the site will be an annexure to the agreement.

Approval

All leases must be approved by Council.

All licences must be approved by Council unless otherwise delegated in accordance with 1.1.16 Disposing of property

~~A standard document shall be used in respect of all agreements. Council shall have the right to attach a schedule to the agreement setting out special conditions, fees or concessions as appropriate.~~

~~4. _____~~

~~5. _____ Where a Lease is entered into, the Lessee will be responsible for the general maintenance of the facility and for the cost of all utilities. Where a Licence is issued and services are made available to the wider public or a common access point is shared between Council and the organisation, the contribution of the organisation towards this cost will be negotiated (based on utilisation) and will be detailed in the schedule attached to the agreement.~~



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- ~~6. Where Council services are sought by the organisation to maintain the facilities in any way, Council shall recoup the full cost of providing those services in the fee as set out in the Annual Fees and Charges.~~
- ~~7. Prior to an agreement being made a condition report shall be produced to determine the condition of the facility at the time of the agreement being made with the organisation and must be signed by all parties agreeing to the condition of the facility.~~

Principles (Guidelines)

1. Exclusivity Test

~~Where the user of a Shire 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 (or an officer delegated by it) approval.~~

~~It will also provide clear direction as to how Council, as custodians of community assets, will manage these assets within an Asset Management Framework.~~

At No Cost to the Shire

~~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 (peppercorn). As a result the remainder of the lease terms and conditions are to be on a 'No Cost to the Shire' basis. The Lessee will be responsible for cleaning, repairs, maintenance, insurances, rates and taxes (if applicable) and all other outgoings associated with the facility.~~

No Recognition of Prior Investment

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

Lease Term

~~Due to the uncertainties surrounding future land use, economic factors and other longer term considerations that may impact on the management of Shire's leased facilities, lease tenure should not generally be negotiated for a total term, including options, longer than twenty (20) years.~~



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Lease Categories

Subject to any overriding land and legislative compliance issues, if the use of Shire facilities is exclusive, then, for the purpose of tenancy negotiations, the user group or organisation shall fall into one of the following categories:

Category	Method of Dealing
Government	By Negotiation
Commercial	By Negotiation (at Market Value)
Residential	By Negotiation (at Market Value) subject to the <i>Residential Tenancies Act 1987</i> & Regulations.
Not for Profit (i.e. sporting, recreational and community)	At a rental of \$1.00 per annum — other terms and conditions on a 'No Cost to the Shire' basis.

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 (or an officer exercising delegated authority) approval.

Not for Profit organisations must demonstrate their status by producing relevant documentation (i.e. incorporation documentation) and/or Australian Taxation Office written confirmation.

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 purposes of that local government ...*” would be exempt.

Therefore in accordance with the *Local Government Act 1995*, the use of a Shire facility by a Lessee is not considered exempt and as a result all Lessees will be responsible for Council rates.

Variations

● Existence of Head Lease

In circumstances where the leased area is also the subject of a Head Lease the sublease rental shall be at least equal to the rental payable under the Head Lease.

● Commercial Activity

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

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~~Where commercial activity is undertaken by a sublessee/sub licensee then a negotiated lease fee will be payable by the Lessee to the Shire 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 amore appropriate tenancy arrangement.~~

• ~~Land Leases~~

~~Where a lease arrangement is negotiated over Shire 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 Shire has no requirement 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 Shire, subject to Council approval, to enter into a licence agreement.~~

Definitions

Not applicable

~~Lease – A lease is a contract between a lessee and the Shire which grants exclusive use of a portion or all of a facility or land parcel in return for payment of rent. Length or tenure is typically up to 10 years.~~

~~Licence – A licence is a contract between a licensee and the Shire which grants non-exclusive use of a facility for a specified period of time.~~

~~Community Purpose – A use aimed at benefiting the local community and can include a government purpose that the Shire considers that use to be of particular value to the local community.~~

~~Commercial Purpose – A use aimed at advancing commercial or economic interests typically business activities that target income generation or profit.~~

~~Government Purpose – A use for the provision of public services by a state or federal government department or body corporate that is incorporated within Australia and is a public authority or an agency of the crown.~~

~~Facility – Means land, halls, pavilions, change rooms, clubrooms, civic offices and other buildings owned or managed by the Shire.~~



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Not for Profit - Is a not for profit legal entity incorporated under *the Associations Incorporation Act 2015 or the Australian Charities and Not-for-Profits Commission Act 2012*, that demonstrates it is financially viable, demonstrates good financial management, record-keeping practices and maintains records for audit purposes.

Commercial Organisation - an organisation that can lawfully distribute their funds in excess of operating expenses (ie. surplus funds or profit), to owners, directors, members or any other stakeholders

Relevant Policies/Council Documents

- ~~• Strategic Community Plan 2017 - 2027~~
- Council Policy 5.1.4 - Facility Hire
- ~~• Serpentine Jarrahdale Shire Plan for the Future 2009 – 2014; this policy is also related to the Focus Area; Success and Sustainability with the following objective:~~
- ~~• ‘The Shire will exercise responsible financial and asset management cognisant of being a hyper-growth Council.’~~
- Land Asset Management Plan
- Long Term Financial Plan
- Shire Council Plan 2023 – 2033
- Shire Leases and Licences Procedure Manual
- Community Infrastructure Implementation Plan
- Shire of Serpentine Jarrahdale Guidelines for Leases and Licences
- Delegations and Authorisations Register

Legislation/Local Law Requirements

- *Local Government Act 1995*
- *Residential Tenancies Act 1987 and Regulations*
- ~~• *Land Administration Act 1997*~~
- Property Law Act 1969

Office Use Only				
Relevant Delegations	<u>1.1.16 Disposing of Property</u>			
Council Adoption	Date	<u>22/04/2013</u>	Resolution #	<u>OCM186/04/13</u>
Reviewed/Modified	Date	<u>29/09/2015</u>	Resolution #	<u>OCM187/09/15</u>
Reviewed/Modified	Date	<u>18/12/2017</u>	Resolution #	<u>OCM179/12/17</u>



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<u>Reviewed/Modified</u>	<u>Date</u>		<u>Resolution #</u>	
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