

# Council Policy 5.1.3 – Lease and Licence Management

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

## Objective

The objective of this Policy is to provide a framework and guideline for undertaking leasing and licencing arrangements for a Shire of Serpentine Jarrahdale (the Shire) owned facility that:

- *is linked to the outcome objectives in the Shire’s Council Plan,*
- *provides guidelines for arrangements with tenants of a Shire facility,*
- *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 the effective use and management of Shire 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 (not for profit), commercial organisations and government departments that seek to lease or license a Shire facility. 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 is relevant to all Shire facilities including sporting, recreational, community, land, commercial, residential and agricultural facilities where the use of the facility is not provided for under 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.

### 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.



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### 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 Shires 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.

### 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.



## Definitions

**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.

**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 (i.e. surplus funds or profit), to owners, directors, members or any other stakeholders.

## Relevant Policies/Council Documents

- Council Policy 5.1.4 – Facility Hire
- 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*



Continued

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