

- Objectives:** People
- Outcome:** 1.3 - A safe place to live.
- Strategy:** 1.3.1 - Comply with relevant local and state laws, in the interests of the community.

Purpose

The purpose of this policy is to implement a framework and provide basic principles for tenancy arrangements at Shire owned facilities (including land) that:

1. Are consistent with the outcome objectives outlined in the Shire's Strategic Community Plan;
2. Provide a consistent, equitable and simple approach to arrangements for all tenants of Shire facilities; and
3. Provide for the effective use and management of those facilities.

Definitions

Not applicable

Policy

This policy applies to all community groups and commercial organisations that seek to lease Shire facilities. It is relevant to all Council facilities including sporting, recreational, community, commercial and residential where the use of the facility, or land, is not provided for under the Council Policy 5.1.4 - Facility Hire.

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.



4. 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.
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.
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 those assets within an Asset Management Framework.

2. 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.

3. 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.

4. 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.

5. 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 & Regulations</i> .
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.

6. 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.



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 a more 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.

**References**

Name of Policy	5.1.3 Lease and Licence Management
Previous Policy	G007 – Lease and Licence Management (E15/5096)
Date of Adoption and Resolution Number	Adopted OCM186/04/13 22/04/2013
Review dates and Resolution Numbers	Reviewed OCM187/09/15 29/09/2015 Ordinary Council Meeting Modified OCM179/12/17 18/12/2017 Ordinary Council Meeting
Next review date	
Related documents	<p>Acts/Regulations <i>Local Government Act 1995</i> <i>Residential Tenancies Act 1987 and Regulations</i> <i>Land Administration Act 1997</i></p> <p>Plans/Strategies Strategic Community Plan 2017 - 2027</p> <p>Policies Council Policy 5.1.4 - Facility Hire</p> <p>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:</p> <p><i>'The Shire will exercise responsible financial and asset management cognisant of being a hyper-growth Council.'</i></p> <p>References Nil</p> <p>Delegations Nil</p> <p>Work Procedures Business Operating Policy 5.1.0 - Leases and Licences - New, Renewal or Extension</p>

Note: changes to references may be made without the need to take the Policy to Council for review.