



DS 1.3 – Community Leases

1.0 Introduction

This policy proposes to outline standard lease provisions and guiding principles for the lease of Reserves *vested* in the Shire of Collie to bodies exempt from the requirements of section 3.58 of the *Local Government Act 1995* by r.30(2)(b) of the *Local Government (Functions and General) Regulations 1996*, being charitable, benevolent, religious, cultural, education, sporting or other like-nature bodies, whose members are not entitled or permitted to receive any pecuniary profit from the bodies' transactions.

All leases are subject to the approval of the Minister for Lands.

Under the Land Administrations Act 1997, the Shire has been granted the care, control and management of numerous parcels of Reserve land which is set aside for various recreational and community purposes, along with the power to lease. As such, the Shire leases this Reserve land to various community groups, clubs, and recreational bodies for the purpose of supporting community use and providing community benefit.

Leases provide exclusivity and security of tenure. Leases are in most cases viewed favorable, if not essential, by some funding providers for capital works grants. The security of tenure encourages Lessees to develop and maintain facilities and lease site for the benefit of their members, and ultimately the wider community.

Co-location or shared facility use is a generally acceptable arrangement, though subject to license/sub-lease (as appropriate) approval by the Shire.

1.1 Purpose

The purpose of this policy is to:

- a) Provide a consistent, transparent and equitable approach for the process of Council entering into a formal lease agreement with community groups to occupy Shire owned or managed land and buildings;
- b) Shire leased assets are managed appropriately to optimize the benefit to and meet the expectations of the community;
- c) Ensure leases maximize benefit to the community by supporting community organizations in the provision of services, facilities and events;
- d) Minimize risk to the Shire, financial or litigious, resulting from community leases.

1.2 Scope

This policy applies to all new community leases for community groups, including renewal of leases on expiration of current leases. It does not cover commercial leases with business entities, however some guiding principles have been prescribed under part 4.11 of this policy. These will be negotiated on a case by case basis for approval by Council.

2.0 Legislative Framework

- *Local Government Act 1995*
- Land Administration Act 1997
- Associations Incorporation Act 2015

3.0 Application of Policy

This policy applies to all new community leases for community groups operating at Shire owned or vested land and facilities. It includes renewal of leases on expiration of current leases. It provides general guiding principles for commercial leases with business entities (ref. part 4.11); however these will be negotiated on a case by case basis for approval by council.

Shire of Collie Bush Fire Brigades occupying the Shire's purpose-built facilities are excluded from this policy. Whilst they are recognized as community groups, they are considered to be an essential service under the Bush Fires Act 1954, and part of 3.1 ('*Local government responsible for structure*') of the Shire of Collie's 'Bush Fire Brigades Local Law 2017'.

4.0 Policy Provisions

4.1 Eligibility for a Community Lease

Groups meeting the definition of a community group and who request exclusive or non-exclusive use to operate community activities from a leased facility, are eligible to apply for a community lease in accordance with this policy.

When assessing applications, Council will consider factors including the following criteria:

- The organizational structure of the group:
 - group is incorporated under the Associations Incorporation Act 2015;
 - compliance with relevant legislation governing the activities of the group;
 - holds all relevant licenses and approvals to operate.
- The community benefit of the proposal:
 - Lease will increase social engagement and/or promote the health and well-being of the community;
 - Meets a high level of need in the community or responds to a community demand for the service or activity;
 - Without this service provision the Shire may be required to provide an additional service or the service would not be available to the community at all;
 - Groups fees are reasonable and accessible, and the group is open to all residents who wish to participate.
- The suitability of the site for the specific purpose;
- The alignment of the proposal with Council's objectives as articulated in the Shire's Strategic Community Plan.

4.2 Standard Community Lease

- 4.2.1 The community lease, developed by the Shire's solicitors, with standard terms and conditions, roles and responsibilities, as amended from time to time, will be executed between the Shire (lessor) and each community group (lessee) wishing to occupy Shire premises;
- 4.2.1 The term of the lease is negotiable taking into account the particular circumstances of the property and of the proposed lessee.
- 4.2.2 All community groups are required to obtain Public Liability Insurance for a minimum cover of \$20,000,000 and any other relevant insurances. A Certificate of Currency must be produced by the community group before the signing of the lease and thereafter every twelve months.

4.3 Rent Subsidies

Subsidizing rent is an indirect form of financial support from ratepayers to community groups and should only be considered by Council if the community group can demonstrate benefits to the entire community (inclusive of benefit) or to a particular sections of the Shire community (exclusive benefit).

To ensure fair and transparent treatment, Council will assess community groups according to their capacity to raise revenue and assign them to one of three rent subsidy categories:

	Category A	Category B	Category C
	Peppercorn rent	Community rent	Market rent, discounted where appropriate
Rent setting	annual rent is \$50 to \$100 (as determined by Council) per annum plus GST, payable per annum	annual rent is \$50 to \$100 (as determined by Council) per annum plus GST, payable per annum	annual rent is more than \$100 (as determined by Council) per annum plus GST, payable per annum
Indicators of eligibility for rent subsidy	no revenue raising capacity from activities consistent with the group's purpose	limited capacity to generate revenue from activities consistent with the group's purpose	ability to raise revenue and charge fees from activities consistent with the group's purpose
	no access to other funding sources	service or activity is non-discriminatory, i.e. open to all residents who wish to participate in that service or activity	access to substantial government grants (federal, state or local)
	without this service provision the Shire would be required to provide an additional service	service or activity is extensively used by specific sections of the community (youth, seniors, etc.)	commercial activities may include, but are not limited to regular bar and food activities, retail shop sales, fee for service at commercial rates.
	meets a high level of need in the community	limited access to other sources of funding (no more than 10% of total revenue)	significant administration resources, such as paid staff, office equipment etc.
	run exclusively by volunteers	run exclusively by volunteers	run by paid staff or paid staff and volunteers

All community lease rents, other than peppercorn rents, will be indexed annually for CPI.

4.4 Review of financial support

For newly established groups, whose subsidy is based on estimated revenue, the Shire will review its financial support upon receipt of two consecutive annual financial statements from the group. Adjustments resulting from such a review will not be retrospective.

If during the course of a lease a community group experiences significant changes to its operation, the group may request the Shire to review their assessment by providing substantiated proof of their changed conditions. Adjustments resulting from such a review will not be retrospective.

4.5 Standard Lease Types

Standard lease formats are categorized as follows:

- Community Built and Operated: This lease applies to buildings, facilities or infrastructure built on Shire owned or *vested* land by a community group who have been granted exclusive use.
- Long-term lease: This lease applies to leases of 10 years or more, including where Council has inherited a building, facility or infrastructure from a community group under a previous lease.
- Short-term lease: This lease applies to leases of less than 10 years.
- License/Sub-lease: A license permits a group to utilise or to co-locate at a premises for short periods of time.

4.6 Lease Renewal for existing Lessees

Council can renew lease agreements with existing lessees or negotiate new lease agreements with existing lessees whose lease has expired. During this process, the following criteria will be considered:

- There remains a strong demand in the community for the continuation of the lessee's activities or services;
- The facility is not required by the Shire for other purposes;
- Renewal of the agreement will continue to maximise benefits to the community and the Shire; and
- The lessee has not been consistently in breach of their obligations under the existing agreement.

4.7 Termination

Council will reserve the right to terminate the lease in accordance with the provisions of the executed lease document.

4.8 Development

Authorisation for any proposed development on leased land (i.e. 'Community Built and Operated' facility) is to be sought from the Shire prior to the submission of formal planning and building permit applications.

At the conclusion of a lease, any buildings or infrastructure not removed from the lease site will become the property of the Shire, for the disposal or retention at the Shire's discretion and associated costs may be recovered from the lessee.

4.9 Maintenance Requirements

The lessee of Shire owned, or vested property will be responsible for all major and minor maintenance, including cleaning, of a *Community Built and Operated* facility, fixture or infrastructure.

4.10 Other Operational Outgoings

All lessees are responsible for costs incurred for their required direct facilitation of the following general operational expenses:

Item	Community Built and Operated	Long-Term lease	Short-Term lease	License/Sub Lease
Building Insurance	Lessee	Shire	Shire	Shire/Lessee
Vandalism damage to building*	Lessee - Building insurance excess	Building insurance excess shared 50/50 by lessee and Shire.	Building insurance excess shared 50/50 by lessee and Shire.	Shire/Lessee
Contents Insurance	Lessee	Lessee	Lessee	Lessee
Compliance with Health (Public Building) Regulations 1992	Lessee	Shire	Shire	Shire/Lessee
Major Maintenance (incl. required upgrades)	Lessee	Shire	Shire	Shire/Lessee
Minor Maintenance (incl. cleaning)	Lessee	Lessee	Lessee	Lessee
Security System / Response	Lessee	Lessee	Lessee	Lessee
Utilities	Lessee	Lessee	Lessee	Lessee
Payment of Emergency Services Levy	Shire/Lessee	Shire	Shire	Shire/Lessee
Sub-letting	With Shire approval	Not permitted	Not permitted	Not permitted

*Assuming no negligence on lessees part.

4.11

Commercial Activity

It is recognized that in certain circumstances it is appropriate for the leased community facility to be utilised to generate profit, where that profit is used to support the lessee.

Generally acceptable uses include:

1. Room, kitchen or venue hire (for a limited time) for classes, workshops, presentations, and functions generally; and
2. Food and beverage sales to members, and also to spectators during sporting events where planning, health and liquor licensing approvals have been obtained.

Any use outside what is generally acceptable will require consideration by Council, and if approved, may affect determination of the annual lease rent.

The following principles are provided to guide Council in their consideration of profit-generating uses on/in community leased land and buildings:

- The use is ancillary and/or complementary to the main use;
- The use is supported by the zoning of the land;
- The use provides an additional community service not otherwise provided;
- The community benefit outweighs the competitive advantage;
- The use is not competing with a commercial enterprise;
- Compliance with relevant legislation governing the activities of the group;
- The group holds all relevant *licenses* and approvals to operate.

5.0 Definitions

Community Group	Is an entity that carries on activities for a public purpose, or another entity whose primary objective is not directed at making a profit.
Lease	Is a grant of interest in land.
License	Is a deed of agreement allowing for occupation of a parcel of land on a non-exclusive use basis. A license is not an interest in land. As a matter of law, it simply authorizes what would otherwise be a trespass. Licences do not provide the security of tenure offered under a lease agreement and can be cancelled without notice on provision of suitable grounds to do so.
Major Maintenance	This includes and structural alteration or repair, any major renovations as necessary as infrastructure (e.g electrical wiring, plumbing, fencing etc) and building fabric (i.e. floor coverings) reach the end of their serviceable life. Includes general re-painting of the building.
Minor Maintenance	The day-to-day upkeep and repair of the building needed to keep it in good working order. This includes replacement of consumables, cleaning, general inspection and operations maintenance and repairs (such as lights, fuses, clearing drains, minor patching/painting, servicing of air conditioners, servicing of fire services, pest inspections/treatment, maintenance of security systems, general grounds upkeep.
Vested:	This is land for which a Management Order has been issued in accordance with the Land Administration Act 1997 identifying the Shire of Collie as an agency responsible for the care, control and management of a reserve.

Policy Adoption and Review

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