

2.13 COMMUNITY LEASES

Responsible Directorate	Infrastructure Services
Responsible Service Area	Building Assets
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Procedure Ref	N/A

1. PURPOSE

The Shire has a number of properties which are used by a range of community groups and organisations, through a lease, licence or management agreement. This policy sets the overarching principles for the management of the Shire owned, managed or controlled property, including Crown land.

The purpose of this policy is to ensure:

- Shire leased assets are managed appropriately to optimise the benefit to and meet the expectations of the community in accordance with the Shire's Strategic Community Plan, Corporate Business Plan and Community Health and Wellbeing Strategy;
- a consistent, transparent and equitable approach for the process of Council entering into a formal lease agreement with community groups and government agencies to occupy Shire owned or managed land and buildings; and
- sound financial management, sustainable asset management and effective administration of the Shire's properties.

2. SCOPE

This policy applies to all community leases for community groups and organisations, including renewal of leases on expiration of current leases.

It does not cover commercial leases with business entities, as these are negotiated on a case by case basis.

Shire of Mundaring Bush Fire Brigades are excluded from this policy: as they are established under the *Bush Fires Act 1954* and the *Bush Fire Brigades Local Law 2013* and do not require a lease.

Facility hire (regular or occasional) to deliver community based programs, events and activities on an hourly or daily rate is not covered by this policy.

3. DEFINITIONS

capital upgrade	refers to enhancement to the existing facility and extends the asset to cater for growth or additional service level.
capital renewal	relates to expenses incurred to restore the original function of the facility by replacing elements that have a life cycle shorter than planned for the entire facility (for example carpets).
community group	characteristics include but not limited to: <ul style="list-style-type: none">a. incorporated not for profit group or association of persons with the primary aim of conducting activities and providing services for community benefit; andb. relies predominantly on volunteer labour, community fundraising, membership fees and donations; andc. may receive state or federal government operational grants and may rely on a fee for service business model.
community lease	a legally binding agreement granted to community group/organisation that provide services with direct benefit to the community.
CPI	consumer price index (CPI) is a quarterly measure of inflation published by the Australian Bureau of Statistics.
Incorporated	a group of people who are recognised as a legal entity, separate from individual members as defined under the <i>Associations Incorporation Act 2015</i> .
lease	exclusive occupancy agreement. Throughout this policy, the word “lease” includes “licence”.
Lessee	a person, group/association who holds the lease of a property. Lessee can be referred to as tenant.
Lessor	the owner of an asset that is leased to another party. Lessor can be referred to as landlord.
lease or licence variation	the addition, removal or change of one or more of the Lease or Licence provisions.
licence	non-exclusive occupancy agreement (shared use).

management agreement	contractual arrangement outlining the terms and conditions associated with usage.
market rent	the annual rent amount the Shire might reasonably expect to receive, and a lessee might reasonably expect to pay, for a tenancy. Market rent value is determined by a licensed valuer.

4. POLICY

The Shire is committed to providing a fair, consistent and transparent approach to the leasing, licencing and management of Shire properties. The Shire acknowledges that there are a range of tenants and uses, many of which provide valued community benefits.

4.1. Occupancy Arrangements

The Shire will enter into one of the following agreements for the use of Shire owned and managed or controlled property including crown land.

The main types of occupancy agreements include:

Lease: proprietary right to exclusive occupation and use of part or all of a Shire-owned property, for an agreed period, in return for rent. The tenant has exclusive use and occupation of the property, although the Shire may require the tenant to encourage other use and subletting can occur if mutually agreeable.

Licence: Contractual right to non-exclusive occupation and /or use of part of a Shire-owned property. It does not confer a right to exclusive possession or occupation of the property. The Shire may see to grant a licence to enable access to the property by the broader community outside of the licensee's usage times.

Management agreement: Contractual arrangement outlining the terms and conditions associated with usage, as negotiated. The terms and conditions are not standard and are negotiated between the two parties.

4.2. Classification of Tenants

4.2.1. Eligibility

In order for community groups and organisations to be assessed for a community lease, the prospective tenants must provide the required documentation. When assessing applications, the following criteria is to be considered:

- a. organisational structure
i.e. incorporated under the *Associations Incorporation Act 2015*; has an Australian Business Number (ABN) (if applicable);
- b. demonstrated financial viability and applicable regulatory compliance
i.e. evidence of revenue; annual financial statements; compliance with relevant legislation governing the activities

of the group; holds all relevant licences and approvals to operate; capacity to meet the cost outlined in the lease contractual agreement.

- c. community benefit
 - i.e. 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;
- d. membership
 - i.e. group's Rules of Association enable non-discriminatory membership, (open to all residents who wish to participate in that service or activity); group's fees are reasonable and accessible;
- e. suitability of the site for the specific purpose;
- f. alignment of the proposal with Council's objectives as articulated in the Shire's Strategic Community Plan; and

Meeting the eligibility criteria listed above does not confer a right to the lease. The Shire reserves the right to decide whether a facility is offered on the basis of a lease; and if so, to whom the lease is offered.

4.2.2. Categories

In the first instance applications for community leases will be considered against the eligibility criteria (refer to item 4.2.1). Where the criteria are met the application will be allocated to one of three categories based on the group/organisation structure and revenue (refer to Appendix 1: Classification of Tenants).

Category One: Incorporated, locally based, not-for-profit groups or organisations with a voluntary management committee and comprised mainly of local representatives. The group/organisation has limited capacity to generate revenue from on-site activities consistent with the group's purpose and the income of the group is generally restricted to low membership fees.

Category Two: Incorporated associations, groups and not-for-profit organisations run by paid staff; or, paid staff and volunteers, and with significant administration resources. The tenant has access to operating and/or capital grants (federal, state or local), and/or additional earning potential through the setting of membership fees, regular events, venue hire, licensed premises and the sale of services or products consistent with the group's purpose.

Category Three: Government Community Child Health Clinic. The tenant receives significant funding from the State or Federal Government or organisations other than the Shire and offer free

community services that specialise in the health of mothers and their babies.

4.3. Fee Structure

The Shire is committed to providing access to Shire owned properties and facilities for the benefit of the local community and to strengthen communities through empowerment of incorporated associations.

The Shire does not seek to derive profit from community leases and it is acknowledged that the cost of providing affordable leases and licences to not-for-profit community and sporting groups is subsidised by the ratepayers of the Shire of Mundaring. To ensure fair and transparent treatment, community groups or organisations will be assessed (as per item 4.2) and according to their capacity to raise revenue and assign them a rent subsidy categories and term as included in the below table.

Category and Fee Structure	Terms
Category One: Peppercorn rent Fee \$1 per annum, yearly maintenance expenditure caps applies (refer to item 4.4.4 and Appendix 2).	Initial term is 5 years with option of 2 x 5 years unless otherwise negotiated by both parties.
Category Two: 50% of premises Market rent(as per item 4.3.1), indexed annually for CPI, plus GST. Lessee responsible for all minor maintenance (refer to Appendix 2) expenditure.	Initial term is 10 years with option of 1 x 10 years.
Category Three: Child health Clinics Fee: \$1 per annum. Lessee responsible for all minor maintenance (refer to Appendix 2) expenditure.	Initial term is 10 years with option of 1 x 10 years.

Note:

Chidlow Progress Association (CPA), Mahogany Creek Progress Association (MCPA) and Katharine Susannah Prichard Foundation (KSPF) have been specified as Category One leases.

The CPA, MCPA and KSPF historical lease agreements provide for a Peppercorn rent with the Lessee having full responsibility for the premises including major structural repairs.

4.3.1. Market Rent (Category Two)

Council will subsidise the cost of Category Two community leases group's annual rent, based on the premises full market rent, by 50%.

The level of financial support provided will be recognised by charging Lessees full market rent and in the same transaction deducting the annual rent subsidy, where Council has approved

such subsidy. This will result in full transparency as to the level of support each group receives from the Shire.

Market rent review will only occur prior to commencement of new lease; or, unless otherwise agreed by both parties at a shared 50% cost of valuation.

4.3.2. Review of Financial Support

If, during the course of a lease, a community group or organisation experiences significant changes to its operation, they 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.

4.4. Standard Community Lease

The standard community lease, developed by the Shire's solicitors, provides clauses for standard terms and conditions, roles and responsibilities of the Lessor and Lessee, insurance requirements etc. The standard community lease may be amended from time to time upon negotiation and agreement prior to the lease being executed between the Shire (Lessor) and each community group (Lessee) wishing to occupy Shire premises.

The term of the lease is negotiable taking into account the particular circumstances of the property and of the proposed Lessee.

4.4.1. Insurance

All Lessees are required to obtain Public Liability Insurance for a minimum cover of \$20,000,000. A Certificate of Currency must be produced by the community group before the signing of the lease and thereafter every twelve months

4.4.2. Variation

If a Lessee requests a variation to the standard community lease, the Shire may grant a variation on the condition that the variation is achieved by surrender of the existing lease and the grant of a new lease with additional conditions the Shire considers appropriate, at the Lessee's cost.

4.4.3. Timing

A formal agreement or permit must be in place for all community leases within six (6) months of occupation. A community group or organisation without a formal signed lease contract will be required to hire or vacate premises if terms and conditions of lease are not accepted within 12 months of occupation.

4.4.4. Maintenance Responsibilities

Each Lessee is required to maintain the facility in accordance with the maintenance clauses attached to their lease and using the services of registered and qualified trades people if

applicable. The maintenance clauses outline the responsibilities of the Shire and the Lessee.

Category One maintenance caps consist of a maximum of \$500 for a 'once off' minor maintenance item and a yearly maximum of \$1500 minor maintenance. Lessees are to ensure that any maintenance expenditure is recorded (i.e. receipts kept) to determine if the maintenance cap has been expended. Where expenditure does not meet the defined maintenance responsibilities, the expenditure will not be included.

Refer to Appendix 2: Community Leases Guidelines for schedule of maintenance obligations and responsibilities and frequently asked questions.

4.5. Lease Renewal for Existing Lessees

The Lessee may request a renewal of their lease agreement within the lease tenure period. At the expiry of lease tenure period, a lease request will be considered as a new lease and may be submitted to Council for approval.

The following criteria will be considered before a new lease tenure is granted:

- a. There remains a strong demand in the community for the continuation of the Lessee's activities or services;
- b. The facility is not required by the Shire for other purposes;
- c. Renewal of the agreement will continue to maximise benefits to the community and the Shire;
- d. Application(s) to lease Shire owned community facilities have been considered on their merit.

The existing Lessee will be given first right of renewal providing the lessee has not been in substantial breach of their obligations under the existing agreement.

5. APPENDICES

Appendix 1 Classification of Tenants

Appendix 2 Community Leases Guidelines

6. RELATED LEGISLATION

Local Government Act 1995 – section 3.58 (Disposing of property)

Local Government (Functions and General) Regulations 1996 – Regulation 30 (Exempt dispositions)

Land Administration Act 1997 – Part 4 (Reserves)

Occupiers' Liability Act 1995

7. RELATED DOCUMENTS

Nil

Community Leases Policy 2.13
Appendix 1 - Classification of tenants



CATEGORY ONE											
Eligibility criteria (for full details refer to Policy item 4.2)											
Organisational structure	Incorporated organisation, locally based service and not -for-profit. It has a voluntary management committee comprised mainly of local representatives. The organisation, community group or club may be part of a larger not-for-profit organisation (if not subsidised by parent body) and is run solely by volunteers.										
Revenue	The tenant has limited capacity to generate revenue from on-site activities consistent with the group's purpose and the income of the group is generally restricted to low membership fees.										
Community Benefit	The service is unique, specific and meets a high level of need, or the service meets identified social/ community needs. This type of service would not be provided unless supported by the Shire's lease.										
Membership	Group demonstrates low or affordable membership regime and good governance, and facilitates programs and activities that are specifically targeted at local residents and add value to the social and community fabric of the Shire. The service is non-discriminatory.										
Examples include but not limited to; small sport clubs, community playgroups, toy libraries, men's shed, youth and day centres and community groups/organisations targeting social isolation. Management agreements with community gardens or with sporting and/or community groups over storage facilities.											
Tenant responsibilities (for full details refer to community lease contract)											
Agreement type	Outgoings	Statutory Compliance	Pest inspection	Rubbish and recycling bins	ESL	Contents insurance	Public Liability	Capped maintenance and repairs	Capital upgrades	Building insurance (*)	Rent
Management agreement	x	x	x	<input checked="" type="checkbox"/>	x	x	<input checked="" type="checkbox"/>	x	x	x	Peppercorn
Licence	<input checked="" type="checkbox"/>	x	x	<input checked="" type="checkbox"/>	x	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	Peppercorn
Lease	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	Peppercorn

(*) Tenant is responsible for 50% of building insurance premium

CATEGORY TWO											
Eligibility criteria (for full details refer to Policy item 4.2)											
Organisational structure	Includes incorporated associations, not-for-profit organisations and community groups / clubs run by paid staff, or paid staff and volunteers with significant administration resources.										
Revenue	The tenant has access to operating and/or capital grants (federal, state or local) and/or additional earning potential through the setting of membership fees, regular events, venue hire, licensed premises and the sale of services or products consistent with the group's purpose.										
Community Benefit	The provision of the service is generally not within the remit of local government.										
Membership	The service is non-discriminatory.										
Examples include but not limited to; sporting groups, for-profit day care centres and Kindergartens. State wide or national not-for-profit organisations (unless a statement of financials is provided that demonstrates the group is not subsidised by parent body)											
Tenant responsibilities (for full details refer to community lease contract)											
Agreement type	Outgoings	Statutory Compliance	Pest inspection	Rubbish and recycling bins	ESL	Contents insurance	Public Liability	All minor maintenance and repairs	Capital upgrades	Building insurance (*)	Rent
Licence	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Discounted Market rent
Lease	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Discounted Market Rent

(*) Tenant is responsible for 50% of building insurance premium and 50% of excess on insurance claims

CATEGORY THREE**Eligibility criteria (for full details refer to Policy item 4.2)**

Organisational structure	Government Agency
Revenue	Receives significant funding from the State or Federal Government or organisations other than the Shire.
Community Benefit	The provision of the service is generally not within the remit of local government.
Membership	N/A

Category Three applies to Community Child Health clinics

Tenant responsibilities (for full details refer to Community lease contract)

Agreement type	Outgoings	Statutory Compliance	Pest inspection	Rubbish and recycling bins	ESL	Contents Insurance	Public Liability	All minor maintenance and repairs	Capital upgrades	Building insurance (*)	Rent
Licence	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Peppercorn
Lease	<input checked="" type="checkbox"/>	x	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Peppercorn

(*) Tenant is responsible for 50% of building insurance premium and 50% of excess on insurance claims