



(ES5) COMMUNITY LEASES AND LICENSE AGREEMENTS OF SHIRE ASSETS (FACILITIES, BUILDINGS AND LAND)

1. POLICY OBJECTIVE

To provide a structured, equitable and consistent approach to the management of the Shire of Derby/West Kimberley's community lease and licence agreements with local community groups for the use of Shire owned and controlled facilities, buildings and lands.

2. POLICY DEFINITIONS

Act means The Local Government Act 1995 as amended.

Community or Sporting Group means a not for profit (vis. does not operate as a business), sporting, recreational, occupational or religious group of any size whose members reside in the Shire and which contributes to active people, clubs and associations. Groups must be incorporated to enter into a Lease or Licence with the Shire and comprise of a committee consisting of a President, Vice President, Treasurer, and Secretary.

Other bodies (for example, local Aboriginal Corporations) might also qualify as being classified under this policy as a Community or Sporting Group, but will be subject individual assessment by the Shire on a case-by-case basis.

Community Lease means a legally binding agreement granted to community, sporting or recreation associations and government bodies or other organisations that provide services solely for the benefit of the community.

Crown Land means land owned by the Crown and vested in the Shire through the granting of a Management Order.

Freehold Land means freehold land (or fee simple) provides the most complete form of ownership of that land, in perpetuity. It allows the land holder to deal with the land including selling, leasing, licensing or mortgaging the land, subject to compliance with applicable laws such as planning and environment laws.

Fees and Charges means the rate set annually by Council in its absolute discretion as the rate chargeable for rateable Property.

Incorporated means a group of people who are recognised as a legal entity, separate from individual members as defined under the *Associations Incorporation Act (1987)*.

Lease means a legally binding agreement by which one party (Lessor) in consideration of rent, grants exclusive use and possession of real Property to a third party (Lessee) for a specified purpose and term. A Lease creates an interest in the Property.

Lease or Licence Variation means the addition, removal or change of one or more of the Lease or Licence provisions. The Shire's Deed of Variation template is utilised for lease and licence variations. This templates allows an arrangement for the lease or licence to be amended, provided the amendment is signed by all parties.



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Lessee means an authorised third party that has entered into a Lease or Licence with the Shire for the use of Shire owned or managed real Property and pays rent to occupy the Property (and where the context permits includes a Licensee).

Lessor means the Shire being the owner or management body of Property with power to Lease or Licence to a third party (Lessee).

Licence means a permit for a person to occupy Property, or part thereof on particular conditions. The main feature that distinguishes a Licence from a Lease is that a Licence does not permit exclusive use of the Property. A Licence does not create an interest in the Property.

Licensee means a person that holds an approved Licence. For the purpose of this document (where context permits) a Licensee will also be referred to as “Lessee”.

Management Order means an authorisation provided by the Crown giving the Shire both the power and authority to manage a parcel of land on behalf of the Crown.

Planning Scheme Consent means Local Planning Authority requirement if proposing to change a land use, develop or use any land including the erection, construction or alteration of any building, excavation or other works on any land.

Property means the Property that is subject to or intended to be subject to a Lease or Licence.

Reserve means a defined area of land belonging to the Crown which has been vested in the Shire by way of a Management Order.

Shire means the Shire of Derby/West Kimberley.

3. ESSENTIAL PRINCIPLES APPLIED BY THE SHIRE WHEN GRANTING A LEASE OR LICENCE OVER PROPERTY

3.1 Lessee / Licensee

The Shire may enter into a Lease or Licence with the following entities:

- a) Incorporated Associations; and
- b) The Crown / a Statutory Authority / other Government body.

A standard lease or licence document is to be used in respect of all agreements, however the Shire reserves the right to attach a schedule to the agreement setting out special conditions, fees or concessions as appropriate and to amend the template lease or licence document as it sees fit.

3.2 Type of Agreement

A Lease will be entered into where the intention is to grant exclusive possession of the property or part of the property.

A Licence will be entered into where the intention is to grant non-exclusive possession of the property or part of the property.

All property rights will be granted in writing.



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3.3 Templates for Leases and Licences

Shire templates are to be provided for each type of use envisaged by this policy in regards to creating a Lease or Licence agreement for community groups to utilise Shire facilities, buildings or land.

3.3.1 Lease of Community Facility Template

This template is used when the Shire is leasing out the whole or a portion of a facility, building or land which is Shire property. Groups that lease community facilities have sole occupancy of the leased area, meaning that other groups do not have access to this area at any stage for the entirety of the lease agreement. For example: the whole of the land contained in a Certificate of Title, a room within a larger facility or an entire building. The lease template will continue to evolve and will be updated from time to time as the need arises.

3.3.2 Licence Agreement to Use Community Facility Template

This template is used where the licensee does not have exclusive possession of the premises. It provides the Shire with flexibility to licence the premises to other parties at different times and better utilise the land and buildings. For example, a group may wish to hire out a storage room for six months of the year during its season or it may share the area with another group whom would also enter into a non-exclusive licence agreement to use the storage room on a shared basis. The licence template will continue to evolve and will be updated from time to time as the need arises.

Community user licences are not to be used for general hire of a facility (for example, for utilising a venue already listed in the Shire's Fees and Charges Schedule on a weekly basis for six hours/week).

4. TERM

The term will depend on many factors:

- a) The needs of the Shire.
- b) The needs of the Community.
- c) The Lessee.
- d) The ongoing need for the Property or the provided use.
- e) The Management Order for the Property (if Crown land) and the requirements of the State Government/Minister for Lands.
- f) The maximum tenure of a Lease or Licence granted by the Shire on Crown land will be 21 years, including any included Lease term option/s.

The maximum tenure of a Lease or Licence granted by the Shire on freehold land will be at the discretion of Council.

5. VARIATION

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

6. ASSIGNMENT

A Lessee must not assign a Lease or Licence without the Shire's prior written consent, which may be withheld in the Shire's absolute discretion. Assignors continue to be liable for the remainder term of the Lease and will be required to prove suitability of an assignee.



7. FURTHER TERM / RENEWAL

If a Lease or Licence provides for a further term, the Shire may grant the Lessee an extension of the Lease or Licence if the Lessee is not or has not been in default and complies with the procedures in the Lease or Licence for renewal. Where an option to renew is stated in the lease or licence agreement, this template is to be used to exercise this option. Both Parties signatures are required.

8. PLANNING, CONSENT & APPROVALS

Planning Scheme Consent/Approval (if required) must be obtained from the Shire as the local planning authority prior to any request for a lease or licence.

Where the Shire manages Crown land, the grant of a Lease or Licence, and each renewal, if any, will be conditional on Minister for Lands approval.

The Lessee or Licensee is solely responsible for obtaining all approvals, licences and authorities necessary to conduct the proposed activities on any premises.

The Shire makes no representation that a premises is suitable for any activity, whether permitted or otherwise.

9. WORKS

A Lessee may only undertake works on the Property in accordance with the Shire's prior written consent. A Lessee will also be responsible for any planning or building approvals that may be required. All works are to be conducted in a safe and professional manner.

10. ENVIRONMENTAL

A Lessee must not clear vegetation on the Property without the Shire's prior written consent.

11. VACANT POSSESSION AND EXPIRY OF TERM

Removal of a Lessee's effects, buildings or infrastructure, apparent cessation of activities, or the continued vacancy of premises, without notice, may be deemed a surrender of Lease or Licence without notice.

If a Lessee remains in occupation of Property after expiry of the Term, with the consent of the Shire, it will do so from month to month unless the Lease/Licence or Shire otherwise provides different holding over arrangements.

On expiry or termination of a lease or License, a Lessee may be directed to remove all Lessee's improvements at the Lessee's cost, unless otherwise directed by the Shire.

A Lessee must make good, damage caused by removal of its improvements and restore the Property to the same condition as at the beginning of the term.

12. RISK MANAGEMENT AND INSURANCE

The Shire requires that all Leases and Licences contain appropriate risk management measures including an obligation on the Lessee to:

- a) Indemnify the Shire (and the Minister for Lands if on Crown land) for loss or damage to persons or Property, wherever occurring;
- b) Maintain adequate public liability insurance;



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- c) Ensure that appropriate documentation and insurance is in place for the hired use of the Property;
- d) Carry appropriate worker's compensation insurance commensurate with activities; and
- e) Be responsible for emergency and evacuation procedures.

A Lessee must maintain a minimum of \$20million public liability insurance per occurrence during the term. If activities undertaken on the Leased or Licensed Property are considered high risk, a higher level of public liability insurance may be required by the Shire.

A Lessee is recommended to insure its personal Property (including contents) for the full replacement value as the Shire will not be responsible for any such replacements under any circumstances.

A Lessee will be required to provide the Shire with a copy of insurance certificates of currency before possession is granted under the Lease or Licence commences, and annually thereafter.

13. LEASE AND LICENCE ANNUAL FEES

An annual rent is to be charged for the use of the facility, building or land as per the below table. The Annual Fee will not be subject to annual increments, but may be amended following budget or policy review. Changes to annual fees as and when presented to Council, are considered to be a review of this policy.

Guidelines on Fees for All Lease & Licence Agreements
The fees below are not to be incorporated into a Lease or Licence Agreement for general hire of a facility (e.g. utilising a venue in the Shire's Annual Fees and Charges Schedule on a weekly basis for 6 hours per week).
Fees apply to club/associations regardless of financial stability.
Facilities, Buildings or Reserves will be charged at the same rate per annum regardless of size and location.
Fees apply regardless of new, old or renovated facility, building or land.
Fees apply regardless of any work carried out by the club or association.
Only one room, store room, building, facility or reserve to one lease/licence agreement. Groups may be able to access more than one lease/licence agreement should the Shire have facilities, buildings, rooms or reserves available.

Facility, Building or Land Lease or Licence Agreement	Fee per Annum	Guidelines
Lease – Reserve/Land	TBC (plus GST)	Buildings and infrastructure is an asset of the club/association and is the club's responsibility. Insurance premiums, utilities, fire control (including DFES Levy) etc. is the responsibility of the lessee.



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Facility, Building or Land Lease or Licence Agreement	Fee per Annum	Guidelines
Lease - Associations/Clubs that Hold a Liquor Licence	TBC (plus GST)	<p>This applies to any venue or reserve under a lease/licence agreement that is an approved Licenced Premises by the State Government for the sale of alcohol.</p> <p>Personal Property Insurance premiums and utilities are the responsibility of the lessee.</p>
Lease - Entire Facilities or Rooms within a Building	TBC (plus GST)	<p>These areas can be small or large however must be able to accommodate a recreational activity or small group meeting.</p> <p>These buildings, rooms or facilities must be for a 'sole recreational purpose'. For example club meeting rooms, tennis courts, rooms within a facility are in a building in which the Shire hires the remaining areas of the facility to general users as per the Annual Fees. Personal Property Insurance premiums and utilities are the responsibility of the lessee.</p>
Lease – Junior Organisation	TBC (plus GST)	<p>The club/Association/Organisation must be specifically for children 17 years and under. This does not apply to any organisation that invites adults (i.e. 18 years and over).</p> <p>This applies to junior organisations that are on a reserve or have an entire facility or room/s within a facility. Personal Property Insurance premiums and utilities are the responsibility of the lessee.</p>
Lease - storage	TBC (plus GST)	<p>This is for any group that has storage within or on a Shire Property. Store rooms generally have no air conditioners or windows.</p> <p>Store rooms cannot accommodate space for a meeting room.</p> <p>Fees and Charges or Utilities or Service charges will not be charged; this includes Water Consumption, Water Rates, Land Tax, DFES Levy and Electricity.</p>
All Community Lessee and Licensees	TBC% discount	Collection Charges weekly bin service only.
	TBC% discount	Local Government rates.



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Policy Details			
Original Adoption Date:	29 April 2021 (Item 11.1. Res. 33/21)	Review Frequency:	3 years
		Next Review Due:	February 2027
Policy Implementing Officer or Team:	Chief Executive Officer	Policy Reviewer:	Chief Executive Officer
Legislative Head of Power (Act, Regulation, or Local Law):	Local Government Act 1995 Local Government (Functions and General) Regulations 1996 Shire of Derby/West Kimberley Local Government Property Local Law 2011		
Related Documents (other Policies, Operational Procedures, Delegations, etc.):	Standard Community Lease and Community Licence documents		
Version Control Council Meeting Review Details:			
Review #:	Council Meeting Date:	Item/Resolution#:	
1.	30 September 2021	Item 11.1 Res. 111/21	
2.	29 June 2023	Item 12.3 Res. 70/23	
3.	19 January 2024	The Director Strategic Business utilised AUTHO33 Local Government Act 1995 s.5.45 Other matters relevant to delegations under this Division (Acting Through on behalf of the Chief Executive Officer), to make minor changes using delegation 1.1.34 Minor Amendments to Policies and Delegations. Synergy Record No. N21078	
4.	29 February 2024	Item 12.3 Res. 09/24	