



AF35 – ESTABLISHMENT OF LEASES AND USER AGREEMENTS

PROCEDURE: N/A

DELEGATION: N/A

OBJECTIVE

To ensure that all commercial business, community groups and sporting clubs occupying shire facilities are operating under a formal agreement with the Shire of Derby/West Kimberley.

To outline the process to be used when establishing Leases or User Agreements for commercial business, community groups and sporting clubs to ensure a standard, equitable and consistent approach is adopted that is appropriate to this region.

POLICY

Commercial Business

A commercial business is defined under the following:

1. Registered as a Corporate Body.
2. Is a registered business.
3. Is registered under other legislation for the purpose of carrying on the operation of a business.
4. Generates income to pay for operational expenses.
5. Has stock in trade.
6. Business turnover is in excess of \$50,000 annually.
7. Business is open for operating in excess of 20 hours per week on a yearly basis.
8. Employs staff to assist in the operation of the business.

Commercial Leases

Commercial Business Leases should be prepared in the manner outlined below for all new Leases. If this arrangement is beneficial to an existing lessee, a new Lease may be established.

For any commercial business which has sole occupancy rights over Council Property.

- The Lessee is required to pay all legal, valuation and surveying cost in relation to signing of a lease agreement.
- The Lessee will be charged and invoiced an annual lease fee based on a Market or Land Rental Valuation unless otherwise directed by Council.
- Rent to be reviewed annually at the anniversary date of the commencement of the term of the lease and increased by the Consumer Price Index (all groups) for Western Australia's Capital City of Perth.
- Lessee will be responsible for all outgoings including water, drainage, sewerage, electricity.
- The Lessee is responsible for maintenance and cleaning of the premises



- The Lessee is required to insure all building structures, fixtures, fittings and contents belonging to the Lessee on the land.
- The Lessee is not required to pay rates.
- GST will apply to all leases.
- The Lease contains a redevelopment clause which allows the Lessor to terminate the Lease by giving not less than 6 months' notice to the Lessee if the Lessor wishes to redevelop the premises.
- The Lessee may not assign or sublet the premises without the Lessor's consent.
- All commercial businesses operating under a Lease will need to provide evidence of current public liability insurance to the value of \$10,000,000.
- The term of the Lease shall be five (5) years with a five (5) year option unless otherwise determined by Council.
- The Lessee must abide by all other legislation, local laws and other regulations relative to the type of the activity of the lessee.
- Provision of special conditions to apply to individual Leases is to be inserted in the applicable item of the Schedule.
- At expiration term of lease there is to be the application of a holding over clause of one month.

Community Groups and Sporting Clubs

A community group or a sporting club is defined under the following;

1. Is an Incorporated Body.
2. Is a not for profit organisation.
3. Whose primary purpose is to provide an activity or a service to the community.

Community group and sporting club Leases should be prepared in the manner outlined below for all new Leases. If this arrangement is beneficial to an existing lessee, a new Lease may be established. Any club not under a Lease who have shared occupancy of Council property, need to have a User Agreement, prepared in the manner outlined below.

Leases

For any Group which has sole occupancy rights over Council Property.

- The Lessee will be charged and invoiced an annual lease fee of \$100 to cover administration costs.
- The Lessor is to insure any buildings or structures on the property which belong to the Lessor.
- The Lessee will be responsible for all outgoings including water and electricity.

For any insurance claim made the Lessee will be required to pay 50% of the excess. The Lessee will be able to request assistance from Council to cover these costs in times of economic hardship. Cyclone, Wind, Rainwater and Flood (as defined by Council's current insurance policy) are excluded as Council will meet the excess involved with these incidents.

- The Lessee is responsible for maintenance and cleaning of the premises.
- The Lessee will report all major maintenance requirements to the Lessor.
- The Lessee is required to insure all building structures, fixtures, fittings and contents belonging to the Lessee on the land.



- The Lessee is not required to pay rates.
- GST will apply to all leases.
- The Lease contains a redevelopment clause which allows the Lessor to terminate the Lease by giving not less than 6 months notice to the Lessee if the Lessor wishes to redevelop the premises.
- The Lessee may not assign or sublet the premises without the Lessor's consent
- All community or sporting groups operating under a Lease will need to provide evidence of current public liability insurance to the value of \$5,000,000.
- The term of the Lease shall be for five years, with an option for a further five years.
- Provision of special conditions to apply to individual Leases is to be inserted in the applicable item of the Schedule.
- A copy of the Lessee's constitution must be provided to the Shire of Derby/West Kimberley and the Committee must be able to prove, at all times when requested by Council, that it is acting constitutionally.
- At expiration term of lease there is to be the application of a holding over clause of one month.

User agreements

All continuous users who have shared occupancy of Shire facilities and are not under a Lease, need to have a User Agreement. This includes oval and court users, any groups that store equipment in Shire operated buildings between uses and any group that has shared use of a Shire facility.

- User Groups who have independent access to the facility they utilise will be charged at a rate of \$3.00 per hour based on a negotiated average number of hours of use with a minimum of 100 hours annually. This will be calculated and charged annually.
- User Groups will be charged for power usage at all facilities with air conditioning and/or sports lighting.
- Community Groups and Sporting Clubs will not incur additional fees for rooms used solely for storage. The hire fee for the Oval or Hall they are using will be the only charge and they will be required to sign a User Agreement.
- The User is required to insure all fixtures, fittings and contents belonging to the User on the land.
- All User Agreements will contain a recommendation for the User to obtain public liability insurance to the value of \$5,000,000.
- All users must obtain a Liquor permit to consume alcohol in the facility, as it will remain the property of the Shire of Derby/West Kimberley.
- Maintenance of the facility is the responsibility of the Shire of Derby/West Kimberley – however any damage deemed to be caused by negligence on behalf of the user group will be charged to the user group.
- All facilities under management agreements need to be accessible via the Shire of Derby/West Kimberley's key system. Authorised staff should be allowed access to these facilities provided adequate notice is given to the User.
- Cleaning of the part of the facility occupied by the user group is the User's responsibility. Failure to fulfil cleaning obligations will incur costs to the lessee for contractors to carry out the work and may jeopardise future use.



All newly established Leases and User Agreements are to be approved by Council prior to formalisation of the negotiation being acknowledged.

All newly established Leases over land vested in Council by DOLA must be approved by DOLA prior to formalisation of the negotiation being acknowledged.

Once formalised, the annual amount is to be included in the list of Standing Invoices produced by the Shire of Derby/West Kimberley's Corporate Services Division and a copy of the agreement is to be kept on file.

Relevant Legislation:	
Related Documents:	
Related Local Law:	
Related Policies:	
Last Reviewed:	
Next Review Date:	08.2016
Adopted:	26.09.2002

