

# Port Pirie Regional Council



## LEASE AND LICENCE POLICY

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Type                         | Governance                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Category                     | Infrastructure                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Responsible Officer          | Director Infrastructure                                                                                                                                                                                                                                                                                                                                                                                                                   |
| First Issued / Adopted       | 27 January 2022                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Review Period                | 2 years                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Last Reviewed                | 27 January 2022                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Minutes Reference            | OM 08/22                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Next Review Date             | January 2024                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Applicable Legislation       | Crown Land Management Act, 2009<br>Development (Miscellaneous) Variation Regulations, 2015<br>Fire and Emergency Services Act, 2005<br>Liquor Licensing Act, 1997<br>Local Government Act 1999<br>Planning, Development and Infrastructure Act, 2016<br>Recreation Grounds Rate and Taxes Exemption Act, 1981<br>Recreation Grounds (Regulations) Act, 1931<br>Retail and Commercial Leases Act, 1995<br>Work Health and Safety Act, 2012 |
| Related Documents            | Community Land Management Plan<br>Community Plan                                                                                                                                                                                                                                                                                                                                                                                          |
| Public Consultation Required | No                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| File Reference               | 9.63.2.4                                                                                                                                                                                                                                                                                                                                                                                                                                  |

### 1. PURPOSE

To provide consistent and transparent administration of Lease and Licence Agreements held over land and facilities owned by Council, or under the care and control of Council, to community and sporting groups, commercial organisations and individuals.

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## 2. OBJECTIVES

The objectives of this policy are to:

- Ensure optimal use and equitable access to Council owned facilities to meet demonstrated community needs, consistent with Council Policies and Community Plan;
- Ensure transparency and equitable process to grant new leases of licences and renewals, with the use of clear assessment criteria;
- Ensure lessee and licensees pay fair and reasonable fees based on clear eligibility criteria and calculation methodologies;
- Assist not-for-profit and volunteer-based organisations that offer activities and services within the Council area;
- Increase community access to activities and services, particularly disadvantaged and socially isolated groups;
- Enable Council's contribution to be reported to the community;
- Assist community groups to understand and support the achievement of Council's policies and plans;
- Facilitate a shared approach between Council and the lessee or licensee as to the cost of management and maintenance of Council owned facilities;
- Ensure that Council owned facilities are appropriately maintained as Council assets;
- Ensure that Council assets are developed and occupied responsibly, having regard to the interests of the local community;
- Provide accountability for Council expenditure on fee subsidies, as they constitute indirect grants;
- Ensure sound financial management and effective administration of the leasing and licensing of community land and facilities.

## 3. DEFINITIONS

In this policy unless the contrary intention appears, these words have the following meaning:

**Community Land** refers to land, excluding roads, owned or managed by Council and classified in accordance with Section 193 of the Local Government Act, 1999. Community land is identified in Council's Community Land Management Register and managed in accordance with Council's Community Land Management Plan.

**Community Land Excluded** refers to land that has been resolved by Council to be excluded from the community land classification, for an alternate purpose i.e. Council operational land.

**Lease Agreement** refers to a contract with Council (Lessor) that grants exclusive rights to a Lessee to occupy land and/or facilities for a specified time, under certain terms and conditions.

**Lessor** refers to Council in the context of this policy, as landowner, or custodian of Crown land.

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### 3. DEFINITIONS (Cont'd)

**Lessee** refers to the individual, group or organisation entering into an agreement with Council to exclusively occupy land and/or facilities.

**License Agreement** refers to a contract with Council (Licensor), that grants non-exclusive rights to occupy land and/or facilities to a Licensee for a specified time under certain terms and conditions.

**Licensor** refers to Council in the context of this policy, as landowner or custodian of Crown land.

**Licensee** refers to the individual, group or organisation entering into an agreement with Council to occupy shared use land and/or facilities.

**Outgoings** means all reimbursable tax charges, insurance premiums, utilities and maintenance and repair costs that are associated with the operation of the premises.

**Premises** includes the whole, or a portion of land, which may include improvements owned or managed by Council, or in the case of a ground lease, improvements owned by the lessee for the term of the lease agreement.

**Recreation** refers to sporting and recreational activities, including spectator provisions.

### 4. POLICY STATEMENT

The Lease and Licence Policy provides the framework to administer a structured and consistent approach to the management of Lease and Licence Agreements for the use of land and facilities owned by Council or under Council care and control.

Procedures set out the process required to appropriately administer this policy, and include assessment criteria, and a checklist of preliminary considerations.

### 5. LEGISLATION

Legislative framework will guide aspects of the administration of lease and licence agreements.

The following South Australian Acts, and associated Regulations, apply to this policy:

#### 5.1 Local Government Act (1999)

The Local Government Act provides Council with the legal capacity to grant a lease or licence agreement for community land, and governs public consultation requirements and the lease or licence term. The Act also requires Council to have a community land management plan, which categorises the use of community land that can be leased or licensed for certain purposes.

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**5. LEGISLATION (Cont'd)****5.2 Retail and Commercial Leases Act (1995)**

The Retail and Commercial Leases Act (RCLA) applies to leases and licences where sites include a food or beverage service and sales to the public, i.e. commercial arrangements. In these situations, lessees or licensees are required to complete a disclosure statement and provide a certified exclusionary clause document to comply with the Act.

Amendments to the Act exclude Council's from the RCLA, where the lessee or licensee is of a class specified by the Regulations. This exemption applies to not-for-profit associations and sites used predominantly for health, welfare, community, cultural, sporting or recreational services or facilities.

**5.3 Crown Land Management Act (2009)**

The Crown Land Management Act applies to Crown land under Council care and control. It stipulates the application and/or consultation process to be undertaken with the Department for Environment and Water (DEW) to obtain permission to lease or licence Crown Land.

**5.4 Planning, Development and Infrastructure Act (2016)**

The Planning, Development and Infrastructure Act must be considered where a lease or licence over community land is for a portion of an allotment, and the term of the lease or licence exceeds 6 years, as a land division will be required.

**5.5 Development (Miscellaneous) Variation Regulations (2015)**

The Development (Miscellaneous) Variation Regulations exclude telecommunication facilities, wind turbines and their associated infrastructure from the land division provision within the PDI Act, allowing a lease exceeding 6 years without it constituting a division of land.

**5.6 Recreation Grounds Rates and Taxes Exemption Act (1981)**

The Recreation Grounds Rates and Taxes Exemption Act provides a rates and taxes exemption for Council land, or land under Council care and control. The exemption applies to land that the public is entitled to access for the purpose of sport or recreation. The exemption is only applicable, where Council apply any income derived from the land towards the maintenance, repair or improvement to the land.

**5.7 Recreation Grounds (Regulations) Act (1931)**

The Recreation Grounds (Regulations) Act should be considered when applying terms and conditions for the use for recreational grounds, including but not limited to the regulated entry of persons, vehicles and dogs. The Act also regulates the sale and consumption of alcohol, and smoking.

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## LEASE and LICENCE POLICY (Cont'd)

### 5. LEGISLATION (Cont'd)

#### 5.8 Fire and Emergency Services Act (2005)

Land occupied under a lease agreement to an emergency services organisation is not rateable in accordance with the Fire and Emergency Services Act.

#### 5.9 Further Legislation

Standard Legislation referenced in all lease and licence agreements includes the Liquor Licensing Act (1997) and the Work Health and Safety Act (2012). Alcohol is not permitted without the written support of Council, and successful application to the Liquor Licensing Authority. The Statutory Requirements clause stipulates that the lessee or licensee must comply with all obligations under the Work Health and Safety Act, and any directives of Council.

### 6. SCOPE

This policy will apply to all new lease and licence agreements and the renewal of agreements at the expiration of the current term.

### 7. LEASE AND LICENCE CATEGORIES

Template agreements have been developed to facilitate the various lease and licence situations, including Council owned land and Crown land under Council care and control. A lease or licence can apply to the whole or a portion of land, and may be community land or excluded community land. Where land has a dedicated purpose, the lease or licence agreement must be consistent with the dedication.

The following categories are applied to leases and licenses:

#### 7.1 Lease Agreement

A lease agreement provides exclusive rights to occupy land or facilities for a specified term.

The minimum lease term is one year, up to a maximum of 42 years, including renewals.

##### 7.1.1 Ground Lease

A ground lease applies to 'land only' lease agreements. Any buildings or improvements to the land after execution of the lease will be owned by the lessee for the term of the lease. The lessee is responsible for the maintenance and associated costs of any improvements.

At the conclusion of the lease term, the lessee will surrender the land and any improvements to Council. The terms and conditions of the lease also provide Council with the right to have the lessee remove the improvements if applicable.

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## **7. LEASE AND LICENCE CATEGORIES (Cont'd)**

### **7.1 Lease Agreement (cont'd)**

#### **7.1.2 Commercial Lease**

A commercial lease applies to Council land and/or buildings occupied for commercial purposes, for a negotiated commercial rate relevant to the site and amenities. This may include an educational hub, commercial vehicle storage or a bus terminal, and can be a ground lease or a lease of facilities.

### **7.2 Licence Agreements**

A Licence Agreement or Community Facilities Licence provides permission to occupy land without having exclusive access. Licences support shared use of facilities and are issued for seasonal access to sporting groups for terms of 6 months to 2 years, or up to 5 years for shared buildings. Licence Agreements include scheduled use details, with specific times of use allocated to each group.

Licence Agreements allow Council to support multiple users of public land to occupy the land and/or buildings in a shared, non-exclusive manner, which improves the utilisation of facilities and reduces the need for multiple underutilised single use sites.

## **8. CROWN LAND**

Council have the ability to lease or licence Crown land under Council care and control, subject to appropriate consultation or application to the Department for Environment and Water (DEW).

When considering a new 'lease' over dedicated land, it is a requirement of the DEW for Council to refer an application to the Minister for approval to ensure:

- Dedicated land is not developed where the nature of the development contemplates use that is at variance to the purpose for which the land has been dedicated.
- The Minister has the opportunity to apply conditions to the lease to ensure the lessee understands the restrictions applicable to the site, in terms of the permitted use.

A lease that is renewed under the same terms and conditions does not require a further application.

When considering a 'licence' over dedicated land, it is a requirement of the DEW for Council to notify and consult with the Crown Lands Office. Improvements to Crown land are also subject to approval from the DEW.

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## **0. TERM OF LEASE OR LICENCE**

The term applied to a lease or licence agreement will not be greater than 10 years, including rights of renewal, unless Council resolves to grant a longer term. Where a lease or licence is to be granted for greater than 5 years, and is located on Community Land, community consultation will be undertaken in accordance with the Local Government Act. The maximum term allowed for a lease or licence is 42 years including rights of renewal.

Where the lease or licence term is less than 5 years, and Section 20B of the Retail and Commercial Leases Act 1995 applies, the lessees or licensee shall be required to provide Council with a certificated exclusionary certificate duly signed by the lessee's or licensee's solicitor waiving the minimum statutory term of 5 years in the form required by the Act.

## **1. CATEGORIES OF USER**

### **10.1 Sporting Groups**

Sporting groups refers to both incorporated and unincorporated groups. These groups usually have the ability to enjoy profit from membership fees, hire of their facilities for social events, bar facilities, canteen or the service of meals.

The fee structure for sporting groups is dependent on their circumstances. Where a sporting group occupies a clubroom building under a lease agreement, the fee is based on the equivalent to rates per annum. Whereas, sporting groups that share Council sporting grounds with other users for training under a licence agreement will be charged a base rate, in accordance with Council's Fees and Charges Register, or a fee calculated by the 'user charge' method.

### **10.2 Recreation and Community Groups**

Recreation and community groups refer to 'not for profit' organisations or groups that are deemed to provide a service or social inclusion benefit to the community, i.e. service clubs, senior citizens club, road safety centre and community interest groups.

Council recognises the community benefit of these groups and provide support, financial and non-financial. The fee structure applied to these leases and licences is dependent on their circumstances. These groups usually have a limited source of income, so the fee is kept to a minimum. In some cases, a 'peppercorn' fee is applied.

### **10.3 Commercial Organisations**

Commercial leases are the occupation of a site which could reasonably be expected to generate a profit. These leases are subject to Council approval prior to entering into a lease agreement. The establishment of a new commercial business on Council land will be subject to individual assessment of all aspects of the proposal by Council, including the fee structure to be applied.

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**10 CATEGORIES OF USER (Cont'd)****10.4 Private**

Private lease or licence agreements are the occupation of land for private purposes, providing no, or minimal, wider community benefit. This can apply to various situations, including land used for grazing and cultivation, boat moorings and aerodrome hangar space.

The fee applied is in accordance with Council's Fees and Charges Register. Requests from private individuals to lease Council buildings or vacant land will be assessed on merit in accordance with Council's strategic direction and operational requirements.

**11. FEE STRUCTURES**

The Local Government Act allows Council to impose lease and licence fees for the use of any facilities controlled, managed or maintained by the Council. The Act does not stipulate how to set these fees. Council have the flexibility to apply a variety of fee models to suit various situations.

**11.1 Council Fees and Charges Register**

The Fees and Charges Register is reviewed and endorsed by Council each financial year.

The register provides base rates, minimum fees, or fee calculation methods. Fees contained in the register that are applicable to lease and licence agreements include airport hangar storage, boat moorings, grazing and cultivation.

**11.2 Market Value**

Council do not charge rates on land that is utilised for recreation and sporting activities. A lease over land that provides public access for the purpose of sport and recreational activities will be subject to a fee equivalent to a rate charge.

This fee is calculated with consideration to the capital value of the site and reflects the rates payable on the property. The fee is applied as a value equivalent to rates: property capital value x Council residential differential rate, i.e. 2019/20 \$64,990 x 0.004097 = \$266.26.

**11.3 User Fee**

The user fee is the fee model applied to sporting licence agreements. It is calculated on programmed use; players per game x games per day x days per season x the rate per player (junior or senior). This fee calculation provides a consistent approach to the application of fees for all sporting groups.

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**11. FEE STRUCTURES (Cont'd)****11.3.1 Club Development Incentive**

Club development programs improve the governance and management of clubs to support long term sustainability. Completion of these programs ensure that clubs using Council facilities are well managed, sustainable and operating legally.

There are a number of recognised club development programs, however the club development program endorsed by the South Australian Office for Recreation, Sport and Racing is Council's preferred club development program for use by sport and active recreation clubs.

To encourage incorporated clubs to be accredited with a club development program, Council will offer a 5-10% discount on the lease or licence fee, subject to program coordinators providing Council with evidence of participation, and demonstrated continuous improvement and quality management i.e. the development of strategic plans and policies.

**11.4 Commercial Rate**

Commercial lease fees are the result of a negotiation process and subsequent endorsement of Council. A price per square metre for commercial space is commonly used to calculate the fee applied to commercial lease agreements.

**11.5 Peppercorn**

A peppercorn lease refers to the nominal fee applied (\$1.00) to the lease agreement. This fee model provides financial benefit to the lessee, allowing the group to focus on community benefit.

In these situations, the lessee is responsible for non-structural maintenance and repairs to Council buildings, and outgoings. Where the lessee has established the improvement on the premises, they are responsible for structural and non-structural maintenance and repairs.

Community groups that provide a service, or community value, that require support from Council with maintenance will be required to make application to Council for consideration of their position. A report will be presented to Council in such circumstances as this is not a standard arrangement, and will have budget impacts for Council.

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## **12. OTHER CHARGES**

### **12.1 Rates**

#### **12.1.1 Recreation Grounds Rates and Taxes Exemption Act, 1981**

Pursuant to Section 4(1) of the Recreation Grounds Rates and Taxes Exemption Act, land that is vested in a Council or is under the care, control and management of a Council, and the public is entitled to access the land for the purpose of sport or recreation, this land is exempt from rates and taxes. The exemption is only applicable if any income derived from the land by the Council is applied towards the maintenance, repair or improvement to the land.

Council will not charge rates on land that is utilised for recreation and sporting activities. Licence Agreements apply to shared use land, and do not incur a rate charge. A lease agreement, providing exclusive use of land, that is categorised as an area that the public will access for the purpose of sport and recreation activities will be charged a lease fee equivalent to a rate charge.

#### **12.1.2 Local Government Act, 1999**

Pursuant to Section 147(2) of the Act defines land that is not rateable including:

- Unalienated Crown land;
- Land used or held by the Crown;
- Land exempt from rates and taxes under the Recreation Grounds Rates and Taxes Exemption Act;
- Land occupied by emergency service organisations under the Fire and Emergency Services Act.

Section 188 of the Act allows Council to impose a fee for the use of any property owned or managed by Council. Where land is not rateable, a market value fee calculation may be applied as a lease fee equivalent to a rates charge.

Pursuant to Section 161 of the Local Government Act, community service organisations can be rebated 75% of rates, or at the discretion of Council, at a higher rate. The Act defines community service organisations as an incorporated 'not-for profit' group that provides community services without charge or for a charge that is below the cost to the body providing the services.

Section 166 of the Act allows Council to grant a rebate of rates where land is being used by an organisation which, in the opinion of the council, provides a benefit or service to the local community.

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**12. OTHER CHARGES (Cont'd)****12.2 Utilities and Outgoings**

Unless otherwise agreed by Council, lessees and licences will be responsible for the cost of all utilities, where the use of services is exclusive to one group, or can be accurately measured. This includes power, water, gas, insurance and metered lighting.

**12.2.1 Waste Disposal**

Council supply Mobile Garbage Bins (MGB's) for waste collection to Council land and Crown land, that is occupied under a lease or licence agreement, without charge.

Where the lessee or licensee requirements exceed 'standard' waste collection quantities, Council may recover the costs associated with the provision of an additional service.

**12.3 Water Usage****12.3.1 Buildings**

Where the lease refers only to a building and there is no open space attached to the leased area then the lessee will be responsible for the payment of all water and sewer charges levied against the land.

**12.3.2 Open Space**

Council encourages water conservation techniques and when considered appropriate will place a cap on the amount contributed by Council. The amount of the cap shall be determined at the time of negotiating a lease or licence by Council. Where there are shared meters on the site consideration will be taken on community access to the site and the proportion will be negotiated with the organisation to ensure it is in line with like facilities.

**13. APPLICATION OF LEASE AND LICENCE POLICY**

Approved applicants will be granted a lease or licence to use Council owned facilities or infrastructure in accordance with the pre-assessment process undertaken by the Property Officer, subject to delegated authority.

Leases or licences of community land for 5 years or more are subject to mandatory community consultation under the Local Government Act, 1999.

A standardised document will be used to prepare all agreements unless a market-based agreement is entered into. Council shall have the right to attach a schedule to any lease or licence agreement, setting out shared maintenance and repair responsibilities, special conditions, and fees or concessions as appropriate.

Public Liability Insurance cover of \$20M will be applicable to all lease and licence agreements, with the exception of airport hangar and boat moorings, which will require cover of \$10M.

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**13. APPLICATION OF LEASE AND LICENCE POLICY (Cont'd)**

Council will insure Council assets. The lessee will be responsible for insuring any improvements made to the lease area of a ground lease.

Not-for-profit community groups may be offered a peppercorn arrangement or a subsidised lease or licence fee.

Any Council funding requested for redevelopment, refurbishment, improvement, expansion or construction of infrastructure or buildings is subject to the Council's annual budget process and business plan.

Council shall delegate full authority for the negotiation and approval of agreements to the Chief Executive Officer or their nominee. Long-term Agreements exceeding 10 years will be considered by Council, and subject to public consultation, where applicable.

The agreement terms (periods of tenure) must be compliant with the Retail and Commercial Leases Act, 1995 and, where the subject Premises is on community land or in the public realm, the Local Government Act, 1999.

Renewals of agreement, set out in the schedule of the agreement, will be executable by the Chief Executive Officer or their nominee unless:

- a) the organisation is in default (breach) of any condition of the agreement;
- b) the organisation has received an expiation, non-compliance notice or order in relation to their occupation of the facility or their operation as an organisation;
- c) unless it is deemed to negotiate new terms and conditions, or if something changes;
- d) the organisation loses its not-for-profit, charitable or community benefit status.

If any of the above conditions apply, a report shall be presented to Council to propose a recommended action.

**14. FINANCIAL REPORTING**

Where Council has various land, buildings and other facilities that are available for hire or lease, it is obligated to disclose information relating to income received from the right to use and benefit from an asset on the Annual Financial Statements, in accordance with AASB16, which applies to lease/licence income.

Council applies the short-term lease recognition exemption and will include in its disclosures in the Annual Financial Statements, only the information relating to arrangements that are non-cancellable and the disclosure will be based on the cost of the right to use an asset. Income received in the reporting period is shown as operating income and where the arrangement the future minimum income expected to be received for the term of the lease is disclosed in the notes of the Annual Financial Statements.

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## 15. FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge from Council's internet site: [www.pirie.sa.gov.au](http://www.pirie.sa.gov.au)

- Port Pirie Council Administration Centre, 115 Ellen Street, Port Pirie
- Crystal Brook Rural Office, Bowman Street, Crystal Brook.

Copies will be provided to interested parties upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

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