



## **CONFIRMED MINUTES**

# **SPECIAL GOVERNANCE COMMITTEE MEETING**

**25 JULY 2023**

I certify that the minutes of the meeting of the Special Governance Committee held on Tuesday, 25 July 2023 were confirmed on Monday, 21 August 2023.

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Presiding Person



**CONFIRMED MINUTES  
SPECIAL GOVERNANCE COMMITTEE MEETING  
25 JULY 2023**

**ATTENTION/DISCLAIMER**

The purpose of this Committee Meeting is to discuss and make recommendations to Council about items appearing on the agenda and other matters for which the Committee is responsible. The Committee has no power to make any decisions which are binding on the Council or the Shire of Mundaring unless specific delegation of authority has been granted by Council. No person should rely on or act on the basis of any advice or information provided by a Member or Employee, or on the content of any discussion occurring, during the course of the Committee Meeting.

The Shire of Mundaring expressly disclaims liability for any loss or damage suffered by any person as a result of relying on or acting on the basis of any advice or information provided by a Member or Employee, or the content of any discussion occurring during the course of the Committee Meeting.

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**SPECIAL GOVERNANCE COMMITTEE MEETING  
COMMITTEE ROOM, SHIRE OF MUNDARING ADMINISTRATION CENTRE**

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## **1.0 OPENING PROCEDURES**

The Presiding Person declared the meeting open at 5.02pm.

### Acknowledgement of Country

Shire of Mundaring respectfully acknowledges the Whadjuk people of the Noongar Nation, who are the traditional custodians of this land. We acknowledge Elders past, present and emerging and respect their continuing culture and the contribution they make to the region.

## **1.1 Announcement of Visitors**

Nil

## **1.2 Attendance/Apologies**

<b>Members</b>	Cr James Martin (President)	South Ward
	Cr Paige McNeil (Deputy President) (Presiding Person)	Central Ward
	Cr Neridah Zlatnik	East Ward
	Cr Luke Ellery	South Ward
	Cr Jo Cicchini (via electronic means)	West Ward
<b>Staff</b>	Garry Bird	Director Corporate Services
	Elizabeth Nicholls	Governance Coordinator
	Pascaline Owers	Governance Officer
<b>Apologies</b>	Cr Karen Beale	West Ward
	Jonathan Throssell	Chief Executive Officer
<b>Guests</b>	Nil	

## **2.0 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION**

Nil

## **3.0 DECLARATION OF INTEREST**

### **3.1 Declaration of Financial Interest and Proximity Interests**

Council Members must disclose the nature of their interest in matters to be discussed at the meeting (*Part 5 Division 6 of the Local Government Act 1995*).

Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting (*Sections 5.70 and 5.71 of the Local Government Act 1995*).

Nil

### **3.2 Declaration of Interest Affecting Impartiality**

A Council Member or an employee who has an interest in a matter to be discussed at the meeting must disclose that interest (*Shire of Mundaring Code of Conduct, Local Government (Admin) Reg. 34C*).

Nil

### **4.0 PRESENTATIONS**

Nil

## 5.0 REPORTS OF EMPLOYEES

### 5.1 Policy Review - Community Leases - for the purpose of consultation

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<b>File Code</b>	GV.OPP1
<b>Author</b>	Pascaline Owers, Governance Officer
<b>Senior Employee</b>	Garry Bird, Director Corporate Services
<b>Disclosure of Any Interest</b>	Nil
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. Draft Reviewed Community Leases Policy <a href="#">↓</a></li><li>2. Appendix 1 Classification of tenants <a href="#">↓</a></li><li>3. Appendix 2 Community Leases Guidelines <a href="#">↓</a></li><li>4. Community Leases Policy - Communication Plan <a href="#">↓</a></li><li>5. Community Leases Policy - OR-24 <a href="#">↓</a></li><li>6. Draft Reviewed Community Leases Policy (with track changes) <a href="#">↓</a></li><li>7. Appendix 1 Classification of tenants (with track changes) <a href="#">↓</a></li><li>8. Appendix 2 Community Leases Guidelines (with track changes) <a href="#">↓</a></li></ol>

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#### SUMMARY

An updated draft “Community Leases Policy” (**Attachment 1**) is presented to the Governance Committee (the Committee) for its consideration and recommendation to Council. Appendix 1: Classification of Tenants (**Attachment 2**); and Appendix 2: Community Leases Guidelines (**Attachment 3**) have been drafted to provide further clarification on the provisions of the updated “Community Leases Policy”.

There are currently 48 community leases encompassing a range of community groups and organisations across the Shire. As such, a communication plan (**Attachment 4**) is attached to inform current lessees of how the proposed draft “Community Leases Policy” will affect new leases, and the renewal of leases with the Shire.

The Committee is asked to review and endorse the updated draft “Community Leases Policy” for the purpose of consultation.

#### BACKGROUND

The current Community Leases Policy (OR-24) adopted in April 2019 has been provided as **Attachment 5**. A review of community leases as of March 2023 identified a lack of consistency across the Shire’s 48 community leases and evidence of community organisations operating without a lease agreement for an extended period of time.

On 20 March 2023, the Governance Committee workshop meeting identified issues to be considered in the policy review including:

- lease categories;
- rent calculation to factor condition of building and the actual space used;
- inclusion of timelines for signing of lease; and
- inclusion of a table of responsibilities.

Members of the Committee advised that they had received anecdotal feedback that there is a level of ambiguity in the Shire's Standard Lease and the Terms and Conditions initially prepared by McLeods solicitors in 2012.

A letter from Playgroup WA advocating for Playgroups in the Shire was sent to council members appointed to the Committee on 4 April 2023 and was also forwarded to staff.

At the Governance Committee workshop held 15 May 2023, a discussion paper was presented with a revised draft policy, which was further amended after discussion by committee members.

The reviewed "Community Leases Policy" was presented to a Governance Committee meeting held 19 June 2023 where the following recommendation to Council was made by the Committee:

*"That Council endorses the draft "Community Leases Policy" (**Attachment 1**) for the purpose of consultation."*

At the Ordinary Council Meeting held 11 July 2023, Council subsequently resolved as follows:

- A. *That the item be referred back to the Governance Committee for further consideration.*
- B. *Reason for the change to the officer recommendation:*  
*The Community Leases Policy is a complex document that has significant implications for community organisations and the Shire of Mundaring. While the policy is largely complete, discussions and questions from council members since the Governance Committee meeting to recommend the policy for community consultation purposes, would indicate that the policy needs further clarity especially in regards to maintenance obligations of the Shire and lessees.*

Further to this resolution of Council, the policy was referred to the Governance Committee workshop held 17 July 2023.

## **STATUTORY / LEGAL IMPLICATIONS**

Section 2.7 of the *Local Government Act 1995* provides the role of council in relation to the determination of policies:

- (1) *The council —*
  - (a) *governs the local government's affairs; and*
  - (b) *is responsible for the performance of the local government's functions.*
- (2) *Without limiting subsection (1), the council is to —*
  - (a) *oversee the allocation of the local government's finances and resources; and*
  - (b) *determine the local government's policies.*

## **POLICY IMPLICATIONS**

The "Policy Development and Review Policy" relates.

Feedback received from the Governance Committee members has been used to inform the review of the "Community Leases Policy" and the communication plan provides information on how the current lessees will be advised of the proposed draft "Community Leases Policy".

It is proposed that the existing policy will be replaced by the new draft policy.

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## FINANCIAL IMPLICATIONS

The most significant financial implication of the updated draft, is the reduction in the rental fee for community groups / organisations (24) currently in Category B and eligible to become Category One. This change is expected to occur within a relatively short period after adoption of the draft policy, on the request of current Category B Lessees. Estimated loss of revenue \$15,416.

It is expected that some existing Lessees will request an early renegotiation of their current lease if they are eligible for reduced rental costs. This would result in a significant increase of officer time following the initial implementation of the policy. After this, it is anticipated that officer time to manage the leases will remain comparable to the current requirement.

Officer time will also be impacted should the number of insurance claims increase due to the updated policy.

There will be a requirement for a new standard community lease document to be prepared by Shire's solicitors if the draft policy is adopted by Council.

As this loss of revenue has not been considered or provided for in the 2023/24 Integrated Planning and Reporting (IPR) process, how this is to be funded should be considered further when the results of the community consultation are presented to Council.

## STRATEGIC IMPLICATIONS

Mundaring Strategic Community Plan 2020 - 2030

Priority 4 - Governance

Objective 4.4 – High standard of governance and accountability

Strategy 4.4.3 – Risks are well managed

## SUSTAINABILITY IMPLICATIONS

### Governance

Deliver outcomes that are consistent with the strategic goals and objectives of the Shire.

## RISK IMPLICATIONS

<b>Risk:</b> Financial, compliance: The current Community Leases Policy is not consistently applied or adhered to by all community groups resulting in differences in compliance with essential terms and rental fees and the frustration of some community groups.		
Likelihood	Consequence	Rating
Likely	Moderate	High
Action / Strategy		
Making decisions based on principles set out in an updated Community Leases Policy, which addresses some of the concerns raised, will ensure that all community groups are treated in a consistent, fair and transparent way.		

<b>Risk:</b> Reputation: Ratepayers may be aggrieved at why ratepayers pay for parts of maintenance and insurance costs for community groups whom have exclusive usage on buildings with peppercorn rent.		
Likelihood	Consequence	Rating
Possible	Minor	Moderate



<b>Action / Strategy</b>
The lease conditions applicable to community groups with exclusive usage of Shire buildings to be consistent and fair to all community groups whom use the buildings and the ratepayers of the Shire whom must pay for the remaining balance of costs not paid by the community groups.

<b>Risk:</b> Financial: A number of leases have expired and renewal has been delayed pending adoption of an updated Community Leases policy.		
<b>Likelihood</b>	<b>Consequence</b>	<b>Rating</b>
Possible	Moderate	Low
<b>Action / Strategy</b>		
Making decisions based on principles set out in an updated Community Leases Policy will ensure that all community groups are treated in a consistent, fair and transparent way.		

## **EXTERNAL CONSULTATION**

A letter from Playgroup WA advocating for Playgroups in the Shire was sent to council members appointed to the Governance Committee on 4 April 2023. This letter was also forwarded to staff. The letter has been considered in the process of drafting the policy. Staff are aware that there has been further correspondence between council members and external parties (i.e. Playgroups WA).

All current Lessees will be contacted, through Engage Mundaring, inviting them to comment on the updated “Community Leases Policy” for their groups/organisations. Ratepayers will also have an opportunity to provide comment on the draft “Community Leases Policy” and associated documents. A question will be included to determine respondents who are current Lessees or Ratepayers. Further information is outlined in the attached communication plan.

## **COMMENT**

The current Community Leases Policy (OR-24) has been reviewed to include suggestions from the Governance Committee where appropriate. Other local government policies dealing with Community Leases were utilised to inform changes including [City of Vincent](#), [City of Nedlands](#), [City of Bayswater](#) and [City of Kalamunda](#).

The following is a summary of current issues noted with Community Leases Policy (OR-24) since its adoption in 2019:

- Rent amount varied from policy fee by Council (6)
- Insurance excess waived (1)
- Two playgroups have no current lease

Leases established prior to 2019 carry over a range of terms inconsistent with the existing “Community Leases Policy” (OR-24).

- Rent amount set to a dollar value (9 leases)
- Maintenance caps reduced or lessees responsible for all maintenance
- Insurance excess reduced or no excess charged
- Historical GRV value applied to Category C

To provide a consistent, transparent and equitable approach to Council entering into formal lease agreements a number of subheadings have been amended, these include:

- Item 4.1 - Occupancy Agreements
- Item 4.2 - Classification of Tenants

- Item 4.3 - Fee Structure
- Item 4.4 - Standard Community Lease
  - 4.4.2 Variation
  - 4.4.3 Timing.
  - 4.4.4 Maintenance Responsibilities
- Item 4.5 - Lease Renewal For Existing Lessees

For clarity, further information on why each of these subheadings have been included are detailed below.

### **Type of occupancy agreements**

Inclusion of ‘management agreement’ to cover community leases with no associated building (i.e. community gardens) and current Memorandum of Understanding (7) between the Shire and community groups for storage of equipment.

This clause provides greater options to classify occupancy agreements executed by the Shire.

### **Classification of tenants**

The initial classification of tenants proposed in the draft “Community Leases Policy” (Category One, Category Two and Category Three) is outlined in the below table and was presented to the 19 June 2023 Governance Committee meeting.

There have been no further changes to the classification of tenants following the 11 July 2023 Ordinary Council Meeting.

Eligibility criteria for the three categories have been included in the updated “Community Leases Policy” and Appendix 1: Classification of Tenants and is summarised in the table below. Changes as presented to the 19 June Governance Committee meeting and subsequent changes following the 11 July 2023 Ordinary Council Meeting are also listed.

<b>Category name</b>	<b>Specific eligibility criteria in relation to group / organisation structure and revenue</b>
Category One: incorporates leases previously categorised as A and B in Community Leases Policy (OR-24)	Category One leases are locally based, not-for-profit groups/organisations with a voluntary management committee and comprised mainly of local representatives. The group/organisation has limited capacity to generate additional revenue from on-site activities consistent with the group’s purpose and the income of the group is generally restricted to low membership fees.  Following the 11 July 2023 Ordinary Council Meeting, the word “incorporated” has been added to the eligibility criteria for Category One in the updated policy and in Appendix 1: Classification of Tenants.
Category Two: incorporates leases previously categorised as Category C in Community Leases Policy (OR-24)	Category Two leases are incorporated associations, groups and not-for-profit organisations run by paid staff, or paid staff and volunteers; and, with significant administration resources. The Lessee has access to ongoing operating grants and/or substantial grants (federal, states or local) or generates additional revenue through membership fees, events, venue hire, or the sale of services or products consistent with the group’s purpose.

Category Three (new lease category not previously catered for in the current Community Leases Policy (OR-24)	Category Three is proposed to be added and covers existing leases with three (3) Child Health Community Centre which are a shared service arrangement with state or federal agencies.
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Feedback previously received from some community groups / organisations has been considered when redefining the categories. It is expected that combining the current community groups / organisations who are in Category A and Category B under one category; Category One, will result in less requests for rental fees to be submitted to Council for variation.

**Fee structure**

The Fee models in the current Community Leases Policy (OR-24) are as follows:

- Peppercorn rent (Category A)
- Community Rent with a fee per square metre (Category B)
- percentage of Market value (Category C)

The initial fee structure as proposed in the reviewed “Community Leases Policy” presented to the 19 June 2023 Governance Committee meeting and the proposed amendments to the updated “Community Leases Policy” following the 11 July 2023 Ordinary Council Meeting are outlined in the below table:

<b>Categories</b>	<b>Current fee model</b>	<b>Proposed fee model</b>
Category One	Peppercorn rent (Cat A) or fee per metres (Cat B), outgoing, capped minor maintenance (except structural).	<p>Initial amended fee structure as included in the reviewed “Community Leases Policy” and associated documents presented to the 19 June 2023 Governance Committee Meeting:</p> <ul style="list-style-type: none"> <li>• Peppercorn rent, lessee is responsible for outgoing, “once-off” maximum maintenance amount and yearly maintenance expenditure cap. Initial term is 5 years with option of 2 x 5 years unless otherwise negotiated by both parties. Low fee, simple to administer, expanded eligibility criteria.</li> </ul> <p>Amendments as included in the updated “Community Leases Policy” and associated documents presented attached to this report following the – 11 July 2023 Ordinary Council Meeting:</p> <ul style="list-style-type: none"> <li>• Include yearly capped minor maintenance.</li> <li>• Removal of “once-off” maximum amount for maintenance item.</li> <li>• Lessee contribution to 50% of insurance excess has been removed.</li> </ul>

Category Two	50% of market rent value (Cat C), discounted if applicable. Capped minor maintenance (except structural).	<p>Initial amended fee structure as included in the reviewed “Community Leases Policy” and associated documents presented to the 19 June 2023 Governance Committee Meeting:</p> <ul style="list-style-type: none"> <li>• Market rent, discounted as per 4.3.1, lessee is responsible for outgoings, all minor maintenance and repairs costs, and capital upgrades. Initial term is 10 years with option of 1 x 10 years. Fee is objective and has direct relationship to the value of the community facility.</li> </ul> <p>There have been no further changes to the proposed fee structure for Category Two following the 11 July 2023 Ordinary Council Meeting.</p>
Category Three	N/A	<p>Initial fee structure as included in the reviewed “Community Leases Policy” and associated documents presented to the 19 June 2023 Governance Committee Meeting:</p> <ul style="list-style-type: none"> <li>• Peppercorn rent, lessee is responsible for outgoings, all minor maintenance and repairs costs, and capital upgrades. Initial. Term is 10 years with option of 1 x 10 years. Low fee, simple to administer.</li> </ul> <p>There have been no further changes to the proposed fee structure for Category Three following the 11 July 2023 Ordinary Council Meeting.</p>

The following items were included in the reviewed “Community Leases Policy” presented to the 19 June 2023 Governance Committee Meeting with no further changes proposed the updated “Community Leases Policy” following the 11 July 2023 Ordinary Council Meeting.

- Period of tenure was not clearly stipulated and has been informed by a review of other local governments’ community leases. It is generally thought that groups/ organisations on a longer lease tenure are more likely to invest in building development. Additionally, longer lease tenures are better suited for community group/organisations seeking grants.
- A note was provided to reflect (3) historical leases where lessees negotiated a peppercorn lease with full responsibility for the leased property building maintenance, including structural maintenance.
- The financial implications of recommended fee structure considered the group’s / organisation’s ability to pay and their benefit derived from sole use in relation to Shire’s capacity to reinvest funds in new building/ refurbishment and the staffing requirements to ensure suitable asset management.

- Given the financial viability of groups generally allocated to Category Two and Category Three there is an expectation that the lessees will provide a 50% contribution to the insurance excess.

### Standard community lease

Initial changes to the standard community lease as included in the reviewed “Community Leases Policy” presented to 19 June 2023 Governance Committee Meeting:

- Variation clause was inserted to capture request for variation of existing leases as a result of lessee change of circumstances.
- A timing incentive was inserted to ensure timeliness of community groups signing a lease agreement.
- Maintenance responsibilities from the standard community lease has been summarised in Appendix 2: Community Leases Guideline.
- Additionally, Appendix 2: Community Leases Guidelines (**Attachment 3**) provides potential and existing lessee(s) an explanation of terminology used in lease agreements, a schedule of maintenance obligations and responsibilities, and a range frequently asked questions. The guidelines will be available on the Shire website for greater access and transparency.

Further changes included in the updated “Community Leases Policy” following the 11 July 2023 Ordinary Council Meeting:

- Detailed requirement for Category One Lessees to record their maintenance expenditure towards maximum yearly cap.
- Further detail has been added to Appendix 2: Community Leases Guidelines pertaining to structural maintenance, casual hire, the process to request capital works, building insurance claims and requirements in terms of malicious damage, break-ins and vandalism.

### Lease renewal for existing lessees

The following was included in the reviewed “Community Leases Policy” presented to the 19 June 2023 Governance Committee Meeting with no further changes proposed to the updated “Community Leases Policy” following the 11 July 2023 Ordinary Council Meeting.

- Feedback from Governance Committee workshop has been incorporated to include (d) “*existing lessee will be given first right of renewal [..]*” and (e) “*application for Shire owned premises have been considered on their merit*” to ensure a balance between providing existing lessees with an opportunity to continue with their lease and providing opportunity for new community groups/organisation to access leases on Shire properties.

Changes from the reviewed “Community Leases Policy” presented to the 19 June 2023 Governance Committee Meeting have been updated following the 11 July 2023 Ordinary Council Meeting. These changes are tracked in **Attachment 6** updated “Community Leases Policy”, **Attachment 7** Appendix 1: Classification of Tenants and **Attachment 8** Appendix 2: Community Leases Guideline.

## VOTING REQUIREMENT

Simple Majority

<b>RECOMMENDATION</b>
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That Council endorses the draft updated “Community Leases Policy” (**Attachment 1**) for the purpose of community consultation.

<b>COMMITTEE RECOMMENDATION MOTION</b>	<b>SGC1.07.23</b>		
Moved by	Cr Zlatnik	Seconded by	Cr Ellery

That Council:

1. Endorses the draft updated “Community Leases Policy” (**Attachment 1**) for the purpose of community consultation.
2. **Notes that Appendix 2: Community Leases Guidelines will be updated to correct typographical errors and to ensure the content is consistent with the endorsed “Community Leases Policy” prior to consultation commencing.**

### CARRIED 5/0

**For:** Cr Cicchini, Cr Ellery, Cr Zlatnik, Cr McNeil and Cr Martin

**Against:** Nil















































































































































































































## **6.0 CLOSING PROCEDURES**

### **6.1 Date, Time and Place of the Next Meeting**

The next Ordinary Governance Committee meeting will be held on Monday, 21 August 2023 at 5.00pm in the Committee Room, Shire of Mundaring Administration Centre.

### **6.2 Closure of the Meeting**

The Presiding Member closed the meeting at 5.11pm.