

Shire of Mundaring

POLICY

COMMUNITY LEASES

Policy Ref: OR-24

Adopted: C8.04.19 **Date:** 9 April 2019
Amended: **Date:**
Reviewed: **Date:**
Procedure Ref: **Delegation Ref:** CE-117
Statute Ref: *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

Local Law Ref: N/A

PURPOSE

To ensure:

- a consistent, transparent and equitable approach for the process of Council entering into a formal lease agreement with community groups to occupy Shire owned or managed land and buildings; and
- Shire leased assets are managed appropriately to optimise the benefit to and meet the expectations of the community.

POLICY

1. DEFINITIONS

Lease	Exclusive occupancy agreement
Licence	Non-exclusive occupancy agreement (shared use)
Community group	<ol style="list-style-type: none">1. incorporated not for profit group or association of persons with the primary aim of conducting activities and providing services for community benefit; and2. relies predominantly on volunteer labour, community fundraising, membership fees and donations; and3. may receive state or federal government operational grants and may rely on a fee for service business model
Community lease	A lease between the Shire and a community group
CPI	Consumer Price Index. For the purpose of this policy CPI means the Perth All Groups CPI rise for the March quarter of

	the year, as determined by the Australian Bureau of Statistics
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.

Throughout this policy, the word “lease” includes “licence”.

2. SCOPE

This policy applies to all new community leases for community groups, including renewal of leases on expiration of current leases. It does not cover commercial leases with business entities, as these will be negotiated on a case by case basis.

Shire of Mundaring Bush Fire Brigades are excluded from this policy: while these are community groups, they are an integral part of the Shire under the *Bush Fires Act 1954* and the Bush Fire Brigades Local Law 2013 and do not require a lease.

3. ELIGIBILITY FOR A COMMUNITY LEASE

Groups meeting the definition of a community group and who request exclusive or non-exclusive use to operate community activities from a leased facility, are eligible to apply for a community lease in accordance with this policy.

When assessing applications, Council will consider factors including the following criteria:

- the organisational structure of the group:
 - ✓ group is incorporated under the *Associations Incorporation Act 2015*;
 - ✓ group has an Australian Business Number (ABN);
- financial viability of the group:
 - ✓ proven financial viability, backed up by annual financial statements;
 - ✓ compliance with relevant legislation governing the activities of the group;
 - ✓ holds all relevant licences and approvals to operate;
- the community benefit of the proposal:
 - ✓ 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;
 - ✓ group’s Rules of Association enable non-discriminatory membership, i.e. open to all residents who wish to participate in that service or activity;
 - ✓ group’s fees are reasonable and accessible;
- the suitability of the site for the specific purpose;

- the alignment of the proposal with Council’s objectives as articulated in the Shire’s Strategic Community Plan; and
- for Shire-owned freehold premises: the alignment of the proposal with Council’s Property Strategy, in which freehold property is distinguished in three categories:
 1. social, community and civic purposes;
 2. economic purposes; and
 3. investment purposes.

4. STANDARD COMMUNITY LEASE

4.1 The community lease, developed by the Shire’s solicitors, with standard terms and conditions, roles and responsibilities, as amended from time to time, will be executed between the Shire (lessor) and each community group (lessee) wishing to occupy Shire premises.

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

4.3 Insurance

All community groups 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.

5. RENT SUBSIDIES

Subsidising rent is an indirect form of financial support from ratepayers to community groups and should only be considered by Council if the community group can demonstrate benefits to the entire community (inclusive benefit) or to a particular section of the Shire community (exclusive benefit).

To ensure fair and transparent treatment, Council will assess community groups according to their capacity to raise revenue and assign them to one of three rent subsidy categories:

	Category A	Category B	Category C
	Peppercorn rent	Community rent	Market rent, discounted where appropriate
Rent setting	annual rent is \$1 per annum plus GST, payable in advance for the duration of the term of the lease	Determined by the size of the leased area: B1: areas up to 999sqm - \$500 per annum plus GST B2: areas 1,000sqm up to 4,999sqm - \$1,100 per annum plus GST	full market rent with any discount based on Council’s assessment of the group’s community benefit

		B3: areas 5,000sqm and over - \$1,700 per annum plus GST	
Indicators of eligibility for rent subsidy	no revenue raising capacity from activities consistent with the group's purpose	limited capacity to generate revenue from activities consistent with the group's purpose	ability to raise revenue and charge fees from activities consistent with the group's purpose
	no access to other funding sources	service or activity is non-discriminatory, i.e. open to all residents who wish to participate in that service or activity	access to substantial government grants (federal, state or local)
	without this service provision the Shire would be required to provide an additional service	service or activity is extensively used by specific sections of the community (youth, seniors, etc.)	commercial activities may include, but are not limited to regular bar and food activities, retail shop sales, fee for service at commercial rates
	meets a high level of need in the community	limited access to other sources of funding (no more than 10% of total revenue)	significant administration resources, such as paid staff, office equipment etc.
	run exclusively by volunteers	run exclusively by volunteers	run by paid staff or paid staff and volunteers

All community lease rents, other than peppercorn rents, will be indexed annually for CPI.

Full market rent discounts (Category C):

Full market rent will be applied where the community group's annual rent is less than 5% of its ongoing operating revenue (or estimated operating revenue where the group is newly established). Operating revenue excludes any capital grants.

Where full market rent would account for more than 5% of the group's annual operating revenue or estimated revenue, Council may provide a subsidy on the following basis:

- 50% discount if the group demonstrates an inclusive benefit;
- 25% discount if the group demonstrates an exclusive benefit.

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.

Review of financial support:

For newly established groups, whose subsidy is based on estimated revenue, the Shire will review its financial support upon receipt of two consecutive annual financial statements from the group. Adjustments resulting from such a review will not be retrospective.

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

6. LEASE RENEWAL FOR EXISTING LESSEES

The CEO has delegated authority (CE-117) to renew lease agreements with existing lessees or negotiate new lease agreements with existing lessees whose lease has expired. During this process, the following criteria will be considered:

- There remains a strong demand in the community for the continuation of the lessee's activities or services;
- The facility is not required by the Shire for other purposes;
- Renewal of the agreement will continue to maximise benefits to the community and the Shire; and
- The lessee has not been consistently in breach of their obligations under the existing agreement.