



<b>POLICY NO</b>	CP/PMG-3780	
<b>POLICY</b>	Leasing of Council Managed Reserve Land - Community	
<b>RESPONSIBLE DIRECTORATE</b>	Community Development	
<b>RESPONSIBLE OFFICER</b>	Manager Community Services	
<b>COUNCIL ADOPTION</b>	Date: 15/05/2012	Resolution No:
<b>REVIEWED/MODIFIED</b>	Date: 23/06/2015	Resolution No: 10990
	Date: 30/8/2016	Resolution No: 11461
<b>REVIEW DATE</b>	Date: August 2017	
<b>LEGISLATION</b>	Local Government Act 1995 Local Government (Functions and General) Regulations 1996 Land Administration Act 1997	
<b>RELATED POLICIES</b>	CP/PMG-3781 - Leasing of Council Managed/Owned Land - Commercial	
<b>RELATED ORGANISATIONAL DIRECTIVES</b>	N/A	

#### **PURPOSE:**

A community lease is an agreement between the Shire and an external organisation to manage a reserve or facility on behalf of the Shire and for the community. This agreement supports the organisation in conducting their activities/services, and in doing so, provides benefit to the wider community. In many ~~cases~~ cases, this arrangement provides a service to the community that would otherwise not be available or would require significant Shire input.

The Shire of Wyndham East Kimberley seeks to support community groups in increasing capacity and improving facilities within the Shire that result in strengthening of the community helping to build vibrant, inclusive and healthy communities.

The objectives of this ~~P~~policy are to:

- Ensure Community leases maximise benefit to the community of the Shire of Wyndham East Kimberley by supporting community organisations in the provision of services, facilities and events.
- Ensure the economic, social and environmental impact of community leases on the Shire and the community is considered.
- Encourage clarity and consistency in the Shire's community leases and associated processes.
- Promote equity across all Shire community leases without favour or prejudice to individual organisations.
- Ensure assets leased to community organisations are well maintained to maximise sustainability, promote safety and maximise community benefit.
- Minimise risk to the Shire, financial or litigious, resulting from Community leases.

- Promote collocation and multipurpose development, where practicable, and strategic development of community facilities based on future requirements of the land and community needs.
- Ensure the value of community leases and Shire contribution to the community through community leases is recognised.

## DEFINITIONS:

## Community

**Group** is an entity that carries on activities for a public purpose, or another entity whose primary object is not directed at making a profit.

**Lease** is a grant of interest in land.

**Licence** is a deed of agreement allowing for occupation of a parcel of land on a non-exclusive use basis. A licence is not an interest in land. As a matter of law, it simply authorises what would otherwise be a trespass. Licences do not provide the security of tenure offered under a lease agreement and can be cancelled without notice on provision of suitable grounds to do so.

## POLICY STATEMENTS:

This **P**olicy provides the opportunity for the lessee to provide service(s) to the Community of the Shire of Wyndham East Kimberley. In some **easescases**, these services may not otherwise be provided or, would require funding from the Shire.

As community benefit is a key objective of this **P**olicy, Community leases should include mechanisms and terms that actively encourage benefit to the community. Lessees can promote community benefits through:

- Operating as per their permitted use and constitution
- Encouraging membership and participation
- Ensuring accessibility where appropriate.

Standard terms of Shire of Wyndham East Kimberley Community Leases are:

### 1. Permitted Use

Permitted use of a lease should be consistent with the purpose of (and management order for) the reserve land and the zoning of the land.

Incidental and ancillary use may be permitted to allow the community group to generate some profit and increase capacity, subject to the profit supporting the community use, and to allow for increased community use of the land as appropriate **(refer clause 7)**.

### 2. Lease Term

The standard lease term will be 10 years.

A longer lease term may be granted at the discretion of Council if the lessee can demonstrate the need for this extended term, as well as the financial sustainability to meet this need, through the lodgement of a business plan.

### 3. Lease Rent

Commencement rental will be \$500 per annum, excluding GST.

Rent review period for community leases will be every 3 years, unless otherwise determined by Council.

The Lessee will be invoiced for the lease rental from 1 July annually; where leases are commenced other than 1 July the lease rental will be invoiced for the proportion of the year to 1 July, to align future lease payments to 1 July.

#### 4. Termination

The Council will reserve the right to terminate the lease if it is decided by the Council that an alternate use of the land may deliver exceptional significant community benefit without the loss of services to the community.

The Council will make every effort to meet the current needs of the lessee through conducting consultation and negotiation to minimise any disadvantage to the lessee and the community.

#### 5. Development

Authorisation for any proposed development on leased land should be sought from the Shire prior to the submission of formal planning and building permit applications. The basis of such 'pre-approval' is to allow the Shire to determine the community need(s) based on long term strategic relevance and planning, which will help to avoid duplication and identify opportunities for collocation and multipurpose developments. Business plans prepared by community groups will assist in identifying proposed future development and opportunities for collocation.

At the conclusion of a lease, any buildings or infrastructure not removed from the lease site will become the property of the Shire, for the disposal or retention at the Shire's discretion and associated costs may be recovered from the lessee.

#### 6. Maintenance Requirements

The lessee will be responsible for all maintenance of buildings, infrastructure or fixtures on the lease site.

#### 7. Commercial Activity

It is recognised that in certain circumstances it is appropriate for the leased community facility to be utilised to generate profit, where that profit is used to support the development or maintenance of the facilities for the purpose of providing a community service.~~lessee.~~

Council shall determine when profit-generating uses are acceptable having regard to the following criteria~~for the following~~:

- The use is ancillary and/or complementary to the main use
- The Income generated
- The income generated is placed into a financial reserve account for approved programs, development or the development or maintenance of the facility
- Rental fees charged by the Lessee are valued at a commercial rate
- The use is supported by the Reserve purpose
- The area occupied by the profit making facilities
- The use provides an additional service not otherwise provided
- The community benefit outweighs the competitive advantage

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- The use does not contravene any written law
- The use is not considered a nuisance or an unacceptable negative impact
- If the use is competing with a commercial enterprise.

~~Generally~~Generally, acceptable uses include:

1. Room or venue hire (for a limited time) for workshops, presentations, and functions generally; and
2. Food and beverage sales to members, and also to spectators during sporting events where planning, health and liquor licensing approvals have been obtained.

Any use outside what is generally acceptable will require consideration by Council, and if approved may affect determination of the annual lease rent.

#### 8. Business Plans

The Shire at its discretion may request the submission of a business plan with any application to lease Shire managed land.

The development of a ~~long-term~~long-term business plan is a key aspect in the setting of strategic direction and objectives for a group or activity and the associated planning, timeframes and resources required to achieve the strategic goals. It can also assist the sustainability and development of a group or activity.

A business plan in relation to a lease proposal should, as a minimum, outline:

- Long term plans or strategic direction over the next 10 years or more
- Detail with respect to infrastructure (buildings and associated works) needs
- Long term objectives with regard to current and potential future land use, and
- Long term financial objectives – to promote financial sustainability.

Business plans may assist in identifying opportunities for collocation and multipurpose development, and will be required in instances where there is a strategic future requirement for the land or a longer lease term is sought.

#### 9. General

- 9.1. Collocation arrangements will be actively encouraged to ensure maximum community utilisation and benefit is obtained from limited community facilities.
- 9.2. Leases will only be granted over areas required for exclusive use. Any areas that can be used jointly or by the general public i.e. for access, parking, ablutions etc., will only be licenced.
- 9.3. Lessees are required to comply with all laws and statutory ~~requirements~~requirements, which are imposed throughout the term of the lease.
- 9.4. Cost of the lease preparation (including advertising costs, valuations, legal fees), stamping and registration are to be met by the Lessee.
- 9.5. Any utility charges, rates and taxes levied against the land are to be paid by the Lessee.

- 9.6. It is strongly advised that the Lessee take out and maintain contents insurance for the contents within the leased premises.
- 9.7. The Lessee will hold public liability insurance to a minimum of \$20 million indemnifying the Shire of Wyndham East Kimberley from any loss resulting from the Lessees activities conducted within the leased premises.
- 9.8. Sub-leasing in principal is not supported unless it is required to enable multipurpose use of facilities or collocation. Sub-leasing agreements are not to be entered into without prior permission from the Shire and Minister for Lands.
- 9.9. Final Ministerial Approval will be required for all Crown land leases.
- 9.10. Registration of the lease will apply where required.
- 9.11. The Lessee will be required to complete a report at the request of the Shire detailing club and building details.
- 9.12. The Lessee may be approved by the Lessor to remain in possession of the leased premises following the expiry of the lease. In such ~~circumstances~~circumstances, the lessee will be deemed to be a tenant at will on a ~~month to month~~month-to-month basis.
- 9.13. Should a lease expire, a holding over clause will apply. Where there is a period between the expiry of a lease and the commencement of a new lease, the commencement date of the subsequent lease will be the date of agreement to the final draft lease by the Shire of Wyndham East Kimberley and the lessee.
- 9.14. The Shire as the Lessor will insure all buildings and other improvements with the Lessee to reimburse the cost of this insurance to the Shire.

#### **EXPLANATORY NOTES:**

This ~~P~~policy proposes to outline standard lease provisions and guiding principles for the lease of Reserves vested in the Shire of Wyndham East Kimberley to bodies exempt from the requirements of Section 3.58 of the Local Government Act 1995 by Regulation 30 (2) (b) of the Local Government (Functions and General) Regulations 1996, being charitable, benevolent, religious, cultural, educational, sporting or other like nature bodies, whose members are not entitled or permitted to receive any pecuniary profit from the bodies' transactions.

All leases are subject to the final approval of the Minister for Lands.

Under the *Land Administration Act 1997*, the Shire has been granted the care, control and management of numerous parcels of Reserve land which is set aside for various recreational and community purposes, along with the power to lease. As such, the Shire leases this Reserve land to various community groups, clubs, and recreational bodies for the purpose of supporting community use and providing community benefit.

Leases provide exclusivity and security of tenure. Leases are in most cases viewed favourably, if not essential, by some funding providers for capital works grants. The security of tenure encourages Lessees to develop and maintain facilities and lease sites for the benefit of their members, an ultimately the wider community.

The exclusivity of a lease does have disadvantages. Leases generally do not encourage collocation or shared facility use and can discourage the development of multipurpose facilities. Such partnership and shared facilities promote more efficient use of space and facilities maximising community asset utilisation. In certain situations therefore, it may be more appropriate for an arrangement for a non-exclusive use of the land or buildings through a Licence. This would then allow and encourage greater use and access by a number of clubs/community groups and the general public, as practicable.

It is noted that all community leases that are located on a foreshore must have a ~~10-metre~~10-metre buffer. In such ~~cases~~cases, it is appropriate for the Shire to issue a License maintaining access for pedestrians and for passive recreational purposes.

**RISK:**

**Risk:** Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

**Control:** Review policies and procedures in accordance with review schedule....