District Council of
Loxton Waikerie

COMMUNITY FACILITIES LEASING/LICENSING POLICY

Responsible Officer/s	Director of Commercial and Community Services Commercial and Community Services
Relevant Legislation / Documents	Local Government Act 1999 Retail and Commercial Leases Act 1995 and Regulations, 2010 Crown Land Management Act 2010 Planning, Development and Infrastructure Act 2016 and Australian Accounting Standards Board Reg 116 (Corporations Act 2001 (Cwlth)) Community Strategic Plan 2038 Rate Rebate Policy
Adopted	November 2015
Reviewed	November 2024
Next Review	November 2027

A. Purpose

The leasing and licensing of Council-owned community facilities make an important contribution to the Council's ability to achieve its objectives and deliver core services.

The purpose of this policy is to provide a framework for leasing and licensing Council-owned properties (land and buildings) at fair and equitable fees without the undue burden of commercial lease charges, and to provide clarity and guidance when granting applications to incorporated community groups, sporting bodies and not-for-profit organisations.

The policy establishes the terms and conditions the Council use as the basis for negotiating all new and renewed leases and licences.

B. Objective

Background

The District Council of Loxton Waikerie (the Council) leases or licences a substantial number of facilities to clubs and incorporated organisations at subsidised occupancy fees for varied purposes, including but not limited to sporting clubrooms, pre-schools, scout halls, and community associations.

Legislative Framework

The following legislation affects the administration of Council's leases and licences

- Local Government Act 1999.
- Retail and Commercial Leases Act 1995 and Regulations, 2010: Controls occupancy of premises that are used predominantly for retail provision of goods or services (including not-for-profit organisations).
- Crown Land Management Act 2010; Determines the need for applications for the lease of Crown land, (application fees apply).
- Planning, Development and Infrastructure Act 2016: May affect the term of the lease or licence, if a lessee requires a lease of more than a 6-year term. Land division will be required if the lease or licence over community land is for less than the whole of an allotment.
- Australian Accounting Standards Board Reg 116 provides the basis for valuing and revaluing assets on a regular basis to avoid detrimental impacts to the annual financial accounts.

Community Profile

Changes to the community profile may affect the type of facilities that the community requires. This policy will ensure that access to Council facilities and assets are not unnecessarily restricted and properties can be redeployed over time to meet changing community needs.

C. Policy

1. Principles

The principles of this policy regarding leasing and licensing of Council Facilities are:

i. Facilities Management Agreement:
- Council owned buildings on land owned by Council
- Responsibility for the maintenance and structural replacement costs remains with the Council
- Council to insure the property
- No rates to be applied

ii. Facilities Lease or Licence:
- Council owned buildings on land owned or under the care and control of Council
- Responsibility for general maintenance is the responsibility of the occupant
- Structural replacement costs remain the responsibility of Council
- Council to insure the building and seek to on-charge to occupant

iii. Ground Lease or Licence:
- Community owned buildings on land owned or under the care and control of Council
- Responsibility for general maintenance and structural replacement costs remain the responsibility of the occupant
- Occupant to pay insurance

iv. General terms:
- Agreements to be 5 years with no extension unless public consultation procedures are followed
- Structures and area to be identified and included in agreement
- No charge to be made for general oval use as this is accepted as Council core business

- All leases and licenses pertaining to community land must adhere to the principles outlined in the applicable community land management plan to ensure cohesive and effective governance

2. Objectives

The objectives of this policy are to:

- Ensure Council-owned facilities are used to meet community needs consistent with Council's policies and the Community Strategic Plan.
- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear understanding of community expectations.
- Assist not-for-profit and volunteer-based organisations that offer activities and services within the Council district.
- Facilitate a shared-approach between Council and occupants as to the cost of management and maintenance of Council-owned facilities.
- Ensure that Council-owned facilities are maintained, developed and occupied responsibly, having regard to the interest of local communities.
- Ensure sound financial management and effective administration of community facility leasing and licensing agreements.

3. Eligibility

3.1 Expression of Interest in Use of Council Property

Community groups that wish to utilise Council property are required to lodge a written expression of interest (EOI) outlining the proposed use of the facility and addressing the needs of the community. Council will consider expressions of interest on their merits when a property becomes available for use.

Existing occupants seeking to renew their lease / licence agreements will be required to submit a formal application and EOI defining the proposed use and demonstrating their alignment with community.

4. Terms and Conditions of Leases and Licenses

4.1 Standard Leases and Licenses

Council's standard lease and licence agreements will be applied to all new occupancies including the renewal of existing occupancies and will not be varied unless it is essential to the special needs of the property or occupant, as resolved by Council. Occupants offered a further term under the agreement may seek renewal of their lease or licence as outlined under sub-clause 4.1.

4.2 Lease Appraisal and Review

4.2.1 Lease Fee

The lease / licence fee is determined on a case-by-case basis, and is dependent on level of community benefit, intended purpose of use, and building or land value at the time of establishing the lease / licence. Building insurance and rates are to be billed separately (if applicable).

4.2.2 Lease Discount and Rate Rebates

Council may discount lease / licence fees to occupants who may not have the financial capacity to meet the criterion established in 6.2.1. Lease / licence holders may be entitled to, or apply for, a rate rebate, excluding fixed charges of CWMS connection and waste collection. Rate rebates to all eligible occupancy agreements will be considered on application and will be resolved by Council on a case-by-case basis, in line with Council's Rate Rebate Policy.

4.2.3 Annual Indexation of Lease Fees

Lease fees will be indexed annually and the amount payable will be increased by the Adelaide Consumer Price Index (Adel - CPI) for all agreements each year.

4.3 Maintenance

As a general principle, maintenance costs will be the responsibility of the occupant.

4.3.1 Programmed Maintenance

Each occupant is required to provide Council with a written report on the anniversary of the commencement of the lease / licence outlining any projected structural works required to the premise. Projections will be made over a 5-year period. Sufficient detail should be provided to Council to enable forward planning and budget provision to be made. Provision of this report does not obligate Council to undertake any or all works noted.

4.3.2 Maintenance Responsibilities

Each occupant is required to maintain the facility in accordance with the special conditions attached to their lease or licence using the services of registered and qualified tradespeople, where necessary, in accordance with Council's Work Health and Safety guidelines. The maintenance schedule will specify the Council's and the occupant's responsibilities. The occupant will be responsible for keeping the facility clean, in good condition and for performing routine maintenance not requiring a skilled tradesperson.

4.3.3 Maintenance Inspection

Council reserves the right to inspect the premises each year or more frequently as required. Council will give appropriate notice to the lessee in accordance with the lease or licence conditions. This applies to all leases and licences regardless of ownership of the facility on land owned or under the care and control of Council.

4.3.4 Utilities

Payment of utilities is the responsibility of the occupant, except where the occupant leases or licenses an area that is part of a larger Council facility and separate metering is impractical. In these cases, Council may negotiate a flat rate contribution towards utilities.

4.4 Term of Lease/License

The term of each lease / licence will be negotiated taking into account the particular circumstances of the facility and the occupant, including capital investment and long-term planning, sustainability of the service, the connection between facility use and Council's

Strategic Plan and relevant strategies, and the extent to which the facility is used for multi-purpose activities. The term of a lease / licence offered should generally be for a 5-year term without an offer of extension; except where public consultation processes have endured.

4.5 Use of Licenses Rather Than Leases

A lease agreement will be used where Council considers that providing exclusive rights to a single occupant is in the best interests of the community or is necessary to recognise financial investment by the occupant or to secure the desired use and long-term development of the property.

Council aims to maximise access and use of community facilities and encourages shared use. Where Council wishes to make a facility available to multiple users, a licence rather than a lease will be the preferred form of agreement.

A Ground Lease / Licence will be granted where evidence demonstrates that a facility on Council or community land under the care and control of Council has been constructed wholly by the occupant without use of Council funds.

4.6 Use of Premises and Casual Hire

Leases and licences will only be available to community groups for approved purposes. Any shared or multiple use will be subject to Council approval.

Occupants should also make facilities available for casual hire where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. Hiring agreements, including fees and any restrictions on the property, shall be referred to Council for approval. Fees from casual hire are payable to the occupant, not to Council, as an incentive to maximise utilisation. Where the occupant receives fees for hiring out facilities, Council will be entitled to review the lease / license fee to take into account the income received.

4.7 Hours of Use

Council may prescribe the hours of use for all premises, dependent on the nature and proposed conduct of activities or programs and any planning permit conditions.

4.8 Sub-leasing

Occupants may only sub-lease or sub-licence with Council permission to approved organisations for approved purposes and subject to approved terms and conditions. Generally, Council will use the same criteria to assess the sub-lease or licence as the head lease or licence. The subsidy level of the head occupant may immediately be reviewed when a sub-lease or licence is developed and may be adjusted if the rent is more than cost-recovery. Any financial gain from sub-letting will normally be payable to the occupant rather than to Council.

4.9 Rates, Taxes and Outgoings

Where the occupant has a lease on an entire property, the occupant shall pay for rates (if charged), and any applicable taxes (including GST) or any stamp duty or other taxes payable in relation to the establishment of a lease. Where there is shared use, the occupant can be charged outgoings on a proportional basis. This could be applied to a

lease or a licence. Service charges applied to the premise will be allocated to the occupant unless otherwise negotiated with Council. Rate rebates will be referred to Council for consideration - refer to the Rate Rebate Policy.

4.10 Insurance

Occupants must maintain their own public liability insurance and Council must be named on the policy. Generally, Council will fully insure all Council owned facilities and improvements, with the lessee being on-charged for the insurance premium, unless otherwise specified. Occupants may opt out of Council's insurance policy and take out their own building insurance cover, however cover must be based on Council's building valuation assessment and must be supported by a current certificate of currency. Occupants are responsible for their own contents.

4.11 Gaming and Liquor Licences

Council prohibits gaming licences in leased or licenced community facilities.

Liquor licence applications require Council approval and must only be applied for after Council's consent.

4.12 Legal Fees

Council will pay legal costs associated with the establishment of a new lease or licence agreement. Legal advice and assistance sought by the occupant will be at their own cost.

4.13 Keys, Locks and Security Arrangements

Occupants must provide keys to Council to enable Council to carry out essential maintenance and emergency services. Occupants must provide Council with information on any other security arrangements undertaken by the occupant in respect of Council's facility, such as security patrols, keypads and alarms, as well as new keys upon replacement.

4.14 Planning Requirements and Other Permits

All occupants must adhere to the conditions of any Development Application issued by Council or other permits issued by other authorities. Occupants must also obtain any permits or licences that are required in order for the occupant to be able to use the premises for its permitted use.

4.15 Removal of Assets

The occupant may remove any assets considered chattels that have been constructed or installed by them during the term of the lease / licence (unless otherwise part of the agreement), subject to the premises being returned to Council in its original condition. Any improvement that can be removed but are not removed at the end of the lease shall remain in Council ownership.

4.16 Capital Improvements

Council will retain ownership of capital improvements that are not removed or cannot be removed without significant damage to the facility, unless otherwise specified in the lease

or licence. Council will consider capital contribution by occupants in assessing lease / licence fee levels and length of lease or licence.

4.17 Acknowledgment of Council Contribution

Occupants must acknowledge Council contribution in their annual report, brochures and on any signage on the premises. Acknowledgement requirements will be specifically detailed in all leases and licences where applicable.

4.18 Nuisance

Council requires that occupant undertake their permitted activities without adversely affecting the amenity of nearby neighbours. Breaches in this regard may lead to forfeiture of occupancy rights.

4.19 Asbestos Hazards

Council will advise occupants if a facility is listed on Council's asbestos register and, where required, ensure that an associated lease or licence clearly states any lessee or licensee's obligations in relation to potential asbestos hazards.

4.20 Cleaning

Cleaning will be the responsibility of the occupant. Where facilities are shared and/or Council arranges cleaning, a flat contribution towards cleaning will be negotiated with the occupant.

4.21 Additional Requirements

The occupant must comply with all legislation governing the activities of the occupant e.g. Work Health and Safety and Council policies.

5. Implementation of this Policy

This policy will apply to all leases and licences developed or renewed following its adoption by Council.

Delegations

Delegated authority has been granted to the Chief Executive Officer to negotiate and approve agreements using the following templates:

- Facilities Lease,
- Facilities Licence,
- Facility Management Agreement,
- Ground Lease / Licence, and
- Short-term Lease / Licence (Casual Hire Agreement),

subject to there being no material difference to the generic agreement with a general principle of consistency being applied.

D. Availability

This Policy will be available for inspection at the Council Offices at Loxton or Waikerie during ordinary business hours at no charge.

Copies of this Policy will also be available from Councils website: http://www.lwdc.sa.gov.au/ or postal copies may be obtained from the Council Office free of charge.

E. Document history and version control

Date	Version	Authorisation	Amendment Details
20/11/2015	1.0	Council at the meeting of 20 November 2015	First version
17/11/2017	2.0	Council meeting of 17 November 2017	Addition of document and version control protocols and extended the review period as per the Policy and Procedure Development and Review Procedure Non profit community based groups seeking lease or licence over council controlled property who fulfil category 'A' criteria of this policy will be granted rate rebate for the term of their proposed lease or licence. Council meeting 15 September 2017 (Item 11.1)
15/5/2020	3.0	Council Meeting of 15 May 2020	Council referred redraft of policy to the Asset Committee for recommendation
5/3/2021		Asset Management Committee meeting of 5 March 2021	Recommendation made to Council for ratification
16/4/2021		Council Meeting 16 April 2021	New version adopted
20/11/2024	4.0	Council Meeting 20 November 2024	Restructure of information within Purpose and Policy Principles. Clarification of the inclusion of rates and lease fee. Grammatical Changes. Transfer to new template