



## LPP12 Leases and Licences

### Policy Objective

The purpose of this policy is:

- a) to ensure transparent and accountable process for the disposal of land and building assets by way of lease or licence held by the Shire of Ravensthorpe either owned in fee simple, under a management order, or via a sub-lease arrangement;
- b) to minimise the risk to the Shire of Ravensthorpe and to maximise the overall return to the community for Shire of Ravensthorpe assets, and
- c) to ensure compliance with the provisions of section 3.58 of the *Local Government Act 1995*, and any other relevant laws and consistency with Shire of Ravensthorpe policies.

### Policy

This policy addresses when to apply a short- and long-term leasing or licencing approach to property owned, managed or sub leased by the Shire of Ravensthorpe.

The Shire of Ravensthorpe owns, manages under order, and sub leases certain land and buildings throughout the Shire and may from time to time choose to enter into leasing and licencing arrangements with individuals, not for profit organisations and businesses.

This policy recognises the variety and diversity of leases and licences as well as recognises that no one particular style of lease or licence is appropriate for all purposes.

This policy will ensure that all requests for lease or licence for whatever purpose will be treated in a fair and equitable manner using open and accountable methodology and in line with statutory procedures.

A lease or a licence is a contractual agreement between Council (lessor or licensor) and another party (lessee or licensee) that binds both parties to the terms of the agreement.

The individual circumstances surrounding the land and buildings and the needs of the users will determine whether granting a lease or a licence is appropriate using the guiding principles detailed in this policy.

This policy recognises that in relation to commercial leases, lessees enter in a commercial business tenancy relationship with the Shire and that the management of such leases and relationships is an operational matter within the responsibilities of the Chief Executive Officer.

### LPP12.1 Essential differences between Lease and Licence

#### **A Lease:**

- a) is a transfer of right to enjoyment (exclusive possession) of that property by the lessor to the lessee, and made for a certain term in consideration of a fee subject to the terms set out in the lease agreement;
- b) grants exclusive possession for a fixed period (term);
- c) creates an interest in the land which can be transferred to the lessee for the period of the lease;
- d) can be transferred (assigned) to another party and if registered on the title is binding on a new owner of the land;
- e) is not revocable (other than subject to any conditions set out in the lease (e.g. a redevelopment clause)).



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**A Licence:**

- a) is the granting of a permission to use the land in consideration of a fee subject to the conditions set out in the licence;
- b) does not grant exclusive possession;
- c) does not create or transfer an interest in the land;
- d) is not transferable;
- e) is revocable.

[LPP12.2 Guiding Principles](#)

Leases and licences will be negotiated consistently with the following GENERAL principles:

Item	Policy	Principle
1.	<b>Type of agreement</b> <b>Lease vs Licence</b>	<p>A Lease will be entered into where the intention is to grant exclusive possession of the property or part of the property.</p> <p>A Licence will be entered into where the intention is to grant non-exclusive possession of the property or part of the property.</p>
2.	<b>Term</b>	<p>The maximum tenure of a Lease or Licence granted by the Shire on Crown land will be 21 years including any further term option/s.</p> <p>The maximum tenure of a Lease or Licence granted by the Shire on freehold land will be at the discretion of Council.</p> <p>The term will depend on many factors, including but not limited to:</p> <ol style="list-style-type: none"><li>a) The needs of Council and Council Plan objectives.</li><li>b) The needs of the Community.</li><li>c) The Lessee.</li><li>d) The Business.</li><li>e) The ongoing need for the Property or the provided use.</li><li>f) Substantial contributions to capital or structural works by the Lessee.</li><li>g) The sustainability of the Lessee.</li><li>h) The sustainability of the Property.</li><li>i) The Management Order for the Property (if Crown land) and the requirements of the Minister for Lands.</li><li>j) The current state of the leasing and licencing market.</li></ol>
3.	<b>Lessee</b>	<p>The Shire may enter into a Lease or Licence with the following entities:</p> <ol style="list-style-type: none"><li>a) Individuals.</li><li>b) Partnerships (i.e. more than 1 individual or entity).</li><li>c) Incorporated Associations.</li><li>d) Companies.</li><li>e) The Crown / a Statutory Authority / other Government body.</li><li>f) Trusts, by their trustee (usually an individual or a company).</li></ol> <p>Some entity types may require guarantor or other types of additional security (see below)</p>



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| <b>4. Planning, Consent and Approvals</b> | <p>Council approval is required for all new leases, licences and sub-leases and can include any further terms.</p> <p>Planning Scheme Consent / Approval (if required) must be obtained from the Shire as the local planning authority prior to a request for a Lease or Licence.</p> <p>Where the Shire manages Crown land, grant of the Lease or Licence and each renewal, if any, will be conditional on Minister for Lands approval.</p> <p>The Lessee or Licensee is solely responsible for obtaining all approvals, licenses and authorities necessary to conduct the proposed activities on any premises. The Shire makes no representation that a premises or property is suitable for any activity, whether permitted or otherwise.</p> |
| <b>5. Format and Conditions</b>           | <p>Leases and Licences will normally only be granted by the Shire on its standard terms and conditions (from time to time) for the type of Lease or Licence sought, and in accordance with the relevant Guidelines.</p> <p>Amendments to standard agreements may be made in appropriate circumstances.</p> <p>Lease and Licence agreements will be supplied by the Shire or its nominated lawyers at the Lessee's cost (unless prohibited by the Commercial Tenancy (Retail Shops) Act 1985). Generally the preparation of a Shire standard licence agreement should not incur cost.</p>   |
| <b>6. Rates, Taxes and Outgoings</b>      | <p>The Lessee/Licensee must pay the relevant authority directly for all outgoings including rates, charges and taxes levied against the Property. User charges including but not limited to water, sewerage, waste disposal, telephone, gas and electricity are generally paid directly to the relevant service provider by the Lessee/Licensee.</p> <p>In shared spaces and/or where separate meters are not available, the Lessee/Licensee will pay its fair share of outgoings as a percentage of its floor space of nett lettable area.</p>  |
| <b>7. Registration</b>                    | <p>A Lessee may procure registration of the Lease (where possible) with Landgate at the Lessee's cost. Licenses are not registrable with Landgate.</p>   |
| <b>8. Sub-letting</b>                     | <p>A Lessee/Licensee must not sub-Lease, sub-Licence or part with possession of Property that is the subject of a Lease or Licence without the Shire's prior written consent. The Lessee/Licensee will be required to prove the suitability of a sub-Lessee/sub-Licensee.</p> <p>Sub-Leases and sub-Licences must be consistent with the head Lease or Licence purpose. If the purpose is inconsistent, a variation to the head Lease or Licence will be required to accommodate the sub-Lease or sub-Licence purpose.</p>   |
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<b>9. Assignment</b>	Unless prohibited by the Commercial Tenancy (Retail Shops) Act 1985, a Lessee/Licensee must not assign a Lease or Licence without the Shire's prior written consent, which may be withheld in the Shire's absolute discretion. Assignors continue to be liable for the remainder term of the Lease and will be required to prove suitability of an assignee.
<b>10. Delegated Authority</b>	The Chief Executive Officer has delegated authority to; <ul style="list-style-type: none"><li>a) grant further lease, licence and sub-lease term extensions that were previously approved by Council when awarded a new lease, licence or sub-lease,</li><li>b) negotiate lease terms within +10% or -10% of the independent valuations. Any variations greater will require Council approval.</li></ul>
<b>11. Risk Management and Insurance</b>	The Shire requires that all Leases and Licences contain appropriate risk management measures including an obligation on the Lessee to: <ul style="list-style-type: none"><li>a) indemnify the Shire (and the Minister for Lands if on Crown land) for loss or damage to persons or Property, wherever occurring;</li><li>b) maintain adequate public liability insurance;</li><li>c) ensure that appropriate documentation and insurance is in place for the hired use of the Property;</li><li>d) carry appropriate worker's compensation insurance commensurate with activities; and</li><li>e) be responsible for emergency and evacuation procedures</li></ul> <p>A Lessee must maintain a minimum of \$20 million public liability insurance.</p> <p>The Shire will be responsible for arranging insurance for Shire owned buildings and recover the cost of insurance premiums from the Lessee as an outgoing.</p> <p>A Lessee must insure the Lessee's personal Property (including contents).</p>
<b>12. End of Lease Provisions</b>	All improvements and permanent structures erected on Council property remain the property of Council, irrespective of who paid for the structure, unless when the lease is terminated all improvements made or structures erected are removed, returning the building and/or site to its original condition.

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This includes the removal of all material, debris and services from the site and the restoration of the building and/or site to the original condition when the Lessee took occupancy of the premises (this may involve the replanting of trees and landscaping).

The only exception to this requirement is where the Council through the Chief Executive Officer agrees to accept partial restoration and/or financial compensation in lieu of full restoration or Council through the Chief Executive Officer determines there is value in Council retaining the improvements or modifications made to a site, or portion thereof.

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| <b>13. Maintenance</b> | <p>The Shire will be responsible for structural maintenance and electrical wiring of Shire owned buildings.</p> <p>A Lessee will be responsible for all other maintenance to the Property including gardens.</p> |
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LPP12.3 Special Principles

SPECIAL Principles relating to certain categories of Property;

<b>Item</b>	<b>Policy</b>	<b>Principle</b>
<b>1.</b>	<b>Commercial Leases</b>	<p>Rent for Commercial Leases or Licences will be determined by Market Valuation.</p> <p>The costs of obtaining a Market Valuation (provided by a licensed Property Valuer) for the initial Lease or Licence rental assessment and during the term of the Lease or Licence will be paid by the Lessee.</p> <p>Rent reviews will be conducted on the anniversary date of the Lease or Licence by Market Valuation every three years and by the most recently published Consumer Price Indexation, All Groups (Perth) for intervening years.</p>
<b>2.</b>	<b>Retail Shop Leases</b>	<p>If the Act applies, Leases will be prepared in accordance with the Commercial Tenancy (Retail Shops) Act 1985).</p> <p>Rent for Retail Shop Leases will be Market Valuation and/or rent based on turnover, with Consumer Price Indexation, All Groups (Perth) adjustment in intervening years.</p> <p>Subject to the Act, a minimum term of 5 years will be granted. The term can be in a combination of initial term and options totaling 5 years.</p>
<b>3.</b>	<b>Residential Leases</b>	<p>Residential Leases of Shire owned Property will be in accordance with the Residential Tenancies Act WA and be charged rent as determined by a current rental valuation.</p> <p>Provision of Shire staff housing will be considered and charged according to the Shire's Workforce Plan and individual employee contract negotiations.</p>



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4. **Community Leases**

Community, sporting or recreation associations must be incorporated to enter into a Lease or Licence with the Shire.

Prospective Community Lessees, upon request, must be able to demonstrate to the Shire's satisfaction that the Lessee will provide sufficient community benefit to justify the Lease or Licence.

Where land and building assets are managed by the Shire under a management order for civic or community purposes, every effort should be undertaken to co-locate appropriate community groups and not for profit entities under a licence or lease agreement.

A community Lease or Licence term will generally be for a maximum of 10 years for community groups leasing Shire managed buildings. A longer term may be considered (at the discretion of Council) for properties that are primarily funded by the community group taking the following factors into account:

- a) Level of capital investment
- b) Long term planning
- c) Extent the property is used for multi-purpose activities and co-location
- d) Council Plan objectives and relevant strategies
- e) Level of maintenance of buildings and infrastructure
- f) History of satisfactory performance

The maximum term for Community Leases and Licences will be 21 years.

Rent for Community groups leasing Property for community purposes will be at a subsidised peppercorn rent of \$10.00 plus GST per annum.

As a minimum Community groups will be responsible for the following costs;

- Lease/licence preparation and administration,
- Building insurance, contents insurance, public liability insurance, utilities, minor maintenance and waste service charges.
- Major maintenance and asset renewal costs may also apply and will be determined as part of the lease negotiations.

Community Leases and Licences may be assigned at the absolute discretion of the Shire, to an entity with similar suitable community intent.

[LPP12.4 Definitions](#)

**'Disposal'** means Disposing of Property pursuant to Section 3.58 of the *Local Government Act 1995* and Regulation 30 of the Local Government (Functions and General) Regulations 1996.

**'Regulations'** means Local Government (Functions and General) Regulations 1996.



LPP12.5 Workplace Information

The Acts and Regulations listed may be applicable but not limited to the following:

- *Local Government Act 1995*
- Local Government (Functions and General) Regulations 1996
- *Land Administration Act 1997*
- Land Administration Regulations 1998
- Land Administration (Land Management) Regulations 2006
- *Transfer of Land Act 1983*
- Transfer of Land Regulations 2004
- Land Titles Registration Practice Manual 2010
- *Commercial Tenancy (Retail Shops) Agreements Act 1985*
- Commercial Tenancy (Retail Shops) Agreements Regulations 1985
- *Residential Tenancies Act 1987*
- Residential Tenancies Regulations 1989

<b>DOCUMENT CONTROL BOX</b>		
<b>Custodian:</b> Chief Executive Officer		<b>Decision Maker:</b> Council
<b>Compliance Requirements:</b>		
<b>Legislation:</b> Local Government Act 1995 Local Government (Functions and General) Regulations 1996 Land Administration Act 1997 Land Administration Regulations 1998 Land Administration (Land Management) Regulations 2006 Transfer of Land Act 1983 Transfer of Land Regulations 2004 Land Titles Registration Practice Manual 2010 Commercial Tenancy (Retail Shops) Agreements Act 1985 Commercial Tenancy (Retail Shops) Agreements Regulations 1985 Residential Tenancies Act 1987 Residential Tenancies Regulations 1989		
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b	OCM 19/07/22 – Item 12.1.2	Comprehensive Policy Register Review
c	OCM 17/12/2024 Item 12.1.2	Policy Reconfirmed – No Amendments