

COUNCIL POLICY

Reference Number	988298
Responsible Business Unit	City Assets Business Unit
Responsible Officer	General Manager, Assets and Infrastructure.
Legislation	Local Government Act 1999 Retail and Commercial Leases Act 1995 Residential Tenancies Act 1995 Crown Land Management Act 2009 Development Act 1993
Relevant Delegations	Chief Executive Officer
Related Policies Management Guidelines Frameworks	Leasing and Licencing Management Guideline, incorporating the approved Lease and Licence Fee Method
Link to Strategic Plan	Goal 2 – Great People and Lifestyle 2.1 – Land Use
Council resolution	
Date Adopted	
Review Date	June 23
Previous Revisions	87.5 of 9 May 2016, 797895;

POLICY STATEMENT

Council owns or has care and control over both community and Local Government land. Council attempts to optimise the use of its land holdings for the benefit of the community.

Decisions to grant leases and licences of Council controlled land and buildings are to be made under delegation to the CEO.

The power to approve the renewal of existing leases and licences is delegated to the CEO, provided the terms and conditions are in accordance with Council policies and management guidelines.

Management of leases and licences of Council-controlled land and buildings will be undertaken in accordance with the provisions of this policy.

OBJECTIVES

Council's Corporate Objectives are aligned with the Rural City of Murray Bridge Strategic Plan framework and will make land, buildings and facilities available to groups, organisations or residents on a fair and equitable basis to meet the community's needs.

The primary policy objectives are to:

1. Ensure Council owned properties are used to meet needs consistent with Council's Strategic Plan and relevant Community Land Management Plans;
2. Ensure fair and consistent lease and licence terms and conditions;
3. Ensure value for money through consistent leasing and licencing fees;
4. To clearly identify the responsibilities and obligations of the Council and Lessee in relation to property maintenance;
5. To undertake routine building inspections that include a report on the condition of the facility and a regime (including timeframes and assigned responsibilities) for building maintenance issues identified.

SCOPE

This policy provides guidance for the consideration of applications for the granting of a lease or licence for the use on Council land or a building and the terms by which such lease or licence will be granted.

PRINCIPLES

Licences

Licences are issued to tenants that want to use a particular facility or portion of a particular facility for a non-exclusive period of time.

Typical licences are for sporting ovals, moorings on the riverfront, portion of a building or facility or for a special event for a specified period of time.

Licence fees are determined in accordance with the approved Lease and Licence Fee Method and increased annually in line with the Minimum Council rate, CPI or a fixed percentage.

New applicants and renewals can apply for a licence by putting their proposal in writing to Council.

The term of a licence is typically 5 years with a right of renewal of 5 years, unless there is a valid reason why the proposed tenant needs a licence outside this term.

Any licence on community land over a term of 5 years will require a public consultation process as outlined within Council's public consultation policy.

Leases – Not for Profit

Leases are granted to tenants for exclusive possession of a building, land or facility.

New applicants and renewals can apply for a lease by putting their proposal in writing to Council.

Lease fees are determined in accordance with the approved Lease and Licence Fee Method and increased annually in line with the Minimum Council rate, CPI or a fixed percentage.

The lessee is responsible for all outgoings related to the use of the building, land or facility (e.g. water rates and usage, electricity usage, insurance costs, other taxes and charges, etc.)

The Lessee is responsible for any fixtures, furniture, fittings and maintenance thereof. Council is responsible for the maintenance of the building structure and for the installation of utilities such as electricity, gas and water to the building.

The term of a lease is typically 5 years with a renewal of 5 years, unless there is a valid reason why the proposed tenant needs a lease outside this term.

Any lease on community land over a term of 5 years will require a public consultation process as outlined within Council's public consultation policy.

Leases and Licences – Commercial

Commercial leases and licences attract the Retail and Commercial Leases Act and require a Disclosure statement to be issued and returned before issuing a lease for signing.

Commercial leases and licences are issued for buildings or land that is being used for business purposes.

Commercial fees are determined by either a qualified valuer or by using the capital value of the building, land or facility.

The lessee is responsible for all outgoings related to the use of the building, land or facility (e.g. water rates and usage, electricity usage, insurance costs, other taxes and charges etc.)

The term of a commercial lease or licence can vary depending on the business needs and requirements. Under the Local Government Act 1999 a lease or licence can be let up to 42 years.

Where the Retail and Commercial Leases Act applies, Council is responsible for all capital expenditure and is restricted from passing on the responsibility of capital expenditure to the lessee.

Any lease or licence on community land over a term of 5 years will require a public consultation process as outlined within Council's public consultation policy.

Each commercial lease or licence and normally all Commonwealth and State government leases and licences will require a report to Council seeking Council approval to delegate authority to the Mayor and CEO to sign and affix the common seal.

Leases – Residential Tenant

Council owns shacks at Wildens Way which are rented out to residential tenants under 12 monthly leases. These are managed through a local real estate agency that manage the rental payments and undertake three monthly tenancy inspections.

Crown Land

Lease and Licences over Crown Land:

The *Crown Land Management Act 2009* needs to be read in conjunction with the *Local Government Act 1999* when considering a lease or licence of dedicated land owned by the Crown but under the care and control of the Rural City of Murray Bridge.

Section 22 of the Act requires the application to seek Ministerial approval to grant a lease over dedicated land.

However, Council does not need to comply with the Crown Land Management Act under Section 22 (5) if:

"a Council is granting a lease in relation to dedicated land in accordance with section 202 of the Local Government Act 1999, this section does not apply to the grant of that lease if -

- Native title in the land has been extinguished or the Council is satisfied that the grant of the lease will not affect native title; and
- The lease will not cause any development (within the meaning of the Planning, Development and Infrastructure Act 2016); and
- The Council is satisfied that the grant of the lease –
 - (1) would not detract from any existing public use and enjoyment of the land, and
 - (2) would not prevent the land being used for the purpose for which it was dedicated; and
 - (3) Would not otherwise, in the opinion of the Council, be improper or undesirable.

Terms and conditions

Lease/licence documentation templates developed by Council's legal advisers should be used to form the basis of documentation for the agreed negotiated terms between the parties.

The following terms form the basis of any negotiations:

Term:	Will normally be 5 years plus 5 years unless the organisation can demonstrate they require a term outside of this; or it is in Council's interest to do a shorter or longer term.
Rental:	As per Council's approved Lease and Licence Fee Method
Rental Increase:	In line with the Minimum Council Rate, CPI or fixed percentage
Public Liability:	minimum \$20 million
Rates, Utilities:	Paid by Club, where appropriate
Maintenance:	Fixtures, fittings and furniture and furnishings are the responsibility of the Club;

The structural integrity of the building is the responsibility of the Council.

Special Conditions: Strategic development clause, good sports clause, annual building inspections and other items as per individual site.

IMPLEMENTATION

Through the implementation of this policy Council aims to maximise the benefits arising from property use while ensuring responsible management of its community assets and accountability to ratepayers. It also aims to set out the basis for the charging of fees associated within the use of Council owned properties. It aims to ensure that fees are applied consistently and transparently.

DEFINITIONS

Lease: a lease is a legal document outlining the terms under which one party agrees to rent property from another party for a periodic payment. Lessee's have exclusive use of that property for the duration of the lease.

Licence: a licence is a legal document that grants permission to use property for specified dates and times. The Licensee does not have exclusive possession of that property at the date and times that are not licenced.