

**MANAGEMENT GUIDELINE**

Reference Number	988302.
Responsible Business Unit	City Assets
Responsible Officer	Manager, City Assets
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 Licensing Policy
Link to Strategic Plan	Goal 2 – Great People and Lifestyle 2.1 – Land Use
Date Adopted	9 May 2016
Review Date	June 2019
Previous Revisions	

**PURPOSE**

This management guideline establishes guidelines for the consideration of applications for the grant of a lease or licence of Local Government buildings or Local Government controlled land and the terms under which such leases/licences will be granted as per the Local Government Act 1999.

**OBJECTIVES**

Council's objectives are aligned with the Rural City of Murray Bridge Strategic Plan which is to:

- Ensure Council owned properties are used to meet the strategies within the Strategic Plan ;
- Optimise use of Council properties where possible;
- Assist not for profit and volunteer community groups in housing their local activities and services that benefit the Rural City of Murray Bridge region;
- Ensure fair and consist lease and licence terms and conditions and equitable access to Council's properties;
- Ensure value for money through consistent leasing and licencing fees;
- Provide accountability in the financial management and effective administration of leasing and licencing properties.

**SCOPE**

This management guideline and policy identifies the basic criteria which Council's Administration will use to assess and recommend a new lease/licence to Council for approval. Approval for the lease/licence renewal of existing lease/licences is delegated to the CEO provided the terms and conditions don't change and are in accordance with Council approved Policy and Management Guideline.

## DEFINITIONS

**Lease:** a lease is legal document outlining the terms under which one party agrees to rent property from another party for 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 a specified dates and times. The Licensee does not have exclusive possession of that property at the date and times not licenced.

## PROCESS

Leases and licences can either be entered into as a new lease/licence or carry over from a previous lease or a renewal period.

If the Lease/Licence is a carry over from a pervious lease or a renewal period, Council's Administration will send the club a renewal letter outlining the terms for the next lease/licence. The lessee/licensee is required to respond to this letter submitting their application in writing to Council. They may also be required to supply their last audited financial statement and a copy of their updated public liability insurance.

If the Lease/Licence is a new lease/licence the organisation is required to fill in an application form outlining what they require and when they require it, including a letter with what their organisation offers the community and details of their financial status. (Lease and Licence Application forms **Appendix B**)

Once submissions are received from the organisation a Memo to the CEO or Council report is drafted taking into consideration:

- Ownership of the land/building;
- Is the land community land or have any dedications or encumbrances on it?
- Does the land have an approved Community Land Management Plan?
- Does the lease/licence require a public consultation process?
- Is the lease/licence on Crown Land and require approval from the Minister?
- Is the organisation an incorporated body, commercial entity or an individual?
- What benefits does the organisation give back to the community?
- Is the organisation planning any construction that requires development approval?

The Memo to the CEO or Council report should outline the previous/current terms and payments and should also show the negotiated terms and conditions as follows:

*(Example Only)*

**Term:** 5+5

**Rental:** (As per Council's approved lease and licence fee method) (refer **Appendix A**)

**Annual Rental Increase:** (in line with Councils Minimum rate or could be a fixed % or CPI)

**Public Liability Insurance:** minimum \$20,000,000

**Rates, Electricity and Water:** Paid by Organisation

**Maintenance of Building/Land:** Organisation where appropriate

**Special Conditions:** (anything outside of the normal terms and conditions of contract)

e.g.: If as part of any redevelopment, asset rationalisation or other project conducted by the Lessor the Lessor wishes to demolish or acquire vacant procession of the Premises or any part of the Premises, then the Lessor will be entitled to:

Terminate this lease subject to issuing a written notice specifying the date on which this lease is to come to an end being a date not less than 6 months after the termination written notice is given.

Lease/Licence renewals that don't have any changes to the terms, fees or purpose do not require resolution by Council but can be approved by the CEO.

Organisations are then notified of the Council resolution by email or letter.

If the land is Council land and has no dedications, public consultation is not required. The Lease / Licence documentation can be drafted and sent to the organisation for signing.

If the land is Council land or Council controlled land and has a community land management plan with the purpose of the lease is listed as a permitted use and the lease is for a term of five years, public consultation is not required.

All other circumstances require a public consultation process as required under the Local Government Act 1999.

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.

Licences don't need approval of the Minister.

Fully executed Lease/Licence documents must be filed within the current electronic filing system (InfoXpert) and filed within the physical folders in the strong room.

Debtor requests need to be set up with the term of the lease fees and method of annual increase and submitted to Finance (debtors) for invoicing.

Council's lease and licence documentation have been drafted by Council's Lawyers and should be updated annually to take account of changes to legislation or regulations.

### Types of Agreements

The following Agreements are to be selected depending on the following criteria:

**Normal Lease Agreement** – generally used when the building/land is owned by Council and the organisation is a not for profit community organisation

**Crown Land Lease Agreement** – generally used when the building/land is owned by the Crown under the care and control of Council. This lease has extra terms regarding Crown Land conditions.

**Commercial Lease Agreement** – generally used when the building/land is owned by Council. Leased by a commercial business and will generally be drawn up by Council's Lawyers.

**Community Facility Users Agreement** – this is a licence agreement used for any organisation licencing Council or Crown land.

**Commercial Mooring Licence Agreement** – This is a licence agreement used for any organisation that requests a permanent mooring site along the river for business use

**Event Licence Agreement** – This is a licence agreement used when major events have requested a booking of a site for 1 day or more

**Miscellaneous Use Agreement** – this is a licence agreement when organisations or individuals install private infrastructure on Council or Crown Land

### Retail and Commercial Leases Act 1995

There are a number of factors that dictate whether the Retail and Commercial Leases Act 1995 (RLCA) applies to a lease from the Council. At its most basic, the RLCA will apply if the lease is a retail shop lease as defined in the RLCA. If this is established, then the exceptions to the application of the RLCA as set out in the RLCA need to be considered.

If the Act does apply, a disclosure statement will need to be filled and sent to the Lessee with the lease documentation for signing.

### Utilities Reimbursement

In some cases Council pays for the electricity or water accounts and collects the required amount used by each organisation via a meter or sub meter reading. Council reads these meters every month.

The organisations that don't have the utility bills in their name reimburse Council for these services.

Council also has some land connected to River Water and these are charged per sub meter read at a cost set by Council under the Fees and Charges Schedule.

Each lease/licence document shall request payment for utilities within the terms and conditions of the Lease/licence.

### Building Maintenance

**Leases** – The Lessee is responsible for the internal fit out, fixtures and furniture of the building, where the building is not furnished by Council. The Rural City of Murray Bridge is responsible for the building structure and any fittings that were installed by Council. The maintenance responsibilities must be attached to the terms and conditions of the lease document.

**Licences** – The Rural City of Murray Bridge is responsible for the structure and fittings where installed by it. The Licensee is responsible for the fixture and fittings brought to the building by them.

The Rural City of Murray Bridge may inspect any building under its control by providing two weeks notice in writing to the organisation.

## APPENDIX A – Lease and Licence fee Method

### LEASE and LICENCE FEE METHOD

#### LEASE - NOT FOR PROFIT COMMUNITY GROUPS

(Based on Council's Minimum Rate) Current rate 2018/2019: \$938

0% Club – Club that does not make any money	\$0.00
15% Club – Club that makes up to \$2,000 income per year	\$140.70
25% Club – Club that makes up to \$5,000 income per year	\$234.50
50% Club – Club that makes over \$5,000 income per year	\$469
(with no alcohol)	
100% Club – Club that sells alcohol	\$938

#### LEASE / LICENCE - COMMERCIAL

1. Valuation from private valuer; or
2. Use Market Value or Capital Value divided by capitalisation rate= rate per annum
3. Use current rate to get to position of number 1 or 2 eg.
  - i. 1<sup>st</sup> year – min rate
  - ii. 2<sup>nd</sup> year – min rate x 2
  - iii. 3<sup>rd</sup> year – min rate x 3 – until reach value in number 1.

#### LICENCE - OVALS – NOT FOR PROFIT COMMUNITY GROUPS

As per Annual Fees and Charges – Oval use – Seasonal Usage (current rate \$550)

#### LICENCE – NOT FOR PROFIT COMMUNITY GROUPS

Min rate / number of available usage per year= Daily rate \* club expected usage per year  
= \$\$

E.g.: \$938/ 365 = Daily Rate\* uses per year (Fridays and Saturdays (104) = \$267.28

