

LEASES AND LICENCES POLICY	
Council Policy	
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1. POLICY STATEMENT

The Port Augusta City Council recognises the community value of sporting and community clubs and community land within the Council area. Council recognises the needs to provide a balanced approach towards the use of land for community purposes and authority over its land use for community, private or commercial purposes.

2. PURPOSE

2.1 Purpose

2.1.1 The purpose of this policy is to provide a consistent and transparent process for the granting and renewal of a lease or license. The policy provides guiding principles for the negotiation of leases, licences and permits, while further taking into account both the financial and community objectives of Council.

2.1.2 Council owns both community and operational land. Council will attempt to optimise the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue it derives from its land holdings including road reserves and unmade roads.

2.2 Scope

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

2.2.2 This policy applies to all Local Government land (including roads, road reserves and unmade roads), owned by the Council or under Council's care for which Council issues leases and licenses to third parties.

2.3 Definitions

In this policy, unless the contrary intention appears, these words have the following meaning:

Community Land is land, excluding roads, owned or managed by Council that is classified in accordance with section 193 of the Local Government Act, 1999.

Lease refers to a contract by which Council (as lessor), grants exclusive rights to occupy Land (usually a parcel of land or portion of a building) to a lessee for a specified time and under certain terms and conditions.

Lessor means lessor within the meaning of *Retail and Commercial Lease Act 1995*, but in the context of this policy additionally means *Council*.

Lessee means lessee within the meaning of *Retail and Commercial Lease Act 1995*.

License refers to a contract by which Council (as licensor), grants non-exclusive contractual rights to occupy Land to a licensee, for a specified time and under certain terms and conditions.

Licensor means the Council, as landlord.

Licensee means a tenant with shared use of a property or facility.

Outgoings means all reimbursable tax charges, insurance premiums, utility, maintenance and repair costs that are associate with the operation of the premises.

Premises include the whole of, or portion of Land, buildings, facilities, structures and infrastructure owned or managed by Council.

Property includes Community Land, vacant land, closed road reserves, buildings and facilities, or any other land related asset owned or managed by Council.

Tenant means Lessee or Licensee.

2.4 Strategic Reference

1 Community

1.3 People of all ages, cultures, abilities and interests have access to services, facilities and experiences that support their wellbeing.

4 Infrastructure

4.1 Our physical infrastructure meets our community needs.

4.2 We have safe, accessible and well-utilised CBD, public spaces and built environments that reflect the priorities of our community.

5 Governance and Financial Sustainability

5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

3. PRINCIPLES

3.1 Use of Council Land

3.1.1 A tenant may occupy Land pursuant to a lease or licence and such use will be consistent with all relevant Council policies including any policy in respect of commercial asset management.

3.1.2 Council may grant a lease or licence in accordance with standard terms, modified to reflect the nature of the premises, permitted use and agreement reached.

3.1.3 Council has delegated authority to the Chief Executive Officer to grant and renew leases and licences of Council-controlled land and buildings. This power may be sub-delegated. Where the terms and conditions of a lease or licence have been substantially varied, the Council will consider the renewal application.

3.1.4 The standard term of a lease or licence agreement granted by Council will be 5 years or less with one right of renewal for a term not exceeding 5 years. Requests for longer terms will be presented to Council for consideration on a case by case basis. The Local Government Act 1999 (the Act), specifies that a lease or licence may be granted or renewed for a term not exceeding 21 years.

3.1.5 Any grant for a right of renewal must be consistent with Council's strategic direction, future use and condition of the premises and in accordance with the Act.

3.1.6 Council may issue a lease or licence over Crown Land under the care and control of the Council. The State Government requires the application to be referred to the relevant Minister to seek approval for both renewals and new application leases or licences. Third party occupation is limited to licence tenure of up to 5 years unless otherwise agreed by the Minister.

3.2 Allocation of Property

3.2.1 Upon lease and license expiry, Council will continue to review its assets with an aim to ensure they are strategically located, fit for purpose and provide for maximum community usage.

3.2.2 Where a property becomes vacant, a new tenant will be selected by an Expression of Interest process. Where there are exceptional circumstances, a proposal may be presented to Council for Resolution prior to commencing negotiations with a single party.

3.3 Maximising Facility Usage

- 3.3.1 Wherever practicable, Council will encourage the continued community access to Council owned facilities, buildings, and playing fields, in conjunction with leases and licenses.
- 3.3.2 Joint use will be encouraged wherever practicable, as the best community value of Council assets is achieved where the facility or building use is maximized.
- 3.3.3 Council will offer incentives to groups which provide for multiple activities and sport codes, which results in shared facilities and increased use.

3.4 Types of Agreements

- 3.4.1 Recreational and Sporting Facilities Lease
This lease provides specific and exclusive rights for a community or sporting group to occupy or use a community and sporting facility.
- 3.4.2 Recreational and Sporting Facilities Licence
This license provides for the non-exclusive use or occupation of a community and sporting facility by a community or sporting group.
- 3.4.3 Commercial Lease
A Lease for a commercial entity (or community group undertaking commercial activities) may be subject to public consultation in line with Section 202 of the *Local Government Act 1999*. Individual leases will be drafted in a registrable form.
- 3.4.4 Ground Lease
A ground lease is used where the lease is for land only and does not create a leasehold interest in any buildings or other improvements on the land. This lease will specify any buildings or improvements as being “Lessee’s Improvements” when drafting the Lease. Improvements made after execution of the Lease will be owned by the Lessee during the period of the lease, but will vest in the Council if the lease is surrendered, or unless agreed otherwise by the parties in the lease. Council is not responsible for the maintenance or insurance of improvements on a ground lease.
- 3.4.5 Horse Stable Licences
Council provides private individuals with licences for facilities to accommodate horses, where improvement/buildings/structures on Council land are privately owned.
- 3.4.6 Aerodrome Lease or Licence
Council provides private individuals or corporations with leases or licences for facilities to accommodate aircraft and associated business operations at the Port Augusta Airport.

3.5 Fee Structure

- 3.5.1 The fee payable for a lease or license will be determined in accordance with this policy and Council’s Fees and Charges Register. A variety of factors will be considered in determining the final fee.
- 3.5.2 Fees will be deemed to be in default if not paid within 7 days of the due date, and Council will take immediate action for non-payment of fees.
- 3.5.3 Fees may be adjusted or increased annually by negotiation, or by a method defined within the agreement, such as a fixed percentage increase (CPI).
- 3.5.4 Tenants must pay or reimburse Council for all outgoings including Council rates, electricity, water, security, fire prevention maintenance and property insurance, unless services are being paid directly to the relevant supplier.
- 3.3.5 Where a tenant has exclusive use of Council land, Council rates must be levied in accordance with the Local Government Act.
- 3.5.6 The Fee structure outlines the fee calculation for all lease and licence arrangements, and is included in Council’s Fees and Charges Register.
- 3.5.7 Any variation to the fee calculation must be approved by Council Resolution.

- 3.5.8 The fee structure takes into account the following factors:
- a. Building owned by Council
 - b. Building owned by Lessee
 - c. Utilities (electricity, water, sewerage)
 - d. Security Services
 - e. Fire Prevention Maintenance Services
 - f. Property Insurance

3.6 Tenant Classification

3.6.1 Community based groups (Hobby Group)

Council recognises the benefit of providing support, financial and non-financial, to community groups and organisations including not for profit bodies. These include service clubs, craft groups, or associations and community based health or social welfare agencies.

Key indicator: un-incorporated, low membership, no membership fees, limited fundraising capability.

3.6.2 Sporting and community bodies

To establish balance in assessing a reasonable contribution amongst the various sporting and recreational clubs, where an organisation has the ability to enjoy profit from either an annual membership fee, or licensed facilities or a combination of both, a differential fee structure will generally be applied.

Key indicators: Incorporated body, membership fee, fundraising capability, good membership, licensed facilities.

3.6.3 Community Group Commercial Activities

Recreation and sporting clubs are finding it increasingly difficult to attract volunteers to help with coaching, administration and maintenance. Council acknowledges that some amateur clubs now offer volunteers some type of remuneration to cover expenses related to their service.

If however the profits gained from a commercial activity are not reinvested into the Club facilities or sport, then the Club may be deemed as being commercial in nature, and a rent charged in accordance with a Commercial Lease arrangement.

Sporting groups, formal associations, or other social community groups

Key indicators:

Large Membership, commercial facility (kitchen, licenced bar, gambling machines), high annual financial turnover.

3.6.4 Commercial Business

a. Resident Private Use

Requests from private individuals to lease buildings or vacant land within townships will be assessed on merit in accordance with Council's strategic direction and operational requirements. A market rate will apply.

b. Private Commercial Use

Proposals to establish a commercial enterprise on any council land will be subject to individual consideration by Council.

3.6.5 Horse Stable Licences

Council recognises the benefits in providing support to private individuals requiring facilities to accommodate horses, where improvement/ buildings/structures on Council land are privately owned.

3.6.6 Aerodrome Licences

Council recognises the benefits in accommodating facilities within the Airport, where improvement/ buildings/structures on Council land are privately owned.

4. RESPONSIBILITY & REVIEW

4.1 Responsible Officer

- 4.1.1 Chief Executive Officer is delegated authority to grant and renew leases and licences and/or permits of Council-controlled land and buildings.
- 4.1.2 The Procurement and Contracts Officer is responsible for the daily management of all leases and licences that are due for renewal or issue.
- 4.1.3 The Assets Officer (Property) is responsible for the facility management of all facilities subject to leases and licenses.
- 4.1.4 Council's Rates Department must be informed of all leases or licences issued over Council land.

4.2 Availability

This policy will be available on Council's website.

4.3 Review

This policy will be reviewed within 12 months of a General Election for Local Government, or as required to meet other obligations.

5. REFERENCES

5.1 Legislation

Associations Incorporations Act 1985
Local Government Act 1999
Retail and Commercial Leases Act 1995

5.2 Other References

Fees and Charges Register