



## REC05 COMMUNITY LEASES AND LICENSE AGREEMENTS OF SHIRE ASSETS (FACILITIES, BUILDINGS AND LAND)

Aim	To provide a structured, equitable and consistent approach to the management of Council's community lease and licence agreements with local community groups for the use of Shire of Ashburton (SOA) owned and controlled facilities, buildings and land
Application	Shire of Ashburton Community, Sporting and Not For Profit Clubs, Associations and Groups
Statutory Environment	<i>Local Government Act 1995 Local Government (Functions and General) Regulations 1996 Shire of Ashburton Local Government Property Local Law 2013</i>
Principles	Strategic Community Plan 2017 – 2027 (Desktop Review 2019)  Goal 01 Vibrant and Active Communities Objective 2 Sustainable services, clubs, associations and facilities
Approval Date	OMC 17 December 2019 (MINUTE: 722/2019)

### Definitions:

**Act** *The Local Government Act 1995* as amended.

### Community or Sporting Group

A not for profit (does not operate as a business, corporation or organisation) social, sporting, recreational, occupational or religious group of any size whose members reside in the Shire of Ashburton who contribute to active people, clubs and associations. Groups must be incorporated to enter into a Lease or Licence with the Shire of Ashburton and comprise of a committee consisting of a President, Vice President, Treasurer and Secretary.

### Community Lease

A legally binding agreement granted to community, sporting or recreation associations and government bodies or other organisations that provide services solely for the benefit of the community.



### **Crown Land**

Land owned by the Crown and vested in the Shire of Ashburton through the granting of a Management Order by the Department of Regional Development and Lands.

### **Freehold Land**

Freehold land (or fee simple) provides the most complete form of ownership of that land, in perpetuity. It allows the land holder to deal with the land including selling, leasing, licensing or mortgaging the land, subject to compliance with applicable laws such as planning and environment laws.

### **Fees and Charges**

The rate set annually by Council in its absolute discretion as the rate chargeable for rateable Property.

### **Incorporated**

A group of people who are recognised as a legal entity, separate from individual members as defined under the Associations Incorporation Act (1987).

### **Lease**

A legally binding agreement by which one party (Lessor) in consideration of rent, grants exclusive use and possession of real Property to a third party (Lessee) for a specified purpose and term. A Lease creates an interest in the Property.

### **Lease or Licence Variation**

The addition, removal or change of one or more of the Lease or Licence provisions. The Shire of Ashburton Deed of Variation template is utilised for lease and licence variations. This templates allows an arrangement for the lease or licence to be amended, provided the amendment is signed by all parties.

### **Lessee**

An authorised third party that has entered into a Lease or Licence with the Shire of Ashburton for the use of Shire of Ashburton owned or managed real Property and pays rent to occupy the Property (and where the context permits includes a Licensee).

### **Lessor**

The Shire of Ashburton being the owner or management body of Property with power to Lease or Licence to a third party (Lessee).

**Licence**

Permits a person to occupy Property, or part thereof on particular conditions. The main feature that distinguishes a Licence from a Lease is that a Licence does not permit exclusive use of the Property. A Licence does not create an interest in the Property.

**Licensee**

A person that holds an approved Licence. For the purpose of this document (where context permits) a Licensee will also be referred to as "Lessee".

**Management Order**

An authorisation provided by the Crown giving the Shire of Ashburton both the power and authority to manage a parcel of land on behalf of the Crown.

**Planning Scheme Consent**

Local Planning Authority requirement if proposing to change a land use, develop or use any land including the erection, construction or alteration of any building, excavation or other works on any land.

**Property**

The Property that is subject to or intended to be subject to a Lease or Licence.

**Reserve**

A defined area of land belonging to the Crown which has been vested in the Shire of Ashburton by way of a Management Order.

**Shire**

Shire of Ashburton.

**Objective:**

Local communities across the Shire of Ashburton are actively engaged in running a range of sport, recreation and youth programs. These sporting clubs and community groups contribute greatly to community life in the towns as well as improving social capital, quality of life and wellness outcomes. The Shire of Ashburton recognises the important role local groups have to play in community wellbeing and invests heavily in community infrastructure and community programming to support these local groups.

This policy aims to encourage and support volunteerism and physical activity in clubs and associations by providing community lease and licence agreements to groups that contribute to the community.

Community lease and licence agreements optimise use of community facilities, catering for storage, meeting rooms, recreation areas and reserves. The agreements provide an avenue for groups to build capacity within and to sustain their organisation into the future.



This policy should be read in conjunction with the Local Government Act 1995 and the associated Regulations.

**Function:**

A standard lease or licence document created by Solicitors is to be used in respect of all agreements. The Shire of Ashburton reserves the right to attach a schedule to the agreement setting out special conditions, fees or concessions as appropriate and to amend the template lease or licence document as it sees fit.

**Essential Principles applied by the Shire of Ashburton when granting a Lease or Licence over property.**

**Lessee/Licensee:**

The Shire may enter into a Lease or Licence with the following entities:

- c) Incorporated Associations.
- e) The Crown / a Statutory Authority / other Government body.

**Type of Agreement:**

A Lease will be entered into where the intention is to grant exclusive possession of the property or part of the property.

A Licence will be entered into where the intention is to grant non-exclusive possession of the property or part of the property.

All property rights will be granted in writing.

**Templates for Leases and Licences:**

Shire of Ashburton templates are to be provided for each type of use envisaged by this policy in regards to creating a lease or licence agreement for community groups to utilise SOA facilities, buildings or land.

1. Lease of Community Facility Template

This template is used when the Shire of Ashburton is leasing out the whole or a portion of a facility, building or land which is SOA property. Groups that lease community facilities have sole occupancy of the leased area meaning that other groups do not have access to this area at any stage for the entirety of the lease agreement. For example: the whole of the land contained in a Certificate of Title, a room within a larger facility or an entire building. The lease template will continue to evolve and will be updated from time to time as the need arises.

2. Licence Agreement to Use Community Facility Template

This template is used where the licensee does not have exclusive possession of the premises. It provides the Shire of Ashburton with flexibility to licence the premises to other parties at different times and better utilise the land and buildings. For example: a group may wish to hire out a storage room for 6 months of the year during their season or they may share the area with another group whom would also enter into a non-exclusive licence agreement to use the storage room on a shared basis. The licence template will continue to evolve and will be updated from time to time as the need arises.



Community user licences are not to be used for general hire of a facility for example, utilising a venue in the Shire of Ashburton Fees and Charges on a weekly basis for 6 hours per week.

**Term:**

The term will depend on many factors:

- a) The needs of Council and Council Plan objectives.
- b) The needs of the Community.
- c) The Lessee.
- d) The ongoing need for the Property or the provided use.
- e) The Management Order for the Property (if Crown land) and the requirements of the Minister for Lands.

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.

The maximum tenure of a Lease or Licence granted by the Shire on freehold land will be at the discretion of Council.

**Variation:**

If a Lessee requests a variation to a Lease or Licence, the Shire may grant a variation on condition that the variation is achieved by surrender of the existing Lease or Licence and the grant of a new Lease or Licence with additional conditions the Shire considers appropriate, at the Lessee's cost.

**Assignment:**

A Lessee 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.

**Further Term/Renewal:**

If a Lease or Licence provides for a further term, the Shire may grant the Lessee an extension of the Lease or Licence if the Lessee is not or has not been in default and complies with the procedures in the Lease or Licence for renewal. Where an option to renew is stated in the lease or licence agreement, this template is to be used to exercise this option. Both Parties signatures are required.

**Planning, Consent & Approvals:**

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.

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.

The Lessee or Licensee is solely responsible for obtaining all approvals, licences and authorities necessary to conduct the proposed activities on any premises. The



Shire makes no representation that a premises is suitable for any activity, whether permitted or otherwise.

**Works:**

A Lessee may only undertake works on the Property in accordance with the Shire's prior written consent. A Lessee will also be responsible for any planning or building approvals that may be required. All works are to be conducted in a safe and professional manner.

**Environmental:**

A Lessee must not clear vegetation on the Property without the Shire's prior written consent.

**Vacant Possession and Expiry of Term:**

Removal of a Lessee's effects, buildings or infrastructure, apparent cessation of activities, or the continued vacancy of premises, without notice, may be deemed a surrender of Lease or Licence without notice.

If a Lessee remains in occupation of Property after expiry of the Term, with the consent of the Shire, it will do so from month to month unless the Lease/Licence or Shire otherwise provides different holding over arrangements.

On expiry or termination of a lease or License, a Lessee may be directed to remove all Lessee's improvements at the Lessee's cost, unless otherwise directed by the Shire.

A Lessee must make good damage caused by removal of its improvements and restore the Property to the same condition as at the beginning of the term.

**Risk Management and Insurance:**

The Shire requires that all Leases and Licences contain appropriate risk management measures including an obligation on the Lessee to:

- a) Indemnify the Shire (and the Minister for Lands if on Crown land) for loss or damage to persons or Property, wherever occurring;
- b) Maintain adequate public liability insurance;
- c) Ensure that appropriate documentation and insurance is in place for the hired use of the Property;
- d) Carry appropriate worker's compensation insurance commensurate with activities; and
- e) Be responsible for emergency and evacuation procedures.



A Lessee must maintain a minimum of \$20 million public liability insurance per occurrence during the term. If activities undertaken on the Leased or Licensed Property are considered high risk, a higher level of public liability insurance may be required by the Shire.

A Lessee is recommended to insure their personal Property (including contents) for the full replacement value as the Shire will not be responsible for any such replacements under any circumstances.

A Lessee will be required to provide the Shire with a copy of certificates of currency before possession is granted under the Lease or Licence commences and annually thereafter.

**Lease & Licence Annual Fees:**

An annual rent is to be charged for the use of the facility, building or land as per the below table. The Annual Fee will not be subject to annual increments but may be amended following budget or policy review. Changes to annual fees are to be presented to Council as a review of this policy – Policy REC05.

<b>Guidelines on Fees for All Lease &amp; Licence Agreements</b>		
The fees below are not to be incorporated into a Lease or Licence Agreement for general hire of a facility. E.g. Utilising a venue in the Shire of Ashburton Annual Fees and Charges on a weekly basis for 6 hours per week.		
Fees apply to club/associations regardless of financial stability.		
Facilities, Buildings or Reserves will be charged at the same rate per annum regardless of size and location.		
Fees apply regardless of new, old or renovated facility, building or land.		
Fees apply regardless of any work carried out by the club or association.		
Only one room, store room, building, facility or reserve to one lease/licence agreement. Groups are entitled to more than one lease/licence agreement should the Shire have facilities, buildings, rooms or reserves available.		
<b>Facility, Building or Land Lease or Licence Agreement</b>	<b>Fee per Annum</b>	<b>Guidelines</b>
<b>Lease Reserve/Land</b> –	\$500.00 plus GST	Buildings and infrastructure is an asset of the club/association and is the club's responsibility.



		Insurance premiums, utilities, fire control (including DFES Levy) etc. is the responsibility of the lessee.
<b>Lease - Associations/Clubs that Hold a Liquor Licence</b>	\$1,000.00 plus GST	This applies to any venue or reserve under a lease/licence agreement that is an approved Licenced Premises by the Department of Racing, Gaming & Liquor for the sale of alcohol.
		Personal Property Insurance premiums and utilities are the responsibility of the lessee.
<b>Lease – Entire Facilities or Rooms within a Building</b>	\$500.00 plus GST	These areas can be small or large however must be able to accommodate a recreational activity or small group meeting.  These buildings, rooms or facilities must be for a 'sole recreational purpose'. For example club meeting rooms, tennis courts, rooms within a facility are in a building in which the Shire of Ashburton hires the remaining areas of the facility to general users as per the Annual Fees and Personal Property Insurance premiums and utilities are the responsibility of the lessee.
<b>Lease – Junior Organisation</b>	\$300.00 plus GST	The club/Association/Organisation must be specifically for children 17 years and under. This does not apply to any organisation that invites adults (18 years and over).  This applies to junior organisations that are on a reserve or have an entire facility or room/s within a Personal Property Insurance premiums and utilities are the responsibility of the lessee.
<b>Lease - storage</b>	\$100.00 plus GST	This is for any group that has storage within or on a Shire Store rooms generally have no air conditioners or windows. Store rooms cannot accommodate space for a meeting room if desired.





		Examples: Tom Price Netball/Basketball Shed, Clem Thompson Memorial Sports Pavilion Store Rooms, Store Storage fees will not be charged where groups do not have sole usage of the storage room. For example – the store room is available for groups that hire the venue on an hourly rate as per the annual Fees and Charges or Utilities or Service charges will not be charged; this includes Water Consumption, Water Rates, Land Tax, DFES Levy and Electricity.
<b>All Community Lessee and Licensees</b>	50% discount	Fees and Charges Schedule of rates for Commercial/Industrial Refuse Collection Charges weekly bin service only.
	100% discount	Local Government rates.

**Supporting Documentation:**

*REC01 Consumption of Alcohol on Shire of Ashburton owned and managed properties.*