

ADMINISTRATION

A 8.5 Property Management (Leases and Licences)

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| <i>Responsible Department</i> | Corporate Services |
| <i>Resolution Number</i> | C.4917 |
| <i>Resolution Date</i> | 20 December 2023 |
| <i>Next Scheduled Review</i> | 2025 |
| <i>Related Shire Documents</i> | Nil. |
| <i>Related Legislation</i> | Local Government Act 1995 s3.58 Local Government Act 1995 s9.49A(2)&(4) Local Government (Functions and General) Regulations 1996 Reg 30(2)(b) |

OBJECTIVE

To provide principles to ensure that all requests to lease or licence Shire of Northam owned, managed or controlled property, including Crown land, are dealt with in a fair, equitable, and where possible, a consistent manner.

To minimise the risk to the Shire of Northam and to maximise the overall return to the community for Shire of Northam assets.

To ensure compliance with the *Local Government Act 1995* and any other relevant laws, and consistency with Shire of Northam policies.

SCOPE

The Policy applies to the leasing and licensing of all property owned, managed or controlled by the Shire of Northam, including Crown land.

POLICY

The Shire of Northam as legal owner of Property may from time to time choose to enter into a Lease or Licence agreement with a third party. The disposal of land is covered under the *Local Government Act 1995* and the *Local Government (Functions and General) Regulations 1996*.

The Shire of Northam also manages some Reserves which are available for leasing and licensing purposes for specific periods and purposes as set by the Crown.

This Policy recognises the variety and diversity of leases and licences and seeks to ensure that all lessees/licensees and prospective lessees/licensees have an understanding of the underlying elements of this Policy.

All requests for a lease or licence will be determined:

- in a fair, transparent, and where possible, consistent way; and
- in a manner that complies with statutory principles and policy.

The Shire of Northam will always seek to comply with the following principles in dealing with property, bearing in mind that variation may be required given the varying nature of each property and lessee/licensee and the current state of the leasing and licencing market.

The Shire of Northam reserves its right to exercise its discretion in all circumstances and remains bound by all applicable Laws and Regulations.

1. Type of Agreement

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

2. Term

- 2.1 As a general principle, a new lease will be limited to a maximum of a five (5) year term and any option to renew will be limited to no more than a five (5) year term. Council may consider longer terms where Council is of the opinion that there is benefit or merit for providing a longer lease term.
- 2.2 The maximum tenure of a Lease or Licence granted by the Shire on Crown land will be consistent with the term of the management order including any further term option/s.
- 2.3 The term will depend on many factors, including but not limited to:
 - 2.3.1 The needs of Council and Council Plan objectives.
 - 2.3.2 The needs of the community.
 - 2.3.3 The Lessee.
 - 2.3.4 The Business.
 - 2.3.5 The ongoing need for the property or the provided use.
 - 2.3.6 Substantial contributions to capital or structural works by the lessee.
 - 2.3.7 The sustainability of the lessee.
 - 2.3.8 The sustainability of the property.

- 2.3.9 The Management Order for the Property (if Crown land) and the requirements of the Minister for Lands.
- 2.3.10 The current state of the leasing and licencing market.

3. Planning, Consent & Approvals

- 3.1 Development Approval must be obtained from the Shire as the local planning authority prior to a lease or licence being entered into.
- 3.2 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.
- 3.3 The lessee or licensee is solely responsible for obtaining all approvals, licenses and authorities, such as building permits, septic approvals and clearing permits, 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.

4. Sub-letting

- 4.1 A Lessee or 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 will be required to prove the suitability of a sub-Lessee/sub-Licensee.
- 4.2 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.
- 4.3 If sub-Leasing or sub-Licensing Shire managed buildings, the Lessee or Licensee cannot charge a rent for the sublet area that is pro-rata higher than the rent payable under the head Lease or Licence.
- 4.4 If sub-Leasing or sub-Licensing buildings constructed by the Lessee on Shire owned and or Shire managed land, the Lessee can determine the sub-Lease or sub-Licence rental provided that the Shire is satisfied that such rental is reasonable and in line with the capital investment in the property.

5. Assignment

- 5.1 A Lessee or 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.

6. Variations

- 6.1 The Shire will consider variation requests on a case-by-case basis. All requests must be receiving in writing with appropriate justification.

7. Vacant Property

- 7.1 Unless extenuating circumstances are deemed by the Shire to apply, the Shire will conduct an Expression of Interest (EOI) process to determine a suitable Lessee for vacant Shire Property.
- 7.2 The decision to conduct an EOI process will be based on factors including but not limited to:
- a. The size of the Property
 - b. The location of Property
 - c. The value of Property
 - d. The expected rental return
 - e. The likelihood of multiple interested users
 - f. Ensure the Lessee delivers specific services
 - g. Allow for innovative or flexible solutions for the property

8. Essential Terms

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| 8.1 Community Lease or Licence to manage community halls (excluding Northam Memorial Hall) | |
| Initial Term | Five (5) years |
| Option | Five (5) years (at the Shire's discretion) |
| Responsibilities of Tenant | <ol style="list-style-type: none"> a. Lessees or Licensees must agree with Council to manage the Property on behalf of the community and to offer a service to the community that provides a net benefit. b. Lessees or Licensees will be responsible for minor maintenance obligations. a. The Lessee or Licensee will be responsible for the cost of repair of any internal damage, vandalism, corrective maintenance or damage to external doors, glass windows, security lighting and any other external facility through misuse by a club representative or member. The Shire may carry out any corrective works and recoup the full cost from the Lessee or Licensee. b. The Lessee or Licensee will be responsible for keeping the building clean and tidy at levels predetermined within the agreement. |

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| | <p>c. The Lessee or Licensee will not incur any costs for property damage excluding contents occasioned by fire, fusion, explosion, lightning, civil commotion, storm, tempest, or earthquake.</p> <p>d. The Lessee or Licensee agree to meet with the Shire representatives on an annual basis to carry out a property inspection to determine the extent to which the Lessee or Licensee have met their lease/licence obligation and to consider any specified building maintenance schedules for the following twelve month period within the Shire's budget parameters.</p> |
| Responsibilities of the Shire | <p>a. The Shire will assist in maintaining the facility for the benefit of the community, with the Community Group as manager;</p> <p>b. The Shire will cover the cost of building insurance and the lease preparation fee.</p> <p>c. The Shire through the Council's annual budget process will provide a maximum amount of \$1,000 per annum, towards the maintenance of the special floor surface in the sports arena section of the Bakers Hill Recreation Centre.</p> |
| Outgoings payable by tenant | The Lessee or Licensee will not be responsible for Shire land rates but will be responsible for all other charges and taxes levied against the Property, including but not limited to water, sewerage, waste disposal, telephone, gas and electricity. |
| Tenancy Fee | \$1.00 per annum to reflect the community contribution of the group. |

| 8.2 Community Lease or Licence | |
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| Initial Term | Five (5) years |
| Option | Five (5) years (at the Shire's discretion) |
| Responsibilities of Tenant | <p>a. Lessees or Licensees must agree with Council to manage the Property on behalf of the community and to offer a service to the community that provides a net benefit.</p> <p>b. Lessees or Licensees will be responsible for minor maintenance obligations.</p> <p>c. The Lessee or Licensee will be responsible for the cost of repair of any internal damage, vandalism, corrective maintenance or damage to external doors, glass windows, security lighting and any other external facility through misuse by a club representative, member or guest. The Shire may carry out any corrective works and recoup the full cost from the Lessee or Licensee.</p> |

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| | <p>d. The Lessee or Licensee will be responsible for keeping the building clean and tidy at levels predetermined within the agreement.</p> <p>e. The Lessee or Licensee will not incur any costs for property damage excluding contents occasioned by fire, fusion, explosion, lightning, civil commotion, storm, tempest, or earthquake.</p> <p>f. The Lessee or Licensee agree to meet with the Shire representatives on an annual basis to carry out a property inspection to determine the extent to which the Lessee or Licensee have met their lease/licence obligation and to consider any specified building maintenance schedules for the following twelve month period within the Shire's budget parameters.</p> |
| Responsibilities of the Shire | <p>a. The Shire will insure the Property at replacement value and pass on the cost to the Lessee or Licensee as the Tenancy Fee.</p> <p>b. The Shire will be responsible for any electrical wiring or structural repairs/improvements in accordance with levels determined within its budget forecast. In the case of the Lessee or Licensee who leases a Council building and obtains approval to carry out extensions, alterations and/or additions, Council will insure the improvements as part of its insurance portfolio at replacement value.</p> |
| Outgoings payable by tenant | <p>a. The Lessee or Licensee will not be responsible for Shire land rates but will be responsible for all other charges and taxes levied against the Property, including but not limited to water, sewerage, waste disposal, telephone, gas and electricity.</p> <p>b. Lessees or Licensees will be responsible for the full cost of the lease document preparation, registration and other costs associated with the execution of the agreement.</p> <p>c. The Lessee or Licensee will be responsible for contents insurance for their contents, and also hold public liability for their activities and workers compensation insurance for their employees (if applicable).</p> |
| Tenancy Fee | An amount equivalent to the cost of building insurance to be reviewed annually. |

| 8.3 Commercial Lease or Licence / Subsidised Community Lease or Licence | |
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| Initial Term | Five (5) years |
| Option | Five (5) years (at the Shire's discretion) |

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| Responsibilities of Tenant | <ul style="list-style-type: none"> a. Cost of repair for any internal damage, vandalism, corrective maintenance or damage to external doors, glass windows, security lighting and any other external facility through misuse by a member of staff, representative or guest. The Shire may carry out any corrective works and recoup the full cost from the Lessee or Licensee. b. In the case of Lessee or Licensee obtaining approval to carry out extensions, alterations and/or additions, Council will insure the improvements as part of its insurance portfolio at replacement value. |
| Responsibilities of the Shire | <ul style="list-style-type: none"> a. The Shire will insure the Property at replacement value and perform any structural repairs, improvements and maintenance in accordance with the level stipulated in the agreement. |
| Outgoings payable by tenant | <ul style="list-style-type: none"> a. All outgoings including rates, charges and taxes levied against the Property, including but not limited to water, sewerage, waste disposal, telephone, gas and electricity. b. Insurance premiums for the Property as recovered by the Shire. The Lessee will reimburse the Shire for any excess in respect of any claim. c. The Lessee or Licensee will be responsible to meet the full cost of the document preparation, registration and other costs associated with the execution of the agreement. d. Clause (c) is excluded if the lease is created under the <i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i> 14B (and is not an assignment or sub-lease). e. The Lessee or Licensee will be responsible for contents insurance for their contents, and also hold public liability for their activities and workers compensation insurance for their employees (if applicable). |
| Tenancy Fee | <ul style="list-style-type: none"> a. The tenancy fee will be consistent with market valuation and be subject to rent reviews on the anniversary date. The costs of obtaining a Market Valuation (provided by a licensed Property Valuer appointed by the Shire) for the initial Lease or Licence rental assessment and during the term of the Lease or Licence will be paid by the Lessee. b. The Shire recognises that partnerships can be entered into for the benefit of the local community and acknowledges the adopted lease or licence rent will be determined on a case by case basis taking into consideration: <ul style="list-style-type: none"> i. Land contribution; |

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| | <ul style="list-style-type: none"> ii. Building cost contribution; iii. State or Federal legislation; and iv. Level of benefit to local community. |
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| 8.4 Airport Hangar Lease or Licence | |
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| Initial Term | All agreements will have a common expiry and the term will be determined based upon the current common expiry. |
| Option | Five (5) years unless otherwise determined to ensure common expiry is achieved. |
| Responsibilities of Tenant | <ul style="list-style-type: none"> a. All improvements, repairs and maintenance to the Property are the sole responsibility of the Lessee or Licensee. b. The Lessee or Licensee will be responsible for lodging a development application for new hangars. A Lease or Licence will not be entered into until approval has been granted. c. To comply with all lawful requirements of the Civil Aviation, Safety Authority or other body or department regulating and relating to the flying of aircrafts and to comply with all Acts of Parliament and regulations relating thereto. |
| Responsibilities of the Shire | <ul style="list-style-type: none"> a. The Shire of Northam will appoint a manager who will be responsible for the day-to-day operations of the Northam Airport. |
| Outgoings payable by tenant | <ul style="list-style-type: none"> a. All outgoings including rates, charges and taxes levied against the Property, including but not limited to water, sewerage, waste disposal, telephone, gas and electricity. b. The Lessee or Licensee will be responsible to meet the full cost of the document preparation, registration and other costs associated with the execution of the agreement. c. The Lessee or Licensee will be responsible to contribute to the full cost of any previous improvements to the Airport by way of a levy proportioned to the cost of the work by a once-off lease establishment fee or transfer fee as set in the Shire of Northam Fees and Charges. d. Building and contents insurance and also hold current public liability insurance and worker compensation (if applicable). |
| Tenancy Fee | \$5.50 per square metre for recreational hangar sites and \$6.00 per square metre for commercial hangar site. |

| 8.5 Pop Up Shop Lease or Licence |
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| Initial Term | Three (3) months |
| Option | A further option of three (3) months may be granted should a subsequent tenant not be identified. |
| Responsibilities of Tenant | <ul style="list-style-type: none"> a. Not to do anything or permit anything to be done to or in the Premises which is a nuisance or annoyance to the Licensor or the occupier of any adjoining or neighbouring premises; b. The Lessee or Licensee will be responsible for keeping the building clean and tidy at levels predetermined within the agreement. c. Not make or permit to be made any alterations or additions whatsoever in or to the Premises or any part thereof without first obtaining the written consent of the Shire. d. Maintain opening hours of not less than five (5) days each week which days must include weekends and such other days where there are events to be held in Northam. |
| Responsibilities of the Shire | a. The Shire will be responsible for any minor maintenance and structural repairs/improvements in accordance with levels determined within its budget forecast. |
| Outgoings payable by tenant | a. Contents insurance, public liability insurance and worker compensation insurance (if applicable). |
| Tenancy Fee | As determined by the Shire of Northam based on the average cost of outgoings. |

DEFINITIONS

In this policy, the following definitions apply:

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| Act | The <i>Local Government Act 1995</i> as amended. |
| Shire | Shire of Northam |
| Commercial Lease or Licence | In this Policy, a legally binding agreement, relating to all Leases other than a Community Lease or a Subsidised Community Lease. |
| Community Based not-for-profit Lease or Licence | A legally binding agreement granted to a community, sporting or recreation associations or other non-government organisations that provides a service or activity for the benefit of the community and does not operate for the profit, personal gain or other benefit of its members or third parties and which applies all proceeds from its activities to the organisation's purposes. |
| Consumer Price Index | The weighted average cost of a standard basket of retail goods expressed in relation to a base period for Perth (All groups). |

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| Crown Land | Land owned by the Crown and vested in the Shire of Northam through the granting of a Management Order. |
| Delegated Authority | In accordance with the provisions of Section 5.42 of the <i>Local Government Act 1995</i> , Council may delegate authority to the Chief Executive Officer to exercise certain powers or duties to enable the continued working of Council without the necessity for reporting to an Ordinary Council Meeting. Delegated Authority Reference F06 relates to the authority granted by Council for disposing of property by lease or licence. |
| 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. |
| Lessee | An authorised third party that has entered into a Lease or Licence with the Shire of Northam for the use of Shire of Northam owned or managed real Property and pays rent to occupy the Property (and where the context permits includes a Licensee). |
| Lessor | The Shire of Northam 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, and may be used by others. 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 Northam both the power and authority to manage a parcel of land on behalf of the Crown. |
| Market Valuation | A valuation determined by a licensed Valuer registered with the Australian Property Institute taking into consideration a range of factors to determine the current market rental value of a Property. |
| Minimum Rate | The rate set annually by Council in its absolute discretion as the minimum rate chargeable for rateable Property. |
| Development Approval | Means an approval under the local planning scheme for development as defined by the <i>Planning & Development Act 2005</i> . |

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| Property | The Property that is subject to or intended to be subject to a Lease or Licence. |
| Regulations | <i>Local Government (Functions and General) Regulations 1996.</i> |
| Reserve | A defined area of land belonging to the Crown which has been vested in the Shire of Northam by way of a Management Order. |
| Subsidised Community Lease or Licence | A legally binding agreement granted to a not-for-profit entity delivering a community social service with the assistance of a Commonwealth or State Government operating grant and/or qualify for charitable status under the <i>Charities Act 2013</i> (Cth). |