

Lease and Licence Policy

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Responsible Division	Corporate – Property and Procurement
Related Documents	Community Engagement Policy Corporate Risk Framework Annual Fees and Charges Community Strategic Plan Community Land Management Plan
Applicable Legislation	<i>Local Government Act 1999</i>

1. Purpose

- 1.1 The contents of, and the commitments that Council makes in this policy are not intended to be and should not be interpreted to be any more than a statement of the Council's general position in relation to those matters and to facilitate its aspirations wherever it is reasonable to do so.
- 1.2 The Alexandrina Council recognises the values in diverse use of Local Government Land, reserves, foreshores, commercial facilities, sporting ovals and public spaces to promote and activate our community.
- 1.3 The Alexandrina Council intends to make these spaces reasonably available for use by private individuals, groups, community organisations and commercial operations within the district to promote economic development and community benefit.
- 1.4 The Policy provides direction for support, encouragement and engagement with community groups and commercial operators in a clear, transparent and consistent manner for the short- and long-term benefit of the community, businesses and visitors.

2. Scope

- 2.1 Council is the owner or caretaker of community, commercial and operational building assets and land throughout the Alexandrina Council district.
- 2.2 This policy deals with all Local Government Land including community land, operational land, buildings, parks and reserves, foreshores, public spaces and public infrastructure that is owned or under the care and control of Council and which is leased or licensed for use to another party.
- 2.3 Management of leases and licenses of Council owned, or controlled property will be undertaken in accordance with the provisions of this Policy. This Policy should be read in conjunction with the applicable corporate policy and procedures, the *Local Government Act 1999* (the Act) and all relevant legislation.
- 2.4 The Alexandrina Council recognises the value of land and buildings under its care and control and their contribution to Councils objectives and community priorities.

Alexandrina Council is committed to providing commercial and local community groups with access to various Council land and buildings on the basis that:

- the community derives benefits from the use of the land and buildings.
- use of land and buildings are optimised under terms and conditions that benefit the community.
- tenure arrangements are administered in a clear, fair, transparent and consistent manner.
- tenancy fees are applied in accordance with a consistent formula.

3. Definitions

Lease provides an agreement by which exclusive use of Local Government Land or part of, (excluding roads) owned or under Council's care and control, is granted to another party (the lessee) for a specific period of time in accordance with agreed conditions and to the exclusion of all others. This can be a ground lease only or inclusive of existing facilities on site.

Licence provides an agreement by which non-exclusive use of Local Government Land or part of, (excluding roads) owned or under Council's care and control, is granted to another party (the licensee) for a specific and limited term, in order for the licensee to do something particular or carry on a specific activity or business from the land which may have the effect of restricting or reasonably interfering with the general public's access to that land during the licence term.

Community use is an incorporated association (or similar not-for-profit) who provide a service for the benefit of the community and generate low income as they do not sell significant volumes of goods or services to the general public (< \$5,000 per annum) excluding membership fees and fundraising activities.

Minor Commercial/Community use is an incorporated association (or similar not-for-profit) who provide a service for the benefit of the community and generate a low income from minor sales of goods or services to the general public (between \$5,000 and \$20,000 per annum) excluding membership fees and fundraising activities.

Major Commercial /Community use is an incorporated association (or similar not-for-profit) who provide a service for the benefit of the community and generate an income from sales of goods or services to the general public through retail, bar and/or dining services (>\$20,000 per annum) excluding membership fees and fundraising activities, irrespective of whether the improvements to the land (buildings) are Council or Community owned.

Commercial is deemed to be an agreement between Council and an external business operator who uses the land and/or buildings to undertake business, retail or other commercial activities including small business, within set terms and conditions.

Emergency Services refers to service providers that respond to emergencies and provide other safety-related services either as part of their on-the-job duties or as part of the main mission of their business (e.g.: CFS Stations, Surf Clubs, Sea Rescue Squadrons).

Existing Tenant is defined as a Lessee or Licensee who has held a previous independent lease or license with Alexandrina Council or has operated as part of a greater Group,

Association or Committee under an existing or previous tenure arrangement with Alexandrina Council.

Fundraising refers to the process of seeking and gathering voluntary financial contributions by engaging individuals, businesses, charitable foundations or governmental agencies, but does not include the hire of the premises or the sale of goods or services to the general public.

Minor Development refers to improvements (development) proposed to Council owned or controlled land, that, on application of Council's Corporate Risk Management Framework, produces a risk matrix rating of Low or Medium.

Major Development refers to improvements (development) proposed to Council owned or controlled land, that, on application of Council's Corporate Risk Management Framework, produces a risk matrix rating of High or Extreme.

Minor Agreement Variations refers to proposed amendment/s to an existing endorsed Agreement with Council, which does not materially change the intent, use, purpose, term or content of the Agreement contemplated by Council at time of resolution.

Major Agreement Variations refers to a proposed amendment/s to an existing endorsed Agreement with Council, which has the effect of materially changing a standard term or condition of the Agreement relating to the intent, use, purpose, term or fee of the Agreement and which was not contemplated by Council at time of resolution.

New tenant is defined as a Lessee or Licensee who has not held a previous independent lease or license with Alexandrina Council or has not operated as part of a greater Group, Association or Committee under an existing or previous tenure arrangement with Alexandrina Council.

4. Policy Principles

4.1 The principles of this policy aim to implement consistent:

- Administrative procedures and authority for issuing leases and licenses for Council owned or controlled land and buildings.
- Procedures for determining and applying applicable fees and terms to lease and licence agreements.
- Procedures to ensure the appropriate referral of lease and licenses to appropriate agencies for decision.
- Procedures for community engagement in accordance with *Council's Community Engagement Policy*.
- Authorisations and Officer Delegations to provide efficiencies in administering lease and licence agreements.

4.2 The principles of this policy will be applied to all new lease and licenses commencing from adoption of the Policy. Existing agreements will continue to be managed in accordance with their current terms of agreement.

5. Risk Management

5.1 Council acknowledges its responsibilities to:

- Provide a balanced approach towards the use of land for community and commercial purposes.
 - Administer tenure matters consistently and transparently.
 - Maintain authority over its land use for community, Council or commercial purposes.
 - Ensure the appropriate revenue is derived from its land holdings.
- 5.2 All lease and licence holders must comply with all requirements by any Act of Parliament, Ordinance, Regulation or By-law relating to the activity and all Special Conditions that the Council may attach to the agreement.
- 5.3 All lease and licence holders must comply with all and any relevant Council Policies such as but not limited to signage policies, Development Act requirements, community engagement policies, refuse collection policies and all Legislative Compliance requirements in accordance with all applicable industry standards, health or safety standards, Australian Standards, Codes of Conduct and applicable legislation.
- 5.4 The Council has an obligation to ensure that Agreements it enters into furthers the functions and objectives of the Council as outlined in the *Local Government Act 1999* and good procurement practices.

6. Terms

- 6.1 Council acknowledges that Section 202 of the *Local Government Act 1999* provides the option to issue a Lease or Licence up to a term of 42 years.
- 6.2 Legally, Council has no obligation to grant a 42-year lease in any instance.
- 6.3 When considering the maximum term for an Agreement, Council seeks to undertake good governance in accordance with the principles of Section 8 of the *Local Government Act 1999* by ensuring that Council resources are used fairly, effectively and efficiently and provide opportunities and availability for new businesses and community organisations to access facilities within the district.
- 6.4 For both community and commercial tenure agreements, Council recognises the need to periodically test the broader market to ensure Council is achieving the best community outcome and / or best financial return for the asset.
- 6.5 A maximum term of 21 years allows Council to periodically review existing Agreements and comply with its obligations under Section 8 of the *Local Government Act 1999* by giving consideration to whether the facility can only realistically be operated or occupied by one particular party (there is 'no market') or determine the particular reasons why the current tenant, above all others, is able to deliver the best financial or community outcome.
- 6.6 To manage these challenges and comply with legislation, the maximum term for a Lease or Licence Agreement with Alexandrina Council is 21 years.

7. Fees

- 7.1 Council will optimise the use of its property for the benefit of the community whilst ensuring the appropriate revenue is derived from its land holdings. Generally, Council will enter into a usage agreement (lease or licence) on Council land in exchange for some form of consideration whether financial or community related.

- 7.2 Rental fees are applied giving due regard to a considered approach which balances community benefit with responsible asset management practices, in fit for use facilities.
- 7.3 For the purpose of ensuring a consistent approach to the application of fees, the user categories are identified as Community, Minor Commercial/Community, Major Commercial/Community Commercial, and Emergency Services as defined under Definitions. The fee payable per Agreement will be charged in accordance with the user category, unless varied by decision of Council.
- 7.4 The annual fee for Community, Minor Commercial/Community, Major Commercial/Community, Commercial, and Emergency Service Agreements are reviewed annually and adopted within Council's Annual Fees and Charges.
- 7.5 The fee structure takes into account a range of factors including but not limited to:
- The community benefit associated with the proposed activity.
 - The commercial implications associated with the proposed activity.
 - The investment proposed by the user.
 - The potential for the user to generate income from the proposed activity.
 - The administrative and legislative procedures required by Council.
 - The infrastructure or improvements to the property as an outcome of the activity.
 - The long-term ownership and benefit of any improvements to the property.
 - The responsibility for outgoings related to the property (water, electricity, maintenance etc).
- 7.6 Application Fee (cost recovery of resourcing)
- An Application Fee, set annually in accordance with Council Adopted Fees and Charges, applies to a Commercial operator seeking to re-negotiate a new Agreement during an existing term.
 - Community organisation seeking to re-negotiate a new Agreement during an existing term.
- 7.7 Administration Charge (cost recovery of external charges)
- An Administration Charge, to recover third party costs borne by Council applies to a:
- Commercial operator seeking a new Agreement with Council.
 - Commercial operator seeking to re-negotiate a new Agreement during an existing term.
 - Community organisation seeking to re-negotiate a new Agreement during an existing term.
- 8. 'Considerations'.**
- 8.1 The below considerations outline the particular information provided to Council.

- 8.1.1 There is no requirement for a draft lease to be attached to a Council report in its entirety when consent is sought to undertake community engagement in respect of that lease.
- 8.1.2 The essential terms including term/duration of the lease, the relevant land, proposed fee/rent, and the permitted use of the lease) should be provided to the Council for its consideration.
- 8.1.3 It is not strictly necessary to include the rent amount and the name of the proposed lessee for the purpose of community engagement, but it can be included at Council's discretion.
- 8.1.4 It is not mandatory for the Council to make a commercial lease available to view and/or download in its entirety, however the Council has discretion to decide.
- 8.1.5 If undertaking community engagement, the Council must provide the public with sufficient information to be able to understand the essential aspects of the draft negotiated arrangement. (i.e. the proposed term/duration of the agreement, the relevant land and the permitted use).
- 8.1.6 It is appropriate for Council to attach all submissions received from community engagement to a Council report.
- 8.1.7 If negotiations have been finalised and the report is recommending that the Council grant the lease, then the lease must be attached to the Council report in full, as the Council is being asked to resolve and agree to all terms of the lease and must therefore be aware of each provision and term.
- 8.1.8 If negotiations have not been finalised and it is being recommended that the Council authorise the Chief Executive Officer to undertake the final negotiations within a set of defined parameters (i.e. the essential terms) and execute the lease on the Council's behalf, then only those known essential terms of the lease must be included in the Council report (the term/duration of the agreement, the relevant land, proposed fee/rent, and the permitted use).

9. Workflow Process

- 9.1 The below workflow process outlines the processes for how leases are administered from start to finish and when and what information is provided to Council at each stage of that process.
- 9.2 Community or Commercial lease on community land consistent with the requirements of the Community Land Management Plan or operational land, for a term of less than five (5) years:
 - Community engagement is not required.
 - A lease may be drafted first;
 - A draft lease or the essential terms of a draft lease will be put to Council for consent to negotiate a lease and use of the common seal or otherwise.
- 9.3 Community or commercial lease on community land for a term greater than five (5) years:

- The essential terms of the lease will be provided to Council to consent to proceeding to consultation,
- A draft lease will generally not be attached
- A further Report will be brought back to Council after consultation with the Community Engagement Feedback Report, to endorse the CEO negotiating a lease or endorsing an attached draft lease, or otherwise.

9.4 Community or commercial lease on operational land for any term (greater or less than five (5) years):

- Community engagement is not required.
- Community Land Management Plan conditions do not apply to operational land.
- A draft lease or the essential terms of a draft lease will be put to Council to endorse the CEO negotiating a lease or endorsing an attached draft lease, or otherwise.

10. Administration

- 10.1 Commercial lease agreements will be prepared by Officers of Council or in consultation with or by an independent external legal party.
- 10.2 Community, Minor Commercial / Community, Major Commercial / Community and Emergency Services lease agreements will be prepared by Officers of Council or by an independent external legal party (or Minister), as deemed applicable by Administration.
- 10.3 Licence agreements will be prepared by Officers of Council or by an independent external legal party, as deemed applicable by Administration.
- 10.4 Deeds of Variation, Assignment, Novation, Renewal, Surrender or Extension to an existing agreement will be prepared by Officers of Council or by an independent external legal party, as deemed applicable by Administration.

11. Consent by Council or by Delegation

- 11.1 Council acknowledges that the Chief Executive Officer may sub-delegate matters related to this Policy to staff or other persons employed or engaged by Council.
- 11.2 Council acknowledges that any authorisation sub-delegated by the Chief Executive Officer can be redirected to a Council decision as required.

Task	Council Decision	Delegation Authority
The grant of a new lease.	Yes	No
The grant of a lease or licence whereby Council is the tenant in instances where there is NO financial benefit for either party out of the agreement. (\$0)	No	Yes
The grant of a lease or licence whereby Council is the tenant, in instances where there IS a financial benefit for either party out of the agreement (>\$0)	Yes	No
The grant of a new licence	No	Yes

Task	Council Decision	Delegation Authority
The grant of a Renewal of an Agreement, during an endorsed term.	No	Yes
The grant of Surrender of an Agreement, during an endorsed term.	No	Yes
The grant of a 'Minor Development' (improvement) by the tenant.	No	Yes
The grant of Major Development' (improvement on the land) by the tenant.	Yes	No
The grant of a 'Minor Variation' to a term or condition of an Agreement during an endorsed term.	No	Yes
The grant of a 'Major Variation' to a term or condition of an Agreement during an endorsed term.	Yes	No
The grant of an Assignment or Novation of an Agreement during an endorsed term, in which the existing purpose of use under the Agreement remains unchanged.	No	Yes
The grant of an Assignment or Novation of an Agreement, during an endorsed term, in which the existing purpose of use under the current Agreement is proposed to change.	Yes	No
The application of the commencement rent (start of lease or licence) to a commercial agreement which has been obtained by an Independent Valuer.	No	Yes
The application of the 'Council's Assessment' of the Market Rental Valuation to the rent review term of a commercial lease that has a current rent of less than \$10,000 (ex GST) per annum at date of rent review and as calculated by the 'Financial Assessment Formula' or Independent Valuer.	No	Yes
The application of the 'Council's Assessment' of the Market Rental Valuation to the rent review term of a commercial lease that has a current rent of greater than \$10,000 (ex GST) per annum at date of rent review and as determined by an Independent Valuer.	No	Yes
The decision on an objection to a rental fee obtained by an Independent Market Valuer or Financial Assessment Formula.	Yes	No

Task	Council Decision	Delegation Authority
The application of annual rental fees for Community, Minor Commercial / Community, Major Commercial / Community and Emergency Services tenants, in accordance with Adopted Fees and Charges.	No	Yes
The grant of consent to 'Holding Over' of an expired lease or licence, as per the Holding over clause of the agreement and in which the existing permitted use remains unchanged.	No	Yes
The grant of consent to 'Holding over' of an expired lease or licence, which does not include a Holding over clause within the agreement and in which the existing permitted use and Lessee remains unchanged.	No	Yes

12. Consultation

- 12.1 Consultation will be undertaken in accordance with the *Local Government Act 1999* and Council's *Community Engagement Policy*.
- 12.2 A lease or licence for a term not exceeding five (5) years on community land (excludes operational land) does not require community engagement to be undertaken as long as the intended purpose of use is authorised in the Community Land Management Plan.
- 12.3 A lease or licence for a term not exceeding five (5) years on community land (excludes operational land) requires community engagement to be undertaken if the intended purpose of use is not authorised in the Community Land Management Plan.
- 12.4 A lease or licence for a term over five (5) years inclusive of any rights of renewal, on community land (excludes operational land) requires community engagement to be undertaken in accordance with Council's *Community Engagement Policy*.
- 12.5 A lease or licence for any term on operational land (excludes community land), does not require community engagement to be undertaken however it may be undertaken in accordance with Council's *Community Engagement Policy*.

13. Confidentiality

- 13.1 Community leases will be provided for decision by public report.
- 13.2 Minor Commercial/Community leases and Major Commercial / Community leases will be provided for decision by public report, unless the financial implications associated with the information contained in the report are subject to the confidentiality clauses within s.90 of the Act.
- 13.3 Commercial leases will be provided to Council for decision by confidential report.

14. Documentation

- 14.1 To ensure the process for the issuing of a lease and licence is cost effective, fair, transparent and accountable in accordance with applicable legislation Council will

record all documentation including the application, assessment, consultation process, outcomes and other related documentation in accordance with Councils *Information Management Policy* and internal software programs.

15. Reporting

- 15.1 Council Members will be provided with information on those matters dealt with by the Administration under delegated authority, as permitted within this policy.

16. Availability of Policy

- 16.1 This Policy will be available for inspection on the Council's website www.alexandrina.sa.gov.au. Copies can also be provided in accordance with Council's Schedule of Fees and Charges.

Annexure A

Community Agreements

1. Council supports and encourages community initiatives throughout the district.
2. A community organisation wishing to occupy a Council asset needs to demonstrate it:
 - Is a not-for-profit organisation under Australian tax office definitions.
 - Is an incorporated body and legal entity with an Australian Business Number (ABN).
 - Is financially viable.
 - Has the capacity to meet its rental, maintenance, and on-going obligations under the Agreement.
 - Will meet a community need and contribute to the well-being of the Alexandrina community.
 - Has good governance capability; and
 - Meets the definition of 'Community' as provided in the Definitions at section 1 of this Policy.
3. A maximum lease term of 5 years will apply to new community organisations that do not hold any previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 5 years.
4. An initial term of 5 years provides good governance in ensuring occupants of Council's buildings and land are both experienced in managing the obligations that come with leasing a facility and adequately resourced and financially sound to meet those obligations prior to entering into a longer-term Agreement.
5. An initial 5-year term recognises that Community Organisation membership numbers can decline, succession planning cannot be realised, grant funding can prove difficult to secure, management and Work, Health & Safety responsibilities can become onerous, building maintenance can exceed expectations and community needs can change over time.
6. Council remains committed to providing ongoing tenure to existing community organisations that have operated successfully under an initial 5-year Agreement, have met the terms and conditions of the Agreement and continue to contribute to the wellbeing of the community. A maximum lease term of 10 years (5+5) will apply to community organisations that have successfully held previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 10 years.
7. Terms greater than identified above should be considered on a case-by-case basis and subject to Council being satisfied that a longer-term arrangement would:
 - Secure grant funding for the organisation.
 - Return capital investment in the facility by the user (modest capital outlay).
 - Provide significant community benefit.
 - Long term financial capacity and succession modelling can be demonstrated.
8. The application of maximum tenure terms provides the community organisation with secure tenure to grow the organisation while providing Council with the flexibility to

manage the asset in the community's best long-term interest. Maximum lease terms ensure Council assets are not unreasonably prevented from periodic review to ensure activation for other uses, opportunities that optimise the return from the property and alternative community benefits are considered.

SCHEDULE – Community Agreements

Obligations	Demonstrate that the organisation is financially viable. Demonstrated contribution to the well-being of the local community. Demonstrate investment in exchange for longer lease term.
Term	Maximum lease term of 5 years for a new tenant.
Term	Maximum lease term of 10 years (5+5) for an existing tenant (subject to investment).
Rent	Community - as per Annual Fees and Charges.
Market rent reviews	Not applicable.
Rights of renewal	Every 2, 5 or 7 years within endorsed lease term. Administered by Delegated Authority.
Cost Recovery	Recovery of administration costs, fees and charges accumulated in administering a new Agreement during an existing term, in accordance with Council's Annual Fees and Charges.
Consent to Lease	Council resolution.
Credit Check	Not applicable.
Insurances	Lessee cost.
Rates & Services	Lessee cost.
Asset Management	Maintenance and repair – Lessee. Replace at end of useful life/structural – Council.

Annexure B

Minor Commercial / Community Agreements

1. Council supports and encourages community initiatives throughout the district.
2. A minor commercial community organisation wishing to occupy a Council asset needs to demonstrate that it:
 - Is a not-for-profit organisation under Australian tax office definitions.
 - Is an incorporated body and legal entity with an Australian Business Number (ABN).
 - Is financially viable.
 - Has the capacity to meet its rental, maintenance, and on-going obligations under the Agreement.
 - Will meet a community need and contribute to the well-being of the Alexandrina community.
 - Has good governance capability; and
 - Meets the definition of 'Minor Commercial/Community' as provided in the Definitions at section 1 of this Policy.
3. A maximum lease term of 5 years will apply to new community organisations that do not hold any previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 5 years.
4. An initial term of 5 years provides good governance in ensuring occupants of Council's buildings and land are both experienced in managing the obligations that come with leasing a facility and adequately resourced and financially sound to meet those obligations prior to entering into a longer-term Agreement.
5. An initial 5-year term recognises that Community Organisation membership numbers can decline, succession planning cannot be realised, grant funding can prove difficult to secure, management and Work, Health & Safety responsibilities can become onerous, building maintenance can exceed expectations and community needs can change over time.
6. Council remains committed to providing ongoing tenure to existing community organisations that have operated successfully under an initial 5-year Agreement, have met the terms and conditions of the Agreement and continue to contribute to the wellbeing of the community. A maximum lease term of 10 years (5+5) will apply to community organisations that have successfully held previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 10 years.
7. Terms greater than identified above should be considered on a case-by-case basis and subject to Council being satisfied that a longer-term arrangement would:
 - Secure grant funding for the organisation.
 - Return capital investment in the facility by the user (modest capital outlay).
 - Provide significant community benefit.
 - Long term financial capacity and succession modelling can be demonstrated.

8. The application of maximum tenure terms provides the community organisation with secure tenure to grow the organisation while providing Council with the flexibility to manage the asset in the community's best long term interest. Maximum lease terms ensure Council assets are not unreasonably prevented from periodic review to ensure activation for other uses, opportunities that optimise the return from the property and alternative community benefits are considered.

SCHEDULE – Minor Commercial / Community Agreements

Obligations	Demonstrate that the organisation is financially viable. Demonstrated contribution to the well-being of the local community. Demonstrate investment in exchange for longer lease term.
Term	Maximum lease term of 5 years for a new tenant.
Term	Maximum lease term of 10 years (5+5) for an existing tenant (subject to investment).
Rent	Minor Commercial / Community-as per Annual Fees and Charges).
Market rent reviews	Not applicable.
Rights of renewal	Every 2, 5 or 7 years within endorsed lease term. Administered by Delegated Authority
Cost Recovery	Recovery of administration costs, fees and charges accumulated in administering a new Agreement during an existing term, in accordance with Council's Annual Fees and Charges
Consent to Lease	Council resolution.
Credit Check	Not applicable.
Insurances	Lessee Cost
Rates & Services	Lessee cost.
Asset Management	Maintenance and repair – Lessee. Replace at end of useful life/structural – Council.

Annexure C

Major Commercial / Community Agreements

1. Council supports and encourages community initiatives throughout the district.
2. A community organisation wishing to occupy a Council asset needs to demonstrate that it:
 - Is a not-for-profit organisation under Australian tax office definitions.
 - Is an incorporated body and legal entity with an Australian Business Number (ABN).
 - Is financially viable.
 - Has the capacity to meet its rental, maintenance, and on-going obligations under the Agreement.
 - Will meet a community need and contribute to the well-being of the Alexandrina community.
 - Has good governance capability; and
 - Meets the definition of 'Major Commercial/Community' as provided in the Definitions at section 1 of this Policy.
3. A maximum lease term of ten (10) years will apply to a new community / commercial organisation that does not hold any previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 10 years.
4. An initial term of ten (10) years provides good governance in ensuring occupants of Council's buildings and land are both experienced in managing the obligations that come with leasing a facility and adequately resourced and financially sound to meet those obligations prior to entering into a longer-term Agreement.
5. An initial 10-year term recognises that Community Organisation membership numbers can decline, succession planning may not be realised, grant funding can prove difficult to secure, management and Work, Health & Safety responsibilities can become onerous, building maintenance can exceed expectations and community needs can change over time, whilst recognising the additional upfront and ongoing investment required by the Lessee to operate a bar, kitchen or goods for sale function.
6. Council remains committed to providing ongoing tenure to existing community organisations that have operated successfully under an initial 10-year Agreement, have met the terms and conditions of the Agreement and continue to contribute to the wellbeing of the community. A maximum lease term of 10 years (5+5) will apply to community organisations that have successfully held previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 10 years.
7. Terms greater than identified above should be considered on a case-by-case basis and subject to Council being satisfied that a longer-term arrangement would:
 - Secure grant funding for the organisation.
 - Return capital investment in the facility by the user (modest capital outlay).
 - Provide significant community benefit.
 - Long term financial capacity and succession modelling can be demonstrated.

8. The application of maximum tenure terms provides the community organisation with secure tenure to grow the organisation while providing Council with the flexibility to manage the asset in the community's best long term interest. Maximum lease terms ensure Council assets are not unreasonably prevented from periodic review to ensure activation for other uses, opportunities that optimise the return from the property and alternative community benefits are considered.

SCHEDULE – Major Commercial / Community Agreement

Obligations	Demonstrate that the organisation is financially viable. Demonstrated contribution to the well-being of the local community. Demonstrate investment in exchange for longer lease term.
Term	Maximum lease term of 10 years for a new tenant.
Term	Maximum lease term of 10 years (5+5) for an existing tenant (subject to investment).
Rent	Major Commercial/Community Use - as per Annual Fees and Charges).
Market rent reviews	Not applicable.
Rights of renewal	Every 2, 3 or 5 years within endorsed lease term. Administered by Delegated Authority.
Cost Recovery	Recovery of administration costs, fees and charges accumulated in administering a new Agreement during an existing term in accordance with Council's Annual Fees and Charges
Consent to Lease	Council resolution.
Credit Check	Not applicable.
Insurances	Lessee cost
Rates & Services	Lessee cost.
Asset Management	Maintenance and repair – Lessee. Replace at end of useful life/structural – Council.

Annexure D

Commercial Agreements

1. Council supports and encourages economic development business opportunities throughout the district.
2. A commercial entity wishing to occupy a Council asset needs to demonstrate that:
 - It is financially viable.
 - It provides a financial benefit or return to Council.
 - It meets a community need or interest.
 - It is capable of meeting the rental, maintenance, and on-going obligations under the Agreement.
 - It contributes to the economic well-being of the Alexandrina community.
 - Meets the definition of 'Commercial' as provided in the Definitions at section 1 of this Policy.
3. A maximum lease term of 10 years (5+5) will apply to new commercial operators that do not hold any previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 10 years.
4. A maximum lease term of 20 years (5+5+5+5) will apply to commercial operators that have successfully held previous tenure agreements with Alexandrina Council. Council is not obligated to apply the maximum term of 20 years.
5. Terms greater than identified above should be considered on a case-by-case basis and subject to Council being satisfied that a longer-term arrangement would:
 - Return significant capital investment in the facility.
 - Assist a lessee secure finance and grow the business model.
 - Manage the risks in deriving profits from the capital outlay.
6. The application of maximum tenure terms provides the lessee with secure tenure to grow the business whilst providing Council the flexibility to manage the asset to the benefit of the community. Maximum lease terms ensure Council assets are not unreasonably prevented from activation for other uses or opportunities that optimise the return from the property and offer improved community benefit.
7. Council reserves the right to test the broader market on expiry of a commercial lease term that exceeds 15 years by decision of Council. Council would test the broader market by seeking tenders or registrations of interest. Testing the broader market demonstrates that Council is achieving the best community outcome and/or best financial return for its asset.
8. Council is not obligated to test the broader market. Exceptions to testing the broader market include:
 - Decision of Council.
 - Special circumstances where there is no 'market'.

- Demonstrated particular reasons why the current Lessee, above all others, is going to be able to deliver the best financial or community outcome.

Credit Check

9. That unless deemed unnecessary by Council staff, every commercial lease with new tenants (exclusive of government, and large not for profit and commercial enterprises) has the following risk assessment:
- Referrals from previous landlord
 - In the case of a business, a credit check

Financial Assessment Formula

10. The decision on the 'Council's Assessment' of the Market Rental Valuation for a rent review term of a commercial lease that has a rent value of less than \$10,000 per annum (ex GST) on date of rent review, can be determined by either Independent Market Assessment or in accordance with the Financial Assessment Formula below:
11. A Financial Assessment Formula can be applied to determine the annual rental valuation for a rent review of a commercial lease where the rental fee on commencement of the lease was determined by an Independent Valuer and, the annual rent on date of rent review is <\$10,000 and, where the CEO (or delegate) is satisfied that the formula considerations put forward establish that the rent return proposed will return a value adequately consistent with an Independent Market Valuation.

Formula considerations:

- A Current rent at rent review date of lease
B + CPI% (Adelaide CPI quarter at date rent review is due or, as dictated within the Lease)
A + B = Rental assessment (ex GST) to be Councils Assessment of the rent review for the following rental term of the lease.

Council is not obligated to use the 'Financial Assessment Formula' for leases with a value of <\$10,000 (ex GST) on date of rent review.

If the proponent does not accept Council's assessment of the rent review value based on the Financial Assessment Formula, an objection can be lodged in accordance with the terms and conditions of the lease.

SCHEDULE – Commercial Agreements

Obligations	Demonstrate that the commercial operation is financially viable. Demonstrated contribution to the economic well-being of the local community. Demonstrate investment in exchange for longer lease term.
Term	Maximum lease term of 10 years (5+5) for new commercial tenants (subject to investment).
Term	Maximum lease term of 20 years (5+5+5+5) for existing commercial tenants (subject to investment).
Commencement Rent	Commencement of lease - Independent Market Assessment by delegated authority. Objection by tenant to Council's assessment of the commencement rent is by decision of Council.
Rent reviews	Every 2, 3 or 5 years within endorsed lease. Rental fee determined by Independent Valuation and applied by delegated authority for rent of >\$10,000 on date of rent review. Rental fee determined by Independent Valuation or Financial Assessment Formula for rentals <\$10,000 per annum (ex GST) on date of rent review by Delegated Authority. Objection by tenant to Council's assessment of the rental valuation is by decision of Council.
Rights of renewal	Every 2, 3 or 5 years within endorsed lease term. Administered by Delegated Authority.
Cost Recovery	Recovery of administration costs, fees and charges accumulated in administering commercial agreements for a third party in accordance with Council's Annual Fees and Charges
Consent to Lease	Council resolution
Credit Check	Credit check to be provided by Applicant at Applicants expense Referrals from previous landlords to be provided on request
Insurances	Lessee cost
Rates & Services	Lessee cost.
Asset Management	Maintenance and repair – Lessee. Replace at end of useful life/structural – Council.

Annexure E

Emergency Service Agreements

1. Council supports Emergency Services throughout the District.
2. An Emergency Service wishing to occupy a Council asset need to demonstrate that it:
 - Is a Prescribed Emergency Service Organisation.
 - Has the capacity to meet its rental, maintenance, and on-going obligations under the Agreement.
 - Will meet a community need and contribute to the well-being of the Alexandrina community.
 - Has good governance modelling.
 - Meets the definition of 'Emergency Service' as provided in the Definitions at section 1 of this Policy.
3. A maximum lease term of 21 years (5 + 5 + 5 + 6) will apply to Emergency Services. Council is not obligated to apply the maximum term of 21 years.
4. Emergency Services will generally be issued over vacant land (ground lease) with any purpose built improvements to the land built and owned by the Emergency Service.
5. The lease term will be considered on a case-by-case basis and subject to Council being satisfied that the term of the Agreement would:
 - Reflect third party investment in the facility / on the land.
 - Is sustainable.
 - Secure grant funding for the organisation.
 - Provide significant community benefit.
 - Meets the objectives of the Prescribed Body.
6. Emergency Services may, by prior negotiation, be required to reimburse Council for fees and charges accumulated by Council in preparation and administration of a tenure agreement in accordance with Council's adopted Annual Fees and Charges (Cost Recovery).

SCHEDULE – Emergency Service Agreements

Obligations	Demonstrate that the organisation is financially viable. Demonstrated contribution to the well-being of the local community. Demonstrated investment in exchange for lease term. Demonstrate that the organisation is a Prescribed Body.
Term	Maximum lease term of 21 years (subject to investment).
Rent	Community (as per Annual Fees and Charges). Minor Commercial / Community (as per Annual Fees and Charges).
Market rent reviews	Not applicable.
Rights of renewal	Every 2, 3 or 5 years within endorsed lease term. Administered by Delegated Authority.
Cost Recovery	By negotiation.
Consent to Lease	Council resolution.
Credit Check	Not applicable.
Insurances	Lessee cost for public liability and contents. 10% Building insurance on-charged for Council owned buildings in lease area
Rates & Services	Lessee cost as applicable
Asset Management	Maintenance and repair – Lessee. Replace at end of useful life/structural – Council.