

## LEASE AND LICENCE POLICY

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Responsible Division	Resources
Related Documents	Consent to Development on Council land - Standard Operating Procedure Annual Fees and Charges Public Consultation Policy Community Strategic Plan Community Land Management Plan
Applicable Legislation	Local Government Act 1999

### Definitions

For the purpose of this Policy:

**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.

**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.

**Minor Commercial/Community** is deemed to be an agreement between Council and a Community Group including not for profit, associations and clubs which occupy Council land or buildings for the purpose of community use and benefit and which, in addition to receiving income from membership fees and fundraising activities, have greater income generating capacity through periodic trading activities (such as bar, dining and sale of goods and services) with the income generated from such sales reinvested back into the upgrade and maintenance of the property or contributed to the local community. Goods for sale can include but are not limited to plants, food, bar sales and arts and crafts.

**Community** use is deemed to be an agreement between Council and a Community Group including not for profit, associations and clubs which occupy Council land or buildings for the purpose of community use and benefit, who have low income generating capacity as they do not sell goods or services to the general public. These organisations receive most of their income from membership fees and fundraising activities only.

**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).

**Minor Development** refers to improvements proposed to Council owned or controlled land by a tenant, which does not meet the criteria of Development Approval and, improvements proposed to Council owned or controlled land by a tenant, which require Development Approval and which, on application of Council's Risk Management Procedure, produces a risk matrix rating of Low or Moderate.

**Major Development** refers to improvements proposed to Council owned or controlled land by a tenant, which requires Development Approval and which, on application of Council's Risk Management Procedure, produces a risk matrix rating of High or Extreme.

**Minor Agreement Variations** refers to a 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.

## Preamble

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.

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.

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.

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.

## Overview

Council is the owner or care taker of community, commercial and operational building assets and land throughout the Alexandrina Council district.

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.

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.

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.

### **Policy Principles**

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 public consultation in accordance with Council's Public Consultation Policy.
- Authorisations and Officer Delegations to provide efficiencies in administering lease and licence agreements.

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.

### **Risk Management**

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.

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 any and all Special Conditions that the Council may attach to the agreement.

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, public consultation 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.

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.

### **Terms**

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.

Legally, Council has no obligation to grant a 42 year lease in any instance.

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.

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.

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.

To manage these challenges and comply with legislation, the maximum term for a Lease or Licence Agreement with Alexandrina Council is 21 years.

### **Fees**

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.

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.

For the purpose of ensuring a consistent approach to the application of fees, the user categories are identified as Commercial, Minor Commercial/Community and Community as defined under Definitions. The fee payable per Agreement will be charged in accordance with the user category, unless varied by decision of Council.

The annual fee for Commercial, Minor Commercial/Community and Community Agreements are reviewed annually and adopted within Council's Annual Fees and Charges.

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).

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.

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.

## **Commercial Agreements**

Council supports and encourages economic development business opportunities throughout the District.

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.

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.

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.

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.

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.

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.

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.

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).
Rent	Independent Market Assessment
Market rent reviews	Every 5 years. Rental fee determined by Council decision.
Rights of renewal	Every 5 years within endorsed lease term. Administered by Delegated Authority.
Expiry of lease	Tender/market test on leases that exceed 15 years.
Cost Recovery	Recovery of administration costs, fees and charges accumulated in administering commercial agreements for a third party.
Consent to Lease	Council resolution
Credit Check	Credit check and referrals from previous landlords.
Insurances	Lessee cost.
Rates & Services	Lessee cost.
Asset Management	Maintenance and repair – Lessee. Replace at end of useful life/structural – Council.

## **Community / Minor Commercial Community Agreements**

Council supports and encourages community initiatives throughout the District.

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.

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.

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 financial sound to meet those obligations prior to entering into a longer term Agreement.

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 W&OHS responsibilities can become onerous, building maintenance can exceed expectations and community needs can change over time.

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.

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.

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 new community organisations.
Term	Maximum lease term of 10 years (5+5) for existing community organisations (subject to investment).
Rent	Minor Commercial / Community (as per Annual Fees and Charges). Community (as per Annual Fees and Charges).
Market rent reviews	Not applicable.
Rights of renewal	Every 5 years within endorsed lease term. Administered by Delegated Authority.
Expiry of lease	Decision of Council.
Cost Recovery	Recovery of administration costs, fees and charges accumulated in administering a new Agreement during an existing term.
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.

## **Emergency Service Agreements**

Council supports Emergency Services throughout the District.

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.

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.

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.

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.

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	Minor Commercial / Community (as per Annual Fees and Charges). Community (as per Annual Fees and Charges).
Market rent reviews	Not applicable.
Rights of renewal	Every 5 years within endorsed lease term. Administered by Delegated Authority.
Expiry of lease	Decision of Council.
Cost Recovery	By negotiation.
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.

### **Administration**

Commercial lease agreements will be prepared in consultation with an independent external legal party.

Minor Commercial / Community and Community lease agreements will be prepared by Officers of Council or by an independent external legal party, as deemed applicable by Administration.

Licence agreements will be prepared by Officers of Council or by an independent external legal party, as deemed applicable by Administration.

Deeds of Variation, Assignment, 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.

The grant of a new lease, irrespective of whether it is a Commercial, Minor Commercial Community or Community Agreement is by resolution of Council.

The grant of 'Major Development' (improvement on the land) by the tenant is by resolution of Council.

The grant of a 'Major Agreement Variation' to a term or condition of the Agreement is by resolution of Council.

The grant of an Assignment of an Agreement, during an endorsed term, in which the existing purpose of use under the Agreement is proposed to change, is by resolution of Council.

The decision on a rental fee obtained by a Market Rental Valuation during an endorsed term is by resolution of Council.

### **Confidentiality**

Commercial leases will be provided to Council for decision by confidential report.

Minor 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.

Community leases will be provided for decision by public report.

### **Documentation**

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.

## **Consultation**

Consultation will be undertaken in accordance with the Local Government Act 1999 and Council's Public Consultation Policy.

A lease or licence for a term not exceeding five (5) years on community land (excludes operational land) does not require public consultation to be undertaken as long as the intended purpose of use is authorised in an approved management plan.

A lease or licence for a term not exceeding five (5) years on community land (excludes operational land) requires public consultation to be undertaken if the intended purpose of use is not authorised in an approved management plan.

A lease or licence for a term over five (5) years inclusive of any rights of renewal, on community land (excludes operational land) requires public consultation to be undertaken in accordance with Council's *Public Consultation Policy*.

A lease or licence for any term on operational land (excludes community land), does not require public consultation to be undertaken however it may be undertaken in accordance with Council's *Public Consultation Policy*.

## **Delegations**

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.

- The grant of a new licence irrespective of whether it is a Commercial, Minor Commercial/Community or Community Agreement is by Delegated Authority.
- The grant of a Renewal of an Agreement, during an endorsed term, is by Delegated Authority.
- The grant of Surrender of an Agreement, during an endorsed term, is by Delegated Authority.
- The grant of an Assignment of an Agreement, during an endorsed term, in which the existing purpose of use under the Agreement remains unchanged, is by Delegated Authority.
- The grant of a Minor Development (improvement) by the tenant is by Delegated Authority.
- The grant of a Minor Agreement Variation, during an endorsed term, is by Delegated Authority.
- The grant of annual rental fees for community tenants, in accordance with Adopted Fees and Charges, is by Delegated Authority.

A quarterly 'For Information' Report will be presented to Council listing those tenure activities executed by Administration that comply with the approved Policy.

## **Availability of Policy**

This policy is available for viewing at the Alexandrina Council offices during normal business hours or copies can be provided to interested members of the community upon request and upon payment of a fee in accordance with Council's Schedule of Annual Fees and Charges.