

Leasing and Licensing of Council Owned Facilities Policy



1. POLICY STATEMENT

City of Marion may lease or license Council owned or managed land to meet Council's strategic plans based on community priorities. The aim of the policy is to make land and building facilities available to groups or organisations on a fair and equitable basis to meet community needs and support the optimal use of facilities.

2. CONTEXT

Council provides an extensive range of facilities from multipurpose sites with playing fields, halls, community gardens, commercial, tennis and netball clubs, kindergartens etc. Leases or licenses are provided to a diverse range of organisations ranging from small community groups, sporting clubs, state government agencies to commercial entities.

The Policy provides guiding principles and statements that will form the minimum negotiating position of Council as new leases are entered into for all organisations who occupy council owned facilities.

The aim of the Policy is to ensure an equitable and consistent approach to leases and licenses which encourages high utilisation rates, diversity of use and supports organisations occupying Council facilities to be sustainable.

3. VISION

Council will ensure facilities are fit for purpose and the term and conditions of leases are equitable, consistent, support good governance, accountability and optimise the use of Council facilities.

4. PRINCIPLES

The following principles guide the provision and management of Council owned facilities:

Community Benefit & Social Inclusion:

- Ensure Council-owned facilities are used to meet demonstrated community needs consistent with Council's policies and the Community Vision
- Optimise use of Council's community facilities and provides equitable and inclusive access by the City of Marion community
- Support and encourage diversity of programs and activities offered from Council facilities
- Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Marion;
- Encourage active and healthy lifestyles

Good Governance & Accountability:

- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear assessment criteria
- Ensure lessees pay fair and reasonable rentals based on established eligibility criteria and calculation methodologies

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- Facilitate a shared approach between Council and lessee as to the cost of management and maintenance of Council-owned facilities;
- Ensure lessees are accountable for meeting operational responsibilities for venue management and meeting agreed targets
- Ensure sound financial management and effective administration of community facility leasing and licensing.
- Ensure that Council-owned facilities are appropriately maintained as Council assets

Environmental Sustainability:

- Ensure Council facilities maximise the use of solar, energy and water efficiency initiatives to reduce the environmental impact
- Encourage and support Lessees to implement environmental initiatives

5. SCOPE

This Policy applies to the leasing or licensing of Council owned or managed land and facilities.

6. ELIGIBILITY FOR LEASE OR LICENCE

6.1 Council will enter into a lease or licence agreement with a *not for profit organisation*, once the organisation can demonstrate

- It is a not for profit organisation under Australian tax office definitions
- It is an incorporated/legitimate body under the auspice of an incorporated body or under the auspice of an incorporated body
- It has an Australian Business Number (ABN)
- It is financially viable by providing 3 years of annual financial statements to Council
- It complies with relevant legislation and regulations governing its activities
- It is able to demonstrate it will meet a community need
- It has good governance capability

6.2 Council will consider a lease or licence agreement, for a commercial organisation once the organisation demonstrates:

- It is able to demonstrate it will meet a community need
- It provides a financial benefit or return to Council
- It has the professional capacity and experience
- It does not generate income from gambling (including poker machines)
- It provides an economic benefit to the City of Marion

6.3 Council will consider a lease or licence agreement with a *school or kindergarten* where:

- The use does not impact on the broader community needs or result in a facility being used beyond its capacity
- Consideration is given to a contribution to the maintenance of the facilities used by the school, the level of contribution reflecting the level of use
- Fees are consistent with community fees, although a reduction could be considered to reflect the school's socio economic status
- A school, DECD or other education body have appropriately contributed to the capital development of the facility they will be provided with exclusive use
- The school or kindergarten has adequate insurance

7. ANNUAL FEE

Rent will be based on the market rate supplied by an external valuer appointed by Council. The fee will be provided to the organisation at the time of entering into a new lease or renewing the lease. Rent will increase annually by CPI and the market rate will be reviewed every 5 years.

Not for profit organisations will be eligible for up to 93% discount based on meeting the criteria for good governance, facility utilisation, social inclusion, volunteer management and environmental initiatives (refer Appendix 1).

Where a building is acquired by or gifted to Council consideration will be given to the terms of this arrangement when determining the annual fee. In this situation a contribution to the ongoing repairs, maintenance and renewal costs will be considered when determining the annual fee to ensure alignment with the market rate and subsidy.

A minimum fee of \$300.00 (excluding GST) per annum shall be payable should the market rate and subsidy be calculated at less than \$300.00.

The minimum fee of \$300 (excluding GST) per annum shall be payable by Community Gardens.

8. TERM OF AGREEMENT

Terms of agreement will not be greater than 5 years unless Council resolves to grant a longer term lease. In these circumstances consideration will be given to developing a management plan in partnership with the organisation which seeks to develop the facility long term.

Where a lease or licence is to be granted for greater than 5 years and is located on Community Land community consultation will be undertaken in line with the Local Government Act 1999.

Where the term of the lease or licence is to be less than 5 years, and Section 20B of the Retail and Commercial Leases Act 1995 applies, the Lessees or Licensee shall be required to provide Council with a certificated exclusionary certificate duly signed by the Lessee's or Licensee's solicitor waiving the minimum statutory term of five years in the form required by the Act.

This certificate must be provided to the Council prior to the Lessee or Licensee taking possession of the premises.

9. MAINTENANCE, REPAIRS AND REPLACEMENTS

A comprehensive list of building items will be provided to organisations when providing a Letter of Offer which will clearly set out responsibilities. Council will take responsibility for structural items in buildings this will include items relating to footings, floor (not including coverings), walls (not including applied finishes), roof members and cladding and provision of services to the external walls.

10. UTILITIES, OUTGOINGS AND WASTE DISPOSAL

Organisations will be responsible for the cost of all utilities, outgoing and waste disposal associated with their operations.

Council will work with organisations to assist them to implement environmental initiatives such as waste reduction, recycling and energy efficient practices.

11. WATER USAGE

11.1 Buildings

Where the lease or licence refers only to a building and there is no open space attached to the leased or licensed area then the Lessee/Licensee shall be responsible for the payment of all water and sewer charges levied against the leased area.

11.2 Open Space

Where there is an associated playing field that is accessible to the general community the lessee/licensee will be responsible for 10% of the cost of the water used. Where the facility is fenced or not accessible to the community the lessee / licensee shall be responsible for the payment of all water and sewer charges levied.

Council encourages water conservation techniques and when considered appropriate shall place a cap on the amount contributed by Council. The amount of the cap shall be determined at the time of negotiating a lease or licence by Council. Access to stormwater reuse will be encouraged.

Where there are shared meters on the site consideration will be taken on community access to the site and the proportion will be negotiated with the organisation to ensure it is in line with like facilities.

12. SPORTING GROUNDS AND COURTS

Council maintains playing fields that are open to the public for passive recreational activities.

There are some circumstances where Council may negotiate with a Club to take on the responsibility of maintaining sporting grounds which are specialist in nature such as bowling greens.

Council will work in partnership with tennis and netball clubs, peak bodies and other funding organisations when courts are required to be resurfaced. Clubs will be expected to contribute funds either through a combination of club funds, external grants or a loan from Council. In determining the club contribution consideration will be given where courts are made available for community use.

13. FLOOD LIGHTING

Council will be responsible for the regular inspecting of light poles and ensuring they are maintained; lessee and licensees will be responsible for the replacement of lamps.

Should a lessee/licensee seek to install new lights, they will be expected to make a financial contribution. Council will work in partnership with the lessee to seek external funding and/or negotiate a Council loan.

14. SUB-LETTING OR HIRING OUT OF LEASED FACILITIES

It will be a condition of the lease that all sub-letting arrangements will be in line with this Policy and that lessees must seek Council approval to the terms and conditions prior to sub-letting.

Where an organisation enters into a sub-licence for part or all of the premises to another club or a commercial activity, Council reserves the right to assist the sub-tenant in negotiating a sub-licence fee based on the nature and quantum of the sub-licence

Clubs are encouraged to hire out facilities to maximise the use of the facilities and to generate income to support them to be sustainable. It is expected that these rates do not exclude the community from being able to access them due to the cost

15. HARDSHIP

Where a Lessee/ Licensee is able to produce evidence that the fee will cause undue hardship (after subsidies are applied) then the Lessee or Licensee can make an application to Council seeking deferment or reduction of payment.

The City of Marion is under no obligation to accept such a request and will make its decision based on the financial position of the lessee or licensee at the time of making the application.

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16. GAMING MACHINES

Council does not support the introduction or increase of gaming machines in premises on Council owned land for any new Lessee or Licensee.

17. POLITICAL SIGNS

Advertising of political parties, Member of Parliament, Elected Members and candidates for Parliament/Council be prohibited on Council owned premises.

18. DEFINITIONS

Community Buildings – Buildings primarily available to facilitate community activities in line with Council's corporate strategies and community land management plans.

Community Club or Organisations – Organisations that are incorporated for the benefit of the community and any profit is distributed back into the facility and does not restrict its services to its members and provides one or more

Incorporated Body – Any Committee or Organisation that is incorporated under the Associations Incorporation Act 1985

Lease – Such agreements shall be used where the occupier has full and exclusive use of the premises.

License – Such agreements shall be used where the occupier does not have full and exclusive use of the premises

Maintenance – Means that facilities are maintained; in good repair and condition; conform to relevant legislation and codes; are free of graffiti and other acts of vandalism; and includes preventative maintenance approaches.

Non-community organisations – Organisations that are specifically a 'business' and are in business for the purpose of making a profit or which are so constituted that the assets may be distributed amongst the members of the organisations.

Open space – is leased outdoor facilities which is available for community use outside formal sporting use excluding sport related facilities such as clubrooms, storage sheds

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19. RELATED DOCUMENTS

The following key City of Marion policies and plans relate to leased and licensed facilities:

- City of Marion Community Vision – Towards 2040
- City of Marion 10-Year Strategic Plan (under revision)
- City of Marion Community Facilities Strategy – (under development)
- City of Marion 3-Year Business Plan 2016-2019
- City of Marion Development Plan
- City of Marion Long Term Financial Plan
- Asset Management Plans
- Community Land Management Plans
- Irrigation Management Plan
- Asset Management Policy
- Disposal of Land and Assets Policy
- Community Consultation and Engagement Policy
- Liquor Licensing Policy

20. REFERENCES

- Local Government Act 1999
- Real Property Act 1886
- Law of Property Act 1936
- Retail and Commercial Leases Act 1995
- Associations Incorporation Act 1985
- Disability and Discrimination Act
- Gaming Machine Act
- Liquor Licensing Act
- Development Act 1993

Policy Name and version no.	Leasing and Licensing of Council Owned Facilities Policy – V2.0
Last update	2017
Last Council review (report reference)	GC280317R02
Next review due	2020
Responsibility	Manager, City Property

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Annual Fee - Subsidy Criteria for Sporting and Community Organisations

Annual lease/licence fee will be calculated at up to 93% of the market rental rate of the leased area/s. Council will offer the following subsidies on the annual fee for not for profit organisations.

Subsidy Criteria	%
Good Governance The organisation can demonstrate; <ul style="list-style-type: none"> • Compliance with conditions of current or previous lease/licence agreements with Council • Provision of Annual General Meeting reports and minutes including financial reports (to be audited upon request) • Financial viability, have not incurred a debt with Council and have repaid any loans to Council in line with the loan agreement • Quality Management is integrated into operations - capacity building, good governance and planning etc., evidenced through provision of an annual business plan, current constitution, policies and procedures etc. 	33%
Facility Utilisation The organisation is able to; <ul style="list-style-type: none"> • Provide evidence of membership/user/participant numbers and hours of use on an annual basis. • Provide evidence of activities and initiatives undertaken to increase the utilisation of the facility • Initiatives planned to increase use or participant numbers • Evidence of shared use of the facility by the community and other community clubs and organisation to ensure optimal use of the facility 	30%
Social Inclusion The organisation can demonstrate; <ul style="list-style-type: none"> • The activity or service they provide is non-discriminatory and is open to all residents who meet stated criteria for participation. • The use of the facility will increase social inclusion, increase community participation and/or will promote health and well-being in the community • Activities support wider social inclusion targets 	20%
Volunteer Management The organisation can demonstrate that it promotes, supports and develops volunteers	5%
Environmental Initiatives The organisation can demonstrate that is promotes and implements environmental initiatives e.g. waste reduction, recycling, energy efficient practices including investments e.g. solar panels	5%
Maximum subsidy available	93%