

Guide for Leasing and Licensing of Sports and Community Facilities

Background Report

July 2020



Acknowledgements

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- Leah Cassidy, CEO Sports SA

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This background report is intended as background information only to support the preparation of a guide and does not contain legal advice. It is recommended users obtain legal advice specific to their circumstance.

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00 Executive Summary

Tredwell Management have been engaged to undertake research and consultation with Councils and the community to get a sound understanding of the current issues associated with letting of community facilities to sporting and community groups.

This background report includes the results of this consultation and desktop research, based on this research a guide for leasing and licensing (occupancy agreements) for sport and community facilities was developed. This guide will create a valuable resource for Councils when setting their policies, establishing an equitable fee structure, and the execution and ongoing management of their occupancy agreements.

The consultation process included two on-line surveys one for Councils and the other for the sporting and community groups that occupy community facilities. The aim of the surveys was to gain an understanding of the current state arrangements and the key issues facing Councils and tenants. A workshop was held with representatives from regional and metropolitan Councils to further discuss the issues and challenges relevant to matters such as the types of occupancy agreements, fee structures and property management processes. Another workshop was held with clubs to further understand their needs, the issues and challenges they face when liaising with Councils and occupying community facilities. Individual stakeholder meetings were also held with key industry bodies such as the Small Business Commission and the Local Government Association Mutual Liability Scheme to discuss key legislation that govern this process and the associated risks.

Research was undertaken at a State, National and International level reviewing key strategic documents, case studies and relevant background information developed through previous work conducted in this space. The benefits of sport, community and recreation facilities were analysed as well as current and emerging trends. Policy documents were reviewed from a range of councils in South Australia and interstate, as well as occupancy agreements including leases, licences, hire agreement and management agreements. Council fee structures including discounts offered were reviewed along with the services provided by Council and the governance structures used.

Throughout the consultation and research stages key issues, challenges and common themes were identified, including:

- Significant and ongoing benefits are generated through the provision of community facilities. Councils and the wider community value the benefits of providing community facilities.
- Community facilities can range from smaller, older, and dysfunctional buildings to new large highly functional and modern multi-use facilities.
- Councils are facing increasing expectations from clubs and the general community to provide higher standard of facilities and services.
- The increase in the number of larger and more sophisticated regional level community facilities is changing the way Council let and manage these types of community facilities.
- Policies, fee structures and services such as maintenance levels provided by Councils can vary considerably between Councils and in some cases within the same Council area.
- The level of progression varied considerably with some Councils not even having a current policy in place, whilst other Councils having had a policy in place for many years and are working towards leading practice governance and management.
- Councils are facing increasing pressure to recognise the community benefits and reduce or remove fees.
- Sporting clubs and community groups are mostly run by volunteers, these volunteers do not always have the skillset to manage the built facilities and playing areas and can regularly changeover with little or no handover from one volunteer to the next. These volunteers can find the occupancy agreement negotiations and ongoing governance requirements complex and onerous.
- Community tenants identified issues including lack of facilities, maintaining aged building to a fit for purpose standard and meeting the expectations of the community. Managing cashflow, increasing utility costs and increased governance reporting requirements were also identified as challenges.

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- Complex arrangements do exist within Councils, especially in relation to land ownership, for instance the Council built facility or playing area is on Crown land or private land. Community groups and sporting clubs may have self-funded the community facility initially or self-funded capital improvements. All these factors can add to the complexity of determining equitable and consistent Council policies, occupancy agreements and fee structures.
- The demand for facilities and playing areas is not consistent across Councils, for example some regionally based Councils may have built facilities and playing areas surplus to requirements due to ageing populations or declining/static population growth, compared to a metropolitan based Council that is facing increasing demand for the use of facilities and spaces from newly formed sporting clubs and community groups or existing sporting clubs and community groups that have an increasing membership base.

The following recommendations were identified and proposed to be included in the guide.

- Identify the key objectives of what Council is trying to achieve through making its facilities and playing areas available for community use, this will guide Council on how they write its policy. This should be in-line with Council's broader strategic planning directions.
- Consideration should be given at the policy development stage to the level of resources Council has available to manage facilities and support tenants.
- The occupancy agreement framework on page 19 of this report provides guidance on key topics for consideration when forming policies and occupancy agreements. These include strategic alignment, legislation constraints, financial consideration, risk management, governance, community use, demand drivers and Council provided services. Social, economic, environmental, and cultural sustainability factors should also be considered at this stage.
- There is likely to be no one occupancy agreement that meets the needs of all Councils and all facilities. Rather a selection of occupancy agreements that council can deploy based on the level of control the Council requires, amount of Council resources available to manage the community facility, type of community facility, tenant type, number of tenants using the community facility, tenure length and if the exclusive or non-exclusive use is required.
- Templates are available from the Local Government Association and it is recommended to seek legal advice on the preparation of the occupancy agreement.
- Fee structures may differ between Councils; however, Council should ensure wherever possible that its policy supports an equitable fee model noting this is a challenge given all the variables at play.
- Council can provide discounts and incentives to recognise the community benefit provided by tenant and achieve desired behaviours and outcomes.
- Tenant capacity is assessed at the commencement of the occupancy agreement to determine that the tenant and its use of the community facility is aligned to Council strategy and provide activities that benefit and engage the community. Further due diligence is recommended to review tenant's incorporation and insurance status, and assess the tenant has the skillsets within its organisation to manage the facility and maintain to a fit purpose standard.
- Sound property management process and ongoing accountability are key aspects Councils need in place to ensure community facilities are well utilised and well maintained. Property management can include tenant reviews, inspections, and key performance indicators, and a working in partnership approach is recommended.
- Council develop quality working relationships through the provision of services and will need to consider the resources required and ensure they have the available resources to offer the services.

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Glossary of Terms

The following terms are defined below for the purpose of the background report.

Term	Definition
Club	A club is defined as a group combining for a common purpose and is normally an incorporated not-for-profit association. They may have a focus on sporting, recreation, social, educational, environmental, arts, cultural and/or health and wellbeing activities provided for the benefit of the community. They are the most common type of tenants occupying community facilities owned and managed by Councils.
Condition	General and specific clauses described in the lease contract that are legally binding.
Council	A local government area constituted and managed in accordance with the Local Government Act 1999 (South Australia).
Community	Residents and visitors of the Council
Community facility	Council owned or managed buildings (e.g. clubrooms, halls, community centres) and playing areas (such as ovals, pitches, courts, bowling greens) that are provided to benefit the community. It also includes community facilities located on Crown Land under the care, control, and management of Council.
Ground lease	An agreement in which a tenant is permitted to develop land during the lease period, after which the land and all improvements are turned over to the property owner.
Lease agreement	An agreement where the tenant has exclusive use of a community facility for a set period.
Licence	An agreement giving official permissions to occupy a community facility for a set period, but the tenant may not necessarily have exclusive use.
Key Performance Indicator (KPI)	A quantifiable measure used to evaluate performance of set objectives.
Peak Body	An organisation that has membership of smaller organisations with allied interests. They are generally established for the purpose of developing standards and processes and to promote the interests of the members.
Management agreement	A contract signed between Council and another party, where the other party is occupying a community and sets out each parties' responsibilities.
Occupancy agreement	Occupancy agreements collectively describes all types of Council / Tenant agreements i.e. permit, licence, lease, and management agreements.
Permit /hire agreement	A permit is once-off or short-term use of facility.
Playing area's	An area set aside for sport, recreation, and community use such as sporting grounds, courts, and parks i.e. (ovals, tennis courts, bowling greens and pitches)
SEIFA	Socio Economic Indexes for Areas is an ABS index that ranks areas in Australia according to relative socio-economic advantage and disadvantage.
STARCLUB	An initiative of the South Australian Office for Recreation, Sport and Racing for use by sport and active recreation clubs for club development.
STARservice	A joint initiative of the South Australian Office for Recreation, Sport and Racing and the Department of Human Services for community group development.
Sub-lease	An agreement by the head tenant to another organisation which stipulates the negotiated fees/charges/conditions and times of use for the period of the agreement.
Tenant	The occupier of a community facility under an occupancy agreement.
Tenure	The legal right to occupy land or building for a period of time.

01 Introduction

Project Objectives

The two main project objectives as outlined in the project brief are:

- Identify local government and community leaseholder (tenants) needs in relation to the execution of an occupancy agreement for Council-owned sports and community facilities.
- Develop a leading practice Guide for Leasing and Licensing Sports and Community Facilities that meet the identified needs.

Background

In October 2013, the Office for Recreation, Sport and Racing (ORSR), formerly the Office for Recreation and Sport (ORS) engaged KPMG to review the impact higher utility costs are having on the sustainability of community sport and recreation organisations. This study identified the below key issues:

- lack of consistency in lease and licence agreements
- lack of understanding of true utility usage and costs
- lack of consistency across Councils regarding water arrangements with clubs, with each Council managing its own policies
- some Councils have no formal leasing agreements in place.

The KPMG report recommended “The ORS in partnership with the Local Government Association investigate opportunities to develop leading practice lease and licence policies/templates” and to be implemented as soon as practicable. In response to the KPMG recommendation, the ORS facilitated a workshop in November 2016 to identify guides and tools that are needed by Councils. The workshop was attended by over 75 participants from Councils across SA. The workshop identified that a leasing policy guide for Councils would be a highly valued resource, thus validating the KPMG finding. A survey was circulated to all Councils following the workshop. Only half of the respondents indicated their Council currently has a lease

policy and over 90 % of respondents indicated that they would be interested in the development of this resource.

During a period of “holding over” for all leaseholders, the City of Onkaparinga recently undertook community engagement with a broad range of leaseholders (sporting clubs, community centres and community halls) to identify their needs in relation in leasing Council-owned community facilities. This process identified that the community feel letting Council owned facilities can be complex, confusing, and potentially inequitable.

As a result of these triggers, the City of Onkaparinga sought and received funding from the Local Government Research and Development Scheme (LGRDS) and the ORSR to develop a Guide for Leasing and Licensing Sport and Community facilities.

Methodology

This methodology has been developed to ensure that the project incorporates relevant research, consultation and planning processes while meeting the brief requirements for the City of Onkaparinga, the Local Government Recreation Forum (LGRF) and the ORSR.

The seven-stage methodology is as follows:

- Stage 1: Project scoping and start-up
- Stage 2: Research
- Stage 3: Council and Community Engagement
- Stage 4: Preparation of draft guide
- Stage 5: Finalisation of draft guide
- Stage 6: Finalisation of all documentation
- Stage 7: Post project evaluation

This project is being managed by the City of Onkaparinga on behalf of the Local Government Recreation Forum and the Office for Recreation, Sport and Racing. Key stakeholders were identified at the start of the project to form a project steering committee. The role of the steering committee is to guide the project through the various stages and endorse progress to the next stage and to also provide their experiences and expertise in relation to this topic.

01 Introduction

Table 1 : Internal Stakeholders (Project Steering Committee)

Role	Name
City of Onkaparinga, Project Manager	Craig Hobart
Berri Barmera Council	Andrew Haigh
City of Prospect Council	Simon Bradley
Sport SA	Leah Cassidy

Community Centres SA, Recreation SA and ORSR were asked to be a part of the steering committee but declined. However, they will be engaged throughout the project's development.

The findings and outcomes of Stages 1 - 5 are presented together in this background report.

Throughout this background report leading practices are outlined, and this has been defined as:

- evidence based
- endorsed by a subject matter expert
- successfully implemented and ideally evaluated.

02 Strategic Context

Strategic Literature Review

A range of strategic documents and policy positions are relevant to the use of community facilities. Various national and state level documents are reviewed in this section with the key relevant information outlined.

Office for Recreation, Sport and Racing (ORSR) Strategic Plan

The ORSR strategic plan¹ has six key priority areas:

- Places and Spaces, South Australians have access to sport and recreation places and spaces that supports participation at all levels.
- Capacity and Capability, the people and organisations delivering sport and active recreation have the capability and capacity to deliver opportunities for participation and performance.
- Access and Opportunity, it is easy and enjoyable for all South Australians to participate at all levels and in all facets of recreation and sport.
- Sporting Excellence, South Australian athletes winning on the international stage.
- Investment, Investment in sport and recreation delivers value for South Australian economy and community.
- Business Performance, the provision of business support services supports ORSR to achieve strategic and functional outcomes.

Councils and the provision of their community facilities are an integral part of the ORSR achieving their strategy.

Office for Recreation and Sport Strategic Plan 2017-21



Office for Recreation, Sport and Racing (ORSR) State-wide Consultation Report

Burning issues identified in the ORSR consultation process that are highly relevant to this project include:

- facilities were lacking or unsuitable
- facilities need to support activities outside of those considered 'mainstream,' such as football, cricket, and netball
- existing facilities to be made more accessible and open for the use by multiple clubs or general public
- overall affordability and sustainability of club operations including paying utility bills and insurances and undertaking routine maintenance
- lack of volunteers, volunteer 'burn out' and challenges with retention, succession, and administration of volunteers.

02 Strategic Context

Australian Sports Commission Corporate Plan

Social and economic benefits can be challenging to quantify however the Australian Sport Commission has undertaken recent studies to better quantify the value of these benefits.

The Australian Sports Commission 2019-2023 Corporate Planⁱⁱ states there are close to 12 million Australians who participate in sport (this includes physical activity) annually, with a further 3.4 million involved in sport through volunteering, coaching, officiating, administration and other non-playing roles.

It is estimated that sport generates **2-3%** of our national GDP and 220,000 people are employed across the sport sector.

Australian Sports Commission Corporate Plan



The Value of Community Sport Infrastructure

The 2018 KPMG report The Value of Community Sport Infrastructure – Investigating the value of community sports facilities to Australia provides further data on quantifying value.

This studyⁱⁱⁱ estimated community sport infrastructure generates an annual value of more than \$16.2 billion to Australia, with \$6.3 billion worth of economic benefit, \$4.9 million worth of health benefit and \$5.1 billion worth of social benefit.

The \$6.3 billion worth of economic benefit includes the economic activity associated with:

- construction, maintenance, and operation of community sport infrastructure
- increased productivity of those who are physically active because of such infrastructure.

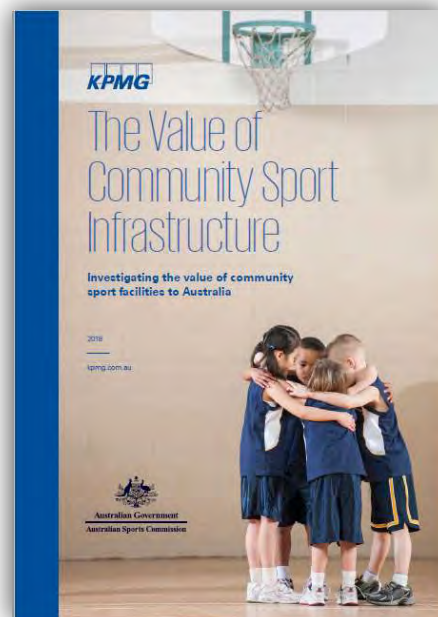
The \$4.9 billion worth of health benefit includes:

- personal benefits to those who are less likely to contract a range of health conditions which are known to be associated with physical inactivity
- the benefits to the health system from a healthier population.

The \$5.1 billion worth of social benefit includes:

- increased human capital resulting from the social interactions that are facilitated by community sport infrastructure
- Broader community benefits of providing “green space”.

KPMG The Value of Community Sport Infrastructure



02 Strategic Context

South Australian Regional Level Recreation and Sport Facilities Planning Guidelines

The Guidelines listed the current challenges in South Australia for providing sports infrastructure as:

- facilities are ageing and in need of redevelopment
- increasing expectations from sporting bodies and the general community to provide higher standard facilities
- pressure on open space
- increasing budget pressures.

To ease these challenges, the Guideline promoted “Regional level” sporting facilities.

Key attributes of Regional level sporting facilities include a fit for purpose facility for one or multiple activities, flexibility of use and caters for a catchment of one large local Council or multiple areas.

Facility management principles were identified to assist to create a consistent network of venues that can all meet similar objectives through their operations:

- Accessibility
- Sustainability
- Community benefit
- Accountability
- First class Service



Guidelines for Sustainable Management of Community Recreation Facilities

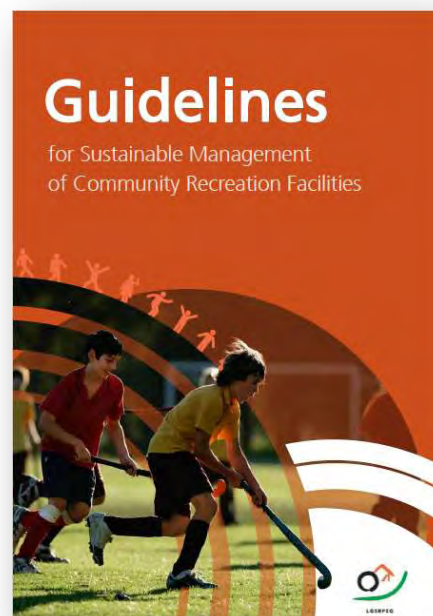
The Guideline provides a resource that Councils can use to ensure community clubs are viable, able to manage their facilities effectively, encouraging maximum community participation and provide a safe and healthy sport and social environment. Financial or Economic sustainability is the primary focus of the guideline, but social, environmental, and cultural sustainability is also addressed.

The Guideline identifies six primary models of management:

- Direct management by Council
- Committee of Management or Subsidiary of Council
- Licence agreement
- Contract management
- Lease agreement
- Shared management

and discussed factors to consider when choosing a management model.

The Guideline listed effective planning and preparation of key performance indicators as successful ingredients to improve sustainability.

















02 Strategic Context










Sport and Recreation Trends

A variety of reports and studies over recent times have identified a raft of trends that are likely to influence Australian sport and recreation over the coming years. These trends are outlined below.

Table 2 Sport and Recreation Trends

Trends	Description
	Increasing popularity of individualised sport and fitness activities (such as yoga, gym, aerobics, and jogging) that align with time-poor, increasingly busy lifestyles.
	Increasing popularity of adventure/ extreme/ lifestyle sports.
	Activities are becoming more geared towards ageing and more culturally diverse Australian population, changing both the types of sports we play and how we play them.
	Governments are increasingly incorporating sport into various policies to tackle a range of issues from childhood obesity through to community wellbeing & female participation.
	Higher salary levels at the elite level, placing pressures on less financially backed sports.
	Greater pressures on loosely organised community sporting clubs to become organisations with corporate structures and formal forms of governance.
	Rising cost of sport participation which is now becoming a barrier for some members of the community.
	Inactivity in children is growing, linked to a decline in sport in schools, less active commuting, increased screen time and changing recreation behaviours.
	Sport and physical activity opportunities will need to be diversified and expanded to meet the needs of the growing cohort of older Australians.
	Australians now have less time available for recreation, and a smaller proportion of that time is spent being physically active; traditional sport formats require a significant time commitment and may be adversely impacted by this trend.
	Sport is becoming increasingly professional & commercial; the benefits from this trend however are being shared unevenly, resulting in potentially negative impacts on 'smaller' sports, such as declining participation rates & reducing the diversity overall.
	Sport is being transformed by technology; social technologies have created online sports communities outside traditional club structures.
	The community's sporting and recreational preferences are continually changing over time, and this has a direct impact on how the sport, recreation and open space facility network will be utilised.
	Broadly speaking, participation rates in traditional organised sports are declining, with preferences trending towards activities such as walking and cycling/mountain biking and other informal recreation activities that can be undertaken as and when the participant desires, offering them greater flexibility and control.

02 Strategic Context

Trends	Description
	Modified formats of the more traditional organised sports are also increasing in popularity (e.g. T20, AFL 9s), as are other sports previously considered as extreme or niche interest activities (e.g. BMX and skateboarding).
	Technological advances have also introduced a wide range of fitness apps that promote participation in physical activity and provide a platform where the individual user can promote and compete against themselves or other individuals on specific challenges (e.g. Map My Ride/Run, STRAVA).
	The emergence of nature-based tourism and increasing visitor numbers will place additional pressures on certain open spaces across the region, particularly the extensive network of national parks, higher profile regional open spaces and other popular and accessible locations.
	The open space network plays a critical role in the facilitation of structured and unstructured sport and recreation. Open space is becoming increasingly linked to climate change adaptation policies, with forward planning required to ensure that open spaces are resilient to the challenges arising from climate change and adaptive measures implemented wherever possible
	Potential impacts of climate change include the risk of increased summer temperatures, prolonged periods of extreme/high temperatures and droughts, increased rainfall intensity and damaged infrastructure through extreme heat and flooding. All these factors will impact upon the delivery facilities and programs that support structured and unstructured physical participation.
	The emergence of female participation in traditionally male dominated sports has exploded in recent years. This is placing pressure on facilities both from a capacity (grounds/courts/ pavilions) and functionality perspective (e.g. changeroom design and access). Ensuring existing and newly developed facilities are universally accessible is essential and ensuring sporting organisations governance arrangements and cultures are inclusive and supportive of female participation.
	The Visitor Economy is now recognised at all levels of government as an intrinsic, sustainable, and driving part of economic development, creating long term improvements in the liveability of cities, towns and rural life and significantly improving the prosperity of Australian communities. The open space network, sport and recreation facilities form a critical component of the infrastructure that supports the Visitor Economy, facilitating access to visitor destinations and experiences, offering sport and recreation participation opportunities and playing host to a wide range of community events.
	Public/private/community partnerships with schools (private and public), private providers and across local/state/federal levels of government are essential moving forward to ensure resources are maximised and sustainable services are provided. Examples include publicly accessible school facilities and private public partnerships for the delivery of infrastructure such as stadiums and aquatic facilities.
	Asset management is a key requirement and focus of local government who own and control vast amounts of infrastructure including sporting facilities, open spaces, and recreation areas. Ensuring contemporary asset management principles are applied is a necessity as is identifying lifecycle costings for proposed new facilities.

02 Strategic Context

Outcomes for Local Government

Throughout South Australia, Australia and Internationally it is well recognised that sport, community, and recreational activities bring people together and provide opportunities for social interaction. Clubs provide a network and sense of belonging, drawing together people of different backgrounds, ages, religions, and cultures. Clubs foster community pride and are the hub of community life, especially for regional and rural communities and they bind families and communities through shared experiences.

Clubs create volunteer opportunities to develop life skills and leadership abilities, can create employment opportunities, contribute to lifelong learning, and assist with finding work/life balance.

Research studies have demonstrated that sport and recreational activities increase physical activity and promote a healthy and active lifestyle, reduces obesity, improves mental health, and eases pressure on the health system. Healthy workers are more productive and take fewer sick days. Kids who participate learn better and are more likely to enjoy school, and they provide positive alternatives to youth offending, anti-social behaviours, and crime.

Research study: Reducing the risk of anxiety and depression. A 2014 Australian study (Kremer et al^{iv}) found that higher levels of physical activity and lower levels of screen-based leisure time were associated with lower depressive symptoms.

Research study: “The Cost of Physical Inactivity” (KPMG-Econtech, 2008^v). This study presents a relationship between sedentary behaviour and a negative impact on productivity in Australia and estimates 1.8 working days per worker per year, at a cost of \$458 per worker per year.

Research study: “Learning to play and playing to learn; organised sports and education outcomes”^{vi}(Rosewater,2009). This study supported:

- participation in sport provides intellectual and academic benefits, improving brain function
- participation also encourages young people to stay in school for longer
- those who participate in sport have a better occupational status and earn higher wages.

Through the provision of community facilities Councils assist to sustain the environment through protecting open space and natural areas. Community facilities that are used regularly will require regular maintenance to retain value. High level of use and a diverse user base will be favourably viewed for grant and other funding requests, increasing the likelihood of capital funding for improvements.

There is also the opportunity for economic growth through business investment, employment, major events, and tourism.

A strong understanding of what Council is aiming to achieve through making community facilities available for use, will guide the direction of Council’s occupancy agreement policy, tenant selection and fee setting.

02 Strategic Context

Community tenants needs

Community tenants were consulted via an on-line survey and community workshop to identify their needs and what is important to them when occupying community facilities.

Community tenants include:

- Community groups
- Cultural groups
- Resident associations
- Sporting clubs
- Sporting associations
- Community organisations
- Volunteer NFP Boards
- Recreational groups

The needs of the tenants will vary dependant on location, size, and maturity of the club, but common needs include:

- safe and fit for purpose facilities
- safe and fit for purpose playing areas
- capital improvements
- facilities are well maintained, and any issues are timely dealt with
- open and regular communication with a Council contact
- equitable and affordable fees
- equitable access to facilities
- consistent lease conditions
- volunteer management training
- governance support
- grant and funding assistance
- assistance with multi-user management
- sub-leasing assistance

Consultation and current state analysis revealed that currently not all these needs are being met and common issues raised included:

- maintaining aged community facilities to a fit for purpose standard
- maintaining community facilities to meet expectations of the community
- managing cash flow to fund obligations for maintenance, services, and improvements
- increasing costs of utilities
- lack of facilities to cope with changing demographics and use requirements e.g. no female changerooms

- establishing a working relationship with Council
- managing duplicate requests for information from Councils
- identifying funding opportunities
- shared decision making over a facility.

International research

Research was undertaken to review the occupancy of community facilities in the United Kingdom and New Zealand.

The United Kingdom presented with issues like Australia, with aged facilities that were costly to maintain and not meeting the demands of the community. A key initiative undertaken by the United Kingdom is to increase usage of sporting and recreational facilities within the schools. School facilities are well used during the school days, but can be underutilised after school, on the weekends and during school breaks. Sport England, the public body responsibility for community sport has focused on making these school sporting facilities available to the community, this can either be managed through the school or by a third party.

Another initiative of Sport England is a Community Asset transfer. This is a shift in management and/or ownership of land or buildings from local authorities to communities (community and voluntary sector groups etc.) These have a long tenure, at least 25 years and can be up to 125 years, this allows security for the tenant and the ability to secure external funding and modify the asset to meet the community demands.

The issues in New Zealand were also similar with clubs struggling with lack of funding, decreasing members and fewer volunteers with the cost of running clubs and maintaining buildings increasing. New Zealand focused on creating sporting hubs to bring sports clubs together within a geographical area to share ideas, resources, knowledge, and skills. The focus of the hub is on collaboration, not amalgamation as it is important to clubs to retain their history and identity. Appendix 1 has further information and international case studies.

03 Legislation Background

Local Government Act 1999

The Local Government Act 1999 Section 36 states that Councils have the legal capacity to enter any kind of contract or arrangement.

If a facility is community land, section 202 provides as follows:

- (1) A Council may grant a lease or licence over community land (including land that is, or forms part of, a park or reserve).
- (2) Before the Council grant a lease or licence relating to community land, it must follow the relevant steps set out in its public consultation policy.
- (3) However, a Council need not comply with the requirements of subsection (2) if –
 - a. the grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less; or
 - b. the regulations provide, in the circumstances of the case, for an exemption from compliance with a public consultation policy.
- (4) A lease or licence is to be granted for a term not exceeding 42 years and the term of the lease or licence may be extended but not so that the term extends beyond a total of 42 years.

(4a) Subsection (4) does not prevent a new lease or licence being granted at the expiration of 42 years (subject to the other requirements of this Act or any other law).

- (5) A lease or licence may provide for –
 - a. the erection or removal of buildings and other structures for the purpose of activities conducted under the lease or licence.
 - b. the exclusion, removal or regulation of persons, vehicles, or animals from or on the land, and the imposition of admission or other charges.
 - c. any other matter relevant to the use or maintenance of the land.
- (6) A lease or licence must be consistent with any relevant management plan.
- (7) This section operates subject to the provisions of the Adelaide Park Land

Act 2005 in respect of the Adelaide Park Lands under that Act.

If the facility is upon “Crown Land” (within the meaning of Crown Land Management Act 2009), section 22 of that Act requires Ministerial consent to any lease of that land.

Discussions with the Local Government Association Mutual Liability Scheme (LGAMLS) highlighted that understanding the ownership of the land is a current challenge for Council and LGAMLS is working with Councils to better understand the classification of their land and risks associated with that land.

Retail and Commercial Leases Act

As per the *Retail and Commercial Leases Act (RCLA)*, a retail shop means – (a) business premises (i) at which goods are sold to the public by retail; or (ii) at which services are provided to the public, or to which the public is invited to negotiate for the supply of services.

It is due to this broad definition that the RCLA applies to most leases and licences entered by Councils as most leased’ sites include a food or beverage service and sales to the public.

There is the opportunity for Councils to obtain an exemption from the RCLA. This can be obtained as a blanket exemption for all community leases within one Council or obtained on an individual lease by lease basis.

An exemption can be sort by writing a letter to the Minister for Consumer and Business Services. This would be reviewed by the Small Business Commissioner prior to the approval granted by the Minister.

The letter should state why the exemption is being requested. The exemption can be requested on an individual lease basis or on a “category” of leases with the same characteristics.

03 Legislation Background

In 2014 a review of the RCLA was carried out (Moss Review) and one of the recommendations was to exclude leases to community groups and sporting groups. The Moss Review stated “There is no doubt that the Act causes government and local government a lot of trouble and expense... modest and worthwhile activities are caught by the act and the requirement upon government and local government to comply with disclosure statements and the other provisions of the Act are extremely onerous and discourages them from providing these community friendly activities.

If Council leases and licences were exempt from the RCLA this has the potential to reduce the administrative burden and complexity of lease agreements.

Consultation with the Office of the Small Business Commissioner on December 12, 2019 revealed that the Retail and Commercial Leases (Miscellaneous) Amendment Bill 2019 was passed. Of particular relevance is section 4, Application of Act which states that a municipal or district Council or other authority with powers and function of local government will be excluded from the Retail and Commercial Leases Act where the lessee is of a class specified by the regulations. Appendix 5 includes the relevant section of the Amendment Bill.

The Commissioner, John Chapman discussed the class is still to be defined to ensure that it covers the local sporting club or community group as it intended and is not overextended or has any unintended adverse impacts. He estimated that this will take at least six months with significant consultation with the Local Government Association (LGA).

Another amendment in the Bill that will have an impact is section 77, which will allow the Commissioner to approve any exemptions, previously this approval was required by the Minister. The Commissioner discussed he does not consider any exemptions unless the tenant or all tenants are comfortable and in agreement with the exemption.

Once the full impact of this change has been implemented, it is anticipated that this will provide Councils and their tenants with additional flexibility and less administrative

burden when executing lease agreements. Councils will have greater flexibility with the length of the tenure as the RCLA provides that retail shop leases must be for a minimum of 5 years, including an option to renew.

The RCLA states the lessor must provide the lessee with a Disclosure Statement before the lease is entered into and when the lease is renewed. A Disclosure Statement details some of the most important aspects of the lease including rent, rent reviews schedule of outgoings, term of the lease, option to renew, lettable area, tenancy mix, permitted use and many other details. The administration effort for Councils to provide the Disclosure Statements will reduce once Council leases are exempt and these statements are no longer required to be produced.

Retail and Commercial Leasing Guide



The Small Business Commissioner of South Australia has produced a Retail and Commercial Leasing Guide, which outline the practical aspects to the act. The Guide covers which leases are governed by the act and the rights and obligations of both the lessor and the lessee. Council can use this resource where they have leases that are subject to the Retail and Commercial leases act.

03 Legislation Background

Case Study: Mount Barker District Council RCLA exemption

In 2013, the Mount Barker District Council sort and received an exemption. The Minister for Small Business granted an exemption from the application of the Act to all the leases between the Council and various sporting clubs and community clubs. Mount Barker stated in their application that the RCLA restricted the manner in which Council manages these sites including the requirement to prepare and serve disclosure statements, the requirement that the occupancy arrangements must be offered for a minimum term of five years and the manner in which Council may agree with occupiers on how to undertake various maintenance and repair obligations.

Mount Barker District Council found these restrictions had an impact of how Council manage the expectations of various community organisations to secure other government-based funding for capital improvements to these facilities.

The exemption granted is from all provisions of the Act, except 9 (Dispute Resolution) and 12 (Miscellaneous) and only applied when:

- the rent payable is \$1/year (GST inclusive) or less and
- the Council clearly discloses this exemption in the lease.

Outcome

This allowed the Mount Barker District Council to move all their sporting and community clubs from leases per the RCLA to management agreements.

This resulted is a more flexible occupancy arrangement for both Council and the clubs.

04 Framework and Policy

Why does Council need a policy?

A leasing policy provides guidance for Council, current tenants and future tenants when entering into occupancy agreements for community facilities. An overarching policy will provide consistency and ensure that community facilities are used fairly, effectively and provide equitable access to the community.

The policy should be aligned to the Council's vision, strategy, and values, whilst optimising the use of community facilities to leverage social, health and economic outcomes.

What should the policy address?

The occupancy framework (Figure 1) was designed to assist Councils to identify key areas to consider when developing or amending a leasing policy. This framework was developed based research of leading practice policies.

The key areas to address when policy setting include:

Strategic alignment: Does the policy reflect the Council's strategy and clearly state the objectives of the policy?

Legislation constraints: Does the policy comply with all relevant legislation?

Finance: Is the fee structure equitable? Is the operating cost understood? Have community benefits been recognised in the fee model?

Risk Management: Have risks been identified and assessed? What risk mitigation processes are in place?

Community Use: Does the policy encourage multi-use and optimal use of facilities? Has the policy considered all types of users?

Property management: What management processes will be used throughout the tenure of the occupancy agreement? What due diligence is required to be undertaken when assessing new tenants? What reporting is required and when?

Council Services: Does the policy deem what services Council will provide to the tenant and what are the tenants responsibilities?

Occupancy Agreements: What are the key occupancy agreements to be used? (e.g. permit, licence, lease, and management agreements).

Demand Drivers: Have all demand drivers for users, built facilities and playing areas been considered? (e.g. participation rates, usage levels, demographics).

Sustainability of the community facility is important to ensure the community facility continues to be available for use. Sustainability of the community groups and sporting clubs is also important to ensure the community and sporting activity continues to take place. Social, economic, environmental, and cultural sustainability factors should all be considered when policy setting.

04 Framework and Policy

Occupancy agreement framework for community facilities

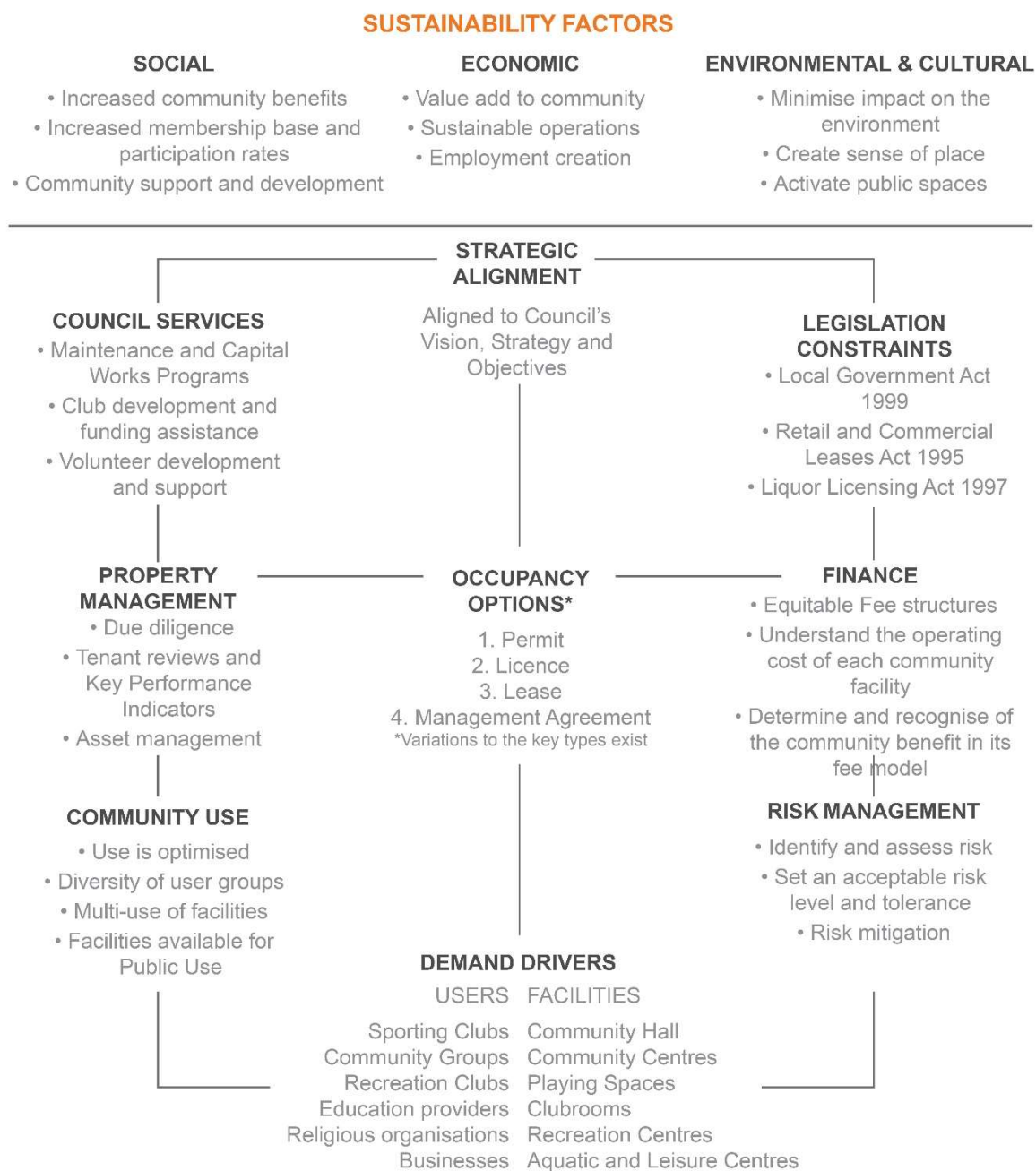


Figure 1: Occupancy Agreement Framework

04 Framework and Policy

Policy development process

Consideration should be given at the policy development stage to the level of resources Council has available to manage facilities and support tenants. Whilst additional property management mitigates risks, the cost of the additional administration time for Council and tenant needs to be acknowledged. Council

should be confident they have the resources available before implementing the policy. Smaller Councils may consider have a shared resource across one or more Council area.

The steps for developing a policy or modifying a policy are shown in Figure 2.

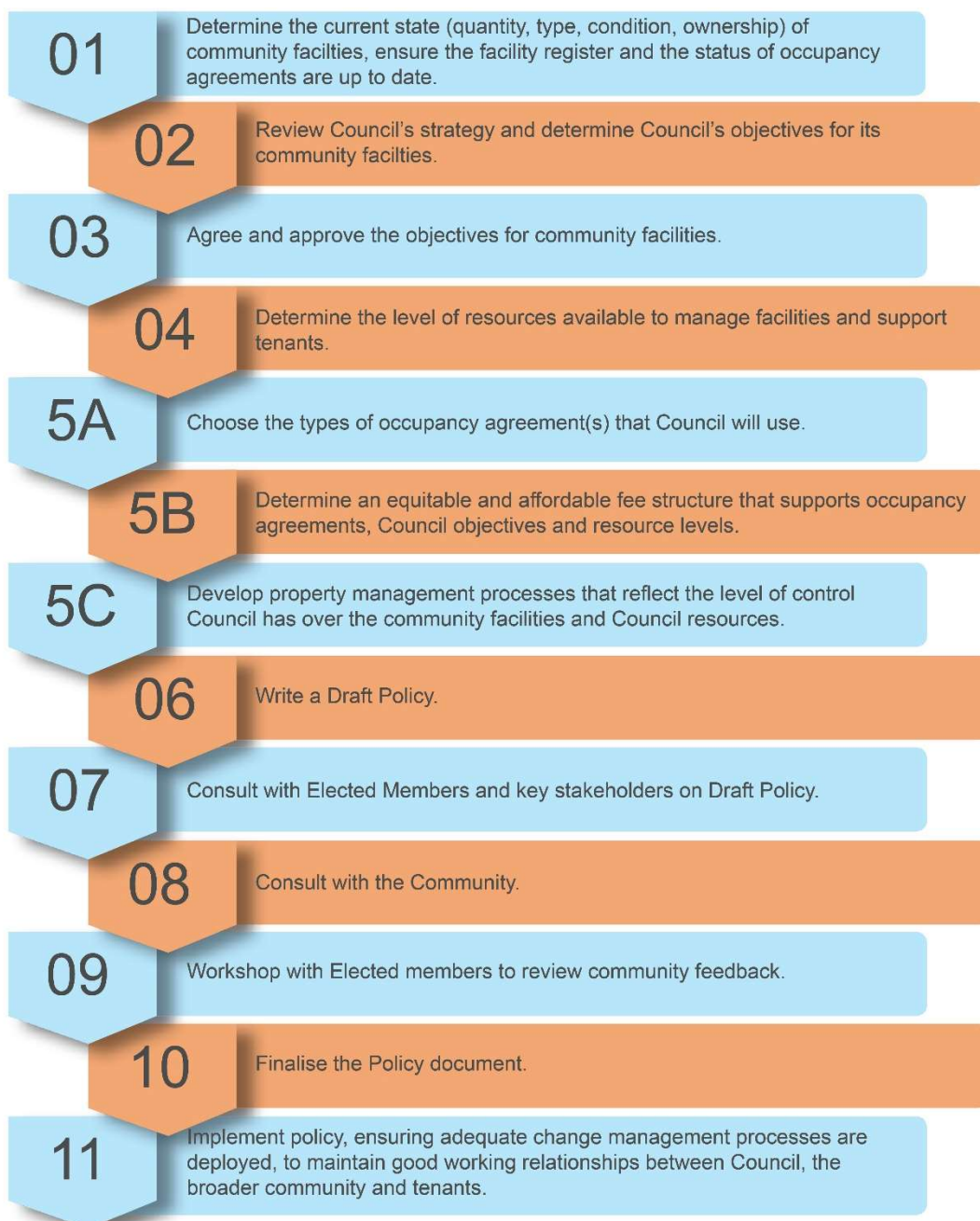


Figure 2 Policy development process

04 Framework and Policy

Examples of leading practice policies

Appendix 2 provides example policies from Mildura Rural City Council and the City of Marion Council. Both policies were provided as examples as they both have clear strategic alignment and provide a multi-facet fee model. Listed below are the attributes of each policy which we consider to be leading practice

The Mildura Rural City Council Leasing and Licensing of Facilities policy has the following attributes of a leading practice policy:

- Policy and principles statements clearly state the strategic objectives Council is aiming to achieve through use of community facilities.
- Policy references all applicable legislation.
- Policy contains a risk assessment reference
- Policy outlines very clearly and succinctly maintenance and occupational health and safety requirements.
- Policy provides an example of a pricing methodology that incorporates lower fees for co-location, lower fees when the tenant has contributed to the facility and lower fees based on the classification of community group.
- Policy includes clear guidance on sub-leasing and non-compliance that may led to eviction.

The City of Marion, Leasing and Licensing of Council owned facilities policy has the following attributes of a leading practice policy:

- Policy statement and objectives clearly state the strategic objectives Council is aiming to achieve through use of community facilities.
- The policy provides guiding principles under the categories of Community Benefit & Social Inclusion, Good

Governance and Accountability and Environmental Sustainability.

- Policy includes criteria for assessing tenant capacity.
- Policy references links to City of Marion Strategic plan and relevant legislation.
- Policy provides an example of a fee structure that rewards good governance, facility utilisation, social inclusion, volunteer management and environmental initiatives.
- Policy includes clear guidance on sub-leasing.
- Policy provides clear responsibilities for building maintenance, utilities, water usage and management of playing areas.

Framework and Policy Recommendations

Identify the key objectives of what Council is trying to achieve through making their facilities and playing areas available for community use, this will guide Council on how they write their policy. This should be in-line with the Council's broader strategic planning direction.

Consideration should be given at the policy development stage to the level of resources Council has available to manage facilities and support tenants.

The occupancy agreement framework on page 18 of this report provides guidance on key topics for consideration when forming policies and occupancy agreements. These include strategic alignment, legislation constraints, financial consideration, risk management, governance, community use, demand drivers and Council provided services. Social, economic, environmental, and cultural sustainability factors should also be considered at this stage.

05 Occupancy Agreements

Why do Council's need an occupancy agreement?

Councils require an occupancy agreement to ensure Councils and tenants have an agreement which clearly articulates the legal responsibilities of both.

The occupancy agreement will:

- provide full details of rent payable
- provide full details of the length of the agreement, including options to renew
- outline maintenance responsibilities
- outline other specific responsibility
- clarify specific termination clauses and dispute management.

Occupancy agreement types

Occupancy agreements can take a variety of forms. Commonly used occupancy agreements include:

- **Permit**, a hire agreement for once off or short-term use of a community facility.
- **Licence**, an agreement giving official permission to occupy a community facility for a set period, but the tenant may not necessarily have exclusive use.
- **Lease**, an agreement where the tenant has exclusive use of a community facility for a set period. Leases are often provided for longer terms e.g. 5, 10, 20 years.
- **Management Agreement**, a contract signed between Council and another party, where the other party is occupying a community facility and sets out each parties' responsibilities. In most cases Council pays a fee to the management body to provide services to the community. A management agreement can be used for community facilities where Council want to adopt a shared management approach.

There are also variants to these occupancy agreements:

- **Head lease**, a lease with one main tenant, who then sub-leases the community facilities to other tenants.

- **Sub-lease**, an agreement by the head tenant to another organisation which stipulates the negotiated fees/charges/conditions and times of use for the period of the agreement.
- **Ground lease**, an agreement in which a tenant is permitted to develop land during the lease period, after which the land and all improvements are turned over to the landowner.
- **Crown land lease**, a lease (or licence) of dedicated land owned by the Crown but under care and control of Council. Leases on Crown land will require Minister approval, except if native title rights have been extinguished or Council can demonstrate the lease will not impact native title rights and leases will not cause any new developments and is consistent with the purpose of the dedication or management plan.

It should be noted that regardless of what the occupancy agreement is named, if it takes the form of a lease then legally it may be viewed as a lease.

As shown in Table 3: Occupancy agreements control and risk profile, different occupancy agreements provide differing levels of Council involvement and Council control. Where Council involvement is higher, Council have greater control and knowledge of how the facility is being used. For example, a community hall may offer a once off permit, or have a regular permit user, this reduces the risk profile for this facility as Council has higher involvement and increased control and access to the facility. In the example of an exclusive lease Council have less control and involvement over the day to day use of the facility. As Council has less control the risk becomes higher for Council. Council then need to look for ways to mitigate the risk by ways of governance and property management. This may be by ways of regular reviews and inspections or the setting of formal key performance indicators.

05 Occupancy Agreements

There is likely to be no one occupancy agreement format that meets the needs of all Councils and all facilities. Rather a selection of occupancy agreements that Council can deploy based on the:

- level of control the Council requires
- level of the Council resources available to manage the community facility
- type of community facility
- tenant type
- number of tenants using the community facility
- length of tenure required
- whether exclusive or non-exclusive use is required.

Table 3: Occupancy agreements control and risk profile

Occupancy Agreement	Council Involvement	Council Control	Risk
Hire permit	Higher	Higher	Lower
Season licence	Higher	Higher	Lower
Management agreement	Lower	Higher	Moderate
Exclusive lease	Lower	Lower	Higher

Table 4: Occupancy Agreement Overview details the types of occupancy agreements, including the type of community facilities and tenants which are well suited to each occupancy agreement type. Table 3 also lists the advantages and disadvantages of each type.

Appendix 3 provides examples of commonly used occupancy agreement.

05 Occupancy Agreements

Table 4: Occupancy Agreement Overview

Occupancy Agreement	Timeframe	Community facilities most suited	Tenants most suited	Advantages for Council	Disadvantages for Council	Further Considerations
Permit	Once off or regular short-term use e.g. < than 1 year.	Community Halls Community Centres Ovals	Community groups Cultural groups Resident associations Private hirers Public	Accessible to wider range of community Higher control of community facility Regular access to community facility Minimal governance requirements Facility utilisation knowledge Ability to respond quicker to changing demands and trends Council can set KPI to measure performance	Administration cost/burden to manage bookings and fees Lack of long- term certainty over community facility utilisation Lack of certainty over community facility use/income stream.	Distinction required between Commercial and not-for-profit tenants.
Licence	Longer term than a permit and/or seasonal use	Shared community facilities Playing areas (e.g. ovals, pitches) Shared Clubrooms	Sporting clubs	Accessible to more than one licence holder at a time. Higher control of community facility Regular access to community facility Low administration/costs with bookings Facility utilisation knowledge Tenant can maintain specialist maintenance requirement such as line marking and turf preparation Access to community facility in-between seasons for scheduled maintenance. Greater certainty of community facility use Council can set KPI to measure performance	Tenants may not have the skillset to manage the community facility or the skillset of the organisation will change overtime. However, Council tend to have a greater management role than if it was a lease. Cost/resources associated in preparing complex licence agreement	

05 Occupancy Agreements

Occupancy Agreement	Timeframe	Community facilities most suited	Tenants most suited	Advantages for Council	Disadvantages for Council	Further Considerations
Management Agreement	Varied-Term management contract	Community centres Aquatic centres Sporting and Recreation complexes (multi-use)	Sporting associations Community organisations Commercial Venue Management Organisations Volunteer NFP Boards	Outsourcing the co-ordination of clubs and bookings Outsourcing the day to day maintenance of the facility Leverage specialist knowledge of management body Council can set KPI to measure performance.	Costs/resources associated in preparing complex management agreements Significant resources required to actively manage the agreement	Management Agreements can also be used where an exemption has been sought from the RCLA. Governance and property management measures will need to be considered to reflect Council control.
Exclusive Lease	Normally 5 or more years	Sporting clubroom Tennis Courts Badminton Courts Bowling Greens	Sporting Group Community Group Recreational Group	Lower maintenance responsibility for council as tenant has the responsibility for on-going maintenance. No administration requirements with bookings. Lower administration associated with longer term leases in lease renewal. Tenant has a greater sense of ownership. Council can set KPI to measure performance	Less accessible to the wider community. Lower knowledge of community facility utilisation Lower control over the maintenance and ongoing condition of the community facility Challenges to respond quickly to changing demands and trends. Tenants may not have the skillset to manage the community facility or the skillset of the organisation will change overtime. Difficult to change the conditions of the lease if required. Cost / resources associated in preparing complex lease agreement.	Governance and property management measures will need to be considered to reflect Council control.

05 Occupancy Agreements

Occupancy agreement tenure

There is further information Council needs to consider when formalising the tenure of an occupancy agreements. The tenure of the occupancy agreement must comply with the Local Government Act which states in chapter 11, section 202 (2) before the council grants a lease or licence relating to community land it must follow the relevant steps set out in its public consultation policy. (3) However, a council need not comply with the requirements of subsection (2) if – (a) the grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less; or (b) the regulations provide, in the circumstances of the case for an exemption from compliance with a public consultation policy.

The Local Government Act also states in chapter 11, section 202 (4) that a lease or licence is to be granted for a term not exceeding 42 years and the term of the lease or licence may be extended but not so that the term extends beyond a total of 42 years. (4a) Subsection (4) does not prevent a new lease or licence being granted at the expiration of 42 years (subject to the other requirements of the Act or any other law).

The Retail and Commercial Leases Act provides that a retail shop lease must be for a minimum of 5 years, including any options to renew. A lease can be for a head term of 5 years, or any combination that totals 5 years when including the options to renew. There are some exceptions to this requirement, including that the; lease is a short-term lease of 6 months or less, lessee has already been in possession of the premises for at least 5 years, lease contains a Certified Exclusionary Clause.

In summary a 5-year tenure (with an option to renew) is considered leading practice as it complies with both the Local Government Act and Retail and Commercial Leases Act and provides the tenant with the opportunity to get established. Other factors to consider when agreeing the tenure include the administration time associated with renewing occupancy agreements, new tenants, tenants with a history of non-compliance and facilities approaching end of useful life.

Occupancy agreement conditions

Council has the option to set criteria initially when the community facility becomes available for occupancy and Council advertise and seek expression of interest from potential tenants. Councils have a further option to include these conditions in the occupancy agreement, and to monitor compliance of these conditions through in-formal catchups or structured reviews.

Historically some clubs may not have met all conditions. Most clubs are run by volunteers and volunteers may not always be aware of all responsibilities or changing of club committee members may occur with no handover of information from one committee to the next. Limited resources and competing priorities are also contributing factors to why conditions may not be met.

Table 4 outlines the required high-level conditions to meet safety and legislative requirements for both Council and its tenant. To realise all the social and economic benefits associated with letting a community facility, additional conditions will likely be required. Examples of these additional conditions are shown in Appendix 2 in the example occupancy agreements and Template 1: Occupancy Agreement Checklist.

05 Occupancy Agreements

Table 5: High level conditions

Condition	Council	Tenant
Incorporation Status	Not Applicable	Tenant has a legal status (exclusions for permits) For incorporated associations that are prescribed (i.e. gross receipts of more than \$500,000 per year) they need to lodge annual financial records with either <u>Consumer and Business Services (CBS)</u> or the <u>Australian Charities and Not-for-profit Commission</u> – if they are a registered charity.
Liquor Licensing	The Council can place restrictions on if a liquor licence can be considered on the premise. The Council will require the tenant to comply with the conditions of its liquor licence.	A liquor licence is required to serve alcohol and there are different types of liquor licences. A Club liquor licence is required for organisations such as sporting clubs or service clubs who intend to sell or supply liquor at their club premises.
Insurance	Public Liability, Property Insurance. Facility owner is responsible for organising its own insurance for the community facility and to protect themselves from its own risks.	Public Liability, Associations, Property and Contents, Directors Indemnity and Glass Breakage insurance are normal requirements of tenants.
Building Standards	The premises must comply with relevant legislation and standards such as the Building Code of Australia and Disability Access	Cannot alter the premises without lessor approval and/or which results in noncompliance of relevant legislation and building standards.
Use of Facility	Must not permit use for anything that is illegal or immoral.	Must not use for anything that is illegal or immoral. Optimal use given individual demand factors.

Occupancy Agreements will contain further conditions to provide clear guidance to the tenant on its responsibilities and ideally in simple terms what they can and cannot do.

The South Australia Local Government Association has created templates to cover agreements for an occasional facility hire permit, on-going facility hire permit and recreational sporting facilities licence or leases (refer Appendix 3). Councils can include conditions that are specific to their situation and the type of facilities they own and intend to lease; normal practice is to have any occupancy agreements reviewed by a legal professional.

The feedback from consultation, included that clubs can find the occupancy agreements challenging to understand when it is a large document filled with legal terms. Councils should consider a succinct guide written in plain “English” to accompany the occupancy agreement to assist clubs understand their responsibilities. If Councils elect to develop a plain “English” guide it should contain a legal disclaimer that the guide must be read in conjunction with your occupancy agreement as there is the potential for tenants to only read the guide and not the full occupancy agreement.

05 Occupancy Agreements

The Brisbane City Council's community facilities guide is a good example of an easy to read and understand document and includes the follow sections from the perspective of the Council tenant.

What are my organisation's responsibilities if I have a lease?

- Pay your bills including lease preparation fees, Council's annual rent, expenses identified in your lease e.g. electricity, rates, water consumption and sewage.
- Hold current insurance policies including public liability insurance and building insurance (if applicable).
- Undertake regular operational maintenance.
- Conduct repairs and annual safety checks.
- Undertake annual inspections including electrical, pest and smoke alarms.
- Appoint a community liaison officer, develop a process to resolve complaints and get involved in communicating with your local community.
- Comply with all local, state, and federal laws.
- Use the facility for the purpose and during the time outlined in your lease.
- Meet with Council at least once a year, complete an evaluation form and provide copies of certificates of currency, licences, safety inspections and annual financial reports.

What are my organisation's responsibilities if I have a licence?

- Pay your bills including licence preparation fee's, Council's annual rent, expenses identified in your licence e.g. electricity.
- Hold current insurance policies including public liability insurance.

When should I contact Council?

- When there are changes to your office bearers and/or contact information.
- When you require emergency maintenance such as burst water main repairs.
- To obtain a copy of your lease / licence.
- If you are having trouble paying your bills



05 Occupancy Agreements

Template 1: Occupancy agreement checklist phrased as a list of questions can be reviewed by Council to ensure that its occupancy agreements includes all necessary conditions considering the type of community facility and the nature of the occupancy agreement.

Checklist Tips

- Seek Legal advice on preparation of occupancy agreements.
- Templates are available from the Local Government Association.
- Establishing a good working relationship with the tenant at the onset will be beneficial for both parties over the tenure of the occupancy agreement.
- Discuss the conditions verbally with the tenant in “plain English” to ensure all parties have a clear understanding of their responsibilities.
- Councils should offer potential tenants an induction meeting prior to signing of agreements, and when there is a changeover of signatories of the agreement.

Template 1: Occupancy Agreement Checklist

Fee	
	Is the fee amount clearly specified?
	Have all discounts, subsidies and incentives been explained?
	Is the fee renewal date and method stated?
	Is the invoice date and payment terms stated?
	Is the invoice date sent at a logical time for seasonal sporting clubs?
Tenure	
	Is the tenure of the agreement stated?
	What are the renewal options?
	Has a holding over condition been considered?
Costs (including Utilities and Rates)	
	What costs are the responsibility of the tenant?
	What costs are the responsibility of the Council?

	Have all the costs for utilities and services (use of telephone, light and other facilities and the consumption of electricity, gas, water) been considered?
	Is there are separate meter for utilities?
	Have all rates and taxes been considered? Is the Tenant required to reimburse these costs?
Use of community facility	
	What purpose can the tenant use the community facility for?
	What can the tenant not use the community facility for?
	Are there any management plans or guidelines the tenant is required to follow?
Hiring / Sub-leasing	
	Can the tenant sub-lease?
	If so, are the conditions clear on when and how they can sub-lease?
	Does it specify Council can be involved in negotiations of sub-lease?
	Can the tenant issue hire permits?
	If so, are the conditions clear on when and how they can issue hire permits?
Legal Compliance	
	Is the legal requirement of the tenant clearly stated? This may include but is not limited to complying with the provisions of all Acts, regulations, by-laws, all laws dealing with workplace safety, public health, public safety, fire safety and safety generally.
Liquor and Gaming Licences	
	Can the tenant obtain a liquor and gaming licences?
	Do they require Council approval?
	What are the responsibilities with having a liquor and gaming licence?
Maintenance and Repair	
	What maintenance and repairs are the responsibility of the tenant?
	What maintenance and repairs are the responsibility of the Council?
	Is a detailed maintenance schedule required?

05 Occupancy Agreements

Maintenance and Repair (cont.)	
	What is the process for Council requesting the tenant to carry out a maintenance activity, i.e. work must be completed within 14 days to the satisfaction of the Council?
	What is the process when Council must carry out a maintenance activity that is the responsibility of the tenant?
Pests	
	What pest control measures are required by the tenant?
Cleaning	
	Have the cleaning requirements been outlined for the tenant?
	What are the tenant's responsibilities regarding litter?
Structural work	
	What are the rules for structural repairs including erection and alteration of buildings?
	What is the process when Council is required to work on the community facility?
Council Access	
	When can Council enter the occupied community facility?
	What notice are they required to give the tenant?
	Have all exceptions been covered?
	Has the timing of reviews been scheduled?
Signs	
	Can the tenant display signage?
	Do the signs require Council approval?
Accidents and Hazards	
	Is the tenant required to notify the Council of any accidents and hazards?
	What is the process for this notification?
Security	
	Have the security requirements been clearly outlined?

Governance Documentation	
	Is the tenant required to supply the Council with a copy of its constitution or any rules and by-laws?
	Is the tenant required to supply the Council with any amendments to the constitution, rules or by laws of the occupier? What timeframe are they required within?
	Is the tenant required to provide a copy of the annual report?
	What are documents are required on request?
Insurances	
	Does the tenant have the required insurances? Public Risk, Property and Contents Insurance.
	Have the certificates of currency been sighted?
	How is this governed throughout the term of the lease?
	Is the Tenant required to notify Council of any insurance claims?
Indemnities	
	Does the agreement require indemnity clause?
	Are the limits on Council's liability specified?
Expiry or Early Termination of Lease	
	What conditions can result in early termination of the lease?
	What is the process for expiration or early termination?
Special Conditions	
	Are there any special conditions?
Disputes	
	Is there are clear process for handling disputes?
Damage or Redevelopment?	
	What is the process if Council want to redevelop the site?
	What is the process if the community facility is significant damages and cannot be accessed?

05 Occupancy Agreements

Sub-leasing

Occupancy agreements such as an exclusive lease provide the tenant with an opportunity to sub-lease out the premise on a regular basis or hire the facility out on an ad-hoc basis. Councils often encourage this practice as it ensures the facilities are well utilised and accessible to more members of their community. Councils tend to have one or more conditions in their occupancy agreements to require the tenant to:

- consider sub-leasing arrangements which enhance, complement, or diversify existing services for the benefit of the community.
- to seek approval from Council prior to entering into any agreement with another organisation for use of the facility, land, or infrastructure.
- A sub-lease must not be used to generate a profit from a community facility unless it is used to offset operational costs or contributions to a sinking fund for community facility improvement.
- In specific cases tenants may get blanket approval for single use hire i.e. special event hire of a facility.
- Council can reserve the right to assist the sub-tenant in negotiations.

Sub-leases are an opportunity for tenants to raise additional funds to operate the facility and, a way to demonstrate higher utilisation. In Council areas where the demand for facilities is high, and some find themselves without a facility, Council may work with existing tenant and new tenants to investigate potential sub-leasing opportunities.

Councils role in sub-leasing reflects the resource and risk profile of the council. In most instances Council request that the head tenant requests approval from the Council prior to entering a sub-lease arrangement. Council should perform due diligence upfront to assess the capacity of the sub-tenant as they would for a tenant.

Once the Council is satisfied that the sub-tenant activity is aligned to Council strategy

and the primary tenant has the capacity to manage the sub-tenant. The Council can delegate the day to day management of sub-tenant to the primary tenant. Property management practices including inspections, reviews and key performance indicators with the primary tenant should be expanded to include the performance of managing the sub-tenants.

Clear communication is required by Council to tenants to ensure they have a clear understanding that they cannot engage a sub-tenant on a handshake or informal agreement that Council have no knowledge of. The principles to be observed by Council as outlined in the Local Government Act include Council seek to ensure that Council resources are used fairly and to ensure equitable access to services, facilities, and programs. If Council has no knowledge of sub-lease agreements, there are potential risks that the community facility is being used unfairly and access is not equitable

Some more risk adverse Councils including the City of Burnside, community facilities are not able to be sub-let by the head tenant, however the lessee may offer ad-hoc hire of the facility in accordance with their lease agreement.

Councils that have a community facility in a more populated location, the opportunity may arise for the primary lessee to sub-let to a commercial tenant, examples of these can include a commercial coffee shop in a surf-club, or a commercial fitness operator at a sports club. A commercial sub-tenant will require commercial rates to comply with competitive neutrality principles. In these circumstances, it would be advisable for Council to lead the negotiations and have a closer role in management of the sub-tenant. This commercial rental income can contribute to a sinking funds and be reinvested into the facility.

05 Occupancy Agreements

Management agreements

Management agreements are often used where Council want to adopt a shared management approach.

Management agreements can be used for community centres and indoor multi-use sports complexes especially when the facility is being managed with a facility management company. Some of the factors for engaging a management company under a management agreement are:

- may have opening hours that clubs are not resourced to manage
- facility management companies can provide expertise and efficiencies from managing other or multiple facilities
- outsourcing the co-ordination of clubs which can be timely
- outsourcing of daily maintenance which can be significant with a larger facility
- outsourcing of marketing and reaching out to new users
- central point of contact for Council rather than multiple sub-tenants.

Consultation with the City of Marion Council revealed that having a management committee or board established to manage a multi-use overall site and undertake sub leases with the sporting clubs has resulted in issues that the board did not always serve the site as a whole but rather the individual representatives who were in attendance purely to serve the interests of their respective clubs only. City of Marion is seeking to move towards installing a facility management company provider to manage these facilities where there are multiple clubs (3 or more) on site.

Management agreements are also used where Council has sought and received an exemption from the Retail and Commercial Leases Act. Consultation with the Mount Barker District Council revealed once they had obtained an exemption from the Retail and Commercial Lease Act they moved away from leases and implemented management agreements with their sporting and community groups. Further details on the Mount Barker District Council Management Agreement is included in the Case Study: Mount Barker District Council Management Agreement.

Occupancy agreement recommendations

There is likely to be no one occupancy agreement format that meets the needs of all Councils and all facilities. Rather a selection of occupancy agreements that Council can deploy based on the:

- level of control the Council requires
- amount of Council resources available to manage the community facility
- type of community facility
- tenant type
- number of tenants using the community facility
- length of tenure required
- whether exclusive or non-exclusive use is required

Templates are available from the Local Government Association and it is recommended to seek legal advice on the preparation of the occupancy agreement.

05 Occupancy Agreements

Case Study: City of Holdfast Bay Third Party Venue Management

City of Holdfast Bay opted for a management agreement to maximise the use of the Kauri Parade sporting complex by a broader section of the community.

Council reviewed other options including Council directly operating the centre and creating a new single association from the original clubs occupying the buildings and grounds but decided on a Management agreement with a third party recreation specialist who could bring their expertise and boost the centre quickly and efficiently.

Outcomes

Key benefits for the Council included, outsourcing coordination of the clubs and daily maintenance of the facility with the possibility to optimise engagement with the community and create a return of investment by commercial activity.

Challenges arose with the Clubs having less flexibility over the function rooms; however, the rooms are now more accessible to the community. Financial results are still to be proven and currently Council are carrying all the costs.

Case Study: Mount Barker District Council Management Agreement

Mount Barker District Council obtained an exemption from the Retail and Commercial Leases (SA) 1995 ("Act"). This allowed the Council to move away from leases (consistent with the RCLA) with their sporting & community groups and onto management agreements.

Mount Barker District Council prepared a standard management agreement which created equity between the sporting & community groups and efficiencies with administration.

Outcomes

The Management agreement provided the Council will more flexibility with tenure, maintenance, and repair obligations.

The challenges involved with the roll-out of the new standard management agreement, included some committees finding the document "too legalistic" and some clauses were too onerous. Change management and relationship building with the clubs were key to implementing this change.

06 Equitable Leasing Fees Framework

Fee Models

Section 188 section (1) (a) of the Local Government Act states Council may impose fees and charges for the use of any property or facility owned, controlled, managed, or maintained by the Council. Furthermore section (2) states fees or charges under (1)(a) need not be fixed by reference to the cost to Council. The flexibility of the Local Government Act has led to a variety of fee models currently in use by Councils, and the fee model often reflects the type of occupancy agreement.

The fee model should align to the Council strategy and the outcomes Council is striving for when they make the community facility available for use however this is regularly not the case. For instance, a regional based Council may have a large number of aged community facilities that are not in high demand due to factors such as ageing populations, changing trends and preferences and in some cases declining populations, this results in sporting clubs and community organisations experiencing financial hardship and in many cases a “peppercorn rent” is agreed to. Whereas, a metropolitan Council may have new multi-use facilities that are in high demand by a growing population and the fee model may be based on market value, with subsidies provided for situations where there is high utilisation of the facility and demonstrated good governance.

Although it is recognised that different Councils have different community facilities (in various conditions and at different stages

of their lifecycles), demographics, economic conditions and overarching strategies results in fee models that vary to meet these different situations. Councils should however ensure wherever possible that their policy supports an equitable fee model noting this is a challenge given all the variables at play.

Ideally neighbouring Councils with similar conditions, demographics and facilities should also have similar policies as the consultation revealed that some clubs and organisations let similar facilities in neighbouring Councils within the metropolitan area and the annual fees paid for these facilities differ significantly between the two Councils, this then has flow on effects to how the user groups set their membership fees and is difficult to explain and justify to user groups. When Councils are considering their fee model, they can undertake a benchmarking exercise with those Councils adjoining them or of a similar size Council.

Table 6 depicts examples of different types of fee models that Councils use to calculate their fees and advantages and disadvantages of each model. It is not uncommon for a Council to use more than one type of fee model depending on the facility or the occupancy agreement and in a significant number of cases Councils do not have a fee model, with agreements being negotiated on a case by case basis, this often leads to inconsistency and inequity.

06 Equitable Leasing Fee Framework

Table 6: Advantages and Disadvantages of Fee Models

Fee Model	Fee is set...	Advantages	Disadvantages
Peppercorn Rent	At a nominal amount e.g. \$1 or \$100, on-going maintenance service is generally not provided by the council but managed by tenant.	Low fees place lower financial burden on tenant, allowing tenant to focus on community benefit. Simple fee model to administer invoices. Tenant may become responsible for more maintenance and outgoings.	Community facility may not be well maintained. Low Council rental revenue which limits the resources that can be reinvested back into the community facility to improve its performance.
Percentage of Market Value	As a percentage of market value. Maintenance will be provided by Council or per occupancy agreement conditions.	Fee is objective and has a direct relationship to the value of the community facility. Higher Council rental revenue which can be reinvested back into the community facility or support tenant services.	Fees can be very high and place some sporting and community groups under financial pressure. Requires market value appraisals and increased administrative burden.
Percentage of Capital Replacement Value	As a percentage of capital replacement value. Maintenance may be provided by Council or per occupancy agreement conditions.	Fee is objective and has a direct relationship to the value of the community facility noting a community facility may be run down and does not function as a new facility may. Higher Council rental revenue which can be reinvested back into the community facility or support tenant services.	Fee can increase considerably when community facility reach end of life and a new community facility is built with higher capital replacement value.
Percentage of Maintenance costs	As a percentage of maintenance costs. Maintenance services provided by Council.	Fee is objective and has a direct relationship to the on-going cost of maintaining the community facility.	Fee can be resource intensive for Council to calculate and some maintenance activity would need be annualised. It is also difficult in some situations to identify the maintenance costs specifically attributed to the tenant.
Schedule of Fees	A set schedule of fees that reflect an hourly/ daily rate etc. Maintenance would normally be provided by Council.	Equitable Fees Structure available for all to view and endorsed by Council.	A complex fee schedule can add resources. There may be no clear rationale for the level of fees set.
Fee per square metre	As a per square metre fee and charged against the total floor area of the community facility (buildings). Maintenance services can either be funded by the Council and on-charged or maintenance can be managed by the Tenant.	Fee is objective and has a direct relationship to the size of the facility. Fee does not reflect capital replacement cost or market value. So, the same size building will attract the same size fee regardless of location. Higher Council rental revenue which can be reinvested back into the community facility or support tenant services.	Fee reflects size of facility only and does not take into consideration the value of the facility, i.e. a tenant with a new facility would pay the same as a tenant with an older facility of the same size.

06 Equitable Leasing Fee Framework

It is not unusual for Councils to apply a combination of the above fee models. They may also apply one or more of the above fee models to playing areas as well as buildings. For example, Council will often maintain sporting ovals to a higher standard than they would for a passive recreation reserve, as the oval is still available for public use the fee can be set as the maintenance cost differential between maintaining the oval as a reserve and the level of maintenance required as a playing space. The fee could be a percentage of the maintenance cost differential or the entire amount. In the instance where the playing area is no longer available to the general community (e.g. bowling greens and tennis courts which are fenced off) they are likely to be fully or partially maintained by the club, but Council may provide a financial contribution to assist with resurfacing etc.

For community halls and community centres they are more likely to use a schedule of fees where community groups have access to the facilities for a set time and would pay the required hourly or daily rate required. This may be managed directly through the Council or some community halls and centres will have a paid manager or management committee that oversees the day-to-day operations of the facilities.

When Councils are determining and setting their fees, they normally consider the level of community benefit provided by the prospective tenant to establish the level of discount they apply. Often the greater the recognition of community benefit, the lower the occupancy fees are set for the tenant.

Discounts / Subsidies

Consultation revealed that discounts and subsidies are common within a Council fee structure where Council has a policy in place. These discounts and subsidies can be applied for different reasons, such as club owned equity (where the club has contributed to the capital development/improvement of the community facility), good governance, financial hardship, diversity of services and programs offered, specialist programs or to assist in meeting utility costs. It is not expected to have all these discounts available to tenants in all cases, but to consider the

application of a discount/s that reflects Council's objectives for making the community facility available for use.

Discounts based on Club Equity in Council built facility

Some sporting and community groups may have self-funded the initial build of their clubroom or facility and thus have equity in the community facility that is on Council land or they have self-funded a capital improvement. These sporting and community groups seek their contribution to be recognised. The two below case studies provide examples of how club equity in community facilities can result in lower fees. In the example of City of Charles Sturt, the club equity is excluded from the value of the building in the fee calculation, whereas Mildura Rural City Council reduce the overall fee where the percentage reduction is based on the amount of club equity.

Case Study: City of Charles Sturt

Charles Sturt Council base its rent on 2.5 % of Council's equity in the building as per its current book value with no rent being charged on the equity apportioned to the club.

Any capital works in excess of \$5,000 undertaken on the building by Council will change the equity percentage that Council owns.

City of Charles Sturt policy states that where a club is deemed to have 100% equity in a building, maintains the building in line with relevant legislation and successfully complies with building audits, no rent applies.

Outcome

City of Charles Sturt tenants who have invested their own funds into their facility have their fee reduced recognising their efforts and contribution to the facility.

06 Equitable Leasing Fee Framework

Case Study: Mildura Rural City Council

Mildura fee structure is based on 3% of replacements value and provides discounts based on category of tenant, financial circumstance, and co-location.

Clubs are then required to provide evidence of how much they have financially contributed to the construction of the facility. Groups contributing in excess of 75% are charged only 25% of the fee, in excess of 50%, charged only 50% of the fee, contributing up to 50%, charged 75% of the fee and with no contributions are charged 100% of the fee. Mildura is an example of how multiple subsidies are applied in practise.

Outcome

Mildura Rural City Council tenants who have invested their own funds into the community facilities have their fee reduced which recognises their efforts and contribution to the facility.

- Regular reviews and inspections
- Compliance with agreed objectives or key performance indicators.

When tenants do not comply with their occupancy agreements, it can be very challenging for Council to rectify compliance breaches. This non-compliance may be a breach of the agreement and could result in eviction, yet eviction may be unlikely as the tenant is often providing a benefit to the community in some form and it may not be in the best interest of the community or council to terminate the agreement. Discounts for good governance is a method for rewarding sporting and community groups who are complying with their agreements and encourages others who are not.

Discounts for increased Facility Utilisation

A common key objective for Councils is to ensure that the facilities are well utilised. Some facilities may have very little use during the day and only used in the evenings and on weekends, these facilities have potential to be used by other sporting and community groups or even schools during the day. Examples of measuring facility utilisation include:

- 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 clubs to ensure optimal use of the facility e.g. sub-letting to other community groups.

Discounts for Good Governance

Council may have an objective that rewards tenants for good governance. Examples of good governance can include.

- Compliance with conditions of current or previous lease/licence agreements with Council
- Provisions of Annual General Meeting reports and minutes including financial reports (to be audited upon request)
- Financial viability i.e. has 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. evidence through provision of an annual business plan, current constitution, policies, and procedures.
- Demonstrated evidence/accreditation of sustainable strategic planning and on-going volunteer training and management (e.g. STARCLUB, Good Sports etc).

06 Equitable Leasing Fee Framework

Discounts for Social Inclusion

Social inclusion and a sense of belonging is often a component of Council strategy and is important to local communities. Some Councils will provide discounts for demonstrating social inclusivity. Examples of measuring social inclusivity include:

- The activity or service they provide is non-discriminatory and is open to all residents who meet the 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 which may include such groups as; Low socio-economic background, older adults, Aboriginal and Torres Strait Islanders, Culturally and Linguistically Diverse (CALD) communities, children and young adults, people with disabilities, activities provided for females multicultural initiatives, Diversity of gender in membership/participation and Committee/Board representation.

Discounts associated with financial hardship or SEIFA index

Some sporting and community clubs may face financial hardship, and in some cases, Councils can use their discretion to negotiate the fee with the club. Council may have the resources to work with the organisation to assist them with financial viability. One example provided during consultation was that Council assisted a club that was having difficulty paying the fees to maintain the oval by approving a sub-lease for a group fitness business (commercial) and the fees received from the sub-lease went directly back to the Council to reduce the outstanding fee's owed.

Socio-Economic Indexes for Areas (SEIFA) is an Australia Bureau of Statistics index that ranks areas in Australia according to relative socio-economic advantage and disadvantage. Council who have clubs operating in areas with a lower SEIFA index, can consider discounting their fee based on this index.

Discounts associated with Utilities

The continual rise in the cost of utilities, places additional pressure on the clubs and community groups occupying community facilities. Clubs that are paying for water and maintenance of community facility may receive a subsidy from Council for the expenditure incurred if they are seen to be providing a positive contribution to the community or where the cost is high. This could be linked closely with the discount offered for good governance, and they may be required to meet governance criteria to be eligible for the discount. Other strategies are also implemented to ensure that utilities are being efficiently used including adaptive use of new technologies (e.g. LED lighting and solar systems).

Incentives

Discounts are most effective for a Council with a fee model that has resulted in higher base fees. Where Councils preferred fee model, is peppercorn or a lower schedule of fees there is not the same opportunity to provide discounts. In this situation, an alternative to providing discounts linked to desired outcomes is to provide incentives linked to desired outcomes.

Incentives can take the form of either a contribution to a sinking fund, an annual financial contribution to assist with running costs or a contribution to purchase specific equipment or fund a specific program.

Incentives can be linked to good governance practices or Key Performance Indicators (KPI). Mount Barker District Council fee model is based on a peppercorn rent of \$1. However their clubs received a financial contribution upon receipt of their business plan, financial statements including a profit and loss statement and bank balances and a certificate of compliance with the required forms attached detailing that they have had fire extinguishers, RCD's, smoke alarms and testing and tagging of electrical equipment carried out. The financial contribution is applied at one rate for sports clubs, hall, and institutes. A higher rate is set for sports recreation grounds.

06 Equitable Leasing Fee Framework

Council fee invoicing

Councils will invoice all tenants in line with the conditions outlined in the occupancy agreements. Where the tenant has received a discount, it is considered leading practice to invoice at full rate and deduct all discounts provided to arrive at the net fee payable. If the flexibility of the financial reporting system does not allow this, then the discounts should be detailed by way of a note or a cover letter.

This method is considered leading practice as it clearly shows to the tenant, that Council values the social and economic benefits the tenant contributes to the community. The Council would also have the reporting capacity to quantify the discounts provided by tenant. If the tenant also receives a discount to it Council rating this should also be clearly shown.

For seasonal sports, consider the timing of when invoices are raised and sent to the tenant, for instance a cricket club do not want to receive an invoice over winter in their off-season.

Council rating exemption and rebates

The Local Government Act governs when Councils can charge rates to lease holders, this is in addition to the occupancy fee. Land which is occupied under a lease, licence or permit granted by a Council and is used by the occupier for the purposes of sport or recreation is exempt from rates per the Local Government Act and the Recreation Grounds Rates and Taxes Exemption Act 1981.

The Local Government Act also allows for a rebate of rates at 75% (or, at the discretion of the Council at higher rate) for community service organisations. The Act defines community service organisations as an incorporated not-for profit that provided community services without charge or for a charge that is below the cost to the body of providing the services.

If the tenant also receives a discount to it Council rating this should also be clearly shown.

Equitable Leasing Fee Framework Recommendations

Council should ensure wherever possible that its policy supports an equitable fee model noting this is a challenge given all the variables at play.


Council can provide discounts and incentives to recognise the community benefit provided by tenant and achieve desired behaviours and outcomes.

Invoice fee at full rate and deduct all discounts provided to arrive at the net fee payable.

06 Equitable Leasing Fee Framework

Figure 3: City of Marion Subsidy Criteria

Leasing and Licensing of Council Owned Facilities Policy



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 which may include such groups as: <ul style="list-style-type: none"> - Low socio-economic background - Over 60's years of age - Aboriginal and Torres Strait Islander - Culturally and Linguistically Diverse (CALD) - Children Under 17 years of age - Physically and intellectually disabled - Female participation in sport 	20%
Volunteer Management The organisation can demonstrate that it promotes, supports and develops volunteers	5%
Environmental Initiatives The organisation can demonstrate that it promotes and implements environmental initiatives e.g. waste reduction, recycling, energy efficient practices including investments e.g. solar panels	5%
Maximum subsidy available	93%

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Category: Public
 Owner: Manager City Property
 Authorisation Date: 28 March 2017 GC280317R01
 Review Date: 2021

Case Study: City of Marion

City of Marion Council adopted a new Leasing and Licensing policy (Figure 2) with all leases being rolled onto this new policy upon expiry. Tenants may be eligible for up to 93% discount on the open market rental valuation. Appendix 2 contains City of Marion, Leasing and Licensing of Council Owned Facilities Policy.

Most of the City of Marion Tenants are not-for-profit organisations or committees formed from sporting groups that use a facility and most qualify for the full 93% discount.

Outcome

Marion Council have found they are now working much more closely with tenants and clubs with regular property inspections and meetings to assist them in areas of governance and club development since the implementation of the new policy.

Case Study: Plympton Sport and Recreation Club

Plympton Sport and Recreation Club is one of the sporting clubs within the Marion City Council comprising cricket, football, soccer, and social clubs.

Upon initial request of the annual fee subsidy criteria for sporting and community organisations the Plympton Football Club President was unsure of what was being asked of the club, why it was important and what impact it would have. However, the President presented this to one of the club members with a background in Council and Property management who could assist the President to provide the required information.

Outcome:

Plympton Football Club could meet the request of the Council and received the 93% discount in full.

06 Equitable Leasing Fee Framework

Figure 4 Mildura Leasing and Licensing

Appendix 1 Pricing Methodology for Community Lease Agreements		
The following matrix indicates the methodology to be used to calculate the appropriate fee for each Lessee by allowing for the specific circumstance of individual organisations.		
A	Categories of Occupancy	Full Lease Fee
	Full lease fee = 3% of the replacement value as determined by a Valuer.	\$
B	Categories of Tenant	% Lease Fee
B1	Community Groups Category 1: Tenants who: <ul style="list-style-type: none"> have a liquor licence held on the premises; AND hold a Food Registration Certificate on the premises; AND hire their facilities for functions/social events; OR charge entry to the premises. 	17%
B2	Community Groups Category 2: Tenants who: <ul style="list-style-type: none"> have a liquor licence held on the premises; OR hold a Food Registration Certificate on the premises; OR hire their facilities for functions/social events; OR conduct sporting activities for members and guests. 	14%
B3	Community Groups Category 3: Non-sporting groups who provide a community service and are predominately volunteer based, excluding Historical Societies and Kindergarten / Preschool leases.	5%
C	Financial Circumstances (Evidence to be Provided)	% of Lease Fee
C1	Group contributed \$0 to the construction of the facility	100%
C2	Group contributed up to 50% towards the construction of the facility.	75%
C3	Group contributed in excess of 50% towards the construction of the facility.	50%
C4	Group contributed in excess of 75% towards the construction of the facility.	25%
D	Co-location	
D1	Tenant has exclusive use	100%
D2	Tenant is co-located with another group.	50%
Rental Calculation AxBxCxD (equals GST exclusive amount)		\$
<i>Note: Minimum rental \$225 per annum plus GST</i>		Plus GST

Case Study: Mildura Rural City Council

Mildura Rural City Council recognises that there is an overall social benefit for the community to enable the use of Council owned and managed land and facilities by organisations that provide recreation and sporting opportunities, or other community services.

These services enhance the quality of life and wellbeing of our municipality in support of the objectives set out in the Community & Council Plan.

Mildura (Figure 3) calculate its fee as $A \times B \times C \times D$ where.

A is the 3% if the replacement value

B is the category of tenant

C is financial circumstances (club equity) and

D is co-location.

The Mildura Rural City Council have set a minimum rental \$225 per annual.

Outcome

The Council have achieved a multi-facet formula for calculating lease fees which is aligned to its objectives and incorporates lower rentals for co-location, lower rentals when the tenant has contributed to the facility and lower rentals based on the classification of community group.

07 Property Management

Property management processes

Property management processes will mitigate risks for Councils associated with making community facilities available for use by the community. Property management processes will provide Councils with confidence that the tenants are maintaining their facilities and Council are achieving their planned objectives.

When considering property management processes, it is important to consider how much control and involvement Council currently has over the occupied facilities. For instance, if the tenant has a long-term exclusive lease then Council will want to ensure effective property management is in place prior to signing over the community facility.

Information requests from tenants should be efficient to capture, report and submit. This could be through use of on-line forms, however as not all Councils would have this capability the data could be captured through other means such as PDF forms or spreadsheets.

Pre-assessment of a potential tenant

Allocating the community facility to an organisation is an important step in the process. Council should seek to ensure the process is equitable, timely and considers Council's strategic objectives.

Leading practice is to have an Expression of Interest (EoI) process or something similar, which assesses the applicant on a pre-determined set of criteria. Initially Council should review the community benefit that the tenancy will offer and their proposed use of the community facility. Due diligence on the potential tenant should be completed prior to entering into an occupancy agreement.

Once Council is satisfied that the tenant and their use of the community facility is aligned with Council's strategies and is providing community activities that benefit and engage with the community, Council can then assess the tenant's capability to maximise use of the

community facility, keep the facility well maintained, undertake capital improvements and address the tenant's governance structure and ability to comply with Council's requirements.

The below criteria could be considered as part of the EoI process.

- Is the applicant incorporated?
- Does the applicant have public liability insurance and if so, is it at the required level?
- History of tenancy with the applicant?
- Can the organisation demonstrate that it can meet key performance indicators or objectives set by the Council?
- Is the facility a suitable fit for the applicant (e.g. is it an appropriate size, functionality, and suitable location)?
- Will the applicant promote the shared use of the facilities, activate, and optimise utilisation of the facilities and resources?
- Does the organisation currently maintain the facility well or can it demonstrate that it will improve and adequately maintain the facility?
- Can the organisation meet the key performance indicators or objectives set by Council?

Brisbane City Council provide a very easy to read and clear objectives and process for interested party looking to lease a Council owned facility.

07 Property Management

Case Study: Brisbane City Council

Brisbane City Council as part of its community facilities guide provide clarity to its local community of its objectives for allocating a community facility.

When allocating a community facility Councils seek to:

- promote equitable access to facilities for a range of community, sport, recreation, and cultural organisations
- provide positive benefits and values to the community
- ensure the use of community facilities is aligned to the Brisbane Vision as well as Council's strategies, legislative requirements, and regulatory frameworks
- increase the health, social wellbeing, and community life of the city
- ensure the facilities are not used for political gain, places of worship or activities that support violence, intolerance, or discrimination
- promote optimal use of community facilities in co-operation with residents and community organisations
- work in partnership with community organisations to ensure that the development and management of community facilities reflects community need and best practice
- encourage community development by providing community organisations with facilities and other resources to deliver their activities.

Outcome: Brisbane Council and Community have a clear and consistent set of objectives that are readily accessible on the Council website.

07 Property Management

Tenant capacity checklist

Template 2: Tenant capacity checklist can be used to determine the suitability and capacity of organisations as potential tenants prior to Councils executing any occupancy agreements.

Checklist Tips

- ✓ Use the checklist not as a roadblock but as a tool to determine the capacity of a tenant, which may assist to determine which occupancy agreement is the best fit and what support the tenant may require going forward.
- ✓ In Councils where demand for facilities are high the ability of the organisation to share the facility and provide accurate usage of records is more critical than in Council where the demand is lower.
- ✓ Request organisations to prepare and provide business plans reflecting the size and complexity of the club.

Template 2: Tenant Capacity checklist

Tenant Capacity Checklist	Evidence
Can the tenant:	
Align their use of the community facility to Council's strategy?	
Provide activities that benefit and engage with the community?	
Provide evidence of a legal entity?	
Provide the required insurances?	
Provide recent Annual General Meeting Reports and minutes?	
Can the organisation provide a financial report? Reviewed or Audited if required.	
Pay rent as agreed?	

Tenant Capacity Checklist	Evidence
Provide a financial report? Reviewed or audited if required.	
Demonstrate there are no unresolved issues with Council?	
Demonstrate the community facility is fit-for-their purpose?	
Specify when and for how long they will use the community facility?	
Increase current utilisation of the community facility?	
Provide evidence of membership and participation numbers?	
Demonstrate they have the skills and experience to manage the facility?	
Demonstrate they have succession planning in place to ensure the transfer of skills and knowledge to emerging leaders?	
Meet the Key Performance Indicators (KPI) or objectives set by Council	
Demonstrate membership of a peak body?	
Demonstrate accreditation to a club development program such as STARCLUB?	

07 Property Management

Key performance indicators

Key performance indicators (KPI) are a way of measuring performance, it can assist in establishing a clear set of outcomes for both Council and tenants. KPI are a tool for measuring if the objectives of leasing community facilities are being achieved.

Leading practice key performance indicators (KPI) are clear, measurable, achievable and outcome focussed. Whilst the occupancy agreement may include conditions relating to governance.

Examples of measurable KPI include:




- Tenant increased membership base by **x%**
- Tenant has increased attendance by **x%**.
- Tenant has established **1+** new sub leasing or hire agreements.
- Tenant has established at least **1+** new programs for a target group.
- Tenant has no outstanding maintenance issues **x** days after routine site inspection.
- Tenant has maintained a customer satisfaction rating of **x%** (or **x%** improvement).
- Council has received zero complaints regarding the tenant.
- Council has received zero complaints regarding the community facility.
- Tenant has advised Council of all Health and Safety incidents within **x** days.
- Tenant has **x%** attendance at all Council facilitated trainings.
- All appliances purchased by tenant has an energy efficient rating above **x** stars.

Leading practice KPI will be specific to the community facilities and the tenant. KPI are well suited to be used where Council has in place longer term occupancy agreements. For Councils that have objectives to increase overall usage or usage of a specific target group, setting KPI which hold the tenant accountable to increase membership, usage, programs, or sub-tenants will align the tenant to the Councils objectives.

It is important for Council to consider the resource requirements for both Council and the tenant to obtain and analysis the data requirements of the KPI to ensure it is achievable. Council can align request for KPI data with tenant reviews to reduce duplicate requests of information. Some fee structures have discounts linked to the achievement of KPI however KPI can exist without financial incentive.

Some Councils may find the term Key Performance Indicators (KPI) too commercial for their clubs and may prefer to refer to them as objectives and/or guidelines. Figure 5 provides an example of annual objectives.

Figure 5 Example Annual Objectives

Criteria	Description	Objective	Evidence
Community 	Volunteer Management	Supports and develops volunteers.	Training available, Volunteer opportunities
	Locality of Users	Encourages a membership base of local residents.	Membership database
	Diversity of Users	Encourages a diverse range of users	Membership database
	Community Benefit	Activities provide benefit to the community.	List of activities provided
Facility 	Facility Utilisation	Look for ways to increase usage at the facility.	New Programs/ Members
	Maintenance & Capital Improvements	Work with Council to maintain and improve asset.	Maintenance Schedule, Capital plans
	Environmental Initiatives	Look for environmental and sustainable alternatives.	Solar panels, native gardens, recycling
Governance 	Utilisation records	Provide Council annual use records.	Timetable/ Membership records
	Insurance	Provide evidence of appropriate insurances.	Certificate of Insurance
	Financial / Constitutional Governance	Provide Annual General Meeting minutes and reports including financial reports (audited if a prescribe organisation).	Minutes and Report.

07 Property Management

Inspections and reviews

Regular facility inspections and tenant reviews are an important way of staying connected with the tenant, understanding the overall health of the tenant, and getting assurance that the facility is getting well looked after and being maintained adequately.

Reviews can be formal scheduled reviews or can take a more informal approach. Topics discussed include facility maintenance, facility utilisation, capital developments plans, AGM's and financial reports, club developments and opportunities for both parties to further work together to achieve the desired outcomes. Leading practice is for inspections to occur at least annually, and at the end of the tenure.

Appendix 6 provides an example of a template which can be used for inspections and reviews. The template covers information about the community facility, tenant information, occupancy agreement status and governance. Community facility use and site inspection data can be collated on the template. The template is required to be signed and dated by both a Council representative and a representative from the tenant organisation and becomes a useful record of information.

Review Tips

- ✓ A new tenant or new facility may require a review relatively soon after signing an occupancy agreement (e.g. six months) to ensure any issues are timely dealt with.
- ✓ Timing of reviews can be aligned to processes such as annual grant submissions to reduce the duplication of information requests.
- ✓ Select a review format that reflects the relationship with the tenant.
- ✓ Council can encourage tenants to be accredited with the club development programs (e.g. STARCLUB program) and rely on this accreditation for some of their review criteria to reduce the administration burden on the tenant.

Supporting good governance

Councils can leverage off Governance programs that are already in existence. Governance can become onerous for some sporting clubs and community groups who also may be accountable to a governing or peak body such as a state sporting body. Clubs and Council will both benefit from a governance structure that is efficient and not asking tenants for duplicate requests for information.

The STARCLUB program and Goods Sports are both programs that focus on Club development and help to create healthy, thriving clubs and assist them in setting themselves up for long term success.

07 Property Management

Case Study: City of Onkaparinga – STARCLUB/STARservice KPI

In 2014, the City of Onkaparinga Elected Members endorsed the inclusion of STARCLUB accreditation as a lease condition for all clubs that were receiving a water subsidy. Since 2019 all new occupancy agreement greater than six months includes STARCLUB accreditation for sporting clubs or STARservice accreditation for non-sporting clubs as a KPI. KPI are an additional annex to the main body of the occupancy agreement.

The City of Onkaparinga choose the STARCLUB program as it clearly defines not-for - profits requirement to meet minimum legal obligations as defined by the State Government. The City of Onkaparinga are strong advocates for continual improvement in club governance and identify STARCLUB and STARservice as valuable resources to support this practice.

The KPI requires tenants to complete six compulsory questions within the first six months of the occupancy agreement and the remainder of the program within two years.

Being incorporated in a key requirement of STARCLUB and a community lease will not be considered unless the tenant is incorporated.

The City of Onkaparinga Council provide support to clubs through its dedicated club development program OACNET, which provides free needs-based training and development sessions. City of Onkaparinga were successful in obtaining 3 years funding to appoint a 0.5FTE Club Development Officer to support clubs to complete STARCLUB. This position has been internally funded for a further 12 months and has been expanded to support STARservice.

By including STARCLUB as a lease KPI, it provides reassurance to the Council that minimum legal obligation as defined by the State Government are met and relationships between clubs who are working on STARCLUB and Council have improved. Clubs that have engaged the support of the Council and are now STARCLUB members have anecdotally indicated their clubs have benefited. Clubs who have engaged their entire committee in the process and have not relied on one person to complete, have benefitted more, and completed the program faster.

Outcome

City of Onkaparinga have a KPI for all occupancy agreements greater than six months that clubs participate in the STARCLUB program, addressing key governance criteria in the first six months and complete the program within two years. This reflects the Council's commitment towards continual improvement in club governance and provides the Council with assurance that clubs are meeting their minimum legal obligations. City of Onkaparinga have provided support services to its clubs and the clubs are recognising the benefits.

07 Property Management

Compliance

Council will have established occupancy agreements with conditions that Council have identified to ensure they are legally compliant and a further set of conditions that Council have identified as important to meet Council objectives. Councils, who have adopted leading practices would also have an overlaying property management processes to measure tenant's performance against these conditions.

However, what is Councils authority to request these conditions and what is their role to ensure the tenant is legally compliant?

The Local Government Act 1999 defines the principal role of a council^{vii}. A Council, is under the system of local government established by this Act, established to provide for the government and management of its area at the local level and, in particular –

(a) to act as a representative, informed and responsible decision-maker in the interests of its community; and

(b) to provide and co-ordinate various public services and facilities and to develop its community and resources in a socially just and ecologically sustainable manner; and

(c) to encourage and develop initiatives within its community for improving the quality of life of the community; and

(d) to represent the interests of its community to the wider community; and

(e) to exercise, perform and discharge the powers, functions, and duties of local government under this and other Acts in relation to the area for which it is constituted.

The Local Government Act 1999 also states the function of a Council is to provide services and facilities that benefits it's area, it's rate payers and residents and visitors to its area and specially mentions community, cultural and recreational services and facilities.^{viii} To establish or support organisations or programs that benefit people in its area or local government generally is also listed as a function of a Council.

The Local Government Act 1999 section 8 provides the Principles^{ix} to be observed by a Council in the performance of its roles and functions – and the Principles directly relevant to the use of community facilities includes:

- manage its operations and affairs in a manner that emphasises the importance of service to the community,
- seek to ensure that Council resources are used fairly, effectively, and efficiently
- seek to provide services, facilities and programs that are adequate and appropriate
- seek to ensure equitable access to services, facilities, and programs.

Thus if Council are setting conditions within their occupancy agreements which assist Council to sustainably maintain their community facilities, support organisations or programs that benefit the community and ensure equitable access to services, facilities and programs, Councils are operating under the principal and function of the Local Government Act 1999. It is recommended that Council seek legal advice to assist in setting conditions in their occupancy agreements, where they consider the conditions to be outside the functions detailed in the Local Government Act 1999.

Council will perform due diligence on potential tenants to ensure the tenant is aligned to Council strategy and has the skillset to manage the community facility. Council will set conditions that state the tenant be incorporated, comply with liquor licensing laws, comply with building standards, insurance requirements and any Council by-laws applicable to the location.

The tenant will have further legal compliance subject to their circumstance, this may include GST registration, employment law if they have employees and child safe legislation. Although it may not be within Councils function to ensure their tenants are complying with every applicable legislation, it is recommended that Councils adopt a proactive approach to assist their tenants will compliance, which will mitigate associated risks.

07 Property Management

The tenant can be an affiliate member of a State or Regional sporting association, and conditions of membership would include being Incorporated, providing constitutional documents, register of members and office holders and copies of its audited/reviewed accounts, annual financial reports and other associated documents as soon as practicable following the affiliate member’s annual general meeting. These peak sporting bodies would also have policies for their affiliate members to ensure they comply with liquor licensing, child safe environment laws, privacy laws and other applicable laws to their organisation. Community groups can also be an affiliate member of Community Centre SA who would also have member policies to ensure members are legally compliant.

Where Councils identifies a tenant that is not complying with either the conditions of the occupancy agreement, it is recommended to work in partnership with the tenant, to provide either direct support or support through a peak body, or club development program. This approach is recommended to ensure that the community benefit generated by the tenant and the activity they provide continues to exist and residents are not seeking these services elsewhere. Tenant evictions are uncommon and very complex, and it is recommended that all other avenues be explored first. However, if Council is faced with non-compliance that is resulting in Council not performing their function of sustainably maintaining community facility, and not providing equitable access to the community, Council will need to act on this. Council’s will need to follow their dispute management clauses and may require mediation or further legal services to resolve the situation.

Dispute management

A common theme throughout the consultation was a good working relationship between Council and sporting clubs and community groups benefited all parties. However, it is important for Councils to incorporate into their occupancy agreements a condition outlining the process for a dispute.

Sporting and community clubs may want to have representation by their governing body.

Throughout consultation it was revealed that dispute management is a last resort and in most cases Councils and clubs work together to resolve matters.

Example - Dispute Management Clause

“If any dispute or disagreement arises between the parties in connection with this Lease, the parties undertake to use all reasonable endeavours, in good faith, to settle the dispute or disagreement by negotiation between representatives of both parties.

If negotiations do not resolve the dispute within thirty (30) days, then a mediator agreeable to both parties may be engaged to seek a resolution. If the parties cannot agree upon a mediator, the mediator will be appointed by the President or Acting President of the Law Society of South Australia. The cost of the mediator will be borne equally by both parties.

Nothing in this Lease is intended to limit either party’s right to seek a legal remedy for any dispute that arises.

The parties agree that matters arising out of any conflict must be kept confidential”.

– Survey Respondent



Figure 6 Dispute management steps

07 Property Management

Property management recommendations

Tenant capacity is assessed at the commencement of the occupancy agreement to determine that the tenant and its use of the community facility is aligned to Council strategy and provide activities that benefit and engage the community.

Due diligence is completed to ensure the tenant has the skillset within its organisation to manage the facility and maintain a fit for purpose standard.

Sound property management process and ongoing accountability are key aspects Councils need in place to ensure community facilities are well utilised and well maintained. Property management can include tenant reviews, inspections, and key performance indicators.

A working in partnership approach is recommended and dispute management is a last resort.

08 Council Services

Why do Council provide services?

To fully achieve the social, health and economic benefits, Councils and tenants need to develop good working relationships. If good working relationships are established and Council support their tenants, these tenants have the capacity to achieve greater benefits for the community.

This working relationship can be enhanced by Council offering a variety of services. Councils will need to consider the resources required and ensure they have the available resources to offer the services.

Councils are also encouraged to host an annual communication session to all tenants. The communication session will be an opportunity to keep all tenants advised of the support on offer and training sessions throughout the year. These annual sessions will assist with the lack of knowledge transfer associated with the turnover of volunteers within the tenant organisation.

Communication should also be extended to tenants who are occupying any Crown land with the Councils local area. This will assist in ensuring Council is keep abreast of any issues or developments between the tenant and the State Government.

Below are some of the common services that are provided.

Volunteer management and training

A common issue that arose in both the desktop research and the community consultation was that most tenants are volunteers. Councils such as the City of Marion and City of Holdfast offer regular volunteer training sessions to support volunteers.

Club development support

Councils may provide club development support and have an on-line newsletter or portal to share information available to clubs.

Councils may actively encourage clubs to become part of STARCLUB or STARservice which focuses on Club development. For example, STARCLUB new 'sustainability' section could significantly reduce clubs running costs and find better ways to manage club's water and energy bills, ground maintenance and finances.

The City of Onkaparinga have a dedicated club development program Onkaparinga Active Community Network (OACNET). The OACNET program is available to sporting clubs, recreation groups, community halls and other volunteer managed not-for-profit groups. The benefits of the program include governance and development support, quarterly newsletters, forum and networking events, regular industry updates and support to achieve STARCLUB and STARservice programs. OACNET conducts over thirty volunteer training and development sessions as well as business improvement training to help committees to meet legal requirements, increase participation and improve succession.

Grant assistance and funding

Councils provide services and advice on available grants and funding and may have a role such as a Sport and Recreation Development Officer or Grants Officer to assist in writing and lodging grant and funding applications.

Capital funds

Councils may establish sinking funds to assist sporting clubs with capital developments or significant maintenance requirements such as court resurfacing. Some Councils work with their tenants to develop and prioritise capital works programs.

08 Council Services

Facility management training

As clubs and community groups are often run by volunteers, they may not have the skill set and knowledge to manage the facility including an understanding of building management requirements such as fire safety, pest control, and all abilities access. Councils may find it beneficial to assist through education and training with facility management to ensure the facilities are appropriately managed.

Maintenance

Councils will usually provide a level of maintenance for the community facility however it is noted that in some cases particularly where leases are in place that the tenants are responsible for day-to-day maintenance. Common practice is that the level of maintenance is usually specified as an appendix to the occupancy agreement specifying what is Council's responsibility and what is the clubs. Appendix 4 provides two examples of maintenance schedules.

Council often governs the maintenance activities that require specialised or professional assistance such as a licenced trade or requires working from heights. The level of maintenance services required is a decision Council will need to make after considering the age of the facilities and the amount of resources Council have available to complete the required maintenance. It is normally the responsibility of the tenant to undertake day-to-day maintenance such as cleaning carpets and the landlord to provide capital improvements and replacements such as roof replacement.

Utility Expenses

One of the trigger for this guide was the key issues raised by stakeholders in the 2013 KPMG 'Increased Cost of Utilities review' study including lack of understanding of true utility usage and costs, lack of consistency across councils regarding water arrangements with clubs, with each council managing their own policies.

Consultation from the Community survey revealed:

- 51% clubs responsible for their water expenses
- 54% clubs responsible for their gas expenses
- 82% clubs responsible for their electricity expenses
- 8 clubs received a discount for water usage.

Clubs raised cost pressures, including utilities as a key issue they are currently facing, and one respondent suggested Council provide subsidies to clubs to support their outgoings for maintaining and using often outdated energy inefficient facilities/venues.

City of Onkaparinga and Tea Tree Gully council both provided feedback that they subsidise water expenses for their tenants. Tea Tree Gully Council will be responsible for water costs for playing surfaces where the general public has access and use of the playing surface, only where there are dedicated playing surfaces which does not allow general public access of use of the playing surface with the tenant be responsible for the water costs. Council may consider a remission of watering charges when there are significant trees on the premises and in the vicinity of the watered location. Water provision for sites receiving recycled water, water supply and costing arrangements may be varied to suit. City of Onkaparinga funds the maintenance and irrigation costs of ovals/pitches to the standard of a reserve (public open space). Clubs will be charged an annual fee which is based on the cost differential between maintaining a sporting playing to field and maintaining a reserve and applied on cost per square metre. Clubs will be eligible for a 50% subsidy providing they have met the eligible criteria. The eligible criteria are met through the completion of STARCLUB and providing data on utilisation and the number of Onkaparinga residents using the facility.

08 Council Services

The STARCLUB program also provides support to sporting and recreation clubs to better manage their utilities expenses and provides information on:

- exemptions, rebates, and grants
- available resources to be more efficient with water usage
- water and energy management plans.

The ORSR have developed extensive resources and case studies to assist clubs manage their utility costs that are available on their website. These resources include:

- Greening your club checklist, providing practical advice to fix your leaks, switch off, buy, and install efficient consumables. Maintain, monitor, and manage and reduce water use.^x
- Fact Sheet: Recreation Grounds Rate and Taxes Exemption Act 1981, outlining the eligibility criteria for certain land used for sport and recreation in South Australia to be exempt from rates and taxes.^{xi}
- Environmental sustainability guide for^{xii} Sport and Recreation Clubs.

The Retailer Energy Efficiency Scheme (REES)^{xiii} is another tool available to assist with lowering energy usage and costs. This scheme developed by the South Australian Government, offers free or discounted energy efficient activities from participating energy retailers. These activities may include installing energy efficient lighting or installing water efficient shower heads. This scheme is in operation until the 31 December 2020.

An energy audit is an assessment of the energy needs and efficiency of a building. The Essential Service Commission of South Australia (ESCOSA) website provides a list of third-party contractors^{xiv} who can perform energy audits.

Clubs can also increase their energy efficiency and lower costs by ensuring they purchase energy efficient appliances and equipment. An energy rating label^{xv} explains how much energy an appliance will use and is useful to compare the energy usage between products.

Council Services Recommendations

Council develop quality working relationship through the provision of services.

Councils will need to consider the resources required and ensure they have the available resources to offer the services.

Councils host an annual communication session to all tenants to keep all tenants advised of the support on offer and training sessions throughout the year.

08 Council Services

Case Study: City of Marion - Club Support

The City of Marion have a Sports and Recreation department which sits within the Land and Property department and was established with the primary objective to assist clubs with governance including succession planning, financial reporting, how to run a AGM/meetings, volunteer management, club culture and inclusion, strategic planning and sponsorship, The Sports and Recreation department also assist clubs in the areas of seeking grant funding and planning.

The City of Marion aid via:

- “Clublink”, an e-newsletter which is sent out monthly to communicate important news to our local clubs.
- Conducting a range of workshops aimed at improving performance of our local sport and recreation clubs. Topics may include grant funding, strategic planning, child safe environment training, volunteer recruitment and support and running effective AGM’s.
- Specific page on its website dedicated to available grants and can provide guidance and assistance.

All clubs are encouraged to become STARCLUB members and STARCLUB accreditation is a condition of Council funding for capital works and Council contributions to projects. City of Marion took the stance that clubs need to display effective governance and financial sustainability before they invest.

Outcome

The City of Marion provide practical support and tools for its local clubs which has resulted in more professional, sustainable, and effectively managed clubs.

This service is of importance as City of Marion offers discounts up to 93% for Good Governance, Facility Utilisation, Social Inclusion, Volunteer Management, Environmental Initiatives.

Appendix 2 contains City of Marion, Leasing and Licensing of Council Owned Facilities Policy. These services can assist the clubs to meet the criteria to receive a discount to their occupancy fee.

08 Council Services

Case Study: Mount Barker District Council - Club Support / Incentives

Mount Barker District Council assist its clubs with developing a business plan.

The Business Plan consists of:

- details of the community, other user groups and individuals of the premises,
- proposed fees and costs charges for the use of the premises,
- details of the proposed maintenance program,
- details of any proposed capital works program,
- the names of the competent persons responsible for the daily control (and access to) the premises; and
- the required resources, information, and development assistance.

Through this process the Building and Recreation Manager has developed good working relationships with clubs. The business plan is very useful when applying for external or Council funding to show how activated the facility is and for prioritising its capital works programs.

Mount Barker District Council will pay an annual financial contribution to the costs of managing the facility and completing the Business Plan is one of the required conditions for receipt of the annual financial contribution.

In addition to the Business plan, to receive the financial contribution, clubs are required to supply financial statements including a profit and loss statement, and bank balances, a Tax Invoice for the required amount and a certificate of compliance with the required forms attached detailing that they have had fire extinguishers, RCD's, smoke alarms and testing and tagging of electrical equipment carried out.

The financial contribution is applied at one rate for sports clubs, hall, and institutes. A higher rate is set for sports recreation grounds. Each sport recreation ground is responsible for turf maintenance and receive an additional amount for turf contribution. The Council's Sports curator oversees the turf contribution and offers each committee advice and assistance.

Outcome

Mount Barker District Council advised that the financial contribution works well for them. Due to the standardised amounts, they do not receive complaints from club committees as the committees are receiving the same amount of funding. It provides the club committees with the autonomy to manage how they use the money, however, they have a very clear understanding of their responsibilities and expectations.



The success of this model does heavily rely on dedicated tenants, which Mount Barker has with its country volunteers and having the Council resources to assist the club committees to develop their business plans.

09 Social and Economic Benefits

Through the community occupying and having access to community facilities it provides social and economic benefits to Council, tenants, and the wider community. Without fit for purpose facilities available, clubs would

not be able to exist, grow and prosper. Table 7, 8 and 9 detail the social and economic benefits for the broader community, the Council, and the tenant.

Table 7: Social & Economic Benefits for the Community

Community Benefits from Letting Council Owned Facilities ^{xvi}	
Social 	Brings people together, providing opportunity for social interaction
	Empowers, inspires, and motivates individuals
	Children who participate in sport, recreation and community activities learn better and are more likely to enjoy school
	Contributes to higher levels of self -esteem and self-worth
	Creates opportunities for and promotes volunteering
	Binds families and communities through shared experiences
	Provides a vehicle for inclusion, drawing together people of different backgrounds, ages, religions, and cultures
	Sport and recreation clubs are the hub of community life, especially in the regions.
	Contributes to work/life balance
	Provides a sense of belonging
	Facilitates opportunities for networking
Economic 	Economic growth through business investment, employment, major events, and tourism
	Eases pressure on the health system
	Healthy workers are more productive and take fewer sick days
	Creates employment opportunities
	Creates positive alternatives to youth offending, antisocial behaviour, and crime.
	Reduces pollution -promotes use of active modes of transport like walking and cycling.
	Maintains value of community facility through regular use and active maintenance (abandoned facilities may reduce to value)

09 Social and Economic Benefits

Table 8: Social & Economic Benefits for the Council





Council Benefits from Letting Council Owned Facilities	
Social 	Enhances community within the local government area
	Creates a volunteering network
	Provides connections within local communities
	Provides a vehicle for inclusion, drawing together people of different backgrounds, ages, religions, and cultures
	Provides a sense of belonging
Economic 	Maintains value of community facility through regular use and active maintenance (abandoned facility may reduce to value)
	Well utilised facilities will be favourably viewed for grant funding, increasing opportunities for capital improvements.
	Creates employment opportunities
	Conducting of community events

Table 9: Social & Economic Benefits for Tenant

Tenant Benefits from Letting Council Owned Facilities	
Social 	Provides an organisation culture and sense of belonging
	Provides a facility to operate from
	Provides playing areas to use
	Increased participation rates in physical and community activities
	Provides a vehicle for inclusion, drawing together people of different backgrounds, ages, religions, and cultures
Economic 	Subsidised or discounted occupancy fees
	Grant and funding assistance and support from Council

09 Social and Economic Benefits

Quantitative Benefits

The Australian Sports Commission 2019-2023 Corporate Plan^{xvii} states there are close to 12 million Australians who participate in sport (this includes physical activity) annually, with a further 3.4 million involved in sport through volunteering, coaching, officiating, administration and other non-playing roles.

It is estimated that sport generates **2-3%** of our national gross domestic product (GDP) and 220,000 people are employed across the sport sector. Councils can use this to determine the local contribution sport generates using their gross regional domestic product (GRDP).

The 2018 KPMG report *The Value of Community Sport Infrastructure – Investigating the value of community sports facilities* to Australia provides further data on quantifying value.

This study^{xviii} estimated community sport infrastructure generates an annual value of more than **\$16.2** billion to Australia, with **\$6.3** billion worth of economic benefit, **\$4.9** million worth of health benefit and **\$5.1** billion worth of social benefit.

The **\$6.3** billion worth of economic benefit includes the economic activity associated with:

- construction, maintenance, and operation of community sport infrastructure
- increased productivity of those who are physically active because of such infrastructure.

The **\$4.9** billion worth of health benefit includes.

- personal benefits to those who are less likely to contract a range of health conditions which are known to be associated with physical inactivity
- the benefits to the health system from a healthier population.

The **\$5.1** billion worth of social benefit includes:

- increased human capital resulting from the social interactions that are facilitated by community sport infrastructure
- broader community benefits of providing “green” space.

Furthermore, the study estimates the **\$16.2** billion annual value of community sport infrastructure is supported by **56.5** million hours of volunteer time annually and used by **8** million people annually

The Office for Recreation, Sport and Racing have developed a social and economic analysis tool to help place a dollar value of social and economic benefits of recreation and sport facilities throughout their lifecycle, in particular the value of health and wellbeing benefits to individuals, the local community and State Government. This tool can be accessed through contacting the ORSR planning and project team.^{xix}

The Intergenerational Review of Australia Sport 2017^{xx} report estimated the combined value of the sport sector to Australia was **\$83** billion, categorised as **\$50** billion of economic value, \$29 billion of health benefits and **\$5** billion of education benefits. The report also acknowledged that sport creates significant personal wellbeing, community cohesion and international reputation benefits but this figure has not been included given the challenges in quantifying its value.

The **\$50** billion economic value represents the direct economic impact of sports spending, indirect economic impact from further spending by suppliers to the sports sector and induced economic impact through consumption by employees of the sport and supplier sectors. Also included is the gross domestic product gain from a more engaged and less absent workforce and the value of volunteer contribution.

The **\$29** billion annual net health benefits represent:

- avoided healthcare cost via reducing the incidence of non-communicable disease, mental health conditions, and

09 Social and Economic Benefits

falls reduces the cost incurred by health providers

- reduced incidence of early mortality by reducing the incidence of disease extends life, reduces the rate of early mortality, and increases quality of life.

The **\$5** billion annual education benefit is the annualised lifetime earnings uplift from sport incorporating:

- children who play sport have improved cognitive development, are better at learning and retaining information and stay in school longer.
- sport teaches children critical life skills such as teamwork, fair play and resilience which are important drivers of our success as adults.

10 Current State of Leasing & Licensing

Framework and Policy

The current state of leasing and licensing of community facilities reflects the feedback from both the Council and community workshop, Council and community on-line surveys, stakeholder interviews as well as desktop research undertaken throughout the project.

Through consultation it was identified that by having community facilities available for use by the community provides both social and economic benefit for the tenant, the Council, and the wider community. These benefits were outlined in Section 9 of this report. Whilst these benefits were well recognised by both Council and tenants, the processes to achieve these benefits through the letting of community facilities varied considerably between Councils.

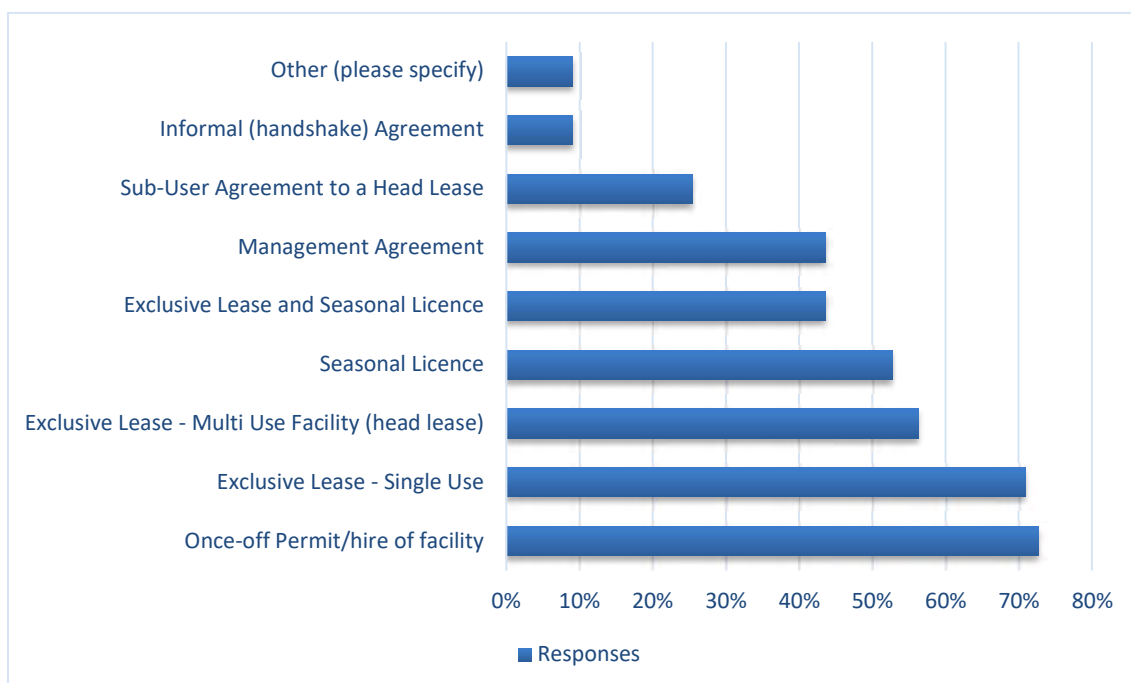
The survey results indicated 74% of respondents have a current lease framework or policy, 19% of respondents stated they did

not and 7% of respondents were unsure. At the Council workshop, it was evident that some Councils have recently spent considerable time and effort updating their policy to make it reflect the current demand for community, sport, and recreational facilities. Other Councils noted that their policies were non-existent, outdated and potentially not reflecting current practice. However, it was agreed, the need for all Councils to have a policy that reflected the strategic direction of the Council and provided guiding principles to ensure their community facilities were well utilised and maintained as fit for purpose whilst generating benefits for the community is important

Types of Occupancy Agreements

There are several occupancy agreements that are currently used by Councils to let their community facilities and many Councils would use more than one depending on the type of facility or playing area available.

Figure 7 : Type of Occupancy Agreement (Council Survey)



10 Current State of Leasing & Licensing

The survey indicated that the most used occupancy agreement was a once off permit or hire of facility, this is generally used for community halls, parks, and reserves. The Council maintains control over the facility and the tenant can use the facility for a set period as detailed on the permit or hire agreement. This arrangement is either a once-off basis or can be at a set regular time. The Local Government Association SA has hire templates available for Councils to use.

The second most used occupancy agreement was the exclusive lease-single use. This is an agreement where one tenant has exclusive access to the community facility. Common examples of this include tennis courts and clubrooms, football clubroom, bowling greens and clubrooms etc. The tenure of these can vary considerably, current practice is to lease for five years with a potential option to renew after five years however historically these leases could be set for much longer periods of time. The tenant contributes to the maintenance of the building and playing area's and capital improvements. It was consistent practice for the maintenance schedule to be included as an appendix to the lease. Due to the longer tenures and exclusivity of these arrangements, Council have lower levels of control and involvement than they would with a permit or hire facility. The LGA has lease templates available for Councils to use, with many Councils indicating they have sought their own legal advice.

Seasonal Licences are another type of occupancy agreement, where the sporting club or community group have access for a season, i.e. a football club has access to the oval for winter and a cricket club has access to the oval for summer. These ovals are generally accessible to the community when matches are not scheduled. Council will maintain the oval to the same standard it would for a Council reserve and the licence holder would contribute to the additional cost required to meet playing area standards. In some instances, the licence holder will do all their own maintenance. Council have a greater level of access and control with licences, and sometimes a condition of the licence is to have a window between the change of seasons where Council have full access to the site.

Multi-use facilities are becoming increasingly popular, as individually operated facilities can be costly to run, upgrade or replace. Local and State Government are opting for a multi-use facility that can be shared by more than one group and used for a range of activities that share buildings, rooms and open spaces either at the same time or different times. Some of the facilities are newer and the agreements have not been in place for long. One type of occupancy arrangement for Multi-use facilities is to have an exclusive head lease and then a sub-lease to the head lease. In the Council workshop it was evident that different Councils were managing their multi-use facilities differently, the head lease may be with a management committee representing the sub-tenants, or there may be a management agreement with a third-party company specialising in the management of recreational facilities. Dependant on the occupancy model used to manage these multi-use facilities depended on the level of control and involvement required by Council.

In addition to using management agreements for multi-use facilities, they were also used where Council has sought an exemption to the Retail and Commercial Leases Act and then let the facility by way of a management agreement.

Figure 7 on the previous page provides a graphical view of the occupancy agreements in place. There are several factors to consider when choosing the best arrangement for the facility:

- level of Council resources available
- type of facility
- age and condition of community facility
- capacity of the tenant
- demand for the community facilities
- Council demographic

Through consultation in the Council workshops is also became apparent that there are further layers of complexity for some Council area's these may include the community facility being on crown land or land not classified as Council community land i.e. in regional area's where local farmers have donated land. Many clubs have funded and built their own community facilities. These additional layers of complexity have contributed to the uniqueness of some arrangements.

10 Current State of Leasing & Licensing

Property Management

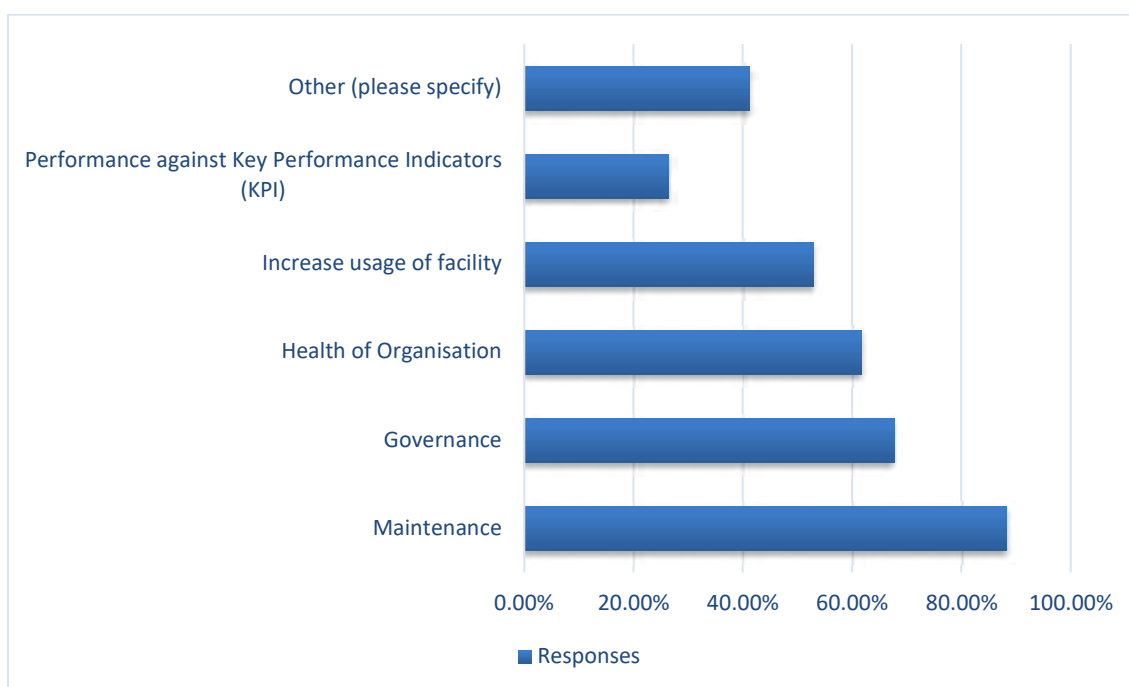
Councils agreed that the overarching criteria when selecting a potential tenant is that the tenant provides a community benefit and are a good fit with Council's strategic plans. Once that criteria are met, the capacity of the tenant to maintain and utilise the community facility needs to be considered. Council would require evidence of appropriate insurances and financial capability. Council would consider the number and experience of the volunteers to ensure the tenant has the capacity to maintain the community facilities and meet any governance requirements.

Case study analysis and the anecdotal evidence provided in the workshops highlighted that a good working relationship between Council and tenant resulted in a well maintained and well utilised community facility delivering higher levels benefits to the community. These working relationships were enhanced by the level of services provided to tenant and a regular review process.

Whilst some Councils had set formal reviews or site inspections many Councils kept these as informal catchups. Some Council have formal KPI in place, whilst other have fewer less formal objectives in place. Council used these reviews to discuss performance against KPI, maintenance of the facility, increasing usage of the facility, health of the organisation and any governance (Figure 8). The reviews may extend to preparation and review of business plans and proposed capital developments.

In most cases, tenants are community organisations solely run by volunteers. The community consultation highlighted that in many organisations' volunteer numbers may be decreasing, there can be a high level of turnover of volunteer and often no handover of information when this occurs. Council can assist with this by offering a range of services that assist organisations either with financial assistance through grants and subsidies or by providing training for the volunteers.

Figure 8 : Topics covered in Council & Tenant Reviews



10 Current State of Leasing & Licensing

Fee Structures

There a variety of fee structures in place, these fee structure should reflect the outcomes Council want to achieve. Historical agreements or peppercorn rate was significantly the most common used fee structure (Figure 9). The peppercorn rate was often set at \$1 or another nominal amount, reflecting that the tenant may be maintaining the community facility and providing ongoing benefit to the local community.

Some metropolitan Councils have moved away from the peppercorn rate, to a fee that is based on a percentage of maintenance costs, capital replacement value or market value. These fee structures will generate higher fee income for the Council but not all tenants will have the capacity to pay.

Councils shared their experiences of moving from a peppercorn rate to a more contemporary fee model, and how important communication, change management was in the process. The fee increases are planned to be implemented over a five-year period.

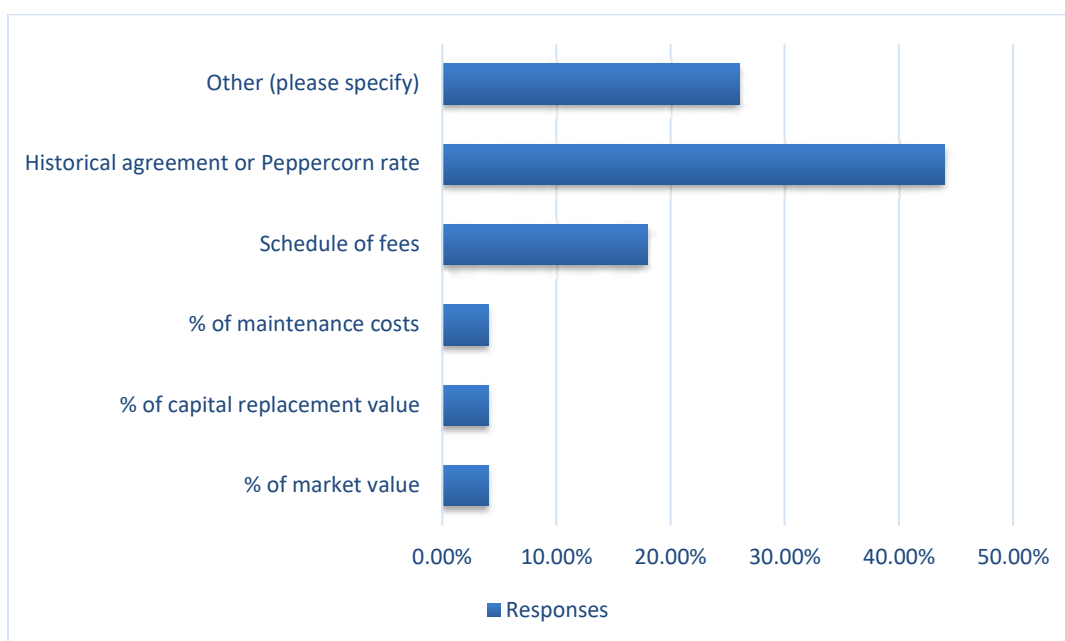
Many Council used discounts and subsidies to accompany their fee structures. These discounts included.

- Discounts for meeting governance criteria
- Discounts for capacity to pay
- Discounts for local members
- Discounts for diversity of members
- Discounts for environmental and sustainable management
- Subsidies to maintenance costs
- Subsidies for capital improvements
- Subsidies for utilities

Councils that were based on a peppercorn arrangement did not have any discounts and subsidies due to the low fee base to start with.

In Summary, the current state of occupancy agreements varying significantly between Councils and even within Councils they may have many different agreements in place. Councils may be working through long standing historical agreements that may no longer be relevant. The demand for facilities can also vary, regional Councils may have more halls and playing spaces than is required, whereas some metropolitan Councils have a lack of available facilities to meet the demand.

Figure 9 : Fee Structures currently used by Council



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The engagement mechanisms used to identify the local government and community needs associated with the occupancy of community facility included:

- Online Council survey
- Council workshop
- Online community survey
- Community workshop
- Key stakeholder meeting /interviews.

The marketing and promotion of the project included providing information through various channels including to all local Councils in South Australia, membership organisations including Sports SA, Recreation SA and Community Centre SA and peak sporting bodies including Basketball SA, SACA, SANFL, Bowls SA, Baseball SA, Softball SA , Tennis SA and Football SA.

Online Council survey

The online Council survey was targeted at all Councils across South Australia. The survey received sixty-one individual responses across forty-three different Councils, providing information about the current state of their occupancy agreements including issues and opportunities.

The respondents identified as metropolitan Council 39%, rural Council 48% remote 5% and other 8%, with other comprising of more than one category. The respondents described their role in Council as 54% Property Manager ,31% other, 13% Sport & Recreation Officer, and 2% Elected member. Other roles included CEO, planning and community engagement roles.

Key findings of the survey included:

- 74% have a current framework and/or policy
- hire permits, exclusive leases and seasonal licences were the top 3 types of occupancy agreements
- 100% rate tenants having appropriate insurance as important
- 96% rate tenant's capacity to maintain the facility as important
- 94% rate the tenant's capacity to manage staff and volunteers as important

- 42% have a review with tenants with 39% having the review at least annually
- Maintenance followed by governance were the two most covered topics at the review
- 53% of occupancy agreements are bound by key performance indicators (KPI)
- Top three KPI were evidence of insurances, submission of annual audited financial statements and annual inspection of facility
- 58% indicated they have a dispute management process or clause in their occupancy agreement
- 44% have a current fee structure best described as historical /peppercorn arrangement
- 59% offer discounts, with only 20% detailing the discount on the invoice
- 97% rate providing grant assistance as important, followed by 92% rate providing capital funds as important
- 67% agree or strongly agree that it should be a function of local government to own buildings to lease to the community.
- 76% responded yes, that their occupancy agreements are prepared in accordance with the Retail and Commercial Leases Act (1995) (SA).



Image: Council Promotional Flyer

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Key Issues from a Council perspective

“The need to work with the clubs to ensure that they are following best practice without being the “big bad Council getting in on their business””.

“Volunteer based tenants with often limited understanding of responsibilities. Changing club committees often with no handover of information from one committee to the next”

“Ensuring that the fee structures, leasing arrangements are fair to all”

“Quantifying the community value, a potential tenant offers”

“Facilities being underutilised”

“Lack of resources to monitor use - we do not have officer-level staff in sports, recreation etc. Community groups often struggle to make ends meet and the volunteers are ‘weary’ in many areas - finding the right balance of support (for a small regional council with limited revenue) is a challenge”

Council Workshop

The Council workshop was held at the Sports SA training room. There were 14 attendees representing City of Mitcham, City of Holdfast Bay, City of West Torrens, Mount Barker District Council, Yankalilla District Council, Adelaide Hills Council, City of Onkaparinga, Berri-Barmera Council, Clare & Gilbert Valley Council, Regional Council of Goyder and Local Government Risk Services.

The workshops focused on the following topics: current state of occupancy agreements, tenants, fee structures, challenges and opportunities and the social and economic benefits of leasing Council owned facilities.



Image: Council Workshop

Key Findings

- Councils use several different occupancy agreements.
- Councils have a variety of fee structures in place.
- Good working relationships with tenants lead to better outcomes.
- Many Councils are working through historical agreements.
- Metropolitan, Metropolitan-fringe and regional Councils all face different challenges.
- Challenges with managing tenants at Multi-use sites.

Online community survey

The online community survey was targeted to sporting and community groups either through Sport SA, peak sporting bodies and through local Councils.

The survey received 52 responses, with 56% identifying as a sporting club, 13% a community group, 13% a community centre management committee, 4% a community hall management committee and 2% a commercial tenant.

Key findings of the survey were:

- 48% described their occupancy agreement as exclusive use either single use (15%) or head lease of a multi-use facility (33%).
- 15% described their occupancy agreement as a management agreement.

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- 17% of current occupancy agreements were in holding over
- 72% had a clear or very clear understanding of their responsibilities as tenants
- Most common expenses included Electricity, Public Liability and Property Insurance, Gas & Water
- 72% provided evidence of insurances annually, 53% had an annual inspection of the facility and 50% provided annual audited financial statements.
- 33% provide usage statistics
- 61% received discounts to their fees
- 36% sub leased the facility they occupy
- 3% had a sinking fund arrangement with Council
- The most important services the respondents required from Council were 1) Council maintains facility to a fit for purpose standard, 2) Council responds quickly to emergency maintenance issues and 3) Council has an equitable lease fee structure.
- 35% were dissatisfied or very dissatisfied that fees were affordable
- 33% were dissatisfied or very dissatisfied that Council responds timely to questions and issues.
- Common themes included volunteer fatigue and turnover, aging facilities and increased utilities costs.

Key Issues from the Community perspective

“Local government has a great opportunity to engage their sporting clubs and support the great work they do in the community by adjusting leases to recognise the health, inclusion and positive community outcomes that come from this commitment. Currently this is not the case and the relationship are poor, without trust and people feel used. Time to change.”

“The playing fields, courts etc. are the fundamental “tools” that Clubs require to provide their essential community service and should be provided “free of charge” to help minimize operating costs. If rate payers pay for the essential services that Councils provide, they should also pay for the provision of these “tools” to ensure clubs can operate effectively. Clubs under financial stress also have less chance of recruiting for future succession as they are not an attractive proposition to prospective Volunteer administrators.”

“What will be vital to clubs on leased premises is a long-term Strategic Plan involving Council for advice and support to sustain and develop viability. Not for profit organisations relying on volunteers which contribute positively to community wellbeing, hire facilities for very reasonable costs need a degree of certainty and support to motivate their commitment. It may be that Council builds in incentives for progressiveness, facility development etc. which enhances a Club's contribution to the sport and its community. This could include broadening maintenance to “approved” improvements rather than Club responsibility for these.

Guide for Leasing & Licencing of Sports & Community Facilities

Project Objectives

- + Identify local government & community lessor/holder needs associated with occupying Council owned sports and community facilities.
- + Develop a leading practice Guide for Leasing & Licencing Sports & Community Facilities.

Project Background & Scope

Historically there has been a lack of consistency in lease and license agreements across Councils, whilst the community feel leasing Council owned facilities can be complex, confusing & potentially inequitable. Tredwell Management have been engaged to undertake research and engagement with Councils and the community to get a sound understanding of the current issues facing both Councils and the Sports and Community groups.

Based on this research a Guide for Leasing and Licencing Sports and Community Facilities will be developed, creating a valuable resource.

We Need Your Input!

On-line Sporting & Community Group Survey

An on-line survey has been developed to capture your needs associated with occupying Council owned facilities. The survey can be accessed here:

<https://www.surveymonkey.com/r/roomcommunitygroups>

This survey closes on Friday the 8th November 2019.

Sporting and Community Workshop

A workshop will be conducted for key stakeholders' input.

Venue: Sport SA, Military Road, West Beach SA 5024
Date & Time: Thursday November 7th at 6-8pm
Please RSVP to Tredwell via the contact details opposite.

Questions?

If you have any questions or queries relating to this project, please contact Tredwell:

admin@tredwell.com.au
(08) 8234 6387

TREDWELL

Image: Community promotional flyer

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Community Workshop

The community workshop was held at the Sports SA training room with eight attendees. The attendees represented Adelaide City Football Club, Pirates Football Club, Mount Barker United Soccer Club, Birkalla Soccer Club, Onkaparinga Club forum and Mount Lofty District Community and Sports Club.



Image: Community Workshop

The topics covered included current state of occupancy agreements, tenants and community needs, resources, and social & economic benefit of occupying Council owned facilities.

Key Findings

- Recognised the need to have good communication with Council and useful to develop relationship with Elected Members.
- Some clubs are dealing with more than one Council. Fee structures and property management processes can vary considerably between Councils.
- Clubs rely heavily on volunteers, not all volunteers have the capacity to meet governance requirements.
- Club development opportunities available such as STARCLUB and Good Sports, in addition to support from Councils.
- Challenges managing the expectations of the playing areas from club members and Councils.
- Utilities costs continue to be a burden, and this is an opportunity for Councils to subsidise.

Key Stakeholder Interviews

Key stakeholder interviews were held with the Small Business Commissioner, and the Local Government Mutual Liability Scheme to discuss relevant legislation, risk profiles and mitigation and to gain their understanding of current issues. The Local Government Association (LGA) were also consulted but declined an interview. The Law Society of South Australia were also consulted but declined an interview as in their view, legal and compliance issues associated with leasing Council owned facilities to the community are complex and independent legal advice is required from a legal practitioner experienced in Local Government work.

Small Business Commissioner

Tredwell met with John Chapman and Stephanie Burke at the Office of the Small Business Commissioner. They were pleased to inform us that the Amendment Bill was passed. (Appendix 5 RCLA Amendment Bill).

In particular section 4 – Application of Act, (2) (g) – Which is effectively stating that the Act does not apply to a retail shop lease where the lessor is the Crown or an agency or instrumentality of the Crown in the right of the State; or a municipal or district council or other authority with powers and function of local government; and the lessee is of a class specified by the regulations for the purpose of this paragraph.

The Commissioner discussed that there is still work required to define the “class” to ensure that it covers the intended “canteen at a tennis club” and is not overextended or has any unintended adverse impacts. It is estimated that this will take at least six months with significant consultation with the Local Government Association (LGA) and the Commissioner recognised that once the regulations specify class an education/information process undertaken by the LGA to all Councils.

Another amendment that will have an impact (section 77), now allows the Commissioner to approve the exemption in addition to the Minister, the Commissioner mentioned he is always consulted on any exemptions prior to

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Minister approval and this amendment now allows the Commissioner to approve the exemption. He discussed he does not consider any exemptions unless the tenant or all tenants are comfortable and in agreement with the exemption.

The Office of the Small Business Commissioner recognise the community benefit in this area and the circumstances that result in inconsistencies between how Councils manage the letting of their sporting and community facilities. They are keen to be kept updated as the project progresses.

Local Government Mutual Liability Scheme

Tredwell met with Robyn Daly, Scheme Manager, Local Government Association Mutual Liability Scheme (LGMLS). We were provided with an overview of Local Government Risk Services and their schemes. Every South Australian council is a member, and although the Local Government Act does not make it mandatory it does set out the insurance requirements and section 142 states that membership of the LGMLS constitutes insurance.

The LGMLS highlighted the issues Councils have with understanding the status or underlying ownership of the land. The importance of understanding their community land and having a well-established community land management plan. She mentioned there is significant work to be done in this area and can understand that these issues add to the complexity and the historical arrangements we have identified through the consultation of leases and licensing with Councils.

Overall Consultation Findings

- Clubs generate social and economic benefit for the local community which is well recognised by all stakeholder consulted.
- The demand for Council facilities can vary significantly across Councils, some Councils are in highly populated areas with an increase in the number and size of sporting and community groups wanting to access facilities. Other Councils have an excess of facilities over demand by sporting and community groups.
- Many Councils have historical agreements which are often based on a peppercorn rate, this does not necessarily reflect leading practice rather it is a simple fee model often accompanying a long tenure. There can be a significant lead time moving from a historic agreement to a contemporary fee model. This includes writing a new policy, adoption, and approval by elected members and to rollover the occupancy agreements when are due for renewal.
- Council that have adopted a contemporary fee models often consisting of a higher base rate, even after significant discounts resulted in a higher fee than a peppercorn rate.
- Consultation revealed that Councils with higher letting fees are likely to offer more services to sporting and community groups.
- Sporting clubs and community groups are mostly run by volunteers, these volunteers do not always have the skillset to manage the built facilities and playing areas and can regularly changeover with little or no handover from one volunteer to the next. These volunteers can find the occupancy agreement negotiations and ongoing governance requirements complex and onerous.
- Community tenants identified issues including lack of facilities, maintaining aged building to a fit for purpose standard and maintaining built facilities and playing areas to a level that meets the expectations of the community. Managing cashflow, increasing utility costs and increased governance reporting requirements were also identified as challenges.
- Complex arrangements do exist within Councils, especially in relation to land ownership, for instance the Council built facility or playing area is on Crown land or private land. Community groups and sporting clubs may have self-funded the facility initially or self-funded capital improvements.

12 Feedback on Draft Guide

The Draft Guide for Leasing and Licensing Sport and Community Facilities was sent out for consultation for a 4-week period, with an accompanying survey which was open for 4 weeks.

The Draft Guide was sent to:

- 70 Councils
- 67 Council officers and elected members who either completed the research survey or attended the workshop.
- 61 Community members who in the main were representatives of sporting and community clubs/associations who either completed the research survey or attended the workshop.
- Steering Committee representatives

Key stakeholders including Office for Recreation, Sport and Racing, Local Government Mutual Liability Scheme, Local Government Association, Small Business Commissioner and Law Society of South Australia, Community Groups SA, Recreation SA, Clubs SA, and peak sporting bodies. (These bodies were requested to also distribute to their wider memberships/ mailing lists for feedback).

A webinar was held on Tuesday 23 June at 3pm, with 45 RSVPs, over 30 people attended, and the webinar was recorded for subsequent use and this link has been distributed to the key stakeholders listed above for future use. The survey received a very good response of 61 responses, 18 of which were not completed in full.

The survey was completed predominantly by Council staff members, sporting clubs and community groups. Overall the feedback was very positive.

Some clubs commented about the Guide being lengthy and, in some parts, quite complex. There could be potential in the future for a simplified version of the Guide aimed at the tenants which are predominantly not-for-profit organisation operated by volunteers. Some clubs and Councils wanted more information specific to their lease / licence arrangement/situation, but this would need to be provided on a case by case basis and this Guide is not intended to cover every individual arrangements/scenario.

Feedback included:

"In has relevant examples and templates to use. It is very thorough yet easy to understand"

"Good graphic displays to aid communication"

"It resembles much of my own thinking, most of which I have either implemented or have plans to implement"

"Provides a comprehensive overview of leasing and licensing and will support Property Officers to manage Council land and facilities more appropriately."

"Simplicity and clarity"

"Easy to read and understand. Well set out with a combination of words, icons, tables, and photos."

"Informative case studies"

The feedback included constructive comments that has been considered in the final version. The inclusions considered were:

- more details on tenant maintenance
- Councils to encourage tenants and sub-tenants that are aligned to the objectives of Council's community land management plans
- acknowledge complexities for clubs
- when Councils are considering their fee model, they can undertake a benchmarking exercise with adjoining Councils or similar size Councils
- Councils obligation to charge rates to tenants
- Council's involvement and support is impacted by resources and the number of facilities within the Council area.
- greater recognition of tenants facilitating identified benefits
- expand Council support activities to include greater understanding of club's activities and forward plans.

The feedback received on the draft Guide was reviewed with the steering committee to arrive at the final inclusions and version.

13 Appendices

Appendix 1 – International Research

United Kingdom

Sport England is a non-departmental public body in the United Kingdom which aims to build the foundation of a community sport system. Two current initiatives associated with sport and recreational facilities and playing areas include “Use our Schools” and Community Asset Transfer. These initiatives have evolved due to the cost in maintaining and upgrading aged Council owned facilities and the increasing demand for community buildings and playing areas.

Use our Schools

Over a third (39%)^{xxi} of England’s sporting facilities are owned by schools and other education sites. Ensuring community use of these facilities is vital given the pressures on local government to rationalise how services are delivered. Approximately two-thirds of school sports facilities across England are now available for some form of community use.

Enabling the community to use school facilities can bring with it a range of benefits including:

- raising the school’s profile and presence in the community
- contributing towards an outstanding school
- generating income streams
- delivering health benefits
- social and cultural development of students
- encourages volunteering within the community.

There are different management models with either the school or a third party managing the community use of the school facilities. The school may manage this using existing school staff or by employing designated staff where the income generated from community use will need to cover the costs of additional staff salaries. The school can use a third party to manage community use, this could be using a commercial leisure provider or a community use provider. Other management models include managing through local government

or through a consortium or network of schools.



Figure: Sport England – How do schools benefit from community use?

Case Study – Greenwood Academy

Greenwood Academy is set within the Castle Vale housing estate, 6 miles northeast of Birmingham and the estate was known for high levels of crime and anti-social behaviour. This led to local government letting the school facilities to the community, however by 2011 community use was declining and the provision of these services was running at a loss. In 2013, with a newly appointed Principal the school opened its doors to the community again, allowing public use of the Sports Hall (4 Badminton Courts), 2 Gymnasiums, Dance Studio and Auditorium. The school also set up a community tuck shop selling teas, coffees, and snacks. The facilities are used by a range of organised groups and clubs with regular block bookings. The main user is a gymnastics club that has over 150 members and uses the facilities three nights per week. This community activity is overseen by a full time Arts, Events and Community Manager. During evening and at weekend, community activity is supervised by a team of Stewards

Appendix 1 – International Research

who are made up of non-teaching support staff paid overtime by the school. Recently, Greenwood Academy have recruited sixth form students providing them with work experience and paid employment on the school site.

Greenwood Academy did not have any problems engaging their community to use the site, but challenges did arise due the full extent of the administration procedures required to support this. The school's academic performance has also improved, and the community program is viewed as a contributing factor for this improvement.

Community asset transfer

Community asset transfer is a shift in management and/or ownership of land or buildings from local authorities to communities (community and voluntary sector groups, community enterprises, social enterprises etc.) In most cases this is a long lease or freehold transfer of the facilities to the club or community organisation.

The length of the tenure will need to be long enough to secure external investment, so at least 25 years but can be 99 to 125 years as this provides better security and incentives to invest. Established sporting clubs, community organisations and new groups who have the capacity and enthusiasm to put unused or underutilised sports facilities and public assets to better use can request a community asset transfer from their Local Authority.

Social benefits of community asset transfer include:

- enabling people to protect the assets in their communities
- involves people in designing and running the services from which, they benefit
- be a catalyst for getting people more involved as volunteers
- supporting policy objectives like health and wellbeing, volunteering, and education
- enabling the Local Authority (Council) to co-locate with community services
- creating a stronger relationship of trust with a community.

- opportunities to grow participation in sports and increase usage.

Economic benefits of community asset transfer include:

- gives sports clubs and community organisations more security and sustainability.
- keeps money in local economy through enterprise and locally owned assets
- financial leverage unlocking funding from sources not available to local authority (Council)
- reducing costs of managing under-utilised facilities
- supporting a less “grant dependent” community and voluntary sector
- improve the quality of the asset leading to an increase in user satisfaction
- an increase in the ability to generate income and create a more sustainable financial position.

Case Study – Nottingham City Gymnastics Club

Nottingham City Gymnastics Club (NCGC) was founded in 2009^{xxii}, and used a number of venues around the city, however as the membership grew to around 200 member's they were spending increasing amounts of time setting up and putting away heavy equipment – they needed a dedicated space of their own. The Nottingham City Council has a community centre “Sixways” that has been closed after the trust managing the centre dissolved. The Club had emailed their local Councillor about their situation and Sixways Community Centre was discussed.

Negotiations processed quickly and Council were open to an asset transfer. The Council agreed to complete outstanding maintenance making it fit for purpose and the Club raised funds to transform the building into a dedicated gymnastics facility. The NCGC was granted a 30-year peppercorn lease with full maintenance responsibility and allowed to sublease. The City Council is saving maintenance costs and has brought a community centre back to use and the Club has control of their space, security of tenure and the opportunity to continue to grow in a sustainable manner.

Appendix 1 – International Research

New Zealand

Clubs throughout New Zealand were struggling with lack of funding, decreasing members and fewer volunteers with the cost of running clubs and maintaining buildings increasing. Sport and sporting clubs are very important to the local communities and Sports NZ understood the value of community sport and recreation facilities.

To overcome these issues, New Zealand has focused on partnership/ hub models and Sportsville is one of those partnership initiatives. Sportsville brings sports clubs together within a geographical area to share ideas, resources, knowledge, and skills. Sportsville^{xxiii} is about creating sports “villages” or communities making it easier for sporting clubs to, offer new programs, attract new members, and control operational costs.

The focus is on collaboration, not amalgamation as it is important to clubs to retain their history and identity. The preferred management model involves the creation of an independent entity, with a focus on strong governance will skilled people to lead the new entity. There may be an employed staff member to undertake administration tasks for the new entity or the club. Success also relied on a clear purpose and reason for all the clubs wanting to be involved in a partnership.

A couple of the lessons learnt from the Hutt City Sportsville^{xxiv} were:

- consistent representation from each club
- build trust, a Council driven approach does lead to some suspicion from sports clubs and as assumption that there must be a hidden agenda
- include a tour of all facilities as this helps to reinforce the shared challenges that the clubs are facing.

Appendix 2 – Policies

Leasing and Licensing of Facilities Policy

Policy – CP056

Prepared	Reviewed	Approved	Date	Council Minute No.
Manager Asset Services	Executive Leadership Team	Council	24 October 2018	2018/ 0218
Trim File: 18/02/01		To be reviewed: October 2021		
Document Owner: Manager Asset Services		Review Frequency: 3 yearly		

1. The purpose of this policy is

To provide guiding principles that will enable the establishment and management of leases and licenses for Mildura Rural City Council's facilities.

2. Policy Statement

Mildura Rural City Council (Council) is committed to the responsible management of community facilities by being consistent, equitable and transparent with Council's lease and license agreements, in order to maximise community benefit.

This Policy does not apply to facilities under a Service Agreement.

3. Principles

This Policy recognises that there is an overall social benefit for the community to enable the use of Council owned and managed land and facilities by organisations that provide recreation and sporting opportunities, or other community services. These services enhance the quality of life and wellbeing of our municipality in support of the objectives set out in the Community & Council Plan.

4. Agreements

- All occupiers of Council land and/or facilities will, as a condition of that occupancy, enter into a formal, legally binding lease or licence agreement with Council.
- Keys or access fobs will not be issued until an agreement has been fully executed.
- Council will only grant a lease or licence to specific persons, companies or incorporated bodies.
- Council will ensure consistency in decision making associated with lease or licence terms and conditions.
- Council will provide an equitable and transparent process for dealing with Council's leased and licensed assets.

Where Council acts as the Committee of Management over Crown Land, Council must seek the prescribed consents in accordance with the provisions of the *Crown Land (Reserves) Act 1978*. Leases and Licenses will be in the prescribed form as provided by the Department of Environment, Land, Water and Planning (DELWP) and Council's additional terms and conditions will form part of the special conditions of the agreement.

- Unless prescribed otherwise by legislation (including the Retail Leases Act 2003), Council may charge Commercial Tenants its legal costs associated with the preparation and negotiation of the licence or lease. Council will not charge Community Occupiers for Council's legal and administrative costs associated with a new community lease or licence, provided the lease or licence conforms to Council's standard document. Substantial

variations to the standard lease or licence agreements may incur increased legal costs to be passed on to the tenant.

Council may also claim from the tenant its reasonable legal costs incurred in connection with an assignment of lease of the premises. Any legal costs associated with a lease or licence variation as a result of a tenant's request may also be charged to the tenant.

- If the lease provides for an option for a further term, then Council will, upon request, grant this to the tenant, provided that the agreement provisions have been satisfied throughout the term.
- Tenants must obtain Council's written consent to any subleasing arrangements. If consent is granted, the management of the sublease is the sole responsibility of the head lessee (Council's tenant).
- Council may evict any occupier who:
 - fails to enter into a formal occupancy agreement for the property within 90 days of receiving the agreement;
 - fails to pay lease/licence rental within 90 days of the invoice due date;
 - fails to perform or observe the conditions of the agreement;
 - fails to provide and keep appropriate Public Liability Insurance; or
 - fails to provide a Termite Inspection Certificate.

5. Inspections, Maintenance and Improvements

- Council will conduct an inspection of all buildings prior to commencement of a lease agreement and at the commencement of any lease renewal.
- Maintenance schedules will be included in all new lease agreements. Each tenant is required to maintain the facility in accordance with the maintenance schedule at their cost.
- Council or Council's authorised agents may enter the premises to inspect the essential safety measures at any time after giving the tenant notice.

6. Risk and Occupational Health and Safety

- Tenants must have in place emergency and evacuation plans and procedures and must ensure that their employees or visitors participate, as requested, in emergency training and drills. Tenants must also adhere to and comply with occupational health and safety requirements.

7. Lease Term and Vacancy Procedures

CROWN LAND (Crown Land (Reserves) Act 1978):

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year Initial term with 2 x 3 year renewal options (Maximum 21 year term)	Community Occupiers – Based on Pricing Methodology Matrix in Appendix 1 Commercial Occupiers – Commercial Market Rental Assessment completed by Valuer
Licence	Preferred Tenure - 3 years	Community Occupiers – Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental Commercial Occupiers – Commercial Market Rental Assessment completed by Valuer
Kindergarten and Preschool Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 21 Year term)	No Charge
Historical Society Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 21 year term)	Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental

COUNCIL LAND:

Community Groups (Local Government Act 1989):

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 50 year term)	Based on Pricing Methodology Matrix in Appendix 1
Licence	Preferred Tenure - 3 years	Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental
Kindergarten and Preschool Lease	Preferred Tenure - 3 year initial term with 2 x 3 year renewal options (Maximum 50 year term)	No Charge
Historical Society Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 50 year term)	Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental

Commercial (Local Government Act 1989 and/or Retail Leases Act 2003):

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year initial term with 1 x 3 year renewal option	Commercial Market Rental Assessment completed by Valuer
Licence	3 years	Commercial Market Rental Assessment completed by Valuer

Council may offer a lesser term where Council considers that this is in the best interests of the community.

Council will generally not grant leases longer than ten years, including options, however, terms longer than ten years may be considered where a tenant commits to substantially invest in a fixed asset (e.g. building, playing surface) and fully maintains the asset.

Council reserves the right to advertise for Expressions of Interest for a leased premises, when a premises becomes vacant or at the expiry of the lease term. Consideration will be given to the length of time a tenant has occupied a premises and how much they have contributed to the construction and ongoing maintenance of the building.

A Notice of Intention to Lease will be advertised for all new leases. This will allow a 28 day submission period in accordance with section 223 of the *Local Government Act 1989*.

8. Pricing Strategy

- Professional advice from Council's in-house registered Valuers will determine the replacement value of facilities that are leased by Community Occupiers, in order to apply the Pricing Methodology (Appendix 1). Due recognition will be given to organisations that have contributed to the capital costs of construction of the asset.
- Professional advice from Council's in-house registered Valuers will determine the market rental of facilities that are leased or licensed by Commercial Occupiers. The rental amount will be increased annually by either the Consumer Price Index or a fixed percentage. The preferred method of review is by a fixed percentage increase annually, as negotiated between the Landlord and the Tenant.
- Rentals for lease agreements are subject to a review at the exercise of an option and/or every three years of the term.
- Licenses that have been granted to Community Occupiers are generally charged based on the minimum rental calculation in the Pricing Methodology (Appendix 1).
- Council reserves the right to amend the rental if a tenant obtains an on-premises licence, packaged liquor licence, general licence or gaming licence, or gains access to other commercial or fortuitous (but not fundraising) means of income generated during the term of the agreement. For example, rent received from subletting, telecommunication rental, revenue received from advertising on the premises. Consent by Council is required for any such use.
- Council will take into consideration its obligations under the National Competition Policy (NCP) when determining rental fees for Commercial Occupiers and will ensure strict compliance with NCP requirements.

9. Use of Premises

- Community Occupiers must allow Council to use the premises for Council's sponsored functions at no cost to Council. Such use will be subject to Council giving the tenant at least 30 days written notice of its need to use the premises, provided that Council's use of the premises does not unreasonably interfere with the tenant's use of the premises. Council must also rectify any damage to the premises due to Council's use of the premises.
- Community Occupiers must allow Council to use the premises for municipal emergencies at no cost to Council.
- Tenants will make the premises available for casual hire to other community groups where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. The tenant must obtain Council's written consent prior to the tenant hiring out the premises for casual use. The hirer must also enter into an occasional use hire agreement on terms, conditions and rates agreed to by Council prior to occupying the premises. A breach of the hire agreement by the tenant or the hirer will be deemed to be a breach of the lease or licence by the tenant.

- Smoking is not permitted in any Council building. Tenants must also display 'no smoking' signs on their premises if requested by Council.

10. Who is responsible for implementing this policy?

Manager Asset Services

11. Abbreviations and Definitions

Facilities	Any asset owned, controlled or managed by Mildura Rural City Council.
DELWP	Department of Environment, Land, Water & Planning
Lease	A lease is a right granted by the owner of land (landlord) to another person (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment.
Sublease	A sublease is the renting of property by a tenant to a third party for a portion of the tenant's existing lease contract.
Licence	A licence permits a person (licensee) to occupy land (or part thereof) based on particular conditions. The main feature that distinguishes a licence from a lease is that a licence does not permit exclusive occupancy of the land. Sporting and recreation clubs that have seasonal service agreements are not included in this Policy.
Commercial Occupiers	Any occupier who operates a business or commercial enterprise, other than a sporting or recreational / community group.
Community Occupiers	Not for profit bodies that provide or promote community, cultural, sporting, recreational or similar activities and do not contravene the National Competition Policy (NCP).
Market Rental Value	The estimated amount for which property should rent, as at the relevant date, between a willing Landlord and a willing Tenant in an arm's length transaction, wherein the parties had each acted knowledgeably, prudently and without compulsion, and having regard to the usual terms and conditions for leases of similar property.
Replacement Value	The cost of replacement of a building that could conceivably be destroyed. The assessed value excludes any equipment, tools, furniture and the like. It also excludes demolition, removal of debris and GST.
NCP	National Competition Policy
Incorporated Body	An organisation that is incorporated under the <i>Associations Incorporation Reform Act 2012</i> .

12. Legislation and other references

12.1 Legislation

Related Policies, Procedures, Guidelines and Forms:

- Local Government Act 1989
- Associations Incorporation Reform Act 2012
- Local Government (General) Regulations 2004
- Retail Leases Act 2003
- Retail Leases Regulations 2003
- Crown Land (Reserves) Act 1978
- Occupational Health and Safety Act 2004
- Residential Tenancies Act 1997
- Planning and Environment Act 1987
- Building Act 1993
- Health Act 1958
- Child Safety and Wellbeing Act 2005
- Education and Care Services National Law Act 2010
- Working with Children Act 2005
- Children's Services Act 1996
- Approved Master Plans
- Mildura Rural City Council Planning Scheme
- Community and Council Plan
- Community Engagement Strategy
- Public Open Space Strategy
- Venue Hire Process
- Land Manager's Consent Policy and Process
- Municipal Emergency Management Plan

12.2 Documents

This Policy is implemented in conjunction with the following documents:

- ProMapp Process for Leasing and Licensing
- DELWP 17D Lease, DELWP 17B Licence, Standard Form S190 Lease, Council Licence Agreement and Commercial Lease documents
- Maintenance Schedules

12.3 Risk Assessment Reference

Risk Category	✓	Risk Category	✓
Asset Management	✓	Financial Sustainability	
Committees	✓	Human Resource Management	
Compliance – Legal & Regulatory	✓	Leadership & Organisational Culture	
Contract Management	✓	Occupational Health & Safety	✓
Contract Tendering & Procurement	✓	Organisational Risk Management	✓
Corporate Governance	✓	Project Management	
Environmental Sustainability		Public Image and Reputation	✓

Appendix 1
Pricing Methodology for Community Lease Agreements

The following matrix indicates the methodology to be used to calculate the appropriate fee for each Lessee by allowing for the specific circumstance of individual organisations.

A	Categories of Occupancy	Full Lease Fee
	Full lease fee = 3% of the replacement value as determined by a Valuer.	\$
B	Categories of Tenant	% Lease Fee
B1	Community Groups Category 1: Tenants who: <ul style="list-style-type: none"> • have a liquor licence held on the premises; AND • hold a Food Registration Certificate on the premises; AND • hire their facilities for functions/social events; OR • charge entry to the premises. 	17%
B2	Community Groups Category 2: Tenants who: <ul style="list-style-type: none"> • have a liquor licence held on the premises; OR • hold a Food Registration Certificate on the premises; OR • hire their facilities for functions/social events; OR • conduct sporting activities for members and guests. 	14%
B3	Community Groups Category 3: Non-sporting groups who provide a community service and are predominately volunteer based, excluding Historical Societies and Kindergarten / Preschool leases.	5%
C	Financial Circumstances (Evidence to be Provided)	% of Lease Fee
C1	Group contributed \$0 to the construction of the facility	100%
C2	Group contributed up to 50% towards the construction of the facility.	75%
C3	Group contributed in excess of 50% towards the construction of the facility.	50%
C4	Group contributed in excess of 75% towards the construction of the facility.	25%
D	Co-location	% of Lease Fee
D1	Tenant has exclusive use	100%
D2	Tenant is co-located with another group.	50%
Rental Calculation Ax BxCxD (equals GST exclusive amount) Note: Minimum rental \$225 per annum plus GST		\$ Plus GST

1. RATIONALE

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.

2. 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.

3. OBJECTIVES

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.

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.

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
- 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

4. POLICY SCOPE

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

5. IMPLEMENTATION

5.1 ELIGIBILITY FOR LEASE OR LICENCE

5.1 (a) 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

5.1 (b) 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

Leasing and Licensing of Council Owned Facilities Policy

- 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

5.1 (c) 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

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 WATER USAGE

5.6 (a) 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.

5.6 (b) 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 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.

5.12 POLITICAL SIGNS

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

6. 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

7. REFERENCES

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

Relevant Acts

- 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

8. REVIEW AND EVALUATION

Reviewed by Council 28 March 2017 (GC280317R01)

Updated to new Format June 2019

Leasing and Licensing of Council Owned Facilities Policy

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 which may include such groups as: <ul style="list-style-type: none"> - Low socio-economic background - Over 60's years of age - Aboriginal and Torres Strait Islander - Culturally and Linguistically Diverse (CALD) - Children Under 17 years of age - Physically and intellectually disabled - Female participation in sport 	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%

Appendix 3 – Occupancy Agreements

PERMIT
FACILITY HIRE (OCCASIONAL)

I
(Name)

for and on behalf ("permit holder")
(Organisation, Business, Group)

of address.....

of telephone.....

hereby apply to
(Council)

to hire the
(Name of the Hall)

for the purpose of
(Name of the event)

date of event between the hours of and

- Alcohol **will** **will not** be served
- Permission to use polish, floor speed etc. **is** **is not** requested

THE PERMIT IS NOT EFFECTIVE PENDING:

- a. The permit holder agreeing to the **General Conditions** as contained herein.
- b. The permit holder agreeing to any/all **Special Conditions** which the Council may determine and attach to the Permit.
- c. The permit holder paying the prescribed fee.
- d. A copy of this document signed for the Council has been returned to the permit holder.

GENERAL CONDITIONS OF PERMIT

1. The permit holder, in paying the prescribed fee, will be covered by a general public and products liability insurance policy.
2. The permit holder agrees to indemnify and to keep indemnified the Council, its employees and/or agents against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against any of them arising out of or in relation to any activities under the Permit or arising out of breach of any condition attaching to the Permit.
3. The permit holder, where appropriate, shall ensure that it is licensed or registered to carry out the activity authorised by the issuing of the Permit.
4. The Permit is not transferable.
5. The permit holder shall comply with applicable laws and also give all notices required by any legislation relating to an activity under the Permit.
6. The permit holder shall notify the Council at the time of the application, if alcohol is to be served during the period of the Permit.

7. No adhesive tape, blu-tack or drawing pins shall be used on walls or ceilings. If suitable anchors are provided, decorations may be hung from them.
8. No polish, floor speed or other material is to be used on the floor without the prior written approval of the Council who shall reserve the right to refuse the same.
9. The permit holder shall ensure that any breakages of glass or spillage of food or drink are cleaned up immediately.
10. At the completion of any function, all floors must be swept, tables, chairs and other furniture placed in their original positions and all areas cleaned to the satisfaction of Council. Failure to do so may result in cleaning fees being charged.
11. All litter resulting from any function must be removed from the hall and adjoining Council property before 12.00 noon the following day.
12. The permit holder shall ensure that all doors and windows are securely fastened and lights extinguished when leaving the hall.
13. The use of the hall may be granted up to 36 hours prior to the time of hire for decorating purposes subject to other bookings during that period.
14. Repairing and/or replacing any damaged furniture, fixtures or fittings will be the responsibility of the permit holder. If any necessary repair or replacement is not undertaken within a reasonable time, Council may repair and/or replace and recover the costs from the permit holder.
15. Normal hire charges may be applied if a cancellation is not received at the Council office at least seven days prior to the reserved date.
16. The Permit is liable to be revoked by Council if the permit holder fails to comply with a condition of the Permit or may be revoked in any other justifiable circumstance.

In making this application, the permit holder agrees to be bound by the conditions of the Permit and declares that the particulars provided by the permit holder with regard to the proposed event are true and correct. The person signing warrants he/she has authority to bind the permit holder for that purpose.

Signed for and on behalf of the permit holder

Name Date.....

Position Signature.....

COUNCIL AUTHORISATION

Authorisation Approved Denied

Special Conditions attached Yes No

Council Specification for Alteration to Road attached Yes No

Fee

Name of Authorised Officer of Council

.....

Signed Date.....

PERMIT
FACILITY HIRE (ONGOING)

I
(Name)

for and on behalf (“permit holder”)
(Organisation, Business, Group)

of address.....

of telephone.....

hereby apply to
(Council)

to hire the
(Name of the Hall)

for the purpose of
(Name of the event)

PERIOD OF HIRE

The Permit shall be for the term of
commencing..... and expiring

on a **Daily** **Weekly** **Monthly** **Quarterly** basis

The Permit is to be valid from to

THE PERMIT IS NOT EFFECTIVE PENDING:

- a. The permit holder agreeing to the **General Conditions** as contained herein.
- b. The permit holder agreeing to any/all **Special Conditions** which the Council may determine and attach to the Permit.
- c. The permit holder paying the prescribed fee.
- d. A copy of this document signed for the Council has been returned to the permit holder.
- e. The permit holder providing to the Council evidence of all insurances as required by either the General Conditions and/or the Special Conditions.

GENERAL CONDITIONS OF PERMIT

- 1. The permit holder agrees to indemnify and to keep indemnified the Council, its employees and/or agents against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against any of them arising out of or in relation to any activities under the Permit or arising out of breach of any condition attaching to the Permit.
- 2. The permit holder shall take out and keep current a public liability policy of insurance for the minimum sum of \$10,000,000.00 in respect of any negligent act or omission of the permit holder in relation to any activities under the Permit.
- 3. The permit holder, where appropriate, shall ensure that it is licensed or registered to carry out the activity authorised by the issuing of the Permit.

4. The Permit is not transferable.
5. The permit holder shall comply with applicable laws and also give all notices required by any legislation relating to an activity under the Permit.
6. Alcohol consumption will be prohibited without prior permission from Council.
7. No adhesive tape, blu-tack or drawing pins shall be used on walls or ceilings. If suitable anchors are provided, decorations may be hung from them.
8. No polish, floor speed or other material is to be used on the floor without the prior written approval of the Council.
9. The permit holder shall ensure that any breakages of glass or spillage of food or drink are cleaned up immediately.
10. At the completion of any function, all floors must be swept, tables, chairs and other furniture placed in their original positions and all areas cleaned to the satisfaction of Council. Failure to do so may result in cleaning fees being charged.
11. All litter resulting from any function must be removed from the hall and adjoining Council property before 12.00 noon the following day.
12. The permit holder shall ensure that all doors and windows are securely fastened and lights extinguished when leaving the hall.
13. The use of the hall may be granted up to 36 hours prior to the time of hire for decorating purposes subject to other bookings during that period.
14. Repairing and/or replacing any damaged furniture, fixtures or fittings will be the responsibility of the permit holder. If any necessary repair or replacement is not undertaken within a reasonable time, Council may repair and/or replace and recover the costs from the permit holder.
15. Normal hire charges may be applied if a cancellation is not received at the Council office at least seven days prior to the reserved date.
16. The Permit is liable to be revoked by Council if the permit holder fails to comply with a condition of the Permit or may be revoked in any other justifiable circumstance.

In making this application, the permit holder agrees to be bound by the conditions of the Permit and declares that the particulars provided by the permit holder with regard to the proposed event are true and correct. The person signing warrants he/she has authority to bind the permit holder for that purpose.

Signed for and on behalf of the permit holder

Name Date.....

COUNCIL AUTHORISATION

Authorisation Approved Denied

Special Conditions attached Yes No

Council Specification for Alteration to Road attached Yes No

Fee

Name of Authorised Officer of Council

.....

Signed Date.....

RECREATIONAL AND SPORTING FACILITIES LICENCE OR LEASE

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AGREEMENT

BETWEEN: ##### ABN ##### of ("Council")
#####

Name of Council and address

AND: ##### ABN ##### of ("Occupier")
#####

*The Person, Club or Group named in **Item 1** of the Schedule*

BACKGROUND

- A. The Council has care control and management of the community, recreational or sporting Facility.
- B. In this Agreement, the parties agree for the Council to grant a right to occupy (or lease, if applicable) the Facility to the Occupier.
- C. The Occupier has inspected the Facility and is satisfied that the Facility is in good condition and is fit for the purposes for which the Occupier intends to use it.

TERMS

1. INTERPRETATION

1.1 The statements in the Background above form part of this Agreement.

1.2 The expressions below have the following meanings:

"Council" means the council so described above and, where the context allows, includes the Council's employees, servants, agents and contractors.

"Facility" means the community, recreational or sporting facility described in **Item 2** of the Schedule, including any buildings, structures, fences, improvements and fixtures that are on the property now or are erected during the Term.

"Fee" means the fee stated in **Item 5** of the Schedule, subject to review as this Agreement may allow, and payable by the Occupier to the Council at the times and in the instalments stated in **Item 6** of the Schedule.

"GST" and **"tax invoice"** have their meaning in A New Tax System (Goods and Services Tax) Act 1999.

"Occupier" means the person/s so described above, and the **"Occupier's visitors"** includes the Occupier's employees, agents, contractors, and anybody else that the Occupier allows onto the Facility.

"Permitted Use" means a use stated in **Item 7** of the Schedule.

"Schedule" means the Schedule at the back of this Agreement.

"Term" means the period stated in **Item 3** of the Schedule starting on the date in **Item 4** of the Schedule, subject to early termination or extension as this Agreement may allow.

- 1.3 A reference to a party includes that party's successors and transferees.
- 1.4 Words in the singular include words in the plural and *vice versa*.
- 1.5 If two or more persons are referred to in the Schedule as "Occupier" then this Agreement binds them jointly and severally.
- 1.6 The words "person" or "group" includes a body corporate.
- 1.7 A reference to any Act or law includes any Act or law that amends or replaces it.
- 1.8 Clause headings are for reference only and should not be taken into account in interpreting this Agreement.

2. GRANT

The parties agree the Council grants to the Occupier a right to occupy the Facility during the Term on the terms of this Agreement.

3. OCCUPIER'S OBLIGATIONS

The Occupier agrees with the Council as follows:

3.1 Fee

- 3.1.1 The Occupier must pay the Fee to the Council in the amounts, in the instalments, and at the times this Agreement requires.
- 3.1.2 The Fee will be reviewed 12 months after the commencement date set out in **Item 4** of the Schedule, and thereafter at intervals of twelve months until the Term ends.
- 3.1.3 Any increase in the Fee will be in proportion to the increase in the Consumer Price Index (all groups index for Adelaide) (CPI) published by the Australian Statistician for the previous 12 months. If there is no increase in the CPI then the annual Fee will not change.

3.2 Rates, Taxes, Charges and Costs

- 3.2.1 The Occupier must pay on time and in full all rates, taxes and charges relating to the Facility no matter whether they are charged, levied or assessed on the Occupier or the Council. Such include charges for telephone, water (including excess water), power, gas or security services to the Facility.
- 3.2.2 The Occupier must pay the costs of preparing this Agreement including any incidental costs.
- 3.2.3 In addition to Fee, the Council may recover from the Occupier any GST for which the Council becomes liable by reason of this Agreement, conditional upon the Council issuing a tax invoice for the payment.
- 3.2.4 The Occupier must comply with its obligations under this Agreement at its own cost.

3.3 Dealings by the Occupier

Except with the Council's prior written consent, the Occupier must not:

- 3.3.1 assign the whole or any of their interest in this Agreement;
- 3.3.2 (subject to Clause 3.5) grant a sub-lease, licence or concession for the whole or a part of the Facility;
- 3.3.3 (subject to Clause 3.5) part with or share possession of the whole or a part of the Facility; or
- 3.3.4 grant a mortgage, charge, lien or pledge over the whole or any of their interest in this Agreement.

Consent under this Clause 3.3 may be conditional.

3.4 Use of the Facility

The Occupier must not use nor allow any other person to use the Facility for:

- 3.4.1 any purpose or activity except the Permitted Use unless it first gets the consent of the Council in writing;
- 3.4.2 carrying on a business; or
- 3.4.3 anything that is illegal or immoral.

3.5 Hiring of the Facility

- 3.5.1 The Occupier may hire the Facility to other persons or bodies on a casual or seasonal basis.
- 3.5.2 The Council reserves the right to fix conditions and fees for the hiring of the Facility by the Occupier and the Occupier must comply with any conditions or fees set by the Council.
- 3.5.3 The Occupier must ensure that any hire agreement it enters into does not breach Clause 3.4.

3.6 Comply with Laws

- 3.6.1 The Occupier must comply with the provisions of all Acts, regulations, by-laws which affect the Occupier's occupation or use of the Facility.
- 3.6.2 The Occupier must comply with any requirement imposed by any local government or semi-government authority in relation to the Facility or to the Occupier's occupation or use of the Facility.
- 3.6.3 Without limiting the generality of Clause 3.6.2, the Occupier must specifically comply with all requirements under laws dealing with workplace safety, public health, public safety, fire safety and safety generally.

3.7 Liquor and Gaming Licences

- 3.7.1 Unless the Occupier first gets the consent of the Council in writing, the Occupier must not in relation to the Facility apply for or hold:

- (a) a liquor licence under the Liquor Licensing Act 1997; or
- (b) a gaming machine licence under the Gaming Machines Act 1992.

3.7.2 If the Occupier obtains a licence of a kind to which Clause 3.7.1 refers, the Occupier must ensure that it and any Occupier's visitors do not do:

- (a) anything that is in breach of the relevant Act or of the conditions of any licence; or
- (b) anything that may result in the licence being revoked or suspended.

3.8 Maintenance and Repair

3.8.1 The Occupier must maintain the Facility in good condition and free from hazards and must:

- (a) keep the Facility clean, tidy and free from dirt, rubbish and vermin;
- (b) keep the Facility in good repair (fair wear and tear and damage by fire, storm, tempest, act of god, war, riot, civil commotion and earthquake excepted);
- (c) paint any buildings and other improvements in the Facility to the Council's satisfaction;
- (d) keep all toilet fittings, sinks, drains, pipes and other plumbing in good repair and free from blockages and ensure that no part of the Facility becomes insanitary;
- (e) keep any vegetation, lawns or garden on the Facility maintained in an attractive state;
- (f) keep all of the Occupier's property in good condition so as to prevent any hazard to any person or any deterioration in the condition of the Facility;
- (g) repair any damage to the Facility caused by the Occupier or any Occupier's visitors;
- (h) notify the Council as soon as it becomes aware of any defects in the Facility or anything which could present a hazard or cause harm to any person or the Facility.

3.8.2 The Occupier does not have to undertake structural works on the Facility except for:

- (a) works on any building or structure erected by the Occupier under Clause 6.1;
- (b) works needed as a result of a negligent or wrongful act or omission by the Occupier or any Occupier's visitors;

(c) works needed as a result of a breach of this Agreement by the Occupier; or

(d) works needed as a result of the use to which the Facility is being put.

3.8.3 The obligations imposed upon the Occupier in this Clause are to be carried out at the Occupier's expense except if the cost of doing it is covered by insurance which either the Council or the Occupier has taken out under this Agreement.

3.9 **Entry by the Council**

3.9.1 The Occupier must allow the Council to enter the Facility for the purpose of inspecting its condition and state of repair.

3.9.2 Except in an emergency, the Council must give the Occupier reasonable notice before exercising its right under this Clause 3.9.

3.10 **Work Required by the Council**

3.10.1 If the Council finds on inspection that any part of the Facility for which the Occupier is responsible needs maintenance or repair then the Council may notify the Occupier in writing of the work to be done and the time within which such work must be done.

3.10.2 The Occupier must comply with the notice to the satisfaction of the Council within the time stated in the notice (which must not be less than fourteen (14) days except in the case of an emergency).

3.10.3 If the Occupier fails to carry out the work required by the notice within the time specified or fails to do the work to the satisfaction of the Council then the Council may undertake the repairs. The cost of such repairs and any other reasonable costs incurred by the Council will be recoverable from the Occupier.

3.11 **Erection/Alteration of Buildings**

3.11.1 Unless the Occupier first gets the consent of the Council in writing it must not in or on the Facility:

(a) erect a building or structure;

(b) fix anything to the outside of a building or structure;

(c) alter any existing water supply or drainage facilities;

(d) alter or demolish an existing building or structure;

(e) install any water, gas or electrical appliances;

(f) install any lighting or air conditioning equipment;

(g) paint any building, structure or other surface in a colour different to that which exists;

(h) make any other change of a permanent nature.

- 3.11.2 If the Council consents to any of the works under this Clause 3.11 then the works must be done strictly in accordance with any plans and specifications approved by the Council and will be done at the reasonable cost of the Occupier.

3.12 **Ownership of Improvements**

Unless the Occupier obtains the written acknowledgment of the Council, all structures, improvements, fixtures and fittings located in or on the Facility at any time during the Term will become the property of and belong to the Council irrespective of whether the Occupier or the Council purchased them.

3.13 **Occupier's Property**

- 3.13.1 The Council may (despite anything else to the contrary in this Agreement) serve the Occupier with a notice in writing (either during the Term or at the end of the Term) requiring the Occupier to remove any of the Occupier's fixtures and fittings from the Facility.
- 3.13.2 The Occupier must comply with the notice within twenty eight (28) days of receiving it and must at its own cost repair any damage so caused to the Facility.
- 3.13.3 If the Occupier fails to comply with the notice, the Council may do any of the actions required by the notice and the Occupier must pay to the Council any reasonable costs incurred by the Council in doing so.

3.14 **Signs**

Unless the Occupier first gets the consent of the Council in writing, the Occupier must not display in or on the Facility any sign that is visible from outside the Facility.

3.15 **Offensive Activities**

- 3.15.1 The Occupier must not do, nor allow its visitors to do, within the Facility or on any adjoining property: -
- (a) anything that is noisy, offensive or dangerous;
 - (b) anything that may cause annoyance, nuisance, or damage to any occupier or owner of nearby land;
 - (c) anything that may become an offence against any Act, regulation or by-law;
 - (d) anything that may cause any insurance policy to become void or to be subject to an increased premium.
- 3.15.2 The Occupier must not bring anything into the Facility which is dangerous, harmful, poisonous, explosive or flammable unless it first gets the consent of the Council in writing.

3.16 **Notification of Accidents and Hazards**

The Occupier must promptly notify the Council in writing of:

- 3.16.1 any accident that occurs in, on or associated with the Facility;
- 3.16.2 anything in, on or associated with the Facility that needs repairing;
- 3.16.3 anything that could present a hazard or that could harm any person upon the Facility or the Facility.

3.17 **Constitution Rules and Reports**

- 3.17.1 The Occupier must supply to the Council:
 - (a) a copy of its constitution;
 - (b) a copy of any rules or by-laws of the Occupier;
 - (c) a copy of any amendments to the constitution, rules or by-laws of the Occupier within twenty eight (28) days of them being made;
 - (d) a copy of the annual report of the Occupier including the balance sheets and any auditor's report.
- 3.17.2 The Occupier must make available at the request of the Council:
 - (a) the financial records of the Occupier;
 - (b) the minutes of any meeting of the Occupier or any committee of the Occupier.

4. **INDEMNITIES AND INSURANCES**

4.1 **Indemnity**

The Occupier indemnifies the Council against all actions, demands, losses, damages, costs and expenses for which the Council may become liable arising wholly or partly from any of the following:

- 4.1.1 the misuse, negligent use, waste or abuse by the Occupier or its visitors of any services at the Facility including, but not limited to, water, gas, electricity or oil;
- 4.1.2 the overflow, leakage or escape of water (including rain water), fire, gas or electricity or other harmful agent in or from the Facility caused or contributed to by any act or omission of the Occupier or any Occupier's visitors;
- 4.1.3 loss, damage or injury to property or persons caused or contributed to by the Occupier or any Occupier's visitors' use or occupation of the Facility;
- 4.1.4 loss, damage or injury to property or persons in or on the Facility caused or contributed to by the neglect or default of the Occupier or any Occupier's visitors;
- 4.1.5 loss, damage or injury to property or persons in or on the Facility caused or contributed to by Occupier's neglect or failure to observe or perform any of its obligations pursuant to this Agreement.

4.2 Limits on the Council's Liability

- 4.2.1 The Occupier will occupy and use the Facility at the risk of the Occupier.
- 4.2.2 The Occupier releases the Council from any costs or loss arising from any accident, damage or injury occurring on the Facility except where such accident, damage or injury results from any wilful or negligent act or omission of the Council.
- 4.2.3 The Council is not responsible for any loss of or damage to any fixtures, fittings or personal property of the Occupier.
- 4.2.4 The Council is not responsible for any costs or loss suffered by the Occupier arising from any malfunction of or interruption to:
- (a) water, gas or electricity services;
 - (b) air conditioning equipment;
 - (c) fire equipment;
 - (d) any other plant, machinery or services; or
 - (e) the blockage of any gutters, pipes or drains.

4.3 Public Risk Insurance

- 4.3.1 The Occupier must take out and maintain during the Term a public risk insurance policy for at least **\$10,000,000** or such other amount as stated in **Item 8** of the Schedule. The policy will be in respect of injury, loss or damage occurring in or on the Facility and will note the Council's rights and interests as controller of the Facility.
- 4.3.2 The Occupier must produce a copy of the policy and a certificate of currency each year on renewal of the policy or at such other time as the Council may request.

4.4 Property and Contents Insurance

- 4.4.1 The Council or the Occupier (as noted in **Item 10** of the Schedule) will take out and maintain an insurance policy in respect of the Facility against damage by fire, lightning, storm, explosion, earthquake, malicious damage and/or such other risks as the Council thinks fit for full reinstatement value.
- 4.4.2 If the Council takes out the insurance under 4.4.1 then the Occupier must pay to the Council all costs incurred by the Council relating to those insurances as soon as demanded by the Council.
- 4.4.3 If the Occupier takes out the insurance under 4.4.1 then the Occupier must produce a copy of the policy and a certificate of currency each year on renewal of the policy or at any other time when requested by the Council.
- 4.4.4 The Occupier is responsible for obtaining insurance to cover its own contents or other assets which are located in or on the Facility from time to time.

4.5 Insurance Claims

- 4.5.1 The Occupier must notify the Council in writing, giving full details, whenever the Occupier becomes aware of a possible claim under any insurance required in this Agreement.
- 4.5.2 If there is a claim under any insurance policy taken out by the Council then:
- (a) the Council alone may deal with the insurer regarding the claim;
 - (b) the Council may settle the claim as it thinks fit, and the Occupier will be bound by the settlement;
 - (c) the Occupier may be required to pay to the Council any excess which the Council has to pay under the insurance policy; and
 - (d) if requested, the Occupier must pay any excess as soon as the Council demands payment.

4.6 Termination or Reduction of Fee on Damage

If the whole or any part of the Facility is destroyed or damaged for any reason such as to make it substantially unfit for the Occupier's use and occupation then this Clause 4.6 will apply.

- 4.6.1 The Council may (in its absolute discretion) decide not to rebuild or reinstate the Facility. If the Council so decides then it may end this Agreement by written notice to the Occupier.
- 4.6.2 If the Council elects not to end this Agreement under Clause 4.6.1, then it must ensure that the Facility is made fit for use by the Occupier within a reasonable time frame.
- 4.6.3 Until the Council either ends the Agreement or makes the Facility fit for use, the Fee and any other payments due under this Agreement will be reduced. The amount of any reduction will be determined by the Council and will depend upon the nature and extent of the damage sustained and will continue until the Facility is reinstated or made fit for the Occupier's occupation and use.
- 4.6.4 If, after six (6) months the Facility has not been substantially reinstated by the Council, this Agreement may be terminated by either party by giving notice to the other in writing.
- 4.6.5 Any such termination will not reduce the rights of either party in respect of any previous breaches of this Agreement.

5. COUNCIL'S OBLIGATIONS

The Council agrees that if the Occupier pays the Fee in accordance with this Agreement and complies with its obligations under this Agreement, then during the Term the Occupier may quietly enjoy the Facility for the Permitted Use.

6. EXPIRY OR EARLY TERMINATION OF LEASE

6.1 Termination

- 6.1.1 This clause applies if the Occupier:
- (a) fails to pay the Fee or any other money which is due to the Council for a period of twenty eight (28) days from the due date for payment;
 - (b) fails to meet any other of its obligations under this Agreement;
or
 - (c) becomes insolvent or in the case of an incorporated association ceases to be incorporated under the Associations Incorporation Act 1985.
- 6.1.2 If this Clause applies, the Council may serve on the Occupier a notice in writing stating:
- (a) the nature of the breach;
 - (b) what the Occupier must do to remedy the breach;
 - (c) the time frame in which the Occupier must remedy the breach;
 - (d) whether the Occupier is to pay any compensation and, if so, how much.
- 6.1.3 If the Occupier fails to comply with the notice within the time stated in it then the Council may end this Agreement and take possession of the Facility.
- 6.1.4 The right to terminate the Agreement and enter into possession will not reduce the Council's right to take any other action for any of the Occupier's previous breaches.

6.2 Surrender

- 6.2.1 Upon the expiration or earlier termination of the Agreement, the Occupier will peacefully and quietly surrender and give up possession of the Facility.
- 6.2.2 Subject to Clause 3.12, the Occupier may remove from the Facility any of the Occupier's fixtures and fittings and must immediately repair any damage caused in removing them.
- 6.2.3 The Occupier will leave the Facility in good condition, repair and cleanliness.
- 6.2.4 Any reasonable costs incurred by the Council in cleaning or repairing any damage caused by the Occupier in surrendering the Facility may be recovered by the Council from the Occupier.

7. OTHER RIGHTS AND OBLIGATIONS

7.1 The Council able to Undertake Works

The Council or any persons authorised by the Council may at any time enter the Facility and carry out any improvements, additions, alterations or any other work. In so doing, the Council must use its best endeavours to cause as little disturbance as possible to the Occupier.

7.2 Resumption

If the Council receives notice of any proposed resumption or acquisition of the Facility by any Government (Federal or State) or other authority, or if the control of the Facility is otherwise taken away from the Council, then the Council may terminate this Agreement by giving three (3) months' notice in writing to the Occupier.

7.3 Renewal

7.3.1 At the end of the initial Term, the Occupier will be entitled to an extension of the Term for the period set out in **Item 9** of the Schedule provided that :

- (a) the Occupier gives the Council a written notice of its desire to be granted the extension not less than three (3) and not more than six (6) months before the expiration of the initial Term;
- (b) the Occupier has not committed any frequent and/or substantial breaches of the Agreement during the initial Term; and
- (c) the Occupier is not in breach of the Agreement at the time the notice is given.

7.3.2 The extended Term will be on the same terms and conditions as this Agreement but will exclude the right of further renewal.

7.4 Holding Over

7.4.1 If, with the consent of the Council, the Occupier continues to occupy the Facility after the expiry of the Term then this Agreement will continue as a monthly occupation on these same terms and conditions.

7.4.2 Either party may give the other one (1) month's written notice to terminate the monthly occupation with the occupation expiring one (1) month from the date the notice is given.

7.5 Waiver

The failure or omission by either party to take any action for the breach of any provision of this Agreement will not stop either party from taking action in relation to any other breaches of the same or any other provision of the Agreement.

7.6 Notices

Any notice required to be given by either party to the other must be in writing and must be given by delivering it or posting it to the address appearing in the Schedule or to such other place as previously nominated by either party to the other.

7.7 Severance

If any provision or obligation of this Agreement is invalid, unlawful or not applicable, then it will be deleted from the Agreement without affecting any other of the parties' obligations under this Agreement.

7.8 Entire Agreement

The terms contained in this Agreement comprise the whole of the agreement between the parties. It is expressly agreed and declared by the parties that no further or other terms exist between them with respect to the Facility or the Agreement.

7.9 No Warranty

The Occupier acknowledges that the Council has not given any warranty as to the condition of the Facility or its suitability for the use referred to in the Schedule or for any other use.

7.10 Regulatory

7.10.1 If the Permitted Use requires the grant of development consent under the Development Act 1993, the right to occupy under this Agreement is not effective pending such consent being obtained.

7.10.2 The Council enters into this Agreement under section 202 of the Local Government Act 1999 as a person having right to possession of the Facility and not in any other capacity.

7.10.3 This Agreement does not fetter or evidence the exercise of any regulatory function or power the Council has now or in the future (whether under the Development Act 1993, South Australian Public Health Act 2011, Local Nuisance and Litter Control Act 2016 or other legislation). When the Council exercises a regulatory function or power, the Council will be taken to be a third party to this Agreement. To avoid doubt, a Council's consent to any change in use or building work in relation to the Facility is not regulatory consent as may be required under the Development Act 1993.

7.10.4 If the Retail and Commercial Leases Act 1995 applies or comes to apply to this Agreement and a provision of this Agreement is or becomes inconsistent with that Act, that provision must be read down or failing that severed from this Agreement to the extent of the inconsistency.

7.10.5 If the Facility is upon "Crown Land" (within the meaning of the Crown Land Management Act 2009):

- (a) and that Act requires the Minister acting under that Act to consent to this Agreement, the right to occupy under this

Agreement is not effective pending such consent being obtained;

- (b) this Agreement terminates without liability if any time the Minister acting under that Act:
 - (i) revokes or modifies the dedication of the Crown Land as to not permit the Permitted Use; or
 - (ii) terminates the Council's right to possession of the Crown Land for the Permitted Use.

7.11 Special Conditions

7.11.1 Any Special Conditions as set out in **Item 11** of the Schedule are incorporated into this Agreement.

7.11.2 Where there is any inconsistency between any Special Condition and any other obligation in this Agreement then the Special Condition will prevail to the extent of the inconsistency.

7.12 Nature of this Agreement

Unless otherwise stated in **Item 11** of the Schedule, the right of occupation under this Agreement is only a contractual licence to occupy, and not in the nature of a lease or tenancy.

DATED the day of 20.....

THE COMMON SEAL of (**Name of the Council**) was affixed in the presence of:)
)
)

.....
Mayor

.....
Chief Executive Officer

THE COMMON SEAL of (**Name of Occupier**) was affixed in the presence of:)
)
)

.....
Authorised Officer

.....
Authorised Officer

OR

SIGNED by (Name of the Occupier) in the presence of:)
)

.....
Witness

SCHEDULE

Item 1 The Occupier:	Name: Address: Note: The Occupier must be a legal person – either an incorporated association, a company, or one or more individuals.
Item 2 Facility:	Name of Facility: Location: Refer also to Plan annexed to this Agreement.
Item 3 The Period:	
Item 4 Commencement Date:	
Item 5 Fee:	\$ per 12 months, and <i>pro rata</i> part of 12 months.
Item 6 Date for Payment of the Fee:	To be paid in advance on the day of each year during the Period.
Item 7 Permitted Use:	
Item 8 Public Risk Insurance:	\$ Note: The Council has the right to require the Occupier to increase the Public Risk Insurance to a greater or lesser figure as nominated by the Council during the Period.
Item 9 Period of Extension:	
Item 10 Property Insurance:	To be taken out by:
Item 11 Special Conditions	Nil. Is this a lease? YES / NO
Item 12 Clauses amended from those in template:	Nil.
Item 13 Clauses deleted from the template:	Nil.

GUIDANCE FOR AUTHORS

- 1) The Local Government Act 1999 section 36 vests Councils with corporate power to contract, including to grant a licence to occupy, or a lease, of land.
- 2) If a Facility is not community land, the Local Government Act 1999 has no specific rules for the licensing or lease of that land.
- 3) If a Facility is community land, section 202 provides as follows -
 - (1) A council may grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve).
 - (2) Before the council grants a lease or licence relating to community land, it must follow the relevant steps set out in its public consultation policy.
 - (3) However, a council need not comply with the requirements of subsection (2) if-
 - (a) the grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less; or
 - (b) the regulations provide, in the circumstances of the case, for an exemption from compliance with a public consultation policy.
 - (4) A lease or licence is to be granted for a term not exceeding 42 years and the term of the lease or licence may be extended but not so that the term extends beyond a total of 42 years.
 - (4a) Subsection (4) does not prevent a new lease or licence being granted at the expiration of 42 years (subject to the other requirements of this Act or any other law).
 - (5) A lease or licence may provide for-
 - (a) the erection or removal of buildings and other structures for the purpose of activities conducted under the lease or licence;
 - (b) the exclusion, removal or regulation of persons, vehicles or animals from or on the land, and the imposition of admission or other charges;
 - (c) any other matter relevant to the use or maintenance of the land.
 - (6) A lease or licence must be consistent with any relevant management plan.
 - (7) This section operates subject to the provisions of the Adelaide Park Lands Act 2005 in respect of the Adelaide Park Lands under that Act.
- 4) If the Facility is upon "Crown Land" (within the meaning of the Crown Land Management Act 2009), section 22 of that Act requires Ministerial consent to any lease of that land.
- 5) The LGAMLS' view is that:
 - (a) A **permit** is appropriate for a one-off or short-term use of a facility.
 - (b) A **licence to occupy** is appropriate for a longer term use of a facility, such as for a tennis, cricket or football season where the occupier would not necessarily have exclusive use.
 - (c) A **lease** (conferring a right to exclusive possession) is appropriate where a facility is to be occupied on an exclusive basis for a period longer than a season.

MANAGEMENT AGREEMENT

CITY OF ONKAPARINGA

[INSERT MANAGER DETAILS]

Draft

**Norman
Waterhouse**
SINCE 1920 LAWYERS

Level 15, 45 Pirie Street
Adelaide SA 5000
Telephone + 61 8 8210 1200
Fax + 61 8 8210 1234
www.normans.com.au

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[DRAFTING NOTE - TO BE PREPARED ONCE DOCUMENT IS FINALISED]

Draft

AGREEMENT is made the

day of

2019

BETWEEN: **CITY OF ONKAPARINGA** ABN 97 047 258 128 of PO Box 1, Noarlunga Centre SA 5168 (**Council**)

AND: **[INSERT MANAGER DETAILS]** (ABN *******) of ******* (**Manager**)

BACKGROUND:

- A. The Council owns the Hall.
- B. The Manager has represented to the Council that it is able to manage the Hall.
- C. The Council has agreed to permit the Manager, and the Manager agrees, to manage the Hall on the terms of this Agreement.

1. INTERPRETATION

1.1 Background

The Background forms part of this Agreement and the parties agree that the Background is true and accurate.

1.2 Definitions

In the interpretation of this Agreement unless the contrary intention appears or unless the context otherwise requires, the following expressions have the following meanings:

- 1.2.1 Accounting Period** means the 12 month period starting from 1 July and ending on June 30 and every subsequent 12 month period during the Term. The initial accounting period will be the period from the Commencement Date until **30 June 2020**. If this Agreement expires or is terminated prior to June 30 in a particular year, the relevant Accounting Period will be the period from 1 July until the date of expiry or termination.
- 1.2.2 Agreement** means this agreement including the Background and all Annexures and all terms and conditions contained herein.
- 1.2.3 Annual Business Plan and Budget** means the annual business plan and budget required to be prepared by the Manager under clause 5.1.
- 1.2.4 Annual Report** means the annual report required to be prepared by the Manager under clause 5.4.
- 1.2.5 Authorisation** means any authorisation, agreement approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.
- 1.2.6 Claim** means in relation to any person, a claim, action, proceeding, damage, loss, cost, expense or liability incurred by or to, or made or recovered by or

against that person, however arising and whether present, unascertained, immediate, future or contingent.

- 1.2.7 **Commencement Date** means [insert].
- 1.2.8 **Confidential Information** means all information disclosed or made available to a recipient by or on behalf of a party and includes:
- (a) Information that is by its nature confidential;
 - (b) Information that is identified as confidential;
 - (c) Information that the recipient knows or ought to know is confidential;
 - (d) Information comprised in or relating to any Intellectual Property Rights;
 - (e) Information relating to the financial position of any person; and/or
 - (f) Information that has any actual or potential commercial value.
- 1.2.9 **Council Contribution** means the amount, if any, approved and endorsed by the Council elected members during each financial year of the Term and as notified in writing to the Manager;
- 1.2.10 **Council In Kind Contribution** means the various items of contribution specified in Annexure A.
- 1.2.11 **Expenses** means all the operating costs and expenses incurred wholly and directly for the operation of the Hall during the Term.
- 1.2.12 **Expiry Date** means [insert].
- 1.2.13 **Governmental Agency** means any government or any government, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.
- 1.2.14 **GST** means any tax on goods and/or services including any value added taxes, **broad** based consumption tax, or other similar tax introduced in Australia, including that tax imposed under GST Law.
- 1.2.15 **GST Law** means a New Tax System (Goods and Services Tax) Act 1999 and **any** other act, order, ruling or regulation which imposes or otherwise deals with the administration of imposition of GST in Australia.
- 1.2.16 **Hall** means [insert];
- 1.2.17 **Income means** all income derived from the operation of the Hall.
- 1.2.18 **Intellectual Property Rights** means and includes rights in respect of or in connection with copyright, know how, inventions or other proprietary rights.
- 1.2.19 **Key Performance Indicators** means the key performance indicators described in Annexure B

- 1.2.20 **Legislation** includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation, order or by-law including by-laws issued by any local **government** body or authority or other document enforceable under any Statute, Regulation, Order, Rule or subordinate legislation.
- 1.2.21 **Maintenance Schedule** means the schedule attached as Annexure C.
- 1.2.22 **Manager** means [insert] and where the context permits, includes its employees, agents, contractors and invitees.
- 1.2.23 **Required Documents** means all of the following:
- 1.2.23.1 Certificate of currency for Manager's public liability insurance;
 - 1.2.23.2 the Manager's Constitution;
 - 1.2.23.3 audited financial statements;
 - 1.2.23.4 membership with the Onkaparinga Active Community Network (**OACNET**);
 - 1.2.23.5 minutes of the most recent Annual General Meeting; and
 - 1.2.23.6 draft minutes for the upcoming Annual General Meeting.
- 1.2.24 **Services** means the management services which the Manager is to perform pursuant to this Agreement.
- 1.2.25 **Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation.
- 1.2.26 **Supply** and **Supplier** have the meanings given to them in GST Legislation;
- 1.2.27 **Term** means the period commencing on the Commencement Date and expiring on **the** Expiry Date.

1.3 **General**

Unless the contrary intention appears:

- 1.3.1 the Background is correct;
- 1.3.2 headings do not affect interpretation;
- 1.3.3 singular includes plural and plural includes singular;
- 1.3.4 words of one gender include any gender;
- 1.3.5 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.3.6 a reference to a person includes a partnership, corporation, association, government body and any other entity;

- 1.3.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.3.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.3.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.3.10 a provision is not construed against a party only because that party drafted it;
- 1.3.11 an unenforceable provision or part of a provision may be severed, and the remainder of this Agreement continues in force, unless this would materially change the intended effect of this Agreement;
- 1.3.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- 1.3.13 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it by that Act at the date of this Agreement. **[Drafting Note – this is our standard provision to capture terms that may be caught by the Corporations Act. There is no need to include Associations Incorporation Act 1985 in this clause]**

2. SCOPE OF THE AGREEMENT

2.1 The Hall

The Manager agrees, during the Term, to provide the Services in compliance with all Statutory Requirements and on the terms and conditions of this Agreement

2.2 Term of Agreement

This Agreement will commence on the Commencement Date and will expire on the expiration of the Term or such earlier termination of this Agreement.

3. FINANCIAL ARRANGEMENTS

3.1 Management

3.1.1 During the Term, the Manager will:

3.1.1.1 collect all Income generated by the Hall; and

3.1.1.2 pay all Expenses associated with use and operation of the Hall;

subject always to the provisions of the relevant approved Annual Business Plan and Budget. **[Drafting Note – I have noted your instructions to delete the word 'approved'. Pursuant to clause 5.1.1, the Manager is required to submit the Annual Business Plan and Budget to the Council for approval. Does clause 5.1.1 need to be amended so that the Annual Business Plan and Budget is not submitted to the Council for approval, or can the word 'approved' remain in this clause?]**

- 3.1.2 All Income received and Expenses paid must be separately recorded in the Manager's accounting system which is accessible to the Council for inspection immediately upon request by the Council.
- 3.1.3 At the end of each quarter during the Term, the Manager must provide the Council with a detailed statement outlining the Income generated by the Hall and the Expenses incurred for that quarter. **[Drafting Note – clause 5.2.3 requires the Manager to provide the Council with usage data and user profile. This clause 3 deals with financial arrangements, and thus requires the Manager to provide financial information. Please let me know if the Council still requires amendments to this clause]**

3.2 Council Contribution

Subject always to the Manager meeting the Key Performance Indicators during the relevant period, the Council will, during each Accounting Period during the Term, pay the Council Contribution to the Manager as follows:

- 3.2.1 50% following the first Annual General Meeting occurring after the Commencement Date and upon submission of Required Documents;
- 3.2.2 25% upon submission of the Quarterly Report by the Manager;
- 3.2.3 25% upon submission of the Annual Report for the relevant financial year.

3.3 Council In Kind Contribution

In consideration of the provision of the Services by the Manager during the Term, the Council agrees to provide the Manager with the Council In Kind Contribution.

3.4 Fees for use of the Hall

The Manager may charge any fees it deems reasonable for the use of the Hall, **provided always** that the Manager may not, except with the Council's prior written consent (which consent may be granted or withheld by the Council at its absolute discretion) use the Hall for its own use or purposes, or any purpose for which it is not charging or receiving a fee for. **[Drafting Note – I have noted your instructions regarding an approved fee. Does this mean that the Manager needs to obtain the Council's approval for the fee(s) it charges? At our meeting, we discussed the Manager having discretion to determine the fee(s) payable for the use of the Halls. I have also noted your further note regarding a review of the fee. I can attend to the additional clause once I have confirmed your instructions regarding 'approved' fees.]**

4. PROVISION OF SERVICES

4.1 General Provisions

- 4.1.1 It is the Council's requirement that the Manager manages the Hall during the Term so as to:
- 4.1.1.1 provide and maintain the Services to a high quality;
- 4.1.1.2 ensure the Hall is maintained in accordance with the Maintenance Schedule and in a way which optimises the provision of the

Services; **[Drafting Note – please see my Drafting Note below regarding the maintenance of the Hall]**

- 4.1.1.3 meet the Key Performance Indicators;
 - 4.1.1.4 ensure that the Services are provided in accordance with the agreed Annual Business Plan and Budget;
 - 4.1.1.5 complies with the Council's policies, practices and procedures concerning public health, cleaning and occupational health, welfare and safety; and
 - 4.1.1.6 ensures compliance with all Legislation.
- 4.1.2 During the Term, the Manager must provide the Council with the Services in respect of the Hall as set out in this Agreement and provide all plans, budgets and reports as required in this Agreement, including:
- 4.1.2.1 the Quarterly Reports;
 - 4.1.2.2 the Annual Business Plan and Budget; and
 - 4.1.2.3 the Annual Reports.
- [Drafting Note – please let me know if any other plans are required or desired by the Council, including, say, a Work Health Management System?]**
- 4.1.3 The Manager must carry out the Services with all the skill, care and diligence to be expected from a qualified, competent and experienced provider of services of a similar nature as the Services. During the Term the Manager will devote such of its time and ability as is appropriate and reasonably necessary for the proper performance of the Services.
- 4.1.4 The Manager warrants to the Council and the Council warrants to the Manager that each party holds all Authorisations required for it to perform its obligations under this Agreement and undertakes to comply with such Authorisations and all applicable Legislation, accepted industry standards, specifications and procedures in the performance of its obligations under this Agreement.
- 4.1.5 The Manager must at all times keep the Council fully and regularly informed as to those matters relating to the Services that are likely to have an impact on the Council and must provide to the Council such information as is reasonably requested by the Council from time to time for the purposes of monitoring the performance by the Manager of its obligations under this Agreement. Matters that are likely to have an impact on the Council for the purposes of this clause include:
- 4.1.5.1 any matter which is likely to affect the delivery of the Services by the Manager on either a short or long term basis;
 - 4.1.5.2 any matter which may give rise to an obligation on the part of the Manager to indemnify the Council;

- 4.1.5.3 any matter which may result in any potential liability to the Council;
- 4.1.5.4 any vandalism or theft at or nearby the Hall; and
- 4.1.5.5 any maintenance issues relevant to the Hall and the provision of the Services.

4.1.6 The Manager must promptly notify the Council of any accident, injury, property or environmental damage which occurs during the carrying out of the Services. The Manager must and within 3 days of any such incident provide a report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

4.2 Compliance with Statutory and Legal Obligations

4.2.1 The Manager must fully comply with all legal obligations that arise, whether by or under this Agreement, Legislation, in equity or at common law, as a consequence of or in connection with the performance of its obligations under this Agreement.

4.2.2 For the avoidance of doubt, the Manager acknowledges that where any person, premises, equipment, or activity is required to be licensed, registered, approved or accredited, the Manager must ensure that the appropriate licence, registration, approval or accreditation is in force and current at all times during the Term and the performance of the Services

4.2.3 Without limiting the Manager's obligations under this clause 4.2, the *Ombudsman Act 1972 (Ombudsman Act)* provides that the Ombudsman may investigate any act of an individual or organisation done in the performance of functions conferred under a contract with certain public authorities. The Manager agrees to ensure timely compliance with all obligations arising under the Ombudsman Act, and any other applicable Legislation, in relation to any such investigation involving the Council.

4.2.4 The Manager acknowledges that in entering into a contract with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act 2012 (SA) (ICAC Act)* and will be obliged to comply with the ICAC Act and the directions and guidelines issued pursuant to the ICAC Act.

4.3 Non Compliance with Key Performance Indicators

The Manager expressly acknowledges and agrees that if the Manager fails to achieve the Key Performance Indicators for a period exceeding 3 consecutive calendar months, such failure will constitute default under clause 14. **[Drafting Note – can we please discuss this proposed clause?]**

4.4 Complaints

The Manager must act on complaints by any Customer at the Hall in an appropriate and timely manner, including by responding to the complainant.

The Manager must also provide a written report to the Council advising of actions taken within 14 days of receiving a complaint.

4.5 **Power and other utilities**

- 4.5.1 The Manager must pay when due the full amount of all accounts, invoices, assessments and charges with regard to the consumption, use or supply of telephone, light, electricity, gas, and any and all other services and utilities supplied to or used from the Hall.
- 4.5.2 Without limiting this subclause, the Manager must comply with the *Electricity (General) Regulations* 1997 (SA) and any other applicable electricity laws.

5. **REPORTING TO THE COUNCIL**

5.1 **Annual Business Plan and Budget**

- 5.1.1 The Manager must perform the Services in accordance with the Annual Business Plan and Budget as approved by the Council during each year of the Term. The Annual Business Plan and Budget must facilitate the achievement of the Key Performance Indicators.
- 5.1.2 The Annual Business Plan and Budget must include appropriate detail as to how the Services will be provided in the forthcoming twelve (12) month period and address, as a minimum, the following issues:
 - 5.1.2.1 annual budget;
 - 5.1.2.2 projected Income and Expenses for the applicable financial year;
 - 5.1.2.3 key planning activities and events;
 - 5.1.2.4 an inventory list of all plant and equipment;
 - 5.1.2.5 how the Manager will ensure achievement of the Key Performance Indicators;
 - 5.1.2.6 any other matters the Council reasonably deems relevant to the provision of the Services.
- 5.1.3 The first Annual Business Plan and Budget must be submitted to and approved by the Council's Contact officer within thirty (30) days of the Commencement Date. For each subsequent financial year the Manager must provide the Council with a draft Annual Business Plan and Budget for consideration and approval at least four months prior to the start of the financial year.
- 5.1.4 The Council may, on receipt of the draft Annual Business Plan and Budget:
 - 5.1.4.1 approve the Annual Business Plan and Budget for the forthcoming twelve (12) month period; or
 - 5.1.4.2 require a meeting with the Manager with a view to refining the terms of the draft Annual Business Plan and Budget.
- 5.1.5 The Manager agrees to continue to work with the Council and to resubmit the draft Annual Business Plan to the Council until it is in a form which is approved by the Council.

- 5.1.6 In circumstances where the Council, acting reasonably, determines that the management of the Hall is not being undertaken in accordance with the approved Annual Business Plan and Budget, the Council's Contact Officer may give notice to the Manager directing the Manager to remedy the issue. Any notice given under this clause may specify a time within which the default must be remedied which is to be at the Council's discretion and must be reasonable.
- 5.1.7 If the Manager fails to remedy the default in accordance with a notice issued under clause 5.1.6, the Council may exercise its rights under clause 15, but such termination will not absolve the parties from any previous unresolved breaches of this Agreement.
- 5.1.8 Where the Council has reasonable grounds to do so, the Council may, at its cost, order an internal audit of the financial operation of the Hall at any time during the Term. The Manager must provide all relevant documents, records and explanations and assist in the discharge of the audit to the best of its ability.

5.2 Quarterly Report

The Manager must maintain accurate information in respect of the Hall and must report the information to the Council on a quarterly basis by way of a written report (**Quarterly Report**) which includes:

- 5.2.1 A Profit and Loss Statement for the quarter that reflects actual performance for that quarter as compared to the agreed budget and applicable commentary for any significant variances;
- 5.2.2 A Year-to-date Profit and Loss Statement that reflects actual performance year to date as compared to the agreed budget and an updated forecast end of year position;
- 5.2.3 Usage data and user profiles for the Hall for the preceding quarter, including hours of use;
- 5.2.4 An updated copy of the complaints register (including all response actions on the part of the Manager);
- 5.2.5 All incidents under the Work Health and Safety Act 2012 (SA);
- 5.2.6 The Manager's performance against the Key Performance Indicators and the approved Annual Business Plan and Budget.

5.3 Administration and Record Keeping

The Manager must maintain accurate information and records in respect of the Hall.

5.4 Annual Reports

By the 31 August each financial year during the Term, the Manager must provide the Council with an annual report (**Annual Report**) which provides a consolidated report of the Manager's performance under this Agreement during the preceding 12 months, including a report on whether the Key Performance Indicators have been met. The

Annual Report must be in a format approved by the Council and must contain all information and data specified by the Council.

5.5 Provision of Accounts

During the Term, the Manager must provide the Council with quarterly financial reports regarding the financial sustainability of the Hall, and where reasonably requested by the Council, the Manager must provide the Council with copies of all relevant documents, records and explanations to substantiate the contents of its monthly reports.

5.6 Audits

The Manager must provide the Council a set of audited financial statements in respect of its management operation of the Hall for the preceding financial year prepared in accordance with usual accounting practices and the following requirements:

5.6.1 The Manager must ensure that:

- (a) audited financial statements; and
- (b) a statement from the person who audits the financial statements ability to operate into its next financial year;

are presented to each of its Annual General meetings; and

5.6.2 In addition, the Manager must ensure that the financial statements:

- (a) are, if the Manager is a 'prescribed association' within the meaning of the Association Incorporation Act 1985 (SA) – audited in accordance with the requirements of that Act; and

- (b) in all other cases:

- (i) are verified as being correct by a person who:

- (1) is not an employee or officer of the Manager;
- (2) has not prepared or assisted with the preparation of the statements; and
- (3) has sufficient skills and knowledge to complete the audit and is free from internal and external pressures or influence that may affect their ability to objectively complete the review (**Reviewer**);

and

- (ii) contain a statement of going concern in which the Reviewer declares:

- (1) that they have made an assessment of the Manager's ability to pay amount as and when they fall due; and

- (2) any matters impacting on the Manager's ability to pay accounts as and when they fall due.

6. REPAIR AND DECORATION OF THE FACILITY

6.1 General

The Manager must ensure the Hall is:

- 6.1.1 kept in a clean and well maintained condition at all times; and
- 6.1.2 maintained in accordance with the Maintenance Schedule.

[Drafting Note – Are there any Council owned plant and equipment that needs to be specifically mentioned in this agreement? Is there fire equipment? Who is responsible for servicing the fire equipment? And sanitary services?]

7. THE HALL

7.1 The Council may instruct the Manager to close the Hall for reasons of:

- 7.1.1 maintenance of the Hall;
- 7.1.2 capital works to the Hall;
- 7.1.3 safety; and/or
- 7.1.4 any Statutory Requirements.

7.2 The Manager will, on a regular basis, attend to ground maintenance at the Hall which includes flowerbeds, shrubs, trees and lawns within the title boundary of the Hall.

8. MEETINGS WITH COUNCIL

8.1 During the Term, the Manager must attend annual meetings with the Council's Contact Officer to monitor the Manager's performance under this Agreement.

8.2 The meetings must be minuted by the Council's Contact Officer with the time lines and responsibility for all agreed action recorded. The Manager must ensure that such staff attend the meetings as directed by the Council's Contact Officer, and deemed necessary by the Manager.

9. INTELLECTUAL PROPERTY RIGHTS

The Parties hereby acknowledge and agree that all Intellectual Property Rights created in relation to this Agreement during the Term, whether by the Manager or the Council will become the property of the Council immediately on their creation and unless specifically required by the Council to the contrary, the Manager is hereby granted an irrevocable and royalty free licence to use such Intellectual Property Rights during the Term for the purposes of providing Services.

10. INSURANCE

The Manager must, at its cost in all things, arrange and maintain during the Term, with a reputable insurance company acceptable to the Council, the insurance listed in this clause 10.

10.1 Return to Work Act

If relevant, the Manager must, during the Term, ensure that it is registered as an employer under the *Return to Work Act 2014* (SA) and it must pay all monthly levies due pursuant to that Act or any other law in respect of the Employees.

10.2 Public Liability

The Manager must insure for public liability for an amount of not less than \$20,000,000 per occurrence and unlimited in the annual aggregate and note the Council's interest in the policy or policies. The Manager must also ensure that the policy or policies taken out in this regard include cover for indemnities given by the Manager to the Council hereunder as regards public liability and includes an endorsement acknowledging that special cover.

10.3 Loss of Income / Theft Cover Insurance

The Manager will effect loss of income and Fidelity Guarantee insurance for material loss or damage and consequential loss for an amount of not less than \$400,000 per claim (which amount is to be reviewed annually by the Manager) and note the Council's interest in the policy or policies. **[Drafting Note – the level of insurance required to be effected is a commercial decision for the Council. It may be worthwhile seeking advice from the Council's insurers for some further guidance]**

10.4 Contents Insurance

The Manager must effect its own contents insurance during the Term.

10.5 Insurance Policies

All insurances will be taken out with reputable insurance companies. Copies of policies and/or evidence of currency must be provided to the Council upon request. **[Drafting Note – the Manager is required to ensure that the insurances are effected during the Term. You have instructed that evidence of currency is to be provided upon 'renewal'. Is this intended to mean on each renewal of the insurance policies? If so, perhaps we can simplify the process to require it to be provided on each anniversary of the Commencement Date?]**

10.6 Not to Void Insurance Cover

Neither party will do anything, or fail to do anything, which does or may render any policy of insurance taken out by the other party void or unenforceable (whether in part or in whole).

10.7 The Council

The Council will also be effecting building and contents insurance for the Hall, together with its own public liability and loss of income / theft cover insurance. **[Drafting Note – I have noted your instructions regarding the Council on-building insurance. I had understood the on-charging process occurs when hirers come to hire the Hall. Is this correct?]**

11. SUBCONTRACTING AND ASSIGNING

- 11.1 The Manager must not assign or subcontract this Agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld in the Council's absolute discretion.
- 11.2 Notwithstanding any other provision herein, no such assignment or subcontract relieves the Manager from any liability under this Agreement or pursuant to any Legislation in respect of the performance or purported performance of this Agreement and the Manager is responsible for the acts and omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Manager.

12. DAMAGE AND DESTRUCTION

If the Hall is damaged or destroyed as a consequence of some negligent act or omission on the part of the Manager or any of its servants or agents, then without limiting the rights and entitlements of the Council under this Agreement and at law, the Manager indemnifies the Council against all loss and damage suffered in consequence thereof.

13. INDEMNITY AND EXCLUSION OF LIABILITY

- 13.1 The Manager must indemnify the Council and its employees, officers and organisations against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Manager, a breach by the Manager of this Agreement, a wilful unlawful or negligent act or omission of the Manager, and any claim action or proceeding by a third party against the Council or its employees officers and organisations caused or contributed to by the Manager.
- 13.2 This indemnity is reduced by the extent to which the Council and/or its employees contribute to the event giving rise to the claim for the indemnity.
- 13.3 The Manager must perform the Services at its own risk in all things and releases the Council and its employees, officers, members and organisations from all claims, actions, proceedings, costs, expenses, losses, suffering, and liabilities incurred by the Manager or its employees, agents, subcontractors and third parties which arise from the performance of the Services, save and except to the extent that such a claim, is caused by or contributed to, by the Council and/or its employees.

14. NON PERFORMANCE BY THE MANAGER

If the Manager breaches a provision of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so, the Council may:

- 14.1 suspend any or all payment of the Council Contribution and/or provision of the Council In Kind Contribution until the breach is remedied, and upon such remedy, all suspended amounts will be paid to the Manager; and/or
- 14.2 remedy the breach itself whether by the use of the Council's employees or other organisations and deduct the cost of remediation from any fee due to the Manager; and/or
- 14.3 terminate this Agreement in accordance with clause 15; and/or

14.4 pursue any other legal remedies available to the Council.

15. TERMINATION

15.1 Termination by the Council

15.1.1 The Council may immediately terminate this Agreement by giving notice to the Manager if the Manager:

15.1.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this Agreement; or

15.1.1.2 breaches a material or essential term of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so; or

15.1.1.3 commits or permits to occur any breach or default in the due and punctual observance and performance of any of the terms of this Agreement, and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so; or

15.1.1.4 becomes an externally-administered body corporate or an insolvent under administration; or

15.1.1.5 in the reasonable opinion of the Council, is unable (other than causes beyond the reasonable control of the Manager) to manage the Hall within the parameters of the approved Annual Business Plan and Budget; or

15.1.1.6 fails to meet the Key Performance Indicators for a period exceeding 3 consecutive months; or

15.1.1.7 fails to obtain the Council's approval (which shall not be unreasonably withheld) for an Annual Business Plan and Budget during any year of the Term; or

15.1.1.8 fails to provide any plans or reports to the Council in accordance with this Agreement.

15.2 Termination by the Manager

The Manager may immediately terminate this Agreement if the Council breaches a material term of this Agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so.

15.3 Termination on Notice

Either of the Council or the Manager may terminate this Agreement on provision of no less than 3 months' written notice on the other party.

15.4 Accrued rights and remedies

Termination of this Agreement under this clause does not affect any accrued rights or remedies of either party.

16. EXEMPTION FROM LEASES ACT

- 16.1 The parties acknowledge and agree that it is intended that the provisions of the *Retail and Commercial Leases Act 1995* (SA) (**Leases Act**) do not apply to this Agreement.
- 16.2 To reinforce the intention of the parties, the parties further acknowledge and agree that as soon as reasonably practicable after execution of this Agreement, the Council and the Manager will jointly make an application pursuant to Section 77 of the Leases Act for an exemption from the application of all of the provisions of this Agreement.
- 16.3 All costs incurred pursuant to this clause 16 will be borne by the Council.

17. HANDOVER OF THE HALL

- 17.1 Within four (4) weeks prior to the expiry of the Term (or immediately following the earlier termination of this Agreement), the Manager will:
 - 17.1.1 thoroughly clean all surfaces of the Hall;
 - 17.1.2 fumigate the Hall to eradicate vermin, insects and other pests;
 - 17.1.3 remove and reinstate any alterations or additions made to the Hall by the Manager;
 - 17.1.4 hand over vacant possession of the Hall in the same condition as at the Commencement Date (fair wear and tear excepted); and
 - 17.1.5 hand over to the Council all keys and other security devices for the Hall which the Manager has in its possession or control.
- 17.2 If at the time that possession of the Hall is given back to the Council, the Manager has not complied with all or any of its obligations under this clause 17, the Manager will not be relieved of its obligation to comply with those requirements, or to compensate the Council for failure to do so, by reason of the fact that the Council has accepted or taken possession of the Hall.
- 17.3 If, when this Agreement comes to an end, the Manager leaves any goods or equipment at the Hall after twenty eight (28) days have elapsed since the Agreement came to an end, then the Council will be entitled to deal with and dispose of those goods or equipment in its discretion.
- 17.4 The Council will not be under any obligation to pay the Manager the final instalment of the Fee until the Manager has complied with its obligations in accordance with this clause 17 to the Council's reasonable satisfaction.

18. CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION

- 18.1 Each of the parties agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose whatsoever, except for the purposes of and in the manner contemplated by this Agreement, and agrees that it will:
 - 18.1.1 keep confidential;
 - 18.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

18.1.3 maintain proper and secure custody of; and

18.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this Agreement.

18.2 The *Freedom of Information Act 1991 (SA)* (**FOI Act**) gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including Agreements, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or necessary for the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.

18.3 The Manager consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

18.4 For the purposes of the FOI Act, the following Clauses are confidential (**Confidential Sections**):

18.4.1 [insert].

18.5 Unauthorised disclosure of the Confidential Sections and the subject matter contained therein constitutes a breach of a party's obligations under this Agreement.

19. NO PARTNERSHIP OR AGENCY

The parties acknowledge and declare that:

19.1 they are not in partnership;

19.2 no agency relationship is created; and

19.3 the Manager will operate and manage the Hall as an independent contractor and that there will be no employment relationship between the Council and any employees, contractors or others engaged by the Manager in connection with the management and operation of the Hall.

20. GENERAL

20.1 Co-operation and Good Faith

The parties will liaise and consult, and deal with each other in good faith and generally cooperate with each other with a view to ensuring that the requirements and objectives of this Agreement are fulfilled in all respects.

20.2 Costs

The parties will bear their own costs of and in connection with preparation, negotiation and finalisation of this Agreement.

20.3 Notices

Any notice required or permitted to be given or served under this Agreement must be in writing and will, without prejudice to any other mode of service, be treated as being duly given or served if it is:

20.3.1 left at the recipient party's address;

20.3.2 sent by pre-paid mail to the recipient party's address (in which case it will be deemed to have been given three (3) business days after the date on which it was posted); or

20.3.3 sent by electronic mail to the recipient party's address.

For the purposes of this a reference to an address means the party's principal and current business address which in the absence of notice to the contrary is deemed to be the address stated herein.

20.4 Variations

No variation or waiver of, or any consent to any departure by either party from, a provision of this Agreement is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent to which it is made or given.

20.5 Waiver

The failure, delay, relaxation, or indulgence on the part of either party in exercising any power or right conferred upon that party by this Agreement does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other right or power under this Agreement.

20.6 Entire Agreement

This Agreement constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms or conditions of any nature not contained and recorded herein will be of any force or effect.

20.7 Severance

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with their terms.

21. DISPUTE RESOLUTION

21.1 General

21.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this Agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.

- 21.1.2 A party claiming that a dispute has arisen under this Agreement must give written notice to the other party specifying the nature and details of the dispute.
- 21.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 21.1.4 If the parties are unable to resolve the dispute within ten (10) business days, they must promptly refer the dispute:
 - 21.1.4.1 in the case of the Council, to the Chief Executive Officer; and
 - 21.1.4.2 in the case of the Manager, to the Manager's Representative.
- 21.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

21.2 Mediation

- 21.2.1 If those persons are unable to resolve the dispute within ten (10) business days of referral, a party may refer the dispute for mediation under the mediation rules of the Law Society of South Australia Inc to:
 - 21.2.1.1 a mediator agreed by the parties; or
 - 21.2.1.2 if the parties are unable to agree a mediator within five (5) business days, a mediator nominated by the President of the Law Society or the President's nominee.
- 21.2.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
- 21.2.3 Any information or documents disclosed by a party under this clause:
 - 21.2.3.1 must be kept confidential; and
 - 21.2.3.2 may not be used except to attempt to resolve the dispute.
- 21.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

21.3 Arbitration

- 21.3.1 If the dispute is not resolved within thirty (30) business days of appointment of the mediator, a party may refer the dispute to:
 - 21.3.1.1 an arbitrator agreed by the parties; or
 - 21.3.1.2 if the parties are unable to agree an arbitrator within five (5) business days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.
- 21.3.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011* (SA).

21.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.

21.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

21.4 Performance

If possible, each party must perform its obligations under this Agreement during negotiations, mediation and arbitration proceedings.

22. GST

22.1 Unless otherwise provided, all amounts specified in this Agreement are expressed to be exclusive of GST.

22.2 If GST applies to any Supply made by either party under or in connection to this Agreement, the consideration (or payment) provided or to be provided for that Supply will, upon production by the Supplier of an appropriate tax invoice, be increased by an amount equal to the GST liability properly incurred by the party making Supply.

22.3 Each party here warrants that at the time any Supply is made under this Agreement on which GST is imposed they are or will be registered under the GST Law. If the other party requests written evidence and registration, the first party will properly produce evidence satisfactory to the other party of such registration.

EXECUTED as an agreement.

Signed for CITY OF ONKAPARINGA by its authorised delegate in the presence of:

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness (print)

.....
Name of authorised delegate (print)

.....
Position of authorised delegate

**The common seal of [INSERT
MANAGER DETAILS]** was affixed in the presence of:

Check Constitution

.....
Chairperson/ Vice-Chairperson
(Please delete as applicable)

.....
Signature of Committee/Board Member
(Please delete as applicable)

.....
Name (print)

.....
Name (print)

Annexure A COUNCIL IN KIND CONTRIBUTION

- Provision of various sample documents for the Manager's reference;
- Invitation to attend various Council training or information sessions;

Draft

Appendix 4 – Maintenance Schedules

ANNEXURE B Guidelines for maintenance, repair and building upgrades for Council owned Land

The following list of maintenance responsibilities are a guide only and must be read in accordance with the relevant provisions of the licence to the extent of any ambiguity or conflict.

Building

Description	Council	Licensee	Additional Information
Automatic Doors including keypad	Install/Replace	Repair/Maintain	Licensee to keep clean and unobstructed and service regularly
Bore Systems including sheds	Install/Replace/Repair	Maintain	Licensee to maintain pump
Ceiling Fans	Nil Responsibility	Total Responsibility	Landlord Approval Required
Ceilings	Install/Replace/Repair	Maintain	Licensee to keep clean and free from cobwebs Repair damage from activities
Cleaning - Internal and within 3 metres of the exterior of the building	Nil Responsibility	Total responsibility	
Curtains and Blinds	Install/Replace	Repair/Maintain	
Doors and Doorways	Install/Replace	Repair/Maintain	Licensee to make minor adjustments to make operable. Keep doors operational – repair (broken door hinges, handles locks, coverings)
Electrical Supply / Meter Board	Total Responsibility	Nil Responsibility	
Electrical Switches & Power Points	Nil Responsibility	Total Responsibility	Landlord Approval Required
Electrical Testing and Tagging	Nil Responsibility	Total Responsibility	
Emergency Light(s)	Nil Responsibility	Total Responsibility	
Exhaust/Extraction Fan(s)	Nil Responsibility	Total Responsibility	Licensee to clean and maintain

Description	Council	Licensee	Additional Information
Fire Blanket(s)	Nil Responsibility	Total Responsibility	Maintain in accordance with the Building Code of Aust.
Fire Exit Door(s)	Install/Replace	Repair/Maintain	Maintain in accordance with the Building Code of Aust.
Fire Extinguisher(s)	Nil Responsibility	Total Responsibility	Maintain in accordance with the Building Code of Aust.
Fire Hose Reel(s)	Install/Repair/Replace	Maintain	Licensee to keep clean and unobstructed
Fire Sprinkler System	Total Responsibility	Nil Responsibility	
Fixed RCD's	Total Responsibility	Nil Responsibility	
Floors – Carpet / Vinyl / Tiles	Install/Replace	Repair/Maintain	Licensee to clean and repair to appropriate finish
Floors – Timber / Concrete	Install/Replace	Repair/Maintain	Licensee to clean, polish and repair to appropriate finish
Gas Supply / Pipes	Total Responsibility	Nil Responsibility	
Graffiti – External	Total Responsibility	Nil Responsibility	Unless specific to the user
Graffiti - Internal	Nil Responsibility	Total Responsibility	
Grease Traps	Repair/Maintain	Install/Replace	
Gutters and Downpipes	Total Responsibility	Nil Responsibility	
Hand Drying Facilities – Electric / Paper	Nil Responsibility	Total Responsibility	Licensee to undertake Electrical Testing and Tagging
Heating & Cooling Systems	Install/Replace	Repair/Maintain	Licensee to clean, service regularly, change filters etc
Hot Water System	Install/Replace	Repair/Maintain	
Illuminated Exit Light(s)	Install/Replace	Repair/Maintain	
Kitchen & Bar – Pipes and Taps (Plumbing only)	Install/Replace	Repair/Maintain	Licensee to keep clean

Description	Council	Licensee	Additional Information
Kitchen & Bar – Surfaces & Structure	Install/Replace	Repair/Maintain	
Lifts	Total Responsibility	Nil Responsibility	Licensee to keep clean and unobstructed
Lighting – Exterior (including Sensors and Timers)	Install/Replace	Repair/Maintain	Licensee to replace globes, keep clean and free from cobwebs
Lighting – Interior	Nil Responsibility	Total Responsibility	
Locks and Keys – Council Code System	Install/Replace/Repair	Maintain	Licensee to replace lost keys/security fobs at own cost
Locks and Keys – Non Council Code System	Install/Replace	Repair/Maintain	Licensee to replace lost keys at own cost
Loose Furniture and Electrical Appliances	Nil Responsibility	Total Responsibility	
Mirrors	Nil Responsibility	Total Responsibility	
Paintwork - External	Total Responsibility	Nil Responsibility	
Paintwork – Internal	Nil Responsibility	Total Responsibility	Repaint every 7 years and end of licence
Pest Control (Licensed Premises)	Nil Responsibility	Total Responsibility	
Pipes - External	Total responsibility	Nil responsibility	
Ramps/Hand Rails	Install/Replace/Repair	Maintain	Keep clear and unobstructed
Roller Doors	Nil Responsibility	Total Responsibility	Landlord Approval Required
Roof	Total responsibility	Nil responsibility	
Security Alarm System	Nil Responsibility	Total Responsibility	
Security Screen Doors	Install/Replace	Repair/Maintain	
Sewer Drain	Install/Replace/Repair	Maintain	Licensee to keep free from blockages and repair damage caused by use

Description	Council	Licensee	Additional Information
Showers	Install/Replace	Repair/Maintain	Licensee to clean and descale shower head on a regular basis to keep free from bacteria
Signs - External	Nil Responsibility	Total Responsibility	Landlord Approval Required
Signs – Internal	Nil Responsibility	Total Responsibility	
Smoke Alarms/Detectors	Install/Replace	Repair/Maintain	Licensee to test/service regularly and replace batteries if not hardwired
Soap Dispensers	Nil Responsibility	Total Responsibility	
Solar Panels and System	Nil responsibility	Total Responsibility	
Special Equipment (Community Installed)	Nil responsibility	Total Responsibility	Landlord Approval Required
Staircase	Install/Replace/Repair	Maintain	Licensee to and keep free of debris. Keep access egress areas clear
Tapware	Install/Replace	Repair/Maintain	
Telecommunications	Nil Responsibility	Total Responsibility	
Toilets – Cisterns and Bowls	Install/Replace/Repair	Maintain	
Toilets – Seats	Nil Responsibility	Total Responsibility	
Verandah - Posts	Install/Replace/Repair	Maintain	Licensee to repaint
Walls - External	Install/Replace/Repair	Maintain	Licensee to keep clean and free from cobwebs
Walls – Internal	Replace structural walls only	Repair/Maintain	Clean and keep free of mould/ grime and cobwebs. Repair damage caused by use. Repaint
Water Supply / Pipes / Systems	Install/Replace	Repair/Maintain	
Windows – Frames and Mechanisms	Install/Replace/Repair	Maintain	

Description	Council	Licensee	Additional Information
Windows – Glass	Install/Replace/Repair	Maintain	Licensee to keep glazing clean (Internal and External) Replace glazing if damage caused by use

Building Grounds

Description	Council	Licensee	Additional Information
Boundary Fencing & Gates	Total responsibility	Nil responsibility	
Carpark Line Marking	Total responsibility	Nil responsibility	
Carpark Surfaces	Install/Replace/Repair	Maintain	Licensee to keep clean and unobstructed
Garden Areas	Nil Responsibility	Total Responsibility	Licensee to plant, irrigate and keep free from weeds
Internal Roads	Install/Replace/Repair	Maintain	Licensee to keep clean and unobstructed
Internal Roads Line Marking	Total responsibility	Nil responsibility	
Irrigation (Reticulation) System	*Install/Replace	Repair/Maintain	*Replacement in partnership
Pathways	Install/Replace/Repair	Maintain	Licensee to keep clean and unobstructed
Play Equipment – Council Installed	Total responsibility	Nil responsibility	
Play Equipment – Non Council Installed	Nil responsibility	Total responsibility	See Special Conditions
Public Toilets	Total responsibility	Nil responsibility	
Seating – Public Benches	Total responsibility	Nil responsibility	
Sheds	Nil responsibility	Total responsibility	Landlord Approval Required
Unimproved Surfaces	Install/Replace/Repair	Maintain	Licensee to keep clean and unobstructed

Water Tanks	Replace/Repair	Maintain	
Shade Sails	Nil Responsibility	Total Responsibility	Landlord Approval Required

Sporting Facilities

Description	Council	Licensee	Additional Information
Basketball Floor/Surface	*Nil Responsibility	*Total Responsibility	*Replacement in partnership Licensee to clean, repair to appropriate finish, sand and polish every 5 years and undertake line marking
Basketball– Backboards, nets, rings	Nil Responsibility	Total Responsibility	
Basketball – scoreboard/fixed furniture	Install/Replace	Repair/Maintain	
Bowling Greens	Nil Responsibility	Total Responsibility	
Cricket Nets and Turf Pitches	Nil Responsibility	Total Responsibility	
Goal Posts - All	Total Responsibility	Nil Responsibility	
Hard wickets	Total Responsibility	Nil Responsibility	
Hard wickets – Covering/Uncovering	Total Responsibility	Nil Responsibility	
Improvements, coaches boxes, etc.	Nil Responsibility	Total Responsibility	Landlord Approval Required
Lights and Lighting Towers - Sporting Grounds	*Install/Replace	Repair/Maintain/ Replace globes	*Replacement in partnership
Line Marking - Ovals	Nil Responsibility	Total Responsibility	
Netball Courts	*Nil Responsibility	*Total Responsibility	*Replacement in partnership
Oval Grounds Maintenance	Install/Replace/Repair	Maintain	Keep clean and unobstructed
Scoreboards	Nil Responsibility	Total Responsibility	Landlord Approval Required

Tennis Courts	*Nil Responsibility	*Total Responsibility	*Replacement in partnership Licensee to clean and keep free from debris and clear drains
Tennis/Netball fences, nets, posts and line marking	*Total Responsibility	*Nil Responsibility	*Licensee responsible for line marking and nets

Emergency contact details:

City of Marion After Hours Number 8375 6666

DRAFT



ANNEXURE 2

REPAIR & MAINTENANCE GUIDE

ASSOCIATION'S NAME

The table below (where completed) is a guide to qualify or expand on the obligations of MBDC and the Association under the Agreement. The table is to be read as Annexure 2 of the Agreement and to the extent that if there is any inconsistency between the detail in this guide and the Agreement, the terms of the Agreement will prevail.

The obligation to “maintain” includes testing and tagging, testing/recording, minor replacements or repairs to maintain the premises in a safe and functional condition. MBDC reserves the right to assess any works performed under the Agreement to ensure compliance with obligations and legislation. A Certificate of Compliance template will be forwarded to the Association to enable them to comply with this obligation. The completed Certificate of Compliance is to be forwarded at the beginning of each and every financial year to MBDC, attaching relevant service compliance documentation.

The Association is responsible for the installation, replacement, repair and maintenance of contents, e.g. chairs, tables, etc.

The Association must not undertake any maintenance or repair on any item that contains or is assumed to contain asbestos. The Association should refer to the Asbestos Register for the premises (if applicable).

Any vandalism needs to be reported by the Association to the Police (obtain Report Number) and MBDC. MBDC will secure the Premises, if required, in order to assess repairs and determine a course of action.

Assessment by MBDC is subject to capital funding being allocated as part of MBDC's budgetary process. NOTE: In many cases items listed below will be included as part of a capital replacement or maintenance project agreed between the Association and MBDC.

BINS AND REFUSE WASTE

1. Only bins that display the MBDC logo and serial numbers as specified in the table below will be collected by MBDC's collection contractor. MBDC may at any time vary the number of bins that are provided to the Association.
2. Any costs incurred in garbage and trade waste disposal that goes beyond the bins specified in the table below will be borne by the Association.
3. The Association is responsible for the cost of replacing damaged or stolen bins.
4. The Association or user group is responsible for removal of rubbish within 24 hours of an event that falls outside the use of the Premises. This includes the sorting of rubbish to achieve Zero Waste objectives.



Ref	Description	MBDC	Association	Assessment by MBDC
1.	Asbestos			
1.1	Management/removal/record keeping (if applicable)	✓		✓
1.2	Display asbestos register at premises (if applicable)		✓	✓
2.	Air Conditioning			
2.1	Replace/maintain		✓	
3.	Bins/Rubbish Removal			
3.1	Clean/replace/maintain/secure		✓	✓
3.2	Serial number of bins to be emptied			
	012019			
	012021	✓		✓
	012455			
	012458			
4.	Bores			
4.1	Major replacement/major repair	✓		✓
4.2	Minor replacement/minor repair		✓	✓
5.	Building Foundations	✓		✓
6.	Car Parks & Roads			
6.1	Grading (annually or as agreed with MBDC)	✓		✓
6.2	Traffic management, line marking and signage	✓		✓
7.	Ceilings			
7.1	Replace/maintain	✓		✓
8.	Cricket/Netball/Basketball/Tennis Nets			
8.1	Replace/maintain		✓	
9.	Doors (Internal & External)			
9.1	Replace due to fair, wear & tear	✓		✓
9.2	Repair/maintain	✓		
10.	Downpipes/Gutters			
10.1	Replacement due to rust	✓		✓
10.2	Leaks/damaged/blocked/cleaning	✓		✓
11.	Electrical Supply			
11.1	Meter panel	✓		✓
11.2	Switchboard		✓	✓
11.3	Electrical infrastructure, accessories & associated maintenance		✓	✓
12.	Fencing - Boundary/Gates			
12.1	Replace/maintain	✓		✓



Ref	Description	MBDC	Association	Assessment by MBDC
13.	Fencing/Gates – Tennis/Softball/ Netball			
13.1	Replace/maintain		✓	
14.	Fencing/Gates - Ovals			
14.1	Replace/maintain		✓	
15.	Fire Safety Requirements			
15.1	Install	✓		✓
15.2	Replace/maintain		✓	✓
16.	Floor Coverings – Carpet/Vinyl/Timber			
16.1	Replace/maintain		✓	
17.	Gas Supply			
17.1	Replace/maintain		✓	
18.	Goods & Chattels (Contents)			
18.1	Replace/maintain		✓	
19.	Graffiti removal	✓		✓
20.	Hard Courts (Netball/Basketball/Tennis/ Bowling/Hockey/Cricket)			
20.1	Routine maintenance/annual cleaning/line marking/minor repairs		✓	
20.2	Resurfacing	✓	✓	✓
21.	Heating			
21.1	Replace/maintain		✓	
22.	Hot Water Service			
22.1	Replace/maintain		✓	
23.	Lighting (Internal & External)			
23.1	Replace/maintain		✓	
24.	Lights & Lighting Towers (Sporting Facilities)			
24.1	Replace/maintain		✓	
25.	Locks & Keys			
25.1	Replace/maintain		✓	
26.	Paintwork			
26.1	External		✓	✓
26.2	Internal		✓	✓
27.	Pest Control		✓	
28.	Playgrounds	✓		✓
29.	Plumbing			
29.1	Replace/maintain		✓	
30.	Rainwater Tanks			
30.1	Install (one - if only bore water available)	✓		✓
30.1	Install (second)		✓	✓
30.2	Replace/maintain (all)		✓	✓



MOUNT BARKER
DISTRICT COUNCIL

Ref	Description	MBDC	Association	Assessment by MBDC
31.	Roof			
31.1	Replace/maintain	✓		✓
32.	Security Alarm Systems			
32.1	Replace/maintain		✓	
33.	Septic/Sewer Tanks			
33.1	Routine desludging (as per Council's desludging program)	✓		✓
33.2	Additional desludging		✓	✓
33.3	Blockages/replacement (internal)		✓	✓
33.4	Blockages/replacement (external)	✓		✓
34.	Solar Panels			
34.1	Replace/maintain		✓	✓
35.	Staircases			
35.1	Maintain		✓	
36.	Toilets (for use by the general public)			
36.1	Replace/maintain	✓		✓
36.2	Maintain cleanliness/supply consumables during events		✓	✓
37.	Toilets (for the specific use of the Association & users of the premises)			
37.1	Replace/maintain		✓	
38.	Tree Maintenance			
38.1	Remove/maintain	✓		✓
38.2	Minor branches – up to 150mm (not significant trees)		✓	
39.	Water (Safe Drinking Water Act)			
39.1	Risk Management Plan		✓	✓
40.	Windows			
40.1	Replace/maintain		✓	

Appendix 5 – RCLA Amendment Bill 2019

Legislative Council—No 115

As received from the House of Assembly and read a first time, 24 September 2019

South Australia

**Retail and Commercial Leases (Miscellaneous)
Amendment Bill 2019**

A BILL FOR

An Act to amend the *Retail and Commercial Leases Act 1995* and to make related amendments to the *Landlord and Tenant Act 1936*.

5—Substitution of section 4

Section 4—delete the section and substitute:

4—Application of Act

5 (1) This Act applies to a retail shop lease if the premises to which the lease applies consist of a retail shop or a retail shop together with an adjacent dwelling.

(2) However, this Act does not apply to a retail shop lease—

10 (a) on or after the relevant day (whether the lease was entered into before or after that day), subject to subsection (3), during any period in respect of which the amount of rent payable under the lease exceeds the prescribed threshold (regardless of whether the Act applies or does not apply to the lease at the time the lease is entered into or renewed because of the amount of rent payable under the lease); or

15 (b) if the lease is for a term of 1 month or less; or

(c) if the right of occupation arises under—

(i) an agreement for the sale and purchase of premises; or

(ii) a mortgage; or

20 (iii) a scheme under which a group of adjacent premises is owned by a company and the premises comprising the group are let by the company to persons who jointly have a controlling interest in the company; or

25 (d) if the lessee is—

(i) an ADI; or

(ii) a body corporate authorised by law to carry on the business of insurance; or

30 (iii) the Crown or an agency or instrumentality of the Crown in right of the State, another State or Territory, or the Commonwealth; or

(iv) a municipal or district council or other authority with powers and functions of local government; or

(e) if the lessee is—

35 (i) in the case of a lease entered into on or after the relevant day—a public company, or a subsidiary of a public company, other than a public charitable company or a subsidiary of a public charitable company; or

- 5
- (ii) in the case of a lease entered into before the relevant day or a lease renewed after the relevant day (whether on the same or different terms) pursuant to a right or option conferred by a lease entered into before the relevant day—a public company, or a subsidiary of a public company (including a public charitable company or a subsidiary of a public charitable company); or
- 10
- (f) if, in the case of a lease entered into on or after the relevant day—the lessee is a body corporate whose securities are listed on a stock exchange outside Australia and the external territories or a subsidiary of such a body corporate; or
- (g) if, in the case of a lease entered into on or after the relevant day—
- 15
- (i) the lessor is—
- (A) the Crown or an agency or instrumentality of the Crown in right of the State; or
- (B) a municipal or district council or other authority with powers and function of local government; and
- 20
- (ii) the lessee is of a class specified by the regulations for the purposes of this paragraph.
- (3) Despite subsection (2)(a), this Act does not apply to—
- (a) a retail shop lease—
- 25
- (i) that is lodged for registration by the lessor within 3 months after both parties have executed the lease, and in relation to which the lessor has provided written notice of lodgement to the lessee within 1 month of lodgement; and
- 30
- (ii) that remains registered for the term of the lease; and
- (iii) under which, at the time the lease is lodged for registration, the rent payable exceeds the prescribed threshold; or
- (b) any renewal of a retail shop lease referred to in paragraph (a)—
- 35
- (i) that is lodged for registration by the lessor within 3 months after both parties have executed the renewal, and in relation to which the lessor has provided written notice of lodgement to the lessee within 1 month of lodgement; and
- 40
- (ii) that remains registered for the term of the renewed lease,
- despite the fact that—

21—Amendment of section 24—Turnover rent

Section 24(5), penalty provision—delete "\$1 000" and substitute:

\$1 500

22—Amendment of section 32—Lessor to provide auditor's report on outgoings

- (1) Section 32(b)—delete "*Corporations Law*" first and second occurring and substitute in each case:

Corporations Act 2001 of the Commonwealth

- (2) Section 32(e)—after "other than" insert:

the emergency services levy,

23—Amendment of section 35—Determination of current market rent under options to renew

Section 35(1)(c)—delete "President of the Australian Institute of Valuers and Land Economists (SA Division) Inc." and substitute:

Chair of the South Australian State Committee of the Australian Property Institute Limited (or the holder of such other office representing property interests in the State prescribed by the regulations)

24—Amendment of section 44—Premium on assignment prohibited

Section 44(2)(a)—delete "\$10 000" and substitute:

\$15 000

25—Amendment of section 51—Confidentiality of turnover information

Section 51, penalty provision—delete "\$10 000" and substitute:

\$15 000

26—Amendment of section 55—Lessor to provide auditor's report on advertising and promotion expenditure

Section 55(c)—delete "*Corporations Law*" first and second occurring and substitute in each case:

Corporations Act 2001 of the Commonwealth

27—Amendment of section 75—Vexatious acts

Section 75, penalty provision—delete "\$5 000" and substitute:

\$8 000

28—Amendment of section 77—Exemptions

- (1) Section 77(2)—after "Magistrates Court" insert:

or the Commissioner

- (2) Section 77(4), penalty provision—delete "\$500" and substitute:

\$800

29—Substitution of section 80

Section 80—delete the section and substitute:

80—Regulations

- 5 (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- 10 (a) be of general or limited application; and
- (b) confer powers or impose duties in connection with the regulations on the Minister or the Commissioner; and
- (c) prescribe codes of practice to be complied with by lessors and lessees; and
- (d) prescribe fees in respect of any matter under this Act and provide for their payment, recovery or waiver; and
- 15 (e) exempt a specified person or class of persons, or a specified transaction or class of transactions, from compliance with this Act or a specified provision of this Act, either absolutely or on conditions or subject to limitations; and
- (f) make provision of a saving or transitional nature consequent on the commencement of specified provisions of this Act or specified regulations under this Act; and
- 20 (g) make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply; and
- (h) incorporate, adopt, apply or make prescriptions by reference to, with or without modifications, any document formulated or published by any body or authority as in force at a particular time or from time to time; and
- 25 (i) impose penalties not exceeding \$2 000 for contravention of a regulation.
- (3) If a document formulated or published by any body or authority as in force at a particular time or from time to time is incorporated, adopted, applied or referred to in the regulations—
- 30 (a) a copy of the document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
- 35 (b) evidence of the contents of the document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the document.
- 40

Appendix 6 – Annual Tenant Review Template

Tenant review template

1. Community Facility			
Community Facility Description		Community Facility Address	
Council Review Date		Reviewed by	
2. Tenant Information			
Name of Organisation			
Postal Address			
Contact Person Name		Contact Person Mobile	
Contact Person Email			
What are the aims and objectives of your organisation or group?			
What is the current membership total of your organisation or group?			
3. Occupancy Agreement			
Agreement number (Council Identifier)		Agreement Expiry Date	
4. Governance			
Is the Tenant Incorporated? Yes / No		Has the Tenant provided the appropriation Insurance Certificates? Yes / No	
Has the Tenant provided the minutes of the last AGM? Yes / No		Has the Tenant provided latest financial report? Yes / No	
Has the Tenant any unpaid debts? Yes/No		Other; please comment	
Does the Tenant have the required skills and expertise in the current membership base?			Yes / No
Details			

Has the Tenant complied with required KPI's (if applicable)?		Yes / No
Details		
5. Community Facility Site Inspection		
Brief description of community facility condition		
Have the maintenance conditions been met?		Yes / No
Details		
Are there any outstanding maintenance Issues?		Yes / No
Details		
Are there any planned capital developments?		Yes / No
Details		
6. Community facility utilisation		
What are the key times the community facility is in use?		
Has asset utilisation or participation rates increases since the last review?		Yes / No
Details		
Is the asset sub-leased or regularly hired out?		Yes / No
Is the Sub-tenant on a formal agreement?		Yes / No
Sub-tenant Details		

Does your organisation target any of the following groups? Please tick.					
Low socio-economic background		Over 60's years of age		Aboriginal or Torres Strait Islander	
Culturally and Linguistically Diverse		Children under 17 years of age		Physically and Intellectually Disabled	
Female Participation in sport		Other, please specify			
7. Council Support					
What Council support services have you used since the last review?					
Details					
What Council Services do you require over the next 12 months?					
Details					
Any other feedback?					
8. Review Sign-off					
Council Officer Name		Tenant Officer Name			
Council Officer Position		Tenant Officer Position			
Council Officer Signature		Tenant Officer Signature			
Sign-off date		Next Review Date			

Tips

- ✓ For Councils that are holding formal reviews for the first time, tenants may need assistance in meeting information requests.
- ✓ A new tenant or new facility may require a review relatively soon after signing of an occupancy agreement (e.g. six months) to ensure that any issues are dealt with in a timely manner.
- ✓ Timing of reviews can be aligned to processes such as annual grant submissions to reduce the duplication of information requests.
- ✓ Council can encourage tenants to be accredited with the STARCLUB program and rely on this accreditation for some of their review criteria to reduce the administration burden on the tenant.
- ✓ Select a review format that reflects the relationship with the tenant.

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- ⁱⁱⁱ KPMG , The Value of Community Sport Infrastructure ; Investigating the value of community sport facilities to Australia, <https://home.kpmg/au/en/home/insights/2018/08/value-community-sport-infrastructure-australia.html>
- ^{iv} Kremer, P, Elshaug, C, Leslie, E, Toumbourou, JW, Patton, GC & Williams, J. (2014). Physical activity, leisure-time screen use and depression among children and young adolescents. Journal of Science and Medicine in Sport, 17(2), 183-187. The cost of physical inactivity. Australia, KPMG , The Value of Community Sport Infrastructure ; Investigating the value of community sport facilities to Australia, <https://home.kpmg/au/en/home/insights/2018/08/value-community-sport-infrastructure-australia.html>
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- ^{vii} Local Government Act 1999, Chapter 2, section 6 Principal role of council
- ^{viii} Local Government Act 1999, Chapter 2, section 7 Functions of a council
- ^{ix} Local Government Act 1999, Chapter 2, section 8 Principles to be observed by a council
- ^x Greening Your Club Checklist, https://www.orsr.sa.gov.au/sport_and_recreation/managing_your_club_or_association/resources_to_help_you_run_your_club
- ^{xi} FACT SHEET: Recreational Grounds Rates and Taxes Exemption Act 1981, https://www.orsr.sa.gov.au/sport_and_recreation/managing_your_club_or_association/resources_to_help_you_run_your_club
- ^{xii} Environmental Sustainability Guide for Sport and Recreation Clubs, https://www.orsr.sa.gov.au/sport_and_recreation/managing_your_club_or_association/resources_to_help_you_run_your_club
- ^{xiii} <https://www.sa.gov.au/topics/energy-and-environment/using-saving-energy/retailer-energy-efficiency-scheme>

References

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xv www.energyrating.gov.au

xvi <https://www.dlgsc.wa.gov.au/sport-and-recreation/benefits-to-the-community>

xvii Australian Sport Commission 2019-2023 Corporate Plan, <https://www.sportaus.gov.au/media-centre/publications>

xviii KPMG , The Value of Community Sport Infrastructure ; Investigating the value of community sport facilities to Australia, <https://home.kpmg/au/en/home/insights/2018/08/value-community-sport-infrastructure-australia.html>

xix Social and Economic Analysis Tool,
https://www.orsr.sa.gov.au/infrastructure/planning_and_development/facility_development_guide

xx Intergenerational Review of Australia Sport 2017, The Boston Consulting Group

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<https://sportnz.org.nz/assets/Uploads/attachments/managing-sport/facilities/Setting-up-a-Sportsville-the-Hutt-City-approach.pdf>