

 Adelaide Plains Council	Lease and Licence for Community Land and Buildings Policy	
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	Strategic Outcome: Enviably Lifestyle Emerging Economy Proactive Leadership	
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1. Objective

The Adelaide Plains Council recognises the community value of sporting and community clubs and community land within the Adelaide Plains region.

Council acknowledges its responsibilities and recognises that it needs to provide:

- a balanced approach towards the use of community land for community purposes; and
- authority over its community land use for community, private or commercial purposes.

The objective of this policy is to establish a set of clear guidelines for the consideration of applications for the granting of leases or licenses to sporting and community groups on community land in accordance with Council's relevant Community Land Management Plan (CLMP).

2. Scope

This Policy will apply in relation to the issuing of leases and licenses for Council-controlled community land and buildings.

3. Definitions

Council means Adelaide Plains Council.

ABN means Australian Business Number.

Agreement means a written agreement for leasing or licencing.

CLMP means Community Land Management Plan.

Council Controlled Land is land that is either owned by Council or under Council's care and control.

CPI means the Consumer Price Index – All Groups Adelaide or if this index is not available or is discontinued or suspended, such other index that represents the rise or fall in the cost of living in Adelaide as the Council reasonably determines.

DEW means Department of Environment and Water.

Lease is an agreement where the owner grants the Tenant exclusive occupancy of a defined area as set out in the Lease, which includes the whole or part of a building and/or land.

Lessee means the occupier of a facility under a lease agreement and is interchangeable with the term **Tenant**.

Lessor means the Adelaide Plains Council and is responsible for granting a lease.

Licence is an agreement where the owner grants the Licensee the non-exclusive right to occupy a defined area as set out in the Licence, which includes the whole or part of a building and/or land.

Licensee means the occupier of a facility under a Licence agreement.

Market Rental Value means the rental value of the Premises or Licensed Area as determined by a valuer appointed by Council.

Nominal/Peppercorn rent means small payment, a nominal consideration, used to satisfy the requirements for the creation of a legal contract. It is often used to provide rental relief to lessees, enabling them to bear responsibility for routine maintenance, outgoings and to invest financial resources back into the leased premises.

Tenant means the occupier of a facility under a Lease agreement and is interchangeable with the term **Lessee**.

4. Policy Statement

This policy specifically deals with all community land owned by the Council or under Council's care and which is leased or licensed to third parties.

The policy should be read in conjunction with the *Local Government Act 1999* (the Local Government Act). Under the Local Government Act, a lease or licence may be granted or renewed for a term not exceeding 42 years as stated in the lease or licence. Council will generally consider shorter term leases of 5 years but will consider requests for long term leases, up to 42 years, on a case by case basis. The terms and conditions of all leases and licences may be reviewed on a regular basis consistent with the content of the agreement.

The policy does not cover all the requirements that pertain to community and Local Government land as these requirements are set out in the Local Government Act and form part of Council's legal obligations. It does, however, take into account requirements of the Department for Environment and Water that should be considered when dealing with dedicated lands owned by the Crown (refer clause 12 of this Policy).

The principles of this policy will be applied initially to those leases and licences which have expired and where renewal is pending. The remaining leases/licences will follow as and when their current agreement requires renewal, or as new leases and/or licences are taken up on Council owned or managed community land.

Section 202 of the Local Government Act outlines the principles in respect of use of community land by lease or licence.

5. Principles

The following principles will be used in determining the rental values charged for the use of Council facilities:

5.1 Shared /Multi-User/Single User facilities

Maximising use of Council facilities results in increasing community capacity and relationships between groups and reduced costs to tenants. Organisations who share facilities will benefit from sharing fees and charges.

5.2 Participation

Participation in community life provides multiple benefits for individuals, communities and Council. Participation is central to many community groups and organisations. In recognition that some organisations do not have the capacity to raise significant funds and provide for minority and specialist sectors in the community, the policy and setting of rental fees provides recognition and allowances for the benefit that community organisations offer.

5.3 Cost Recovery

Where Council is responsible for maintaining facilities and buildings, Council will investigate options for proportional cost recovery.

5.4 Equity

Leases and licences shall be charged at rates which reflect the value of the asset and are benchmarked against other Councils.

5.4 Affordable

Rental fees will be set at levels that allow organisations to remain sustainable while balancing the cost of providing and maintaining high standard facilities. All fees will be published annually in the fees and charges schedule of Council's budget.

6. Revenue received from tenancy of Council Reserves, Land and Buildings

In managing the revenue received from reserves, halls, land and buildings, revenue will be receipted into Council's general revenue.

Outstanding debtors will be pursued in line with Council's *Rates Arrears and Debtor Management Policy*.

7. Types of agreements

The following categorisation will be applied to leases and licences.

7.1 Recreational and Sporting Facilities Lease

The Recreational and Sporting Facilities Lease template provides specific and exclusive rights for a third party to occupy or use a community recreational and sporting facility.

7.2 Recreation and Sporting Facilities Licence

This template is for long term use or occupation that does not provide sole/specific rights to the land and/or buildings.

7.3 Commercial Leases

Leases to a commercial party for a commercial activity will be subject to public consultation and separate individual leases drafted in a registrable form.

8. Leases

The following conditions apply in relation to the leasing of a building, venue or facility, exclusively occupied by a sporting or community organisation.

8.1 Term of Lease

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.

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 Local Government Act.

8.2 Tenant Responsibility

The Tenant will:

- Enter into a formal lease agreement with the Council
- Be responsible for all day-to-day repairs and maintenance of a non-capital nature as specified in the lease agreement (e.g. Emergency Service Provisions, fire and safety maintenance, replacement of light globes, washers, taps, carpet repairs, waste disposal costs, signage, graffiti removal within or on the leased premises, internal painting and Property, Plant and Equipment)
- Be responsible for public liability and contents insurance to a minimum amount nominated by Council

Note: Electronic version in Council's EDRMS is the controlled version. Printed copies are considered uncontrolled.
Before using a printed copy, verify that it is the current version.

- Be responsible for all direct outgoings as specified in the lease agreement (e.g. electricity, water (buildings) and gas and other identified costs such as cleaning)
- Be responsible for selecting their gas retailer and paying associated costs (if applicable)
- Be responsible for electrical tagging and testing
- Be responsible for selecting their electricity retailer and contracting directly with that retailer for the supply of electricity and paying associated costs including installation of necessary meter(s)
- Be responsible for ensuring compliance with the Liquor Licensing Act 1997
- Be responsible for seeking approval from the lessor for any changes or improvements to fixtures or fittings
- Be responsible for complying with all relevant legislation, regulations and standards in respect of the facilities contained under their lease agreement (e.g. hazardous substances, building codes)
- Remove weeds within the lease area and/or adjoining carpark spaces
- Maintain hard or synthetic playing surfaces
- Display posters or information in prominent areas about current societal issues when required by Council.

A tenant may hire out the leased facility providing that this is in accordance with their lease agreement. Formal subleasing and assignment of leases will be considered by Council on a case by case basis.

8.3 Council Responsibility

Council will (subject to prioritisation of resources):

- Provide points of contact for clubs and organisations to contact Council
- Nominate and be responsible for building insurance
- Nominate the water provider
- Be responsible for structural repairs (to provide weather proofing as a minimum)
- Maintain trees and vegetation within a precinct
- Arrange for the completion of maintenance obligations of the tenant at the expense of the tenant, in the event that the tenant requests council to complete and/or the tenant fails to complete in accordance with any lease or licence agreement
- Repair and replace carparks
- Provide external painting of shared use facilities.

9. Maintenance of grass playing surfaces and leased premises

Council will undertake the grass cutting of playing surfaces where the playing surface is freely open to the public for passive recreational activities.

Maintenance of grass playing fields for surfaces freely open to the public for passive recreational activities will be undertaken by Council in accordance with horticultural maintenance standards to be established for each reserve within the terms of the lease or license.

Grass cutting and maintenance of playing surfaces of a specialist nature will be undertaken by the lessee (e.g. bowling and croquet greens, turf cricket wickets, closed sporting facilities), at the Lessee's expense.

Publicly accessible hard based playing surfaces (tennis and netball courts, synthetic surfaces) will be maintained by the Council.

Restricted access hard based playing surfaces (tennis and netball courts, synthetic surfaces) will be maintained by the lessee unless otherwise stipulated via the terms of the lease.

Council will maintain the base course for all tennis and netball courts' synthetic surfaces.

Maintenance of leased premises (excluding buildings and playing surfaces) will be undertaken in accordance with the terms agreed with each club or organisation.

10. Watering Costing and Provision

The tenant will be responsible for all costs and outgoings in relation to water usage and water rates for buildings contained under the lease agreement (e.g. clubrooms and change rooms).

Water costing and water provision for reserves and playing surfaces will be in accordance with the following categories:

- Council will be responsible for water costs for playing surfaces with bore water / mains water and/or recycled water where the general public has access and use of the playing surface. The tenant will be responsible for all electricity costs associated with the pumping of water and any additional watering above the Council nominated allocation for the site
- The tenant will be responsible for water costs where there are dedicated playing surfaces which do not allow general public access or use of the playing surface
- Council may consider a remission of watering charges when there are significant trees on the premises and in the vicinity of the watered location. Any requests will be considered on a case by case basis.

11. Sports Field Flood Lighting

The tenant is responsible for all electricity costs and outgoings for sports field flood lighting.

12. Crown Land Management Act 2009

When considering the lease or licence of dedicated land owned by the Crown but under the care and control of the Adelaide Plains Council, the following matters must be considered in accordance with the *Crown Land Management Act 2009* (the Crown Land Management Act):

- The Minister may dedicate unalienated Crown land to Council for a purpose specified in the instrument as well as subject to a management plan (Section 18 of the Crown Land Management Act)
- The Minister may revoke a dedication of land that is under the care, control and management of Council (Section 19 of the Crown Land Management Act)
 - Note: Eleven (11) parcels of land under the care, control and management of Council were revoked on 16 March 2016 by the Minister pursuant to Section 19 of the Crown Land Management Act (following consultation with Council) and proclaimed as a National Park known as the Adelaide International Bird Sanctuary. Further parcels of land under the care, control and management of Council were later revoked by the Minister following consultation with Council and the community.
- The Minister may place dedicated land under the care, control and management of Council subject to specific conditions or vary such conditions or withdraw the land from Council's care, control and management subject to consultation with Council (Section 20 of the Crown Land Management Act)
- If the Minister enacts Section 19 or Section 20 of the Crown Land Management Act as above, Council may remove the dedicated land from its Community Land Register without undertaking the revocation process under Section 194 of the Local Government Act (Section 20A of the Crown Land Management Act)
- Consent of the Minister to grant a lease over dedicated land is not required if:
 - Native title in the land has been extinguished
 - The lease will not cause development to occur under the *Planning, Development and Infrastructure Act 2016*
 - The Council is satisfied that the grant of lease would not detract from any existing public use and enjoyment of the land, is in accordance with the dedication of the land and in the opinion of the Council would not be improper or undesirable (Section 22 of the Crown Land Management Act).
 - *Example: if a netball club was leasing existing netball courts and clubrooms on dedicated Crown land for recreation purposes, Ministerial consent is not required to renew the lease on expiry.*
 - *Note: if the current dedication does not meet the proposed use of the lease (e.g. a Scout Hall built on land currently dedicated for recreation purposes,*

the consent of the Minister is required to vary the dedication or include a dual dedication of recreation and community purposes.

- Council may grant a licence over dedicated land if it is satisfied that the grant of licence would not detract from any existing public use and enjoyment of the land, in accordance with the dedication of the land and in the opinion of the Council would not be improper or undesirable (Section 22A of the Crown Land Management Act).

13. Categories of user

The fee payable on land leased or licensed to third parties will be separated into two categories:

13.1 Community based bodies

Council recognises the benefit of providing support, financial and non-financial, to community groups and organisations including not for profit bodies. These include service clubs, craft groups, or associations and community based health or social welfare agencies.

13.2 Sporting and recreational bodies

To establish balance in assessing a reasonable contribution amongst the various sporting and recreational clubs, where an organisation has the ability to enjoy profit from either an annual membership fee, or licensed facilities or a combination of both, rental fees and charges shall reflect this.

14. Commercial activities

Commercial Activities will be separated into two areas, being:

14.1 Landowner and/or Resident Private Use

Requests from private individuals to lease buildings or vacant land within townships will be assessed on merit in accordance with Council's strategic direction and operational requirements. A market rate will apply.

14.2 Full Commercial Use

Proposals to establish a commercial enterprise on any council land will be subject to individual consideration by Council.

Expansion of general farming activities from adjoining neighbours who apply to use vacant land will be considered under the category of landowners/residents/private use as outlined under 14.1. A market rate will apply.

15. Related Documents

This policy shall operate in conjunction with the Adelaide Plains Council Community Land Management Plan.

16. Record Management

All documents relating to this Policy will be registered in Council's Record Management System and remain confidential where identified.

17. Document Review

This Policy will be reviewed every two (2) years to ensure legislative compliance and that it continues to meet the requirements of Council and its activities and programs.

18. References

Crown Land Management Act 2009

Heritage Places Act 1993

Local Government Act 1999

Native Title Act 1994

Planning, Development and Infrastructure Act 2016

Retail and Commercial Leases Act 1995

19. Further Information

Members of the public may inspect this Policy free of charge on Council's website at www.apc.sa.gov.au or at Council's Principal Office at:

2a Wasleys Road, Mallala SA 5502

A copy of this Policy may be obtained on payment of a fee.

Any queries in relation to this Policy must be made in writing to info@apc.sa.gov.au to the attention of General Manager – Governance and Executive Office.