



Shire of
Serpentine
Jarrahdale

Guidelines for Leases and Licences



What this guide is for



This guide has been prepared to help you understand key provisions and obligations contained in a lease or licence with the Shire. This guide is not legal advice and does not replace or in any way override the terms and conditions of a lease or licence agreement.

A lease or licence places duties and obligations on the Tenant to do or not do certain things. Leases and licences are complex documents designed to cover a number of scenarios. Whilst they can appear wordy and detailed, this detail is necessary to achieve the objective of providing a comprehensive document that makes it clear who is required to do what and when and how to deal with matters as they arise.

The Shire uses a standard lease or licence template which is prepared for Tenants. The need for specific terms and conditions relative to unique requirements for the leasing or licensing of a Shire facility will be considered on a case-by-case basis. The intent of the lease or licence is to preserve and maintain facilities for the benefit of users of those facilities now and in the future.



Leasing and Licencing policy

The Shire has an adopted policy "Council Policy 5.1.3 – Lease and Licence Management" which applies to the grant of a right of exclusive use (Lease) or non-exclusive use (Licence) of facilities within the Shire, being either facilities owned outright by the Shire (referred to as Freehold land), or facilities owned by the State and managed by the Shire (referred to as Crown Land or Reserve).

Facilities owned by the State can only be leased (or licenced) by the Shire if the Shire have the 'vesting' or 'management order' over the facility together with power granted to the Shire to enter into a lease (or licence). The Management Order will designate the approved purpose of the Reserve which means that the Shire can only grant a lease (or licence) to a user whose objectives and proposals fit within that approved purpose – see more below.

The policy can be located on the Shire's website via <https://www.sjshire.wa.gov.au/documents/176/lease-and-licence-management-council-policy-513>



Commonly Used Terms

Act: The *Local Government Act 1995* as amended.

Exempt: exempt from the requirements of section 3.58 of the *Act*.

Community Group: a body, whether incorporated or not –

- i. The objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and
- ii. The members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions.

Consumer Price Index: The weighted average cost of a standard basket of retail goods expressed in relation to a base period for Perth (All groups).

Crown Land: Facility owned by the Crown and vested in the Shire of Serpentine Jarrahdale through the granting of a Management Order by the Department of Planning, Lands and Heritage.

Facility: this defines the area of land or building (or part of a building) that the tenancy agreement is granted over. If the tenancy agreement is granted

over land or a portion of the land it will include any Improvements on that land. Facility means land, halls, pavilions, change rooms, clubrooms, civic offices and other buildings owned or managed by the Shire.

Improvements: means any buildings, structures, fixtures, and fittings on the Premises.

Incorporated: A group of people who are recognised as a legal entity, separate from individual members as defined under the *Associations Incorporation Act (1987)*.

Lease: A legally binding agreement by which one party (Lessor) in consideration of rent, grants exclusive use and possession of Property to a third party (Lessee) for a specified purpose and term.

Lessee: An authorised third party that has entered into a lease for owned or managed property and pays rent to occupy the property.

Licence: Permits a person to occupy a facility, or part thereof on particular conditions. A licence does not permit exclusive use of the facility.

Licensee: A person that holds an

approved licence.

Lessor: The Shire of Serpentine Jarrahdale.

Management agreement: Contractual arrangement outlining the terms and conditions associated with usage.

Management Order: An authorisation provided by the Crown giving the Shire of Serpentine Jarrahdale both the power and authority to manage a facility on behalf of the Crown.

Market Valuation: A valuation taking into consideration a range of factors to determine the current market rental value of a facility.

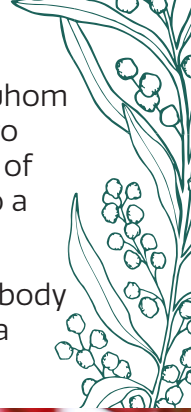
Peppercorn rent: A very small amount of money that is paid by a Lessee for a facility so that the arrangement between them and the owner of the facility is legal.

Regulations: *Local Government (Functions and General) Regulations 1996.*

Schedule: this is usually found at the start of a lease or licence and includes things such as the rent payable, when rent is reviewed, the duration of a tenancy agreement, options for further terms, land descriptions etc.

Sublessee: Any party to whom a Lessee grants the right to possess all or any portion of the premises according to a sublease.

Tenant: Is the Associated body or entity the Shire enters a lease or licence with.





Standard Provisions

Payment of Rent

For a community group lease or license the Shire will use a cost recovery model to recover a portion of operating costs for facilities up to market rent value (where appropriate). Any community tenancy agreement or licence that is provided under this model will detail the value of provision by the Shire and the subsequent community benefit the lessee or licensee provides.

For all other lease or licence agreements a market rental valuation assessment will be undertaken by a licensed valuer and the rent will be market related and negotiated on a case-by-case basis.

Rent is payable annually in advance.

Rent Review

Community leases and licences rent review clause will be accessed on a case-by-case basis.

Commercial rents will be reviewed every 12 months in accordance with CPI and at 5-year intervals in accordance with a market rent appraisal.

Rent reviews generally occur on the anniversary of the lease commencement date.



Responsibility for Outgoings

All outgoing applicable to the premises are the responsibility of the Tenant. These include but are not limited to local government charges (rates), sewerage, water rates and usage, electrical and fire equipment testing, electricity, telephone, insurances effected by the landlord and land tax.

If the facilities are on a portion of land which does not have its own meters for services, the charges will usually be calculated based on the extent of the Tenant's area in comparison to the whole land / building known as proportionate usage. This percentage will be detailed in the agreement.

Pest Control

The Tenant must keep the facility free of any pests and vermin and the Shire will arrange an annual inspection and pest treatment by a licensed pest controller and invoice the Tenant for this expense.

Maintenance

Generally, a Tenant is solely responsible for maintenance and repair of the Premises.

For community agreements the Tenant is expected to maintain and keep the premises clean and in good repair. The tenant would



be responsible for any damage and the Shire responsible for fair wear and tear. Maintenance obligations taking in the specific considerations for the site and the subsequent community benefit the lessee or licensee provides and will be an annexure to the agreement.

Tenants are to report any maintenance, damage, or repair requirements to the Shire in writing and in a timely manner via a Customer Request Management (CRM).

Tenants are to enter a CRM via www.sjshire.wa.gov.au/community/services/request-and-report-it/maintenance-requests.aspx these are then allocated to the correct internal team for actioning.

Alterations and Additions

A Tenant must not carry out any alterations, improvements, or other structural works in or to the facility, without the prior written consent of the Shire.

Insurance Obligations

Generally, the Shire will ensure buildings on Shire owned or managed land through the Local Government Insurance Scheme (LGIS) and recover the cost of the premium from the Tenant.

The Shire adheres to industry recommended asset management principles and will periodically obtain a professional revaluation of buildings to ensure they are adequately covered. This avoids the risk of a building being underinsured and not be able to reinstate or rebuild in the event of damage or destruction.

It is important that if you are considering any renovations or additions to the Premises, that you first seek the Shire's approval and ensure that you budget to provide the Shire with a reinstatement/replacement valuation of that improvement. This will enable the Shire to insure for the correct value if this occurs during the gap between scheduled revaluations.

Public Liability

Tenants must affect and maintain adequate public liability insurance to the sum of not less than \$20million.

You must ensure you are covered for all activities undertaken on the Premises. This can include workers compensation, voluntary workers



insurance, contents insurance and any other insurance required.

Tenants must provide the Shire with copies of all insurance policies required under the lease or licence.

Permitted or Authorised Use of Facility

The Tenant must not permit any person to sleep on or use the Premises as accommodation without the written consent of the Shire. The Tenant must not do or permit on or around the facility anything which is a nuisance, causes aggrievance, disturbance or annoyance to the Shire or occupiers and users of land or premises in the vicinity of the facility.

There are restrictions on what may be kept on the premises such as items of a dangerous, hazardous or flammable nature.

Hiring of a leased facility

It is recognised that some Tenants may wish to hire out their Premises to another community organisation, group or individual for the purpose of fund raising or simply sharing their facilities.

Prior consent for such use must always be sought and will generally be given where the hire purpose is consistent with the use authorised in the agreement of the Premises.

If it is permissible under your agreement and you hire the Premises to a third party, you must first ensure your insurance covers such use and the secondly that the hirer has their own personal public liability cover.

Signage

Generally, no signs, notices or advertisements can be displayed on the Premises without the prior written consent of the Shire, unless the sign or notice is a legal requirement.

Right of Entry

A Tenant must allow the Shire and any person authorised by it to enter the Premises to view the state of repair and condition of the Premises



and generally monitor compliance with the agreement obligations. The Shire will provide reasonable notice of its intention to inspect unless there is an emergency.

Inspections

A Property Condition Report (PCR) will be completed at the start of the tenancy to document the current state of the property. This initial report will be compared to a follow-up report conducted at the end of the tenancy to assess any damages.

The Shire will undertake annual property inspections to ensure compliance with the agreement obligations and will provide the Tenant with appropriate feedback. Appropriate prior notice of the inspection will be given to the Tenants.

Security

The Tenant will be responsible for ensuring the premises is appropriately secured by ensuring all doors, windows and other access points are locked and securely fastened at all times the facility is not being occupied.

Lessees shall keep the security system in good working order and are required to pay all monitoring and service costs associated with the security system.

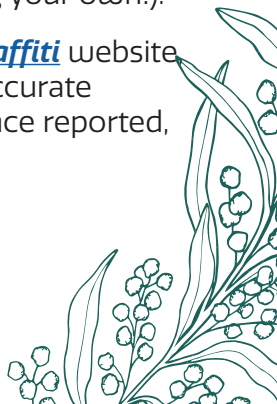
Report to Shire

Tenants must report any act of vandalism or damage to the facility via a CRM.

Graffiti

Everyone is encouraged to report graffiti. You can report graffiti you find on public buildings and facilities like playgrounds, bus stops and benches, as well as anyone's private property (including your own!).

Please report it as soon as possible via the [Goodbye Graffiti](#) website managed by the State Graffiti Taskforce. This ensures accurate recording of graffiti incidents and evidence of "tags". Once reported, the asset owner is notified.



Whilst you can directly report Graffiti on Shire building via CRM, omitting the above steps minimises chances of identifying hot spots of criminal activity by the authorities.

Subletting

A Tenant must not without the consent of the Shire and, in the case of Reserve or Crown land, the Minister for Lands, do anything that would involve a change of occupation of the facility. This will be the case even in the event of a proposal that relates to only a part of the land or building as opposed to the whole.

Provision of Information

It is important that the Shire keep and maintain an up-to-date record of the officers within a Tenant organisation with responsibility for managing and maintaining the facility. Following an annual general meeting, we ask that the Shire be notified of the name and contact details of office bearers.

If the Tenant changes its rules (constitution) or objectives, it must notify the Shire in writing of such changes within 30 days.

For community agreements under a cost recovery model there may be a requirement for the Tenant to provide an annual evaluation report outlining the community benefit provided for the preceding year.

Non-Compliance or Breach of a Condition

Failure to comply with the agreement constitutes a default of agreement terms. A Tenant would, for example be in breach if they fail to comply with maintenance obligations or pay their rent on time. The Shire, as Landlord will serve a notice on a Tenant of this default if necessary. Failure to comply with a validly served notice can ultimately result in the agreement being ended. If you have any concerns about your obligations or your ability to comply with them, it is advisable to discuss this with a Property Officer at the earliest possible opportunity.

Purpose of use

The Lessee or Licensee must use the facility for the purpose as outlined in the lease or licence agreement and consistent with the purpose of the reserve land and/or the zoning of the land.



A Tenant must only use the facility for the purpose specified in the agreement. This is usually found in the Schedule.

Term

Generally, all leases will be for a maximum term of 10 years including any further term option. This is usually five years, with a five-year further term option. Licences will be for a maximum term of 3 years including any further term option. This is usually, three years with a one-year further term option

Option of further term

The lease or licence may include a clause that offers a Tenant the right to extend the lease for an additional fixed term subject to conditions.

Redevelopment Clause

All Shire leases and licences will contain a redevelopment clause, whereby if the Shire wishes to carry out significant redevelopment of the facility the Shire may give 6 months written notice of termination, to enable undertaking of the proposed redevelopment.

Expiry

The lease or licence specifies your obligations at the end of the term.

It is recommended that you consider what you want to do at least nine months prior to the end of your term and make us aware of your intentions so we can undertake any necessary disposing of property process under the *Act*.

There generally is a requirement on the tenant to restore the premises to its original condition upon lease termination. Ownership of all improvements erected or constructed on the Land by the Tenant shall at the expiry of the lease (and option period) revert to the Shire or be removed at Tenant's cost if the Shire deems it does not require the improvements at the end of the lease.



Approvals Governed by Statutory or Other Requirements

Public Building

The term “public building” is defined in *Health Act 1911* as meaning a building or place where people assemble for different reasons including civic, theatrical, social, political, religious, entertainment, recreational sporting or business purposes. The general intent of the legislation is to assist in the protection of the health, safety and amenity of persons in and about buildings and places where generally, large numbers of the public gather.

If the facility is a “public building” it must be approved for the purpose for which it is being used and it must have a Form 4 (Certificate of Approval) issued by the Shire prominently displayed in the building. This Certificate states the maximum number of persons that can be accommodated in the building or place.

Liquor Licences

Tenants must not supply or sell alcohol or apply for a liquor licence unless the prior written consent of the Shire has been obtained. The consent required under a lease or licence is *in addition* to the approval and or consent that may also be required from other sectors of the organisation such as the Department of Planning and Department of Health, or other State Government agency approval.

Food Preparation

A registration certificate may be required if you are preparing and/or selling from the Premises. There are certain requirements under the *Food Act 2008* that you may be required to comply with. You should contact an Environmental Health Officer to discuss your proposal or use if you are unsure what approval may be required.

Other Approvals

There may be other approvals you need to obtain from time to time throughout your lease or licence term, for example should you wish to use the Premises for something that constitutes an event. If at any time you are unsure if an approval is required for a particular matter feel free to contact the Property Officer.

This is a guideline only. For more information, please contact the Shire of Serpentine Jarrahdale.



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