Leases, Licenses and Permits Policy

Keywords: *Lease, License, Permit*

Corporate Plan:	
Classification:	*Environmental Services – "Leases, Licenses and Permits Policy*
First Issued/Approved:	*September 2014*
Review Frequency:	*Biannually*
Last Reviewed:	*May 2024*
Next Review Due:	*May 2026*
Responsible Officer(s):	*Manager Environment and Regulatory* *Land and Property Officer*
Council File Reference:	
Applicable Legislation:	*Local Government Act 1999, s202, s221, s222* *Planning, Development and Infrastructure Act 2016, Disability Discrimination Act 1992, Electronic Conveyancing National Law (South Australia) Act 2013, Food Act 2001 Independent Commissioner Against Corruption Act 2012, Liquor Licensing Act 1997 and Codes of Practice, Local Government (Accountability and Governance) Amendment Act 2015, South Australian Public Health Act 2011, Real Property Act 1886, Retail and Commercial Leases Act 1995, Work Health and Safety Act 2012*
Relevant Policies:	*Asset Accounting Policy* *Fees and Charges Policy*
Related Procedures:	*LGA Mutual Liability Scheme templates* *Public Consultation and Community Engagement Policy* *Land and Development Infrastructure Guidelines*
Delegations:	*Berri Barmera Council Delegations Register*

1. Purpose

Part of the principal roles of a Council in accordance with the Local Government Act 1999 is to:

- provide and co-ordinate various public services, facilities and to develop its community and resources in a socially just and ecologically sustainable manner; and
- to exercise, perform and discharge the powers, functions, and duties of local government under the Local Government and other Acts in relation to the area for which it is constituted.

The Berri Barmera Council (the Council) acknowledges the responsibility and recognises the value of sporting, community clubs and use of Council land within its constituted area to provide:

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

2. Definitions

The Act	Local Government Act 1999
CEO	Chief Executive Officer
LGAMLS	Local Government Association Mutual Liability Scheme
Residents	Constituents within the Berri Barmera electorate
Crown Land	Public land without a specific tenure, land owned by the government and is described as held in the "right of the Crown"
The Council	Berri Barmera Council
LLAG	Leases, Licences Advisory Group

3. Principles

To implement administrative procedures and authority for issuance of leases, licenses and/or permits for Council-controlled land and buildings.

This Policy addresses the Council's decision making and risk management in relation to the granting of leases and licences for Community Open Space and Community Facilities. The Council will make land, venues, and facilities available to groups, organisations or residents on a fair and equitable basis to meet community needs. Community organisations with a membership comprising of local residents will be prioritised by the Council over clubs and community groups from other Council controlled areas.

Council owns both community and operational land, the Council attempts to optimise the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue it derives from its land holdings including road reserves and unmade roads.

Decisions to grant leases of the Council-controlled land and buildings are to be made by resolution of the Council. Decisions to grant licences and permits of the Council-controlled land and buildings are to be made under delegation of the CEO.

The authority to approve the renewal of existing leases, licences and/or permits is delegated to the CEO, provided the terms and conditions are in accordance with the Council policies and procedures. Where the terms and conditions have been substantially varied, the Council will consider the renewal application.

Management of leases, licences and/or permits of the Council-controlled land and buildings will be undertaken in accordance with the provisions of this policy.

4. Policy Statement

This policy specifically deals with all Local Government land including roads, road reserves and unmade roads, owned by the Council or under the Council's care and control which is leased, licensed or covered by permit to third parties.

The policy should be read in conjunction with the Local Government Act 1999 (the Act). In accordance with section 202. 4 o f the Act, a lease or licence may be granted or renewed for a term not exceeding 42 years. T h e Council will generally consider shorter term leases of 5 years but will review requests for long term leases on a case-by-case basis. Leases may be extended but not so that the term extends beyond a total of 42 years. The terms and conditions of all leases and licences may be reviewed on a regular basis consistent with the content of the agreement.

The Council will work within the requirements that pertain to community and Local Government land as set out in the Act and form part of the Council's legal obligations. It does, however, consider requirements of the relevant state authority that should be considered when dealing with dedicated lands owned by the Crown.

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 and licences will follow as and when their current agreement requires renewal, or as new leases/licences/permits applied for on Council owned or managed land.

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

The Council utilises LGAMLS established templates to cover each type of use envisaged by this policy and those templates form the basis of documentation of arrangements between the parties. Where there is no suitable LGAMLS template leases, licences and permits will be referred to the LLAG. Where the LGAMLS lease templates are not adequate, a legally binding lease templates will be procured from the Councils current legal representation.

The type of leases, licenses, and permits the community can apply for with the Council:

4.1 *Licence Recreation and Sporting Facilities*
Is for long term use or occupation that does not provide sole/specific rights to the land and/or buildings.

4.2. *Permit – Facility Hire (ongoing)*
Is to be used for the short-term use (less than one season) of a recreational or sporting facility.

4.3 *Permit – Occasional Hire of Council Facility*
Is for one-off use of a Council facility, which may include recreation and sporting facilities and other Council owned building.

4.4 *Permit – Special Event*
Applies for individual events which do not include facilities hire.

4.5 *Permit – Stall Holder/Exhibitors*
Relates specifically to events where food and/or drink may be sold and which do not include facilities hire.

Council supports community groups which raise funds by conducting stalls and badge days in public space, including footpaths and public land. These groups include but not limited to sporting clubs, recreational clubs, craft groups or associations and community-based health or social welfare agencies. If a stall includes the sale of food, the owner of the stall is required to comply with the appropriate regulations of the Food Act 2001.

Community Groups and not for profit organisations may be granted a permit to operate from Local Government land without fee for the purposes of raising funds for charity, subject to the group providing proof of an adequate public liability insurance policy and meeting other statutory requirements, if applicable.

4.6 *Permit to use a Public Road for Business Purposes*
This permit is required to carry out a business activity on a public road.

4.7 *Authorisation to Alter a Public Road*
Applies for both temporary and permanent alterations to a public road that will be carried out by a third party. A Permit to use a public road for business purposes may also be required.

4.8 *Lease - Recreational and Sporting Facilities*

Provides specific and exclusive rights for a third party to occupy or use a community recreational and sporting facility.

4.9. *Sporting and community bodies*

With regards to sporting and community bodies and establishing balance when assessing a reasonable contribution amongst the various sporting and recreational clubs, where an organisation could enjoy profit from either an annual membership fee, or licensed facilities or a combination of both, a differential fee structure will generally be applied.

4.10. *Lease – Commercial*

Commercial activities will be separated into two areas, being:

4.10.1. Landowner and/or Resident Private Use;

4.10.2. Full Commercial Use.

4.11. *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, market rates will apply.

4.12. *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 4.11 market rates will apply.

The Council may lease property to commercial tenants to create a financial return on investment for the community.

4.12.1. Generally, charged at commercial rate.

4.12.2. No obligations from Councils resources.

Commercial rate may be negotiated due to market demand.

4.13. *Lease – Community Benefit*

This agreement supports organisations in conducting their activities and services, in doing so, provides benefits to the wider community. These are divided into two areas – Community Based Bodies and Community Facility.

4.14. *Community based bodies*

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

The following fee structure principles will be considered for not-for-profit organisations, however individual circumstances may apply in each case, considering the cost of any improvements on the land and the responsibility for the maintenance of those improvements.

The Council may lease a property at reduced rates where significant community benefit is provided through the tenancy;

- Reduction of commercial rate (subject to negotiations).
- Lessees are requested to recognise the Council as a partner or sponsor to the value of the lease reduction.
- Reduced rate leases would require tenant to fund all outgoings as the Council contribution is the lease reduction.

4.15. *Lease - Community Facility*

Leases can be utilised to facilitate community management of facilities which are solely for community benefit. If not leased they are generally facilities which the Council would be required to provide and manage.

- Lease amounts are generally charged at the minimum rate.
- Not for profit tenants.
- Lessees are requested to recognise the Council as a partner or sponsor to the value of the lease.
- Lessees are required to supply an Annual Report to LLAG in accordance with Schedule 1 of the Lease.
- Lessees are encouraged to provide shared community benefit, not exclusivity.
- Lessees are encouraged to seek external funding for capital improvements to site.
- Property related maintenance such as extraordinary and/or major maintenance as defined in schedule 1 of the lease.

Where exclusive possession of a Community Facility has been granted to a community organisation, they will be required to:

- Enter into a formal lease agreement with the Council
- Meet all costs associated with outgoings related to the building as specified in the lease (eg water rates, water and electricity use, insurance costs, other taxes and charges, etc);
- Should the RCL Act apply to the lease, land tax payments cannot be passed onto the tenant;
- Undertake building maintenance as specified in the lease; and
- Pay to Council a lease fee as determined by the Fees and Charges Policy or as set out in the lease.

Where additional Council support is requested capital investments, opportunity is preferred over operational costings.

5. Crown Land

When considering the lease or licence of dedicated land owned by the Crown but under the care and control of the Council, no approval from the Minister for Environment, Water and Natural Resources is required providing that;

5.1. Native Title rights have been extinguished over the land or where the relevant Council can demonstrate the grant of the lease will not impact native title rights;
5.2. the lease is consistent with the purpose of the dedication or management plan; and
5.3. the lease will not cause any new development.

6. Confidentiality

Any information provided will be treated as strictly confidential. Information provided to the Council's Chief Executive Officer (CEO) will be securely retained within Council's records.

Version No.	Date Issued	Description of Change
1.0	May 2024	Reviewed and Updated