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Strategic Plan:	
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Council File Reference:	
Applicable Legislation:	<i>Local Government Act 1999, s202, s221, s222 Development Act 1993, 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, Public Health Act 2011, Real Property Act 1886, Retail and Commercial Leases Act 1995, Work Health and Safety Act 2012</i>
Relevant Policies:	<i>Asset Accounting Policy Fees and Charges Policy</i>
Related Procedures:	<i>LGA Mutual Liability Scheme templates Public Consultation Guidelines</i>
Delegations:	

1. Purpose

The Berri Barmera Council recognises the community value of sporting and community clubs and community land within the district.

Council acknowledges its responsibilities and recognises that it needs 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. Policy Objective

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

This Policy addresses Council 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 from other Council areas.

3. Policy statement

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

The power 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 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 Council-controlled land and buildings will be undertaken in accordance with the provisions of this policy.

4. Scope

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

The policy should be read in conjunction with the Local Government Act 1999 (the Act). Under the Act, a lease or licence may be granted or renewed for a term not exceeding 21 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 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 policy does not cover all the requirements that pertain to community and Local Government land as these requirements are set out in the Act and form part of 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 (see section 7).

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/licences/permits are taken up 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.

5. Templates for leases, licences and permits

The Local Government Association Mutual Liability Scheme (LGAMLS) has 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 Leases and Licences Advisory Group. Where the LGAMLS lease templates are not adequate legally binding lease templates will be procured from our lawyers.

6. Types of agreements

The following categorisation will be applied to leases, licences and permits.

6.1 Licence - Recreation and Sporting Facilities

This template (see section 5) is for long term use or occupation that does not provide sole/specific rights to the land and/or buildings.

6.2 Permit - Facility Hire (ongoing)

This template (see section 5) is to be used for the short-term use (less than one season) of a recreational or sporting facility.

6.3 Permit – Occasional Hire of Council Facility

This template (see section 5) is for one-off use of a Council facility, which may include recreation and sporting facilities and other Council owned buildings.

6.4 Permit - Special Event

This template (see section 5) applies for individual events which do not include facilities hire.

6.5 Permit - Stall Holder/Exhibitors

This template (see section 5) 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 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 will need to comply with the appropriate requirements of the Food Act.

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.

6.6 Permit to use a Public Road for Business Purposes

This permit is required to carry out a business activity on a public road.

6.7 Authorisation to Alter a Public Road

This template (see section 5) 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.

6.8 Lease - Recreational and Sporting Facilities

This LGAMLS template (see section 5) provides specific and exclusive rights for a third party to occupy or use a community recreational and sporting facility.

Sporting and community bodies

To establish balance in 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.

6.9 Lease – Commercial

Commercial activities

Commercial Activities will be separated into two areas, being:

6.9.1 Landowner and/or Resident Private Use.

6.9.2 Full Commercial Use.

6.9.1 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.

6.9.2 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 6.9.1. A market rate will apply.

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

- Generally, charged at commercial value.
- No obligations from Councils resources.

Commercial value may be negotiated due to market demand.

6.10 Lease – Community Benefit

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.

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

Council may lease property at a reduced rate where considerable community benefit is provided through the tenancy;

- Reduction of commercial rate (subject to negotiations).
- Generally for not-for-profit lessees who are a significant community benefit from the leased property.
- Lessees are requested to recognise Council as a partner or sponsor to the value of the lease reduction.
- Reduced rate leases would require tenant to fund all outgoings as Council contribution is the lease reduction.

6.11 Lease - Community Facility

Leases can be used to facilitate community management of facilities which are solely for community benefit. If not leased, they are generally facilities which 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 Council as a partner or sponsor to the value of the lease.
- Lessees are required to supply an Annual Report to Leases & Licenses Advisory Group 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/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 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 are preferred over operational costings.

7 Crown Land

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

- 7.1 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.
- 7.2 and the lease is consistent with the purpose of the dedication or management plan.
- 7.3 and the lease will not cause any new development.

8 Further information

This policy is available to be downloaded, free of charge, from Council's internet site: www.berribarmera.sa.gov.au or available for inspection during normal business hours at the Council offices located at 19 Wilson Street, Berri.

The fee schedule is reflected in Council's Fees and Charges Register, which is available for viewing at www.berribarmera.sa.gov.au

All leases are subject to negotiations.

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