

Leasing and Licensing of Council Owned Facilities Policy



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 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. Council will 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 benefit to the Marion community, 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 provide 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

Policy Ref/Security Classification:

Category: Public

Owner: Manager City Property

Authorisation Date: 25/11/2025

Review Date: 25/11/2029

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- Facilitate a shared approach between Council and lessees 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 AND IMPLEMENTATION

Scope

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

Implementation

4.1 ELIGIBILITY FOR LEASE OR LICENCE

4.1 (a) Council will enter into a lease or licence agreement with a not-for-profit organisation, once the organisation can demonstrate its eligibility by meeting the relevant eligibility criteria to the reasonable satisfaction of Council Administration.

Council will prioritise access for use and occupancy of its community facilities for local, not-for-profit and organisations that will likely provide the best community outcomes for City of Marion residents in particular. Relevant criteria will be:

- Not for profit organisation under Australian tax office definitions
- Incorporated/legitimate body under the auspice of an incorporated body or under the auspice of an incorporated body
- Australian Business Number (ABN)
- Financially viable by providing 3 years of annual financial statements to Council (where applicable)
- Complies with relevant legislation and regulations governing its activities
- Demonstrates meeting a community need
- Good governance capability

4.1 (b) Council will consider a lease or licence agreement for a commercial organisation once the organisation demonstrates that it:

- Will meet a community need
- Has the professional capacity and experience
- Does not generate income from gambling (including poker machines)
- Provides an economic benefit to the City of Marion

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4.1 (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, with the level of contribution reflecting the level of use
- Fees are consistent with commercial fees, although a reduction may be considered to reflect the school's socio-economic status, contribution to the ongoing maintenance and capital
- A school, Department for Education 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

4.2 ANNUAL FEE

Sporting & Community (Not for Profit) Agreements

Rents for Sporting and Community (Not for Profit) agreement holders will be charged on the following basis:

- The annual rent will generally be calculated at a rate of **5%** of the 'market rent' in accordance with Council's desktop market rental valuation data. Council may choose to resolve to charge a different percentage of the 'market rent', at its discretion, based upon its assessment of meeting the eligibility criteria set out in 4.1(a), in particular whether Council considers it to be locally based and will provide significant community outcomes particularly for City of Marion residents.
- Managed indoor sports facilities (eg basketball and volleyball) may have rents calculated on more commercially based terms, including number of hours included in the agreement.
- The rent will be fixed for the duration of the term (up to 5 years) and will be reviewed on any renewal of the lease to the rate of **5%** of the 'market rent' in accordance with Council's desktop market rental valuation data applicable at the time.
- Where separately metered, agreement holders will be responsible for 100% of the cost of utilities consumed, with the utility accounts in the name of the agreement holder where possible (with the exception of water which will be as detailed in this Policy).
- Council will not on-charge the costs of building insurance or Council Rates to Sporting and Community (Not for Profit) agreement holders.
- Where the agreement is for the shared use of a multiple occupancy facility, Council Administration may choose to apply a grossed-up rent which will include an element for contribution for a share of the outgoings and utilities costs for the premises based on reasonable estimated usage.
- Sporting and Community (Not for Profit) agreement holders will be required to meet Key Performance Outcomes (outlined in the Guidelines Procedure), and to provide evidence of meeting these outcomes on an annual basis, together with any other

compliance documentation required by Council.

- A minimum fee of \$300.00 (excluding GST) per annum will be payable should the discounted rent be calculated at less than \$300.00
- The lease agreements for Community Halls (Marino Community Hall, Cosgrove Hall, Clovelly Park Hall, and Park Holme Hall) will be charged at peppercorn **\$1 per annum** rent (if demanded). Noting that the agreement holders will still be responsible for the payment of outgoings and utilities.

Commercial Agreement Rent/Fees

Commercial Agreements will generally have a market rent or fee set to provide a commercial return to Council, however in selecting a commercial lessee, Council will have regard to how the proposed use or business will contribute to the delivery of the Strategic Plan and the likely impact or benefit to the community. This may affect the level of rent applied and would be subject to a Council resolution. Council will recover outgoings and legal expenses where applicable, in accordance with any restrictions imposed by the Retail and Commercial Leases Act 1995. Council Rates will be applicable for commercial lease agreements.

Rent Arrears and Non-Compliance

Community and Sporting (Not for Profit)

Where an agreement holder is in arrears with their invoiced rent and / or outgoings liabilities by a period of 90 days, a breach notice will be served. After 120 days or more, or where an agreement holder has not supplied all required Key Performance Outcomes evidence (or subsidy information if on an historic agreement) and other required compliance documentation to Council within 120 days of an annual written request, then Administration will provide a report to Council at the next General Meeting, subject to agenda preparation deadlines in place.

Commercial Agreements

Where an agreement holder is in arrears with their invoiced rent and / or outgoings liabilities by a period of 14 days, a breach notice will be served requiring this to be remedied within the specified timeframe. If the breach is not remedied within the specified timeframe, then the Chief Executive Officer is delegated to issue a notice of termination. At their discretion, a report may be presented to Council for consideration.

Assignment of Lease

Where an agreement holder requests an assignment of lease, the Chief Executive Officer is delegated to approve or decline this request. It will be a requirement that all outstanding monies due to Council must be paid to prior to any approval for assignment being granted.

4.3 TERM OF AGREEMENT

Terms of agreement will not be greater than 5 years unless Council resolves to grant a longer term lease.

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 will 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 Council prior to the lessee or licensee taking possession of the premises.

4.4 MAINTENANCE, REPAIRS AND REPLACEMENTS

A comprehensive list of building items will be provided to organisations in the form of a Maintenance Schedule Annexure to the agreement 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.

4.5 UTILITIES, OUTGOINGS AND WASTE DISPOSAL

Organisations will be responsible for the cost of all utilities, outgoings 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.

4.6 WATER USAGE

4.6 (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 will be responsible for the payment of all water and sewer charges levied against the leased area.

4.6 (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 associated playing field water used. In addition to the associated playing field and where the building or facility is fenced or not accessible to the community, the lessee / licensee will be responsible for the payment of all water and sewer charges levied.

Council encourages water conservation techniques and when considered appropriate will place a cap on the amount contributed by Council. The amount of the cap will 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.

4.7 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.

Council reserves the right to charge agreement holders separately to the rent, for the use of sporting grounds and courts, in accordance with Council's Schedule of Fees and Charges.

4.8 FLOOD LIGHTING

Council will be responsible for the regular inspection 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.

4.9 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 or hire agreement for part or all of the premises to another club or a commercial activity, Council reserves the right to, at its discretion, set a maximum sub-licence fee based on the nature and quantum of the sub-licence and the rent, charged by Council.

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.

4.10 NEW AGREEMENTS AND RENEWALS

New Agreements

Newly built assets and vacant premises are generally offered for occupancy under an expression of interest process. This may be weighted to take into account the proposed use, community benefit, return on investment and strategic fit, whilst prioritising support for local not-for-profit organisations and/or local organisations that provide a particular benefit to the City of Marion community. Subject to a decision of Council, an exception may be applied to this where a

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community organisation has contributed in some form to the project, been re-located from an existing community facility, or in the case of an unsolicited proposal.

Renewals

Existing lessees and licensees will generally be given opportunity for lease / licence renewal in preference to any expression of interest or unsolicited proposal process. The Mayor and the relevant Ward Councillors will be given the opportunity to provide comment on any proposed lease or licence renewal prior to these being executed utilising any sub-delegations which may be in effect.

4.11 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 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.

4.12 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.

4.13 POLITICAL SIGNS

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

4.14 LIQUOR LICENSE SUPPORT REQUESTS

Where agreement holders wish to apply for a new Liquor License, or apply for an amendment to an existing Liquor License, landowner consent and support will be required to be sought from Council. Requests will be assessed in accordance with Council's Liquor License Support Procedure.

Transitional Arrangements

The provisions of this Policy will not apply to any existing leases or licenses to the extent that the provisions contained herein are not in accordance with the original agreement. When the renewal of that lease or licence is negotiated the provisions of this Policy will be applied fully.

Where no formal arrangements exists then the provisions of this Policy will be applied to negotiate a formal lease or licence at the earliest opportunity.

5. DEFINITIONS

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Category: Public

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<i>Term</i>	<i>Definition</i>
Community Buildings	Buildings primarily available to facilitate community activities inline 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 will be used where the occupier has full and exclusive use of the premises.
License	Such agreements will 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	Leased outdoor facilities which are available for community use outside formal sporting use excluding sport related facilities such as clubrooms, storage sheds.

6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
Unit Manager Property & Facilities	<ul style="list-style-type: none"> Overall responsibility for ensuring compliance with this Policy.
Team Leader Property	<ul style="list-style-type: none"> Ensure documentation and responsibilities are compliant with this Policy, including inspections undertaken and compliance documentation provided. Reporting on arrears and non provision of requested compliance documentation to Council.
Property Officer	<ul style="list-style-type: none"> Ensure documentation and responsibilities are compliant with this Policy, including inspections undertaken and compliance documentation provided.

7. REFERENCES

City of Marion

- Asset Management Plans
- Asset Management Policy
- City of Marion Community Vision – Towards 2040
- City of Marion Strategic Plan 2019-2029
- City of Marion Community Facilities Strategy – (under development)
- City of Marion Business Plan 2019-2023
- City of Marion Long Term Financial Plan
- Community Land Management Plans
- Disposal of Land and Assets Management Policy
- Irrigation Management Plan
- Public Consultation Policy and Public Consultation Procedure

Other

- Associations Incorporation Act 1985
- Development Act 1993
- Disability and Discrimination Act 1992
- Gaming Machines Act 1992
- Law of Property Act 1936
- Liquor Licensing Act 1997
- Local Government Act 1999
- Planning, Development and Infrastructure Act 2016
- Real Property Act 1886
- Retail and Commercial Leases Act 1995

8. REVIEW AND EVALUATION

This policy will be reviewed by Council every four years in accordance with the City of Marion Policy Framework or sooner if required.

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Key Performance Outcomes for Sporting and Community (Not for Profit) Organisations

It will be a condition of Lease and Licence Agreements to sporting and community organisations that the below Key Performance Outcomes are achieved on an annual basis.

Good Governance

The organisation must demonstrate:

- 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.

Facility Utilisation

The organisation must:

- 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.

Social Inclusion

The organisation must demonstrate:

- 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 pro-actively support wider social inclusion targets.

Volunteer Management

The organisation must demonstrate that it promotes, supports and develops volunteers.

Environmental Initiatives

The organisation must demonstrate that it promotes and implements environmental initiatives e.g. waste reduction, recycling, energy efficient practices including investments. e.g. solar panels.

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