

Keywords: Lease, License, Permit

Corporate Plan:	
Classification:	<i>Environmental Services – “Leases, Licenses and Permits Policy</i>
First Issued/Approved:	<i>September 2014</i>
Review Frequency:	<i>Annually</i>
Last Reviewed:	<i>11 September 2018 (SGAMC)</i>
Next Review Due:	<i>September 2019</i>
Responsible Officer(s):	<i>MES/MP, PO</i>
Council File Reference:	
Applicable Legislation:	<i>Local Government Act 1999, s202, s221,s222</i>
Relevant Policies:	
Related Procedures:	<i>LGA Mutual Liability Scheme templates Public Consultation Guidelines</i>
Delegations:	

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.

Policy Objective

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

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, licences and/or permits of Council-controlled land and buildings are to be made *[by resolution of Council or 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.

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, up to 21 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 Act and form part of Council's legal obligations. It does, however, take into account 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.

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.

Types of agreements

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

Recreational and Sporting Facilities Lease

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

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.

Facility Hire Permit (ongoing)

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

Permit – Occasional Hire of Council Facility

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

Special Event Permit

This template applies for individual events which do not include facilities hire.

Stall Holder/Exhibitors Permit

This template 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. In the event that 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.

Authorisation to Alter a Public Road

This template 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.

Permit to use a Public Road for Business Purposes

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

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.

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, the Department of Environment, Water & Natural Resources requires the application to be referred to the Minister for Environment, Water & Natural Resources to seek approval from the owner of the land, whether it is a renewal or a new application for a lease or licence. This procedure is to ensure:

- Dedicated lands are not developed where the nature of the development contemplates use that is at variance to the purpose for which the land has been dedicated.
- Third party occupation is limited to licence tenure of up to 5 years unless otherwise agreed by the Minister.

Categories of user

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

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.

Sporting and community 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, a differential fee structure will generally be applied.

Commercial activities

Commercial Activities will be separated into two areas, being:

- a. Landowner and/or Resident Private Use
- b. Full Commercial Use

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.

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 8.3.1. A market rate will apply

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