

# Wagga Wagga City Council

## LEASING AND LICENSING POLICY

<b>REFERENCE NUMBER</b>	POL 038		
<b>ORIGINAL APPROVAL DATE</b>	September 2000		
<b>RESPONSIBLE MANAGER</b>	Manager Council Businesses		
<b>RESPONSIBLE DIRECTOR</b>	Commercial Operations		
This document is to be reviewed bi-annually. Next review date: September 2018			
<b>Revision number</b>	<b>Issue Date</b>	<b>Council resolution</b>	<b>Council meeting date</b>
1		Res No: 1155/00	25 September 2000
2		Res No: 827/01	27 August 2001
3		Res No: 141/03	24 February 2003
4		Res No: 04/243	23 August 2004
5		Res No: 07/121.8	23 April 2007
6		Res No: 09/077	27 July 2009
7	August 2013	Res No: 13/224.1	26 August 2013
8	August 2017	Res No: 17/279	28 August 2017

## **PART 1: POLICY CONTENT**

### **1.1 Rental**

- a) In all cases where the property is subject to a commercial, retail or residential Lease a market rental shall be applicable.
- b) Where the Lessee/Licensee of community or Crown land is a non-profit organisation or community group the minimum base rental is \$350.00 plus GST per annum. This is not applicable to agistment agreements where rental is determined on the area of the land or amount of stock to be placed upon the property.
- c) Any sporting association occupying premises on Crown Land and/or Council controlled land that hold a "non-temporary" liquor licence shall pay market rental.
- d) The Lessee/Licensee will be required to pay GST (Goods and Services Tax), if such is applicable, in addition to the rent payable under this policy.

### **1.2 Rent reviews**

- a) Leases and Licences to a community or non-profit group for a period of more than twelve (12) months and less than five (5) years shall be subject to rental reviews every year by way of CPI increases commencing on the anniversary. Leases/Licences of a period of five (5) years or more (including options) shall be subject to rental reviews every five (5) years by way of CPI increases.
- b) All commercial or retail Leases are to be reviewed to market.

### **1.3 Outgoings/maintenance**

- a) All Lessees/Licensees including non-profit, community or sporting groups paying the minimum rental shall be responsible for the payment of all outgoings including rates (if applicable), land tax, water, electricity, gas, telephone, and any other operating costs associated with their respective activities. Where appropriate any utilities that are connected to be in the name of the lessee / licensee.
- b) If there are multiple users on the subject land or each building/group it is not separately metered, then a contribution of a minimum of \$50.00 per year must be made by the Lessee/Licensee on the anniversary towards rates, water usage and electricity in relation to their use of such land.
- c) All Lessees/Licensees of Council owned or controlled land will be responsible for payment of any building/ construction work to the property that is of a cosmetic or improvement nature, when such work is desired by such Lessee/Licensee. Council will be responsible for structural maintenance of the property. Any improvements made by the lessee are to be maintained by the lessee at their cost.

## **1.4 Indemnity & insurance**

### **1.4.1 Release**

The Lessee unconditionally releases all claims, suits, demands, actions or proceedings (whether at law, in equity or arising under any statute) which The Lessee has or may have against Wagga Wagga City Council, its councillors, officers, employees or agents (other than The Lessee) arising out of or in connection with an act, default or omission of The Lessee or any of its officers, employees or agents. The Lessee agrees not to sue or make any claim or demand against the Wagga Wagga City Council, its councillors, officers, employees or agents in respect of matters covered by this release.

### **1.4.2 Indemnity**

The Lessee indemnifies, holds harmless and defends Wagga Wagga City Council, its Councillors, officers, employees or agents (other than The Lessee) against loss (including legal costs and expenses) or liability reasonably incurred or sustained by any of the indemnified persons arising from a claim, suit, demand, action or proceeding by any person against any of the indemnified persons where the loss or liability arises out of or in connection with an act, default or omission of The Lessee or any of its officers, employees or agents.

### **1.4.3 Wagga Wagga City Council's Negligence**

The Release Clause a. and Indemnity Clause b. above do not extend to a claim, suit, demand, action or proceeding where the claim, suit, demand, action or proceeding is based upon errors, negligent omissions negligence or work performed or advice given in a negligent manner by the Wagga Wagga City Council or any of its councillors, officers, employees or agents (not including The Lessee).

The indemnity provided by the Indemnity Clause b. above is reduced proportionally to the extent that the negligence of Wagga Wagga City Council, its councillors, officers, employees or agents (other than The Lessee) as contemplated in this clause c. contributed to the loss or liability.

### **1.4.4 Insurance**

Public Liability Insurance Policy - The Lessee must hold Public Liability insurances for the entire duration of this lease. Any claims excess or deductible payable under the terms and conditions of the insurance policy are entirely the responsibility of The Lessee. The Lessee must provide Council a copy of the Certificate of Currency annually.

Contents Insurance Policy – The Lessee / Licensee is responsible for insuring of any contents and or private articles kept on the leased premises.

The policy must be with approved insurers.

To be acceptable for the purposes of this agreement, an insurance policy must be underwritten by:

- An Australian registered insurance company, approved by the Australian Prudential Regulation Authority (APRA) to conduct general insurance business in Australia; or
- A Lloyds of London Underwriter;

## a) General Requirements for Insurance Policies

The insurance policies must:

- Include Wagga Wagga City Council as an additional named insured, and;
- Include a satisfactory "Principal's Indemnity" clause, and;
- Include satisfactory "Cross Liability" and "Subrogation Waiver" clauses.

## b) Evidence of Insurance

The Lessee must provide to Wagga Wagga City Council evidence of the insurances nominated whenever requested to do so. A copy of the Policy is to be provided to Council at the commencement of any new Agreement. The evidence must be in a form acceptable to Council and should be as issued by the insurer (not an Insurance Broker or other intermediary).

## 1.5 Costs of Preparation of Documents

- a) The Lessee/Licensee shall be responsible for the payment of the costs of Council's Solicitors in relation to the preparation of the Lease / Licence and any costs relating to the renewal of such agreement under any option clause contained therein. Such costs shall include all work completed by the Solicitors in addition to the initial preparation of the document should amendments be required or further negotiations necessitated.
- b) Documents such as Agistment Agreements for Crown Land or Council controlled land, Temporary Licence Agreements for Crown Land use and the like that are prepared by Council officers shall be done so at the expense of the Licensee who will be responsible for payment of a fee as contained in Council's Fees and Charges.
- c) Any new lease or licence requiring preparation by a Solicitor will require an initial contribution of \$400 towards Council's legal costs, paid into a trust account pending finalisation of the agreement.
- d) All new leases or licences must be executed by the lessee or licensee within 90 days from the Council resolution. Should the proposed Agreement not be finalised within the allocated time frame then the property can be readvertised for new 'expressions of interest' or may be reported back to Council for further consideration.

## 1.6 Crown land

Leases/Licences for Crown Land to be prepared in accordance with the guidelines contained in Council's guidelines for Crown Land attached hereto. Nominal base rental for any Lease/Licence over Crown Land to be a minimum of \$350.00 plus GST as set out in 1(b) above.

## 1.7 Agistment land/property

- a) When a parcel of land is introduced or relinquished by a previous occupier for use as an agistment paddock, the following steps should be taken to locate the most suitable tenant.
  - i) Advertise the parcel of land in the local paper for expressions of interest
  - ii) Review all applications that meet the selection criteria
  - iii) Where a property is vacant or will become vacant at the expiry of an existing lease/licence, a report will be submitted to Council presenting a range of options for future use. Where Council has determined the property will be retained for community or commercial lease, criteria for selection of a preferred tenant will be reported to Council for approval, prior to advertising for 'Expression of Interest' from the community.
- b) Once 'Expression of Interest' have been invited, received and assessed against the criteria a further report detailing all applicants and assessment against the selection criteria will be submitted together with a recommendation to grant the Lease or License to the highest offer for a period of 5 years. When a Licence or Lease Agreement expires the agistment paddock may be offered to the current Licensee/ Lessee for a further term of 3 years subject to a CPI price increase, such extension being restricted to a twelve (12) month period, after which time the lease would be re-advertised.
- c) Council authorises the Mayor and General Manager to execute under delegated authority, all Lease and Licence Agreements on Crown Reserve or Council owned land.

## 1.8 Wagga Wagga City Council's Guidelines for Council Controlled Crown Land

All leases, licences and temporary licences are to be issued by Council as Trust Manager of the Reserve Trust. The documents may be executed by either the Trust (under Common Seal) or by the General Manager and Mayor as Trust Manager.

Rental should be market rent and generally should not be less than the statutory minimum. The recommended guideline as to minimum rental is 350.00 per annum plus GST.

Preference to be given for Licences rather than Leases.

Preference to be given for temporary 12 month Licence agreements as they are applicable to specific purposes and do not require the consent of the Department of Land and Water Conservation. The purposes apart from grazing are:

- a) advertising
- b) camping
- c) catering
- d) hiring of equipment
- e) entertainments
- f) equestrian events
- g) exhibitions
- h) functions
- i) markets
- j) meetings
- k) sales
- l) shows
- m) sporting activities
- n) stabling of horses
- o) holiday accommodation

All leases and licences other than temporary licenses detailed above require the consent of the Minister administering the Crown Lands Act.

## 1.9 Leases

- a) The purpose of the Lease must be compatible with the purpose/s of the reservation/dedication and permitted use under the Local Environment Plan. It must also be established as to whether the Lease will benefit or provide a service or facility to Reserve users. These issues must be addressed by the Reserve Trust and details be provided that clearly demonstrate the proposal is not inconsistent with and does not interfere with the Reserve Trust's purposes.
- b) The Lease must contain insurance and indemnity provisions consistent with clause 4. INDEMNITY & INSURANCE above.
- c) Leases should be for shortest possible term appropriate to all circumstances with a maximum term of 20 years (including any extension of term options). A longer term can be justified as higher if MAJOR capital investment is involved or if the Lessor is directly associated with the existence of the Reserve (e.g. Racing clubs and Racecourses, Show Societies and Showgrounds).
- d) Options for renewal are not favoured. However, if an option is given, the agreement must specify that there will be no such option clause in the renewed agreement (to avoid creating a Perpetual Lease situation). Also such clauses must specify that the Minister's consent is to be obtained before the option is exercised. Holding over clauses should also be limited to a set period of time.
- e) Clauses conferring a right to compensation for improvements are not acceptable. In appropriate cases the lessee should be required to clear and/or restore the land to the satisfaction of the Trust and the Minister. In all circumstances the lease should clearly reflect the Trust's intentions with respect to improvements within the leased land at the determination of the lease (removed or remain and become property of Trust).
- f) Where applicable, the agreement should include clauses providing for use/access by the general public.
- g) A clause requiring the lessee to bear the trust's expenses involved with the lease (e.g. Solicitor, advertising, stamp duty) should be considered.
- h) The agreement should fix an economic rental, having regard to the terms and conditions, especially those requiring construction and maintenance of improvements which will become Crown property on termination of the agreement. Agreements for other than a short term should provide for regular periodic redetermination of rental and for reference to an arbitrator (preferably not from the Department) if the parties cannot agree to the redetermination. Where a nominal rental is imposed because the lessee is a charitable or non-profit organisation, such rental should still be realistic and should not be less than the statutory minimum rental prescribed for tenures under the Crown Lands Act 1989. Where it is proposed to rebate the economic market rent to enable the rebate to be expended on the lease area/premises/ Reserve, this should be stated in the lease with details of where the rebate is to be expended.
- i) Where only part of a reserve is to be leased and the term is three or more years (including options), "subdivision" of the title may be involved.



- j) If a lease for three years or more (including option) is proposed, action should be taken to have the lease registered on the Torrens Register.
- k) In the case of a proposed lease with a term exceeding 5 years (including options), the Minister must advertise his/her intention to grant consent in the local press and invite submissions.

## 1.10 Licences

- a) The purpose of the Licence must be compatible with the purpose/s of the reservation/dedication and permitted use under the Local Environment Plan. It must also be established as to whether the Licence will benefit or provide a service or facility to Reserve users. These issues must be addressed by the Reserve Trust and details be provided that clearly demonstrate the proposal is not inconsistent with and does not interfere with the Reserve Trust's purposes.
- b) The Licence must contain insurance and indemnity provisions consistent with clause 4. **INDEMNITY & INSURANCE** above.
- c) The Licence should be for the shortest possible term with a maximum term of 10 years (including options). A term greater than 10 years may be justified in cases where major capital investment is involved and the Licensor (Reserve Trust) is directly associated with the existence of the Reserve (e.g. Racing Clubs and Racecourses, Show Societies and Showgrounds).
- d) Option clauses are not favoured. The procedures set out in (3) in "Leases" must be followed. Any option clause which extends the term of the Licence beyond 10 years is not permitted except in exceptional circumstances which will need to be negotiated with the Department.
- e) There must be no clauses conferring a right to compensation for improvements. In all circumstances, the Licence should clearly reflect the Reserve Trust's intentions in respect of the improvements within the Licensed land at the determination date of the Licence (i.e. is the Licensed area to be cleared and/or restored or are the improvements to remain but become the property of the Crown). Section 174 of the Crown Lands Act, 1989 provides that on determination of a holding of Crown land, all improvements on the land become the property of the Crown (subject to certain provisos).
- f) Where conditions of the Licence agreement require the Licensee to undertake development works it must be specified that no work is to be undertaken until the development plans have been approved by the Reserve Trust and the Department and all necessary consents obtained from Council.
- g) Where appropriate, the Licence agreement should include clauses providing for use/access of the Reserve by the general public.
- h) A clause requiring the Licensee to bear the Reserve Trust's expenses involved with the Licence (e.g. Trust Solicitor, stamp duty) should be included in the Licence.



- i) The Licence Agreement should fix an economic market rent having regard to the Licences terms and conditions, especially those requiring construction and maintenance of improvements which will become Crown property on determination of the agreement. Agreements for other than a short term Licence should provide for regular periodic redetermination of the economic market rent at intervals of not more than five years and at shorter periods in respect of business undertakings and for reference to an independent arbitrator (not from the Department) if the parties cannot agree to the redetermination. Where a nominal, low or rebated rent is imposed because the Licensee is a registered charitable and/or non-profit making organisation, such rent should still be realistic and should not be less than that statutory minimum rent prescribed for tenures under the Crown Lands Act 1989.

Where it is proposed to rebate the economic market rent to enable the rebate to be expended on the licensed area/premises/Reserve, this should be stated in the licence with details of where the rebate is to be expended. A licensee should not be retaining forgone rent income/rebate for its benefit. The disposition of this rent for the betterment of the Reserve should be detailed in the Licence.

Delays in the granting of consent from the Minister administering the Crown Lands Act may occur until such time as the issue of Native Title has been addressed in relation to the subject Crown Reserve.

## 1.11 Agistment Land/Property

- a) When a parcel of land is introduced or relinquished by a previous occupier for use as an agistment paddock, the following steps should be taken to locate the most suitable tenant.
- i) Advertise the parcel of land in the local paper for expressions of interest
  - ii) Review all applications that meet the selection criteria
  - iii) Grant the Lease or Licence to the highest offer for a period of 5 years, alternatively should the highest offer not be suitable to Council then a report will be submitted outlining the details and various reasons.
- b) When a Licence or Lease Agreement expires the agistment paddock may be offered to the current Licensee/ Lessee for a further term of 3 years subject to an annual CPI price increase, such extension being restricted to a twelve (12) month period, after which time the lease would be re-advertised.
- c) Council authorises the Mayor and General Manager to execute under delegated authority, all Lease and Licence Agreements on Crown Reserve or Council owned land.

## 1.12 Selection Process

Where a property is vacant or will become vacant at the expiry of an existing Lease/Licence, a report will be submitted to Council presenting a range of options for future use. Options shall include but not be limited to retention for community or commercial Lease/Licence or other purpose, modifications / alterations to the property and disposal.

In circumstances where Council has determined that a Council property will be retained for community or commercial lease, recommended criteria for selection of a preferred tenant will be reported to Council for approval, prior to proceeding to invite expressions of interest from the community.

Once expressions of interest have been invited, received and assessed against the criteria, a further report detailing all applicants and assessment against the selection criteria will be submitted together with a recommendation for a preferred applicant.

### a) Community / Sporting / Pre-School Leases and Licences

Council reserve the right to renew a Lease or Licence on operational land without advertising for expressions of interest. Each property is to be assessed on an individual basis and advertised at the discretion of the Director.

## 1.13 Review

Council review the Leasing Policy in 2 years unless circumstances or legislative changes required an interim review.