



# Property Management Policy

27 August 2024 -Attachment 9.3.2a

# Policy Statement

The purpose of the policy is to outline the principles and guidelines governing the management of properties owned or controlled by the Shire of Denmark. Effectively managing the very significant building portfolio is vital for ensuring efficient long-term service delivery and maximising value for the community. The Shire seeks:

- Consistent and equitable tenure arrangements within each property agreement classification;
- Terms that are responsive to changing conditions;
- Co-investment in maintaining the asset; and
- Sharing arrangements that maximise the use of community facilities.

## Policy Scope

This policy specifically applies to property arrangements with the Shire, encompassing commercial (including business, telecommunications and community), licensing agreements, and memorandums of understanding (MOU). Property used for the Shire's operational requirements (eg. administration building, depot, fire sheds) and residential properties managed by the Shire are outside the scope of this policy.

## Definitions

### **Commercial Lease**

Commercial leases are agreements with an entity where the tenancy is held to generate income from ongoing activities or where a non-exempt body or organisation conducts activities under the Local Government Act 1995. The term 'generate income' is expressly not intended to include clubs undertaking normal fundraising activities for club members.

### **Community Lease**

A peppercorn (usually \$1) lease is established between the Shire and a not-for-profit community group where the core service provided specifically to the Denmark community is not, in the CEO's opinion, commercial competition with any other local provider. While this lease arrangement grants the lessee exclusive use, community groups are encouraged to make maximum use of the facility, so share arrangements, including leases by management groups or sub-tenancies with other community groups, are encouraged.

A community lease holder has the same obligations as a commercial lease holder but with a peppercorn rent.

### **Telecommunication Lease**

These agreements between the Shire and a telecommunications carrier or provider permit the property to house and operate telecommunications infrastructure and equipment.

### **Facility Hire**

Are arrangements where the Shire undertakes day-to-day facility management and provides access to individuals or groups based

on casual, regular, or seasonal space hire within the facility. This property arrangement offers the most significant access for the public to use a facility but is resource-intensive for the Shire to manage.

<b>Licence</b>	Are property arrangements where permission is granted to a party to enter and use a property space for a particular purpose without exclusive possession. Licenses generally last for a shorter duration than leases (months or years) and do not allow the licensee the right to transfer their permission to use the property to another party. Licenses are primarily used for parking, storage, or similar temporary arrangements.
<b>Memorandums of Understanding (MOU)</b>	Are non-binding agreements between two or more parties outlining the understanding of proposed transactions or collaborations. They are less formal than a lease or license and are typically not intended to govern the use or occupancy of the property.
<b>Property Maintenance Checklist</b>	A checklist developed by the Shire to clearly outline the lessor and lessee responsibilities.
<b>Shared Use</b>	Where two or more parties agree to share the use of a property. This arrangement allows the parties to use the same premises for their respective purposes, often resulting in cost savings, increased efficiency, and optimal space utilisation. These arrangements are formalised through a Management Agreement.
<b>Strategic Holding</b>	The Shire of Denmark can apply this subclassification to any lease when it considers the property needs to be held in a short-term arrangement pending short—to medium-term potential future development. This includes but is not limited to, redevelopment, improvement, repurposing, demolition, rebuilding for purposes of increased income generation or providing community infrastructure. This subclassification does not alter any other conditions of the property arrangement other than the lease term.
<b>Sublease</b>	A sublease is a formal contractual arrangement in which the original lessee sublets all, or part, of a property to another party (the sublessee) while still retaining rights and obligations under the head lease with the landlord (the Shire). A sublease arrangement requires Shire approval.

# Policy Principles

## 1.1 Sustainability

The Shire of Denmark is dedicated to implementing a clear and consistent property management structure to facilitate access to Shire facilities via various property arrangements. Given the Shire's substantial property holdings, innovative methods must be investigated to ensure the continued sustainability of these vital assets. This policy empowers the Shire to define or adjust property arrangements to ensure the overall long-term financial sustainability of its building assets. This may involve pursuing commercial leases while recognising the importance of subsidising community-focused property arrangements that contribute to nurturing community life across the Shire.

Several Shire of Denmark owned community halls are located around the Shire that provide a valuable meeting place for the local community. These meeting places are often deeply rooted in the local culture, history and the specific needs of the residents. These facilities play a role in civil engagement, emergency response, community building and social interaction. The Shire considers these to be valuable community assets and, as such, will assist community groups to manage these facilities through service partnerships to ensure these facilities are maintained. The Shire will establish a budget for service agreements within the annual budgeting process. The financial contribution allocated to the community group under the service agreement will be commensurate with the frequency of the building's utilisation. Greater usage of the facility will result in increased monetary support.

## 1.2 Consistency

Each property arrangement is assigned a classification that will determine the standard terms and conditions of the property agreement. At the end of a property agreement term, the Shire may review and amend the property classification based on strategic or emerging issues or changing community expectations and economic needs. See Section 1.10 for lease conclusion arrangements.

The choice of property agreement employed by the Shire hinges on several factors, namely:

- The current and intended zoning regulations applicable to the property.
- The activities proposed to be undertaken by the applicant.
- The historical use of the property.
- An applicant's financial investments in the existing or planned development of the site.
- Alternative property uses.
- The resources available to the Shire for overseeing the proposed property arrangement.

### 1.3 Efficiency

When community groups apply for a community lease, efficiencies are considered when evaluating their request to use a Shire facility. These considerations encompass:

- The anticipated occupancy rate of the property. If the projected occupancy rate isn't expected to be fully utilised, collaborative shared-use agreements must be extensively explored and presented as part of any application.
- The significance and extent of the group's contributions to the broader community, beyond its primary membership.
- The group's capacity to generate revenue to meet its property agreement obligations.
- The group's commitment and capability to contribute to addressing community needs.
- On a case-by-case basis, the Shire may consider entering into specific user arrangements that do not require a shared use arrangement in recognition that some groups have specific infrastructure that makes shared-use challenging, they have invested significant levels of their capital in facilities on Shire managed land or for other justifiable reasons.

### 1.4 Shared Use – Community Groups

The Shire maintains the authority to refuse property arrangements, whether at renewal or when considering a new application if evidence suggests that the prospective applicant may not optimally use the facility and has expressed reluctance to share the space with other community groups.

The Shire prioritises shared use between community groups because it fosters community cohesion, optimises facility use, and promotes cost savings for as many groups as possible. Since the Shire cannot provide a building for every community group. Fairness and equity can sometimes only be achieved through sharing arrangements.

This policy encourages community groups to actively pursue shared-use arrangements through a management structure or by applying for a sublease arrangement with another community group. Sharing a facility with others can substantially lessen the maintenance cost burden. Dividing these expenses among more than one party allows each group to experience reduced financial pressure while enjoying access to the facility.

Single applicants seeking a property arrangement will need to demonstrate that they have:

- Assessed their own needs and requirements for space within the facility and determined whether there is space available for sharing.
- If shared space is an option, conducted research and consultation to gauge interest from other community organisations in sharing the facility.

Requests from shared users must have:

- Negotiated terms of the sharing arrangement in a written Management Plan that includes:
  - Names and addresses of all parties;
  - Areas of responsibility to comply with a Shire property use agreement;
  - A communication protocol for liaising with the Shire;
  - A dispute resolution process;
  - A means for modifying the Management Agreement, including default, repudiation or termination by one party; and
  - Any other requirement determined necessary by the Shire's Chief Executive Officer.

Parties to a shared use arrangement are encouraged to establish an incorporated management body with membership consisting of representatives from each party.

### **1.5 Rate Waivers and Peppercorn Rent**

The Shire continues its commitment to providing affordable spaces for community groups by offering leases at a peppercorn rate. The Shire appreciates the essential role that community groups play in delivering services and enhancing the quality of life for our residents, so it also considers rate waivers each year to support the efforts of these groups. (Refer to the Community Contributions Policy).

In this regard, the Shire seeks to foster a reciprocal relationship where community groups undertake to maintain the asset over the life of the use agreement in line with standard commercial property arrangements.

### **1.6 Repairs, Maintenance and Property Maintenance Checklist**

Lessees are responsible for the building repairs and maintenance. The extended security of tenure associated with commercial leases, even when the lease rates are minimal (referred to as "peppercorn" rates), imposes an obligation on lessees to continuously conduct repairs and maintenance as part of a shared property agreement. The maintenance responsibility encompasses tasks related to internal furniture and fittings, pest control, security, electrical, fire services and emergency procedures, sewerage, water supply and drainage, gardening and landscaping, plant and machinery, and external features, including sporting and recreation facilities.

To facilitate this, lessees will receive a detailed property maintenance checklist, and a Shire representative will conduct an annual property inspection in collaboration with a representative from the lessee. This process aims to establish and document the ongoing condition of the premises and identify any issues that require attention from the responsible party.

Contributions towards repairs and maintenance that are embedded in use agreements prior to the commencement of this policy, will be phased out as the use agreements come to the end of their term.

Any future contributions to maintenance or the ongoing operations of a community group will be provided for in any new agreement and/or the Council's *Community Contributions Policy*.

## 1.7 Additional and Unique Assets

Certain community organisations that lease property from the Shire offer a range of facilities for the benefit of their members, such as additional auxiliary buildings, recreational areas, and sports playing surfaces.

These facilities are considered assets and are, therefore, included in the Shire's asset register and integrated into the Shire's balance sheet. The Shire provides ongoing property insurance for these assets.

Community groups offering these unique assets to their members will manage and maintain them throughout their operational lifespan and will be responsible for funding their replacement. This obligation will form a condition of any lease agreement.

## 1.8 Standard Terms of Leases

**General:** The following standard terms are provided as a guide. The Shire reserves the right to exercise discretion in all circumstances and remains bound by all applicable laws and regulations.

- Commercial and Telecommunications leases: The standard term will be up to 21 years.
- Community leases: The standard term will be 10 years.
- Licenses / MOUs: The standard term is up to 3 years.

**Strategic Holding:** For any lease, licence of MOU where the land is deemed a strategic holding the maximum term will be 3 years.

**New lease midterm:** Under certain circumstances, a new lease may be initiated with the Shire before the current lease expires. The decision to commence a new lease prior to the expiry date lies within the discretion of the Shire and should be prompted by significant reasons presented by the lessee, including:

- Property Upgrades: where the lessee intends to make improvements or upgrades to the property.
- Funding considerations: where a funding body connected to the lessee is seeking assurance that the lessee has a commitment to a specific length of property tenure to continue funding them to deliver a service.
- Shared lease consideration: The lessee requests a lease change to enter into a shared use lease.

## 1.9 User responsibilities and agreement type

Standard arrangements for each agreement type outline the **property user's responsibility** to meet the costs associated with the arrangement.

General Property User's Responsibilities  (Subject to specific conditions in the lease)	Telecommunication Lease	Commercial Lease	Community Lease	Community Lease land only*	License	MOU	Hire
Outgoings – utilities (water, gas, electricity)	✓	✓	✓	✓	NA	NA	NA
Cleaning and grounds maintenance	✓	✓	✓	✓	✓	NA	NA
Rubbish and recycling	✓	✓	✓	✓	NA	NA	NA
Emergency Services Levy	NA	✓	✓	✓	NA	NA	NA
Building insurance excess (if claim made)	✓	✓	✓	✓	NA	NA	NA
Public Liability	✓	✓	✓	✓	✓	✓	NA
Ongoing repairs and maintenance	✓	✓	✓	✓	NA	NA	NA
Significant structural repairs (not including inherent structural defects)	✓	✓	NA	✓	NA	NA	NA
Rates	✓	✓	** Waived	** Waived	NA	NA	NA
Rent	✓	✓	\$1	\$1	✓	NA	Refer to Fees & Charges Schedule

\* Community groups who fund 100% of the cost of the facility based on a Shire land lease only are responsible for structural repairs to the buildings.

\*\* Rate waivers are considered by Council in accordance with s 6.47 of the Local Government Act 1995.

## 1.10 Lease Conclusion

If the lease term ends and the Shire determines that the property might be required for an alternative purpose in the short to medium term, the Shire will offer the lessee the right of first refusal to enter a *Strategic Holding* lease for a maximum period of up to three years and no less than one year.

This provision is designed to give the Shire the necessary time to assess the future use of the property while allowing the lessee to consider other arrangements.



At the conclusion of the Strategic Holding lease, Council will decide whether to either transition back to a commercial, community or telecommunications lease, renew the Strategic Holding lease, or otherwise alter the lease arrangements.

### **1.11 Acknowledging the Shire**

Recognising the Shire's support is crucial as it helps build positive relationships between community groups and the local government. By acknowledging the Shire's contribution, community groups foster a sense of partnership and collaboration. Additionally, publicly recognising the Shire's support enhances transparency and accountability, ensuring the community is aware of the resources provided to benefit all.

Therefore, community groups with property agreements are required to acknowledge the Shire's contribution at all available public opportunities, including their organisation's website homepage, social media and any advertising materials. Prior approval from the Shire is necessary for any materials using the Shire logo before publication.

### **1.12 Public Register**

The Shire will publish a register of all current leases, licences and MOU's on the Shires website.

## **Responsibilities**

In line with Delegations 1.2.18 Disposing of Property, the following assignments have been determined.

The Council will determine:

- Commercial and Telecommunication leases with a total lease value above \$50,000.
- Community leases, when entering into an arrangement for the first time.
- Community leases, where the lease term is over 10 years.
- Subleases, when entering into an arrangement for the first time.
- Strategic Holding classifications.
- Any other use agreements that, in the opinion of the Chief Executive Officer, should be considered and determined by Council.

The Chief Executive Officer will determine:

- Commercial and Telecommunication leases with a total lease value below \$50,000.
- Renewal of Community leases for 10 years or less.
- Renewal of subleases.
- Licence agreements.
- Memorandums of Understanding.

<b>Document Control Box</b>			
<b>Document Responsibilities:</b>			
<b>Owner:</b>	Governance Coordinator	<b>Owner Business Unit:</b>	Governance
<b>Reviewer:</b>	Chief Executive Officer	<b>Decision Maker:</b>	Council
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2.			

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Comment	Officer Response
<p>The Denmark Bridge Club is a not-for-profit community group established in 1985 with over 60 active members providing social interaction with cognitive benefits and is open to all age groups. The Club leased McLean House after a lengthy wait for lease approval after the Men's Shed vacated the centre on the condition that we paid net rent of over \$70 per week and kept the building, contents and surrounding lawn and gardens clean and orderly and that we would share the House with other community groups/shire functions as needed. On October 1st 2023, the Shire terminated the lease, citing that McLean House was being reverted as a Youth Hub. Since this date, the Shire has used this valuable community resource twice - once for a Perth based business providing art/craft activities during the peak Xmas-New Year season (in direct competition with the Denmark Arts Club) and once for the a one day Youth Fest during the Easter school holidays. The Denmark Bridge Club seek to lease McLean House on a Community Lease basis. We aim to share with any youth based activities that the Shire organises that are best placed in McLean House, the Denmark Chess Club and any other community clubs. Being left empty for ten months (excluding the aforementioned uses) in addition to the zero use of the centre following the lengthy period between the vacating of the premises by the Men's Shed and reluctant approval to grant a community lease Denmark Bridge Club demonstrates that the Property Management of McLean House has not been in the best interests of Denmark Shire residents.</p>	<p>The concerns are noted. There are no implications for the proposed Policy.</p>

As [REDACTED] of the Scotsdale Shadforth BFB I am concerned that the draft policy does not clearly indicate what, if any, implications there will be for the location and operations of my brigade on Shire managed land at 151 Turner Rd.

The existing fire shed:

- \* has been in operation for approximately 16 years
- \* was sited at 151 Turner Rd at the request/decision of the Shire of Denmark
- \* was constructed with significant financial contributions from volunteer brigade members (half the shed cost and all the site work costs)
- \* the brigade houses conducts regular training activities around the shed and uses approximately 2 ha of the total reserve site of 42Ha.
- \* recent alternative use proposals to utilise land in close proximity to the BFB shed and training spaces have raised the real potential for negative impacts on the provision of emergency bush fire services.
- \* the brigade has continued to develop the shed facilities, using significant volunteer resources to generate funds not available from DFES and the Shire of Denmark. Examples include a concrete apron, appliance refill hydrant, a rainwater tank, standby generator and upgraded communications/IT capacity.

Given the above it would seem sensible for some certainty of occupancy to be established for the Scotsdale Shadforth BFB at 151 Turner Rd. The Community Lease and Shared Use provisions in the draft policy may apply to us however the role of DFES funding, and we assume, their interest in land management arrangements that cover the life cycle of brigade facilities (which exceed the 10 year leases proposed in the draft policy) may be an issue. Until the release of the draft policy we were not involved in any consultations and unfortunately we have been unable to obtain any clarifications prior to the closing date for comment.

The Policy does not apply to BFB facilities as these are essentially Shire operational facilities operated by Shire volunteers.

A clarification in the proposed draft is included.