

POL 0016: Building and Property Agreements

Purpose

To determine a set of property classifications that can be applied to all Council's properties providing for consistency in documentation for building and property agreements such as leases, licences and memorandum of understanding for equity in terms and conditions within and between various property classifications.

Scope

All land owned or managed by the Shire of Esperance must have a valid agreement in place if –

1. a third party wishes to establish improvements on the land; or
2. a third party wishes to utilise the land or a Shire owned structure located on the land.

Definitions

N/A

Practice

This policy recognises the variety and diversity of agreements and that no one particular style of agreement is appropriate for all purposes; consequently a set of template agreement documents have been developed in consultation with McLeods Barristers and Solicitors to be used for each particular requirement.

1. Property Classifications

All properties are classified using specific principles as detailed within this policy.

- a. Commercial Premises – Open Market
 - i. Commercial sites offered by tender or disposed by section 3.58 of the *Local Government Act 1995*.
 - ii. Market rent determined by valuation with individual rent as determined by Council.
 - iii. All outgoings for these sites is recouped or supplied direct to the Tenant.
 - iv. CEO approval required prior to any sub-letting of premises.
 - v. Council may charge rates, emergency services levy (ESL), insurance and valuation costs on these properties.
 - vi. Council will collect a bond of 3 months' rent for these properties, excluding land only agreements.
 - vii. Properties in this classification will utilise the Commercial Agreement (Non-Retail Shop) Template.

Examples of properties within this classification are:

RAC Caravan Park	Esperance Lots 316 & 430, Res 26967
Esperance Mini Golf	Portion of Res 28207
BP Australia	Part Lot 15, Esperance Airport
Car Hire Desks (4)	Gibson – Portion Lot 15, Esperance Airport
Airport Hangars (8)	Gibson – Portion Lot 15, Esperance Airport
Communication Tower – Helms Drive	Esperance Loc 2112, Res 45368
Communication Tower – Howick Hill	Lot 524, Res 47555
Communication Tower – Salmon Gums	Part of Salmon Gums Lot 123

b. Commercial Premises – Retail Shops

- i. All outgoings are recouped or charged direct to the Tenant
- ii. Rent determined by Council in conjunction with market rental valuation
- iii. Disposal to be in accordance with section 3.58 *Local Government Act 1995*, noting exemptions that apply via Regulation 30 of *Local Government (Functions and General) Regulations 1996*.
- iv. CEO approval required prior to any sub-letting of the premises.
- v. Council may charge rates, emergency services levy (ESL), insurance and valuation costs on these properties.
- vi. Leases within The Market Village will be charged rates.
- vii. Council will collect a bond of 3 months' rent for these properties, excluding land only agreements.
- viii. Properties in this classification will utilise the Commercial Agreement (Retail Shop) Template.

Examples of properties within this classification are:

The Market Village Buildings (11)	Esperance Lots 56,57,58,61,62, Res 2815
Jetty Headland Sites (4)	Esperance – Portion Lot 991, Res 27318

c. Specific Sports Facilities

- i. Development of facilities by Shire or Club on Council land often with capital cost shared between Shire, Department of Sport and Recreation and Club or any combination of this mix of funding.
- ii. Exclusive use of the premises for a specific sport.

- iii. All outgoings (excluding rates) are recouped or charged direct to the Tenant.
- iv. CEO approval required prior to any sub-letting of the premises.
- v. Groups, Clubs and Organisations are encouraged to submit applications via the Community Grants Program when requesting Council's financial assistance.
- vi. Council may charge emergency services levy (ESL) costs on these properties.
- vii. Properties in this classification will utilise the Community Agreement Template.

Examples of properties within this classification are:

Clay Target Club	Fisheries Rd, Res 28099
Equestrian Club	Res 31708
Esperance Speedway	Myrup Rd, Res 35037
Golf Club - Pink Lake	Res 34829
Netball Pavilion, Esperance	L500 Black Street
Pistol Club – Skrolys Park	Skrolys Park
Surf Lifesaving Club House	Res 41860
Tennis Club, Esperance	L500 Black St
Esperance Bay Turf Club	Lot 202 Fisheries Rd, Bandy Creek
Esperance Golf Club	Res 38227
Multi Sports Pavilion	L500 Black St

d. Halls and Community Centres

- i. Developed facilities with mostly Council funding assistance, grants or self-supporting loans for the capital costs.
- ii. Available for general community use and income retained for this casual hire to offset minor expenses, i.e. the agreement allows for casual hire.
- iii. All outgoings (excluding rates) are recouped or charged direct to the Tenant.
- iv. Groups, Clubs or Organisations would be encouraged to submit applications via the Community Grants Program when requesting Council's financial assistance.
- v. Funding may also be available under the Shire's Reserve Funding for Community Halls Policy.
- vi. Council may charge emergency services levy (ESL) costs on these properties.

- vii. Properties in this classification will utilise the Community Agreement Template.

Examples of properties within this classification are:

Community Hall – Beaumont	Parmango Rd
Community Hall – Cascade	L49 Mitten Watson Rd
Community Hall – Dalyup	Res 26309 South Coast H'way
Community Hall – Grass Patch	Shepherd St
Community Hall – Salmon Gums	Res 30224 John & Moore Sts
Community Hall – Condingup	L1 Sutcliffe St, Condingup

e. Community Services – Category 1

- i. Exclusive use or special purpose community funded facilities with minimal Council capital contribution, however located on Council controlled land.
- ii. All outgoings (excluding rates) are recouped or charged direct to the Tenant.
- iii. Groups, Clubs or Organisations would be encouraged to submit applications via the Community Grants Program when requesting Council's financial assistance.
- iv. Council may charge emergency services levy (ESL) costs on these properties.
- v. Properties in this classification will utilise the Community Agreement Template.

Examples of properties within this classification are:

Agricultural Society Facilities	L500 Black St
Cannery Arts Centre (Gallery Only)	Norseman Road
Community Hall – Scouts	L686 The Esplanade
Hospital Hostel	L241 Hicks St
Playgroup	Esperance Lot 388, R31633 & Lot 389, R34556

- f. Community Services – Category 2
 - i. Development of facilities mainly by Government funds on land controlled/vested to Shire of Esperance.
 - ii. Facilities are operated by government agencies or community based incorporated business.
 - iii. All outgoings are charged directly to Tenants.
 - iv. Council may charge rates, emergency services levy (ESL) and insurance costs on these properties.
 - v. Properties in this classification will utilise the Community Agreement Template.

Examples of properties within this classification are:

Recherche Aged Welfare Committee	Esperance Lot 893, Eyre St
Esperance Child Care Centre (Lingalonga)	Esperance Town Lots 171 &172 Randell St
Esperance Lotteries House	Part Esperance Lot 3 Forrest St
Old Station Master's Office	Part Lot 103 Dempster Street

2. Property Agreement Register

The Chief Executive Officer will maintain a register of all Council properties that have agreements in place. Details within the Register will include; name of the Tenant, description of the property, term of the agreement and fees.

3. Lease Preparation Fees

A Lease Preparation Fee shall be charged to all leases and licences as set within the Annual Schedule of Fees & Charges upon commencement.

Leases bound by the *Commercial Tenancy (Retail Shops) Agreements Act 1985* will not be charged lease preparation fees in accordance with section 14(b) of the Act.

Memorandum of Understanding (MOU) agreements will not be charged preparation fees.

4. Agreement Fees

In relation to establishing a guide for the calculation of fees the following shall be applied to the particular property classifications as detailed within this policy, for example -

- a. Commercial Premises – Open Market – As determined by Council after obtaining a market rental valuation.
- b. Commercial Premises – Retail Shops – As determined by Council after obtaining a market rental valuation.
- c. All other classifications would generally be \$100 ex GST per annum for community groups, clubs, not for profit organisations.

5. The Market Village

a. Usage

The commercial properties within The Market Village will provide services or retail goods. Applications will be assessed using the following criteria –

- Contributes goods and/or services for tourists and the Esperance community;
- Provides diverse locally produced goods and services that promote local and regional tourism;
- Provides a unique product or service which is not currently available;
- Attracts an increase in visitation to The Market Village;
- Supports further activation of the area.

b. Agreement Fees

Fees for The Market Village will be calculated on the average of the base commercial rental (obtained from local real estate) for the town centre. This figure will be discounted by 20% to recognise the condition and setback location of the Market Village from Dempster Street.

c. Management Group

Tenants at The Market Village will be encouraged to establish an informal management group to -

- i. Oversee the needs of The Market Village tenants
- ii. Pursue marketing and promotional opportunities
- iii. Encourage local arts, crafts and other appropriate industries to become involved
- iv. Activities within the precinct

6. Maintenance Obligations

Maintenance obligations of each Tenant will be specified in each agreement document.

Generally this will be determined as follows;

a. Land Only

Agreements for those properties which have no structures located on the site, or structures not owned by the Shire, will require the Tenant to be responsible for all maintenance, repair and renewal of any structures.

b. Shire Owned Structures

Agreements for those properties which have Shire owned structures located on the site will require the Tenant to be responsible for minor maintenance of the structures. Minor maintenance will include items such as repair or replacement of door handles, door locks, light fittings, globe replacement, internal glass breakage and general cleaning etc.

The Shire will be responsible for structural repairs and will have a building maintenance budget allocation and renewal schedule for the premises.

7. Implementation

Any amendments to the standard lease documentation including maintenance and cleaning schedules is to be negotiated with individual groups, clubs or organisations and introduced on the following timetable -

- a. when an existing agreement expires and the Tenant requests a renewal;
and
- b. when new agreements are considered and approved by the Council.

8. Agreement Types

All property agreements will be subject to terms and conditions outlined within the document as determined by the property classifications within this policy.

The Shire of Esperance currently utilises the following types of agreements -

- a. Lease
Provides the Tenant (Lessee) with exclusive use of the premises.
- b. Licence
Provides the Tenant (Licensee) with non-exclusive use of the premises. Licenced properties must remain open and accessible to members of the public.
- c. Memorandum of Understanding
A Memorandum of Understanding (MOU) will be used in cases where the Tenant is not an incorporated group, or for short term arrangements.

.....End.....

Document Information

Responsible Position	Coordinator Governance and Corporate Support
Risk Rating	Medium

Referencing Documents

- *Local Government Act 1995*
- *Commercial Tenancy (Retail Shops) Agreements Act 1985*
- *Local Government (Functions and General) Regulations 1996*
- Shire of Esperance Schedule of Fees and Charges

Revision History

Date	Version	CM Reference	Reason for Change	Resolution #	Next Review
Feb 2007	1		New policy	O0207-0987	
Sept 2007	2	D12/15			
Aug 2015	3		Removal of unnecessary background wording	O0815-010	
Sept 2015	4		Amend museum village provisions to include new rent calculation and require rates to be charged on village premises.	O0915-022	

Mar 2018	5	D16/28987	Update document controller title Minor wording changes Amend museum village buildings to (11) Remove Bob Stevens from classification (ii) example Rename 2. to be Lease Register Remove reference to order register by property classification Insert 'ex GST' in 4. (iii) Insert 'from 2015' in museum village lease fees paragraph, Remove reference to supplementary document in 5.	O0318-073	Mar 2020
Jan 2020	6	D16/28987[v2]	Include rates charge information in various categories, exempt CTA leases from being charged lease preparation fees, remove irrelevant information and amend implementation paragraph	O0120-013	Jan 2022
Feb 2022	7	D16/28987[v3]	Update policy to include all agreements, not just leases. Update responsible officer title. Include relevant information from COR 003 Museum Park Building Lease Arrangements and COR 014 Public Land Improvement Licence. Update property classification criteria and update examples as necessary. Reword sections 2-8.	O0222-033	Feb 2024
Dec 2023	8	D16/28987[v4]	Update classification tables, amend title for classification B, include separate use for Station Master's Ticket Box and minor wording/formatting changes.	O1223-203	Dec 2025
Dec 2024	9	D16/28987[v5]	Update to remove Old Station Master's Office from Museum Village section and include as part of Community Service Category 2.	O1224-099	Dec 2026
Mar 2026	10	D16/28987[v6]	Added information to Purpose section for greater clarity. Updated classification example information. Updated Market Village references following name change in Feb 2026. Updated section 5.a. regarding the Market Village Purpose and application criteria.	O0326-055	Mar 2028