

COR 004: BUILDING AND PROPERTY AGREEMENTS

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Objective

To determine a set of property classifications that can be applied to all Council's properties providing for consistency in agreement documentation and equity in terms and conditions within and between various property classifications.

Policy

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

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

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.

(i) Commercial Premises – Open Market

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

Examples of properties within this classification are:

Esperance Seafront Caravan Park	Esperance Lots 316 & 430, Res 26967
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Mobile Food Van Sites (4)	Esperance – Portion Lot 991, Res 27318
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
Telstra Corporation – Helms Drive	Esperance Loc 2112, Res 45368
Telstra Corporation – Howick Hill	Lot 524, Res 47555
Telstra Corporation – Telecommunications	Part of Salmon Gums Lot 123

(ii) Commercial Premises – Community

- All outgoings are recouped or charged direct to the Tenant Rent determined by Council in conjunction with independent market rental valuation
- 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*.
- CEO approval required prior to any sub-letting of the premises.
- Council may charge rates, emergency services levy (ESL), insurance and valuation costs on these properties.
- Leases within Museum Village will be charged rates.
- Council will collect a bond of 3 months' rent for these properties, excluding land only agreements.
- Properties in this classification will utilise the Commercial Agreement Template.

Examples of properties within this classification are:

Museum Park Village Building (11)	Esperance Lots 56,57,58,61,62, Res 2815
Caravan Park – Salmon Gums	Res 27786

(iii) Specific Sports Facilities

- 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.
- Exclusive use of the premises for a specific sport.
- All outgoings (excluding rates) are recouped or charged direct to the Tenant.
- CEO approval required prior to any sub-letting of the premises.

- Groups, Clubs and Organisations are encouraged to submit applications via the Community Grants Program when requesting Council's financial assistance.
- Council may charge emergency services levy (ESL) costs on these properties.
- Properties in this classification will utilise the Community Agreement Template.

Examples of properties within this classification are:

Gun Club Caretakers Cottage	Fisheries Rd, Res 28099
Equestrian Club	Res 31708
Esperance Speedway	Myrup Rd, Res 35037
Golf Club - Pink Lake	Res 34829
Golf Club - Salmon Gums	Salmon Gums, R30223, R30224
Gun Club, Salmon Gums	Res 30224
Netball Pavilion, Esperance	Lot 310 Jane St
Pistol Club – Skrollys Park	Skrollys Park
Surf Lifesaving Club House	Res 41860
Tennis Club, Esperance	L310 Jane St
Esperance Bay Turf Club	Lot 202 Fisheries Rd, Bandy Creek
Esperance Golf Club	Res 38227
Multi Sports Pavilion	L865 Black St

(iv) Halls and Community Centres

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

- 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

(v) Community Services – Category 1

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

Examples of properties within this classification are:

Agricultural Society Facilities	L 968 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

(vi) Community Services – Category 2

- Development of facilities mainly by Government funds on land controlled/vested to Shire of Esperance.
- Facilities are operated by government agencies or community based incorporated business.

- All outgoings are charged directly to Tenants.
- Council may charge rates, emergency services levy (ESL) and insurance costs on these properties.
- 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
Esperance Lotteries House	Part Esperance Lot 3 Forrest St

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:

- (i) Commercial Premises – Open Market –As determined by Council after obtaining an independent market rental valuation.
- (ii) Commercial Premises – Community –As determined by Council after obtaining an independent market rental valuation.
- (iii) All other classifications would generally be \$100 ex GST per annum for community groups, clubs, not for profit organisations.

5. Museum Park Period Village

(i) Usage

The commercial properties within the Museum Park Period Village will promote arts, crafts and goods inspired and produced both locally and regionally, and tourism retail outlets.

(ii) Agreement Fees

Fees for the Museum Park Period 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 village from Dempster Street.

(iii) Management Group

Tenants at the Museum Park Period Village will be encouraged to establish an informal management group to;

- Oversee the needs of Period Village tenants
- Pursue marketing and promotional opportunities
- Encourage local arts, crafts and other appropriate industries to become involved
- 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;

(i) 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.

(ii) 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:

- (i) when an existing agreement expires and the Tenant requests a renewal; and
- (ii) 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;

(i) Lease

Provides the Tenant (Lessee) with exclusive use of the premises.

(ii) Licence

Provides the Tenant (Licensee) with non-exclusive use of the premises.

Licensed properties must remain open and accessible to members of the public.

(iii) 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.

..... Policy Ends