

# COUNCIL POLICY



<b>Policy name</b>	Leasing and Licensing of Council-owned and Managed Land and Property
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<b>Abstract</b>	To ensure the leasing and licensing of Council owned and controlled land and property in an equitable manner to both community organisations and/or private individuals, taking into account Council's long term strategic objectives and the beneficial return of such asset utilisation to the community.
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<b>Dates</b>	<table> <tr> <td>Policy or amendment approved</td> <td>24 Aug 2022</td> </tr> <tr> <td>Policy or amendment takes effect</td> <td>24 Sep 2022</td> </tr> <tr> <td>Policy is due for review (up to 4 years)</td> <td>24 Sep 2026</td> </tr> </table>	Policy or amendment approved	24 Aug 2022	Policy or amendment takes effect	24 Sep 2022	Policy is due for review (up to 4 years)	24 Sep 2026
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<b>Endorsed by</b>	Executive Management Team						
<b>Approved by</b>	Gunnedah Shire Council, at its [Meeting type] Meeting of Council held 24 Aug 2022 Resolution number: 23.08/22						
<b>Policy Custodian</b>	Director Infrastructure Services						
<b>Relevant to</b>	Internal Staff Community						
<b>Superseded Policies</b>	Leasing and Licensing of Council Land and Property - 2012						
<b>Related documents</b>	Asset Management Plan – Buildings Asset Management Plan – Council Land Plan of Management – Generic Community Strategic Plan 2017-2027						
<b>Related legislation</b>	Local Government Act 1993 Local Government (General) Regulation 2005 Crown Land Management Act 2016 Crown Land Management Regulation 2018 Native Title Act 1993 Conveyancing Act 1919 Real Property Act 1900 Retail Leases Act 1994						

	Residential Tenancies Act 2010 Roads Act 1993 Aviation Transport Security Act 2004 Aviation Transport Regulation 2005
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### 1. Purpose

To ensure that the leasing and licensing of Council owned or controlled land and property is conducted in an equitable manner to both community organisations and/or private individuals, taking into account Council's long term strategic objectives and the beneficial return of such asset utilisation to the community.

### 2. Scope

- 2.1 This policy applies to Council owned and Council managed Community and Operational Land and Buildings.
- 2.2 This policy excludes the hire and usage arrangements of land or real property where charges are set within Council's annual *Schedule of Fees and Charges*.

### 3. Definitions

Lease/license – any agreement over land or property conferring some right(s) to a person or entity over the land or property. For the purpose of this policy any reference to leasing will apply to any proposed leases or licences pertaining to Council land and property.

**CLMA** means Crown Land Management Act 2016.

**Community Land** as defined in Chapter 6, Part 2 of the Local Government Act 1993.

**Council** means Gunnedah Shire Council.

**Crown** means the NSW Government.

**Land** as defined in Section 3 of the Real Property Act 1900.

**Lease** is any agreement under which a person grants to another person for value a right of occupation of premises or land for a particular purpose for a specified term. It gives the tenant a proprietary interest in the real property.

**Licence** is an agreement that grants a personal right to occupy and use a premises or land for a particular purpose. It does not grant exclusive possession of the land and may permit the land to be used by other persons.

**LG Act** means the Local Government Act 1993.

**Market Rental Value** is the amount of annual rent achieved if the occupation had been let in a competitive market.

**Minister** means Minister for Local Government.

**Occupation Agreement** means the contract between the user and Council to reflect the agreed terms and conditions for the use of the land or facility. A lease or licence is referred to as an agreement.

**Operational Land** as defined in Chapter 6, Part 2 of the Local Government Act 1993.

**Plan of Management** as defined Chapter, Part 2 of the Local Government Act 1993.

**Real Property** means land and all that is attached to it.

**Regulations** means Local Government (General) Regulation 2005.

**Roads Act** means Roads Act 1993.

**Tenant** is a person or company or organisation who occupies land or real property rented from the Council. A tenant may be a lessee or licensee.

#### 4. Policy principles

That Council's Policy for the leasing or licensing of Council Land ensures:

All leasing or licensing of Council-controlled land and building assets, including Crown Land, will:

- Be consistent with Council's economic, social and environmental objectives;
- Be undertaken in compliance with legislative and other obligations;
- See consistency and equity in the charges levied across all leases and licences; and
- Be through a fair and open process.

#### 5. Policy statement

This policy covers all of the Gunnedah Shire Council Local Government Area and property assets or land owned by the Council or Crown Land controlled and/or managed by the Council on behalf of the Crown.

Under the Local Government Act 1993 all public land must be classified as either "Operational land" or "Community land". The main effect of classification is to restrict the use of the land.

Land is classified by either:

- A Local Environment Plan (prepared under the EP&A Act 1979); or
- By resolution of Council (prior to or when the land is acquired); or
- By operation of the Local Government Act.

### **5.1 Operational Land**

Operational Land has no special restrictions other than those that may apply to any piece of land.

### **5.2 Community Land**

Classification as community land reflects the importance of the land to the community because of its use or special features. Generally, it is land intended for public access and use, or where other restrictions applying to the land create some obligation to maintain public access.

Community land:

Sections 46 and 47 of the Local Government Act 1993 stipulate the clauses in relation to leasing and licensing of community land:

- Cannot be sold unless reclassified to Operational Land.
- Cannot be leased, licenced or any other estate granted over the land for more than twenty-one (21) years.
- Must have a Plan of Management endorsed for it.

Land classified as community land must be further categorised as one of more of the following:

- A natural area;
- A sportsground;
- A park;
- An area of cultural significance;
- Or general community use.

Leasing or licensing of community land is restricted by the Local Government Act 1993. Leases and licenses must be consistent with the core objectives of the category of land, for a use prescribed by the Act or Regulations and expressly authorised in a Plan of Management.

Purposes prescribed by the Act for leases or licenses of community land are for the provision of goods, services and facilities, and the carrying out of activities, appropriate for the needs within the local community and of the wider public in relation to public recreation or the physical, social, cultural and intellectual welfare or development of persons.

Leases and licenses for more than five (5) years (or for a first term and option period/s which total more than five (5) years) must be determined by tender or other competitive process, except if the lessee/licensee is a non-profit organisation.

Leases and licenses of community land cannot be longer than twenty-one (21) years (including the period of any options to renew) as per S47 of the Local Government

Act 1993. Where a proposed lease/licence exceeds twenty-one (21) years, application by Council to the Minister must be made.

### **5.3 Public Exhibition**

If Council proposes to grant a lease/license on community land the proposal must be notified and exhibited in the manner prescribed by section 47 of the Local Government Act 1993. This includes:

- Give public notice of the proposal, and
- Exhibit notice of the proposal on the land to which the proposal relates, and
- Give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and
- Give notice of the proposal to any other person, appearing to the Council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the Council the land that is the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.

A notice of the proposal must include:

- Information sufficient to identify the community land concerned
- The purpose for which the land will be used under the proposed lease, license or other estate
- The term of the proposed lease, licence or other estate (including particulars of any options for renewal)
- The name of the person to whom it is proposed to grant the lease, license or other estate
- A statement that submissions in writing may be made to the Council concerning the proposal within a period, not less than 28 days, specified in the notice.

### **5.4 Submissions/Objections**

For a term of five (5) years or less, details of all submissions must be included in a report to the Council to enable the proposal to be reconsidered, having regard to the content of each submission. On receipt by the Council of a written request from the Minister, the proposal is to be referred to the Minister for consideration.

For a term greater than five (5) years, if a person makes a submission by way of objection to the proposal, details of all submissions must be included in a report to the Council to enable the proposal to be reconsidered and the proposal must be referred to the Minister for consent to the proposal.

### **5.5 Crown Land**

Leases and licences for Crown Land which is managed by Council are to be prepared in accordance with the Local Government Act 1993, following the changes made to the Crown Land Management Act 2016, which came into effect on 1 July 2018.

Crown land managed by Councils under section 48 of the LG Act (devolved management) remains available for leases or licences only with the consent of the Minister for Lands and Forestry.

## **5.6 Types of Agreements**

### **5.6.1 Agreement to Lease**

An agreement to lease is a legally binding contract used to commit to the terms of a lease to be granted at a future time, subject to certain conditions occurring.

### **5.6.2 Lease**

A lease enables exclusive use over a particular piece of land or building for a specified term and controls the rights and obligations of both parties to the occupancy. A lease is considered the best form of agreement if longer-term security of tenure is an important factor the user of the land – such as where commercial arrangements are proposed and major financial outlay is required.

Leases will only be considered in exceptional circumstances in regards to community land that may include the following situations:

- The proposed use of the facility has the potential to provide the best value to the community.
- Community consultation or a tender process has been undertaken.

### **5.6.3 Licence**

A licence is a contractual agreement that grants the licensee a personal right to occupy and use land for a particular purpose. It does not grant exclusive possession of the land, as is the case with a lease, and may permit the land to be used by other persons.

## **5.7 Rental Review**

Annual lease and licence fees will be subject to an annual review in all cases, either by the Consumer Price Index at the time of the review or a fixed percentage, or as specified in the individual agreement.

Leases or licences extending beyond a five (5) year term will have a market rental assessment review applied six (6) months prior to the anniversary of the commencement date of the fifth (5<sup>th</sup>) year. The new rental will be negotiated in accordance with the terms of the agreement and this policy.

## **5.8 GST**

All lessees and licensees must pay GST in addition to the rent calculated, unless otherwise stated.

## **5.9 Agreement Inclusions**

Responsibilities in relation to outgoings and maintenance will be fully documented within each lease/licence. This will include, but is not limited to:

- 5.9.1 In all cases the tenant will be responsible for all user pays charges including power supply, water, sewerage, waste removal.
- 5.9.2 The lease/licence should include provisions that the tenant is responsible for general maintenance and upkeep of the land.
- 5.9.3 The lease/licence should include a clause to enable either party to terminate with appropriate notice.
- 5.9.4 The allowable usage for leased/licenced land should be clearly defined in each lease/licence with any changes in usage requiring the approval of Council, including but not limited to sub-leasing.
- 5.9.5 Council will retain right of access and the ability to inspect regularly.
- 5.9.6 Commercial leases or leases to community organisations will preferably be to incorporated bodies with a minimum of \$20 million public liability insurance cover, unless otherwise varied by Council. Council may request to be listed as an interested party on the agreement.
- 5.9.7 All lease/licence arrangements will be signed by both parties and recorded in a register held by Council. Under certain circumstances, a lease will require registration with the Land Titles Office.
- 5.9.8 Modifications and significant improvements to Council owned or managed properties must be approved by Council.
- 5.9.9 At the conclusion of an agreement, in appropriate cases the lessee/licensee should be required to clear and/or restore the land to the satisfaction of the Council and/or the Minister. Otherwise at the conclusion of the agreement, the improvements become the property of Council.

## **5.10 Approval and Execution of Leases and Licences**

In accordance with delegated authority.

## **5.11 Costs for preparation of documents**

Council has the discretion to engage a legal representative to prepare the required documentation. Accordingly, the lessee/licensee shall be responsible for the payment of the 'reasonable' costs of Council or its legal representative in relation the preparation of the lease/licence. Prior to engaging legal representation, a quote shall be obtained and provided to the proposed lessee/licensee.

## **5.12 Records Management**

All leases and licences will be retained and registered in accordance with Council's Records Management Policy and procedures in relation to legal documents.

## 6. Accountability, roles and responsibilities

### 6.1 Manager Public Facilities

Council's Manager Public Facilities is the officer accountable for managing policy compliance and initiating the policy review process. They will also have the responsibility for all aspects of policy implementation, unless appropriately delegated to another officer. These responsibilities include being the primary contact point for advice on the policy or its implementation; establishing and maintaining Council's records in relation to the policy; proposing amendments; and managing the consultation process when the policy is due for review.

### 6.2 Public Facilities Team

Members of Council's Public Facilities team are responsible for actioning this policy as described under delegated authority.

## 7. Acknowledgements

- Hilltops Council – Leasing and Licensing of Council Land and Buildings Policy.
- Mid Western Regional Council – Leases and Licences of Council Owned and Managed Land and Real Property.
- Woollahra Municipal Council – Leasing and Licensing Council Controlled Land Policy.

## 8. Version control and change history

Date	Version	Approved by & resolution no.	Amendment
17 Nov 1999	For revision	143.6	19 Sept 2001
19 Sept 2001	For revision	59.3	18 July 2012
23 July 2012	Draft	Policy Working Group	
15 Aug 2012	Final	Council Resolution	Due for review 31 Aug 2016
June 2022	Draft	ELT	
24 Aug 2022	Final	Council 24/08/22 Resolution 23.08/22	