

	Leasing & Licencing of Council Property	Doc no:	
		Version 1	Date:
Controller:	Approved By:	Review Date	
General Manager	Council Minute No. 2020/245		

1. OBJECTIVE

This policy enables Council to consider applications for the leasing and licencing of Council controlled land assets, including Crown Land, whilst ensuring Council is consistent and transparent, and complying with appropriate legislative requirements when determining each application. It excludes the hire of community buildings, sporting venues and facilities.

2. RELEVANT LEGISLATION

Local Government Act 1993

Crown Land Management Act 2016

Roads Act 1993

3. POLICY STATEMENT

Council has the responsibility to maintain its land asset portfolio in the best interests of the local community and stakeholders. The Council's land asset portfolio includes buildings, vacant land, Crown Reserves and commercial property, and a network of road reserves controlled by Council within the Balranald Shire Local Government area.

For the purpose of this Policy, it is important to clarify the difference between a lease and a licence agreement:

- A lease will provide exclusive possession of a defined area of land, for a fixed period (or series of periods) of time, with the intention to create an estate in land – that is an interest in the land itself which can be assigned or sold.
- A licence provides permission to use land, it allows someone access to the land of another for an agreed purpose, it provides non-exclusive use of the land.

Where possible, Council will allow leases or licences to be held over designated Council controlled land assets to ensure that the property is maintained and used in a responsible and appropriate manner, allow the occupant legal tenure over the property, and to encourage capital investment and improvements to be made to the property.

Where possible, long term users of a Council controlled Crown Land will be offered an agreement based on the appropriate leasing or licencing template and guidelines provided the appropriate State Government Authority, and as allowed under the *Crown Lands Management Act 2016* to allow community and social groups the opportunity to plan for the ongoing improvement of the community facility they occupy and ensure that the facility is available to contribute to the continuation and growth of recreational activities of the local community and visitors to the region.

The determination for the leasing or licencing of all properties will be made after public advertisement of an “Expression of Interest”, or after an application is made for the formal tenure over an available site.

When determining a suitable lease or licence for Council controlled land assets, including Crown Land, Council will:

- be consistent with Councils economic , social and asset management objectives;
- be in compliance with legislative obligations;
- when required by procedure or legislation, consult with all affected stakeholders and relevant sections of the community taking into account all relevant comments and representations;
- consider all applications with the intention of securing an optimum mix of financial and other benefits for the community;
- proceed through a fair and open process;
- proceed in accordance with Council’s Policy.

In all cases, the occupant of a Council controlled land asset must indemnify Council, and any relevant State Government Authorities from:

- All claims for loss and damage that may be made against the Council in respect of personal injury or the death of any person;
- All claims for loss or damage to any property whatsoever, arising out of or as a consequence of the lease, licence or agreement of a Council controlled land asset;
- Carry a minimum sum insured for Public Liability Insurance of \$10,000,000 with the interest of Balranald Shire Council as the owner or trustee of the designated land parcel to be noted on the insurance policy.

Where applicable, all leases, licences and agreements must ensure that noxious weeds and pests on the Council controlled land asset are controlled by the lessee/licensee during the lease/licence period.

For a leased or licenced property, Council seeks to recover rent at competitive or fair value. At the discretion of Council a rental subsidy may be applied.

Market rental assessments will be obtained for all Council’s public land and buildings, by suitably qualified property professional and will be updated on a regular basis. In certain circumstances a rental assessment may be required from an independent suitably qualified valuer. The market rental value is the amount of annual rent

achieved if the accommodation had been let in a competitive market (if such a value can be determined).

If the assessed market value is not agreed upon, the applicant is entitled to obtain their own independent valuation by a suitably qualified valuer. If a significant difference in value applies, the valuer will be required to meet with Council staff to determine a resolution on the market value.

Where it is clear a proposed lessee/licensee has an ability to pay a market rental or fee, the rental/fee payable shall be the market rate as determined by the assessment.

4. CALCULATION OF RENTAL REBATE FOR NOT FOR PROFIT ORGANISATIONS

Where a not for profit organisation seeks to occupy a Council asset, Council may offer a discounted annual rent. Attachment 1 contains the metrics for determining level of rental subsidy for leases and licences for not for profit organisations.

5. VARIANCE

Council reserves the right to vary the terms and conditions of this policy, subject to a report to Council.

Attachment 1 – Matrix, Criteria for Determining Level of Rental Subsidy for Leases and Licences for Not for Profit Organisations

	Criteria	Each answer worth 4 points	Each answer worth 3 points	Each answer worth 2 points	Each answer worth 1 points
1	Organisational Status & Structure	The organisation is locally based, stand alone and not-for-profit. It has a voluntary management committee, comprised mainly of local area representatives	The organisation is locally based, has a regional focus, is stand alone and not-for-profit. It has a voluntary management committee, comprised partly of local area representatives	The organisation is a locally based service, outlet or project that is part of a larger not-for-profit organisation, it has a voluntary advisory committee, comprised partly of local area representatives	The organisation is a locally based service, outlet or project that is part of a larger not-for-profit organisation. There is limited or no local area representation on the advisory committee or similar
2	Capacity to undertake range of Administrative and Management responsibilities	Dependant on assistance from volunteers for all administrative and management functions	Paid staff undertakes some of the administrative and management functions and volunteers assist with the other tasks	Staff undertake majority of administrative and management functions with additional assistance provided by umbrella organisation	Umbrella organisation carries out majority of administrative and management functions
3	Extent of Service provided by Organisation	The broader community is a beneficiary of services established by the organisation	Service is significantly used by number of specific sections of the local community	While the organisation provides a direct service to only a small number in the local community, it forms a part of a larger service provision	Service is only used by a small number of the local community
4	Extent of Accessibility of facility to Community	Facilities are accessible to many in the local community (managed by Council)	Facilities are generally accessible to the local community (managed by Council)	Facilities have limited accessibility to others in the local community (any fees charges for use comes to Council)	Facilities not accessible to others in the local community or limited access with funds (if charged) going to lessee/licensee

Attachment 1 – Matrix, Criteria for Determining Level of Rental Subsidy for Leases and Licences for Not for Profit Organisations

	Criteria	Each answer worth 4 points	Each answer worth 3 points	Each answer worth 2 points	Each answer worth 1 points
5	Number / Type of Service Providers	A unique service (only one of a kind)	One of a number of providers of a community service	One of a number of providers meeting a less critical community need (in terms of Council identified targets) or meeting an identified recreational need	Provider meets social or recreational needs only
6	Social and Community Benefit	Service is unique and specific and meets high level of need, or service meets identified social / community needs, with most service users from low socioeconomic or disadvantaged backgrounds	Service meets identified social / community needs, with service users from range of socioeconomic backgrounds	Service meets a broad social / community need	Service is valued by community but it is not focused on meeting an identified social / community need
7	Ability to Charge Fees and Raise Income	Limited or no ability to raise revenue	Some ability to raise revenue and charge fees which may be varied to reflect ability of clients to pay	Has ability to charge fees and raise revenue	Operate on profit basis
8	Access to other sources of funding	No access to other sources of funding	Limited access to other sources of funding (no more than 5% total)	Access to other sources of funding – Federal, State and/or Local funding which provides between 5%-30% of total funding	Access to other sources of funding – Federal, State and/or Local funding which provides more than 30% funding

Attachment 1 – Matrix, Criteria for Determining Level of Rental Subsidy for Leases and Licences for Not for Profit Organisations

	Criteria	Each answer worth 4 points	Each answer worth 3 points	Each answer worth 2 points	Each answer worth 1 points
9	Do they provide direct competition to commercial ventures?	No. Main activity is not a commercial activity	While main business is not a commercial activity, some aspects of the business are in direct competition with other organisations or businesses	While they are in direct competition with commercial providers they provide added or differentiated service to users	In direct competition with commercial providers
10	Reactive & Ongoing Maintenance	Takes responsibility for internal & external reactive maintenance as detailed in the agreement including full cleaning of the facility	Takes responsibility for almost all the internal & external reactive maintenance as detailed in the agreement including majority of the cleaning of the facility	Takes responsibility for some of the internal & external reactive maintenance as detailed in the agreement including minor cleaning of the facility	Does not take responsibility for internal & external reactive maintenance including no cleaning of the facility

Calculating the Subsidy

Category	Category A	Category B	Category C	Category D
Points of Range	31-40	21-30	11-20	10 points
Range of Subsidy	77-100% Subsidy	52-76% Subsidy	27-51% Subsidy	No subsidy

The level of subsidy is based on the number of points. Subsidy will be based on the following equation:

Market Rental = assessed per square metre value x actual square metres of the building

$\frac{\text{Score}}{40} \times 100\% = \% \text{ Subsidy}$

40

Assessed rental = Market Rental X % Subsidy