

LICENCES & LEASES POLICY


XX 2022

Public Exhibition Document

Endorsed by Council meeting on 1

November 2022 for public exhibition on 3

November – 30 November 2022

	POLICY		
TITLE	LICENCES AND LEASES POLICY		
RESPONSIBILITY	xx		
DATE ADOPTED	Xx	MINUTE	xx
REVISED	n/a	REVIEW	Xx
CM10 No	xx		
ASSOCIATED LEGISLATION	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Crown Lands Management Act 2016</i> • <i>Government Information (Public Access) Act 2009</i> 		
ASSOCIATED POLICIES/PLANS	<ul style="list-style-type: none"> • Strathfield Community Strategic Plan • Strathfield Long Term Financial Plan • Strathfield Council Plans of Management (various) 		

1.0 Introduction

1.1 Title and Commencement

This policy is titled *Licences and Leases Policy*. This policy was adopted by Council resolution (x/22) after public exhibition from xx to xx.

1.2 Purpose

The purpose of this policy is to set out guiding principles for the management of private use agreements in the form of a licence or lease of Council owned or managed land and property assets.

1.3 Coverage

This policy applies to land and property assets owned or managed by Council where:

- the existing licence or lease is due to expire; or
- a building becomes available for community use through vacation of existing occupant, acquisition by Council or a construction of a new community facility or sportsground.

Short term agreements including casual, regular or seasonal hire agreements of facilities or sportsgrounds are exempt from this policy.

1.4 Objectives of the policy

The objectives of the policy is to:

- set out principles for licencing and leasing of Council owned or managed land and property assets
- outline processes for assessing market values returns
- set out reporting requirements
- outline processes concerning commercial agreements, rental agreements and agreements with community organisations including assessment of subsidies

1.5 Definitions

Community Land – community land is a classification under the *Local Government Act ('Act') 1993* and *Crown Land Management Act 2016* of public land which is intended for public access and subject to requirements under the Act regarding licencing and leasing.

Operational Land – Operational Land is public land owned by Council used for operational purposes eg Depots, Council offices with limited public access. This land classification has less restrictions than Community Land under the Act, however for the purposes of this policy, the management of licencing and leasing of facilities located on Operational Land will be managed in a similar manner to those on Community Land.

Licence - A licence is an agreement for use of land or a facility for a stipulated purpose(s). It is possible for a facility to have multi-licences operating.

Lease - A lease is an agreement that gives the lessee exclusive use over a particular piece of land for a specified term and purpose.

Plan of Management – All Community Land (classified under the *Local Government Act 1993* and *Crown Land Management Act 2016*) requires a Plan of Management. This Plan describes the objectives of the land and permissible uses. Agreements for private use of land, through licences and leases, must be 'expressly authorised' by the Plan of Management.

Commercial – business or for profit organisations

Community organisation – for the purpose of this policy, this includes organisations which are not for profit and covers sporting, recreation, cultural and community organisations, clubs or groups.

Facility – land or property asset owned or managed by Council eg park, sportsground, community centre etc.

2.0 Background and context

Strathfield Council's land and property assets are diverse consisting of land and facilities including parks and open space, car parks, sportsgrounds, community and childcare centres, meeting rooms, offices, halls and residential units. Council also manages land and facilities located on Crown Land in the Strathfield LGA. Community and commercial use of facilities may be achieved by a licence or lease agreement.

Management of land and property assets is subject to requirements of the *Local Government Act 1993* ('Act'), *Crown Land Management Act 2016* ('Crown Act') and relevant Plans of Management. The purpose, use and maintenance of these assets aligns with Council's Integrated Planning and Reporting framework, Community Strategic Plan ('CSP'), Asset Management Planning and Long Term Financial Plan.

2.1 Principles

All leasing or licencing of Council managed land and property assets, including Crown Land, is required to:

- be consistent with Council's Integrated Planning and Reporting (IPR) framework and strategic objectives and plans including Community Strategic Plan, Asset Management Plan and Long Term Financial Plan
- be permissible under the relevant Plan of Management for Community and Crown Lands
- comply with legislative requirements
- ensure processes are fair, open and transparent

2.2 Assessing uses of facilities

In the event of a new facility or an existing lease or licence is due to expire within six (6) months, Council will assess requirements including analysis of potential uses of the facility in consideration of:

- Strathfield Community Strategic Plans including asset management, relevant Plans of Management, social or recreational plans
- Assessment of current usage, condition and demand for the facility
- Restrictions with regard to contractual or legal obligations
- Financial requirements eg maintenance, upgrades etc
- Process for advertising the facility eg commencing negotiations with current licences or publicly notifying availability of the facility

If this assessment recommends substantial changes to the current use of the facility, a report should be presented to Council.

2.3 Assessing market rental values

Council will assess and determine a market rate value. The rental market for leased and licensed land uses the principle of supply and demand to set the price between the lessor/licensor and the lessee/licensee.

Market rent should be determined based on a comparison with similar and current rental evidence. This may include rents recently negotiated for similar premises.

Possible approaches to determine market values include one or more of the following:

- Obtain an independent valuation to determine the market value of the site for the proposed licence type (recommended for commercial proposals or longer-term tenancies).
- Seek and use accurate information about rents for similar properties by obtaining information directly (eg from another council), or contacting a real estate agent. Take into account the condition of the property and the assets on site to determine an appropriate market value.
- Take relevant external factors into account to determine market value, such as supply and demand, and asset condition.

Negotiations will be in line with the determined market rental value. Subsidy arrangements may apply for community organisations as outlined in cl.2.6.

In situations involving proposals for a major development or upgrading of a property requiring significant investment, an extended period of agreement may be necessary, so that the parties involved are able to realise a viable return on their investment. Such a proposal will be subject to expert independent appraisal, evaluation and a report to Council.

2.4 Leases and licences – Commercial

Where the term of an existing commercial lease is due to expire or where a new lease is contemplated, an Expression of Interest (EOI) and/or Tender will be called for licences over five or more years. Existing lessees or licensees will be notified and given the opportunity to submit an EOI or Tender.

Unless otherwise considered appropriate, the period of any lease or licence will not normally exceed five years, with an option of renewal of five years. Leases or licences will include CPI adjustments.

2.5 Rental agreements

Agreements for renting residential property will be managed through a real estate agency with the expectation of achieving market rate returns.

Residential property owned by Council may be offered as 'affordable housing' for low to moderate income or key workers. Eligibility and conditions will be consistent with the NSW Affordable Housing Ministerial Guidelines.

Proposed use of properties for affordable housing will require a report to Council.

2.6 Leases and licences - Community Organisations

Community organisations often rely upon access to Council owned or managed facilities to provide a wide variety of community, cultural and recreational activities and services. Use of facilities can range from use of offices and meeting rooms, use of sportsgrounds or courts to full occupation of a facility such as a childcare centre.

Council recognises that many existing leases or licences are held by local community organisations with strong historical ties to the facilities they use. In considering new or continued leases or licences of such facilities, Council will take historical arrangements as well as their past performance into account.

Council will notify proposals in accordance with Section 47 of the Act.

Unless otherwise considered appropriate, the period of any lease or licence will not normally exceed three years, with an option of renewal of two years. Licences or leases with community organisations will not exceed five years.

Lease or licence agreements will include CPI adjustments.

2.7 Community/Not for Profit Organisations - subsidy arrangements

Council will consider licence or lease fee reductions for not for profit/community organisations based on their assessment of their organisational status, financial capacity and benefit of their service or program to Strathfield Council and Strathfield community.

Due to the variations of facilities and potential applicant organisations, assessment will be merit based but consider the following criteria in assessment and recommendations to Council.

a) Eligibility – organisational status

Organisations are eligible if they are:

- are a community/not for profit and can provide proof of its status eg incorporation, charitable organisation registration
- are solvent and financially viable
- has no outstanding debts to Strathfield Council
- has a good past history of conduct and payment (where applicable)

- if the charter or constitution of the applicant organisation aligns with Council's priorities, goals, objectives and community needs as identified in the Strathfield Community Strategic Plan.

b) Financial capacity

Organisations must demonstrate they lack the financial capacity to pay the market rental value of the facility due to:

- limited financial capacity from its own income
- limited ability to receive support from the Federal or State government, private sector or parent organisation (where applicable)

c) Community benefits

Organisations must demonstrate community benefit of this service or program and will need to:

- provide or demonstrate how their services and/or programs will enhance the well-being and/or respond to community social, recreation and/or cultural needs of the Strathfield LGA.
- demonstrate a prior record of providing and promoting community development in the Strathfield LGA (where relevant) or working in partnerships such as with Council or with other community organisations
- whether the organisation provides a unique service ie there are no other organisations in the LGA providing a similar service, and why is the service important to the Strathfield LGA?
- demonstrate where similar services are available in the LGA, does the organisation collaborate or share facilities or resources with other groups?
- whether the services and programs are available to the general community or to only specific groups?
- does the organisation provide public information on the services or programs to encourage community participation eg websites, social media etc?

Council may request additional information from organisations to support their application.

Should a fee subsidy be applied, organisations will be required to provide an annual financial statement and a report to Council assessing the community benefits provided to the Strathfield LGA.

2.8 Approval of licences and leases

A report will be submitted to Council regarding proposals for licencing or leasing Council property and the draft conditions and term of the agreement.

The report will estimate the total cost of the agreement including estimate of the extent of financial subsidies.

Licence or lease agreements will be signed by the Mayor and General Manager

Affected group(s) will be notified in writing of the outcome to the report to Council.

Council's Land Register will be amended to include current licences or lease agreements

2.9 Investment in maintenance of facilities

Income from licencing and leasing of Council land and facilities should be directed to support asset maintenance and renewal.

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