

ITEM 4 POLICY REVIEW - LEASING AND LICENCING POLICY

The Leasing and Licencing Policy (Policy) has been revised as part of the Council policy review process. This policy has been drafted following a review of both the Leases and Licences of Council Owned and Managed Land, Buildings and Public Roads Council Policy and the Legal Costs Payable by Lessees and Licensees of Council Premises other than Retail Premises Council Policy. The revised policy was endorsed by EMC on 10 August 2023.

RECOMMENDATION

- 1 Council endorse and adopt the revised Leasing and Licencing Policy.
- 2 The Leases and Licences Council Policy supersede both the Leases and Licences of Council Owned and Managed Land, Buildings and Public Roads Council Policy and the Legal Costs Payable by Lessees and Licensees of Council Premises other than Retail Premises Council Policy.

REPORT AUTHORISATIONS

Report of: Lucielle Power, Manager Property + Recreation
Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

ATTACHMENTS

- 1 Leasing and Licencing Council Policy - Draft

BACKGROUND

The Leasing and Licencing Policy has been drafted following a review of both the Leases and Licences Council Owned and Managed Land, Buildings and Public Roads Council Policy and the Legal Costs Payable by Lessees and Licensees of Council Premises other than Retail Premises Council Policy.

Council manages a significant property portfolio which incorporates several different categories of leases and licences. These range from sporting and community group leases to commercial leases such as kiosks or telecommunication agreements. It is important that these leases and licences seek to maximise the community benefit obtained from Council owned and managed land, whether this be through ensuring appropriate community use of sites, maximising revenue from the sites or ensuring the sites contribute to the economic growth and wellbeing of area.

The review undertaken of both of these policies has resulted in these policies being amalgamated with the following changes:

1. Updated format to reflect the endorsed Policy Framework
2. Making it clear that the intent of the policy is to ensure that all leasing, licencing or occupancy approval activities are consistent with all relevant legislative requirements;
3. Noting that Council aims to either manage the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue from its land holdings;
4. Differentiating between the objectives of community leases or licences (being to maximise the community use and benefit of these sites) and commercial leases or licences (being to optimise revenue and performance);
5. Ensure that Council's liability is limited through the use of appropriate lease or licence agreements and insurance requirements
6. Incorporates the position outlined in the Legal Costs Payable by Lessees and Licensees of Council Premises other than Retail Premises Council Policy which differentiates between commercial and non-commercial leases and licences.
7. Documents Council's position in relation to undertaking competitive processes in line with Council's Procurement Guidelines and requirements in relation to direct negotiation.

Generally, the review seeks to update the references to legislation and bring the Policy in line with Council's Policy Framework.

PROPOSAL

It is proposed that Council endorse and adopt the revised Leases and Licences Council Policy as attached to this report and that this Policy supersede both the Leases and Licences of Council Owned and Managed Land, Buildings and Public Roads Council Policy and the Legal Costs Payable by Lessees and Licensees of Council Premises other than Retail Premises Council Policy.

CONSULTATION AND COMMUNICATION

Consultation has been undertaken with various internal divisions of Council as part of the policy review process.

PLANNING AND POLICY IMPACT

This Policy contributes to Goal 5, 'We value and protect our environment' and in particular, the core business of Property Services to 'Manage Council's commercial property portfolio including purchase, sale and leasing' as well as 'manage the statutory requirements of Council's property portfolio for Community Lands and management of Crown Lands held under trust'.

RISK MANAGEMENT

There are no substantial risks identified with the adoption of the Policy noting that it does not propose any substantial changes to the policy from the previous review and seeks to ensure that the high risk areas associated with the occupation of Council owned or managed land such as having legal agreements in place and appropriate insurance are incorporated into the revised policy.

FINANCIAL IMPLICATIONS

The revised Policy seeks to ensure that either Council's Fees and Charges are implemented, or market rates informed by valuations are sought in relation to leasing and licencing matters. Noting this, the revised Leasing and Licencing Policy can be implemented within Council's current operational budget for Property Services Core Services.

CONCLUSION

The adoption of the revised Leasing and Licencing Policy will ensure that Council's property portfolio continues to be managed in accordance with Council's objectives and legislative requirements.



LEASING AND LICENCING COUNCIL POLICY

ADOPTED BY COUNCIL: : [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

Council's property portfolio consists of Council owned land, Council managed road reserve and Crown Land. Council grants leases and licences of land it owns or manages for the benefit of the community or to maximise the revenue it derives from its land holdings. Council ensures that the grant and management of these arrangements are consistent with legislative requirements.

POLICY INTENT

This Policy is only intended to apply to leases, licences and other occupation agreements relating to Council owned land or Council managed road or Crown Land whereby Council is the lessor/licensor entity approving the occupation or use.

The overall intent of this Policy is summarised as follows:

1. Council will ensure that its leasing, licencing or occupancy approval activities are consistent with all relevant legislative requirements
2. Council aims to either manage the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue from its land holdings.

The main objectives of this policy are to set the broad framework for the grant and management of leases and licences relating to land that Council owns or manages. This broad framework incorporates the following activities:

1. Granting of leases or licences of Council owned or managed land whether these for strategic, commercial or community purposes;
2. Management of Council's property portfolio to ensure compliance with any relevant legislation and the requirements of Council's Relevant Policies as amended by Council from time to time.

WOLLONGONG 2028 OBJECTIVES

This policy supports our Community Goals outlined in Wollongong 2028, with interconnected objectives being:

- We value and protect our environment
- We have an innovative and sustainable economy
- We have a creative, vibrant city
- We are a connected and engaged community

The Policy contributes to the delivery of Our Wollongong 2028 Goal 5 "We have a healthy community in a liveable city".

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POLICY STATEMENT

In undertaking Leasing and Licencing activities, Council will:

- 1 In relation to community leases that fall within the Community and Sporting Group Rental Policy, or licences, seek to maximise the community use and benefit of these sites
- 2 Strive for best value for the community through achieving the best outcomes for the community in relation to community leases or licences and through optimising revenue and performance in relation to commercial leases or licences.
- 2 In relation to all leases, seek to maximise Council's revenue in a fair and transparent way through either the application of fees and charges or through the payment of market rent informed by independent valuations and/or competitive processes.
- 3 Seek to minimise Council's liability through appropriate lease or licence agreements and insurance requirements
- 4 Undertake competitive processes in line with Council's procurement requirements whenever appropriate to inform new lease arrangements and have regard to all relevant legislation and the Guidelines issued by the Independent Commission Against Corruption (ICAC) whenever engaging in direct negotiations.
- 5 In relation to all leases on Council owned or managed land, Council officers must seek reimbursement for all costs of preparation and finalisation of lease/licence arrangements in line with the below:
 - a) In relation to community group leases and licences, reimbursement is for a portion of the costs as determined by Council's Revenue Policy, Fees and Charges;
 - b) In relation to commercial leases, reimbursement is for all costs;
 - c) Reimbursement of costs will only apply to the extent that recovery of these costs is consistent with the provisions of the *Retail Leases Act 1994* (and any other relevant legislation).

LEGISLATIVE REQUIREMENTS

Wollongong City Council recognises its obligations under the *Local Government Act 1993* and the *Crown Land Management Act 2018* as they relate to land owned or managed by Council and leasing/licencing activities. All decisions in relation to Council's property portfolio must have regard to and be consistent with the requirements of this legislation and any associated regulations.

In addition, Council must abide by all legislation that relates to leasing and licencing activities, including but not limited to the *Conveyancing Act 1919*, *Retail Leases Act 1994*, *Real Property Act 1900* and any other relevant legislation or regulations that may apply from time to time.

REVIEW

This Policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

REPORTING

Council must meet its requirements under the *Local Government Act 1993* in relation to the maintenance of a land register and any financial disclosure obligations. Council must also regularly review its property portfolio and report on any relevant key performance indicators as set from time to time.

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ROLES AND RESPONSIBILITIES

The Property Management team within the Property Services business unit is responsible for the granting of new leases and licences and the management of the existing portfolio. New leases and licences may be granted by either Council or by delegated authority.

Asset Management of the assets located within leased or licenced areas are the responsibility of Infrastructure Strategy & Planning Division with Property Services as the Service Manager.

RELATED PROCEDURES

Occupation of Council Owned or Managed Land, Buildings and Public Roads.

APPROVAL AND REVIEW		
Responsible Division	Property and Recreation	
Date/s adopted	<i>EMC</i> [updated by policy owner]	<i>Council</i> [To be inserted by Governance]
Date/s of previous adoptions	3 April 2017	
Date of next review	[Not more than two years from last adoption]	