

1.0 INTRODUCTION

- 1.1 Council is the custodian for a diverse and extensive portfolio of land assets.
- 1.2 Council has acquired ownership and/or responsibility of these assets by various means, including but not limited to:
 - Acquisition by purchase, agreement or compulsory acquisition;
 - Donation;
 - Gazetted as Trustee pursuant to Part 5, Division 4 of the *CL Act*;
 - Vesting, pursuant to Part 4, Division 7 of the *CL Act*;
 - Transferred to Council on amalgamation of Moree Municipal, Boolooroo and Boomi Shires; or
 - Acquired as part of a subdivision.
- 1.3 This policy provides the principles and guidelines when setting the terms and negotiating leases and licenses for Council's Real Property.
- 1.4 This policy is linked to the following Moree Plains Shire Council adopted Community Strategic Plan theme(s) and objective(s):
 - L1.1 Ensure Council's operations are financially sustainable and we responsibly manage our organisational resources, systems and processes.
 - L1.2 Deliver the desired services throughout the Shire to meet community needs in an effective, efficient and financially viable way, having regard to compliance and risk obligations.
 - L1.3. Implement good practice in managing and maintaining our assets.

2.0 PURPOSE

- 2.1 To acknowledge Council's charter as 'the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible'. (Chapter 3 of the *LG Act*).
- 2.2 To ensure that, when considering the leasing or licensing of Council-controlled land-based assets, including Crown Land, Council explores possible options for the use of the land, applies processes that are demonstrably equitable, consistent and transparent, complies with appropriate legislative requirements and obtains best value results for Council and the Moree Plains community.
- 2.3 To identify, manage and mitigate the risks associated with leasing and licencing of Land.

3.0 SCOPE

- 3.1 This Policy deals with:
 - Leases of Council land, including commercial, retail and residential tenancy agreements;
 - Licences over Council land;
 - Agistment and cropping leases and licences.
- 3.2 This Policy does not cover:
 - Leases or licenses under the *Roads Act 1993* (e.g. street vending licences, footpaths licences, short-term leases of unused public roads, etc);
 - Licences or agreement for short term use or non-exclusive use, (e.g. hiring the town hall, sporting ovals or other venue hire, etc).

4.0 DEFINITIONS

- 4.1 **Community Land** as defined in Chapter 6, Part 2 of the *Local Government Act 1993*.
- 4.2 **Community Purpose Land** means land that is classified operational land but utilised for community uses, e.g. Moree Water Park.
- 4.3 **Council** means Moree Plains Shire Council.
- 4.4 **CL Act** means the Crown Lands Act 1989.
- 4.5 **CL Regulation** means the Crown Lands Regulation 2006.
- 4.6 **GIPA Act** means the Government Information (Public Access) Act 2009.
- 4.7 **Land** as defined in Section 3 of the *Real Property Act 1900*
- 4.8 **Lease** means 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.
- 4.9 **License** 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.
- 4.10 **LG Act** means the Local Government Act 1993.
- 4.11 **Operational Land** as defined in the Chapter 6, Part 2 of the *Local Government Act 1993*.
- 4.12 **Premises** means the land and the improvements on it, e.g. buildings, shop, dwelling etc.
- 4.13 **Real Property** means interest in land, including fixtures or structures upon the land.
- 4.14 **REINSW** means Real Estate Institute of NSW.
- 4.15 **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.

5.0 POLICY STATEMENT

To ensure decisions made in relation to leasing and licensing land are made to provide maximum return to the community either by realising the strongest financial return or by fulfilling a community service need aligned to the Moree Plains Shire Community Strategic Plan.

5.1 Leasing or Licensing of Council Controlled Land

i) Commercial, Retail and Residential Land

Council will utilise the services from qualified, licenced, reputable organisations with suitable real estate experience, to manage all commercial, retail and residential leasing arrangements. This approach ensures Council is getting advice from experienced professionals, who understand the local market, to maximise Council's chances of achieving best value, when negotiating the leasing and licensing of land. Further, it ensures that the land is managed in accordance with relevant legislation and by someone who is licenced to act as a real estate agent.

ii) Crown Land

Council will follow the processes outlined in the *Reserve Trust Handbook* for the leasing and licensing of all Crown Land.

iii) Community Land and Land for Community Purposes

Council recognises that many existing lessees or licensees of Community Land and land for Community Purposes, notably sporting bodies and community groups, have strong historical and/or social and/or recreational ties to the facilities they use. In some cases, they have contributed financially or in-kind to the development of these facilities. In considering new or continued leases or licences of such facilities, Council will take these factors into account.

All Leases and Licences over Community Land and Land for Community Purposes are at Council's discretion and subject to a report to Council.

There is no automatic right to re-new. It should not be assumed that a new Lease/Licence will be automatically granted to the same not-for-profit lessee/Licensee at the end of a Lease/Licence term. Council will consider the issue of a community benefit to the Moree Plains community on each occasion a new Lease/Licence is to be entered into.

Similarly, it should not be assumed that a new Lease/Licence will be automatically granted with the same terms and conditions.

Lessee/Licensee Requirements: A not-for-profit, sporting or community organisation requesting a new lease/licence or renewal of a lease/licence of Council premises at less than market rent is expected to provide Council with all the information sought to enable Council to assess the proposed benefit to the community based on the organisation's merit. This may include some or all of the following requirements:

- Public Liability Insurance of at least \$20 million for the activities taking place on the land;
- The last 3 years audited financial statements;
- The organisation's Constitution;
- Details and copies of any agreements or arrangements with or to any third parties;
- A Business Plan for the period of the proposed lease/licence (including any option periods). The Business Plan should demonstrate the proposed Lessee's capabilities to carry out any items specific to the proposed lease/licence during the tenure and provide details and time-lines of any maintenance, improvements or enhancements proposed to be carried out and completed and paid for by the Lessee/Licensee during the tenure.
- Other benefits (qualitative and quantitative) which may be provided to the wider community

5.2 Lease or License Duration

i) Commercial and Retail Properties

The term of the lease or licence for commercial and retail land should be a minimum of three (3 years) plus renewal options. Council will consider incentives recommended by our real estate agent to maximise the rental term while still ensuring the financial return to Council is commensurate with current market rates.

ii) Residential Properties

The standard agreement term for residential properties should be for a minimum 12 month period.

iii) Crown Land

The term of a lease/licence should be as short as possible, taking into account the particular circumstances of the reserve and the lessee's proposed use of it. Terms of more than 20 years will not normally be approved by Crown Lands.

A lease or licence of a Crown reserve can only permit the lessee/licensee to use the reserve in a way that is consistent with the reserve purpose (as stated when the reserve was dedicated or reserved). However, temporary licences (licences for up to one year) can be granted for purposes listed in clause 31 of the *CL Regulation*.

The devolution of care, control and management of reserves under the provisions of Section 48 of the *LG Act* authorises Council to enter into lease/licence agreements with the Minister's consent. However, the Minister's consent does not need to be obtained before a lease or licence is signed if:

- It is a temporary licence (i.e. the term does not exceed one year) and it is for a use that comes within one of the permitted purposes under clause 31 of the *CL Regulation*; or
- If the reserve trust manager has obtained prior written consent under section 102A of the *CL Act* to enter into certain leases and licences without the need for Ministerial consent.

If the agreement is a lease for a term exceeds 5 years, arrangements must be made to advertise the Minister's intention to give consent in accordance with Section 102(2) of the *CL Act*.

iii) Community Land and Land for Community Purposes

A lease or licence over community land must comply with section 46 of the *LG Act*. In addition to this and in respect to leases and licences for terms of five (5) years or less Council must:

- Give public notice of the proposal;
- Place a notice of the proposal on the land;
- Notify owners adjoining the land;
- Notify persons living in the vicinity of the land if Council believes that the land "is the primary focus of the person's enjoyment of community land";
- Consider submissions made about the proposal.

Council may only grant leases or licences over community land for terms up to 21 years. For leases between five (5) and 21 years Council must:

- Give public notice of the proposal;
- Place a notice of the proposal on the land;
- Notify owners adjoining the land;
- Notify persons living in the vicinity of the land if Council believes that the land is the primary focus of the person's enjoyment of community land;

- Consider submissions made about the proposal;
- Refer the proposal to the Minister for Local Government if Council has received an objection to the proposal.
- If an objection has been received, Council cannot grant the lease or licence and must refer the proposal to the Minister for approval.

iv) Land for Community Purposes

- The term of the lease or licence for land used for Community purposes should be a minimum of three (3 years).

5.3 Leasing and Licensing Principles

All decisions and actions in relation to the leasing and licensing of land will have due regard to the following principles:

- Accountability - demonstrate the best use of public resources and the highest level of performance through appropriate property management, record keeping and audit trails;
- Probity – address perceived or actual conflicts of interest;
- Legislative compliance;
- Commercial maximisation – achieving ‘best value’ which may include financial, social and environmental benefits;
- Transparency of process – must be open to scrutiny and provide full information and record the reasons behind decisions. All leases and licences as well as communications relating to these are subject to the *GIPA Act*.

6.0 DELEGATION

- 6.1 Pursuant to Section 377 of the *LG Act*, the General Manager is provided with delegated authority to enter into Leases and Licences on behalf of Council provided, if applicable, they meet the following criteria:
- a) That the lease is negotiated by Council’s appointed real estate agent at a commercial rate that is commensurate with or better than the market rates at that time.
 - b) The lease or licence must incorporate Council or the Crown’s standard lease and licence conditions, or in the case of residential agreements, uses the REINSW Residential Tenancy Agreement.
 - c) That the agreements are be prepared and/or reviewed by Council’s appointed solicitors.
 - d) That the lease or licence is in accordance with the *CL Act* and the *Crown Land Trust Handbook* leasing and licensing guidelines.
 - e) Where the rental amount does not exceed \$50,000 per annum and the term 10 years, excluding aerodrome leases where the standard lease term is 20 years, including options.
- 6.2 Councillors will be provided with at least 14 days notice of all leases and licences proposed to be executed under delegation by the General Manager.
- 6.3 Where any lease or licence does not comply with this policy, the prospective tenant is requesting concessional arrangements, unusual terms and conditions or no agreement can be reached, the lease or licence will be presented to council for review and determination.

- 6.4 The General Manager is authorised, pursuant to Section 377 of the *LG Act*, to allow a matter that does not conform with a policy to proceed if the General Manager is of the opinion that the variation from the Policy is of a minor nature.

7.0 REFERENCES

- 7.1 Ballina Shire Council Community Property Leasing and Licensing Policy (July 2016)
- 7.2 Crown Lands Act 1989
- 7.3 Crown Lands Reserve Trust Handbook (April 2016)
- 7.4 Government Information (Public Access) Act 2009
- 7.5 Local Government Act 1993

8.0 DISPUTE PROCEDURE

- 8.1 In the event of a dispute over any aspect of this policy, immediate action will be taken to resolve the situation through effective and constructive consultation between the parties concerned. If a resolution cannot be reached, the services of a mediator will be requested to finalise the matter to the satisfaction of all parties concerned.

9.0 REVIEW

- 9.1 Council will review existing policies if at any time it is apparent that the circumstances which gave rise to the policy have changed substantially.
- 9.2 Council will consider existing policies on a progressive basis; however, each policy will be reviewed by staff at least once within four years of the date of adoption and proposed changes reported to the Council.

HISTORY

Original Policy	Nil
Policy drafted by	Corporate Services
Policy reviewed by Managers' Meeting	6 September 2017
Policy reviewed by Manex	27 September 2017
Council Resolution Number, if applicable	17/11/03
Date of Adoption	9 November 2017
Review Date	November 2021
Classification of Policy	External
This Policy works in conjunction with these polices	Nil
This Policy works in conjunction with these procedures:	Nil

ELECTRONICALLY SIGNED BY THE GENERAL MANAGER OF MOREE PLAINS SHIRE COUNCIL,
WHOSE SIGNATURE APPEARS BELOW.

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LESTER RODGERS