

ADOPTED		VERSION NO	3.0
COUNCIL MEETING MIN	321/24	REVIEW DATE	SEPTEMBER 2028
DATE:	11 DECEMBER 2024	FILE NUMBER	COU500044, GOV400047

## Objective

Council owns and manages both *Community* and *Operational Land* and real property, and unformed Council public roads. Council will manage the use of its holdings for the benefit of the community and/or to maximise the amount of revenue it derives from these holdings.

Some of these land assets are available for short term and long term use under an agreement.

The main objectives of this Policy are:

- in response to Chapter 3 Local Government Act 1993, to acknowledge Council's charter as the custodian and trustee of public assets and to effectively manage the holdings for which it is responsible;
- to outline the general requirements for the grant of occupation agreements for Council owned and managed land and buildings;
- to ensure the grant of occupation agreements meet legislative requirements;
- to ensure management and use of Council owned and managed land and real property is consistent with Council's economic, social and environmental objectives;
- to ensure the grant of occupation agreements are consistent, transparent, fair and impartial.

## Scope

This Policy applies to Council owned and Council managed *Community* and *Operational* land and, unformed Council public roads.

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*.

## Legislative requirements

- Local Government Act 1993
- Local Government (General) Regulation 2021
- Crown Land Management Act 2016
- Crown Land Management Regulation 2018
- Crown Land Management Rule - Granting leases and licences for communication infrastructure-related purposes on Crown land
- 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
- Civil Aviation Act 1998
- ICAC Direct Negotiations: Guidelines for Managing Risks 2018

## Related policies and plans

- Asset Management Policy
- Asset Management Strategy
- Building Maintenance Plan
- Mid-Western Regional Council Plans of Management for *Community* land
- Mudgee Regional Airport Master Plan
- Mudgee Showground Master Plan
- Unmaintained & Unformed Roads Policy
- Roads Asset Management Plan
- Code of Conduct

## Definitions

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

**Commercial Business** means an entity leasing or licencing a Council facility for the purpose of generating a profit, as a sole trader, company, partnership, joint venture or trust.

**Commercial Licence or Lease** means a lease or licence of a Council facility for the purpose of generating a profit.

**Community Group** means a group that provides facilities for a community benefit and to meet community needs and do not have the capacity to generate significant income and operate on a not-for-profit basis.

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

**Council** means Mid-Western Regional Council.

**Crown** means the NSW Government.

**Crown Lands statutory minimum rent** means the minimum annual rent set by the NSW Government for leases or licences of Crown Land.

**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 the things that are attached to it.

**Regulations** means Local Government (General) Regulation 2021.

**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.

## Policy

An occupation agreement may take the form of either a licence or lease.

Types of occupation may include, but are not limited to, major commercial developments; retail, airport and other commercial businesses; residential; community groups or clubs; agistment and occupation of surplus unformed Council public road reserves.

Types of agreement documentation to formalise an occupation include, licence agreements, retail leases where occupation is subject to the Retail Leases Act 1994; residential leases where occupation is subject to the residential Tenancy Act 2010; all other occupations are leases subject to the provisions and formal requirements under the Real Property Act 1900 and the conveyancing Act 1919.

The lease or licence will be administered in accordance with the LG Act and CLMA, where applicable, when dealing with *Community* land or *Operational* land and; the Roads Act when dealing with Council public roads.

A proposed lease or licence outcome will be assessed in accordance with, but not limited to, the following:

### STATUTORY AND STRATEGIC CONSIDERATIONS:

- Land management provisions of the LG Act, CLM Act and Roads Act;
- Other Legislative requirements;

- Native Title interest and Aboriginal Land Claims;
- Planning controls;
- Strategic objectives;
- Asset management objectives;
- Land will be effectively utilised;
- Condition & ongoing maintenance requirements;
- Land classification and zoning;
- Length of tenure and if the duration of the agreement allows Council to respond to any changing operational and community demands and needs;
- Exclusivity or non-exclusivity of use;
- Social and community benefit – address identified community demand and Council’s operational needs.

#### COMMERCIAL AND FINANCIAL CONSIDERATIONS:

The most appropriate return; having regard to the proposed use, tenant and the specific property being the subject of the agreement.

### General Principles

#### DELEGATION

Pursuant to section 377 of the LG Act, the General Manager has been provided with delegated authority to enter into all leases and licenses on behalf of Council.

The Director of Corporate Services and the Manager Property and Revenue are sub-delegated to enter into leases and licenses on behalf of Council, where the total value of the lease is within their approved financial delegation.

#### COMMUNITY LAND

The lease or licence of *Community* land is restricted by the LG Act and must be consistent with the core objectives of the category of land, for a use prescribed by the LG Act or Regulations and expressly authorised in a Plan of Management.

Purposes prescribed by the LG Act for leases or licences 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, cultural, social and intellectual welfare or development of persons.

The term of tenure for *Community* land is influenced by the legislative requirements of the LG Act.

#### OPERATIONAL LAND

The lease or licence of *Operational* land is not burdened with the same legislative restrictions as those of *Community* land.

#### APPOINTMENT PROCESS

A licensee or lessee will be assigned by a mixture of incumbency, via a third party suitably qualified real estate agent, direct negotiation or a public competitive process depending on the circumstances of the property and the licensee or lessee.

It is recognised that sporting bodies and community groups who hold an existing licence or lease may have strong historical and/or social and/or recreation ties to the facilities they use. In some cases, they may have contributed cash or in-kind contributions to the development of these facilities. In considering new or continued leases or licenses of such facilities, Council will take these factors into account and may assign the license or lease by direct negotiation. Similarly, renewal or extension of other non-commercial incumbent license or lease holders with a good tenancy history may be assigned by direct negotiation.

Commercial licences and leases, and other licences or leases where no incumbent is in place, may be assigned via a public competitive process being either by tender, expression of interest or other competitive process. In some circumstances, it may not be possible to use a competitive process or; while a competitive process may be possible, it may be so impractical or expensive that direct negotiations are the most acceptable way to seek assignment.

All direct negotiations must be undertaken having regard to achieving the best outcome for Council and the community, and be in accordance with the guidelines issued by the Independent Commission Against Corruption - *Direct Negotiations: Guidelines For Managing Risks 2018*.

In other circumstances, Council may contract a suitably qualified real estate agent to secure a tenant.

#### LEASE AND LICENCE TERMS AND CONDITIONS

In all instances, except where deemed a standard agreement template will be acceptable, lease and licence agreements will be prepared and reviewed by Council's solicitor having regard to the proposed use, tenant and the specific property being the subject of the agreement.

Any standard agreement template will be submitted to Council's solicitor for review at least every three years to reflect changes in legislative and administrative requirements.

#### APPLICATION FEES AND LEGAL COSTS

Unless exempt by legislation or in certain commercial lease or licence circumstances, the proposed lessee/licensee shall be responsible for the payment of all application fees (when applicable) and Council's legal costs in the preparation and review of leases and licences.

Prior to engaging legal representation, a quote shall be obtained and provided to the proposed lessee/licensee.

#### RENTAL VALUE

The Crown Lands statutory minimum rent may be applied to community group leases and licences and leases and licences of Council public road reserves. An alternate higher rent amount may be determined by the Director of Corporate Services for these leases and licences where deemed appropriate.

In other circumstances, market rental valuations may be obtained from a suitably qualified valuer. In certain circumstances a rental assessment may be obtained from a suitably qualified real estate agent.

A rental return of less than market value may be considered in specific circumstances.

Rental values will be reassessed in line with the above methodology at the expiry of each agreement.

#### RENT REVIEW AND ADJUSTMENTS

All rents will be reviewed during the lease or licence period in line with the tenure agreement with the view to being increased annually for the term of the agreement by either a consumer price index adjustment, a fixed percentage, or as specified in the individual agreements.

#### MANAGEMENT OF LEASE AND LICENCE TERMS AND CONDITIONS

Council will manage the compliance of lease and licence terms and conditions, except in certain circumstances where the management may be contracted to a suitably qualified real estate agent.

#### MAINTENANCE, IMPROVEMENTS AND PRESENTATION

Responsibilities will be fully detailed in formal agreements.

In relation to buildings and structures, no alterations, modifications or beautifications are to be undertaken without Council's consent.

#### INDEMNITY

All tenants shall indemnify Council (and the Crown, if applicable), and hold Public Liability Insurance to the minimum value of \$20 million; or other amount as advised by Council.

#### CONFLICT OF INTEREST

All staff involved in managing, negotiating or authorising a lease for Council will be required to consider and report any conflict of interest, in line with Councils Code of Conduct.

#### Variation

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