

	<h1>LEASING AND LICENCING</h1>	(Policy No. 3.21)		
		LAST REVIEW May 2018	NEXT REVIEW May 2021	MINUTE REF C312/10-18
POLICY STATEMENT:	1.1 The leasing or licencing of any Council land or facility will follow a prescribed process that achieves an appropriate balance between community needs and commercial requirements.			
DEFINITIONS:	2.1 In this policy: <ul style="list-style-type: none"> • "Act" - means the <i>Local Government Act 1993</i> • "Commercial" means a purpose that involves the supply of goods and services on the open market, or shares characteristics with a provider of goods and services for profit. • "Hire" - means obtaining the temporary use of something based upon an agreed price and period of time, including casual or seasonal hire. • "Lease" - an agreement where the Lessor (owner of the property) grants to another person (the Lessee) exclusive possession of the property for an agreed period usually (but not necessarily) for rent. • "Lessee" - means the tenant, or the person to whom the lease is granted. • "Lessor" - means the owner of the property; the person who grants a lease (i.e. Council). • "Licence" - is a formal authority or permission to enter and occupy a person's land for an agreed purpose. A licence does not usually confer a right of exclusive possession of the property, or any estate or interest in it. • "Licensee" - a person who has been granted the benefit of a licence; a person who enters land with the express or implied permission of the property owner occupier. • "Licensor" - the property owner occupier who grants the licence (i.e. the Council) 			
OBJECTIVE:	3.1 The objective of this policy is to provide a framework for the leasing and licencing of council land and facilities that is consistent, transparent, fair and equitable. In addition, it seeks to maximise the community benefit to be gained from Council's facilities through appropriate recovery of costs of outgoings.			
SCOPE:	4.1 This policy applies to land or facilities that are owned or managed by Council within the Kingborough Municipal Area. It does not apply to the hire of Council land and/or facilities that are routinely booked or hired for occasional uses.			
PRINCIPLES	5.1 The following principles underpin this policy: <ul style="list-style-type: none"> • Procedural fairness – all users of Council land/facilities are entitled to be dealt with consistently and equitably; • Transparency – the process followed by Council will be open and transparent; and • Public interest – any decision made by Council to lease or licence land or facilities will be made in the best interests of the Kingborough community. 			
PROCEDURE: (POLICY DETAIL)	6.1 <u>Commercial Leases and Licences:</u> Council will manage commercial use of land and facilities so that they provide a financial return to ratepayers at a market rate. Where a new commercial lease or licence agreement is proposed, the following process will be followed:			

- a) Public Advertising – expressions of interest for use of the land/facility will be publically advertised.
- b) Unsolicited Proposals – the requirement for public advertising may be set aside where a unique or innovative proposal initiated by the private sector is made to Council on a commercial in confidence basis and it can be demonstrated that the proposal has the potential to deliver outcomes that are desirable to the community. This provision shall only apply to land that is not defined as Public Land under Section 178 of the Local Government Act.
- c) Valuation – in accordance with the provisions of Section 177(2) of the Local Government Act, a current market valuation will be obtained for any land/facility being recommended for lease from the Valuer-General or a person who is qualified to practise as a land valuer under Section 4 of the *Land Valuers Act 2001*.
- d) Public Land – the provisions of Section 178 of the Local Government Act in regard to public consultation will apply to the intended leasing of any land that is defined as Public Land (advertising twice in a daily circulating newspaper, displaying a notice on the boundary of land that abuts a highway and allowing a 21 day period for public submissions).
- e) Responsibility for Costs – the cost of any valuation and advertising will be met by Council in the first instance, but where the tenant has initiated the transaction to meet their own requirements, the cost will be recovered from the person requesting the land or use of the facility.
- f) Responsibility for Outgoings – the lessee/licencee will be responsible for all outgoings associated with their occupation of Council land or facilities, including all applicable insurances.
- g) Rates and Charges – the lessee/licencee will be responsible for all rates and charges associated with their occupation of Council land or facilities. Rates and charges and land tax are only able to be charged to the lessee if the property is separately valued for rating purposes. If the property is not separately valued, then an estimate of rates and charges and land tax will be made, and charged to the lessee in addition to the rental fee.
- h) Rental Fee – the independent market valuation will be the minimum rental applied. Council may approve a lower rental in instances where it can be demonstrated that there is a clear community benefit to do so.
- i) Rental Review – all lease/licence agreements shall include provision for annual rental increases in accordance with CPI, as well as a full rental review to be undertaken at least once every five years.
- j) Tenure – where the lease involves part of a title of land, the maximum length of term that shall apply is ten years. Where a discrete title is involved, a term of more than ten years may be negotiated for a commercial lease.

6.2 Government Organisations and Private Individuals:

Where a government organisation or private individual is seeking to lease or licence Council owned or managed property, the process to be followed shall be the same as for a commercial entity.

6.3 Not for Profit Organisations:

Council will manage leases and licences to not for profit organisations in a manner that addresses community needs and is consistent with Council's strategic plans. Where a non-commercial lease or licence agreement is proposed, the following process will be followed:

- a) Public Advertising – where a parcel of land or facility has been identified as suitable for community purposes and there are no existing tenants/occupants, expressions of interest for use of the same will be publically advertised.
- b) Valuation – in accordance with the provisions of Section 177(2) of the Local Government Act, a current market valuation will be obtained for any land/facility being recommended for lease/licence. Where appropriate, the "AAV" figure (adjusted for CPI and proportioned where

only part of the site is used) will provide a proxy for a rental valuation. Whilst the market valuation in most cases won't be applied to not for profit organisations, it will provide a record of the value of the support provided by the Council to the community group in question.

- c) Public Land – the provisions of Section 178 of the Local Government Act in regard to public consultation will apply to the intended leasing of any land that is defined as Public Land.
- d) Rental – in setting the rental for non-commercial leases/licences, Council shall give consideration to the following factors:
 - The income generating capacity of the land/facility in question (largely covered by the rental valuation);
 - The nature of the organisation (benevolent service, community group, junior or senior sporting club);
 - The extent to which the organisation provides benefits to the broader community; and
 - Consistency with other similar organisations.
- e) Rates and Charges – the lessee/licencee will be responsible for all utility charges associated with their occupation of Council land or facilities. Rates will not apply to not-for profit organisations.
- f) Responsibility for outgoings – the lessee/licencee will be responsible for all outgoings associated with their occupation of Council land or facilities. Where a facility is owned by Council, the tenant shall only be responsible for contents insurance, with Council to insure the building.
- g) Rental Review – all lease/licence agreements shall include provision for annual rental increases in accordance with CPI, as well as a full rental review to be undertaken at least once every five years.
- h) Tenure – most non-commercial agreements shall have a maximum term of five years. A longer tenancy may be granted if it can be demonstrated that it is in the best interests of the community to do so.

6.4 Approval Process:

- a) Report to Council – prior to the leasing/licencing of any Council owned or managed land, a report to the Council outlining the following will be provided:
 - Current use and history of land/facility;
 - Valuation details;
 - Legal requirements;
 - Nature of the proposed lessee/licencee, including membership arrangements and income generating capacity; and
 - Essential terms and conditions of the lease agreement, including length of term and proposed rental.
- b) Public Land – in relation to land classified under the Local Government Act as Public Land, the report will be considered in open session as required by the provisions of Clause 15 3(c) of the *Local Government (Meeting Procedures) Regulations 2015*.
- c) Non-public Land – for land not defined as Public Land, the report will be considered in closed session in accordance with Section 15 3(f) of the *Local Government (Meeting Procedures) Regulations 2015*.
- d) Simple Licences – in cases in which there is no exclusive possession implied (eg access over Council owned land) a report to Council will not be required and the licence may be approved by the General Manager.

6.5 Other Considerations:

Where applicable, Council will include conditions in all new leases to encourage best practice in terms of energy usage, waste management and reduction, along with responsible serving of alcohol.

GUIDELINES:	<p>7.1 Any potential lease/licence of Council land or facilities will:</p> <ul style="list-style-type: none"> • Be undertaken in compliance with legislative requirements; • Be undertaken with the intention of securing maximum financial and/or other benefits to the community; • Be through a fair and open process that includes regular market testing; • Be open to public scrutiny while maintaining appropriate levels of commercial confidentiality, and • Be conducted in accordance with the Council's adopted procedures.
COMMUNICATION:	This policy will be communicated to all staff involved in the process of leasing and licencing Council owned or managed land and facilities.
LEGISLATION:	<p>The primary legislation in relation to this policy is the <i>Local Government Act 1993</i> (Tas). Other relevant legislation may include the following:</p> <ul style="list-style-type: none"> • <i>Land Use Planning and Approvals Act 1993</i>; • <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i>
RELATED DOCUMENTS:	<ul style="list-style-type: none"> • Kingborough Public Open Space Strategy • Kingborough Sport and Recreation Strategy
AUDIENCE:	Public