



Leasing and Licensing of Council Controlled Land Policy

Adoption Date:	3 June 2024 by Council Resolution
Last Reviewed:	September 2019 (18/144185)
Next Review Date:	May 2029
Division/Department:	Infrastructure & Sustainability Division / Property & Projects Department
Responsible Officer:	Manager, Property & Projects
HPE CM Record Number:	24/13026

Contents

Policy Statement.....	3
1. Objective	3
2. Principles	3
3. Application of this Policy	3
4. Types of Land Over Which Leases and Licenses Occur in Woollahra.....	4
5. Leasing or Licensing of Council Controlled Land Assets	4

Policy Statement

1. Objective

The objective of this Policy is to ensure that, when considering the leasing or licensing of Woollahra Municipal Council (Council) controlled land or land based assets, 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 the Woollahra community.

2. Principles

All leasing or licensing of Council-controlled land assets will:

- Be consistent with Council's economic, social and environmental objectives,
- Be undertaken in compliance with legislative and other obligations, including Office of Local Government and/or Independent Commission Against Corruption (ICAC) guidelines,
- Be consistent with adopted Community and Crown Land Plans of Management
- Be informed by relevant strategies adopted by Council
- Be informed, where appropriate, by consultation with affected stakeholders
- Be undertaken with the intention of securing an optimum mix of financial and other benefits for the community,
- Be through a fair and open process and include regular market testing where appropriate
- Be open to public scrutiny while maintaining appropriate levels of commercial confidentiality

3. Application of this Policy

This Leasing and Licensing Policy applies to the Woollahra Council Local Government area and any land or land-based property assets owned by Woollahra Council and Crown Land controlled and/or managed by Woollahra Council on behalf of the Crown or a Trust.

The Policy does not apply to;

- Short term and casual hire of parks, sportsfields and community halls (managed through application process and adopted Fees and Charges)
- Seasonal hire of sportsfields (managed through seasonal application process and adopted Fees and Charges)
- Footway Dining Approvals (managed under separate policy)
- Private encroachments onto Council land (managed under separate policy)

4. Types of Land Over Which Leases and Licenses Occur in Woollahra

The types of land which are either owned or managed by Council and to which leases and licenses are granted are shown in the following table:

Land Type	Applicable Legislation
Council-owned land which is classified as Community	Local Government Act 1993 S25,46
Council-owned land which is classified as Operational	Local Government Act 1993 S25
Crown Land which is managed by Council	Crown Land Management Act 2016 S3.23
Road Reserves	Roads Act 1993 S153

5. Leasing or Licensing of Council Controlled Land Assets

Leasing and licensing of Council owned or controlled land assets will generally fall into the following categories:

- Leases and licenses to commercial operators on Community Land or Crown Land
- Leases and licenses to commercial operators on Operational Land
- Leases and licenses to not-for-profit community and/or sporting organisations
- Leases of road reserve

Council's approach to leases and licenses under each of these categories shall be as outlined below:

i. Leases and licenses to commercial operators on Community Land or Crown Land

Council frequently enters into leases for commercial activity on Community Land or Crown Land which is managed by Council. Examples of activities which are currently subject to lease or license are kiosks, cafes and tennis centres in parks and reserves.

The Local Government Act includes specific and prescriptive requirements relating to leasing and licensing of Community land. These relate primarily to the types of leases and licenses that may be entered into and the term of those agreements. These requirements flow through to Crown Land managed by Council as the Crown Lands Management Act requires Council to manage these lands as if they were Community land under the Local Government Act.

Very importantly, any lease or license to be entered into on Community or Crown land must be expressly authorised in the Plan of Management applying to the land.

In granting any lease or license over Community or Crown land, Council will at all times ensure consistency with S46 of the Local Government Act and S3.23 of the Crown Lands Management Act.

In addition, the following specific approach shall be followed prior to granting of leases and licenses to commercial operators on Community or Crown Land:

1. The market shall be tested through an open tender process.
2. In recognition of the strong community interest that is often associated with these activities, the results of the tender process shall be reported to Council and the granting of the lease or license shall be subject to Council resolution and not delegated to the General Manager.
3. Prior to the calling of tenders, a report which details the proposed use under a lease or license will be brought before Council. Tenders shall not be called until Council has approved the use.
4. The maximum term of leases and licenses shall be 15 years, including any option for extension.

ii. Leases and licenses to commercial operators on Operational Land

Council owns a number of sites which are classified as Operational land and over which leases and licenses may be granted. Examples include the Kiaora Place site in Double Bay and the Cross Street Car Park and Cosmopolitan Centre in Double Bay.

For Operational land, there are no special restrictions under the Local Government Act relating to the granting of leases and licenses. Management of these sites is effectively the same as for privately owned land.

In managing retail and commercial leases on operational land, Council's principal objective will be to efficiently achieve optimum commercial benefit over the long term, noting that effective management of a large retail/commercial leasing portfolio requires a high degree of agility and ability to capitalise on appropriate commercial offers as they arise.

For the majority of retail and commercial sites on Operational land, leases and licenses will be granted under delegation to the General Manager and will be subject to an appropriate market testing process which may be in the form of an expression of interest/tender or through attainment of advice from a specialist retail consultant or centre manager.

The exception to this will be for leases and licenses which have a term of greater than 15 years (including any option for extension) or annual income of greater the \$1m. In these

instances, the General Manager will not have delegation to grant these leases and licenses, with the granting of such leases or licenses to be subject to a resolution of Council.

iii. Leases and licenses to not-for-profit community and / or sporting organisations

Council grants leases and licenses to not for profit sporting and community organisations. These typically occur on Community and Crown land but may also occur on Operational land. Current examples include: Woollahra Golf Course, Woollahra Park sports facilities, baby health centres and leases over the Drill Hall and Royal Australian Naval Sailing Association (RANSA) sites in Darling Point.

Generally, granting of leases and licenses to not-for-profit sporting and community organisations shall be subject to an expression of interest process with defined selection criteria which shall reflect community benefit and consistency with adopted Council strategies and policies. Prior to calling for expressions of interest, a report which details the proposed use under a lease or license will be brought before Council. Expressions of interest shall not be called until Council has approved the use.

It is however recognised that some existing not-for-profit lessees and licensees have strong historical, social and recreational ties to the facilities they use. In some cases, the lessee or licensee may have contributed cash or in-kind to the development of these facilities. Examples of this are the three community gardens and the Colleagues and Easts Rugby Clubs. In such cases, Council may opt to enter into a new lease or license with the incumbent without reference to an expression of interest process. These cases will be subject to a report to Council which outlines the reasons for the continuation of the arrangement with the incumbent. Negotiations with the incumbent shall not be commenced until such time as Council has resolved to enter negotiations.

All leases and licenses to not-for-profit community and sporting organisations shall be subject to a Council resolution and will not be delegated to the General Manager for approval.

iv. Leases of road reserve

In accordance with S153 of the Roads Act, Council may grant leases over unused portions of road reserve to the owner or lessee of land adjacent to the road reserve. In the Woollahra context, these leases are relatively uncommon and have usually been entered into in order to formalise existing encroachments (which are the subject of a separate policy) or to allow for parking of private vehicles on unused portions of road reserve.

Such leases shall be limited to a five year period and will be subject to market assessment and a resolution of Council. Granting of leases over road reserve will not be delegated to the General Manager.

Policy Amendments

Date	Responsible Officer	Description
September 2019	Manager – Property & Projects	Policy reviewed
March 2024	Manager – Property & Projects	Revised for consideration by Council on 11 March 2024
May 2024	Manager – Property & Projects	Adoption pending Council resolution