

LEASING/LICENSING OF COUNCIL PROPERTIES POLICY

Purpose

Council has a number of properties, both commercial and residential, that it rents or leases to individuals and organisations.

This policy aims, therefore, to provide a coherent and transparent method renting or leasing Council's properties.

Scope

Council has a number of properties that it rents or leases to auspiced services, businesses, community organisations, employees and private individuals. These properties include office space, business premises, a caravan park and a residence.

It is important that Council makes the best use of its properties and obtains the best return available for the benefit of the whole community. It is also important that all aspects of the leasing/licensing process must be fair and honest and transparent.

General Principles

APPLICATION

This policy applies to the leasing or licensing of Council-owned properties.

1. DEFINITIONS

1.1 Residential Property

A *residential property* is one that is used for the purpose of residential occupation.

1.2 Commercial Property

A *commercial property* is one that is used for commercial or other purpose other than as a dwelling.

1.3 Community Land

Community land is land classified by Council in the Broken Hill Local Environmental Plan 1996, as amended, that should be kept for use by the general public (community). It cannot be leased or licensed for more than 21 years and may only be leased or licensed for more than 5 years if public

notice of the proposed lease or licence is given and, in the event that an objection is made to the proposed lease or licence, the Minister for Local Government's consent is obtained. Public parks are an example of community land.

1.4 Operational Land

Operational land would ordinarily comprise land held as a temporary asset or as an investment, land which facilitates the carrying out by Council of its functions or land which may not be open to the general public, such as the Works Depot or Council Garage. Such land may be leased without the restrictions applied to community land.

2. DECISION TO LEASE/LICENSE

When a Council property falls vacant, the following process will occur:

- (a) the General Manager shall determine whether the property continues to be required for Council purposes;
- (b) Should the General Manager determine that the property should be retained for future Council purposes then the property can remain vacant or be offered for lease or licence;
- (c) If the property is deemed not required for Council purposes then the Council will resolve whether the property should be sold.

3. ADVERTISING VACANCIES

- (a) Should it be decided that a Council property is available for lease, then that property should be advertised in the Barrier Daily Truth and /or by any other method that offers potential tenants an opportunity to apply;
- (b) Leases should be offered to suitable applicants who are able to meet Council's lease and rental requirements, on a first come first served basis;
- (c) Exceptions to this would be situations where Council's community service obligation requires that the property be offered to a suitable community organisation e.g., locations such as the HACC Centre, where the principle of co-location requires that the vacant space be made available to a HACC or HACC-related service.

4. SETTING OF RENTS

- (a) All rental shall be at market rental rate, assessed by a Registered Real Estate Valuer (rounded to the nearest dollar);
- (b) Rentals determined by special arrangements, such as at the HACC Centre, are exempted from Clause 6(a);

- (c) (d) Commercial rentals will be reviewed annually in accordance with the terms of the respective lease;
- (d) All rents will be included in Council's Schedule of Fees and Charges each year.

5. LEASES/LICENCES

- (a) All tenants, excepting community organisations that occupy Council properties by special arrangement, must enter into a lease/licence prior to taking occupancy of the property;
- (b) Community organisations occupying Council properties by special arrangement must sign a letter of agreement prior to taking occupancy.

6. DURATION OF LEASES/LICENCES

- (a) The normal duration for residential leases will be 3 years;
- (b) The normal duration of non-residential leases will be 1 – 10 years initial term, with options to renew to a maximum of 20 years.
- (c) Where a property is classified as operational land it may be leased or licensed for a period longer than 5 years by mutual agreement;
- (d) Where a property is classified as community land it may be leased or licensed for between 5 and 21 years by agreement with Council only after public notice of the proposed lease or licence is given and, in the event that an objection is made to the proposed lease or licence, the Minister's consent is obtained;
- (e) No property classified as community land may be leased or licensed for more than 21 years.

7. SURETIES

- (a) All tenants, other than community organisations that occupy Council properties by special arrangement, will be required to deposit a bond or security;
- (b) All tenants shall pay their rent in advance;

8. TERMINATION OF LEASE

Notice of termination requirements will be set out in individual leases. If the tenant is a Council employee however, then:

- (a) If repairs are required to the premises upon termination of the lease, the cost of such repairs, to the maximum of 4 weeks rent as set out in

Council's Schedule of Fees and Charges, shall be garnished from any termination payment or salary payment made to the tenant, as an employee of the Council, after the premises have been vacated;

- (b) Should the tenant of a residential property cease to be an employee of the Council, the lease shall terminate, subject to the required notices being served.

9. GST

- (a) No GST will be applicable to the rental income for residential properties except where the property is defined as a commercial residential property;
- (b) GST is applicable to rental income from non-residential properties.

10. SPECIAL ARRANGEMENTS

On occasions Council may resolve to provide an individual or organisation with occupancy of a property on a non-commercial basis. This may involve subsidised rental, repayment of rental as a donation, or free rental as an in-kind contribution. In any of these situations the following will apply:

- (a) Rental shall be assessed by a Registered Real Estate Valuer;
- (b) All rents will be included as assessed in Council's Schedule of Fees and Charges each year;
- (c) The above information will be used to calculate the degree of subsidisation (foregone rental income) involved in the special arrangement;
- (d) All tenants entering special arrangements are required to sign a Letter of Agreement prior to taking up occupancy;
- (e) All existing tenants in special arrangements will be encouraged to sign a Letter of Agreement to formalise the occupancy arrangements.

11. DELEGATION

- (a) The General Manager is authorised to offer/accept a lease (or licence if applicable) agreement for any Real Estate of the Council not required for immediate use and obtain the best rental/licence fee having regard to, but not limited to, the assessment of market rent determined by a Registered Real Estate Valuer;
- (b) the Mayor and the General Manager are authorised to sign a lease/licence under seal of Council for any Council property covered under Clause 13(a) of this Policy.

12. NONCOMPLIANCE WITH THIS POLICY

Failure to comply with the terms of this policy may lead to disciplinary procedures being implemented against the responsible staff member.

Any instances of corrupt conduct can lead to dismissal and/or criminal prosecution.

13. REVIEW

This policy shall be reviewed biennially to ensure that it meets the requirements of legislation and the needs of Council.

Associated Policies & Documents

*Community Land Management Plans
Disposal of Council Real Estate Policy*

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