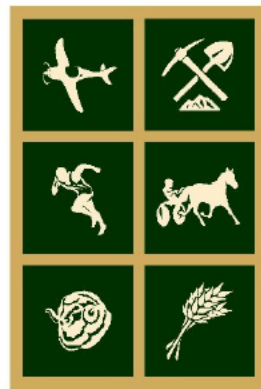


TEMORA SHIRE COUNCIL



TEMORA
The Friendly Shire

Lease and License of Council Owned and Managed Land Policy

ACTIVE

Review DetailsABOUT THIS RELEASE

DOCUMENT NAME:	Lease and License of Council Owned and Managed Land Policy
POLICY TYPE:	Council Policy
POLICY REFERENCE NUMBER:	G37
RESPONSIBLE DIRECTOR:	Director Administration & Finance
ENDORSEMENT DATE:	18 September 2025
ENDORSED BY:	Council
ENDORSEMENT MINUTE OR REFERENCE:	Resolution 106/2025
NEXT REVIEW DATE:	September 2029

REVIEW HISTORY

Revision Date	Revision Description	Revision No.	Date approved	Approver
	New Policy	1	September 2025	Council

1. Scope

This Policy applies to the leasing or licensing of:

- Council-owned or managed community and commercial facilities
- Leases under the *Roads Act 1993* (NSW).
- Leases to operate commercial activities on Council Land for a specified period of time (e.g. mobile food truck in a park)

This Policy does not apply to:

- Telecommunications facilities
- Outdoor Dining, where it is in accordance with s 125 of the Roads Act.
- Short term (less than two weeks), non-exclusive use of property for matters such as access, events, or filming.
- Licenses or other agreements relating to land where there is no alternative public benefit by application of this policy (such as land adjacent to or enclosed by private land and maintenance or access is conducted by the adjacent landholder).

2. Relevant Community Strategic Plan Objectives

Temora Shire Council Community Strategic Plan (CSP) 2025-2035:

Objective 3. Plan attractive, liveable and sustainable towns, villages and rural communities.

Objective 5. Deliver effective leadership, governance and engagement to meet community needs.

3. Purpose

Temora Shire Council aims to optimise community benefits through effective management of council-owned or controlled land and buildings. This policy outlines how community facilities, commercial buildings, and residential properties can be leased and licensed by individuals, organisations, and businesses. It covers lease and licence terms, responsibilities, rental charges, and the process for offering new leases and licences.

4. Principles

The principles of this Policy is to provide that Council will:

- Have clear processes to provide that community and commercial facilities under Council's control may be leased to individuals, organisations and businesses.
- Provide an equitable and fair decision-making process that aligns the use of the facilities with the strategic goals of Council.
- Be consistent, maintaining a fair and open process.

5. Land Classifications

Under the Act, land under Council's control, other than roads and Crown Land must be classified as either 'operational land' or 'community land'. Land owned and land leased by Council is either:

- Operational Land or Community Land (as described in Division 1 of Part 2 of Chapter 6 of the Act).
- Road Reserves
- Crown Land.

Type of Land	Permitted Use	Reference
Operational Land	Used for Council's administrative and works functions, commercial and investment opportunities. Does not require a Plan of Management and may be managed in accordance with Council's operational and strategic goals.	The Act, Real Property Act 1900, Conveyancing Act 1919 and Retail Leases Act 1994
Community Land	Leasing of Community Land must be consistent with the Legislation and Council Policy. Community Land will have a 'Plan of Management' ('POM') Leases / Licenses must be consistent with the core objectives of Community Land, for a use prescribed by the Act or the Local Government (General) Regulation 2021 (if expressly authorised under a POM for that land). A lease or license exceeding 21 years requires the assent of the Minister.	Sections 45 – 47AA and 55 of the Act
Road Reserve	Leasing and licensing of parts of public roads including road closures (road closures are not in scope of this policy).	Roads Act 1993
Crown Land	Land which is owned by the State of NSW, reserved or dedicated for public recreation or similar purpose. Councils may be appointed as the Reserve Trustees on behalf of the Minister for Lands and Property to manage and care for the Crown Land to facilitate and encourage community use and enjoyment. A Lease / License of Crown Land will be generally carried out under the same conditions as apply to Community Land. All leases or licence are to be issued by Council as Trust Manager of the Reserve Trust.	Crown Lands Management Act 2016.

6. Process for leases and licenses

The General Manager will determine, in line with this Policy, the appropriate process for the entering into of an agreement. There are three ways that Council will enter into agreements for the lease or license.

It is noted that the requirements of the Act and Regulation relating to tenders may impact the proposed approach by Council and reference should be had to the tendering requirements as in force at the time. Any land classified as Community Land must also refer to the relevant Plan of Management ('POM') and will override this section to the extent of any inconsistency.

Unless the wording of a Council resolution explicitly states otherwise, no lease, license or other estate is established until the formal instrument of agreement is validly executed by the appropriately delegated person.

1. Unsolicited proposals: where an application is received by Council for a lease or license of a property, the General Manager may determine to report it to Council for determination or conduct an EOI process to solicit other proposals.
If a public proposal process is entered into, the party submitting an unsolicited proposal may amend their initial, unsolicited proposal to meet the brief of the process.
2. Direct negotiations: where the site exhibits one or more of the following:
 - a. Property with constraints; or
 - b. Potential for strategic benefit to the community in addressing a matter outlined in the Community Strategic Plan; or
 - c. Economic development or Community Development opportunities that are in the public interest.

In these circumstances, the General Manager may enter negotiations with parties to obtain the best outcome for the Council and report the matter to Council for determination.

3. Expression of Interest ('EOI'): Where there are potentially multiple parties who may have an interest in the site (e.g. a commercial premises), then an EOI process may provide public notification and the opportunity for submissions to be made and considered by Council. The General Manager will include in the notification:
 - a. Clear identification of the site and overview of any material facts affecting the application (e.g. permitted uses).
 - b. Overview of the process, including how to make a submission, the deadline and key dates.
 - c. Assessment criteria, which may include the following non-exhaustive list:
 - i. Alignment with the Council's strategic objectives and policies.
 - ii. The proposed use of the lease or license and its potential benefits to the community.
 - iii. The applicant's experience and qualifications.
 - iv. Financial viability and sustainability of the proposed use.
 - v. Any other criteria specified by the Council.
 - vi. Price (set by Council in the fees and charges or to be submitted by the applicant)
 - d. Any matters that would exclude a submission (e.g. incomplete applications)

Following the deadline for submissions, an assessment of the received applications will be undertaken and reported to Council for determination.

Public notification of the lease or license is only applicable where legislation or other requirement exists as the advertisement of the EOI and reporting to Council constitutes sufficient public notification.

7. Lease and License Conditions

Each Lease or License will include Council's Standard Conditions, varied as required depending upon the commercial terms. If the nature of the transaction requires a different base document, this will be notified to the prospective lessee.

Leases will generally be considered up to a maximum term of 21 years, however Council at its discretion can grant leases or licenses for a longer term, subject to a Ministerial consent.

7.1 Rent, Fees and GST

Ordinarily, rental amounts will be adjusted annually at least in line with the Consumer Price Index (CPI) and reviewed to market every 5 years of the Lease including any option. The lessee or licensee may be required to reimburse Council for all legal costs associated with the preparation, negotiation, execution and registration of the legal documents except where prohibited by legislation.

All lessees and licensees must pay GST at a level determined by the Federal Government on rent. GST is payable in addition to the rent calculated, unless otherwise stated.

7.2 Rent Determination

For a leased or licensed property, Council seeks to recover rent at market value although in some cases a rental subsidy may be applied for by Not-funded, Not for Profit registered groups only.

Market rental valuations may be obtained for all Council public land and buildings, by an independent qualified valuer. The market rental value report acts as a guide for the amount of annual rent negotiated. Where it is clear a proposed lessee/licensee has an ability to pay a market rental or fee, the rental/fee payable shall be the market rate as determined by the rental valuation report.

7.3 Capital Works

A Lease / Licence may require a Lessee / Licensee to undertake capital works. The value of the capital works may be amortised over the term of the Lease / Licence. Council may require that any capital works undertaken by a Lessee / Licensee be project-managed by Council.

If a Lease / Licence requires the Lessee / Licensee to undertake capital works or other improvements to the premises, the Lease / Licence will state that those works or improvements are to become the property of Council if it so elects. The undertaking of capital works or other improvements to a premises by a Lessee / Licensee does not give the Lessee / Licensee any interest in or claim to:

- The works, improvements and / or the premises beyond the interest granted under the Lease / Licence,
- The premises after the expiry of the Lease / Licence, and / or
- A new Lease / Licence of the premises after the expiry of the initial Lease/Licence.

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Before undertaking any works in a premises, the Lessee / Licensee must ensure that they have all relevant approvals for the proposed use of the premises and the works in accordance with all relevant legislative requirements, including the *Environment Planning and Assessment Act 1979*.

7.4 Outgoings

Responsibilities in relation to outgoings will be fully documented within the lease/licence and in general the following process will apply:

- Lease: 100% contribution to outgoings by Lessee
- License: To be determined on a case-by-case basis considering the basis of the license and percentage use of the outgoings for the premises/facility.

7.5 Maintenance

The Lease or Licence will outline the maintenance responsibilities of the parties. The Lease or Licence will specify the obligations, scope and standards for maintenance activities to be undertaken by each party.

7.6 Subletting

Subletting is not permitted without prior written approval of Council. Subletting may trigger a rent review at the discretion of Council.

7.7 Assignment or Transfer of Lease or Licence

Assignment or transfer of a Lease or Licence will not be permitted without prior written consent from Council and will be subject to all requirements stated in the Lease or Licence, and legislation where applicable, being satisfactorily met.

Council may conduct due diligence checks on the proposed assignee or transferee to assess their suitability. This may include financial viability checks, ASIC search and other relevant factors to ensure the prospective lessee or licensee meets the requirements to fulfill the obligations under the Lease or Licence.

7.8 Renewal and Expired Agreements including timeframes

The lessee or licensee must provide written notification to Council by no later than six months prior to the Lease or Licence expiry date, outlining their intent to take up an option to renew (if applicable) or whether the lessee or licensee would like to hold over or renew the Lease or Licence. Council encourages lessees and licensees to proactively consider and contact Council to discuss their future needs to improve community outcomes.

Council may, during the period prior to the expiration of the Lease or Licence, engage in discussions with the lessee or licensee regarding any potential considerations with new agreements. Council reserves the right, at its discretion, subject to any option to renew contained in a Lease or Licence, to decide whether or not to extend or renew a Lease or Licence.

A review of usage and management options for the facility and Council land may be undertaken within the last six months of the agreement period. It will take into account existing usage, the potential for the facility and land to be used on a multiuser basis and any changing community needs.

Council recognises that many user groups and organisations have a strong historical affiliation with the facilities which they use and have contributed in cash and kind to their development. However, past contributions of cash or in kind by user groups and organisations to a facility do not convey permanent or preferential access to that facility. While Council supports the

continued occupation of those facilities and land by those groups and organisations, it will encourage a shared multi-use basis where it does not currently occur.

Unless the Council resolves otherwise when entering into a lease or license, the General Manager has the authority to agree to lease renewals, where the lease or license has renewal options in the agreement. The General Manager will report to Council any proposed renewal or extension for determination where there is no mechanism for this in the lease or license agreement. There is no limitation on the General Manager reporting a renewal option to Council for consideration.

7.9 Approval and Execution of Leases and Licensees

Approvals and execution of leases and licenses must be in accordance with the delegations from Council and the General Manager. The relevant Officer executing a document on behalf of Temora Shire Council must have assurance that appropriate public notification and consideration has been undertaken in accordance with the Act.

Any lease or license that is beyond the General Manager's delegation will be reported to Council for determination.

8. Public Notice of Leases and Licenses for Community Land

If Council proposes to grant a Lease, Licence or other estate in respect of Community Land exceeding 5 years the proposal must be notified and exhibited in the manner prescribed by section 47 of the *Local Government Act 1993* (NSW). This includes public notification of the following information:

- The location, and identification of the site.
- The purpose of the lease
- The term of the lease (including renewal options)
- The name of the person who is proposed to be granted the lease
- Details of where submissions can be made.

The public notification must, at a minimum be made:

- On Council's website,
- On the premises of the proposed lease
- Notice to any current occupants or users of the site and any adjoining owners or occupants.
- Notice to any other persons who may reasonably be impacted by the proposed lease.

The public notification of any proposed lease must be for a minimum of 28 days and the period specified on the notice. Any submissions received by Council on the lease must be considered prior to entering the lease and the provisions of the Act, s 47-47A relating to objectors will apply.

Notice must also be given in any manner specified in the relevant legislation or Council's Community Engagement Strategy.

9. Roles and Responsibilities

The General Manager is responsible for the implementation of this Policy and providing appropriate resources and delegation to staff to manage the various leases and licenses which Council manages. The General Manager will make operational determinations that impact the implementation of this policy.

Lessees and Licensees are responsible for meeting the obligations of their lease or license, and to report any issues with Council Property to Council.

The Council is responsible for the consideration and endorsement of this Policy.

10. Definitions

Community Land means Land classified under the *Local Government Act 1993* (NSW) and Land under the *Crown Land Management Act 2016* (Cth). It reflects the importance of the land to the community because of its use or special features.

Crown Land means Land that is vested in the Crown.

Lease means a legal document that grants an occupant the exclusive right to use land/property and/or buildings for specified purpose and term.

Assignment of Lease means transferring the lease to another entity including all the rights and obligations.

Leases of land means that the Roads Act 1993 (NSW) empowers a road authority (Council) to lease the airspace above or the subsoil below a public road. It also empowers a road authority in certain circumstances to lease the land comprising a public road (other than a Crown Road).

License means a legally binding document that grants non-exclusive right to use land and/or buildings for specified purpose and term.

Operational Land means the same as classified under the *Local Government Act NSW 1993* (NSW). Operational land has no special restrictions other than those that may apply to any piece of land. Operational land is used for Council's administrative and works functions.

Plan of Management means the Legislative requirements for Community Land under Section 36 of the *Local Government Act 1993* (NSW) which identifies the purpose and permitted use of the land.

Not funded, not for profit means a defined body with a legal entity that is incorporated under the *Corporations Act 1990* and/or registered under the *Charitable Fundraising Act 1991* (NSW). The Charity is Not Funded, Not for Profit and charitable purposes are for public benefit.

11. Supporting Legislation and Documents

Relevant Legislation

Local Government Act 1993 (NSW)

Local Government (General) Regulation 2021 (NSW)

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Crown Lands Management Act 2016 (NSW)

Dividing Fences Act 1991

Independent Commission Against Corruption Act 1988

Retail Lease Act 1994 (NSW)

Residential Tenancies Act 2010

Conveyancing Act 1919 (NSW)

Native Title Act 1993 (Cth)

Roads Act 1993 (NSW)

Relevant Council or Other Documents

Practice Note No 1 (May 2020 - Public Land Management ISSN 1320-6788 – Department of Local Government)

Council's Plans of Management

G3 Procurement Policy

G36 Community Engagement Strategy