

POLICY NAME	Leasing and Licensing of Council Property Policy
DIRECTORATE	Economic Development & Tourism – Property

1. INTRODUCTION

Council from time to time leases and licences Council Land. In doing so, Council has obligations under legislation that are underpinned by probity, due diligence, analysis of risk, value for money and other key issues.

This Policy is a general guide to the principles and criteria that is to be followed when Council leases or licences Council land but is not intended as a complete statement on the subject.

1.1 Terms and definitions used in this Policy

In this Policy:

- (a) **CL Act** means the *Crown Lands Act 1989*.
- (b) **Closer Settlement Acts** includes the *Closer Settlement Act 1901* and the *Closer Settlement Act 1904*.
- (c) **Community Land** means Public Land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the LG Act.
- (d) **Council** means Albury City Council and its successors.
- (e) **Council Land** means all land owned or controlled by Council which is listed in Council's Land Register.
- (f) **Council Officer** means any staff member of Council.
- (g) **Crown Land** means land that is vested in the Crown or was acquired under the Closer Settlement Acts as in force before their repeal, not in either case being:
 - (i) land dedicated for a public purpose; or
 - (ii) land that has been sold or lawfully contracted to be sold and in respect of which the purchase price or other consideration for the sale has been received by the Crown.
- (h) **Land Register** means the land register comprising all land that is vested in or under the control of Council (as required by section 53 of the LG Act).
- (i) **Lease Register** means Council's Authority program Register of Leased and Licensed properties.
- (j) **LG Act** means the *Local Government Act 1993*.
- (k) **Minister** means the Minister for Local Government.

- (l) **Operational Land** means Public Land that is classified as operational land under Division 1 of Part 2 of Chapter 6 of the LG Act.
- (m) **Plan of Management** means a plan of management adopted by Council under Division 2 of Part 2 of Chapter 6 of the LG Act, to manage Community Land.
- (n) **Public Land** means any land on Council's Land Register (including a public reserve) vested in or under the control of Council, but does not include:
 - (i) a Public Road; or
 - (ii) land to which the CL Act applies; or
 - (iii) a common; or
 - (iv) land subject to the *Trustees of Schools of Arts Enabling Act 1902*; or
 - (v) a regional park under the *National Parks and Wildlife Act 1974*.
- (o) **Public Road** means
 - (i) any road that is opened or dedicated as a public road, whether under the Roads Act or any other Act or law; and
 - (ii) any road that is declared to be public for the purposes of the Roads Act.
- (p) **Reserve Trust** is the legal body holding ownership of reserved or dedicated Crown Land on a temporary basis (for the life of that reserve trust). A reserve trust is set up under the CL Act to have responsibility for the care, control and management of Crown Land.
- (q) **Retail Leases Act** means the *Retail Leases Act 1994*.
- (r) **RMS** means the Roads and Maritime Services.
- (s) **Roads Act** means the *Roads Act 1993*.
- (t) **Roads Authority** means a person or body that is, by or under the Roads Act, declared to be a roads authority and, in relation to a particular road, means the roads authority for that road.
- (u) **Valuer** means a person who either:
 - (i) is a practising real estate agent;
 - (ii) is a full member of the Australian Property Institute Inc (NSW Division) and has been for the last 5 years;
 - (iii) holds a licence to practise as a valuer;
 - and
 - (iv) is active in the relevant market at the time of his appointment; and
 - (v) has at least 5 years experience in undertaking valuations of the nature of the requirements of this Policy.

1.2 Policy Objectives

- (a) The objectives of this Policy are:
 - (i) to acknowledge that in accordance with Council's charter it is the custodian and trustee of Council Land and is required to effectively account for and manage the assets for which it is responsible;

- (ii) to set out the general principles, criteria and responsibilities for Council and Council Officers to consider in the management of the leasing and licensing of Council Land;
 - (iii) to identify, manage and mitigate the risks associated with the leasing and licensing of Council Land; and
 - (iv) to ensure impartiality, transparency, accountability and the delivery of best value leasing and licensing Council Land.
- (b) This Policy describes, generally, the manner in which Council will undertake the leasing and licensing of Council Land and acts to provide Council with:
- (i) a reference that will survive successive Councils;
 - (ii) an endorsed framework to enable and pursue Council Land leasing and licensing opportunities of merit and pro-actively present such opportunities to Council.
- (c) This Policy also seeks to:
- (i) allow implementation functions to be addressed to meet market drivers; and
 - (ii) ensure that the best possible outcome is achieved by Council.

2. **SCOPE OF POLICY**

- 2.1 This Policy applies to the leasing or licensing of all Council Land.
- 2.2 This Policy applies to all Councillors, Council Officers and agents of Council and to any other person involved in the leasing or licensing of Council Land.

3. **AGREEMENT TYPE – LEASE OR LICENCE**

3.1 **Lease**

- (a) A lease provides the lessee with exclusive possession over the relevant Council Land (or part of the relevant Council Land) usually for a fixed period.
- (b) A lease creates an interest in the land (proprietary right) and confers greater protection than a licence.
- (c) A lessee can enforce its rights against third parties (i.e. subsequent owners of the property, if the land is sold).
- (d) A lease can be transferred (assigned) to another party but usually subject to the consent of Council.

3.2 **Licence**

- (a) A licence provides the licensee with non-exclusive rights over the relevant Council Land (or part of the relevant Council Land).
- (b) A licence does not create an interest in the land (as the rights are based in contract only).
- (c) A licensee cannot enforce its rights against third parties.
- (d) A licence is non transferrable (as the rights are based on contract only and are personal to the licensee).

4. **GENERAL REQUIREMENTS**

4.1 **Land Type**

- (a) The classification of Council Land will impact on the agreement type, method of offer to the public and term of agreement.
- (b) Under the LG Act, Public Land must be classified as either “Operational Land” or “Community Land”.
- (c) Accordingly, land leased or licensed by Council will fall into one of the following groups:
 - (i) Public Land – classified as either:
 - (A) Community Land; or
 - (B) Operational Land;
 - (ii) Crown Land; or
 - (iii) a Public Road.

4.2 **Different requirements**

(a) **Public Land**

Community Land

- (i) Community Land is land which:
 - (A) is reserved for community use;
 - (B) is of importance to the community because of its use or special features and must be managed according to special guidelines in accordance with the LG Act;
 - (C) Council has no power to sell, exchange or otherwise dispose of it;
 - (D) there are restrictions on Council’s ability to grant a lease, licence or other estate over the land; and
 - (E) must have a Plan of Management prepared for it by Council (in accordance to the *Local Government Act 1979*) or applying to it.
- (ii) Council may only issue a lease or licence where it is consistent with the relevant Plan of Management and where the purpose for which the lease or licence is

sought is consistent with the core objectives for the area of Community Land in question.

- (iii) Where a proposed lease or licence is not consistent with the core objectives of the relevant Plan of Management for Community Land then the lease or licence will be rendered invalid.
- (iv) The term of the lease or licence, including any option to renew, must not exceed twenty one (21) years (except with the Minister's consent). In any event, the term must not exceed thirty (30) years.
- (v) If Council proposes to grant a lease or licence for a period (including any option to renew) exceeding five (5) years, it must (in accordance with section 47 of the LG Act):
 - (A) give public notice of the proposal (in accordance with Part 1 Chapter 18 of the LG Act); and
 - (B) exhibit notice of the proposal on the land to which the proposal relates; and
 - (C) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the relevant Community Land; and
 - (D) give notice of the proposal to any other person, appearing to Council to be the owner or occupier of land in the vicinity of the Community Land, if in the opinion of Council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of Community Land.The notice must comply with the requirements of section 47(2) of the LG Act.
- (vi) Before granting the lease or licence, Council must consider all submissions made to it (in response to the notice). Council must not grant the lease or licence if a person makes a submission by way of objection to the proposal, except with the Minister's consent.
- (vii) A lease or licence of Community Land:
 - (A) for a term of less than 5 years may be granted by expression of interest (unless specified otherwise in the relevant plan of management) or tender;
 - (B) for a term exceeding 5 years may be granted only by way of tender unless it is granted to a non-profit organisation (pursuant to section 46A(3) of the LG Act).
- (viii) The procedure set out in appendix 1 - flow chart should be followed.

Operational Land

- (i) Operational Land is land which:
 - (A) is held as a temporary asset or as an investment;
 - (B) facilitates the carrying out by Council of its functions or operational activities, such as the provision of public car parks;
 - (C) may not be open to the general public (such as a works depot or Council garage); or
 - (D) is not required to be managed on behalf of present and future communities, or kept for general public use.

- (ii) Operational Land has no special restrictions other than those that may apply to any piece of land and can be leased or licensed for any period of time as determined by Council.

(b) **Crown Land**

- (i) Crown Land is owned by the State Government of NSW and is reserved or dedicated for public recreation or similar purpose and governed by the CL Act.
- (ii) A Reserve Trust may be set up under the CL Act to have the responsibility for the care, control and management of a parcel of Crown Land. A Reserve Trust is a legal entity in its own right. However, it cannot operate without having someone appointed to manage its affairs. Council has been appointed as the trust manager of certain Crown Land in Council's local government area.
- (iii) A lease or licence of Crown Land can only permit the lessee or licensee (as the case may be) to use the land in a way that is consistent with the reserve purpose (as stated when the reserve was dedicated or reserved).
- (iv) However, temporary licences (licences up to one (1) year) can be granted for purposes listed in clause 31 of the *Crown Lands Regulation 2006*.
- (v) A lease or licence of Crown Land can only be granted with the consent of the Minister for Lands.
- (vi) The Minister of Lands may not consent to the granting of a lease for a term exceeding 5 years (including any option to renew) unless at least fourteen (14) days have elapsed from the date of a notice of intention to give consent published in a newspaper circulating in the locality in which the land is situated or in a newspaper circulating in the state generally. Council, as the trust manager, should organise the publication of this notice.
- (vii) Rent should reflect a commercial approach, having regard to the purpose of the lease or licence, site value and ownership of existing improvements and must, in all cases, exceed the minimum rent for Crown Land.
- (viii) The procedure set out in the "Department of Primary Industries – Lands, Reserves Trust Handbook 2007" should be followed by Council.
- (ix) The standard lease or licence template for Crown Land must be used at all times.

(c) **Road**

- (i) Leasing or licensing of a Public Road (or part of a Public Road) is governed by the Roads Act (and, in particular, Divisions 1 and 2 of Part 10).
- (ii) Council is the Roads Authority for all Public Roads within the Council local government area, except for any freeway, Crown public road or any Public Road declared to be under the control of some other authority (i.e. RMS).
- (iii) Subject to paragraph (ii), the Public Roads are vested in fee simple in Council (pursuant to section 145(3) of the Roads Act).
- (iv) Council may only lease a Public Road to the owner or lessee of land adjoining the Public Road if, in the opinion of Council, the Public Road is not being used by the public (section 153 of the Roads Act). However, the term of the lease, together with any option to renew, must not exceed 5 years. No structure may be

constructed on the Public Road, the subject of the lease without Council approval, which will only be granted if Council is satisfied that the proposed structure comprises a fence or a temporary structure of a kind that can be easily demolished or removed (section 157 of the Roads Act).

Note: pursuant to section 153(3) of the Roads Act a lease may be terminated by Council at any time (and the lease should include a clause to this effect).

- (v) Any agreement in relation to street vending (pursuant to section 139A of the Roads Act) is to be pursuant to Council's Street and Outdoor Activities Policy.
- (vi) Any licence in relation to a structure encroaching over a Public Road must be prepared in accordance with Council's Encroachment on Council Land Policy.
- (vii) A lease or licence may be granted in respect of the air space above, or land below the surface of, any Public Road (section 149 of the Roads Act). A lease pursuant section 149 of the Roads Act may not be granted by Council without the approval of the Director of Planning.

Note: an approval will not be given if the granting of a lease would be inconsistent with the rights of passage and access that exist with respect to the road. The term of the lease, together with an option to renew, must not exceed 99 years.

4.3 Retail Leases

- (a) Leases of some property will be governed by the Retail Leases Act, depending on the permitted use under the lease.
- (b) Schedule 1 of the Retail Leases Act sets out which leases the Retail Leases Act applies to (noting that there are certain exceptions under sections 6 and 6A of the Retail Leases Act).

Note: At the commencement of this Policy:

- (i) Section 6 of the Act provides that the Act does not apply to any of the following leases of retail shops:
 - (A) leases for a term of 25 years or more (with the term of a lease taken to include any term for which the lease may be extended or renewed at the option of the lessee);
 - (B) leases entered into before the commencement of section 6 of the Act (being 1 August 1994);
 - (C) leases entered into under an option granted or agreement made before the commencement of section 6 of the Act (being 1 August 1994); and
 - (D) any other lease of a class or description prescribed by the regulations (made under the Act) as exempt from the Act.
- (ii) Section 6A(1) of the Act provides that, subject to section 6(2), the Act not to apply to a lease of a retail shop for a term of less than 6 months without any right for the lessee to extend the lease (whether by means of an option to extend or renew the lease or otherwise).
- (c) The requirements under the Retail Leases Act are in addition to the restrictions and requirements under the LG Act (for Community Land) or under the CL Act (for Crown Land).
- (d) There are certain procedural and disclosure requirements for retail leases including for Lessor's and Lessee's Disclosure Statements which must be given to the proposed lessee prior to the lease being entered into by Council and the proposed lessee.

- (e) Retail leases must be for a minimum of 5 years (except in certain cases, i.e. the provision of a certificate by a lawyer or conveyancer (acting for the lessee) pursuant to section 16(3) of the Retail Leases Act).
- (f) Section 44A of the Retail Leases Act does not apply to Community Land.
Note: Section 44A states that a landlord cannot during the term of a retail lease advertise for a new lessee or invite expressions of interest or tenders for a lease to start after the expiry of the current lease except in the circumstances set out in section 44.

5. DETERMINING RENT AND LESSEE/LICENSEE

5.1 Retail or other commercial leases – rent

- (a) Commercial leases are leases where the lessee operates a business in, undertakes commercial activities on, obtains income from and/or there is a private gain from the use of, the premises.
- (b) Examples of commercial leases are:
 - (i) leases of kiosks, restaurants, shops, offices and other premises used for the operation of a business;
 - (ii) leases of childcare centres to a person or company which operates a for-profit service; and
 - (iii) a lease to a lessee which sub-licences or hires the premises for profit.
- (c) Retail leases are usually commercial leases.
- (d) Current market rent will be charged by Council on all commercial leases.
- (e) If there is a direct negotiation with one potential lessee only, the current market rent will be determined by an external Valuer (selected by Council having regard to the terms of the proposed lease and the provisions of section 19 of the Retail Leases Act if the lease will be a retail lease) or otherwise by a practising real estate agent.
- (f) If Council selects the lessee by a competitive process (i.e. auction, tender or expression of interest), the current market rent may be, but is not restricted to, the highest rent offered in a complying proposal.

5.2 Non-profit, sporting and community organisations

- (a) Leases may be granted to non-profit, sporting and community organisations for non-commercial purposes for below market rent.
- (b) A minimum rent may be applied to all leases, at the same minimum rate applicable to Leases of Crown Land (as determined by the Department of Industry – Lands)..

- (c) The following are relevant factors in Council's assessment of the community benefit from a proposed lease and its decision to grant a lease to a non-profit organisation and accept less than current market rent:
- (i) the identity of the organisation, its Constitution and its aims and objectives;
 - (ii) its history and experience;
 - (iii) the length of time it has been based in the Council local government area and/or its connection with the Council local government area;
 - (iv) its funding sources and financial position;
 - (v) the services it offers;
 - (vi) whether there are other organisations in the Council local government area offering the same or similar services and whether there is a shortage of such services;
 - (vii) whether such services are most efficiently delivered by Council providing subsidised premises to the organisation or another organisation or by Council providing the services itself or by making monetary grants to another organisation;
 - (viii) the clients and/or members of the organisation (the rent discount may be higher if the organisation is local and if it is delivering services mostly to the residents of the Council area);
 - (ix) whether the lessee generates income from the premises and, if so, whether the income generated from the premises is used for the leased premises only or the services of the local community. If the lessee is remitting income earned from the premises to its other services outside the Council local government area, higher rent may be charged (but not exceeding current market rent);
 - (x) the costs and expenses incurred by Council in owning and leasing the premises, including staff administration time (the minimum rent should, where possible, cover Council's costs);
 - (xi) the costs and expenses Council would incur for the maintenance and other expenses if it did not lease the premises (that is, the savings by Council if a lessee undertakes the maintenance and repairs instead of Council providing the service and maintaining the premises itself);
 - (xii) any capital works to be done by the lessee (see clause 5.3 of this Policy); and
 - (xiii) whether the lessee is competing with other services or businesses and, if so, whether the lease at less than current market rent provides an unfair advantage to the lessee over its competitors.
- (d) Council recognises that many existing lessees of Community Land and Crown Land, notably sporting bodies and community groups, have strong historical and/or social and/or recreational ties to the facilities they use. In some cases, they have contributed cash or in kind to the development of these facilities.
- (e) In considering new or continued leases or licences for such facilities, Council will take these factors into account and may, in its absolute discretion, not require expressions of interests or tenders (except where required by the LG Act) and will negotiate the lease directly with the relevant lessee.
- (f) It cannot be assumed that a new lease will be granted to the same non-profit lessee at the end of a lease.

- (g) Council will consider the issues of the community benefit on each occasion a new lease is to be granted by Council. In deciding whether to grant a new lease to the same lessee, Council will (in addition to the above) consider:
 - (i) the extent of compliance by the lessee with the lease throughout the term, including whether the lessee has properly maintained the premises as required and/or if the lessee has completed any work it has to do in a satisfactory manner;
 - (ii) whether demand for the service has increased or decreased;
 - (iii) whether demand by other groups for access to these or similar premises has increased or decreased, and whether it is equitable for one organisation to have on-going exclusive use;
 - (iv) whether the membership/clientele of the lessee has increased or decreased; and
 - (v) whether renewals of leases to the same lessee for less than current market rent result over time in effective or perceived privatisation of Council Land without proper return to the public.
- (h) A non-profit organisation requesting a new lease or a renewal of a lease of Council Land at less than current market rent is expected to provide Council with all information requested by Council to enable Council to assess the community benefit.
- (i) A lease to a non-profit, sporting or community organisation for less than current market rent will contain provisions in the lease to ensure that it is (and continues to be) in the interests of the public.

5.3 Capital Works

- (a) If the lease requires the lessee to undertake capital works or improvements to the premises, the lease will state that the works (or improvements as a result of such works) are or will become the property of Council or the Crown (as the case may be).
- (b) Capital works undertaken by the lessee do not give the lessee any interest or claim in the works or improvements or the premises (beyond what is in the lease) nor does it give the lessee any claim to the premises or improvements after the termination of the lease.
- (c) Undertaking capital works during the term of a lease does not entitle the lessee to demand a new lease following the termination of the lease.
- (d) Care is to be taken if the rent payable is reduced as a result of capital works to be done by the lessee. Capital works by the lessee may only be a return to the public if, following termination of the lease, Council is able to rent the premises for a higher/market value having regard to the improvements which have been made by the lessee (which become the property of Council or the Crown (as the case may be)).
- (e) If the lease term is very long and/or if renewals of leases of premises are continuously granted to the same lessee, capital works may benefit only that lessee (or are part of its use of the premises as lessee) and do not provide compensation to the public for the use of the Council Land.

5.4 Definitions in this clause

In this clause 5:

- (a) a reference to a “lease” includes a licence;
- (b) a reference to the “lessee” includes a licensee;
- (c) a reference to the “lessor” includes a licensor; and
- (d) a reference to “rent” includes a licence fee.

6. SELECTION PROCESS

6.1 Council officers are to consider the processes for a lease or licence:

- (a) approximately 6-12 months prior to the expiry date of a current lease or licence; or
- (b) as early as possible before the anticipated commencement of a new lease or licence.

6.2 A lease or licence of Council Land may be offered by one of the following means (unless Council is required by legislation to offer the lease or licence in a specific way):

(a) *Advertised as an ‘Expression of Interest’*

This option is appropriate in the following circumstances:

- (i) the use of the Council Land is unclear;
- (ii) the rental value is unknown;
- (iii) there is potential for interest from multiple parties;
- (iv) the works to be carried out prior to leasing or licensing are unknown; or
- (v) Council has identified that the relevant Council Land has lease/licence potential.

Expressions of Interest will be assessed by a panel of at least 3 Council Officers.

(b) *Advertised ‘For Lease’/‘For Licence’*

- (i) This option is appropriate when the value and potential use of the land is clearly known by Council and it is likely that more than one potential lessee/licensee may have an interest in the relevant Council Land.
- (ii) Potential lessees/licensees or groups are to respond by completing an application form. Council may elect to engage the services of a real estate agent.
- (iii) Applications will be assessed by a panel of at least 3 Council Officers.

(c) *Offered Direct to Potential Lessee / Licensee*

- (i) This option is appropriate when the potential lessee or licensee already has a relationship with Council regarding a property and it is advantageous to both parties for the relationship to continue.
- (ii) Potential lessees/licensees may be asked to respond to a prepared proposal.

6.3 Invitations to lodge tenders or expressions of interest are to be published in the local newspaper in the appropriate section and on the Council website. Council Officers may also advertise in additional ways if they consider this necessary or desirable to bring the advertisement to the attention of appropriate persons.

6.4 Council Officers are to give direct notice of the advertisements (or invitation to lodge tenders or expressions of interest) to any existing lessee/licensee of the premises.

7. OTHER CONSIDERATIONS

7.1 Agistment of Land

- (a) Council may enter into an agreement with another party for that party to agist cattle, horses or other animals on Council Land. Such an agistment agreement will be by way of a licence.
- (b) The term of an agistment agreement must not exceed five (5) years.
- (c) At the expiry of an agistment agreement the land may be offered to the current licensee (agistee) for a further term subject to a market fee review.
- (d) When:
 - (i) Council wishes to offer Council Land for agistment; or
 - (ii) at the expiry of an agistment agreement:
 - (A) Council does not offer the current licensee (agistee) a further term; or
 - (B) Council offers the current licensee (agistee) a further term and the licensee (agistee) does not wish to renew the agistment agreement,the land is to be advertised in the local paper and Council website calling for expressions of interest to determine the most suitable agistee

7.2 Instructions

Once the lessee or licensee has been determined and the terms of the lease or licence have been negotiated, Council's Property Officer will be responsible for:

- (a) providing instructions to Council's legal services provider for the preparation of the lease or licence;
- (b) arranging for the execution of the documents by all parties;
- (c) where applicable, the inclusion in the Council Meeting Agenda (under Documents for Sealing);
- (d) registration and/or completion of the lease (if applicable);
- (e) arranging access to the property on the commencement date;
- (f) preparation of the debtors advice to Finance;
- (g) updating the Lease Register; and
- (h) monitoring the review of the fees and terms of the lease or licence.

7.3 Insurance

- (a) All lessees and licenses must effect and maintain the appropriate insurance policies for their permitted use throughout the term of the lease or licence
- (b) These policies will include:
 - (i) public liability insurance not less than \$20 million;

- (ii) workers or accident compensation (if required);
 - (iii) contents insurance (if required); and
 - (iv) any other insurance required by Council.
- (c) The lessee/licensee must provide Council with a copy of the relevant Certificate of Currency during each year of the term.

7.4 **Costs**

- (a) Council may require the lessee or licensee to be responsible for the payment of the costs of Council's legal providers in relation to the preparation of the lease or licence and any costs relating to the renewal of such lease or licence under any option to renew clause (except to the extent prohibited under the Retail Leases Act, where applicable).
- (b) All leases (for a term in excess of a term of 3 years) are to be registered on title and the costs associated with the registration must be paid by the lessee, (except for leases over a Public Road where a folio for the Public Road has not been created).
- (c) Any legal fees associated with assignments, sub leases, surrenders or variation to a lease or licence will be payable by the lessee or licensee.

7.5 **Current market value**

- (a) For leases or licences of Public Land, Council must obtain a current market review of the rent or licence fee every 5 years.
- (b) The current market review can be by way of:
 - (i) full market valuation by a Valuer; or
 - (ii) appraisal by a suitably qualified practising real estate agent (experienced in leasing/licensing of similar properties).
- (c) Where a current market review is required under the terms of the lease or licence, then the current market review must be undertaken in accordance with the requirements of the lease or licence.
- (d) Subject to clause 5.1(c) of this Policy, Council is not bound by any current market review (unless such current market review is required under the terms of the lease or licence). However, Council should consider the current market review in determining the rent or licence fee payable.

8. **EXECUTION OF LEASE OR LICENCE**

- (a) Leases should be executed by Council under the Council Seal (in accordance with Council's Use of Council Seal Policy) pursuant to regulation 400 of the *Local Government (General) Regulation 2005*.

- (b) Licences do not have to be executed by Council under the Council Seal. Licences may be executed by Council by being signed by an authorised delegate of Council pursuant to section 377 of the LG Act.

9. DEPARTURE FROM THIS POLICY

Any provision of this Policy may be varied to meet the needs of a particular matter, by resolution of Council. The reasons for change will be clearly articulated within the report submitted for consideration by Council in adopting such resolution and will only apply to such matter.

10. LEGISLATIVE REQUIREMENTS

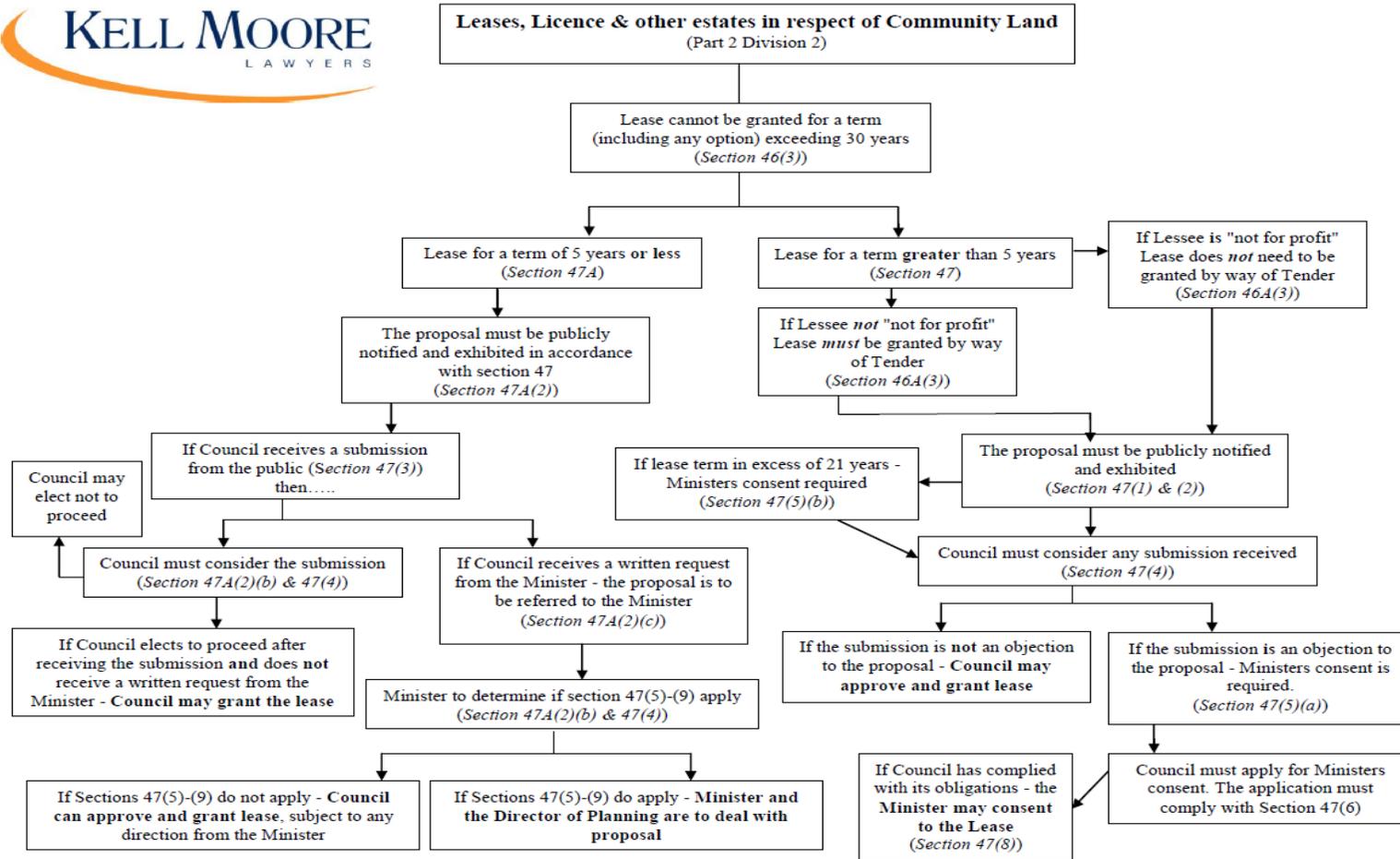
10.1 In implementing this Policy, Council must have regard to the legislative parameters of the:

- (a) *Crown Lands Act 1989*
- (b) *Local Government Act 1993*
- (c) *Local Government (General) Regulation 2005*
- (d) *Retail Leases Act 1994*
- (e) *Roads Act 1993*

10.2 This Policy is to be implemented with other relevant Council policies and strategies including the following:

- (a) Use of Council Seal Policy (DOC12/111623)
- (b) Street and Outdoor Activities Policy (DOC12/99281)
- (c) Encroachment on Council Land Policy (DOC16/210284)
- (d) Acquisition and Disposal of Land Policy (DOC13/106229)

Appendix 1



This guide is intended to provide general information only. It is not a complete guide to the area of law and should not be relied upon as legal advice. Further advice should be obtained before applying this Guide to individual circumstances.

NOTE: A reference to a Lease is also a reference to a Licence

AUTHORISATION

Status	Committee	Planning & Development – 13 February 2017
	Manex	17 January 2017
	Council	24 April 2017
Owner	Economic Development & Tourism – Property Officer	
Compliance	Mandatory	
History	Replaces Leasing Council Property Procedure (DOC11/27207) – September 2010	
Register	This policy is included in the Public Policy Register.	
Last issued	24 April 2017	Review 24 April 2021
TRIM REFERENCE DOC17/10516		