



Leasing and Licensing Facilities **Policy**

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Purpose

To provide a clear, consistent and equitable approach to the leasing, licensing and management of Council owned facilities and land.

Policy summary

Central Coast Council (Council) provides a wide range of community facilities which help meet the diverse needs of its residents. It also owns, manages and leases land and buildings to provide these community facilities, and serve a commercial return.

This policy sets out the way community facilities, commercial buildings and residential properties may be leased and licenced by individuals, organisations and businesses. It provides direction on lease and licence terms, responsibilities and rental charges, as well as the process for offering new leases and licences.

Definitions

1. The definitions used in this Policy are set out below:
 - a. **Facility maintenance:** Regular day-to-day work necessary to keep an asset safe, and operational, and to achieve its optimum life expectancy. Examples of facility maintenance include painting, glazing, replacing light globes and fittings, air conditioning repairs, tap seal repairs and cleaning gutters.
 - b. **Facility renewal:** Capital works which return an asset to its 'as new' condition and/or restore it to its original life expectancy. This includes renewal of related infrastructure such as pathways, retaining walls and drainage.
 - c. **Facility upgrade:** Capital works carried out to provide a higher level of service of an asset.
 - d. **Land rates:** All local government rates, levies and other charges imposed in relation to the leased premises and/or the tenant's use of the land. Land rates exclude charges for the removal of waste.
 - e. **Land-only lease:** A lease or licence over Council owned land on which a building or facility constructed by the lessee or licensee is located.
 - f. **Lease:** The exclusive right to use land and/or facilities for agreed purpose and term.
 - g. **Licence:** The generally non-exclusive right to use land and/or facilities for agreed purpose and term, in consultation with all relevant stakeholders.

- h. **Market appraisal:** An estimate of market rent based on an assessment of comparable properties in the current market.
- i. **Market rent:** The rent paid for leasing or licensing a facility on the private market as determined by an independent valuer.
- j. **Market valuation:** A valuation of market rent provided by an appropriately qualified and experienced professional independent to Council.
- k. **Residential building:** A Council owned building leased under the *Residential Tenancies Act 2010*.
- l. **Sports ground buildings and facilities:** A clubroom, grandstand, change room, kiosk, sports field, sports court or other building or works associated with a sports ground and primarily used to support recreation and leisure activities.
- m. **Structural repairs:** Repair works that Council considers are essential to maintain the basic functions of stability and weather resistance in the floors, walls and roofs of an asset. This includes repairs and replacements to the footings and foundations, columns, beams, joists, bearing walls, perimeter walls and floor slab and roof structure of the building.
- n. **Utility service account:** Includes electricity, gas, telephone and internet services, as well as water usage.
- o. **Wider community services:** Service or programs available to all Central Coast residents and community members, beyond the specific members of an organisation or group.

Scope

- 2. This Policy applies to:
 - p. Community facilities and/or land which Council provides to help serve community needs
 - q. Commercial buildings and/or land which Council owns or manages to deliver a financial benefit to Council
 - r. Residential properties which Council owns.
- 3. For the purposes of this Policy, community facilities may include:
 - a. Arts and cultural facilities
 - b. Childcare facilities
 - c. Community centres
 - d. Community halls

- e. Recreation and aquatic centres
- f. Senior citizens centres
- g. Sports ground buildings and facilities
- h. Tennis facilities
- i. Youth centres.

4. This Policy does not apply to:

- a. Seasonal hire or short-term arrangements
- b. Community facilities which are managed by staff or Section 355 committees
- c. Surf clubs
- d. Telecommunication facilities
- e. Licences for exploration, land access and monitoring under the *Mining Act 1992*
- f. Consents for roads under the *Roads Act 1993*
- g. Central Coast Airport - However this policy should be considered in any future lease or licence (or equivalent) negotiations

General

Vision for community facilities

5. The following vision reflects what is most important to the community for the future use and management of facilities in the Central Coast:

Central Coast Council provides and supports a network of affordable and well-maintained facilities which form the active hearts of local communities.

6. The vision was developed from consultation with the community and people who use and manage facilities.

Purpose of facilities

7. The following purpose statements help support and achieve the vision:

- a. Central Coast Council provides **community facilities** to encourage:
 - activities which improve individual and collective health and wellbeing

- provision of social, cultural, recreational, educational, environmental and other services which provide community benefits
 - events and activities which strengthen community connections and local identity.
- b. Central Coast Council provides **commercial buildings** to generate a financial return. This assists Council to fund its services and reduce pressure on other incomes sources, such as rates.

Principles for facilities

8. This Policy was developed and will be implemented in accordance with the following principles:
- a. **Community:** Community facilities are provided for community benefit and to meet community need
 - b. **Equity:** Access to community facilities is equitable for community members
 - c. **Affordability:** Community members can afford to use community facilities
 - d. **Utilisation:** Council seeks to maximise community use of community facilities
 - e. **Quality:** Community facilities are managed, operated and maintained to a consistent quality
 - f. **Transparency:** The management and governance of community facilities and commercial buildings is transparent, and decisions are based on clear policies and procedures
 - g. **Accountability:** Responsibilities for the management, operation and governance of community and commercial buildings are clearly identified and undertaken legally and ethically.

Lease and licence categories

9. There are eight categories of tenant to which Council may lease or licence a community facility or commercial building. These are set out in Table 1.
10. The most appropriate tenant category will be determined by Council, based on information provided by the prospective lessee or licensee and any other information Council considers relevant.

Table 1 Categories of tenant to which facilities may be leased or licenced

Tenant category	Description
1. Local community group	<p>This type of tenant is likely to:</p> <ul style="list-style-type: none"> • be leasing or licensing a community facility or land • be an incorporated association • have no paid staff • have low or no membership fees • receive no recurrent funding from government • may receive project and/or program funding.
2. Local community sporting club	<p>This type of tenant is likely to:</p> <ul style="list-style-type: none"> • be leasing or licensing a community facility or land • be an incorporated association • focus on one sport or interest • have five or fewer paid staff who deliver coaching, administration and associated services, typically on a part time basis • receive limited income from local sources • not have a liquor licence other than a limited licence • not have a gaming licence.
3. Small to medium not-for-profit provider of community services	<p>This type of tenant is likely to:</p> <ul style="list-style-type: none"> • be leasing or licensing a community facility or land • be operating on a not-for-profit basis • be a registered charity • provide wider community services (beyond members) • have paid staff, as well as volunteers • be classified by the Australian Charities and Not-for-profits Commission having annual income under \$1 million (averaged over the previous five years).
4. Large not-for-profit provider of community services	<p>This type of tenant is likely to:</p> <ul style="list-style-type: none"> • be leasing or licensing a community facility or land • be operating on a not-for-profit basis • be a registered charity • provide wider community services (beyond members) • have paid staff, as well as volunteers • be classified by the Australian Charities and Not-for-profits Commission as having an annual income over \$1 million (averaged over the previous five years).
5. Recreation club	<p>This type of tenant is likely to:</p>

	<ul style="list-style-type: none"> • be leasing or licensing a community facility or land • be an incorporated association, registered club and/or registered charity • have more than five paid staff • receive recurrent commercial income • have a liquor licence • have a gaming licence.
6. Government entity providing community services	<p>This type of tenant is likely to:</p> <ul style="list-style-type: none"> • be leasing or licensing a community or commercial facility or land • be a government agency or government organisation • provide multiple community programs and/or services.
7. Commercial business	<p>This type of tenant is:</p> <ul style="list-style-type: none"> • leasing or licensing a Council facility or land for the purpose of generating a profit • a sole trader, company, partnership, joint venture or trust.
8. Residential tenant	<p>This type of tenant is leasing a residential property.</p>

Lease and licence terms

11. Leases and licences will generally only be available for facilities, including the land on which those facilities are located.
12. In exceptional circumstances, typically relating to legacy arrangements, Council may consider entering into a land-only lease or licence.
13. In all cases, Council will remain the owner or manager of the land and any assets constructed upon it.
14. In signing a lease or licence agreement, the lessee or licensee must comply with all conditions within the agreement.
15. Lessees and licensees must ensure maintenance and repairs are undertaken by appropriately qualified and registered tradespeople.
16. Lessees and licensees must report structural maintenance requests and facility damage to Council in a timely manner, in accordance with Council's processes.

17. Lessees and licensees may not undertake, or submit a funding or development application to undertake, capital works without the prior written approval of Council in its capacity as owner and lessor of the asset.
18. Subletting will be permitted subject to prior written approval from Council consent and the conditions in the lease or licence agreement. For Category 1-4 leases and licences, subletting for a commercial purpose will trigger a market rent review.
19. Where Council proposes to enter into a new lease or licence for part of a community facility which is subject to an existing lease or licence, Council will communicate with the existing tenant before entering into the new lease or licence.
20. Category 1 and 2 leases and licences cannot be assigned. Other categories of leases and licences may be assigned subject to Council consent and the conditions in the lease or licence agreement.
21. Lease and licence agreements will include processes relating to breaches of the agreement, along with the associated consequences.
22. Council reserves the right to terminate any lease or licence of a community facility or commercial building for breach of agreement.

Lease and licence lengths

23. The length of a lease or licence which Council may offer to each category of tenant discussed in Section 5 is set out in Table 2.
24. The process for offering a new lease or licence on expiry of an existing lease or licence is set out in Section 13.
25. New lease and licence agreements will not include as-of-right renewal options or entitlements to additional lease terms.
26. The lease or licence terms recognise the need for Council to respond to changing community needs over time, as well as the need for tenants to have certainty of tenure if they are seeking to invest in capital improvements to a facility. The lease or licence terms also recognise the need for Council to minimise risk associated with the management of its assets.
27. Proposed large investments into or onto Council owned or managed assets may be subject to specific detailed agreements between Council and the proponent.
28. The length of leases and licences of Crown land are subject to transitional restrictions under the *Crown Land Management Act 2016*.

Table 2 Length of lease or licence by tenant category

Tenant category	Lease or licence term
1. Local community group	5 years, unless the lessee or licensee has documented evidence it plans to spend over \$50,000 on facility renewal or upgrade, in which case the term is 10 years
2. Local sporting club	5 years, unless the lessee or licensee has documented evidence it plans to spend over \$50,000 on facility renewal or upgrade, in which case the term is 10 years
3. Small to medium not-for-profit provider of community services	5 years, unless the lessee or licensee has documented evidence it plans to spend over \$50,000 on facility renewal or upgrade, in which case the term is 10 years
4. Large not-for-profit provider of community services	5 years, unless the lessee or licensee has documented evidence it plans to spend over \$50,000 on facility renewal or upgrade, in which case the term is 10 years
5. Recreation club	5 years, unless the lessee or licensee has documented evidence it plans to spend over \$50,000 on facility renewal or upgrade, in which case the term is 10 years
6. Government entity providing community services	5 years, unless the lease has been tendered, in which case the term is 10 years
7. Commercial business	5 years, unless the lease has been tendered, in which case the term is 10 years
8. Residential building	6 to 12 months

Lease and licence responsibilities

29. High level responsibilities of Council and of lessees and licensees are shown in Tables 3 and 4. Further details on these responsibilities will be contained within the lease or licence agreement between Council and the tenant. Maintenance responsibilities for residential tenants (Category 8) will be in accordance with the *Residential Tenancies Act 2010*.

30. In addition to the responsibilities set out in Tables 3 and 4, Council will plan for and undertake structural repairs, facility upgrades and facility renewals in accordance with its adopted asset management plans, budgets and capital works programs.

31. Council officers will provide an induction to a tenant's responsibilities at the start of a lease or licence.

Table 3 High level responsibilities for Council and category 1-4 tenants

High level Council responsibilities	High level tenant responsibilities
<p>Council will be responsible for:</p> <ul style="list-style-type: none"> paying land rates maintaining a building insurance policy maintaining fire safety compliance <p>undertaking:</p> <ul style="list-style-type: none"> - graffiti removal - termite control - major tree removal <p>undertaking facility inspections.</p>	<p>Tenants will be responsible for:</p> <ul style="list-style-type: none"> • maintaining a building contents insurance policy • maintaining a public liability insurance policy of at least \$20 million • organising and paying for utility services • organising and paying for waste collection services • paying water accounts and charges • undertaking facility cleaning and grounds maintenance • repairing damage caused by users of the facility • undertaking facility maintenance as outlined in the lease • undertaking pest control other than termites • enabling facility inspections by Council and its agents • undertaking annual use surveys and end of lease or licence reporting.

Table 4 High level responsibilities for Council and Category 5-7 tenants

High level Council responsibilities	High level tenant responsibilities
<p>Council will be responsible for:</p> <ul style="list-style-type: none"> maintaining a building insurance policy maintaining fire safety compliance undertaking: <ul style="list-style-type: none"> - termite control - major tree removal undertaking facility inspections. 	<p>Tenants will be responsible for:</p> <ul style="list-style-type: none"> • maintaining a building contents insurance policy • maintaining a public liability insurance policy of at least \$20 million • paying land rates • paying any land taxes levied by NSW Government • organising and paying for utility services • organising and paying for waste collection services • paying water accounts and charges • undertaking facility cleaning, graffiti removal and grounds maintenance • repairing damage caused by users of the facility • undertaking facility maintenance as outlined in the lease • undertaking pest control other than termites • enabling facility inspections by Council and its agents • undertaking annual use surveys and end of lease or licence reporting • returning the property to its original state at the end of a lease or licence.

Lease and licence rental charges

32. Council seeks to ensure that costs associated with rental charges and subsidies are transparent for community facilities. It provides subsidies to community organisations based on their ability to raise revenue, and the subsequent level of support required from Council.

33. Table 4 sets out the proportion of market rent which will be charged to each category of tenant discussed in Section 5 of this policy, as well as the corresponding subsidy provided to that category of tenant by Council. Market rents will be established through assessments undertaken or commissioned by Council.
34. Rental charges for facilities of the same type (such as community centres) will vary, based on both the market rent for that facility and the tenant category. Rental charges associated with any land-only leases will be based on the unimproved value of the land.
35. Any not-for-profit provider of community services that can evidence financial hardship through the charging of rental charges under this policy may have phased increments or be further supported by Council during this transition.
36. Rents will be increased each year by 3%, for category 3 to 7 tenants. Leases and licences for a term of more than five years will be subject to a market rent review every five years.
37. The minimum rental charge for any leased or licenced community facility, land or building shall be \$1.

Table 5 Lease and licence rental charges and subsidies

Tenant category	Percentage of market rent paid by tenant	Subsidy provided by Council
Local community group	0%	100%
Local community sporting club	0%	100%
Small to medium not-for-profit provider of community services	5%	95%
Large not-for-profit provider of community services	10%	90%
Recreation club	100%	0%
Government entity providing community services	100%	0%
Commercial business	100%	0%
Residential tenant	100%	0%

Leasing and licensing processes

38. The process Council will follow when leasing or licensing a new or vacant community facility or commercial building is shown in Figure 1.
39. The process Council will follow on expiry of a lease or licence for a community facility or Council building is shown in Figure 2.
40. If Council is transferring management of a community facility from a Section 355 committee to a lease or licence, it will follow the Path A process set out in Figure 2.
41. The criteria Council will use when making decisions about the following matters are set out in Table 6 below:
- whether to offer a lease or licence for a new or vacant facility
 - whether to offer a new lease or licence on expiry of an existing lease or licence
 - the lease or licensing pathway to follow.
42. If a tenant or potential tenant believes any aspect of a lease or licensing processes under this policy has not been undertaken fairly, they should lodge a complaint, which will be managed in accordance with Council's Complaints and Feedback Management Policy and Procedure.

Table 6 Decision making criteria for leases and licences

Criteria
<p>Criteria Council will consider when making decisions about leases and licences include:</p> <ul style="list-style-type: none"> • Alignment with Council's Community Strategic Plan • Alignment with the principles set out in Section 7 of this Policy • Understanding of community needs in the area • Strategic planning undertaken by Council • Compliance with the terms of any previous lease or licence agreement • Ability to manage the facility • Ability to meet any rental charge payments • Timeliness of any previous rental charge payments • Compliance with any capital works expenditure commitments • Compliance with legislative requirements.

Figure 1 Process for a lease or licence for a new or vacant facility

Figure 2 Process for a new lease or licence on expiry of an existing lease or licence

<p>Step 1: 12 months before the lease or licence expires</p> <p>Council staff contact the tenant requiring a report to be provided within 3 months on:</p> <ul style="list-style-type: none"> • Use of the facility and/or land and any community benefit provided • Legal status of the organisation and funding sources • Any business, management and development plans, as well as recent annual reports • Any improvements made to the facility and/or land, including capital expenditure • Plans for future improvements and capital expenditure, including identified funding sources. 	
<p>Step 2: Council staff have 3 months to review the report, the lease or licence history and the criteria set out in Table 6 of this Policy and discuss any issues raised with the tenant.</p>	
<p>Step 3: At least 6 months before lease or licence expires, Council notify the lessee or licensee of their intent to follow:</p> <ul style="list-style-type: none"> • Path A: publicly notify of intent to offer a new lease or licence to the existing lessee or licensee, or • Path B: seek EOIs or tenders for the facility or building. 	
Path A	Path B
<p>Step 4: If the tenant is a Category 1-2, Council staff prepare a market rent appraisal.</p> <p>If the tenant is a Category 3-7, Council staff obtain an independent market valuation.</p>	<p>Step 4: Council determines which categories of tenant will be suitable. If the tenant is Category 1-2, Council staff prepare a market rent appraisal. If the tenant is Category 3-7, Council staff obtain an independent market valuation.</p>
<p>Step 5: Council staff provide the tenant with a draft lease or licence agreement, including annual rental charge and any special conditions.</p>	<p>Step 5: Council staff prepare a draft lease or licence agreement, including special conditions.</p>
<p>Step 6: Council publicly notifies of intent to lease/licence the property, in accordance with Local Government Act.</p>	<p>Step 6: Council publicly advertises for expressions of interest for the facility or, if required, undertakes a tender process in accordance with the Local Government Act 1993. Existing lessee's can submit as part of this process.</p>
<p>Step 7: Council staff consider submissions received during the notification period. If the proposed lease or licence term is over 5 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for consent, as required in the Act.</p>	<p>Step 7: Council staff assess expressions of interest against the criteria set out in Table 6 of this Policy and recommend the preferred tenant and its category.</p>
<p>Step 8: Council staff liaise with tenant and complete leasing process.</p>	<p>Step 8: Council publicly notifies of intent to lease/licence the property, in accordance with the Act.</p>
	<p>Step 9: Council staff consider any submissions received during the notification period. If the proposed lease or licence term is over 5 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for consent, as required in the Act.</p>
	<p>Step 10: Council staff liaise with tenant and complete leasing process.</p>

Reporting and review

43. Leasees and licensees will complete a short annual survey on their use and management of the facility.
44. Twelve months prior to the expiry of a lease or licence with a Category 1-7 tenant, Council will request a report from the tenant containing information about:
 - Use of the facility and/or land and any community benefit provided
 - Legal status of the organisation and funding sources
 - Any business, management and development plans, as well as recent annual reports
 - Any improvements made to the facility and/or land, including capital expenditure
 - Plans for future improvements and capital expenditure, including potential funding.
45. Council will review the report, the tenant's history and the criteria set out in Table 6 of this policy.
46. At least six months prior to the expiry date of the lease or licence, Council will inform the tenant of its intention to either offer a new lease or licence or seek expressions of interest for the facility or building.
47. This policy will be reviewed at least every four years.

Related resources

48. There are a range of legislative requirements relating to the management and use of council-owned facilities and buildings in NSW. These include requirements under the Local Government Act 1993 about the leasing and licensing of facilities.
49. Section 46 of the Act allows a council to grant a lease or licence for a community facility, if authorised in a plan of management that applies to the land. A lease or license agreement can be negotiated at any time and is for a set term. The maximum period for leases and licences on community land under the Act, without the approval of the Minister, is 21 years. Under Sections 47 and 47A of the Act, proposed leases or licences must be publicly notified for a period of at least 28 days. If the proposed lease or licence term is greater than five years, and the council receives an objection to the proposal, the Minister must provide consent before the lease or licence can be granted.
50. Community land is also regulated by plans of management. Under Sections 35 and 36 of the Act, these must be prepared for all community land, and must include the:
 - a. objectives and performance targets for the land

- b. means by which the council proposes to achieve the plan's objectives and performance targets
- c. way in which the council proposes to assess its performance against the plan
- d. activities which require the prior approval of the council before they can be carried out.

51. Other important sections of the Act which are relevant to this policy are:

- e. Section 440, which requires councils to adopt a code of conduct to guide the behaviour of councillors, staff members and council delegates in carrying out their functions
- f. Section 610F, which requires councils to publicly advertise all proposed fees and charges for at least 28 days, as part of their draft operational plan.

52. Under the *Crown Land Management Act 2016*, Crown land must be managed as if it were community land under the *Local Government Act 1993*, unless the land has been classified as operational land with the consent of the Minister.

53. This policy will be implemented in accordance with these and other provisions of the Act and the following related legislation, regulations, policies and plans:

Council policy documents

- a. Code of Conduct
- b. Statement of Business Ethics
- c. Complaints and Feedback Management Policy
- d. Complaints and Feedback Management Procedure

Council strategies and plans

- a. One – Central Coast Community Strategic Plan
- b. Asset Management Strategy
- c. Relevant Plans of Management

Legislative documents

- a. Local Government Act 1993
- b. Local Government (General) Regulation 2005
- c. Aboriginal Land Rights ACT 1983
- d. Crown Land Management Act 2016
- e. Retail Leases Act 1994
- f. Conveyancing Act 1919
- g. Residential Tenancies Act 2010
- h. State Records Act 1998
- i. Work Health and Safety Act 2011
- j. Native Title Act 1993 (Commonwealth)
- k. Native Title (New South Wales) Act 1994

History of revisions

Amendment history	Details
Original approval authority details	<p data-bbox="603 488 1018 521">Chief Executive Officer / Council</p> <hr data-bbox="595 595 1437 600"/> <p data-bbox="603 618 1082 651">10 August 2020 – Minute No: 733/20</p> <hr data-bbox="595 674 1437 678"/> <p data-bbox="603 678 1422 1059">Following a Council resolution on 24 September 2018, Central Coast Council conducted a review of the use and management of its community facilities to ensure a consistent and transparent approach to the management, operation and planning of Council’s community facilities. The Facilities Leasing and Licencing Policy was created as a result of the review, which focused on the use and management of community facilities operating under lease, licence, hire and volunteer models.</p>