

MURRAY RIVER COUNCIL
COUNCIL POLICY

DRAFT
**LEASING
AND
LICENSING
POLICY**

POL-218.V#1



murray river
council

1. INTRODUCTION

This Policy may be cited as the “Leasing and Licensing of Council Land Policy”.

2. OBJECTIVE/PURPOSE:

- (a) 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.
- (b) This Policy is a general guide to the principles and criteria that are to be followed when Council leases or licences Council Land but is not intended as a complete statement on the subject.
- (c) The objectives of this Policy are:
 - (i) to acknowledge that Council 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.
- (d) 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; and
 - (ii) an endorsed framework to enable and pursue Council Land leasing and licensing opportunities of merit and pro-actively present such opportunities to Council.
- (e) 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.

3. SCOPE

This Policy applies to the leasing or licensing of all Council Land.

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.

4. LEGISLATION

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

- ▶ Local Government Act 1993 (LG Act)
- ▶ Local Government (General) Regulation 2021
- ▶ Crown Land Management Act 2016 (CLM Act)
- ▶ Crown Land Management Regulation 2018 (CLM Regulation)
- ▶ Retail Leases Act 1994
- ▶ Retail Leases Regulation 2022
- ▶ Roads Act 1993
- ▶ Roads Regulation 2018

POLICY STATEMENT

5. AGREEMENT TYPE – LEASE OR LICENCE

5.1 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), subject to complying with any applicable lease registration requirements.
- (d) A lease can be transferred (assigned) to another party but usually subject to the consent of Council.

5.2 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).

6. GENERAL REQUIREMENTS

6.1 LAND TYPE

- (a) The type 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) Under the CLM Act, the Crown Land Manager is authorised to manage its dedicated or reserved Crown Land as if it were Public Land (subject to Division 3.4 of Part 3 of the CLM Act).
- (d) 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 – classified as either:
 - (A) Community Land; or
 - (B) Operational Land; or
 - (iii) a Public Road.

6.2 FUNCTION OF COUNCIL AS CROWN LAND MANAGER

- (a) Council (as Crown Land Manager) is authorised to manage its dedicated or reserved Crown Land as if it were Public Land (subject to Division 3.4 of Part 3 of the CLM Act).
- (b) Council, as Crown Land Manager, cannot:
 - (i) sell or dispose of the Crown Land in any way (unless the Crown Minister gives written consent for it);
 - (ii) classify Crown Land as Operational Land (unless the Crown Minister gives written consent for it);

- (iii) do any other thing under the LG Act that would involve a contravention of a provision of the CLM Act that applies to council managers; or
- (iv) do anything that contravenes:
 - (A) any limitations or other restrictions specified by the provisions of the manager's appointment instrument; or
 - (B) the CLM Regulation; or
 - (C) any applicable Crown land management rules, or
 - (D) any applicable plan of management under Division 3.6 (if there is no requirement for a plan of management under the LG Act).

6.3 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 or applying to it.
- (ii) Council may only issue a lease or licence:
 - (A) 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; or
 - (B) for any other reason specified in Section 46(1) of the LG Act.
- (iii) Where a proposed lease or licence is not consistent with the core objectives of the relevant Plan of Management for Community Land (and is not otherwise permitted under Section 46(1) of the LG Act) then Council will be in breach of the LG Act if it grants the lease or licence.
- (iv) The term of the lease or licence, including any option to renew, must not exceed twenty-one (21) years (except with the LG 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 comply with the provisions of Section 47 of the LG Act.
- (vi) If Council proposes to grant a lease or licence for a period (including any option to renew) of five (5) years or less, it must comply with the provisions of Section 47A of the LG Act.
- (vii) Before granting the lease or licence, Council must consider all submissions made to it (in response to the notice). Council must not grant a lease or licence except with the written consent of the LG Minister if:
 - (A) in relation to a lease or licence for a period (including any option to renew) exceeding five (5) years, a submission by way of objection is received; or
 - (B) in relation to a lease or licence for a period (including any option to renew) of five (5) years or less, Council receives a written request from the LG Minister.
- (viii) A lease or licence of Community Land:
 - (A) for a term of less than five (5) years – may be granted by expression of interest or tender

(unless specified otherwise in the relevant plan of management) or any other means permitted by this Policy;

- (B) for a term exceeding five (5) years:
 - (I) may be granted only by way of tender in accordance with Division 1 of Part 3 of the LG Act unless it is granted to a non-profit organisation (pursuant to Section 46 A(3) of the LG Act);
 - (II) to a non-profit organisation, may be granted by expression of interest or tender (unless specified otherwise in the relevant plan of management) or any other means permitted by this Policy
- (ix) The procedure set out in the attached flow chart for dealing with Community Land should be followed.
- (x) When granting a lease or licence over Community Land, the relevant Council Officer should also consider the requirement for approval pursuant to Section 68 of the LG Act.

(b) Public Land – 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 parcel of land and can be leased or licensed for any period of time as determined by Council.
- (iii) Where Council proposes to lease Operational Land (whether vacant land or not) for a period greater than or equal to ten (10) years, Council must comply with the Land Acquisition and Disposal Policy.

(c) Crown Land

- (i) The functions of Council as a Crown Land Manager of specified dedicated or reserved Crown Land are:
 - (A) to be the person responsible for the care, control and management of the Crown Land for purposes referred to in Section 2.12 of the CLM Act applicable to the land; and
 - (B) to exercise any other functions that are conferred or imposed on the manager by or under the CLM Act or another Act (including by Divisions 3.4 and 3.5).
- (ii) Dedicated or reserved Crown land may be used only for the following purposes and, therefore, any lease or licence of Crown Land may only be for the following purposes:
 - (A) the purposes for which it is dedicated or reserved;
 - (B) any purpose incidental or ancillary to a purpose for which it is dedicated or reserved; or
 - (C) any other purposes authorised by or under the CLM Act or another Act.
- (iii) When Council is appointed as Crown Land Manager, it has the authority to manage Crown Land as if it were Public Land, including classifying the land as Community Land or Operational Land.
- (iv) If Crown Land is classified as Community Land, then a lease or licence may be granted in accordance with this Subclause and Clause 4.3(a). If Council has not yet adopted its first plan of management for the land (for the purposes of Section 3.23 of the CLM Act), Council may

only grant a lease or licence in accordance with Clause 70 of the CLM Regulation.

- (v) If Crown Land is classified as Operational Land, then a lease or licence may be granted in accordance with this Subclause and Clause 4.3(b).
- (vi) 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.
- (vii) The standard lease or licence template for Crown Land should be used for all leases or licences of Crown Land.
- (viii) The procedure set out in the attached flow chart for dealing with Community Land should be followed for Crown Land (unless it is classified as Operational Land or subject to Clause 70 of the CLM Regulation).

(d) 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, 1A 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 road or any Public Road declared to be under the control of some other authority (i.e. TfNSW).
- (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). The following restrictions apply:
 - (A) the term of the lease, together with any option to renew, must not exceed five (5) years; and
 - (B) no structure may be constructed on the Public Road 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).
- (v) Pursuant to Section 153(3) of the Roads Act a lease may be terminated by Council at any time and for any reason (and the lease should include a clause to this effect).
- (vi) Before granting a lease of a Public Road, Council must cause notice of the proposed lease:
 - (A) to be published in a local newspaper; and
 - (B) to be served on the owner of each parcel of land adjoining the length of public road concerned.

The notice:

- (A) must identify the public road concerned; and
 - (B) must state that any person is entitled to make submissions to Council with respect to the proposed lease; and
 - (C) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.
- (ii) If Council receives any submissions, it must consider those submissions. After considering the submissions, Council may grant the lease, either with or without alteration, or may refuse to grant the lease. If Council grants a lease, it must cause notice of that fact to be published in a local newspaper.

- (iii) 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), but only with the approval of the Secretary of the Department of Planning and Environment.

6.4 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 Regulation sets out which leases the Retail Leases Act applies to (noting, however, that there are certain exceptions under Sections 6 and 6A of the Retail Leases Act).
- (c) The requirements under the Retail Leases Act are in addition to the restrictions and any relevant requirements under the LG Act or under the CLM Act.
- (d) There are certain procedural and disclosure requirements for retail leases including for Lessor's and Lessee's Disclosure Statements (pursuant to Sections 11 and 11A of the Retail Leases Act) which must be given to the proposed lessee at least 7 days prior to the lease being entered into.
- (e) 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.

7. DETERMINING RENT AND LESSEE / LICENSEE

7.1 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.
- (i) Current market rent will be charged by Council on all commercial leases.
- (d) 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).
- (e) 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.

7.2 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 Planning, Housing and Infrastructure – Crown 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 7.3 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 Council 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 or the CLM 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.

7.3 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.

7.4 DEFINITIONS IN THIS CLAUSE

In this clause 7 only:

- (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.

8. SELECTION PROCESS

8.1 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.

8.2 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 a Tender

- (i) A lease or licence of Community Land for a term exceeding 5 years may be granted only by tender in accordance with Division 1 of Part 3 of the LG Act, unless it is granted to a non-profit organisation.
- (ii) Council may elect to use a tender process for the granting of a lease or licence in any other circumstance.
- (iii) Council must comply with its Procurement Policy (insofar as it is relevant to leasing and licensing by way of tender).

(b) Advertised as an 'Expression of Interest'

This option is appropriate in the following circumstances:

- (i) the use of the Council Land or Crown 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 three (3) Council Officers.

(c) 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) If Council engages a real estate agent, Council must provide a copy of this Policy to the agent.
- (iv) Applications will be assessed by a panel of at least three (3) Council Officers.

(d) 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 required to provide a prepared proposal to Council which is to be assessed by a panel of at least three (3) Council Officers.

8.3 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.

8.4 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 (unless such lessee/licensee is in default or has been in default during the term of the lease/licence).

9. OTHER CONSIDERATIONS

9.1 AGISTMENT OF LAND

- (a) Council may enter into an agreement with another party for that party to agist cattle, horses or other stock 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) Depending on the type of land, the relevant parts of Clause 6.3 and 7 must be followed.
- (d) At the expiry of an agistment agreement the land may (but is not obligated to) be offered to the current licensee (agistee) for a further term subject to a market fee review.
- (e) 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.

9.2 INSTRUCTIONS

Once the lessee or licensee has been determined and the terms of the lease or licence have been negotiated, Council's Chief Legal Counsel 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.

9.3 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 (in accordance with the lease or licence).
- (b) These policies will include:
 - (i) public liability insurance not less than \$20 million;
 - (ii) workers compensation insurance (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 of Insurance during each year of the term.

9.4 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 (including any option to renew) exceeding of three (3) years must be registered on title and Council may elect to register any leases for a term of three (3) years or less.

- (c) The costs associated with the registration of the lease must be paid by the lessee, (except for leases over a Public Road where a folio for the Public Road has not been created).
- (d) Any legal fees associated with assignments, sub leases, surrenders or variation to a lease or licence will be payable by the lessee or licensee.

9.5 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 (h) 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.

10. EXECUTION OF LEASE OR LICENCE

- (a) Leases should be executed by Council under the Council Seal pursuant to Regulation 400 of the LG Regulation.
- (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 or 378 of the LG Act.

11. ROLES AND RESPONSIBILITIES

Position	Responsibility
Chief Executive Officer	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy and related Procedures.
Directors, Managers and Supervisors	To communicate, implement and comply with this policy and related Procedures.
All Council Employees	To be aware of and ensure compliance with this Policy.
Council Committees	To be aware of and adhere to this Policy.

12. EVALUATION AND REVIEW

It is the responsibility of the Chief Legal Counsel, to monitor the adequacy of this Policy and recommend appropriate changes.

This Policy will be formally reviewed every four (4) years or as needed, whichever comes first.

13. NON-COMPLIANCE

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.

14. ASSOCIATED DOCUMENTS, DEFINITIONS & ACRONYMS

External:

When implementing this Policy, Council should take into consideration the following (where applicable):

- ▶ Independent Commission Against Corruption (ICAC) – Direct Negotiations: Guidelines for Managing Risks; and
- ▶ NSW Government – Unsolicited Proposals: Guide for Submission and Assessment,

and this Policy is to be read as being subject to Council complying with these (where applicable).

Internal:

- ▶ MRC Policy - Asset Management Policy (POL-305)
- ▶ MRC Policy - Delegations of Authority (CEO and Mayor) Policy (POL-102)
- ▶ MRC Policy - Delegations of Authority (CEO to Employees) Policy (POL-107)
- ▶ MRC Policy - Land Acquisition and Disposal Policy (POL-602)
- ▶ MRC Policy - Procurement Policy (POL-205)
- ▶ MRC Policy - Statement of Business Ethics Policy (POL-111).

(or any amended or replacement policy).

Definitions:

Term	Definition
CLM Act	the Crown Land Management Act 2016.
CLM Regulation	the Crown Land Management Regulation 2018.
Community Land	(i) Public Land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the LG Act; or (ii) Crown Land that is classified as community land under section 3.21 of the CLM Act and Division 1 of Part 2 of Chapter 6 of the LG Act.
Council	Murray River Council and its successors.
Council Land	all land owned, controlled or managed by Council (including Public Land and Crown Land).
Council Officer	any staff member of Council.
Crown Land	has the same meaning as in Section 1.7 of the CLM Act.
Crown Land Manager	▶ the persons appointed as the Crown land ▶ means manager for the relevant land under Part 3 of Division 3.2 of the CLM Act.
Crown Minister	the Minister for Lands and Property.

Land Register	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)
Lease Register	Councils Register of Leased and Licensed properties.
LG Act	the Local Government Act 1993.
LG Minister	the Minister for Local Government.
Operational Land	<ul style="list-style-type: none"> (i) Public Land that is classified as operational land under Division 1 of Part 2 of Chapter 6 of the LG Act; or (ii) Crown Land that is classified as operational land under section 3.21 of the CLM Act and Division 1 of Part 2 of Chapter 6 of the LG Act.
Plan of Management	<p>a plan of management adopted by Council:</p> <ul style="list-style-type: none"> (i) under Division 2 of Part 2 of Chapter 6 of the LG Act, to manage Community Land; or (ii) under section 3.23 of the CLM Act to manage Crown Land.
Public Land	<p>any land (including a public reserve) vested in or under the control of Council, but does not include:</p> <ul style="list-style-type: none"> (i) a Public Road; or (ii) land to which the CLM Act applies; or (iii) a common (as defined in the Commons Management Act 1989); or (iv) a regional park under the National Parks and Wildlife Act 1974.
Public Road	<ul style="list-style-type: none"> (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.
Retail Leases Act	the Retail Leases Act 1994.
Retail Leases Regulation	the Retail Leases Regulation 2022.
Roads Act	Roads Act 1993.
Roads Authority	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.
TfNSW	Transport for NSW constituted under the Transport & Administration Act 1988.
Valuer	<p>a person who:</p> <ul style="list-style-type: none"> (i) is a full member of the Australian Property Institute Inc (NSW Division) and has been for the last 5 years; (ii) holds a licence to practise as a valuer; (iii) is active in the relevant market at the time of his appointment; and (iv) has at least 5 years experience in undertaking valuations of the nature of the requirements of this Policy.

15. DOCUMENT CONTROL

Version No.	Details	Dates	CM9 Reference	Resolution No.
1	Final Policy for adoption – Policy prepared by Kell Moore Lawyers and Conveyancers	DRAFT	VF/24/907	040424

Council reserves the right to review, vary or revoke this policy at any time
This Policy is scheduled for review in before 2028

NOTE:

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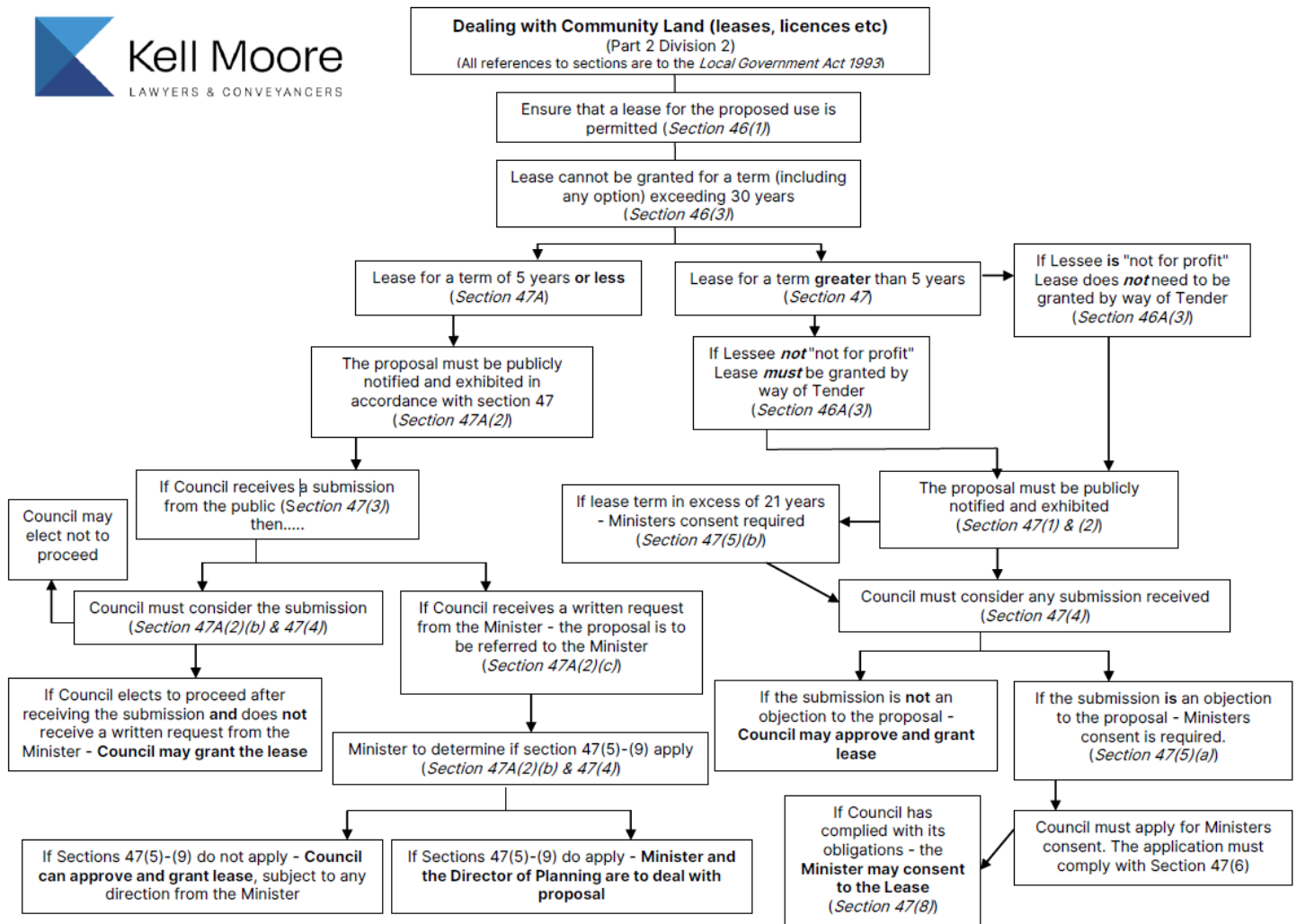
DISCLAIMER:

This document was formulated to be consistent with Murray River Council's legislative obligations and with the scope of Council's powers. This document should be read in conjunction with relevant legislation, guidelines and codes of practice. In the case of any discrepancies, the most recent legislation should prevail. This document does not constitute legal advice. Legal advice should be sought in relation to particular circumstances and liability will not be accepted for losses incurred as a result of reliance on this document.

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this, such a change may be made administratively. Examples include a change to the name of a Business Unit, position title or a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. When such changes are made the version number will be amended and an extension added (eg V#1.1)

ANNEXURE

Flow Chart for Dealing with Community Land



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.

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