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1 Policy statement/Objectives

The purpose of this policy is to provide clear requirements regarding the use and occupation of Council owned or managed public places within the Kiama Local Government Area (LGA) under agreements.

The objectives of this policy are:

- to establish leasing and licensing guidelines for use and occupation of public places.
- to provide clear governance and procedural requirements for the use and occupation of public places under agreements.

2 Scope

This policy applies to Council owned and managed public places within the Kiama LGA.

3 References

This document should be read in conjunction with the following:

- Local Government Act 1993
- Local Government Regulation 2021
- Crown Land Management Act 2016
- Crown Land Management Regulation 2018
- Native Title (New South Wales) Act 1994
- Retail Leases Act 1994
- Residential Tenancies Act 2010
- Roads Act 1993
- Environmental Planning and Assessment Act 1979
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Kiama Local Environmental Plan 2011
- Kiama Development Control Plan 2020
- Plans of Management
- Footpath Dining Policy
- Acquisition and Disposal of Land and Easements Policy
- Commercial Fitness Activities and Personal Training Policy
- Markets Policy
- Surf Schools on Seven Mile Beach Guidelines

4 Consultations

Internal

- Management Leadership Team (MLT)

- Executive Leadership Team (ELT)
- Council staff responsible for application of existing guidelines.

External

- Public exhibition for 28 days, from 26 August 2022 to 23 September 2022.

5 Definitions

Term	Definition
Expression of Interest (EOI)	refers to a transparent public process seeking written interest from individuals or operators to conduct a use or activity on approved public places under an agreement
Lease	refers to the written permission from Kiama Municipal Council to a person, operator or company to use or occupy a public place
Licence	refers to the written permission from Kiama Municipal Council to a person, operator or company to use or occupy public places on a non-exclusive basis
Public place	means; a public reserve, public bathing reserve, public baths, public swimming pool, public road, public bridge; Crown reserve comprising and reserved for future public requirements; public land or Crown land that is not a Crown reserve; land that has been sold or leased or contracted to be sold or leased; land that is declared by the regulations to be a public place for the purposes of this definition
Public land	means any land including a public reserve vested in or under the control of the council but does not include a public road or land to which the <i>Crown Land Management Act 2016</i> applies
Public reserve	means; a public park, any land conveyed or transferred to council under section 340A of the <i>Local Government Act 1919</i> ; any land dedicated or taken to be dedicated as public reserve under s340C or 340D of the <i>Local Government Act 1919</i> ; any land dedicated or taken to be dedicated under section 49 or 50 of the <i>Local Government Act 1993</i> ; any land vested in the council and declared to be a public reserve under section 377AAA of the <i>Crown Lands Consolidation Act 1913</i> ; any land vested in the council and declared to be a public reserve under section 76 of the <i>Crown Lands Act 1989</i> ; Council-managed Crown land that is dedicated or reserved for public recreation or for a public cemetery or for a purpose that falls within the scope of this definition by means of an order published in the gazette by the Minister administering the <i>Crown Land Management Act 2016</i> ; land declared to be a public reserve and placed under the control of Council under section 52 of the <i>State Roads Act 1986</i> ; land dedicated as a public reserve and placed under the control of Council under section 159 of the <i>Roads Act 1993</i> ; a public reserve of which Council as control under section 344 of the <i>Local Government Act 1919</i> or section 48 of <i>Local Government Act 1993</i>
Public road	means a road dedicated by plan of subdivision, gazette notice or under the <i>Roads Act 1993</i> that is controlled by Kiama Municipal Council which the public are entitled to use
Road	includes a highway, street, lane, footpath, cycleway, thoroughfare, bridge, culvert, causeway or crossing whether temporary or permanent

Term	Definition
	and any part of a road and any part of any thing referred to in this definition
Short-term licence	refers to the written permission from Kiama Municipal Council to a person, operator or company to use or occupy public places on a non-exclusive basis for a term not exceeding 12 months
Tender	means the process described by section 55 of the <i>Local Government Act 1993</i> and Part 7 of the <i>Local Government Regulation 2021</i>

6 Variation and review

Council reserves the right to review, vary or revoke this policy.

Review history

Date reviewed	Date adopted/endorsed	Brief detail of amendments
7 July 2022	15 November 2022	Major review of Guidelines content and layout to reflect current legislation and statutory frameworks
4 June 2020	23 June 2020	<p><i>1. Management and Use of Council Public Roads and Footpaths</i></p> <p>Council resolved on 17 March 2020 to adopt Development Control Plan 2020. This affects the provisions in the Guidelines for mobile food and drink vending and has been updated accordingly.</p> <p><i>2. Management and Use of Public Land, Reserves and Council-Managed Crown Land</i></p> <p>Table 3 identifying the current permissible land uses/activities on public land under the relevant legislations has been updated to correct the listing of uses under short term licence, or lease.</p> <p><i>3. Use of Tenders and Expressions of Interest for land use agreements on public land and public reserves</i></p> <p>A correction was required to the Local Government Act requirements for tendering. Only leases on community land exceeding 5 years (excluding not-for-profits) requires tendering under the Act. No other matter requires tendering.</p> <p><i>4. Agreements requiring Council resolution –</i></p> <p>In association with 3 above, leases and licences that are the subject of an EOI process (not required to go through tender under the Act) do not require Council resolution and will become delegated to the General Manager with the existing other listed matters.</p>
N/A	17 March 2020	New guidelines

POLICY

7 Management of public places

7.1 Permissible uses

Council manages a property portfolio consisting of public reserves and other public land under both direct ownership and land vested in management control including public road reserves. These are collectively known as public places. In order to use public places for organised activities, written consent from Kiama Council is required under a land use agreement.

A land use agreement is the formal written arrangement between Council (as landowner) and the user of the land. This could be in the form of a lease or licence. The land use agreement imposes specific conditions attaching to the use of the land.

Under section 34 of the Local Government Act 1993, Council has to classify land as operational or community (excluding public roads). Council manages land differently according to the classification.

7.1.1 Operational land

Use of Council operational land under an agreement has to consider the land zoning/permisibility (Kiama Local Environmental Plan 2011). Other relevant considerations include any Development Control Plans, Council policies, as well as State Environmental Planning Policy (Exempt and Complying Development) 2008 and State Environmental Planning Policy (Transport and Infrastructure) 2021.

Council's objectives in the consideration of land use agreements on operational land are maximum revenue generation, full cost recoupment (incurred through the preparation of the land use agreements) and maximum property outgoings off-set.

7.1.2 Community land

Use of Council community land under an agreement has to consider the land zoning/permisibility (*Kiama Local Environmental Plan 2011*). Leases and licences on community land can be granted for uses under the provisions of section 46 of the *Local Government Act 1993*. Specifically, the lease or licence can be granted for:

- a use under s46(1)(a) or (1)(a1) or (1)(c),
- when authorised by the Plan of Management (s46(1)(b)) and consistent with the objectives of the land categorisation (s46(2)) for the following:
 - purposes prescribed by s46(4),
 - purposes consistent with core objectives of community land categorised natural area or foreshore,
 - short-term casual purpose under s46(1)(b)(iii)

Other relevant considerations include any Development Control Plans, Council policies, as well as *State Environmental Planning Policy (Exempt and Complying Development) 2008* and *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

Council's objectives in the consideration of land use agreements on community land include a combination of commercial consideration/revenue prescribed by Council's Fees and Charges, cost recoupment (incurred through the preparation of the land use agreements) and reasonable property outgoings off-set.

7.1.3 Council-managed crown land

Council-managed crown land is managed as if it were Council owned community land. Use of Council managed crown land under an agreement has to consider the land

zoning/permisibility (*Kiama Local Environmental Plan 2011*), the gazetted reserve purpose and the Plan of Management in place for the land - a lease or licence can be granted if it relates to the reserve purpose, is authorised by the plan of management or the use is for a prescribed purpose. (NB: refer 7.2 for interim arrangements regarding leases and licences on Council managed crown land in the pre-Plan of Management phase). Other relevant considerations include any Development Control Plans, Council policies, *State Environmental Planning Policy (Exempt and Complying Development) 2008* and *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

Council's objectives in the consideration of land use agreements on community land include a combination of commercial consideration/revenue prescribed by Council's Fees and Charges, cost recoupment (incurred through the preparation of the land use agreements) and reasonable property outgoings off-set.

7.1.4 Public roads

Use of Council controlled public roads under an agreement has to consider the land zoning/permisibility (*Kiama Local Environmental Plan 2011*) as well as any Council policies or Development Control Plans. Under the *Roads Act 1993*, Council as the roads authority can consider the issue of land use agreements including but not limited to footpath dining, structures over a road reserve, street vending, lease of public roads and lease of air space.

Council's objectives in the consideration of land use agreements on public roads are a combination of commercial consideration/revenue prescribed by Council's Fees and Charges, cost recoupment (incurred through the preparation of the land use agreements) and reasonable property outgoings off-set.

7.2 Agreements

7.2.1 Leases

- Leases are used for land use agreements of 1 year + terms
- Leases are appropriate where there is exclusivity of use
- Where a lease also involves the erection of structures or fit-out works the lease will be pre-enabled by an Agreement for Lease and Construction Agreement (for works being undertaken)
- Maximum lease terms are determined by legislation. Under the Local Government Act 1993 the maximum lease term is 30 years and Crown Land Regulation 2018 either 5 years or 21 years. The Roads Act 1993 provides varying lease terms depending on the use. Lease terms will generally be determined through a negotiated process however, Council will consider capping maximum lease terms to achieve property/asset strategies.
- Under the Crown Land Management Regulation 2018, leases can only be considered during the pre-Plan of Management period if listed under cl.70(2) of the Regulation.
- Where a tender or EOI is undertaken, the lease term will be specified.
- Sub-lease on community land is determined by s47C of the Local Government Act 1993. Sub-let uses are to be the same as approved under lease, as notified with the lease, or for a use prescribed by the *Local Government Regulation 2021*, notwithstanding cl.119 of the Regulation provides additional sub-lease uses for surf clubs and sporting clubs.
- Registration of a lease will be considered for longer lease terms, where options are in place and leases on operational land. A lessee may specifically require a lease to be registered.

- Lease documentation is required to be executed within 60 days of receiving the draft lease from Council. Alternate lease negotiations and opportunities can be pursued by Council if not completed in this time.

7.2.2 Licences

- Licences will be used for land use agreements of 1 year + terms
- Licences are the preferred land use agreement where there is no exclusivity of land use. The use can be regular and continuous or take place for short periods of time.
- Maximum licence terms are determined by legislation. Under the Local Government Act 1993 the maximum term is 30 years. Licence terms will generally be determined through a negotiated process however, Council will consider capping maximum licence terms to achieve property/asset strategies. Licences on Council managed crown land can only be issued as short-term licences pre-Plan of Management adoption (refer 7.2.3).
- Where an EOI is undertaken, the licence term will be specified.
- Licence documentation is required to be executed within 30 days of receiving the draft lease from Council. Alternate lease negotiations and opportunities can be pursued by Council if not completed in this time.

7.2.3 Short term licences

- Short-term licences are for uses occurring up to 12 months, whether regular, continuous or one-off in occurrence
- Short-term licences include those short-term and casual basis uses under cl.116 of the Local Government Regulation 2021. Short-term casual basis licences apply to:

the playing of a musical instrument, or singing, for fee or reward
engaging in a trade or business
the playing of a lawful game or sport
the delivery of a public address
commercial photographic sessions
picnics and private celebrations such as weddings and family gatherings
filming sessions
agistment of stock
transport building materials and equipment required in relation to building work that is to be, or is being, carried out on land adjoining the community land or to remove waste that is consequential on such work

- The *Crown Land Management Act 2016* permits short-term licences (12- month term) on Council managed crown land until the Plan of Management takes effect. Section 2.20(3) of the Act allows short-term licences for purposes inconsistent with the crown land dedication or reservation.
- Where an EOI is undertaken, the licence term will be specified.

- Licence documentation is required to be executed within 10 days of issue. Council may pursue alternate negotiations and opportunities with other parties if not completed in this time.

7.2.4 Consents

- Under the *Roads Act 1993*, land uses can be approved by way of leases and consents. Maximum lease terms and consent periods are determined by the *Roads Act 1993*. Terms for other uses on road reserves may be specified in separate policies of Council listed at 6.10 of this policy or otherwise as allowed under the Act.
- Consents/leases are required to be executed within 10 days of issue. Council may pursue alternate negotiations and opportunities with other parties if not completed in this time.

7.3 Financial

7.3.1 Rental

- Council's Fees and Charges specify methods to determine rental including prescribed amounts, independent valuation advice and through expression of interest/tender process
- When market valuation has been obtained the valuation advice will only be relied upon if it has been obtained in the previous 12 months.
- Lease rental (excluding prescribed Fees & Charges) is indexed annually in accordance with CPI (All Groups Sydney) or minimum 3%, whichever is the greater.

7.3.2 Outgoings

Land use agreements require the lessee to be responsible for outgoings where applicable including but not limited to:

- Council rates and land tax (operational land only)
- water usage and charges (water charges operational land only)
- electricity usage
- garbage collection
- building insurance (proportional) for that premises defined under the agreement
- trade waste servicing

7.3.3 Cost recoupment

Council's Fees and Charges requires the following costs to be met by the lessee:

- statutory advertising costs
- proportional costs of valuation to determine rental with market rent reviews (options)
- reasonable legal costs of Council (in the preparation and formulation of the agreement)
- lease registration costs
- survey costs
- native title assessment (if applicable)

7.3.4 Bond/Bank guarantee

A bond or bank guarantee may be imposed with a lease or licence. The minimum amount will be 5% of the annual rental. In some circumstances and at Council's discretion a higher amount up to 25% of the annual rental/scheduled annual fee will be imposed.

Council's Fees and Charges may prescribe the bond or bank guarantee amount. If it is specified, the Fees and Charges amount will be applied to the lease or licence.

7.4 Maintenance obligations

Land use agreements stipulate the respective obligations and responsibilities of the lessor and lessee with regard to building maintenance and repairs.

For the term of the agreement and unless specifically stated otherwise Council (as lessor) will assume responsibility for:

- the structural and external components of the asset including repair and if required replacement
- the provision of required inspections for fire safety systems (excluding those specific fire safety measures installed directly as a result of the lessee's specific use of the premises)
- maintaining essential services to the land/premises (electricity, gas, water, sewer)
- existing ducted air conditioning systems

For the term of the agreement and unless specifically stated otherwise (excluding residential property management agreements where responsibilities of landlord and tenant are defined under the *Residential Tenancies Act 2010*), Council will require the lessee to be responsible for (but not limited to):

- maintaining the property (including cleaning) throughout the lease in its condition at the commencement date of occupation
- undertaking all general maintenance to the property exterior including vegetation and weed control, keeping gutters and drains free from debris and sediment build up
- rectifying blocked drains and pipes
- replacing missing or damaged wall and floor tiling, spent light globes, broken power points and hot water systems
- repairing light fittings/electrical fixtures, plumbing fittings and split a/c system
- maintaining and repairing all doors, fences, gates, hinges, locks, windows, glazing and window frames and keeping them in good working order
- repainting the internal walls and ceiling of the premises and any external areas in a neutral tone at five-year intervals
- grease trap cleaning and servicing according to trade waste agreement schedule
- waste control and removal
- pest and vermin control

7.5 Lease and Licence advertising

Under the *Local Government Act 1993*, leases and licences on community land must be publicly advertised for 28 days. Advertising includes:

- notice on Council website

- notice on the land to which the proposal relates including land description, proposed use, term, licensee and submission period
- notice to adjoining property owners and occupiers
- notice to owners and occupiers in the vicinity if it is considered the land is likely to form the primary focus of the person's enjoyment of the community land

Under the *Roads Act 1993*, leases of unused areas of road and road closures must be publicly advertised for 28 days. Advertising includes:

- notice on Council website
- notice to adjoining property owners and occupiers

The following uses are **exempt** from the requirement to advertise:

- uses on operational land
- short-term licences on Council-managed crown land (in the pre-Plan of Management period)
- use and occupation of community land specified under cl.116(1) and (4) of the Local Government *Regulation 2021* (see table below for described uses) on a short-term casual basis and when the use/occupation does not involve;
 - the erection of any building or structure of a permanent nature;
 - the use/occupation of community land (that occurs once) does not exceed three consecutive days; or,
 - the use/occupation of community land (that does occur more than once) does not exceed three consecutive days (not including Saturday or Sunday) and the period between the first and last occurrence is not greater than 12 months.

the provision of pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider that is situated on the community land

a public performance (a theatrical, musical or other entertainment for the amusement of the public)

the playing of a musical instrument, or singing, for fee or reward

engaging in a trade or business

playing of any lawful game or sport

delivering a public address

conducting a commercial photographic session

picnics and private celebrations such as weddings and family gatherings

filming

7.5.1 Native Title

The *Crown Land Management Act 2016* requires a native title to be considered for all land use activities and proposals on crown land. Council undertakes the native title assessment. A separate fee is charged for this.

7.5.2 Aboriginal land claims/Aboriginal cultural heritage

Council will consider the existence of Aboriginal land claims/Aboriginal cultural heritage with any uses proposed on Council managed crown land under a lease or licence.

7.6 Public road reserves

Council public road reserves do not include classified roads controlled by the RMS. Under the *Roads Act 1993* a range of land uses are able to be considered under land use agreement including on Council controlled public roads:

- footpath dining (s125)
- structures over a road reserve (s139)
- street vending (s139a)
- lease of public roads (s153)
- lease of air space (s149)
- closure of public roads (Part 4)
- road and footpath occupations for minor and major works, on-road filming, access, fencing and hoardings, on-road signposted work zones (s138)
- permits for road events (s144) to conduct an event on a public road
- permits for public gates (s128) for access purposes

7.7 Specific uses and activities on road reserves

7.7.1 Structures over a road reserve

(a) *Awnings and balconies*

Council can consider structures (eg; awnings and balconies) under s138/139 of the *Roads Act 1993*. A consent under s138/139 is issued after the granting of a development consent (use of the road reserve with a permanent structure). Existing awning structures attached to building shopfronts pre-dating development approvals only require a s138/139 consent.

New and redeveloped awnings will only be considered for approval if:

- an unobstructed vertical clearance (from the underside of the balcony) of 2,700mm exists from the respective point of the footpath finished surface level,
- awning support posts/structures are located 800mm from the back of the road kerb,
- a design by a suitably qualified chartered professional engineer certifies that the individual stanchions/posts if dislodged by vehicle collision will not result in collapse and are cantilevered to achieve structural integrity.

Consent for structures over a road reserve are issued for a maximum term of three years. The owner of the property the awning attaches is responsible for providing structural certification from an appropriately qualified engineer every three-year consent term. The responsibility for awnings over roads belongs to the person who has the control, use or benefit of the awning under section 142 of the *Roads Act 1993*. Council cannot issue a s139 consent for an awning, balcony or the like without structural certification evidence and certificate of currency of public liability insurance (\$20M) for the term of the s139 consent.

Certified awnings and balconies extending over a public road reserve are included on planning certificates (section 10.7 *Environmental Planning and Assessment Act 1979*) for the subject property to ensure owner/prospective owner responsibility for the safety and structural integrity of the structure.

(b) Other structures and encroachments

Minor encroachments of structures (excluding awnings and balconies) will be considered on an individual basis. Council will consider the following in assessing the merits or otherwise for a s139 consent:

- if the public footpath area will be adversely impacted by the encroachment
- if the encroachment is minor having regard to the total width of the footpath/road reserve
- if there is a material or monetary benefit accruing to the private property as a result of the encroachment and if so, if it is measurable
- if there is any issue relating to public safety and the use of the footpath by the public.

In commercial/business areas of the LGA, Council may adopt a more stringent application of s139 consents for encroachments given the potential for more intensive footpath public use of the footpath, public convenience and safety considerations.

7.7.2 Footpath dining

Council can consider footpath dining in accordance with the Footpath Dining Policy by s125 of the Act as expressed under *SEPP (Exempt and Complying Development) 2008*. No development consent is not required for footpath dining being exempt development. Footpath dining consents are issued for maximum three- year terms.

In the event an awning exists over the corresponding footpath area and is not demonstrated to be structurally certified or has no current s139 consent (refer 7.7.1), the footpath dining proposal may not be supported on the basis of the risk associated with intensification of the footpath under or near the uncertified awning.

7.7.3 Street vending

(a) Mobile Food and Drink Vending

Council can consider mobile food and drink vending under s139A of the Act. No development consent is required for mobile food and drink outlets being exempt development under the *Exempt and Complying SEPP 2008*. Council's Development Control Plan 2020 contains the specific controls for food and drink stalls/vending.

An Expression of Interest process will be undertaken for mobile food vans to operate on nominated public roads and public reserves in DCP2020. Terms of approval through an EOI will be up to three years.

Following the s139A consent a separate food vending permit from Council is required to ensure compliance with relevant Foods Authority standards for public health.

Specifically exempt from expression of interest and s139A consents are mobile food and drink vending associated with an approved market, event, or local sporting clubs directly servicing patrons in conjunction with weekend sporting activities.

(b) Street Stalls

Council can consider street stalls under s139A of the Act for the purposes of fundraising by charitable not for profit organisations and local sporting clubs/groups on the public road reserve at the following locations:

- adjoining No.3 Allowrie Street, Jamberoo

- adjoining No.113 Fern Street, Gerringong
- adjoining No.17-19 Johnson Street, Kiama Downs
- adjoining No.86 Terralong Street, Kiama

Stalls are only permitted Thursday to Saturday between 9am-5pm. Location of stalls must ensure footpath pedestrian accessibility and not set-up within 3m of shopfronts in Terralong Street and 2m in other commercial areas. In the event a footpath dining consent is granted by Council under s125 of the Act, no street stalls will be permitted.

7.7.4 Lease of unused sections of public roads

Council can consider the lease of unused sections of public roads under s154 of the Act. The maximum lease term for unused part of a public road is seven years.

If the lease of the unused road is approved, the decision has to be publicly notified.

7.7.5 Lease of air space

Council can consider the lease of air space of a public road reserve under s149 of the Act. The maximum lease term for air space is 99 years. Council will enter into reduced lease terms as appropriate.

Council's Fees and Charges prescribe a valuation-based approach to the calculation of lease of air space and is paid either as annual rental for the term of the lease or an upfront present value calculation at lease commencement.

Structural certification from an appropriately qualified structural engineer needs to be obtained by the owner of the benefitting property (the structure "owner") at three-year intervals. The existence of the structure will be included on planning certificate (section 10.7 certificate *Environmental Planning & Assessment Act 1979*) for the subject property to ensure owners in succession are aware of their responsibility for ongoing structural integrity occupying the road reserve.

7.7.6 Closure of public road

Council can consider the closure of Council public roads under Part 4 of the Act. The Acquisition and Disposal of Land and Easement Policy describes the method of sale and determination of sale price including the requirement for the full resolution of the Council to endorse the sale.

Closed road areas less than the minimum lot size for a residential dwelling must be consolidated in title with the adjoining parcel as a condition of settlement.

Unformed public road reserves vest in the crown upon closure. Council adopts a different fee structure in the consideration of unformed road reserve proposals on a lump sum basis plus cost recoupment under Council's Fees and Charges.

7.8 Illegal land use

Instances of illegal structures/use of land taking place on Council owned /managed land involves issuing notices or orders under the *Local Government Act 1993* and *Environmental Planning and Assessment Act 1979* respectively as appropriate.

7.9 Other policies

The following policies are in place for specific land uses and land dealings associated with public places:

- Acquisition and Disposal of Land and Easements
- Footpath Dining
- Commercial Fitness Activities and Personal Training

- Markets
- Mobile Food Vending
- Surf Schools on Seven Mile Beach

Notwithstanding the specific policy for markets, Council limits market stalls on public land and reserves in association with events (short term licences) where markets are ordinarily conducted under licence. The number of event-related market stalls are 10 (Coronation Park, Gerringong Old School Park and Jamberoo Parklands) and 20 (Black Beach Reserve).

8 Tenders and Expressions of Interest

8.1 Tendering

Under the *Local Government Act 1993*, Council is required to tender for the lease or licence of community land for a term exceeding five years (excluding not-for-profit organisations). Council managed crown land is excluded during the pre-Plan of Management period (cl.70 *Crown Land Management Regulation 2018*) for both leases and short-term licences.

Tendering can take place by open or selective method under the *Local Government Regulation 2021* at Council's discretion. Nothing prevents Council from tendering for any other lease or licence.

Tender duration and advertising is undertaken in accordance with the Act and Regulations. All tenders are to be appear on the Council website under "*Tenders*".

Tenders are reviewed by a panel of three including one independent panellist. Tenders are approved by resolution of Council (Confidential) following panel chair report and recommendation.

In the event of a tender being conducted, the current lease/licence may be terminated by Council in accordance with the lease end of that agreement date, prior to the tender start date.

8.2 Expressions of Interest

Council may use an Expression of Interest (EOI) process for leases and licences where there are no statutory obligations to tender. Council has an obligation to operate in a transparent manner and wherever possible conduct publicly accessible platforms for individuals and groups to use or occupy community land. The following circumstances warrant Council's consideration for the use of an EOI process:

- commercial considerations
- competitive interest
- equity and public interest
- Council policy
- resolution of Council

Council has a panel of providers to exclusively act on its behalf for acquisition and disposal of land, marketing and the leasing of premises. The panel of providers was established through EOI process and has a three-year currency. In the event an existing residential tenancy management agreement ends through disposal of the land or any other reason, no ongoing relationship exists between Council and the agency.

Expressions of Interest are required to be undertaken as follows:

8.2.1 Community land

- where more than one operator may have an interest to undertake the land use/activity under lease or licence
- mobile vending (refer DCP2020 for specified locations and circumstances)

- when specified in a Policy or by resolution of Council
- where the lessee has occupied the property for a term greater than five years, except where there is no reasonable likelihood of an alternate use/user

8.2.2 Operational land

- where it is considered that Council could be commercially disadvantaged by not undertaking an EOI process. If Council elects to proceed without undertaking an EOI, an independent valuation report is required to demonstrate fair and reasonable market rental return is achieved under the lease/licence.
- where the lessee has occupied the property for terms greater than five years and it is considered that Council could be commercially disadvantaged by not undertaking an EOI. An independent valuation report is required to demonstrate fair and reasonable market rental return when an EOI is not pursued and reasonable evidence there will be no commercial disadvantage to Council.
- when specified in a Policy or by resolution of Council.

EOI advertising will be for a minimum 14 days up to 28 days and placed on the Council website under “*Expressions of Interest*” plus selected other channels depending on the proposal including but not limited to property promotional signage, social and print media.

EOI’s are reviewed by a panel of three including one independent panellist . EOI’s are determined by the Chief Executive Officer following EOI panel chair report and recommendation.

In the event of a tender being conducted, the current lease/licence may be terminated by Council in accordance with that agreement and the lease end date prior to the tender start date.

9 Public land use approval and decision-making framework

Council resolution	CEO approval	Executive approval
Policies	Leases and licences following a market valuation establishing rental	Short-term licences
Plans of Management	Leases and Licences following an Expression of Interest process	Prescribed land use and activities under the <i>Local Government Act 1993</i> and <i>Crown Land Management Act 2016</i>
Disposal of land and property		Uses under s68 of the <i>Local Government Act 1993</i>
Acquisition of land and property		Consents and leases under the <i>Roads Act 1993</i>
Classification of public land		All other leases and licences (including sub leases, lease assignments and lease renewals) not in Column A or B

Council resolution	CEO approval	Executive approval
Creation of easements on public land or otherwise where for public benefit		
Leases and licences following tender process under <i>Local Government Act 1993</i>		
Leases and licences advertised by statutory requirement where greater than five submissions received (excludes situations where development application process for the use/activity resulted in substantively same issues being raised)		

10 Related forms/documents

- Nil

11 Attachments

- Nil

12 Authorisation

Name: Council Resolution No: 22/356OC

Date: 15 November 2022