

Policy Document

LEASES, LICENCES AND PERMITS POLICY

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Classification:

Property Management

Strategic Plan links:

Strategy 2.6 Provide and maintain public buildings and land promoting multi-use where possible.

Strategy 4.16 Community wellbeing and health through recreational facilities an support for not for profit groups.

Strategy 4.1.3 Continue to work with District Council of Streaky Bay sporting bodies throughout the district to review and implement master plans that results in equitably funded and economically viable facilities that meet individual community needs.

Strategy 5.4.3 Finalising of lease arrangement for caravan and camping facilities with local community groups.

References:

Local Government Act 1999
 Real Property Act 1886
 Law of Property Act 1936
 Retail and Commercial Leases Act 1995
 Associations Incorporation Act 1985
 Disability Inclusion Act 2018
 Gaming Machines Act 1992
 Liquor Licensing Act 1997
 Development Act 1993

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1. Introduction

- 1.1 The District Council of Streaky Bay recognises the community value of sporting and community clubs and community land within the district.
- 1.2 Council acknowledges its responsibilities and recognises that it needs to provide:
 - a balanced approach towards the use of land for community purposes; and
 - authority over its land use for community, private or commercial purposes.

2. Policy Objective

- 2.1 To implement administrative procedures and authority for issuance of leases, licenses and/or permits for Council controlled land and buildings.

3. Policy Statement

- 3.1 Council owns both community and operational land. Council attempts to optimise the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue it derives from its land holdings including road reserves and unmade roads.
- 3.2 Decisions to grant leases, licences and/or permits of Council-controlled land and buildings are to be made under delegation by the Chief Executive Officer (CEO)
- 3.3 The power to approve the renewal of existing leases, licences and/or permits is delegated to the CEO, provided the terms and conditions are in accordance with Council policies and procedures. Where the terms and conditions have been substantially varied, the Council will consider the renewal application.
- 3.4 Management of leases, licences and/or permits of Council controlled land and buildings will be undertaken in accordance with the provisions of this policy.

4. Scope

- 4.1. This policy specifically deals with all Local Government land including roads, road reserves and unmade roads, owned by the Council or under Council's care and which is leased/licensed/covered by permit to third parties.
- 4.2. The policy should be read in conjunction with the *Local Government Act 1999* (the Act). Under the Act, a lease or licence may be granted or renewed for a term not exceeding 21 years as stated in the lease or licence. Council will generally consider shorter term leases of 5 years but will consider requests for long term leases, up to 21 years, on a case by case basis. The terms and conditions of all leases and licences may be reviewed on a regular basis consistent with the content of the agreement.

- 4.3. The policy does not cover all the requirements that pertain to community and Local Government land as these requirements are set out in the Act and form part of Council's legal obligations. It does, however, take into account requirements of the relevant State Authority that should be considered when dealing with dedicated lands owned by the Crown (see section 7).
- 4.4. The principles of this policy will be applied initially to those leases and licences which have expired and where renewal is pending. The remaining leases/licences will follow as and when their current agreement requires renewal, or as new leases/licences/permits are taken up on Council owned or managed land.
- 4.5. Section 202 of the Act outlines the principles in respect of use of community land by lease or licence.

5. Templates for leases, licences and permits

- 5.1. The Local Government Association Mutual Liability Scheme (LGAMLS) templates for leases, licences and permits shall be used in conjunction with this policy.
- 5.2. Commercial Leases
- 5.3. Rental Agreements

6. Types of Agreements

The following categorisation will be applied to leases, licenses and permits:

6.1. Recreational and Sporting Facilities Lease

- 6.1.1. This LGAMLS template provides specific and exclusive rights for a third party to occupy or use a community recreational and sporting facility.

6.2. Recreation and Sporting Facilities Licence

- 6.2.1. This template is for long term use or occupation that does not provide sole/specific rights to the land and/or buildings.

6.3. Facility Hire Permit (ongoing)

- 6.3.1. This template is to be used for the short term use (less than one season) of a recreational or sporting facility.

6.4. Permit – Occasional Hire of Council Facility

- 6.4.1. This template is for one-off use of a Council facility, which may include recreation and sporting facilities and other Council owned buildings.

6.5. Special Event Permit

6.5.1. This template applies for individual events which do not include facilities hire.

6.6. Stall Holder / Exhibitors Permit

6.6.1. This template relates specifically to events where food and/or drink may be sold and which do not include facilities hire.

6.6.2. Council supports community groups which raise funds by conducting stalls and badge days in public space, including footpaths and public land. These groups include sporting clubs, recreational clubs, craft groups or associations and community based health or social welfare agencies. In the event that a stall includes the sale of food, the owner of the stall will need to comply with the appropriate requirements of the *Food Act 2001*.

6.6.3. Community Groups and not for profit organisations may be granted a permit to operate from local government land without fee for the purposes of raising funds for charity, subject to the group providing proof of an adequate public liability insurance policy and meeting other statutory requirements if applicable.

6.7. Authorisation to Alter a Public Road

6.7.1. This template applies for both temporary and permanent alterations to a public road that will be carried out by a third party. A Permit to use a public road for business purposes may also be required.

6.8. Permit to use a Public Road for Business Purposes

6.8.1. This permit is required to carry out a business activity on a public road.

6.9. Commercial Leases

6.9.1. Leases to a commercial party for a commercial activity will be subject to public consultation and separate individual leases drafted in a registrable form.

6.10. Facilities User Agreement

6.10.1. This Agreement will allow for rental of office space etc within a Council owned building for a specific period of time.

7. Crown Land

7.1. When considering the lease or licence of dedicated land owned by the Crown but under the care and control of the District Council of Streaky Bay, the Department of Environment and Water requires the application to be referred to the Minister for Environment and Water to seek approval from the owner of the land, whether it is a renewal or a new application for a lease or licence. This procedure is to ensure:

- Dedicated lands are not developed where the nature of the development contemplates use that is at variance to the purpose for which the land has been dedicated; and
- Third party occupation is limited to licence tenure of up to 5 years unless otherwise agreed by the Minister.

8. Categories of User

The fee payable on land leased or licensed to third parties will be separated into three categories:

8.1. Community based bodies

- 8.1.1. Council recognises the benefit of providing support, financial and non-financial, to community groups and organisations including not for profit bodies. These include service clubs, craft groups, or associations and community based health or social welfare agencies.
- 8.1.2. Fee structure principles are set out in section 9 and will apply to community based organisations, however individual circumstances may apply in each case, taking into account the cost of any improvements on the land and the responsibility for the maintenance of those improvements.

8.2. Sporting and community bodies

- 8.2.1. To establish balance in assessing a reasonable contribution amongst the various sporting and recreational clubs, where an organisation has the ability to enjoy profit from either an annual membership fee, or licensed facilities or a combination of both, a differential fee structure will generally be applied.

8.3. Commercial Activities

- 8.3.1. Commercial Activities will be separated into two areas being:

- a) Landowner and / or Resident Private Use; or
- b) Full Commercial Use.

8.3.1.1. Landowner and / or Resident Private Use

Requests from private individuals to lease buildings or vacant land within townships will be assessed on merit in accordance with Council's Strategic Plan and operational requirements. A market rate will apply.

8.3.1.2. Full Commercial Use

Proposals to establish a commercial enterprise on any Council land will be subject to individual consideration by Council.

8.3.2. Expansion of general farming activities from adjoining neighbours who apply to use vacant land will be considered under the category of Landowners and / or Residents Private Use as outlined under 8.3.1.1. A market rate will apply.

9. Annual Fee

- 9.1. The annual fee will be based on the market rate supplied by an external valuer appointed by Council. The fee will be provided to the organisation at the time of entering into a new lease or renewing the lease. The fee will increase annually by CPI and the market rate will be reviewed every 5 years.
- 9.2. Sporting and Community Organisations will be eligible for up to 93% discount based on meeting the criteria for good governance, facility utilisation, social inclusion, volunteer management and environmental initiatives (refer Appendix 1). This discount will be assessed annually.
- 9.3. Where a building is acquired by or gifted to Council, consideration will be given to the terms of this arrangement when determining the annual fee. In this situation a contribution to the ongoing repairs, maintenance and renewal costs will be considered when determining the annual fee to ensure alignment with the market rate and subsidy.
- 9.4. A minimum fee shall be charged per annum as set out in Council's Fees and Charges Schedule which is available on Council's website or at Council's offices during normal working hours.

10. Term of Agreement

- 10.1. Terms of agreement will not be greater than 5 years unless Council resolves to grant a longer term lease. In these circumstances consideration will be given to developing a management plan in partnership with the organisation which seeks to develop the facility long term.
- 10.2. Where a lease or licence is to be granted for greater than 5 years and is located on Community Land, community consultation will be undertaken in line with the *Local Government Act 1999*.
- 10.3. Where the term of the lease or licence is to be less than 5 years, and section 20B of the *Retail and Commercial Leases Act 1995* applies, the Lessee or Licensee shall be required to provide Council with a certificated exclusionary certificate duly signed by the Lessee's or Licensee's solicitor waiving the minimum statutory term of five years in the form required by the Act.
- 10.4. This certificate noted in 10.3 must be provided to the Council prior to the Lessee or Licensee taking possession of the premises.

11. Maintenance, Repairs and Replacements

- 11.1. A comprehensive list of building items will be provided to organisations when providing a Letter of Offer which will clearly set out responsibilities. Council will take responsibility for structural items in buildings this will include items relating to footings, floor (not including coverings), walls (not including applied finishes), roof members and cladding and provision of services to the external walls.

12. Utilities, Outgoings and Waste Disposal

- 12.1. Organisations will be responsible for the cost of all utilities, outgoings and waste disposal associated with their operations.
- 12.2. Council will work with organisations to assist them to implement environmental initiatives such as waste reduction, recycling and energy efficient practices.

13. Water Usage

13.1. Buildings

- 13.1.1. Where the lease of licence refers only to a building and there is no open space attached to the leased or licensed area then the Lessee/Licensee shall be responsible for the payment of all water and sewer charges levied against the leased area.

13.2. Open Space

- 13.2.1. Where there is an associated playing field that is accessible to the general community the lessee/licensee will be responsible for 100% of the cost of the water used.
- 13.2.2. Where the facility is fenced or not accessible to the community the lessee / licensee shall be responsible for the payment of all water and sewer charges levied.
- 13.2.3. Council encourages water conservation techniques and when considered appropriate shall place a cap on the amount contributed by Council. The amount of the cap shall be determined at the time of negotiating a lease of licence by Council. Access to stormwater reuse or recycled water will be encouraged.
- 13.2.4. Where there are shared meters on the site, consideration will be taken on community access to the site and the proportion will be negotiated with the organisation to ensure it is in line with like facilities.

14. Sporting Ground and Courts

- 14.1. Council maintains playing fields that are open to the public for passive recreational activities.
- 14.2. There are some circumstances where Council may negotiate with a Club to take on the responsibility of maintaining sporting grounds which are specialist in nature, such as bowling greens.

- 14.3. Council will work in partnership with tennis and netball clubs, peak bodies and other funding organisations when courts are required to be resurfaced. Clubs will be expected to contribute funds either through a combination of club funds, external grants or a loan from Council. In determining the club contribution, consideration will be given to where courts are made available for community use.

15. Flood Lighting

- 15.1. Council will be responsible for the regular inspecting of light poles and ensuring when they are maintained; lessee and licensees will be responsible for the replacement of lamps.
- 15.2. Should a lessee / licensee seek to install new lights, they will be expected to make a financial contribution. Council will work in partnership this the lessee to seek external funding and/or negotiate a Council loan.

16. Sub-letting or Hiring out of Leased Facilities

- 16.1. It will be a condition of the least that all sub-letting arrangements will be in line with this Policy and that lessees must seek Council approval to the terms and conditions prior to sub-letting.
- 16.2. Where an organisation enters into a sub-lease for part or all of the premises to another club or a commercial activity, Council reserves the right to assist the sub-tenant in negotiating a sub-lease fee based on the nature and quantum of the sub-lease.
- 16.3. Clubs are encourage to hire out facilities to maximise the use of the facilities and to generate income to support them to be sustainable. It is expected that these rates do not exclude the community from being able to access them due to the cost.

17. Hardship

- 17.1. Where a Lessee / Licensee is able to produce evidence that the fee will cause undue hardship (after subsidies are applied) then the Lessee or Licensee may make an application to Council seeking deferment or reduction of payment.
- 17.2. The District Council of Streaky Bay is under no obligation to accept such a request and will make its decision based on the financial position of the lessee or licensee at the time of making the application.

18. Gaming Machines

- 18.1. Council does not support the introduction or increase of gaming machines in premises on Council owned land for any new or existing Lessee or Licensee.

19. Political Signs

- 19.1. Advertising of political parties, Members of Parliament, Elected Members and candidates for Parliament / Council are prohibited on Council owned premises.

20. Related Documents

The following key District Council of Streaky Bay policies and plans relate to leased and licensed facilities:

- District Council of Streaky Bay Strategic Plan 2016-2026
- District Council of Streaky Bay Annual Business Plan
- District Council of Streaky Bay Long Term Financial Plan
- Asbestos Management Plan
- Asset Management Plan (currently under development)
- Asset Management Policy
- Building and Swimming Pool Inspection Policy
- Community Wastewater Management Scheme Customer Charter Policy
- Environmental Policy
- Public Consultation Policy
- Risk Management Policy
- Tree Management Policy
- Waste Management Policy

21. Further Information

This policy will be available for inspection at the District Council of Streaky Bay offices, 29 Alfred Terrace, during ordinary business hours. The policy is also available to be downloaded free of charge from Council's website <http://www.streakybay.sa.gov.au/home>.

Copies will be provided to interested parties upon request. Please email Council at dcstreaky@streakybay.sa.gov.au. Fees and Charges may apply as per Council's Fees and Charges Policy.

Appendix 1

Annual Fee – Subsidy Criteria for Sporting and Community Organisations

Annual lease / licence fee will be calculated at up to 93% of the market rental rate of the leased area/s. Council will offer the following subsidies on the annual fee for sporting and community organisations.

Subsidy Criteria	%
Good Governance The organisation can demonstrate: <ul style="list-style-type: none"> • compliance with conditions of current or previous lease / licence agreements with Council; • provision of Annual General Meeting reports and minutes including financial reports (to be audited on request); • financial viability, have not incurred a debt with Council and have repaid any loans to Council in line with the loan agreement; • quality management is integrated into operations – capacity building, good governance and planning etc., evidenced through provision of an annual business plan, current constitution, policies and procedures etc. 	33%
Facility Utilisation The organisation is able to: <ul style="list-style-type: none"> • provide evidence of membership/user/participant numbers and hours of use on an annual basis; • provide evidence of activities and initiatives undertaken to increase the utilisation of the facility; • initiatives planned to increase use or participant numbers; • evidence of shared use of the facility by the community and other community clubs and organisations to ensure optimal use of the facility 	30%
Social Inclusion The organisation can demonstrate: <ul style="list-style-type: none"> • the activity or service they provide is non-discriminatory and is open to all residents who meet stated criteria for participation; • the use of the facility will increase social inclusion, increase community participation and/or will promote health and well-being in the community; • activities support wider social inclusion targets. 	20%
Volunteer Management The organisation can demonstrate that it promotes, supports and develops volunteers	5%
Environmental Initiatives The organisation can demonstrate that it promotes and implements environmental initiatives e.g. waste reduction, recycling, energy efficient practices including investments (e.g. solar panels etc)	5%
Maximum subsidy available	93%