

COMMUNITY LEASING POLICY

April 2022

PREPARED BY:

PROPERTY SERVICES UNIT



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SUTHERLANDSHIRE

1. PURPOSE

Sutherland Shire Council encourages the use of buildings on Council land to create vibrant local communities that promotes social activity. Council recognises the contribution of community-based organisations in the development, maintenance and provision of services in these buildings located on land owned or managed by Sutherland Shire Council.

The purpose of this policy is to provide principles to guide clear and equitable management of leases and other occupation agreements held by community groups on Community land or other land under council care and control and to meet Councils obligations under Local Government Act 1993, Section 47D that prohibits exclusive use or occupation of Community land unless under lease, licence or other estate.

Council will manage the community leasing portfolio to meet the changing needs of the community seeking to optimise use and availability to the community of the limited resources of community land and buildings, in line with best asset management practices.

2. APPLICATION

The policy applies to all staff and building occupants who tenant buildings and associated areas on Council community land or Crown land managed by Council. The policy does not apply to building areas with commercial use.

Building uses may include: clubhouses, canteens, offices, amenities and community activity rooms and building occupants may include:

- Community service groups & organisations
- Child care centres/Kindergartens
- Sporting clubs
- Community Clubs (Interest groups)
- Scouts/Girl Guides

3. PRINCIPLES

3.1 Application of Principles

No one principle should be applied to the detriment of another. Principles must be collectively considered and applied to the extent that is reasonable and practicable in the circumstances.

3.2 Legal Occupation

Occupants of buildings and/or land exclusively used must be on a valid agreement.

3.3 Shared Responsibilities and Costs

Council and tenants will partner with a co-operative approach to the asset responsibilities and costs. Occupation of Council land will not impose an unreasonable burden on general revenue, nor will Council seek a profit from Community leases.

3.4 Minimum Risk to Council and Tenant

Occupation of buildings on Council land must not expose Council or tenants to unnecessary risk.

3.5 Standard Lease Terms

Standard lease terms of up to 5 years will be offered. Longer term leases, generally no more than 10 years, may be considered in limited circumstances.

3.6 Optimal Use of Building

Optimal use of buildings is to be applied wherever possible appropriate to the permitted land use, location and tenants use. Exclusive use may be deemed appropriate in limited circumstances.

3.7 Suitability of Tenant

Council may offer a current tenant the first right of refusal for a new lease agreement if they can show satisfactory need for exclusive occupation. New tenants are chosen by a competitive process.

4. RESPONSIBILITIES

4.1 Responsible Officer

The Manager Property Services is the Responsible Officer for this policy and is responsible for developing and reviewing guidelines to support the implementation of this policy.

4.2 Chief Executive Officer

Council has delegated to the Chief Executive Officer the authority to approve leases. Council may delegate the Chief Executive Officer the authority to execute any necessary documentation.

4.3 Directors

Directors are responsible for ensuring their directorate adheres to the requirements of this policy and provide guidance within their directorate and the organisation. Directors may amend Schedule A.

4.4 Employees

Employees must adhere to the requirements of this policy and operate within the authorities of the Local Government Act NSW 1993.

5. POLICY COMPLIANCE

The Manager Property Services will monitor, review and report on the effectiveness of the Policy.

6. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY

Council adheres to and complies with the NSW State Records Act 1998 and Privacy and Personal Information Protection Act 1998 through its Access to Information Policy and Privacy Management Plan.

7. BREACHES OF POLICY

Breaches of this Policy will be dealt with in accordance with normal disciplinary procedures and will be advised to the Chief Executive Officer and / or Director Shire Services, via the Manager Property Services.

8. RELATED DOCUMENTS

- Community Strategic Plan
- Resourcing Strategy 2017-2027 (consisting of a Long-Term Financial Plan, Workforce Strategy and Asset Management Strategy)
- Graffiti Management Policy and Graffiti Management Plan

9. RELEVANT LEGISLATION AND REGULATIONS

- Local Government Act 1993 (NSW)
- Crown Lands Management Act (2016)
- State Records Act 1998 (NSW)
- Privacy and Personal Information Protection Act 1998 (NSW)
- Government Information (Public Access) Act 2009 (NSW)

10. DEFINITION OF TERMS

Term	Meaning
Commercial Lease	Any lease entered into by Council that involves the grant of an interest for private gain to another party at market rent
Community Land	Community Classified land under the Local Government Act NSW 1993 and land under Crown Land Management Act 2016
Community Group	Not for profit group or organisation with Proof of Incorporation or operating under an Auspice organisation
Council	Sutherland Shire Council and its staff
Council Property	Property owned or managed by Council including Community, Operational and Crown Land.

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Term	Meaning
Crown Land	Crown land means land that is vested in the Crown
Expression of Interest (EOI)	A document describing requirements or specifications of a site and seeking information from potential applicants that demonstrate their ability to meet those requirements
Lease	A contractual agreement enabling exclusive use over a particular piece of land for a specified term and purpose.
License	A contractual agreement enabling non-exclusive use over a particular piece of land for a specified term and purpose. It does not grant exclusive possession of the land, as is the case with a lease and permits the land to be used by other entities/groups.
Local Government Act / LGA	Local Government Act NSW 1993
Operational Land	Operational Classified land under the Local Government Act NSW 1993
Outgoings	Expenses paid to operate a property e.g. water, electricity, pest inspections, Fire services maintenance, telephone.
Plan of Management / POM	Legislative requirement for Community land under section 36 LGA 1993 which identifies the purpose and permitted use of the land
Sporting Group	Not for profit group or organisation with Proof of Incorporation providing sports related activities
Structure	Building components including roofing elements, exterior walls, exterior openings, ground slab, foundations, gutters, downpipes, underground pipes
Tenant	An organisation who occupies land and/or buildings owned by Council

End of Document

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PRINCIPLE 3.2 – LEGAL OCCUPATION

Occupants of buildings and/or land exclusively used must be on a valid agreement.

What does this look like:

- Council will be compliant with Local Government Act Section 47D.
- Existing building occupants must enter into a valid community lease within 12 months of the date of this policy.
- Tenants will be charged rent in line with Council's Fees & Charges and be responsible for all costs and works associated with their building occupation.
- If a building occupant does not agree to the terms of this policy, they will be given notice to vacate. If possible, the building occupant may relocate to a more appropriate facility by agreement.

PRINCIPLE 3.3 – SHARED RESPONSIBILITIES AND COSTS

Council and tenants will partner with a co-operative approach to the asset responsibilities and costs. Occupation of Council land will not impose an unreasonable burden on general revenue, nor will Council seek a profit from Community leases.

What does this look like:

- Council assets will be managed in a fiscally responsible manner.
- Occupants must have the financial capacity to meet their obligations under the lease.
- Rent will be determined by fees and charges and adopted by Council.
- Rents will not be set higher than Council costs to meet their obligations under this policy.
- Rents will commence 2022/23 and increase by a fixed percentage of 3% per annum.
- Rents will vary according to size, building complexity, location, age, building materials and building replacement value.
 - CATEGORY A - Very small buildings or part of a building eg: canteens/change rooms sized buildings.
 - CATEGORY B - Small simple buildings in reasonable condition eg: small football clubhouse.
 - CATEGORY C - Medium sized or small complex eg: football clubhouse with bar, multiple rooms, scout hall.
 - CATEGORY D - Large, more complex buildings eg: stadiums, larger preschools.
- Council will undertake structural repairs, replacement or renewal according to Council's adopted Asset Management Policy and Resourcing Plan which considers priority, budget and service need.
- Council will be responsible to provide a safe and occupiable building (to a minimum community facility standard) including:
 - structural repairs, renewals and upgrades,
 - contamination removal,
 - graffiti removal in line with Council's Graffiti Policy,

SCHEDULE A – COMMUNITY LEASING POLICY

– Information for Interested Parties



- repairs and maintenance intended to ensure structural integrity and asset longevity (eg: gutter cleaning, external painting),
 - repairs to the exterior and surrounds of the building caused by malicious intent of the public,
 - building compliance (not directly related to the specific use by the tenant),
 - attention to dying, dangerous or declining trees (may include tree pruning or removal),
 - building insurance, and
 - repair, maintenance, testing and annual AFSS certification of essential services.
- Occupants must meet all costs associated with their occupation including but not limited to:
 - day to day operational costs such as cleaning, electricity, phone/data, security, water usage, waste services,
 - replenishment of supplies of washroom and cleaning products,
 - maintenance and repairs resulting from ordinary use of the premises,
 - repair, maintenance and testing of building service elements eg: mechanical services, HVAC (air conditioning),
 - upgrades and renewal of internal fixtures and fittings,
 - rates & taxes where applicable, and
 - user specific upgrades including building compliance works triggered by upgrades.
 - Utilities – where services cannot be separately metered a utility surcharge may be specified within the lease.
 - Where a building or building component is at end of life, Council can decide to not undertake or approve renewal or upgrade if it places an unreasonable burden on general revenue.
 - Commercial lease fees (determined by valuation) will apply to building/land occupants with the financial capacity to generate significant income and/or who operate commercial activities from the land (eg: tennis operators).
 - In limited circumstances where the Tenant employs skilled property/asset/operations staff and has the financial capacity, Council may consider increasing asset responsibilities for the tenant and may consider a lower rental category as long as there is no conflict with Principle 3.4 (eg: Scouts Australia).

PRINCIPLE 3.4 – MINIMUM RISK TO COUNCIL AND TENANT

Occupation of buildings on Council land must not expose Council or tenants to unnecessary risk

What does this look like:

- Council and Tenant will be compliant with their obligations under WH&S Act 2011.
- Council and Tenant will manage their assets in line with Australian Standards.
- Council will ensure buildings are safe and occupiable to a minimum community building standard.
- Council will ensure buildings on Council land are adequately insured.

SCHEDULE A – COMMUNITY LEASING POLICY

– Information for Interested Parties



- Tenants must demonstrate the capacity (skills, approvals and funding) to undertake works within the building and obtain owners consent to commence any work on the building.
- Council, in consultation with the tenant, may terminate agreements where a building is unfit for occupation.

PRINCIPLE 3.5 – STANDARD LEASE TERM

Standard lease terms of up to 5 years will be offered. Longer term leases, generally no more than 10 years, may be consider in limited circumstances.

What this looks like:

- Council will comply with its obligations under Local Government Act 1993.
- Council will manage its community building portfolio to meet the changing needs of the community.
- Standard agreements offered to building occupants will be up to 5-year term.
- Long term leases may be considered according to the following assessment matrix:

	Base	Tenant contributed to cost of building: long term occupant: demonstrated ongoing need > 5 years	Tenant commits to spend 25% of replacement value in first 2 years	Tenant commits to spend 50% of replacement value in first 2 years	Tenant commits to spend 75% of replacement value in first 2 years	Comment
Sporting Clubs	5	10	10	15	20	
Preschools	5	10	10	15	20	
Recreation/Special Interest Clubs	5	10				
Not for Profit Community Service Provider - Small to Medium	5					Linked to major funding source (eg grant agreement)
Not for Profit Community Service Provider - Large	5	10				

PRINCIPLE 3.6 – OPTIMAL USE OF BUILDINGS

Optimal use of buildings is to be applied wherever possible appropriate to the permitted land use, location and tenants use. Exclusive use may be deemed appropriate in limited circumstances.

What does this look like:

- Occupants must show a need for exclusive use occupation under a lease, for example:
 - extended hours of use,
 - ability to manage subletting or making the facility available to other users.
- If an occupant cannot show satisfactory need for exclusive use, they must enter into a non-exclusive use agreement being a licence or hire agreement or vacate the building.

SCHEDULE A – COMMUNITY LEASING POLICY

– Information for Interested Parties



PRINCIPLE 3.7 – SUITABILITY OF TENANT

Council may offer a current tenant the first right of refusal for a new lease agreement if they can show satisfactory need for exclusive occupation. New tenants are chosen by a competitive process.

What does this look like:

- When an agreement expires, Council will consider the sitting tenants need for the building, current condition and community demands to determine whether to continue to offer it under an exclusive use community lease arrangement or whether there is greater benefit to make the building available to other users.
- Renewal of leases will only be offered to building occupants who can meet their obligations under principle 3.2 and demonstrate a need to continue exclusive use under Principle 3.6.
- New tenants will be chosen via a competitive process for example an Expression of Interest process.
- Council may choose to specify community service level requirement for tenants.

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