

LEASE AND LICENCE POLICY

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Administered by:
General Manager of Business

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January 2029

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418608

Classification:
Strategic Management

Strategic Plan link:

A Council that is actively responsive to community needs and delivers financial sustainability, governance and leadership

References and related Policies, Procedures and Forms:

Local Government Act 1999
 Local Government (Financial Management) Regulations 2011
Crown Land Management Act, 2009
Planning, Development and Infrastructure Act, 2016
 Development (Miscellaneous) Variation Regulations, 2015
Fire and Emergency Services Act, 2005
Native Title (South Australia) Act 1994
Liquor Licensing Act, 1997
Recreation Grounds Rate and Taxes Exemption Act, 1981
Recreation Grounds (Regulations) Act, 1931
 Retail and Commercial Leases Act, 1995
Work Health and Safety Act, 2012
Safe Drinking Water Act, 2011
 Community Land Register
 Community Land Management Plans
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 Plans (currently under development)
DCSB-DC-03.01 - Building and Swimming Pool Inspection Policy
DCSB-EM-05.06 - Community Wastewater Management Scheme Customer Charter Policy
DCSB-FM.07.14 – Asset Management Policy
DCSB-EM-05.03 – Sustainability and Environmental Policy
DCSB-CR-02.01 - Public Consultation Policy
DCSB-SM-18.00 Risk Management Framework
DCSB-SM-18.01 Risk Management Policy
DCSB-EM-05.04 - Tree Management Policy
DCSB-EM-05.02 - Waste Management Policy
DCSB-FM-02-Rates Rebate Policy
DCSB-FM-07.09 - Disposal of Asset Policy
DCSB-I-14.06 – Advertising Signage Policy
DCSB-I-14.09 – Moveable Signs Policy
DCSB-SCC-17.02 – Child and Young Person (and other vulnerable people) Safe Environment Policy

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1. Purpose

The purpose of this policy is to provide consistent and clear guidelines in the administration of leases and licences over Council/s land and facilities to community, sporting, commercial and or individuals.

2. Scope

The scope of this policy is such that it applies to all local government land (except roads) owned by Council or under Council's care and control and management, where it is proposed that a lease or licence will exist over the property.

3. Objectives

The objectives of this policy are to:

Community Benefit: Ensure Council owned facilities are used appropriately and meet community needs, and use of Council's community land and buildings is optimised.

Property Maintenance: Ensure Council owned facilities are developed, maintained, and occupied responsibly having regards to the interests of the local community

Transparent and Fair Allocation: Ensure a consistent and fair approach is taken for all community groups and sporting clubs from all areas within the district.

Financial Management: Ensure sound financial management and effective administration and legislative compliance is met by all parties.

Monitoring and Evaluation: Provide clarity and understanding of the responsibilities associated with a lease or licence regarding maintenance, renewals, upgrades, insurance, utilities etc.

4. Definitions

In this policy unless the contrary intention appears, these words have the following meaning:

Community Land refers to land, excluding roads, owned or managed by Council and classified in accordance with Section 193 of the Local Government Act, 1999. Community land is identified in Council's Community Land Management Register and managed in accordance with Council's Community Land Management Plan.

Community Land Excluded refers to land that has been resolved by Council to be excluded from the community land classification, for an alternate purpose i.e. Council operational land.

Lease Agreement refers to a contract with Council (Lessor) that grants exclusive rights to a Lessee to occupy land and/or facilities for a specified time, under certain terms and conditions.

Lessor refers to Council in the context of this policy, as landowner, or custodian of Crown land

Lessee refers to the individual, group or organisation entering into an agreement with Council to exclusively occupy land and/or facilities.

License Agreement refers to a contract with Council (Licensor), that grants non- exclusive rights to occupy land and/or facilities to a Licensee for a specified time under certain terms and conditions.

Licensors refers to Council in the context of this policy, as landowner or custodian of Crown land.

Licensee refers to the individual, group or organisation entering into an agreement with Council to occupy shared use land and/or facilities.

Outgoings means all reimbursable tax charges, insurance premiums, utilities and maintenance and repair costs that are associated with the operation of the premises.

Premises includes the whole, or a portion of land, which may include improvements owned or managed by Council, or in the case of a ground lease, improvements owned by the lessee for the term of the lease agreement.

Recreation refers to sporting and recreational activities, including spectator provisions.

5. Legislation

Legislative framework will guide aspects of the administration of lease and license agreements.

The following South Australian Acts, and associated Regulations, apply to this policy:

5.1 **Local Government Act (1999)**

The Local Government Act provides Council with the legal capacity to grant a lease or licence agreement for community land and governs public consultation requirements and the lease or licence term. The Act also requires Council to have a Community Land Management Plan, which categorises the use of community land that can be leased or licensed for certain purposes.

5.2 **Retail and Commercial Leases Act (1995)**

The Retail and Commercial Leases Act (RCLA) applies to leases and licences where sites include a food or beverage service and sales to the public, i.e. commercial arrangements. In these situations, lessees or licensees are required to complete a disclosure statement and provide a certified exclusionary clause document to comply with the Act.

Amendments to the Act exclude Council's from the RCLA, where the lessee or licensee is of a class specified by the Regulations. This exemption applies to not-for-profit associations and sites used predominantly for health, welfare, community, cultural, sporting, or recreational services or facilities.

5.3 **Crown Land Management Act (2009)**

The Crown Land Management Act applies to Crown land under Council care and control. It stipulates the application and/or consultation process to be undertaken with the Department for Environment and Water (DEW) to obtain permission to lease or licence Crown Land.

5.4 **Planning, Development and Infrastructure Act (2016)**

The Planning, Development and Infrastructure Act must be considered where a lease or licence over community land is for a portion of an allotment, and the term of the lease or licence exceeds 6 years, as a land division will be required.

5.5 **Development (Miscellaneous) Variation Regulations (2015)**

The Development (Miscellaneous) Variation Regulations exclude telecommunication facilities, wind turbines and their associated infrastructure from the land division provision within the PDI Act, allowing a lease exceeding 6 years without it constituting a division of land.

5.6 Recreation Grounds Rates and Taxes Exemption Act (1981)

The Recreation Grounds Rates and Taxes Exemption Act provides a rates and taxes exemption for Council land, or land under Council care and control. The exemption applies to land that the public is entitled to access for the purpose of sport or recreation. The exemption is only applicable, where Council apply any income derived from the land towards the maintenance, repair or improvement to the land.

5.7 Recreation Grounds (Regulations) Act (1931)

The Recreation Grounds (Regulations) Act should be considered when applying terms and conditions for the use for recreational grounds, including but not limited to the regulated entry of persons, vehicles, and dogs. The Act also regulates the sale and consumption of alcohol, and smoking.

5.8 Fire and Emergency Services Act (2005)

Land occupied under a lease agreement to an emergency services organisation is not rateable in accordance with the Fire and Emergency Services Act.

5.9 Further Legislation

Standard Legislation referenced in all lease and licence agreements includes the Liquor Licensing Act (1997) and the Work Health and Safety Act (2012). The sale of alcohol is not permitted without the written support of Council, and successful application to the Liquor Licensing Authority. The Statutory Requirements clause stipulates that the lessee or licensee must comply with all obligations under the Work Health and Safety Act, and any directives of Council.

6. Lease and Licence Categories and Terms

A lease or licence can apply to the whole or a portion of land and may be community land or excluded community land. Where land has a dedicated purpose, the lease or licence agreement must be consistent with the dedication.

The following categories are applied to leases and licenses:

6.1 Lease Agreement

Terms of agreement will not be greater than five (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.

Where a lease or licence is to be granted for greater than five (5) years and is located on community land, community consultation will be undertaken as per the *Local Government Act 1999* requirements.

Where the lease or licence term is less than five (5) years, and Section 20B of the Retail and Commercial Leases Act 1995 applies, the lessees 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 (5) years in the form required by the Act.

6.1.1 Ground Lease

A ground lease applies to 'land only' lease agreements. Any buildings or improvements to the land after execution of the lease will be owned by the lessee for the term of the lease. The lessee is responsible for the maintenance and associated costs of any improvements.

At the conclusion of the lease term, the lessee will surrender the land and any improvements to Council. The terms and conditions of the lease also provide Council with the right to have the lessee remove the improvements if applicable.

6.1.2 Commercial Lease

A commercial lease applies to Council land and/or buildings occupied for commercial purposes, for a negotiated commercial rate relevant to the site and amenities and can be a ground lease or a lease of facilities.

6.2 Licence Agreements

A Licence Agreement or Community Facilities Licence provides permission to occupy land without having exclusive access. Licences support shared use of facilities and are issued for seasonal access to sporting groups for terms of six (6) months to two (2) years, or up to five (5) years for shared buildings. Licence Agreements include scheduled use details, with specific times of use allocated to each group.

Licence Agreements allow Council to support multiple users of public land to occupy the land and/or buildings in a shared, non-exclusive manner, which improves the utilisation of facilities and reduces the need for multiple underutilised single use sites.

6.3 Residential Tenancy Agreements

A Residential Tenancy Agreement is undertaken for a residential property that is rented to a tenant, who is granted a right of occupancy for this property. This arrangement is undertaken by a third party. A review of the rental amount will be undertaken annually.

7. Crown land

Council has the ability to lease or licence Crown land to bring such land under the Council for care and control, subject to appropriate consultation or application to the Department for Environment and Water (DEW).

When considering a new 'lease' to a third party for Crown land that has been dedicated to Council, it is a requirement of DEW, for Council to refer the application to the relevant Minister for approval to ensure:

- Dedicated land is not developed where the nature of the development contemplates use that is at variance to the purpose for which the land has been dedicated.
- The Minister can apply conditions to the lease to ensure the lessee understands the restrictions applicable to the site, in terms of the permitted use.

A lease that is renewed under the same terms and conditions does not require a further application.

When considering a 'licence' over Crown Land that is dedicated land, it is a requirement of DEW for Council to notify and consult with the Crown Lands Office.

Any improvements to Crown Land are subject to approval from DEW.

8. Native Title

Native title is the recognition that Aboriginal and Torres Strait Islander people have rights and interests to land and waters according to their traditional law and customs as set out in Australian law. Native title is governed by the Native Title Act 1993 (Cth).

The extinguishment of native title and any provisions associated with Native Title must be considered within leasing arrangements and the appropriate advice sought.

9. Categories of User

9.1 Sporting Groups

Sporting groups refers to both incorporated and unincorporated groups. These groups usually have the ability to enjoy profit from membership fees, hire of their facilities for social events, bar facilities, canteen or the service of meals.

For the purpose of sporting group leases, a sinking fund, will be imposed, in lieu of a lease fee.

9.2 Recreation and Community Groups

Recreation and community groups refer to 'not for profit' organisations or groups that are deemed to provide a service or social inclusion benefit to the community, i.e. service clubs, senior citizens club, road safety centre, craft groups and community interest groups.

Council recognises the community benefit of these groups and provide support, financial and non-financial. The fee structure applied to these leases and licences is dependent on their circumstances. These groups usually have a limited source of income, so the fee is kept to a minimum. In some cases, a 'peppercorn' fee maybe applied.

9.3 Commercial Organisations

Commercial leases are the occupation of a site which could reasonably be expected to generate a profit. These leases are subject to Council approval prior to entering into a lease agreement. The establishment of a new commercial business on Council land will be subject to individual assessment of all aspects of the proposal by Council, including the fee structure to be applied

9.4 Private

Private lease or licence agreements are the occupation of land for private purposes, providing no, or minimal, wider community benefit. This can apply to various situations, including land used for grazing and cultivation and aerodrome hangar space.

The fee applied is in accordance with Council's Annual Fees and Charges. Requests from private individuals to lease Council buildings or vacant land will be assessed on merit in accordance with Council's strategic direction and operational requirements.

10. FEE STRUCTURES

The *Local Government Act 1999* allows Council to impose lease and licence fees for the use of any facilities controlled, managed, or maintained by the Council. The Act does not stipulate how to set these fees. Council have the flexibility to apply a variety of fee models to suit various situations.

All fees and charges that apply to leases and licences will be recorded in Council's Fees and Charges that is adopted annually.

10.1 Peppercorn

A peppercorn lease refers to the nominal fee applied (\$1.00) to the lease agreement. This fee model provides financial benefit to the lessee, allowing the group to focus on community benefit and capital renewals and upgrades. Sinking funds may apply.

~~In these situations, the lessee is responsible for non-structural maintenance and repairs to Council buildings, and outgoings. Where the lessee has established the improvement on the premises, they are responsible for structural and non-structural maintenance and repairs.~~

~~Community groups that provide a service, or community value, that require support from Council with maintenance will be required to make application to Council for consideration of their position. A report will be presented to Council in such circumstances as this is not a standard arrangement, and will have budget impacts for Council.~~

10.2 User Fee

The user fee is the fee model applied to community licence agreements. This fee is based on use, ability to pay and level of operational management, as required, by the Agreement.

10.3 Commercial Rate

Commercial lease fees are the result of a negotiation process and subsequent endorsement of Council. ~~A price per square metre for commercial space is commonly used to calculate the fee applied to commercial lease agreements.~~

10.3 Residential Rent

Residential rents amounts, will be negotiated prior to a new tenant, taking up residence, and will be a decision of Council.

10.4 Sinking Fund

A sinking fund will be applied to all sporting leases, in lieu, of a lease fee. This fee will be calculated using the fair value of all assets included on the land, relative to this lease, multiplied by .25%.

11. Other Charges and Responsibilities

11.1 Rates

11.1.1 Recreation Grounds Rates and Taxes Exemption Act, 1981

Pursuant to Section 4(1) of the Recreation Grounds Rates and Taxes Exemption Act, land that is vested in a Council or is under the care, control and management of a Council, and the public is entitled to access the land for the purpose of sport or recreation, this land is exempt from rates and taxes.

11.1.2 Local Government Act, 1999

Pursuant to Section 147(2) of the Act defines land that is not rateable including:

- Unalienated Crown land;
- Land used or held by the Crown;
- Land exempt from rates and taxes under the Recreation
- Grounds Rates and Taxes Exemption Act;
- Land occupied by emergency service organisations under the Fire and Emergency Services Act.

Section 188 of the Act allows Council to impose a fee for the use of any property owned or managed by Council. Where land is not rateable, a market value fee calculation may be applied as a lease fee equivalent to a rates charge.

Pursuant to Section 161 of the Local Government Act, community service organisations can be rebated 75% of rates, or at the discretion of Council, at a higher rate. The Act defines community service organisations as an incorporated 'not-for-profit' group that provides community services without charge or for a charge that is below the cost to the body providing the services.

Section 166 of the Act allows Council to grant a rebate of rates where land is being used by an organisation which, in the opinion of the council, provides a benefit or service to the local community.

11.3 Maintenance, Repairs and Replacements

A comprehensive list of building items will be provided to the lessees with the Lease or Licence Agreement. 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 the provision of services to the external walls

Council will not be responsible for structural repairs, if the damage has been caused the lessee not undertaking the maintenance program as provided with the lease,.

All other maintenance, repairs, replacements and upgrades are the responsibility of the Lessee. A more detailed responsibility list will form part of the lease agreement.

11.4 Utilities and Outgoings

Council, lessees and licences will be responsible for the cost of all utilities. This includes power, gas, insurance and metered lighting. For those circumstances, where Council has access to the water supply, negotiations will occur with the lessee in relation to a percentage of responsibility.

11.5 Water Usage

Where the lease refers only to a building and there is no open space attached to the leased area then the lessee will be responsible for the payment of all water and sewer charges levied against the land.

For those circumstances, where Council has access to the same water supply, negotiations will occur with the lessee, in relation, to a percentage of responsibility.

11.6 Waste Disposal

Lessees will be responsible for waste collection charges, except, where negotiation has occurred.

11.7 Insurance

Council will pay for insurance on all buildings and structures, all other insurances are to be paid by the lessee.

11.8 Inspections and Compliance

Compliance with Work Health and Safety, in relation, to the general structure of the buildings and structures, will be the responsibility of Council. Access maybe required, keys to be supplied to Council.

11.9 Potable Water

Rainwater on the property is not to be sold. Signage on any rainwater tanks or tapware to be displayed.

11.9 New Assets and or Disposal of Assets

Council encourages community groups and organisations to undertake asset upgrades, renewals and new assets, permission to erect structures on the land, will require permission from Council and any associated interested organisation, and undertake to get development approvals as per the Planning, Development and Infrastructure Act 2016.

Lessees must seek Council permission to sell assets that are located on the land.

11.10 Community Loans

Council will support community groups, by undertaking a loan facility with the Local Government Finance Authority. This will be a fixed loan and interest rates will be applicable to the current

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interest rate, at time of application. The community group will be responsible for ongoing bi-annual payments, and will be paid to Council, as per the Loan Agreement.

Any other loan, with terms and conditions, outside of the above, will be subject to Council approval.

12. Sub-letting or Hiring out of Leased Facilities

It will be a condition of the lease 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.

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.

Clubs are encouraged 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.

13. Financial Assistance

Council is committed to assist and support community and sporting groups to enhance and continue to upgrade facilities by providing a fixed term loan, based on current interest rates.

14. Club Development Incentive

Club development programs improve the governance and management of clubs to support long term sustainability. Completion of these programs ensure that clubs using Council facilities are well managed, sustainable, and operating legally.

There are a number of recognised club development programs, however the club development offered by the Australian Sports Commission (ASC) called Game Plan is a free online platform that allows sporting clubs of all sizes to get insights into their current capabilities in key areas of club administration, then supports ongoing club development with a suite of tools.

15. Gaming Machines

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.

16. Political Signs

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

17. Leases and agreement arrangements

As part of the lease and agreements process, the Council will undertake to do and provide the following documentation: -

- Onsite visit to meet with the community groups Committee to discuss the items that are included in the lease and obsolete assets.
- Lease Agreement (including)
 - * Map of the Leased area
 - * Leases and Responsibility listing for lessee and Council
 - * Asset Forms – Permission to erect structures or buildings on the site
 - * Asset Forms - Asset replacement and disposal advise
 - * Asset Listing – assets that are included on the property
 - * Asset Condition Reports – conditions of assets – at last assessment
 - * Maintenance and repair schedule
 - * Asbestos Register and Reports
 - * Termite Reports – annually
 - * Community Land Management Plan (CLMP)
 - * Hazard Reporting Form
- Meeting and Inspection of premise to occur on an annual basis.
- Leases and supporting information to be supplied to President, annually.

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The Community group will supply a copy of the following:-

- Constitution and bylaws– if not current, a new one developed within the two years of the signing of the agreement.
- Executive Group – contact addresses, emails and phone numbers to be supplied – on an annual basis
- Insurance – Public Liability – for all occupiers of the premises - \$20 million – unless an exemption is listed in the agreement.
- Insurance – Volunteer Insurance
- Insurance – Directors Insurance
- Annual Reports
- Financial Reports – Balance Sheet - annually - if Council has not had current version
- Auditors Reports
- Long Term Asset Replacement Schedule – template provided by Council
- Keys – access to buildings
- A listing of all occupiers on the premise.
- Maintenance Form – annually – with proof of works undertaken

18. Non Compliance

If any lessee, fails to provide any of the required information, a penalty fee of \$300.00 will apply.

19. Delegations

Council shall delegate full authority for the negotiation and approval of agreements to the Chief Executive Officer or delegated officer.

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Renewals of agreement, set out in the schedule of the agreement, will be executable by the Chief Executive Officer or their nominee unless:

- the organisation is in default (breach) of any condition of the agreement;
- the organisation has received an expiation, non-compliance notice or order in relation to their occupation of the facility or their operation as an organisation;
- unless it is deemed to negotiate new terms and conditions, or there are significant changes or impacts;
- the organisation loses its not-for-profit, charitable or community benefit status.

If any of the above conditions apply, a report shall be presented to Council to propose a recommended action.

Long-term Agreements exceeding 10 years will be considered by Council, and subject to public consultation, where applicable.

The agreement terms (periods of tenure) must be compliant with the *Retail and Commercial Leases Act, 1995* and, where the subject Premises is on community land or in the public realm, the *Local Government Act, 1999*.

Council delegates to the Chief Executive Office the power to approve asset upgrade and replacement, as per the following:-

- Renewal of assets \$ 100,000
- New Assets and upgrade \$ 50,000

20. Records Management

All records shall be kept and disposed of in accordance with Councils Records Management Policy & procedure and the current General Disposal Schedule.

21. Further Information and Policy Availability

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.streakybay.sa.gov.au

District Council of Streaky Bay
29 Alfred Terrace
Streaky Bay SA 5680

Copies will be provided to interested parties upon request. Email dcstreaky@streakybay.sa.gov.au

22. Document History

Version No:	Issue Date:	Description of Change:	Date Endorsed
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1.00	August 2018	First Version	16 August 2018
2.00	November 2023	Intensive Review – significant different. More defining of responsibilities, legislation, made it more applicable to Council's practices and references updated	

23. Acknowledgment

I, _____ (*print full name*) have read and understood the District Council of Streaky Bay's DCSB-PM-16.08 – Leases and Licence Policy and I agree to abide by this policy which is outlined above.

Employee Signature: _____ Date Signed: _____

