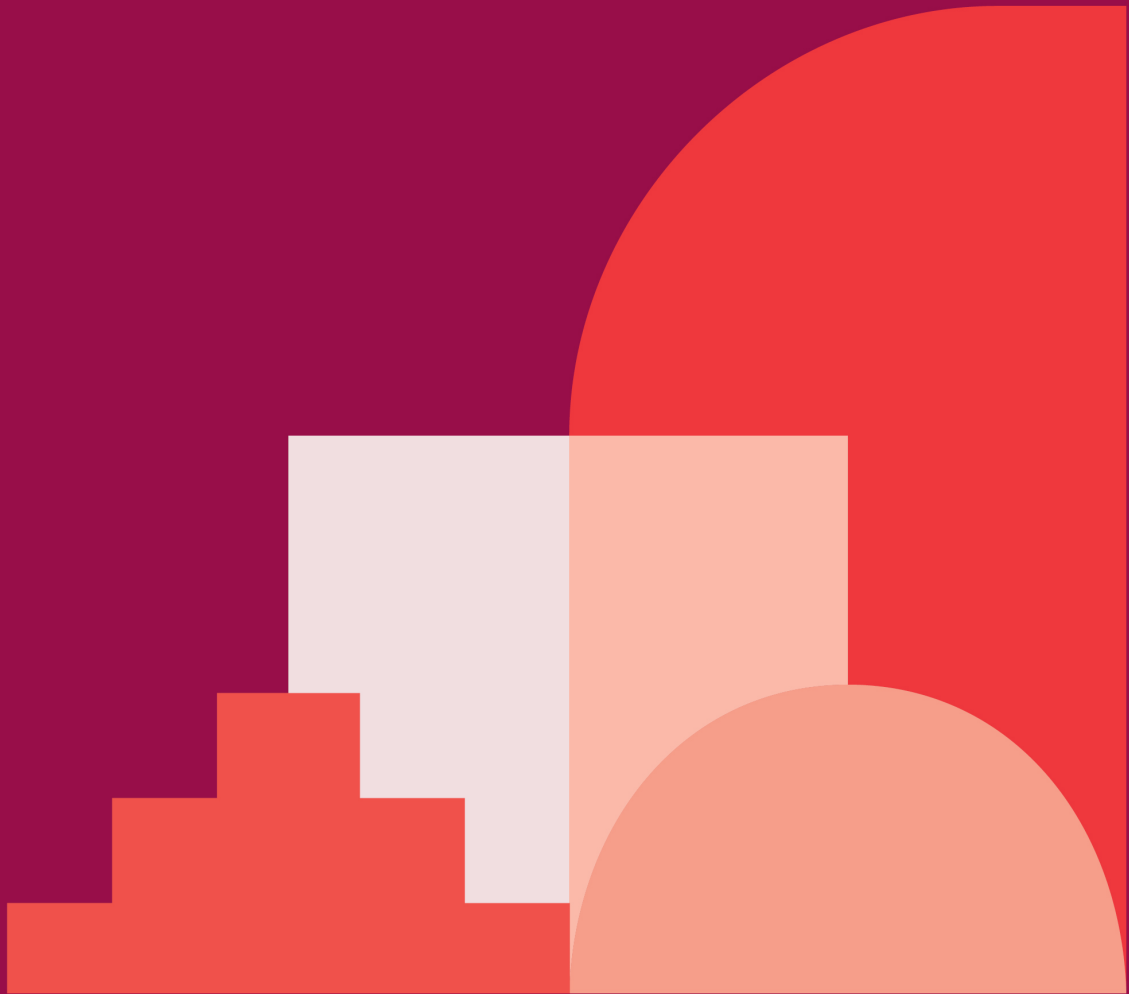


Land and Property Policy

V2



Title	Land and Property Policy
Summary	<p>The Inner West Council is committed to optimising community benefits to meet the needs of our community now and in the future through consistent management of Council owned or controlled land or buildings.</p> <p>This policy sets out the way community facilities, commercial buildings and residential properties may be leased and licenced by individuals, organisations and businesses. It provides direction on lease and licence terms, responsibilities and rental charges, as well as the process for offering new leases and licences.</p>
Document Type	Policy
Relevant Strategic Plan Objective	<ul style="list-style-type: none"> • Strategic Direction 1: An ecologically sustainable Inner West • Strategic Direction 2: Liveable, connected neighbourhoods and transport. • Strategic Direction 3: Creative communities and a strong economy • Strategic Direction 4: Healthy, resilient and caring communities • Strategic Direction 5: Progressive responsive and effective civic leadership.
Legislative Reference	<ul style="list-style-type: none"> • <i>Anti-discrimination legislation (various)</i> • <i>Conveyancing Act 1919</i> • <i>Crown Lands Management Act 2016</i> • <i>Dividing Fences Act 1991</i> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Independent Commission Against Corruption Act 1988</i> • <i>Land Acquisition (Just Terms Compensation) Act 1991</i> • <i>Land Tax Management Act 1956</i> • <i>Local Government Act 1993</i>

	<ul style="list-style-type: none"> • <i>Local Government (General) Regulation 2021</i> • <i>NSW Government Procurement Policy Framework 2022</i> • <i>Real Property Act 1900</i> • <i>Residential Tenancies Act 2010</i> • <i>Retail Leases Act 1994</i> • <i>Roads Act 1993</i> • <i>Telecommunications Act 2018</i> • <i>Valuation of Land 1916 Act No 2</i>
<p>Related Council Documents</p>	<ul style="list-style-type: none"> • Affordable Housing Policy • Statement of Business Ethics • Child Safe Framework • Complaints Handling Policy • Debt Recovery Policy • Employment and Retail Land Strategy • Hazardous Material Policy • Inclusion Action Plan for people with a Disability 2017-21 • Inner West Community Strategic Plan • Local Housing Study and Strategy • Integrated Transport Strategy • Local Strategic Planning Statement • Model Code of Conduct • Plans of Management • Procurement Policy • Procurement Procedure • Recreation Needs Strategy • Statement of Visions and Priorities • Voluntary Planning Agreements Policy • Zero Waste Strategy
<p>Version Control</p>	<p>See last page</p>

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1 Purpose

The purpose of this policy is to provide Council with the decision-making framework to operate a consistent approach to land and property management.

2 Scope

This policy applies to all Council Officials.

This policy applies to the following:

- Council owned or controlled land or buildings.
- Leases of land including residential leases and leases under the *Roads Act 1993*.
- Licenses to operate ventures on Council land for a specified period whether on a full time or part time basis (for example a license to park and operate a mobile coffee van in a park or road).
- Agreements analogous to the above including memorandums of understanding and service agreements for community and commercial uses.
- Air space leases and licenses.
- Accommodation grants.
- Land classifications.

This policy does not apply to:

- Casual or periodic bookings of community spaces or sporting fields as set out in the Fees & Charges.
- Footpath dining under section 125 of the *Roads Act 1993*.

3 Definitions

In the Land and Property Policy, the following terms have the following meanings:

Act	<i>Local Government Act 1993</i>
Councillor	Inner West Council elected representative.
Council committee member	A person other than a Councillor or Council Officer who is a member of a Council committee other than a wholly advisory committee, and a person other than a Councillor who is a member of Council’s audit, risk and improvement committee.
Council Official	Councillors, Council Officers, Council committee members and delegates of Council.

Council Officer	Inner West Council members of staff (including full-time, part-time, casual and contracted staff).
Crown Land	Has the same meaning as in the <i>Crown Land Management Act 2016</i> .
CSP	Inner West Community Strategic Plan (otherwise known as Our Inner West 2036).
Facility Maintenance	Regular day-to-day work necessary to keep an asset safe and operational and to achieve its optimum life expectancy. Examples of facility maintenance include painting, glazing, replacing light globes and fittings, air conditioning repairs, tap seal repairs and cleaning gutters.
Facility Renewal	Capital works which return an asset to its 'as new' condition and / or restore it to its original life expectancy. This includes renewal of related infrastructure such as pathways, retaining walls and drainage.
Facility Upgrade	Capital works carried out to provide a higher level of service of an asset.
Fees & Charges	Includes all costs relating to the transaction and charged as per the cost incurred or as details in Council's published Fees and Charges.
General Manager	General Manager of Inner West Council.
Land Rates	All Council rates, levies and other charges imposed in relation to the leased premises and / or the Lessee's / Licensee's use of the land. Land rates exclude charges for the removal of waste.
Land Tax	The land tax that the Lessee will be liable for in respect of the premises during the term of the Lease if land tax is payable on the land under the <i>Land Tax Management Act 1956</i> .
Lease	A lease will provide a right of exclusive possession of an area for a specified term. A Lease includes all property related SLAs and MOUs that detail the terms for a party's exclusive use of Council-owned Property.

Lessee	The recipient of a Lease that gains the exclusive use of the property.
Licence	A lease will provide part of a building or land at specific times.
Licence Fee	The licence fee payable under a Licence.
Licensee	The recipient of a Licence that gains a non-exclusive right to use of the property.
Market Rent	The Rent paid for leasing or licensing a premises on the private market as determined by an independent valuer.
Market Valuation	A valuation of Market Rent provided by an appropriately qualified and experience professional independent to Council.
MOU	Memorandum of Understanding.
Neighbourhood Centre	Refer to section 17.1.
Outgoings	The outgoings payable under a Lease or Licence.
Property	Land and / or buildings owned or leased by Council, and access to public land under Council management.
Rent	The rent payable under a Lease.
Residential Building	A Council owned building leased under the <i>Residential Tenancies Act 2010</i> .
SLA	Service Level Agreement.
Sports Ground Buildings and Facilities	A clubroom, grandstand, change room, kiosk or sports field.
Structural Repairs	Repairs that Council considers are essential to maintain the basic functions of stability and weather resistance in the floors, walls and roofs of an asset. This includes repairs and replacements to the footings and foundations, columns, beams, joints, bearing walls, perimeter walls and flood slab and roof structure of the building.

Utility Service Account Includes electricity, gas, telephone and internet services, as well as water usage.

4 Statement

Council is committed to optimising community benefits to meet the needs of our community now and in the future through consistent management of Council owned or controlled land or buildings.

The objective of this policy is to demonstrate a sustainable, equitable, transparent, risk management approach to property and land management.

All leasing and licencing of Council controlled land assets, including Crown Land, will:

- Be consistent with Council's economic, social and environmental objectives.
- Be undertaken in compliance with legislative and other obligations.
- Occur only after consultation with all affected stakeholders and relevant sections of the community.
- Be undertaken with the intention of securing an optimum mix of financial and other benefits for the community.
- Be through a fair and open process and include regular market testing in accordance with the NSW Independent Commission Against Corruption Direct Negotiations: Guidelines for Managing Risks.
- Be open to public scrutiny while maintaining appropriate levels of commercial confidentiality.
- Be conducted in accordance with Council's procedures covering Business Ethics and the Model Code of Conduct.

This policy sets out the way community facilities, commercial buildings and residential properties may be leased and licenced by individuals, organisations and businesses. It provides direction on Lease and Licence terms, responsibilities and rental charges, as well as the process for offering new Leases and Licences.

5 Land Classifications

Under the Act, land under Council's control, other than roads and Crown Land must be classified as either 'operational land' or 'community land'. Land owned and land leased by Council is either:

- Operational Land or Community Land (as described in Division 1 of Part 2 of Chapter 6 of the Act).
- Crown Land.

- Road reserve.

Council must manage all land under its control as detailed in the following Table 1 – Land and Permitted Use.

Table 1 – Land and Permitted Use

Operational Land	Used for Council’s administrative and works functions, affordable housing, commercial and investment opportunities. Do not require a Plan of Management.	Subject to the Act, <i>Real Property Act 1900</i> , <i>Conveyancing Act 1919</i> and <i>Retail Leases Act 1994</i>
Community Land	Leasing of Community Land is restricted for use by the public. Leases / Licenses must be consistent with the core objectives of Community Land, for a use prescribed by the Act or the <i>Local Government (General) Regulation 2021</i> (if expressly authorised under a Plan of Management for that land). A Lease / License for a term exceeding 5 years may be granted only after a tender process, unless it is granted to a non-profit organisation.	Subject to sections 45 – 47AA and 55 of the Act
Crown Land	Land which is owned by the State of NSW, reserved or dedicated for public recreation or similar purpose. Councils may be appointed as the Reserve Trustees on behalf of the Minister for Lands and Property to manage and care for the Crown Land to facilitate and encourage community use and enjoyment. A Lease / License of Crown Land will be generally carried out under the same conditions as apply to	Subject to the <i>Crown Lands Management Act 2016</i> .

Community Land, but these Lease / Licenses are also subject to Ministerial consent.

Road Reserve	Leasing and licensing of parts of public roads including road closures (not covered by this policy).	Subject to the <i>Roads Act 1993</i>
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6 Required Registers – Land Register, Others

- 6.1 The Land Register details the Lot and Deposited Plan descriptions, addresses and classifications of all Council controlled land.
- 6.2 The Crown Land Register details all land owned by the Crown that Council is the trustee and Manager of.
- 6.3 The Compulsory Acquisitions Register details all land that may or may not be transferred to Council by dedication, voluntary planning agreement, State Government transfers and other transfers of ownership to Council.
- 6.4 The Register of Easements, Rights of Way and Other Burdens details all Council-owned land that is burdened by encumbrances and other land that Council has the benefit of registered encumbrances over.
- 6.5 The Hazardous Materials Register contains the details required to be listed pursuant to Council’s Hazardous Material Policy.

7 Links to CSP

The CSP identifies Council’s vision for the future, long-term goals of the Council, and the strategies to get there and measure the progress towards that vision.

8 Land Management

A Council resolution following a public exhibition period is required to classify land as Operational Land.

9 Lease and Licence Categories

- 9.1 There are eight categories of Lessees / Licensees that Council may Lease or Licence a community facility or commercial building to. These are set out in the following Table 2 – Categories of Lessees / Licensees.

9.2 The most appropriate Lessee / Licensee category will be determined by Council, based on information provided by the prospective Lessee / Licensee and other information Council considers relevant.

Table 2 – Categories of Lessees /Licensees

<p>Local Community Group</p>	<p>This type of Lessee / Licence is likely to:</p> <ul style="list-style-type: none"> • Be leasing or licensing Community Land (or a facility on it). • Be an incorporated association. • Have no paid staff. • Have low or no membership fees. • Receive no recurrent funding from government. • May receive project / program funding.
<p>Local Community Sporting Group</p>	<p>This type of Lessee / Licence is likely to:</p> <ul style="list-style-type: none"> • Be leasing or licensing Community Land (or a facility on it). • Be an incorporated association. • Focus on one sport or interest. • Have five or fewer paid staff who deliver coaching, administration and associated services, typically on a part-time basis. • Receive limited income from local sources. • Not have a liquor licence other than a limited licence. • Not have a gaming licence.
<p>Small to Medium Non-Profit Provider of Community Services</p>	<p>This type of Lessee / Licence is likely to:</p> <ul style="list-style-type: none"> • Be leasing or licensing Community Land (or a facility on it). • Be operating on a non-profit basis. • Be a registered charity. • Provide wider community services beyond its members. • Have paid staff, as well as volunteers. • Be classified by the Australian Charities and Not-for-profits Commission as having an annual income under \$1,000,000 (averaged over the previous 5 years).
<p>Large Non-Profit Provider of Community Services</p>	<p>This type of Lessee / Licence is likely to:</p> <ul style="list-style-type: none"> • Be leasing or licensing Community Land (or a facility on it). • Be operating on a non-profit basis. • Be a registered charity. • Provide wider community services beyond its members. • Have paid staff, as well as volunteers.

- Be classified by the Australian Charities and Not-for-profits Commission as having an annual income of \$1,000,000 or above (averaged over the previous 5 years).

Recreation Club

This type of Lessee / Licence is likely to:

- Be leasing or licensing Community Land (or a facility on it).
- Be an incorporated association, registered club or registered charity.
- Have more than 5 paid staff members.
- Receive recurrent commercial income.
- Hold liquor and / or gaming licence/s.

Government Entity Providing Community Services

This type of Lessee / Licence is likely to:

- Be leasing or licensing a community or commercial facility or land.
- Be a government agency or government organisation.
- Provide multiple community programs and / or services.

Commercial Business

This type of Lessee / Licence is:

- Leasing / licensing a Council facility or land for the purpose of generating a profit.
- A sole trader, company, partnership, joint venture or trust.

Residential Lessee

This type of Lessee is leasing a residential property.

10 Objectives and Types of Leases / Licences

10.1 Leasing / licencing objectives are used to assess the Lease / Licence value and include:

- Optimising the use of public assets.
- Providing premises for local community groups and Not for Profit providers.
- The facilitation of an endorsed strategy or plan.
- The generation of revenue to contribute to Council's sustainability.

10.2 Lease / Licence types include commercial, retail, community, airspace, substratum and residential Leases / Licences.

10.3 The general position regarding the term of the Lease / Licence is set out in Table 3 – Length of Lease / Licence by Lessee / Licensee.

10.4 A Lease / Licence term of 5+ years requires an expression of interest or tender process prior to the grant of the Lease / Licence.

- 10.5 A Lease / Licence term of no longer than 21 years is permissible for Community Land.
- 10.6 SLAs will be set dependent on the type of service being provided from the leased / licensed premises.
- 10.7 Unless the Lessee / Licensee is entitled to an Accommodation Grant as outlined in section 14, the Market Rent will be determined by an independent valuer or by reference to similar rates currently in place for all Leases / Licenses and documented in the Lease / Licence.
- 10.8 The Licence Fee must at least cover the costs of utilities, consumables and other expenses incurred by Council as a direct result of the Licensee's non-exclusive use of the land.
- 10.9 The Rent / Licence Fee is to be reviewed annually. Leases / Licences will provide for annual rent reviews on accordance with the changes in the Consumer Price Index (all groups) – Sydney or a percentage amount set in the Lease / Licence (whichever is the greater). The rent is to be subject to a Market Review upon the exercise of an option to renew or the renewal of a Lease / Licence on its expiry or the year immediately before the exercise of option.
- 10.10 All Lessees / Licensees are to pay the attributable outgoings for the premises (including but not limited to rates, Land Tax, utilities and maintenance costs).
- 10.11 The Lessee / Licensee will be required to maintain the premises in good order and repair having regard to their condition at the start of the Lease / Licence. The Lessee / Licensee will be required to complete an entry condition report at the beginning of the Lease / Licence. If Council finds that the premises are not being kept in good order and repair, Council may carry out any repairs and recover the costs of those works from the Lessee / Licensee (including without limitation any project management fees).
- 10.12 A Lessee / Licensee is not usually responsible for structural repairs unless the structural repairs are required because of:
 - The Lessee's / Licensee's failure to comply with their obligations to keep the premises in good order and repair.
 - The Lessee's / Licensee's permitted use of the premises.
 - Council has granted the Lessee / Licensee approval to carry out structural works to the premises.
- 10.13 It is preferred that Council carries out any structural works to a premises. However, Council and the Lessee / Licensee may negotiate for the Lessee / Licensee to be responsible for structure repairs to a premises as part of an agreement for the Lessee / Licensee to pay less than Market Rent at the commencement of the Lease / Licence. If the Lessee / Licensee erects any structures on Council owned land, it will be required to undertake any structural repairs required to that structure at its expense.

- 10.14 If Council undertakes structural works that are required because of the Lessee's / Licensee's failure to keep the premises in good order and repair, or the Lessee's / Licensee's permitted use, Council may recover the costs of those works from the Lessee / Licensee (including without limitation any project management fees).
- 10.15 All Lessees / Licensees must do the following:
- Take actions to increase inclusion within their operations in accordance with Council's *Inclusion Action Plan for People with a Disability 2017-2021*.
 - Align their practices and operations with Council's *Climate Renewables Strategy – Responding to the Climate Emergency – Climate Change Mitigation – December 2019*.
- 10.16 Each Lease / Licence will recognise the need for Council to respond to changing community needs over time, as well as the Lessee's / Licensee's need for security of tenure if they are seeking to invest in capital works for their premises.
- 10.17 Each Lease / Licence will also recognise that Council needs to minimise the risk associated with leasing / licensing Council owned land and buildings to third parties, and that each Lessee / Licensee should be occupying or using the premises at their own risk.
- 10.18 Proposed large-scale investments into or on Council owned premises may be subject to a separate agreement between Council and the Lessee / Licensee.

11 Retail and Other Commercial Leases

- 11.1 Commercial Leases / Licences are Leases / Licences where the Lessee / Licensee operates a business in, undertakes commercial activities on, obtains income from and/or has a private gain from the use of the premises. Leases / Licences of kiosks, restaurants, shops, offices and other premises used for the operation of a business are commercial Leases / Licences. Leases of Childcare Centres to a person or company which operates a for-profit service are commercial Leases. A Lease / Licences to a Lessee / Licensee which sub-Leases / sub-Licenses or hires the premises for profit is a commercial Lease / Licence.
- 11.2 A Lessee / Licensee may be a non-profit organisation but it may sub-Lease / sub-License or hire part of the premises for a fee or operate, or permit a sub-Lessee / sub-Licensee, contractor or other person to operate on the Leased / Licensed premises a for-profit business, a commercial activity which provides private gain, profit or income for the sub-Licensee, contractor or other business operator and/or which competes with other private businesses. This is also a commercial Lease / Licence.
- 11.3 Market Rent will be payable for Commercial Leases / Licenses.

- 11.4 If there is direct negotiation with one potential Lessee / Licensee only, the Market Rent may be determined by an external Valuer having regard to the terms of the proposed Lease / Licence.
- 11.5 An assessment of Market Rent by a registered valuer is an opinion by an expert. It is noted that it will not give as true a measure of Market Rent as a competitive process (such as an auction, tender or expression of interest campaign) between two or more interested parties.
- 11.6 With a competitive process the Market Rent is the higher of the Market Rent as determined by a registered valuer and the highest offer a potential Lessee/Licensee is prepared to offer during the competitive process. . However, the benefit of receiving the highest Market Rent may be outweighed / offset by other factors so long as the public receives value for money from the commercial use of public land.

12 Duration of Lease and Licence

- 12.1 The length of a Lease / License which Council may offer to each category of Lessee / Licensee is set out in Table 3 – Length of Lease / Licence by Lessee / Licensee.
- 12.2 New Leases / Licences will not include as-of-right renewal options or entitlements to further terms.
- 12.3 The term of Leases / Licences on Crown Land may be subject to transitional restrictions under the *Crown Lands Management Act 2016*.

Table 3 – Length of Lease / Licence by Lessee / Licensee

Local Community Group	Not greater than 5 years unless the Lessee / Licensee has documented evidence it plans to spend \$50,000 or more on the renewal or upgrade of the premises, in which case the term is 10 years.
Local Community Sporting Group	Not greater than 5 years unless the Lessee / Licensee has documented evidence it plans to spend \$50,000 or more on the renewal or upgrade of the premises, in which case the term is 10 years (with a further option to renew to be agreed if further capital works are undertaken).
Small to Medium Non-Profit Provider of Community Services	Not greater than 5 years unless the Lessee / Licensee has documented evidence it plans to spend \$50,000 or more on the renewal or upgrade of the premises, in which case the term is 10 years (with a further option to renew to be agreed if further capital works are undertaken).

Large Non-Profit Provider of Community Services	Not greater than 5 years unless the Lessee / Licensee has documented evidence it plans to spend \$50,000 or more on the renewal or upgrade of the premises, in which case the term is 10 years (with a further option to renew to be agreed if further capital works are undertaken).
Recreation Club	Not greater than 5 years unless the Lessee / Licensee has documented evidence it plans to spend \$50,000 or more on the renewal or upgrade of the premises, in which case the term is 10 years (with a further option to renew to be agreed if further capital works are undertaken).
Government Entity Providing Community Services	Not greater than 5 years, unless the grant of the Lease has been the subject of a tender process, in which case the term is 10 years (with a further option to renew to be agreed if further capital works are undertaken).
Commercial Business	Not greater than 5 years, unless the grant of the Lease has been the subject of a tender process, in which case the term is 10 years.
Residential Lessee	6 to 12 months.

13 Lease and Licence Responsibilities

- 13.1 A high-level summary of the key responsibilities of Council and the Lessees / Licensees of Council owned premises are (subject to the *Residential Tenancies Act 2010* and the *Retail Leases Act 1994*) set out in Table 4 – Summary of Key Responsibilities for Leases / Licences.
- 13.2 Further details on the responsibilities of Council and the Lessees / Licensees of Council owned premises will be contained within each Lease / Licence.
- 13.3 The provisions of the *Residential Tenancies Act 2010* will, in the event of any inconsistency between the responsibilities in this section 13 and the *Residential Tenancies Act 2010*, prevail in respect of any Leases that are residential Leases for the purposes of the *Residential Tenancies Act 2010*.
- 13.4 The provisions of the *Retail Leases Act 1994* will in the event of any inconsistency between the responsibilities in this section 13 and the *Retail Leases Act 1994* prevail in respect of any Leases / Licences that are retail Leases for the purposes of the *Retail Leases Act 1994*.
- 13.5 Council will plan for and undertake structural repairs, Facility Upgrades and Facility Renewals in accordance with its adopted management plans, budgets and capital works programs unless specified in the Lease / Licence.

13.6 Council Officers will provide an induction to the Lessee's / Licensee's responsibilities at the commencement of a Lease / Licence.

Table 4 – Summary of Key Responsibilities for Leases / Licences

Council Responsibilities	Lessee / Licensee Responsibilities
<p>Council will be responsible for:</p> <ul style="list-style-type: none"> • Maintaining a building insurance policy. • Maintaining fire safety compliance. • Undertaking termite control and major tree removal. • Undertaking facility inspections. 	<p>The Lessee / Licensee will be responsible for:</p> <ul style="list-style-type: none"> • Maintain a building contents insurance policy. • Maintaining a public liability insurance policy for at least \$20,000,000. • Organising and paying for utility services. • Paying any Land Tax levied by the NSW State Government. • Paying land rates. • Organising and paying for waste collection services. • Paying water accounts and charges. • Undertaking cleaning of the premises, graffiti removal and grounds maintenance. • Repairing damage caused to the premises by the Lessee / Licensee and other users of the premises (including without limitation the Lessee's / Licensee's employees, agents, contractors and invitees). • Undertaking maintenance of the premises as required in the Lease / Licence. • Undertaking pest control (other than for termites).

- Enabling the inspection of the premises by Council and its authorised agents and contractors.
- Undertaking annual use surveys and end of Lease / Licence reporting.

14 Accommodation Grants

- 14.1 Council will from time-to-time Lease / Licence a premises for a reduced Rent / License Fee (below the Market Rent).
- 14.2 Accommodation Grants (**Grants**) equivalent to all or part of the Market Rent may be granted to Non-Government Organisations (**NGOs**), incorporated non-profit organisations, charity service providers or sporting and community organisations for non-commercial purposes provided that such uses align with the community's demonstrated needs or aspirations and further the objectives in Council's *Statement of Visions and Priorities* and / or the *Local Strategic Planning Statement* or other adopted Plans. Refer to Table 5 – Grant Eligibility Criteria.
- 14.3 Priority areas of support for non-profit businesses will be determined by Council.
- 14.4 The percentage of the Grant will reflect the benefit to the community from the Lease / Licence and service provided, the extent to which it aligns with Council's *Statement of Visions and Priorities* and / or the *Local Strategic Planning Statement* or other adopted Plans, and the applicant's capacity to pay the Market Rent. Refer to Table 5 – Grant Eligibility Criteria.
- 14.5 The Grant will be detailed in the Lease / Licence and the Grant will specify the services to be provided to the community to ensure that the Lessee's / Licensee's occupation / use of the premises continues to be in the public interest during the term of the Lease / Licence. These particulars may include, but are not limited to the following:
- The requirements for the services to be offered and the clientele to whom the services are to be provided to.
 - That membership must be opened to all of the community.
 - The shared use of / access to the premises by third parties.
 - The prices to be charged for the services provided.
 - The hours of operation.
 - The preference in the provision of services to Council's residents.
 - Key performance indicators.
 - Annual reporting requirements.
- 14.6 The Grant cannot be considered in perpetuity.
- 14.7 The Grant will only be for the Market Rent or part thereof.

- 14.8 The Grant does not include the outgoings for the premises (including without limitation Council's repair and maintenance costs, utility charges, rates, insurance charges, management fees and other expenses) or the costs of non-structural maintenance and repairs, the Lessee's / Licensee's utilities and / or the other costs incurred or to be incurred by the Lessee / Licensee. These costs must be paid by the Lessee / Licensee unless an exemption is approved.
- 14.9 The Grant is a financial contribution from Council to the Lessee / Licensee and to the service the Lessee / Licensee is providing. This financial contribution must be acknowledged in the Lease / Licence (as outlined in section 14.5), on signage in the premises, in annual reports and in other communications by the Lessee / Licensee to its clients and others.

Table 5 –Grant Eligibility Criteria

100%	Council provides a grant for 100% of the Market Rent excluding the cost of the outgoings arising as a direct result of the Lessee's / Licensee's use of the premises and the rent for Crown Land (if applicable).
90%	This will usually apply to small volunteer groups with little funding or capacity to raise income and who meet Council's strategic objectives and / or priorities to a very high degree and who are occupying 1-2 small rooms with shared facilities / using a co-location. The Rent / License Fee must at least cover the outgoings arising as a direct result of the Lessee's / Licensee's use of the premises and the rent for Crown Land (if applicable).
75%	This will usually apply to organisations which meet Council's objectives or priorities to a high degree and have some funding, but are unable to pay close to Market Rent.
50%	This will usually apply to organisations which align with Council's priorities and have some funding / capacity to obtain income or funding but are unable to pay full Market Rent.
25%	This will usually apply to organisations which align with Council's priorities and have some funding / capacity to obtain income or funding but are unable to pay full Market Rent.
10%	This will usually apply to organisations with the capacity to pay Market Rent, due to the charging of fees for their services and / or other commercial avenues or funding sources. However, a small Council

subsidy is justified due to the need and uniqueness of the services provided or other factors.

- 0% This will usually apply to organisations with the capacity to pay Market Rent, due to their size, the charging of fees for their services and / or other commercial avenues or funding sources.

15 Criteria and Processes

- 15.1 The criteria which Council will consider when making decisions about whether to offer a Lease / Licence of a new or vacant premises, or to offer a new Lease / Licence on expiry of an existing Lease / Licence is:
- Alignment with the CSP.
 - Alignment with the principles set out in Table 6 – Process for a Lease / Licence for a new or vacant premise and Table 7 – Process for a new Lease or Licence on expiry of an existing Lease or Licence.
 - Understanding of the community needs in the area in which the premises is situated.
 - Strategic planning undertaken by Council.
 - Compliance with the terms of any previous Lease / Licence.
 - Ability to manage the premises.
 - Ability to meet any increase in the Rent / Licence Fee.
 - The timeliness of any previous Rent / Licence Fee payments.
 - Compliance with any capital works expenditure commitments.
 - Compliance with legislative requirements.
- 15.2 The process Council will follow for the grant of a new Lease / Licence is outlined in Table 6– Process for a Lease / Licence for a new or vacant premises.
- 15.3 The process Council will follow for the grant of a new Lease / Licence on the expiry of an existing Lease / Licence is outlined in Table 7– Process for a new Lease or Licence on expiry of an existing Lease or Licence.
- 15.4 If Council is transferring the management of a community facility from a Section 355 Committee to a Lessee / Licensee, it will follow Path A in Table 7 – Process for a new Lease or Licence on expiry of an existing Lease or Licence.
- 15.5 If a Lessee / Licensee or a potential Lessee / Licensee believes that any aspect of a Lease / License process under this policy has not been undertaken fairly, they should lodge a complaint with Council. The complaint will be managed in accordance with Council’s Complaints Handling Policy.

Table 6 – Process for a Lease / Licence for a new or vacant premises

Step 1	Council Officers will identify if there is a new or vacant community facility, commercial building or Council owned land available for Lease / Licence. Council Officers will also determine which category of Lessee / Licensee will be suitable for the premises.
Step 2	<p>If the Lessee / Licensee is a Local Community Group or Local Community Sporting Group, Council Officers will prepare a Market Rent appraisal.</p> <p>If the Lessee / Licensee is Small to Medium Non-Profit Provider of Community Services, Large Non-Profits Provider of Community Services, Recreation Club, Government Entities Providing Community Service, Commercial Business or Residential Lessee, Council Officers will obtain a Market Valuation.</p>
Step 3	Council Officers will prepare a draft Lease / Licence using Council’s standard template and any required special conditions.
Step 4	Council will publicly advertise the premises via an expression of interest process or (if required) undertake a tender process in accordance with the Procurement Policy and Procedure.
Step 5	Council Officers will evaluate the expressions of interest or tender bids against the criteria set out in section 15.1 and recommend the preferred Lessee / Licensee and its category.
Step 6	Council will publicly notify its intent to Lease / License the premises in accordance with the Act.
Step 7	Council Officers will consider any submissions received during the notification period. If the proposed Lease / Licence terms is for over 5 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for Consent as required in the Act.
Step 8	Council will liaise with the Lessee / Licensee to complete the Lease / Licence.

Table 7 – Process for a new Lease or Licence on expiry of an existing Lease or Licence

Step 1	<p>Council Officers will contact the Lessee / Licensee 12 months prior to the expiry of the Lease / Licence requiring a report to be provided within 3 months on the following:</p> <ul style="list-style-type: none"> • The use of the premises and / or land and any community benefit provided. • The legal status of the organisation and its funding sources. • Any business, management and / or development plans. • Recent annual reports. • Any improvements made to the premises and / or the land, including capital expenditure. • Plans for future improvements and capital expenditure, including identifying the funding sources. 	
Step 2	<p>Council Officers will have 3 months to review the report, the Lease / Licence history and the criteria set out in section 15.1 and discuss any issues raised with the Lessee / Licensee.</p>	
Step 3	<p>At least 6 months before the Lease / Licence expires, Council will notify the Lessee / Licensee of their intent to follow:</p> <ul style="list-style-type: none"> • Path A – give public notice of their intent to offer a new Lease / Licence to the existing Lessee / Licensee, or • Part B – seek expressions of interest or a tender for the premises. 	
Step 4	<p>Council Officers will obtain a Market Valuation.</p>	
Step 5	<p><u>Part A</u></p> <p>Council Officers will prepare a draft Lease / Licence (including the annual rental charge and any special conditions).</p>	<p><u>Part B</u></p> <p>Council Officers will prepare a draft Lease / Licence (including any special conditions).</p>
Step 6	<p><u>Part A</u></p> <p>Council gives public notice of its intent to Lease / Licence the premises in accordance with the Act.</p>	<p><u>Part B</u></p> <p>Council publicly advertises for expressions of interest for the premises or, if required, undertakes a tender process in accordance with the Act.</p>
Step 7	<p><u>Part A</u></p> <p>Council Officers will consider submissions received during the</p>	<p><u>Part B</u></p> <p>Council Officers will assess the expressions of interest against</p>

notification period. If the proposed Lease / Licence term is over 4 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for consent as required in the Act.

the criteria set out in section 15.1 and recommend the preferred Lessee / Licensee.

<p>Step 8</p>	<p><u>Part A</u> Council Officers will liaise with the Lessee / Licensee to complete the Lease / Licence.</p>	<p><u>Part B</u> Council will give public notice of its intent to Lease / Licence the premises in accordance with the Act.</p>
<p>Step 9 (Part B only)</p>		<p><u>Part B</u> Council Officers will consider any submissions received during the notification period. If the proposed Lease / Licence term is over 5 years and Council receives an objection to the proposal during the notification period, it must forward the proposal to the Minister for Local Government for consent as required in the Act.</p>
<p>Step 10 (Part B only)</p>		<p><u>Part B</u> Council Officers will liaise with the Lessee / Licensee to complete the Lease / Licence.</p>

16 Reporting and Review

- 16.1 Lessees / Licensees will complete a short annual report on their use and management of the premises.
- 16.2 If the Lessee / Licensee is a Small to Medium Non-Profit Provider of Community Services, Large Non-Profits Provider of Community Services, Recreation Club, Government Entities Providing Community Service, Commercial Business or Residential Lessee, Council will request from the Lessee / Licensee a report containing information about:

- The use of the premises and / or land and any community benefit provided.
- The legal status of the organisation and its funding sources.
- Any business, management and development plans, as well as recent annual reports.
- Any improvements made to the premises and / or the land, including capital expenditure.
- Plans for future improvements and capital expenditure, including potential funding.

16.3 If a Lessee / Licensee is required to provide a report pursuant to section 16.2, Council will:

- Review the report, the Lessee's / Licensee's history and the criteria set out in section 15.1, and
- At least 6 months prior to the expiry of the Lease / Licence, inform the Lessee / Licensee of its intention to either offer a new lease / licence or seek expressions of interest for the premises.

17 Neighbourhood Centres

17.1 A Neighbourhood Centre is an organisation that provides generalist neighbourhood services and advice, accessed by a wide cross-section of the community. It has an existing, longstanding tenancy in a Council premises.

17.2 This Land and Property Policy recognises the Newtown Neighbourhood Centre and Summer Hill Community Centre as the two organisations classified as 'Neighbourhood Centres'. These organisations must maintain legal registration or incorporation as a non-profit organisation to continue to be eligible for Council accommodation grants.

17.3 Prior to occupying a Council owned building, Neighbourhood Centres are required to enter into a binding Lease with Council. Existing Neighbourhood Centres with no current Lease in place are required to enter into a binding Lease in order to continue their occupation of Council owned buildings.

17.4 Neighbourhood Centres are eligible for a 100% Accommodation Grant which will cover all rental costs for the occupation of the premises. In order to receive the 100% Accommodation Grant, Neighbourhood Centres will be required to comply with the requirements set out in Table 5 – Grant Eligibility Criteria.

17.5 It is a requirement that Neighbourhood Centres pay the costs of statutory outgoings for the premises they occupy. Council Officers will carry out a review to determine if existing grants cover the costs of these outgoings. Where it is established that the existing grant is insufficient to cover the cost of the outgoings, Council Officers may recommend an increase in the grant.

- 17.6 The Lease will include a SLA with the Neighbourhood Centre which will detail the specific requirements and services being offered. This will ensure the Neighbourhood Centre's occupation of the premises continues to be in the interests of the public. The SLA will be an 'essential term' of the Lease. Any repetitive persistent breach and / or non-compliance with the SLA will result in a breach of an essential term of the Lease and will be managed as outlined in section 24.
- 17.7 Council will negotiate service outcomes with Neighbourhood Centres and these will be detailed in the SLA. This enables Neighbourhood Centres to articulate the nature of their impact in the community and demonstrate the return on the use of public assets.
- 17.8 Service outcomes and measures are defined as:
- Service outcome or goal – the outcome the service seeks to achieve. This outcome or goal should contribute to one or more of Council's Community Strategic Plan objectives.
 - Performance measures – this should describe how the organisation plans to measure its achievement towards the service outcome or goal.
 - Types of evidence – this should identify the types of evidence used to measure performance.
- 17.9 The SLA will require Neighbourhood Centres to deliver and comply with the following minimum requirements:
- Demonstrate the community benefits arising from their use of Council owned buildings through formal reporting requirements. This reporting should be carried out at 6 month intervals or at 3 month intervals if Council requests due to performance issues.
 - Provide details on the clients to whom the service is to be provided to the satisfaction of Council. This reporting should be carried out at 6 month intervals or at 3 month intervals if Council requests due to performance issues.
 - Provide reporting on key performance indicators to the satisfaction of Council. This reporting should be carried out at 6 month intervals or at 3 month intervals if Council requests due to performance issues.
 - Provide annual audited financial statements.
 - Provide an annual report to Council and ensure that it is publicly available on the Neighbourhood Centre website.
 - Ensure that the Neighbourhood Centre has membership open to all in the community with a preference for Inner West Council area residents.
 - Provides shared use or access by third parties with a preference for Inner West Council area residents and groups.

- Ensure that pricing and hours of operation are pre-approved by Council in accordance with any existing Council fee scale policy or similar. Pricing must be easily found on the Neighbourhood Centre's website.
- Meet a minimum of once every 3 months with Council Officers to assist in collaboration, joint programming and maintenance of the premises.
- Where the Neighbourhood Centre is engaged in child related work, demonstrate compliance with Council's Child Safe Framework. This includes provision of evidence that where required staff, volunteers and board members have Working with Children Checks, and the Neighbourhood Centre's child safe policies and procedures are fit for purpose.
- Establish an internal complaint handling procedure with provisions for escalation to the Neighbourhood Centre's internal board. Council will be the final escalation point failing an appropriate resolution from the internal complaint handling procedure.
- Comply with the model constitution produced by NSW Fair Trading for incorporated associations. This includes dispute resolution between members and the association, and between users of the facility and the association.
- Ensure the Responsible Service of Alcohol (RSA) requirements are complied with on the premises at all times. Where applicable, staff are required to hold an RSA qualification and ensure that scheduling of events where alcohol is present does not conflict with other sensitive programming.

17.10 Neighbourhood Centres may not sub-lease or sub-licence the premises without the prior written consent of Council. If consent is granted, it may be subject to terms and conditions and only to approved organisations providing a direct community benefit.

18 Capital Works

- 18.1 A Lease / Licence may require a Lessee / Licensee to do capital works. The value of the capital works may be amortised over the term of the Lease / Licence.
- 18.2 Council may require that any capital works undertaken by a Lessee / Licensee be project-managed by Council.
- 18.3 If a Lease / Licence requires the Lessee / Licensee to undertake capital works or other improvements to the premises, the Lease / Licence will state that those works or improvements are to become the property of Council if it so elects.
- 18.4 The undertaking of capital works or other improvements to a premises by a Lessee / Licensee does not give the Lessee / Licensee any interest in or claim to:

- The works, improvements and / or the premises beyond the interest granted under the Lease / Licence,
- The premises after the expiry of the Lease / Licence, and / or
- A new Lease / Licence of the premises after the expiry of the initial Lease / Licence.

- 18.5 Before undertaking any works in a premises, the Lessee / Licensee must ensure that they have all relevant approvals for the proposed use of the premises and the works in accordance with all relevant legislative requirements, including without limitation the *Environment Planning and Assessment Act 1979*.
- 18.6 If not contrary to other Council policies, project management and other fees may be waived or discounted in line with Table 5 –Grant Eligibility Criteria by written approval of the Group Manager Property, Major Building Projects and Facilities.
- 18.7 Council may require the Lessee/Licensee to make good any capital works if it requests the Licensee/Lessee to do so, at the cost of the Licensee/Lessee.

19 Leases to Sporting Clubs and Community Groups

- 19.1 Council recognises that many existing Lessees / Licensees of Community Land and Crown Land, notably sporting bodies and community groups, have strong historical / social / recreational ties to the facilities they use. Council will take these factors into account when considering new or continued Leases / Licences of such facilities and may, in its discretion and subject to a report to Council, not require expressions of interest or tenders to be called unless required by any applicable legislation.
- 19.2 Council's decision as to whether it grants a Lease and if so, of what premises, will be determined by needs studies and research, the Recreation Needs Strategy, the Plans of Management and community needs assessments. If Council decides to grant a Lease of a storage room to an incorporated sporting organisation or community group for a set term and the Lessee seeks to pay less than Market Rent, the proposal will be assessed under the Grant Eligibility Criteria in Table 5.
- 19.4 There is no automatic right of renewal. It should not be assumed that a new Lease / Licence will be automatically granted to the same non-profit Lessee / Licensee at the end of a Lease / License term.
- 19.5 It should not be assumed that a new Lease / Licence will automatically be granted on the same terms and conditions.
- 19.6 A non-profit, sporting or community organisation requesting a new Lease / Licence or renewal of Lease / Licence of Council premises at less than Market Rent is expected to provide Council with all information Council requires / requests to enable Council to assess the proposed benefit to the community based on the organisation's merits. This information may include some or all of the following:

- Confirmation of the legal entity and its ABN.
- The last 3 years of the organisation's audited financial statements.
- The organisation's constitution.
- Details and copies of any agreements or arrangements with or to any third parties.
- A business plan for the period of the proposed Lease / Licence (including any option periods). The business plan should demonstrate the proposed Lessee's / Licensee's capabilities to carry out the terms and conditions of the proposed Lease / Licence during the tenure and provide details and timelines of any maintenance, improvements or enhancements proposed to be carried out and completed and paid for by the Lessee / Licensee during the tenure.
- Detail of community use and active member numbers.

20 Council Land or Property Sales or Acquisition

- 20.1 All requests to buy or sell Council land or property are to be directed to Group Manager Property, Major Projects & Facilities for review and feasibility.
- 20.2 A Council resolution is required to sell any Council land or property.
- 20.3 An independent valuation will be commissioned by Council Officers and paid for by the proposed purchaser as a 'cost of sale'.
- 20.4 Community Land cannot be sold. If Council intends to sell Community Land it must be first reclassified as Operational Land by:
- Local Environmental Plan and a public hearing under section 68 of the *Environmental Planning and Assessment Act 1979*, or
 - Council resolution (if certain conditions are met).
- 20.5 Operational Land including roads can be sold.
- 20.6 A road will need to be closed prior to a sale. The *Roads Act 1993* sets out the process for a road closure including public exhibition and gazettal.
- 20.7 The objectives of sale of land or property must align with Council's Land and Property Strategy – these include to obtain revenue and improve land use.
- 20.8 A sale can be undertaken through a:
- Tender Process – this could include a public tender for the sale of land or property plus added community benefits eg. additional carparking, activation of space or provision of community or commercial rooms / space.
 - Direct Negotiation – this could include where an adjacent owner wishes to buy a drainage space or an adjacent, unused parcel of land. if there is only one buyer then a direct negotiation can be undertaken, or

- Representative or Agent – this could be an auctioneer, real estate agent or property consultant who has a network of buyers and a marketing platform to increase revenue prospects.

21 Dividing Fences

- 21.1 The *Dividing Fences Act 1991* applies to all landowners.
- 21.2 Council will not contribute to any costs or liability for any dividing fences adjacent to land that is owned by Council or the Crown.
- 21.3 Council Officers will review and may agree to Council contributing 50% of the operational costs for the repairs, replacement and maintenance of fences on land that is classified as Operational Land.

22 Unsolicited Offers

- 22.1 Unsolicited offers include requests to occupy Council property or land through a Lease or Licence, an approach to sell or develop Council land, and / or an approach by a sporting / community group to apply for a grant to construct on Council owned land.
- 22.2 The NSW Unsolicited Proposals: Guide for Submission and Assessment will guide Council's review and decision making.
See https://www.nsw.gov.au/sites/default/files/2020-05/Unsolicited_Proposals_Guide.pdf.
- 22.3 The unsolicited proposals process will look to optimise outcomes; however, it is not be a substitute for routine competitive procurement. The Assessment Criteria will include:
- Uniqueness.
 - Value for money.
 - Multiple benefits.
 - Return on investment.
 - Capability and capacity.
 - Affordability.
 - Risk allocation.
- 22.4 Requests to occupy space by any organisation will be reviewed for any available and suitable space. If there is no space available that can be provided the applicant will be registered for the next invitation to tender / expression of interest or opportunity to share services. Applicants wanting to share and co-locate with other Lessees / Licensees or services will be given priority to enable increased utilisation of Council assets.

23 Leases of Airspace Over Roads

Any approval for the construction of a veranda or balcony in the air space over a public road will be subject to the following:

- The owner of the veranda or balcony entering into a 99-year Lease with Council in accordance with section 149 of the *Roads Act 1993*.
- The consent of the Director General, Department of Planning as required under section 149(2) of the *Roads Act 1993*.
- The owner / Lessee paying all costs in connection with the Lease including legal, survey, valuation and registration fees and stamp duty.
- The rent for the total 99 years of the Lease being paid prior to release of the construction certificate for construction of the structure.
- Except as set out below, the rent being at market value, determined having regard to the increase in value of the subject property.
- No rent being payable where the structure is a restoration (returning a place to a known earlier state by removing accretions or by reassembling existing elements without the introduction of new material) or reconstruction (returning a place to a known earlier state by the introduction of new material) of a balcony or veranda that existed prior to 1939 (or where a veranda or balcony exists on a building built after 1939 which is of heritage significance) and where the restoration or reconstruction is in strict accordance with detailed architectural drawings and methodology for the restoration or reinstatement of the balcony or veranda, to be approved by council's heritage officer.
- Where any existing development consent approved the erection of a balcony or veranda over a footpath subject to the execution of a 5-year commercial or 10-year residential air space License, the relevant property owner being given the option of entering into a 99-year Lease in accordance with the above provisions.

24 Compliance, Default and Early Termination

- 24.1 Lessees and Licensees of Council land and building areas expected to comply with the terms of their Lease / Licence. The obligations are specifically set out in the Development Applicant Consent, Lease / Licence agreement and / or any other legislative requirements pertaining to the use of the property and are not reduced (and should not be reduced) because the Lessor is the Council rather than a private lessor.
- 24.2 Lessees of Council are expected to comply with Council's Statement of Business Ethics and Model Code of Conduct policies and any other Council policy.
- 24.3 A default procedure will commence when a Lessee / Licensee falls in breach of the requirements of the Lease / Licence. Relevant and appropriate measures will be undertaken according to the Lease / Licence to remedy the issue. Full

compliance is expected by the Lessee / Licensee to ensure the matter is resolved quickly and amicably to mitigate further risks and avoid legal action being undertaken. Council's Debt Recovery Policy may also apply.

- 24.4 Without limiting section 24.3, if a Lessee or Licensee breaches a Lease / Licence, the General Manager or delegate may issue a notice of breach of a Lease / Licence requiring rectification of the breach or payment of compensation for the breach. If a Lessee / Licensee does not comply with the notice to remedy a breach of a Lease / Licence by remedying the breach or paying compensation or continues to commit breach of the Lease / Licence, Council may terminate the Lease / Licence.
- 24.5 Council reserves the right to terminate the Lease / Licence by re-entry in the event of non-payment of the Rent / Licence Fee.

25 Naming Convention

Where practical, the name of a building will indicate the location and use of the property and not its occupants.

26 Breaches of this Policy

Breaches of this policy may result in an investigation of the alleged breach in line with relevant Council policies including the Model Code of Conduct.

Any alleged criminal offence or allegation of corrupt conduct will be referred to the relevant external agency.

27 Administrative Changes

From time-to-time circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made including branding, Council Officer titles or department changes and legislative name or title changes which are considered minor in nature and not required to be formally endorsed.

28 Version Control – Policy History

This policy will be formally reviewed every three years from the date of adoption or as required.

Governance use only:

Document	Land and Property Policy	<i>Uncontrolled Copy When Printed</i>	
Custodian	Scott Mullen, Strategic Investment and Property Manager	Version #	Version 2
Adopted By	Council	ECM Document #	31035390
Next Review Date	April 2027		

Amended by	Changes made	Date Adopted
Governance and Risk	This was the first Land & Property Strategy for the new Inner West Council. The former Marrickville, Leichhardt and Ashfield Councils each had various policies for informing property and land management.	13 August 2019
Strategic Investment and Property	Our primary changes to the previous Policy were to: <ol style="list-style-type: none"> 1. clarify the position between the grant of a lease giving exclusive use of a premises and the grant of a licence for the non-exclusive use of premises in the Policy; 2. update legislative and policy references; and 3. unify the use of defined terms. 	9 April 2024