

LEASING AND LICENSING OF FACILITIES AND PUBLIC OPEN SPACE

Previous policy number: 1.6.1

Policy Statement

The Town of Mosman Park owns or manages reserves, public open space and facilities on behalf of the Mosman Park Community. The Town is committed to maximising the public benefit of these reserves, public open space and facilities and recognises that this can be achieved in some instances by providing these areas for the use of clubs, groups and organisations. In doing so the collective social needs and wishes of the Mosman Park community are met. The Town can do this by providing exclusive use of reserves, public open space and/or facilities to a club, group or organisation, for a defined period of time. The Town can also offer funding support to enable the club, group or organisation to sustain itself.

Depending on how closely the club, group or organisation aligns with the Town's priorities and principles, varying levels of support are offered, in five category levels. These categories each provide varying levels of funding for capital works, capital maintenance, maintenance and operations, in order to ensure a fair, transparent and equitable distribution of Town funds.

Policy Details

Objective

To ensure that the community is adequately supported through its clubs, groups and relevant organisations by appropriate long term tenure arrangements and funding of Town of Mosman Park land and facilities.

Policy Principles

Town Priorities

In supporting clubs, groups and organisations the Town is aiming to provide the highest community benefit for the use of a space and to align with the Town's long term plan for the future and Sport and Recreation Plan and Policy.

Town support will be preferentially given to clubs and groups according to the following criteria:

1. Amount of time a facility/space is available to the public at no cost (e.g. use of a room or a court);
2. Located in Town. Clubs/groups based in Mosman Park and operating within Mosman Park;
3. Number/percentage of Mosman Park Residents who are participating;

Social (non-playing) memberships will not be counted towards this number on the basis that social membership is primarily a funding mechanism for the club/group or organisation. The type of participation a social member brings could equally be obtained at a private restaurant or bar and is therefore effectively competing with

the open market and not contributing to the desired participation activity of the club/group or organisation.

4. Number/percentage of seniors, juniors and persons with a disability participating;
5. Volunteering Contribution; more support will be provided where the club/group or organisation is run by volunteers; with less support where in-house paid staff are running the organisation; with the least support where the organisation is run through private business. While all these ways of operating a club/group or organisation support self-sufficiency, this preference goes to a principle of direct community participation by the volunteering members. For the in-house paid staff the Town is effectively already supporting the club/group or organisation with the lease land and a facility to the exclusion of others. For the private business, the Town is again providing land and a facility to the exclusion of others and is providing a private business the opportunity to make a profit.
6. Financial Self-sufficiency;
 - a. Percentage of Income from Non-commercial Activities (eg. Fund-raisers, donations, memberships, state government funding) - most supported;
 - b. Financial Self-sufficiency. Percentage of Income from In-house Trading Activities (eg. Bar, functions) – less supported;
 - c. Financial Self-sufficiency. Percentage Income from Private Trading/Sub-lease Activities – least supported;
7. Capital and/or Maintenance Reserve Fund in place;
8. Comprehensive Strategic Plan in place, including at least: the objectives, management, operations, tenure, 10 year development plan, , annual and long term financial plan; and
9. Tenancy rating for administration of the lease, maintenance and care of the facility and good neighbour relations, all as determined by the Town. New potential lessees will be assessed through references, or assumed a mid-range score in the first year.

Categories

There are five categories of support for lessees and users. The support categories range from income deriving land transaction leases (Category 1), to full and free access by the public to the facilities and spaces managed and owned by the Town (Category 5).

At Category 1 the Town is undertaking a land transaction or major land transaction and is deriving commercial income from this activity through the lease of its facilities and/or spaces. An example of Category 1 lease would be a privately owned and run café business established on a public reserve providing rent to the Town.

The increasing categories align with increasing benefit to the community and as such, support by the Town increases.

At Category 5 the Town fully funds the facility and/or space, including the initial capital works, ongoing whole of life capital works, maintenance and operations. A Category 5 example would be a reserve containing footpaths and a children's playground.

Category 1 – Commercial

This is a commercial arrangement by the Town and attracts commercial income. It applies to commercial organisation as defined in this policy. The Town offers the use of its land, with or without an existing facility, for the exclusive use of the lessee for a defined period of time with the intention of producing either net nil cost, or profit to the Town.

Category 1 leases are based on two fundamental principles:

- a) Compensation for exclusive commercial use. The Town, and hence the community, is compensated for providing exclusive use of a space and/or facility to a lessee, where that lessee is deriving commercial income from the space and/or facility.
- b) Open market equity. The Town is commercially fair to the open market in that it is offering the business a space/facility on the same terms as other spaces/facilities are offered by private enterprise. This addresses anti-competitive concerns, which would arise where a business is able to lease a Town space or facility at a rate significantly less than private industry would charge.

The Town may consider leasing reserves, public open space or facilities to commercial organisations, but only on the basis that there is a clear net overall benefit to the Town, primarily driven by the Town's ability to earn income from the lease, for the benefit of the community.

A decision by Council to lease in Category 1 will take into account:

- Clear net overall benefit to the community;
- Any lost opportunity for other uses of the space;
- Zoning and vesting restrictions;
- Community consultation;
- State government interests in lease income; and
- Open market competition.

Category 1 activities are commercial in nature and will be considered in accordance with the Local Government Act 1995 as land transactions or major land transactions, as applicable. Where Crown land is involved in a Category 1 lease the State Government will have a commercial interest in the activity as "owner" of the land and will be consulted as a potential financial beneficiary of Category 1 commercial lease.

Category 2

This is only available to not-for-profit clubs, groups or organisations.

The lessee benefits from the exclusive use arrangement of the public open space and/or facility for a specified period in exchange for community benefit, and pays a reduced commercial return to the Town. The lessee is responsible for all other expenses/costs.

The Town will contribute up to 40% of initial capital works, up to 36% of ongoing capital renewal costs, and up to 33% of maintenance costs, however, all other costs will be funded by the club/group or organisation.

Category 3

This is only available to not-for-profit clubs, groups or organisations.

The lessee benefits from the exclusive use arrangement of the public open space and/or facility for a specified period in exchange for community benefit, and pays no commercial return to the Town.

The Town will contribute up to 65% of initial capital works, up to 70% of ongoing capital renewal costs, and up to 63% of maintenance costs, however, all other costs will be funded by the club/group or organisation.

Category 4

This is only available to not-for-profit clubs, groups or organisations.

The lessee benefits from the exclusive use arrangement of the public open space and/or facility for a specified period in exchange for community benefit, and pays no commercial return to the Town.

The Town will contribute up to 73% of initial capital works, up to 85% of ongoing capital renewal costs, and up to 76% of maintenance costs, however, all other costs will be funded by the club/group or organisation.

Category 5

Category 5 represents the type of activity that the Town fully funds and it includes the broad range of physical activity that is open to the whole community, such as footpaths and parks and playgrounds. This category is not subject to lease arrangements but is included in order to benchmark the level of the Town's commitment to funding broad community recreational pursuits against the exclusive use lease type recreational activities.

In Category 5 the community member benefits from the non-exclusive use arrangement of the public open space and/or facility, at any time.

The Town will contribute all of the costs for the initial capital works, ongoing capital renewal works, maintenance and operations.

Table 1. Funding Arrangement per Category

FUNDING ARRANGEMENT	CATEGORY				
	1	2	3	4	5
Payment to Town (rent) by lessee	Net break even or Full Commercial Rate	No	No	No	No
Initial capital works contribution by Town to Lessee*	0%	40%	65%	73%	100%

Ongoing capital renewal works contribution by Town to Lessee*	0%	36%	70%	85%	100%
Maintenance works (as listed on Lessee's Maintenance Schedule per Lease Agreement) contribution by Town*	0%	0%	0%	0%	100%
Maintenance works (other than that listed on the Lessee's Maintenance Schedule per Lease Agreement) contribution by Town*	0%	33%	63%	76%	100%
Operations/utilities contribution by Town*	0%	0%	0%	0%	100%

Notes to Table

* The balance is to be paid by the lessee.

Capital Renewal Fund

A percentage of the replacement cost of a leased facilities premises, including items specific to Lessee's activities/use, shall be transferred into the capital renewal fund on an annual basis by the Lessor and Lessee as per the category rating above and using the percentage stipulated in the table below:

Table 2. Capital Renewal Contribution

Leased Premises	% Contribution
Buildings	2%
Lessee's Specific Use eg. tennis courts, bowling greens, movie equipment	Specific to lease

Any interest earned on monies held in the capital renewal fund shall remain in that fund for the purpose of future capital renewal works.

Any monies remaining in the leased premises capital renewal fund on termination of a lease agreement shall remain the property of the Town.

Public Interest

A minimum of two years prior to the end a lease term that is greater or equal to 15 years (including any extensions and previous expired lease agreements), the Town shall consider public consultation on:

- the best use of the leased premises;
- a potential change in purpose of the leased premises; and/or
- a request for expressions of interest by community groups.

A decision regarding whether public consultation is required will be determined by resolution at an Ordinary Council Meeting.

Policy Transition Period

Transition provisions for this lease policy are as follows:

	Year new lease agreement commences or is due to commence				
	2018/19	2019/20	2020/21	2021/22	2022/23
Discount to lessee on capital renewal contributions	50%	40%	30%	20%	10%
Public Interest Notice Period	0 months	12 months	24 months	24 months	24 months

Policy Guidance

Application of this policy is guided by the following statements.

Town Priorities

In order to promote the Town's priorities lease provisions will require lessee's to provide an agreed discounted rate in their annual Fees and Charges specifically for Local Mosman Park Community Groups. This will provide them access to any available space that facilities have. Where a facility is designated as an emergency evacuation centre, lease provisions will be included that give precedence to the Town in the event that the facility is needed for this purpose. Under these circumstances the Town will pay the operating expenses and cancellation costs of bookings, during occupancy of the facility but will not pay the lessee for use of the facility.

Funding Initial Capital Works

In deciding to fund capital works the Town will take into account the following:

- Alignment with the Town's Sport and Recreation Plan;
- Alignment with the Town's asset management aims for a facility (the benefit of significant renewal works may outweigh small ongoing annual capital works);
- Support through a State or Federal Government grant;
- The club/group or organisation is expected to show commitment to the project by funding a portion of the works depending on their category;
- Whole of life costs of the facility;
- The club/group or organisation's financial position;
- The Town's financial position; and
- The Town's strategic priorities.

The Town will also determine whether it will undertake the works or allow the club/group or organisation to do so, based on the club, group or organisation's project management capabilities as well as the above-mentioned criteria.

Self-supporting loans will be considered by Council, however, in addition to the items taken into account for funding capital works, Council will also consider its position in terms of the Town's debt service ratio and long term financial plan.

The Town provides no net funding for any part of a self-supporting loan arrangement. Assistance for establishment loans, or on-the-ground support will only be considered on the basis of full reimbursement and interest pegged to the consumer price index.

Assessment of Category

Assessment of the Category to which a club, group or organisation most reasonably aligns, will be carried out in order to provide an equitable comparison of the club/group or organisation to other clubs/groups or organisations. The assessment will be carried out on the following basis:

- 1) Each lessee or potential lessee will be scored on multiple criteria to determine which Category they fall into. The multi-criteria assessment is based on the Town Priorities defined by Council in this policy. Lease arrangements will then be drafted based on the category and presented in draft for Council approval.
- 2) Lessees, their sub-lessees and potential Lessees will be required, as a lease provision, to provide externally audited financial and other information annually in order for the Town to be able to assess or reassess the Category of the lessee.
- 3) Where a group fails to provide assessment information requested by the Town, the Town will revert to the minimum score for that information area.
- 4) Leasing requests for ovals will be considered and scored separately to leasing requests for facilities.
- 5) Where the facility has heritage provenance then the funding score will be derived as though no heritage provenance exists and the impact of the heritage provenance will be considered separately by the Council.
- 6) Any lease arrangement may include the Town carrying out the work and being reimbursed by the lessee to the percentage specified in Table 1, at the Town's discretion.
- 7) Category reviews will be undertaken by the Town annually and whenever a Lessee applies to the Town for capital works funding. Any proposed change of category will be provided to the Council for ratification.
- 8) When this policy is reviewed the Town Priorities, Category Score Banding Range and the Weightings given to the Town Priorities in the Procedure will also be reviewed. Should there be any changes then the Leases will be reviewed in the next cycle accordingly.

Definitions

AGREEMENT : A negotiated arrangement between the Lessee and another party to use all or a portion of the leased facility on a regular basis, as determined by the Town.

CAPITAL: a facility or infrastructure asset greater than \$5,000 and part of, or permanently fixed to the facility or infrastructure. Capital items become the property of the Town under a Lease, irrespective of who pays for the capital item. This excludes furniture and equipment not fixed to the building.

CAPITAL RENEWAL FUND: monies held in the Town's 'Leased Facilities Reserve' and accounted for by leased premises.

CAPITAL RENEWAL WORKS: means any work in excess of \$5,000 to rebuild part of the facility or infrastructure asset. Details are provided in the lease.

CAPITAL WORKS: means the construction, redevelopment, expansion or structural alteration of a facility or infrastructure asset in excess of \$5,000, but excludes any furniture or non-fixed equipment. Details are provided in the lease.

COMMERCIAL ORGANISATION: means a for profit organisation, or a school, or a state government organisation.

DISABILITY: The WA Disability Services Act (1993) defines disability as a condition that:

- is attributed to an intellectual, cognitive, neurological, sensory or physical impairment or a combination of those impairments;
- is permanent or likely to be permanent; and
- may or may not be episodic in nature, and
- that results in a substantially reduced capacity of the person for communication, social interaction learning or mobility and a need for continuing support services.

HIRER: means the casual or regular user of the Premises, or any part of the premises for no more than 300 hours per annum. Where a user seeks to have exclusive use of the Premises or any part of the premises for more than 300 hours per annum the Town may consider this reason for a Sub-Lease.

JUNIOR: a person under 18 years of age.

LAND TRANSACTION or **MAJOR LAND TRANSACTION**: have the same meanings as in the Local Government Act 1995, section 3.59 and the Local Government (Functions and General) Regulations 1996, Part 3. Leasing is "disposal" of an interest in land and must be considered as a land transaction where there is an intention to give exclusive or joint use of land and produce profit to the Town. This applies to category 1, commercial leases only.

LEASE: a contract granting conditional use or occupation of public open space and/or facilities during a specified period in exchange for a specified rent, other form of payment, and/or community benefit.

LESSEE: the party to the lease contract using and occupying the public open space and/or facilities.

LESSOR: the party to the lease contract providing the public open space and/or facilities.

LICENCE: has the same meaning as “lease” except that the specified term is periodical, for example, from January to June each year for ten years. Unless noted otherwise the terms lease, lessor and lessee include licence, licensor and licensee respectively, in this document.

MAINTENANCE: means any work on the facility or infrastructure asset to keep it in good repair over the course of a year that is less than \$5,000, including inspections. Details are provided in the lease. Any maintenance item that is greater than 5,000 will be considered within this Policy as Capital Renewal Works.

OPERATING COSTS: means the day to day running costs of the facility. This includes, but is not limited to cleaning, utilities costs, annual levies and consumables and is essentially all costs excluding capital works, capital renewal works and maintenance.

SENIOR: a person 65 years and older.

SUB-LEASE: means the transfer of the Lessors interest in all or part of the Premises that is not considered a hire agreement as defined as “Hirer” within this Policy. A sub-lease may be in respect of the whole or part only of the premises, and must terminate before the termination date of the head-lease. The sub-lease must not conflict with the terms of the head-lease. All sub-leases must be approved by the Town and have Ministerial consent. Sub-lease private business will also be subject to these policy positions of the Town in accordance with the above-mentioned principles. For this reason leases will contain mandatory sub-lease approval, control and disclosure clauses from the lessee to the lessor regarding any proposed or operating sub-lease.

TOWN: the Town of Mosman Park local government.

Governance References

Statutory Compliance	<p>Local Government Act 1995, section 3.59 – ‘Commercial enterprises by local governments’. Deals with land transactions, where category 1 leases are proposed.</p> <p>Land Administration Act 1997 - Section 46 – ‘Care, control and management of reserves’. Provides the head of power for lease of crown land.</p> <p>Land Administration Act 1997 - Section 91 – ‘Licences and profits à prendre over Crown land, grant of’. Provides the head of power for licensing of crown land.</p>
Organisational Compliance	<p>Sport and Recreation Plan and Policy.</p> <p>Leasing and Licensing of Facilities and Public Open Space Procedure.</p>

Policy Administration

Directorate:		Officer title:
Corporate Services		Executive Manager Corporate Services
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1	27 March 2018	OCM-058-2018
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