

## Appendix 3 - Leases, Licences and Other Estates

A lease will be required where exclusive occupation or use of all, or part, of an area is proposed. Following is a summary of the requirements of the Act. For more detailed, specific information, please refer to the Local Government Act 1993 and the Local Government (General) Regulation 1999.

A lease, licence or other estate may only be granted if:

- the plan of management expressly authorises the lease, license or other estate; **and**
- the purpose of the lease, licence or other estate is consistent with the core objectives for the category of land (s.46 (2)); **and**
- the lease, licence or other estate is for a purpose listed in section 46(1)(b).

The only permitted exception to this rule is where a lease, licence or other estate may be granted for the provision of public utilities and works associated with or ancillary to public utilities. Works in this instance do not need to be expressly authorised nor consistent with the core objectives or be for a purpose listed in section 46(1)(b).

### Permitted purposes for leases, licences and other estates as described in s46:

- The provision of public utilities and works associated with or ancillary to public utilities; or
- The provision of pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the council or other public utility provider; or
- The provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following:
  - public recreation;
  - the physical, cultural, social and intellectual welfare or development of persons.\*
- The provision of public roads.
- Activities undertaken for the purpose of achieving a core objective of the categorisation of the land concerned
- For a short term, casual purpose. \*\*
- For a residential purpose in relation to housing owned by Council.
- For the purpose of filming

\* (This includes maternity welfare centres, infant welfare centres, kindergartens, nurseries, childcare centres, family day-care centres, surf lifesaving clubs, restaurants or refreshment kiosks).

\*\* Short-term casual purposes that council may grant a lease or licence for:

- The playing of a musical instrument, or singing, for fee or reward.
- Engaging in a trade or business.
- The playing of a lawful game or sport,

- Delivering a public address.
- Commercial photographic sessions.
- Picnic and private celebrations such as weddings and family gatherings.
- Filming.
- The agistment of stock.
- The use of an existing road or fire trail to:
  - transport building materials and equipment required in relation to building work that is to be, or is being carried out on land adjoining the community land; or
  - to remove waste that is consequential on such work.

These short-term, casual purposes are permitted only if they do not involve the erection of any building or structure of a permanent nature.

### **Lease or licence in respect of natural areas**

Specific conditions apply to lease, licence and other estates within natural areas

Building of or use of structures other than those specified below are not permitted (this includes rebuilding):

Walkways  
 Pathways  
 Bridges  
 Causeways  
 Observation platforms  
 Signs  
 Information kiosks  
 Refreshment kiosks (but not restaurants)  
 Work sheds or storage required in connection with the maintenance of the land  
 Toilets or rest rooms.

### **Sublease of community land**

Community land that is the subject of a lease cannot be sublet for a purpose other than:

- The purpose for which the land was to be used under the lease; or
- A purpose prescribed by the regulations:
  - refreshment kiosks, dances and private parties are prescribed as purposes for which community land that is leased for surf life-saving club or sporting club may be sublet; and
  - a croquet club is prescribed as a purpose for which community land that is used as a bowling club may be sublet.

### **Granting of a lease or licence or other estate**

Plans of Management must specify the purpose for which a lease or licence or other estate may be granted only by tender. Leases and licences not specified may be by tender or not.

A lease or licence for a term exceeding 5 years must go to tender unless it is granted to a non-profit organisation.

Council must not grant a lease or licence for a term greater than 21 years.

If council proposes to grant a lease, licence or other estate in respect of community land, it must follow certain notification procedures as outlined in section 47 of the Local Government Act.

**Exemptions for which Council does not need to notify or exhibit a lease or licence:**

- Residential purposes, where the relevant community land has been developed for the purpose of housing owned by Council.
- The provision of pipes, conduits or other connections under the surface of the ground for the connection of premises adjoining the community land to a facility of the Council or other public utility provider that is situated on the community land.
- Use and occupation of the community land for events such as:
  - a public performance (That is, a theatrical, musical or other entertainment for the amusement of the public);
  - the playing of a musical instrument, or singing, for fee or reward;
  - playing of any lawful game or sport;
  - engaging in trade or business;
  - delivering a public address;
  - conducting a commercial photographic session;
  - picnics and private celebrations such as weddings and family gatherings;
- The use of an existing road or fire trail to:
  - transport building materials and equipment required in relation to building work that is to be, or is being carried out on land adjoining the community land; or
  - to remove waste that is consequential on such work.

The above activities are exempted from the need to notify only if:

- No permanent buildings or structures are to be erected.
- The occupation does not continue for more than 3 consecutive days.
- If any use occurs more than once, the period from the first occurrence until the last occurrence is not more than 12 months.

**Occupation of community land otherwise than by lease or licence.**

The exclusive occupation or use other than by lease or sub lease is prohibited except where:

- The appointed manager of a senior citizens centre or home or community care facility occupies or uses part of the site.
- Occupation is prescribed by the regulations.

**Development of community land**

Council cannot delegate consent to development of community land if:

- The development involves the erection, rebuilding or replacement of a building, except:
  - Toilet facilities
  - Small refreshment kiosks
  - Shelters for persons from the sun and weather
  - Picnic facilities
  - Structures required for the playing of games or sports
  - Playground structures
  - Work shed or storage sheds
  - Buildings of a kind prescribed by the regulations.
- The development involves the extensions to a existing building greeter than 10% of its existing area; or
- The location of the development has not been specified in the Plan of Management and the development is likely to be intrusive to nearby residents.

#### **Special provisions for filming**

A lease, licence or other estate may be granted in order to allow a filming project to be carried out, whether or not the project is in accordance with the plan of management or is consistent with the core objectives or the categorisation of the land concerned.

If the community land is critical habitat, directly affected by a recovery plan or threat abatement plan, and or is declared to be an area of cultural significance, additional notifications are required. Please refer to section 47AA of the Act, section 25A of the Regulations and section 1 of the Local Government (General) Amendment Regulation 2002.