



Murrumbidgee
COUNCIL

Leasing of Council Residential Properties Policy (revision 1)

	Name	Position	Signature	Date
Responsible Officer	Sue Mitchell	Manager Corporate and Community Services		24 November 2022
Authorised By	John Scarce	General Manager		24 November 2022

Document Revision History	
Date adopted by Council:	28/08/2018
Minute Number:	175/08/2018
Revision Number:	1
Review Date:	October/November 2022
Date adopted by Council:	22 November 2022
Minute Number:	177/11/22
Next Review:	See item 14 of this Policy
Revision Number:	
Review Date:	
Date adopted by Council:	
Minute Number:	

November 2022

Contents

1. Purpose and Objectives	3
2. Scope of Policy	3
3. Legislative Requirements.....	3
3.1 Residential Tenancies Act 2010	3
3.2 Local Government Act	4
4. Classification.....	4
5. Standard Leases.....	5
6. Below Market Rent.....	6
7. Delegation of Authority.....	6
8. Non-Government Organisation(s) and Individuals	6
9. Compliance.....	6
10. Exceptions	7
11. Ethics and Conflicts of Interest	7
12. Definitions	7
13. Related Documents	7
14. Policy Review.....	8

1. Purpose and Objectives

The purpose of this policy is to protect Council's interests by prescribing reasonable conditions to apply to the rental or lease of Council owned residences to Council staff or non-Council staff. It is also intended to ensure that Council's leasing of its residential properties is transparent, consistent with the purpose for which the property was acquired, the funding source and has regard to Council aims and responsibilities. Murrumbidgee Council currently owns residential properties in Coleambally, Darlington Point and Jerilderie. It is intended that the policy will apply to future acquisitions of residential property, if any, as well as those currently owned or under Council's control.

The main objective of lease of Council residential properties is to obtain rental income and/or act as a potential incentive for attracting and retaining suitably qualified staff with skills needed by Council. For properties acquired for future conversion to another use, this revenue will be applied towards the conversion costs. Rent from other residential properties will contribute to the ongoing provision, improvement and maintenance of Council services and assets.

Individuals and organisations covered by this policy include Murrumbidgee Council staff who have access to rental of Council's residential properties, and individuals or tenants who use and have access to Council's residential properties but are not staff of Murrumbidgee Council.

2. Scope of Policy

This policy deals only with lease of Council's residential properties for residential use, including 'caretaker leases'. This policy does not cover:

- Houses or flats or other former residential property under Council's control which are leased for use as offices, community facilities or any purpose other than as a private residence; and
- Any housing provision by, or policies of, State or Federal Governments or their agencies.

This policy is supported by, and should be read in conjunction with, Council's Codes of Conduct, where appropriate. The policy provides guidance on how Council provides rental options for staff and, where relevant, non-staff.

3. Legislative Requirements

3.1 Residential Tenancies Act 2010

The *Residential Tenancies Act 2010*, applies to all residential leases in NSW (with some limited exceptions), including by a Council as a landlord. The Act overrides anything in a lease agreement which is inconsistent with the Act. Principal provisions include:

- A standard form of lease agreement;
- After expiry of the fixed term when the lease is on holdover, 60 days' notice must be given of any rent increase. Rent cannot be increased more than once every 12 months. The tenant may approach the Tenancy Tribunal for an order that any rent increase is excessive and the Tribunal may set the rent for a period of up to 12 months;
- 90 days' notice to vacate must be given (except in case of default and some other situations). The landlord cannot physically remove the tenant or change the locks or take other action to force the tenant out. If the tenant fails to vacate at the end of the notice period, the landlord must obtain an order from the Tenancy Tribunal and if the tenant still fails to vacate, an order for the sheriff to remove the tenant. The Tenancy Tribunal may refuse to order a tenant to vacate;
- The landlord must provide locks and other security devices to ensure the premises are reasonably secure; and
- The landlord must provide the premises in a reasonable state of cleanliness and fit for habitation by the tenant.

3.2 Local Government Act

Section 8 of the *Local Government Act 1993*, states that Council's charter includes:

- To provide directly, or on behalf of other levels of Government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- To exercise community leadership;
- To have regards to the long term and cumulative effects of its decisions; and
- To raise funds for local purposes by the fair imposition of rates, charges and fees, income earned from investment (including rental income from assets), and, when appropriate, by borrowings and grants.

4. Classification

Under the *Local Government Act 1993*, land under Council's control, other than roads and Crown Land under the Crown Lands Act, must be classified as either 'operational land' or 'community land'. Residential properties, if any, acquired by a Council for investment, will usually be classified as operational land. Residential properties acquired for future conversion to open space are sometimes classified as operational and an acquisition to allow leasing for a few years, with the intention that they will be reclassified to 'community' land once the leasing has ended and the properties converted to public open space. In respect of 'operational land', Council is bound by the law relating to residential leasing, the same as a private landlord, but does not have additional obligations that are imposed for community classified land.

Houses in parks or on other land owned by Council are classified as community land and leasing is restricted. The base principle is that community land remain public or provide services for the public generally.

5. Standard Leases

- Market rent will be payable for residential premises leased by Council;
- Rent will be increased at intervals of not less than 12 months to keep pace with market rent generally and in accordance with advice from a local leasing real estate agent, unless Council agrees to grant a lease for several years at pre-agreed or no rent increase;
- All staff rentals shall be tied to a base rent set at 75% of an independent valuation, which will be reviewed every five years by a duly authorised real estate agent;
- When selecting tenants, Council officers or agents are to be satisfied of a prospective tenant's ability to pay the market rent, and conduct detailed reference checks to be satisfied this condition is met;
- Council officers or agents are to select tenants who have satisfactory references, usually from a previous landlord or agent. In the case of first term renters who fit one of the preferred groups referred to in the point below, references from any person may be accepted;
- In selecting tenants for Council residential properties, preference may be given to:
 - * Persons who are employed in the Murrumbidgee Local Government Area, such as the Police or Emergency Services; and/or
 - * Persons who already live in the Murrumbidgee Local Government Area.
- Where properties are purchased with developer contributions for conversion to open space, car parking or other specific purpose, the properties must be leased at market rents under this 'standard lease' category until sufficient funds exist for the conversion;
- Subject to legal or contractual constraints, other residential property may be selected by Council for lease at rents below market rent, or otherwise, in accordance with the following section 'Below Market Rent'. A property will be covered by the 'Standard Lease' section and, until endorsed by Council resolution, be offered under any other provisions or conditions;
- When Council approves the rental or leasing of a residential property, the keys of the residence shall be withheld until such time as the parties have completed a Lease Agreement (Residential Tenancies Regulation 2010 Schedule 1 Standard Form Agreement [Clause 4(1)];
- All utilities are the responsibility of the approved occupant;
- Occupants may choose to organise utilities or Council may carry these and invoice the occupant for such expense subject to the consent of the General Manager;
- The General Manager or his representative will inspect Council houses annually and, upon new tenants, will prepare a condition report for Council;
- All Council's residential properties will be required to undergo termite and pest inspections annually, with condition reports prepared for Council and held on file; and
- All Council's residential properties should be kept in a neat and tidy manner and any damages or issues are to be reported to Council immediately.

6. Below Market Rent

This section applies to properties which Council has, by resolution, determined will be leased at less than market rent:

Tenants who are eligible to rent at less than market rent include:

- Key workers, such as persons employed in the Murrumbidgee Local Government Area in desirable service occupations, including policing and emergency services, who might otherwise be unable to live in the Murrumbidgee Local Government Area;
- Senior or otherwise skilled and qualified staff, as a means of attracting and retaining these skill sets for Council; and
- Consultants who may be employed by Council on a temporary basis to undertake significant or specialist projects or assignments.

Council may agree to grant a lease for several years at pre-agreed or no rent increase.

Sitting tenants who are not in breach of their lease will not be evicted in order to grant a lease to another at below market rent. When an eligible property becomes vacant, or is acquired, Council will then consider whether it is appropriate for it to be offered for lease at less than market rent in accordance with this section.

7. Delegation of Authority

Authority for implementing the Leasing of Council Residential Properties Policy is delegated by Council to the General Manager in accordance with the *Local Government Act 1993*.

The General Manager, or their delegated representative, has the authority to approve variations to this Policy if the variation is to Council's advantage and/or due to revised legislation or a change in market conditions. Any variations to the Policy will be reported to Council at the next possible meeting.

8. Non-Government Organisation(s) and Individuals

If Council has a property which is suitable for, and satisfies the requirements of, a non-Council organisation or individual based in the Murrumbidgee Local Government Area, Council may, by resolution, grant a long term lease to the non-Council organisation.

9. Compliance

Lessees of Council properties are expected to comply with the terms of their lease. The obligations are not reduced and should not be ignored by tenants because the lessor is a Council rather than a private landlord.

All individuals covered by this policy must comply with its provisions and subsequent lease documentation. Director(s) are responsible for providing advice as required to staff in relation to the provision of the policy. The General Manager is responsible for providing advice to individuals other than staff in relation to the provisions of this policy.

10. Exceptions

In the event that either the General Manger or Directors do not wish to avail themselves of Council housing options, Council can consider alternatives to generating rental income from these vacant properties. Such options could include making properties available to other staff members or members of the general public.

11. Ethics and Conflicts of Interest

Officers shall refrain from personal activities that would conflict with the proper execution and management of Council's residential properties and portfolio. This policy requires officers to disclose any conflict of interest to the General Manager as soon as they arise.

12. Definitions

Act	<i>Local Government Act 1993</i>
Council	Murrumbidgee Council
Staff	All persons employed by Murrumbidgee Council
Landlord	Murrumbidgee Council
Lease	Signed agreement between the landlord (Murrumbidgee Council) and the tenant
Council Official	Councillors, Council staff, volunteers or delegated persons as defined in the <i>Local Government Act 1993</i>
Tenant	Murrumbidgee Council staff, or individuals who rent Council owned property but are not staff of Murrumbidgee Council
Caretaker Lease	Lease of residences to employees of Council in connection with their employment as caretakers

13. Related Documents

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Residential Tenancies Act 2010
- Residential Tenancies Regulation 2010
- Residential Tenancies Regulation 2010 Schedule 1 Standard Form Agreement Clause 4(1)
- Murrumbidgee Council Codes of Conduct

14. Policy Review

This Policy:

- To be reviewed within the first year of the new Council term;
- May be reviewed and amended at any time at Council's discretion (or if legislative or State Government policy changes occur).