

**FILE NO:** PSC2010-04912

**TITLE:** COMMUNITY LEASING AND TENANCY POLICY

**POLICY OWNER:** PROPERTY SERVICES MANAGER

**PURPOSE:**

The objective of this policy is to provide Council with a structured, transparent framework, for dealing with leases and licences to Community Service Providers and Community Sporting Groups over Council owned or controlled property.

This Policy is to be read in conjunction with the associated Guideline document – "Guideline – Assessment and Rental Provisions for the Community Leasing and Tenancy Policy".

**CONTEXT/BACKGROUND:**

Council's Property Service's section maintains a significant portfolio of leases and licences to various Community Service Providers and Community Sporting Groups generally on behalf of other sections of Council being the asset owners. This Policy seeks to establish a formalised process for the assessment of the contribution of such groups relative to Council's Community Strategic Plan.

The Policy further seeks to establish a formalised system to readily quantify Council's contribution to such groups by way of provision of discounted rents.

**SCOPE:**

The provisions of this Policy apply to all land owned or controlled by Council (under Trust or similar arrangements) which is either leased or licensed to Community Service Providers or Community Sporting Groups.

**DEFINITIONS:**

The definitions applicable to this Policy are detailed within the associated Guideline document – "Guideline – Assessment and Rental Provisions for the Community Leasing and Tenancy Policy".

**POLICY STATEMENT:**

1. The licensing or leasing of community sporting and recreation facilities is governed by the Community Strategic Plan and associated Council resources.
2. Council is committed to providing facilities, and partnering with community sporting and service providers to enable the stand alone community management of these facilities.
3. Council is committed to an open and transparent licensing and leasing framework to ensure fair and equitable dealings with all sporting and community groups.
4. Council will encourage multiple uses of Community Sporting and Recreational Facilities wherever appropriate, maximising the use of capital infrastructure and encouraging cooperation between groups and organisations.
5. Community Sporting Groups ('CSGs') seeking exclusivity of use must be able to demonstrate significant social and community benefit and ongoing financial viability of the facility and their service. They must also demonstrate a high level of usage and occupancy of the facilities.
6. The assessment and apportioning of rents and Licence fees under this Policy is in accordance with the Port Stephens Council Guideline document "Assessment and Rental Provisions for the Community Leasing and Tenancy Policy".

**POLICY RESPONSIBILITIES:**

Council's Investment and Asset Manager and Community Services Section Manager are responsible for the implementation and review of this policy.

**RELATED DOCUMENTS:**

This policy is designed to support and complement the following existing policies:

- Guideline – Assessment and Rental Provisions for the Community Leasing and Tenancy Policy;
- Financial Assistance under Section 356 of The Local Government Act 1993;
- Community Group Loans Policy.

**CONTROLLED DOCUMENT INFORMATION:**

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<b>TRIM container No</b>	PSC2010-04912	<b>TRIM record No</b>	026
<b>Audience</b>	Staff, management, Councillors, prospective community service providers and prospective sporting groups.		
<b>Process owner</b>	Property Services Section Manager.		
<b>Author</b>	Investment and Asset Manager.		
<b>Review timeframe</b>	Two years from adoption.	<b>Next review date</b>	23 June 2017
<b>Adoption date</b>	23 June 2015		

**VERSION HISTORY:**

Version	Date	Author	Details	Minute No.
1	23/6/2015	Brett Field	Amalgamation of Community Leasing and Tenancy Policy	173



## GUIDELINE

### Assessment and Rental Provisions for the Community Leasing and Tenancy Policy

Author: Brett Field – Investment and Asset Manager  
Date: 15 May 2015  
Procedure Ref: #



#### Background information/Situation

- Port Stephens Council is party to a large portfolio of lease and/or licence transactions with various community groups in respect of Council owned land or land for which Council is (by virtue of legislative provisions) the trustee;
- This guideline supports the Community Leasing and Tenancy Policy to ensure that all such transactions are transparent and mutually equitable and provide for recognition by publication of Council's contribution to community groups in the form of discounted rents (primarily) in return for contribution to community outcomes in accordance with Council's Community Strategic plan.

#### Target Audience/Users

Council Officers, Management and Prospective Lessees or Licensees over Council owned or controlled Land.

#### Applicable Standards

Nil

#### Procedure Description

- Council will enter into formal Leases, Licenses and/or Management Agreements with Community Sporting Groups ('CSGs') in relation to their tenancy arrangements. The form of agreement will be determined by taking into account;
  - Exclusivity of use
  - Length of tenure
  - Land classification and zoning
  - Land management provisions of the Local Government Act
  - Other Legislative requirements
  - Social and community benefit
  - The cost of entering agreements is to be borne by the lessee or licensee.
  - Rents, fees or charges made by Council will be determined by taking into account:
    - Council's annual schedule of fees and charges.
    - The total annual cost of maintaining the facility at agreed levels.
    - Capital cost to Council of providing the facility.
  - Exclusivity of use.
  - Length of tenure.
  - Contribution made by the community, sporting or recreational group to the capital costs or level of intended investment in the capital infrastructure.
  - Assessment of social and community benefit.
- CSGs as prospective tenants may be required to develop a Business Plan according to Council's guidelines for the use of facilities, which will include:
  - Clear objectives for the management and use of the facility including the links to Council's Community Strategic Plan and any relevant Plans of Management.
  - A demonstrated commitment to community input into the operations of the facility.
  - Financial planning and accounting processes.
  - Asset Maintenance plans and schedules, including proposed improvements.
  - Review strategies.
- Vacant facilities will be advertised, specifying the purpose for which they are available and inviting submissions for use or occupation. Submissions may be sought by Council directly from specific community groups where appropriate.

- Submissions will be required to meet an established deadline and are to be assessed on established criteria. Criteria will include, but not necessarily be restricted to the following;
  - Proposed use of facility.
  - Structure of organisation making the submission.
  - Willingness to meet formalised conditions of use, including shared usage where appropriate.
- Appropriate officers will assess submissions.
- Prior to occupation all relevant documentation (including Business Plans where required) relating to the use of the facility will be provided to Council.

#### **LEASE DOCUMENT FORMAT**

- Leases less than three (3) years – all leases determined under this Guideline for community groups which are less than 3 (three) years in duration inclusive of the term of any option and therefore not requiring registration, are to be in the form of the Real Estate Institute of New South Wales Commercial Lease (FM00900).
- Leases exceeding three (3) Years – all leases determined under this Guideline for community groups which are for terms in excess of three (3) years in duration will be drafted by the Property Investment Coordinator Services Section or Council's retained law firm under instruction via the standard Legal template process.

#### **LICENCE FORMAT**

- All licences implemented in accordance with this guideline are to be in the standard Licence format adopted by Council's Commercial Property section.

#### **MANAGEMENT AGREEMENTS**

- Management Agreements required to formalise other obligations in regard to Asset Maintenance and the like will be negotiated and structured on a needs basis having regard to the documented Principles herein.

#### **COMMUNITY SERVICE PROVIDERS ('CSP's) ASSESSMENT CRITERIA**

- For the purposes of determining an equitable schedule of rents, Community Service Providers are to be assessed in accordance with the following Property/Lease and Organisational specific Assessment Criteria;

**CSP - ASSESSMENT SCALE**

<b>Community Leasing Policy / Lease Specific Assessment Based on Rating Criteria</b>					<b>POINTS ('PTS') ASSESSED</b>
<b>Criteria</b>	<b>Assessment Scale (Points)</b>				
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	
Land Classification and sta (Net or Gross)	Operational / Gross	Operational / Net	Community / Gross	Community / Net	<b>PTS</b>
Lease Security	0 - 1 Months Bond	2 Months Bond	3 Months Bond	3 Months Bank Guarantee	<b>PTS</b>
Total Council Contribution to Fitout	>= \$5,000	\$3000 - \$4,999	< \$2,999	Nil required	<b>PTS</b>
<b>Organisational Specific Assessment</b>					
<b>Criteria</b>	<b>Assessment Scale</b>				
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	
<b>Community Benefit / Link to Council Community Strategic Plan</b>	Little or no direct or integrated link or targets within the Council Community Strategic Plan.	Services provided do not integrate into the current Council Community Strategic Plan but do provide significant benefits to the community.	Services provided do not integrate into the current Council Community Strategic Plan but do provide significant benefits to the community which are considered to reduce the burden on Council budgets.	Integrates directly into the Council Community Strategic Plan.	<b>PTS</b>
<b>Organisational Structure</b>	The organisation is a locally based service, outlet or project that forms part of a larger not for profit organisation. There is limited or no local area representation on the advisory committee or management structure.	The organisation is a locally based service, outlet or project that forms part of a larger not for profit organisation. It has a voluntary management committee, comprised partly of local area representatives.	The organisation is locally based; has a regional focus; is stand alone and not for profit. It has a voluntary management committee, comprised partly of local area representatives.	The organisation is locally based; stand alone and not for profit. It has a voluntary management committee, comprised mainly of local area representatives.	<b>PTS</b>
<b>Number of Providers</b>	Meets Social or Recreational needs only	One of a number of providers meeting needs outside of those identified in Council Community Plan	One of a number of providers providing Community Services	Unique service provided of great benefit and linked to Council identified Community Strategic Plan targets	<b>PTS</b>
<b>Competition</b>	Provide in entirety direct Competition to Commercial operators	Partly competing with Commercial Operators	Direct Competition but also with added or differentiated benefits to service users	Main activities do not compete with Commercial providers	<b>PTS</b>
<b>Ability to raise income</b>	Commercial (profit) operation	Has ability to charge fees and raise revenue	Some ability to raise revenue and charge fees which are varied in line with respective client's abilities to pay.	Little or no opportunity for raising income	<b>PTS</b>
<b>Access to Grant or similar funding</b>	Access to State or Federal funding generally being Long term arrangements or which guarantee > 40% funding.	Access to State or Local funding generally being Long term arrangements or which guarantee > 40% funding.	Some (but generally) limited access to funding	No access to other funding sources	<b>PTS</b>
<b>POINTS TOTAL</b>					<b>PTS</b>

### POINTS SCORES FROM ASSESSMENT SCALE

- In order to determine the appropriate rental to be applied to an eligible CSP, the total assessment points are to be arrived at by using the assessment scale above and then by reference to the points score data below, an appropriate discount from a market rental can be determined.

Point score Range	Discount from Market Rental to be Applied
< 9 pts	Nil
9 to 14 pts	5%
15 to 24 pts	40%
25 to 36 pts	60%

### ARRIVING AT MARKET RENTS FOR THE PURPOSE OF THIS GUIDELINE

- Market rents can be determined by utilising registered Valuers from within Council's Property Services section. In the case of contentious rents or where other external factors may dictate, external Valuers may be engaged to appropriately determine a market rent with the associated fees for such valuations to be borne by the prospective tenant(s). In such situations, Council reserves its right to contest external valuation and seek/rely upon their own opinion.
- This guideline assumes that any valuations obtained for the purpose of arriving at lease terms, are to be undertaken by appropriately qualified members of the Australian Property Institute with Certified Practising Valuer status.

### APPORTIONING APPROPRIATE LICENCE FEES FOR THE PURPOSE OF THIS GUIDELINE

- Having regard for the fact that a licence differs from a lease in that it does not provide an exclusive use and generally only provides a limited use for a specific time and purpose, licence fees will generally (but not always) be set at a lower level than a rent.
- Licences may be issued for a wide range of uses including temporary access or occupation, communication towers and or antennae and temporary right of way.
- Licences over Community Classified Land – in respect to licence fees applied under this guideline, the fees will generally reflect an apportionment of projected costs in terms of maintaining the licence terms in addition to a standard administration fee charged at commencement.
- Licences over Operational Land – for licences to CSP's over operational land; the licence fees will reflect an appropriate return to the asset manager/owner and will be set by the responsible officer in consultation with the asset manager/owner.