

FILE NO: PSC2021-02605

TITLE: COMMUNITY LEASING, LICENCING AND TENANCY POLICY

OWNER: COMMUNITY SERVICES SECTION MANAGER

1. PURPOSE:

- 1.1 The purpose of this policy is to provide Council with a consistent, structured and transparent framework, for dealing with leases and licences for Council owned or managed land to community service providers and community groups.
- 1.2 The policy aims to achieve well-managed community facilities that promote community participation through establishing a formal process for the allocation of land and determination of financial contributions.
- 1.3 This policy is to be read in conjunction with the associated Guideline document – Community Leasing, Licencing and Tenancy Guideline.

2. CONTEXT/BACKGROUND:

- 2.1 Port Stephens has a diverse range of community facilities including recreational spaces that are well suited to a wide range of uses. A consistent approach to issuing leases and licences will ensure fairness, equity and transparency in the allocation and ongoing management of Council's assets.

3. SCOPE:

- 3.1 The provisions of this policy apply to all community land owned or managed by Council, including those parcels of Crown land where Council has been appointed as land manager under Crown Land legislation.
- 3.2 Community land is intended for general public use. It cannot be sold and cannot be leased for more than 30 years.
- 3.3 Crown land managed by Council is governed by Crown Land Legislation and cannot be leased or licenced if the proposed use is inconsistent with the reserve categories core objectives. Council as land manager can enter into a leasing or licencing arrangement for Crown Land under its care and control.
- 3.4 This policy does not apply to:
 - a) Land managed under the Roads Act 1993.
 - b) Land classified as Operational under the LG Act 1993.

- c) Crown land where Council is not appointed as land manager.
- d) Temporary events.
- e) Commercial facilities that are subject to a lease.
- f) Commercial use of community halls.
- g) Commercial use of sports facilities.

4. DEFINITIONS:

4.1 An outline of the key definitions of terms included in the policy.

Categorisation	The category described in sections 36E-36N (inclusive) of the LG Act that have been applied to the land in the Plans of Management (POM).
Community Group	A company or individual including registered charities that provide a service to the local or wider community who operate a business on a cost recovery basis and do not make a profit.
Community Lease	Where a landlord grants a tenant a legal right to exclusive possession of premises for a specified period of time in return for the payment of rent.
Community Licence	When a licensor grants a licensee a contractual right to occupy premises in return for the payment of a licence fee. In law, a licensee is not entitled to exclusive possession of the premises.
Crown Land	Land held in the name of the State of NSW and reserved under Crown Land legislation.
Crown Land Legislation	The Crown Land Management Act 2016.
LG Act 1993	The Local Government Act 1993.
Temporary Events	Any event that is held less than 4 times in any one calendar year.

4.2 Other definitions applicable to this policy are detailed within the associated Community Leasing, Licencing and Tenancy Guideline.

5. STATEMENT:

5.1 The leasing or licencing of community facilities is governed by the Community Strategic Plan and any lease or licence application must be consistent with the intent of that Plan, and any Plan of Management applying to the land.

5.2 Council is committed to providing facilities and partnering with community groups and community service providers to enable stand alone community management of these facilities where appropriate.

- 5.3 Council is committed to an open and transparent leasing and licencing framework to ensure fair and equitable dealings with all community service providers.
- 5.4 Council will encourage multiple uses of community facilities wherever appropriate to maximise the use of capital infrastructure. This can be achieved through licencing parts of facilities to multiple groups and may include use of shared amenities and/or car parking. In this circumstance, maintenance responsibilities will be apportioned on an area basis or pro rata contributions to the cost of maintenance by third parties may be required.
- 5.5 Community service providers 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, and must be committed to undertaking continued maintenance of the facility throughout the lease or licence term. Where exclusivity of use is supported, a lease may be offered.
- 5.6 All requests to lease or licence Council owned or managed land must be submitted in writing on the designated application form.
- 5.7 When assessing an application, Council will take into consideration the following factors:
- a) The Community Strategic Plan and any Plan of Management applying to the land.
 - b) The proposed use of the land.
 - c) The current permitted or potential uses of the land.
 - d) The applicant's financial standing and ability to manage the facility.
- 5.8 Where the land applied for is Crown land, Council will also consider the following factors, in addition to those specified at 5.7 above:
- a) The Native Title and Aboriginal Land Rights Acts.
 - b) Any requirements for community engagement under Crown Land legislation.
- 5.9 The maximum licence term that will be offered at any time is 5 years and the maximum lease term that can be offered is 30 years.
- 5.10 To ensure fairness and transparency vacant community facilities will be advertised through an Expression of Interest (EOI) process, specifying the purpose for which they are available and inviting submissions for use or occupation. Submissions may also be sought by Council directly from specific community groups where:

- a) A prior public competitive process for the lease or licence of the land was unsuccessful, or there are overwhelming public interest considerations.
 - b) In emergency situations
 - c) Where an existing tenant seeks to improve Council's facility through capital investment and requires an extension of the existing lease term to amortise the investment
- 5.11 Council may also reserve the right to offer existing tenants a new lease or licence agreement where an option period has not been identified and where it can be demonstrated that the tenant has delivered positive economic and community benefits with its service delivery across the Local Government Area. If supported, a business case will be required to go to Council for consideration and approval.
- 5.12 All leases and licences will attract an annual rental fee. Rental will be determined at either current fees as found in Councils Fees and Charges or through a market rent review where rebates may be applied in accordance with the Community Leasing, Licencing and Tenancy Policy rating criteria questionnaire.

6. RESPONSIBILITIES:

- 6.1 Council's Community Contracts Coordinator and Community Services Section Manager are responsible for implementing, complying with, monitoring, evaluating, reviewing and providing advice on the policy.

7. RELATED DOCUMENTS:

- 7.1 Community Leasing, Licencing and Tenancy Guideline.
- 7.2 Community Leasing, Licensing and Tenancy Policy rating criteria questionnaire.
- 7.3 Financial Assistance under Section 356 of the Local Government Act 1993 (NSW).
- 7.4 Community Group Loans Policy.
- 7.5 Setting of Fees and Charges Management Directive.
- 7.6 Events Policy and Guideline.
- 7.7 Commercial Operators Policy.
- 7.8 Mobile Food Guideline.
- 7.9 Port Stephens Council Plans of Management for Community Land.
- 7.10 Local Government Act 1993 (NSW).
- 7.11 Crown Lands Management Act 2016 (NSW).

CONTROLLED DOCUMENT INFORMATION:

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Audience	Staff, management, Councilors and prospective community service providers.		
Process owner	Community Services Section Manager		
Author	Community Contracts Coordinator		
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Adoption date	23 June 2015		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	23/06/2015	Investment and Asset Manager	Amalgamation of Community Leasing and Tenancy Policy.	173
2	13/02/2018	Property Services Section Manager	Policy has been reviewed following discussions with stakeholders and no changes have been made. Adopted by Council.	012
3	13/09/2022	Community Services Section Manager	Extensive wording changes to incorporate the inclusion of Community Licencing after amalgamation of all Community leases, licenses and tenancy into Community Services Section. Reviewed and updated into the correct Policy template. Amended review timeframe to 3 years in accordance with Council's policy review process.	249