

# LEASE/LICENCE OF COUNCIL LAND & BUILDINGS TO COMMUNITY GROUPS

Policy | Business Development

To provide equity of leasing and licencing of Council's land and buildings to community groups

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<b>Responsible Officer:</b>	Business Development Specialist		
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Rescinded



# 1 Background

## 1.1 Title of the Policy and Commencement Date

The Lease/Licence of Council Land & Buildings to Community Groups Policy takes effect from 25 November 2019.

## 1.2 Purpose of the Policy

The purpose of this policy is to provide the framework for the assessment of leasing/licencing Council owned/managed land and buildings to community groups prior to the consideration of the matter by Council. It establishes the requirement for all community groups to demonstrate the community benefit arising from their use of the Council owned/managed land and buildings and sets out reporting requirements to ensure accountability to Council and recognition of Council's contributions. The policy sets out terms and conditions to be used as the basis for negotiating leases/licences.

# 2 Objective

## 2.1 Objectives and Coverage of the Policy

Council aims to achieve a number of outcomes from the policy including:

- Providing lease/licence guidelines which are clear and easily understood by the community and community groups;
- Optimising contributions from community groups towards the cost of providing use of Council facilities;
- Ensuring Council owned facilities are used to meet demonstrated community needs consistent with Council's vision, policies and strategic plans;
- Ensuring fair and consistent lease/licence conditions between tenant community groups and equitable access to leased/licensed community assets;
- Providing accountability for Council expenditure on lease/licence subsidies, as they constitute donations; and
- Ensuring that Council-owned facilities are appropriately maintained, developed and occupied responsibly having regard to the interests of local communities and the care of the assets.

# 3 Application

## 3.1 Application of this Policy

This policy will apply to all leases and licences to community groups developed or renewed following adoption of the policy by Council.

## 3.2 Exclusions

Commercial or for-profit organisations are not eligible for any rental subsidy.



This policy does not apply to annual allocations of sporting facilities or the current lease arrangements in place for the service sheds at the Singleton Council Depot (refer to minute no. 39/11).

## 4 Definitions

For the purposes of this policy:

Term	Meaning
Facility	Part or all of a Council owned/managed land and/or building asset and associated infrastructure occupied by a community group/s under a lease/licence to provide and organise recreational, cultural, sporting and community service activities. They are generally situated on Council owned operational and community Land or Crown Land for which Council has long term management responsibility.
Community Group	A community group under this policy is an entity which provides a benefit to the community on a non-profit basis, has a constitution or charter and a program of services or activities which confirm a commitment to meeting the cultural, social and/or recreational needs of the community. Occasional and regular hirers of Council facilities are not covered by this policy.
Capital Contribution	Monetary or other contribution (e.g. donated labour and materials) which improves, enhances, or adds value to the facility based on the replacement/refurbishment cost/s assessed in line with industry accepted quantity surveying principles.
Plans of Management	Refers to the requirement under the <i>Local Government Act, 1993</i> that all public land be classified as either "operational land" or "community land" and a Plan of Management must be prepared for land designated community land. The granting of a lease or licence over a facility on community land, the conditions of the lease or licence and the potential uses of a facility are set down in the Plan of Management. The Act states: "A council may grant a lease or licence of community land, but only in accordance with Section 46 and (if relevant) section 47 of the <i>Local Government Act, 1993</i> ."
Lease	A lease provides for exclusive possession of property by the Lessee. A lease is granted for a set term and provides for the payment of rental and other terms set out in the lease agreement. A lease creates an interest in the land which can be transferred to the Lessee for the period of the lease. A lease can be transferred to another party with consent of the land owner. A lease is not revocable unless essential terms of the lease are breached by either party.
Licence	A licence is the granting of permission to use land for a specific purpose, and provides for payment of a licence fee by the Licensee. A licence does not grant exclusive possession.



	<p>A licence does not create interest in the land and is not transferrable.</p> <p>A licence is revocable.</p>
Maintain/Repair	Keep in good condition in accordance with Australian Standards. Ensure useful life of the asset is met and does not deteriorate during the term of the lease/licence.
Replace	Replace at end of useful life. Replace if broken or damaged beyond repair.
Full Maintenance	Maintain repair and replace.
Market Rental	<p>The rent that would reasonably be expected to be paid for the facility, determined on an effective rent basis having regard to:</p> <ul style="list-style-type: none"> <li>• The rent that would reasonably be expected to be paid for the facility if it was unoccupied and offered for rent on the open market.</li> <li>• The highest and best uses for which the facility would be physically suitable and which would be permissible under the zoning of the land and by any plan of management.</li> </ul>

## 5 Principles/Body

### 5.1 Management Philosophy

- Council facilities which are not required for delivering Council services and which the Council has determined are suitable for lease/licence by community groups will be subject to the conditions and guidelines outlined herein. The terms of occupation will be contained in a lease/licence agreement prepared by Council's legal provider.
- Facilities will generally be managed in a manner which preserves and maintains their flexibility and availability for current and future residents of Singleton Council. Wherever possible, Council will implement a strategy of multiple shared uses between groups.
- The allocation of an available facility to any community group shall have regard to the existing level of support (financial and non-financial) provided by Council to that community group.
- Council seeks to recover a proportion of the total operating costs of all facilities.

### 5.2 Eligibility

To be eligible to lease or licence part or all of a Council facility, a community group will be assessed against the following eligibility criteria.

The criteria indicated with an asterisk (\*) are mandatory and must be met to enable assessment of an application. A weighting of the remaining criteria will be applied to assist in the assessment process.

#### 5.2.1 Community Group Criteria

- The community group is one which is not operating for the profit or gain of its individual members, whether these gains would be direct or indirect.



- The community group is a legal entity registered under appropriate legislation (such as the *Associations Incorporation Act, 2009*). \*
- The community group is financially sustainable, with annual financial statements provided to Council, audited where it is required as a prescribed association under the *Associations Incorporation Act, 2009*.
- The community group complies with relevant legislation governing its activities, and holds any licences or registration certificates required for it to operate and holds appropriate insurance.\*
- The community group has a committee of management or other like governance structure and appropriate governance arrangements, with established accountability and reporting methods to members of the community group and / or to the community.
- The community group adheres to all relevant Council policies and has complied with the terms of any previous lease/licence and/or financial assistance from the Council.\*
- The community group has a constitution or charter which confirms the group's commitment to either the cultural, social and/or recreational wellbeing of the community.\*

#### 5.2.2 Community Benefit Criteria

- Use of the facility will increase social engagement and promote health and well-being of the Singleton community.
- A plan for the facility's use is provided including current and projected hours of operation and participant and / or membership numbers.\*
- The community group provides a service or a program of activities which can be demonstrated to address an identified cultural, social, recreational or other need in the community.\*
- Facility use is consistent with Council's vision and the goals outlined in Council's Strategic Plans.
- The level of support already being provided by Council to a community group both financial and non financial.
- The service or activity is non-discriminatory: it will be open to all residents who meet clearly stated criteria for participation that are directly related to the nature of the service or activity, or geographic catchment area.
- The service or activity can be accessed by disadvantaged groups, with strategies in place to review and remove any barriers to participation.
- The community group's promotion and support of volunteerism.

#### 5.2.3 Facility Management Criteria

- Proposed use of the facility is suitable for the nature of the site and the neighbourhood.\*
- The community group will keep the facility in good repair and undertake upkeep in accordance with the maintenance schedule included in this policy.



- Utilisation of, and community access to, the facility will be maximised, through shared use with other community groups, consistent with any special requirements of the head tenant.
- The community group is willing to undertake significant/identified capital works as necessary to develop the facility as an asset for the long term benefit of the community.
- The community group is able to fulfil relevant insurance requirements as determined by Council's Integrated Risk Management Team.\*

The eligibility requirements indicated above will be applied in the assessment of an initial request for a Council facility lease or licence and an application to renew a lease or licence.

### 5.3 Lease/Licence Provisions

Council recognises that many groups have a strong historical affiliation with the facilities which they use, and have contributed in cash and kind to their development. Generally, Council supports the continued occupation of those facilities by those groups but with a preference for a shared multi-use basis where it does not currently occur.

Where a current licence, lease or other formal agreement exists, this will be honoured until its expiry. A review of future management options for the facility will be undertaken within the last 24 months of the agreement period. Community groups wishing to renew a lease or licence will be subject to a reassessment of their eligibility. Reassessment will refer to the eligibility criteria as noted in this policy (refer Section 5.2). It will also take account of existing usage rates and the potential for the facility to be used on a multi-user basis, in line with changing community needs and in consultation with the community.

An Expressions of Interest process will be undertaken for facilities covered by this policy which become vacant.

Leases/licences will be developed by Council's legal provider reflecting the contents of this policy and relevant legislation in accordance with Council's Procedure for Obtaining Legal Advice.

#### 5.3.1 Term

The term of a lease/licence will generally be for a period of up to five (5) years.

Where a community group can demonstrate that it has made a capital contribution, consideration will be given by Council to the granting of a longer lease/licence term on a case by case basis.

#### 5.3.2 Rental

##### 5.3.2.1 Rent Subsidy

The level of rental payable by community groups who satisfy the requirements under Section 5.2 above will be based on the extent to which the group meets the criteria indicated in Table 1 Rent Subsidy Categories set out below.

The compliance of a community group against the criteria will be reviewed annually. Should a community group's category change, the revised level of rental payable will be subject to the approval of Council.





## 5.3.2.2 Table 1 Rent Subsidy Categories

Category	Annual Rent	Eligibility
Nominal rent	\$483 per annum (exclusive of GST) as at date of adoption of policy and annually adjusted by CPI	<ul style="list-style-type: none"> <li>Satisfies all eligibility criteria under Section 5.2</li> <li>Services provided integrate directly into Council's Community Strategic Plan</li> <li>Provides optimal multiple use opportunities (i.e. fully utilised or nature of community groups operations precludes multiple use)</li> <li>Has limited revenue-raising and grant funding ability net of cost of service (no access to grants or fund raising opportunities)</li> <li>May be in need of Council's assistance to become established</li> </ul>
Community Partnership Rent	25% of market valuation (exclusive of GST)	<ul style="list-style-type: none"> <li>Satisfies all eligibility criteria under Section 5.2</li> <li>Services provided do not integrate into Council's current Community Strategic Plan however provide significant benefits to the community which are considered to reduce the burden on Council's budget</li> <li>Provides reasonable multiple use opportunities (say 3 or more groups per week)</li> <li>Undertakes some capital development and full maintenance of facility</li> <li>Has limited revenue-raising and grant funding ability net of cost of service (access to funds/grants no greater than 20% of total revenue raising abilities)</li> </ul>



Category	Annual Rent	Eligibility
Discounted market rent	50% of market valuation (exclusive of GST)	<ul style="list-style-type: none"> <li>Satisfies all eligibility criteria under Section 5.2</li> <li>Services provided do not integrate into Council's current Community Strategic Plan but do provide significant benefits to the community</li> <li>Limited or no multiple use opportunity (i.e. nature of community groups operations and capital investment by group supports minimal multiple usage. Responsible for day to day maintenance only</li> <li>Has reasonable revenue raising ability from their activities, private sector sponsorship or government grants (net of cost of service)</li> </ul>
User built facility rent	5% of the unimproved capital value of the land the building and grounds cover Note: 10% of the capital value is a typical market rent. Discount this by 50% as a community service = 5% UCV	<ul style="list-style-type: none"> <li>Satisfies all eligibility criteria under Section 5.2</li> <li>Building and grounds capital works and maintenance fully funded by users</li> <li>Little or no direct or integrated link with Council's Community Strategic Plan</li> <li>Limited or no multiple use opportunity (ie. Nature of community group operations and capital investment by group supports minimal multiple usage)</li> <li>Responsible for all maintenance</li> <li>Has reasonable revenue raising ability from their activities, private sector sponsorship or government grants (net of cost of service)</li> </ul>



### 5.3.2.3 **Adjustments of Rents**

The rent payable under the nominal category will be adjusted annually in accordance with the Consumer Price Index (CPI). The rent payable under the community partnership and discounted market rent categories will be adjusted by CPI annually with a market review to be undertaken every five years.

New rent and subsidy levels will be introduced in all new leases and licences following adoption of the policy, including any new lease or licence developed with current tenants.

### 5.3.2.4 **Reporting on Rent Subsidies**

The value of imputed rent payments foregone through rental subsidies will be included in annual Council budget papers.

### 5.3.3 **Maintenance of Council Facilities**

All community groups signing leases or licences following commencement of this policy will be required to contribute towards the maintenance of the facility occupied. The level of maintenance responsibility will be determined by the function of the facility, the degree of community benefit, and the community group's ability to generate revenue. In broad terms maintenance responsibilities will be as outlined in Table 2 below, which should be seen as a general guide only. Specific responsibilities will be negotiated with each community group taking into account the nature, age and condition of the facility and included in a schedule to that community group's lease or licence.

## 5.3.3.1

**Table 2 Indicative Summary of Maintenance Responsibilities**

Category	Facility Component	Community Group Responsibility	Council Responsibility
<b>Nominal Rent</b>	Building shell erected by Council	Maintain/repair	Replace
	External surfaces, including painting, pathways, fences, car parks, brickwork	Full maintenance	-
	Fixtures/fittings (toilet pans, taps, door furniture)	Full maintenance	-
	Interior surfaces (painting, carpet, tiling)	Full maintenance	-
	Building services (water supply, gas, sewerage, electrical)	Full maintenance	-
	Essential services	-	Full maintenance
	Routine services (gutter cleans, pest control)	Maintain/repair	-
	Grounds (landscape features, external furniture)	Full maintenance	-
	Specialist ground surface and equipment (eg. Playground equipment, synthetic playing surface, trees planted by group)	Full maintenance	-
	Existing trees	-	Full maintenance



Category	Facility Component	Community Group Responsibility	Council Responsibility
<b>Community Partnership Rent</b>	Building shell erected by Council	Maintain/repair	Replace
	External surfaces, including painting, pathways, fences, car parks, brickwork	Maintain/repair	Replace
	Fixtures/fittings (toilet pans, taps, door furniture)	Full maintenance	-
	Interior surfaces (painting, carpet, tiling)	Full maintenance	-
	Building services (water supply, gas, sewerage, electrical)	Maintain/repair	Replace
	Essential services	-	Full maintenance
	Routine services (gutter cleans, pest control)	Maintain/repair	-
	Grounds (landscape features, lawns, external furniture)	Full maintenance	-
	Specialist ground surface and equipment (eg. Playground equipment, court synthetic playing surface, trees planted by group)	Full maintenance	-
	Existing trees	-	Full maintenance



Category	Facility Component	Community Group Responsibility	Council Responsibility
<b>Discounted market rent</b>	Building shell erected by Council	-	Full maintenance
	External surfaces, including painting, pathways, fences, car parks, brickwork	-	Full maintenance
	Fixtures/ fittings (toilet pans, taps, door furniture)	Maintain/repair	Replace
	Interior surfaces (painting, carpet, tiling)	Maintain/repair	Replace
	Building services (water supply, gas, sewerage, electrical)	Maintain/repair	Replace
	Essential services	-	Full maintenance
	Routine services (gutter cleans, pest control)	-	Full maintenance
	Grounds (landscape features, lawns, external furniture)	-	Full maintenance
	Specialist ground surface and equipment (eg. Playground equipment, court synthetic playing surface, trees planted by group)	Full maintenance	-
	Existing trees	-	Full maintenance
<b>User built facility rent</b>	Building shell erected by group and grounds	Full maintenance	-



Where a group voluntarily undertakes extensions or improvements to the exterior of a facility (eg. pergola, sun shade) they are responsible for the maintenance and presentation of those improvements. Note: Such groups will need to comply with any relevant statutory approval processes (eg. Development Consent).

Unless mentioned above, users of the facility should be responsible for all internal maintenance of the facility. Where more than one group uses a facility, contributions and responsibility for maintenance should be shared.

Any maintenance work undertaken is to be carried out by suitably qualified contractors in accordance with the lease/licence provisions.

#### 5.3.4 Statutory Outgoings

The community group shall be responsible to pay 50% of Council and Water Sewerage rates levied on a facility. If the community group utilises only part of a building, a contribution for statutory outgoings may be negotiated and included in the lease/licence agreement.

#### 5.3.5 Operating Costs

Community groups will be responsible for the costs associated with services provided to a leased/licensed facility (e.g. electricity, water usage and gas) and any applicable taxes (including GST and stamp duty). If the community group utilises part of a building a contribution for associated services may be negotiated and included in the lease/licence agreement.

#### 5.3.6 General

##### 5.3.6.1 Hours of use

The hours of use may be prescribed for all leased/licensed premises and determined by Plans of Management or Development Consent.

##### 5.3.6.2 Sub-leasing

Community groups may only sub-lease with council permission to approved organisations for approved purposes and subject to approved terms and conditions. Generally, Council will use the same criteria to assess the sub-lease as the head lease. The subsidy level of the head tenant may be reviewed when a sublease is developed and may be adjusted if the rent is more than cost-recovery.

##### 5.3.6.3 Insurance

A community group must maintain its own Public Liability insurance to a value determined by Council's Integrated Risk Management Team as detailed in lease/licence documents. Generally, Council will fully insure all improvements on a leased/licensed premises. Community groups are responsible for insuring their own contents. Council will not insure contents.

##### 5.3.6.4 Legal Fees

Council will pay 50% legal costs associated with the establishment of a new lease/licence agreement where the lease is developed by Council's legal provider. The community group will be responsible for the cost of any independent legal advice and assistance sought by the community group.



### 5.3.6.5 Removal of Assets

The community group may remove any assets that have been constructed or installed by them during the term of the lease or licence, subject to the premises being returned to Council in its original condition.

Council may request the demolition/removal of the asset if required by the lease/licence conditions. Any improvement not able to be removed at the end of the lease/licence shall remain in Council ownership.

### 5.3.6.6 Capital improvements

Community groups may only undertake capital improvements with the permission of Council as the asset owner.

Council retains ownership of capital improvements that cannot be removed unless otherwise specified in the lease or licence. Any capital contribution of community groups will be taken into account in assessing rent levels and length of lease/licence.

### 5.3.6.7 Acknowledgement of Council contribution

The community group shall, in liaison with Council's Communications, Community and Economy section, acknowledge Council's contribution in their organisation's annual report and publications, any advertising and community events.

### 5.3.6.8 Nuisance

Council requires that community groups undertake their permitted activities without adversely impacting on the amenity of nearby neighbours. Council reserves the right to terminate the tenancy or to restrict the use of premises by the community group and through occasional hire arrangements if this requirement is not adhered to.

## 6 Relevant Legislation

Community facilities will be managed in a manner which ensures compliance with relevant legislation and Council policies including the:

- *Local Government Act, 1993*
- *Crown Lands Act, 1989*
- *Environmental Planning & Assessment Act, 1979*
- *Protection of the Environment Operations Act, 1997*
- *Conveyancing Act, 1919*
- *Real Property Act, 1900*
- *Retail Leases Act, 1994*

and where applicable, in a manner consistent with the values and directions of the Plans of Management for Community and Crown Land.





## 7 Document Information

Related documents and reference information in this section provides a single reference point to develop and maintain site compliance information.

### 7.1 Related Documents

Related documents, listed in **Table 7-1** below, are internal documents directly related to or referenced from this document.

Number	Title
POL/9006	Asset Management Policy
	Procedure – Governance – Obtaining Legal Advice
<a href="http://www.crownland.nsw.gov.au/trusts/trust_handbook">www.crownland.nsw.gov.au/trusts/trust_handbook</a>	Crown Lands Reserve Trust Handbook
<a href="http://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/practice-notes-and-guidelines">www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/practice-notes-and-guidelines</a>	Office of Local Government – Practice Note 1 – Public Land Management

Table 7-1 – Related documents

## 8 Responsible Officer / Policy Owner

Ownership of this policy rests with the Business Development Specialist.

## 9 Responsibilities

Parties or Persons	Responsibilities
Business Development Specialist	<ul style="list-style-type: none"> <li>• Ensure that leases and licences to community groups are developed and implemented in accordance with this policy.</li> <li>• Assess community benefit and recommend appropriate rent category.</li> <li>• Coordinate any expression of interest processes required by this policy.</li> <li>• Coordinate annual compliance review of leases / licences that fall under this policy.</li> <li>• Coordinate reporting as required by this policy.</li> </ul>
Leadership Team	<ul style="list-style-type: none"> <li>• Consider and endorse recommendations for leases and licences to community groups prior to reporting to Council.</li> </ul>
Council	<ul style="list-style-type: none"> <li>• Consider and resolve reports on proposed leases and licences to community groups.</li> </ul>
Infrastructure Services	<ul style="list-style-type: none"> <li>• Ensure appropriate maintenance of Council land and buildings as specified in this policy.</li> </ul>
Integrated Risk Management Team	<ul style="list-style-type: none"> <li>• Provide advice on insurances as required.</li> </ul>

## 10 Approval

As per cover sheet.



## **11 Monitoring**

This policy will be monitored by the Business Development Specialist to ensure compliance.

## **12 Review Date**

This policy, once adopted, is to remain in force until it is reviewed by Council. This policy is to be reviewed approximately every two (2) years to ensure that it meets legislative requirements.

## **13 Last Review Date**

This policy was last reviewed on 18 November 2019.

## **14 Record Keeping, Confidentiality and Privacy**

This policy is to be made available for public viewing as required under the *Government Information (Public Access) 2009, NSW*.

## **15 Breaches and Sanctions**

Any breaches of this Policy will be referred to the General Manager for appropriate action.



## Appendix A - Process Map

