

**POLICY NAME:** COMMUNITY PROPERTY LEASING AND LICENSING POLICY  
**POLICY REF:** C02  
**MEETING ADOPTED:**  
**POLICY HISTORY:**



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## **OBJECTIVE**

The objective of this policy is to provide a process and criteria to assess the granting of leases and licences of Council owned or managed properties to Not for Profit Community Groups which are to be predominantly used for sporting, recreation or other community purposes.

## **POLICY**

The purpose of this policy is to:

- provide guidelines for the leasing and licencing of the properties covered by this policy to Not for Profit Community Groups;
- provide assessment criteria to assist in assessing the suitability of tenants;
- encourage better utilisation of the properties;
- set out some of the general terms and conditions for leases and licences, and the general leasing process;
- ensure that demonstrated benefits are being provided to the community to warrant the Council receiving less than market rent for the properties.

This policy does not alter the terms of any existing leases or licences.

### **1. APPLICATION**

#### **Leases and licences to which this policy applies**

This policy applies to leases or licences of the properties listed in Attachment 1 to Not for Profit Community Groups, where the properties are to be predominantly used for sporting, recreation or other community purposes.

This policy does not apply to:

- leases or licences of a property listed in Attachment 1 for commercial purposes; or
- leases or licences of a property listed in Attachment 1 to an entity that is not a Not for Profit Community Group.

### **2. PLAN OF MANAGEMENT**

Under the *Local Government Act*, Council's land is categorised as either Operational Land or Community Land. Classification of land as Community Land reflects the importance of those properties to the community. Community Land needs to be managed according to special requirements in the *Local Government Act* and *Crown Land Management Act*.

Under the *Local Government Act*, Council may only grant a lease or licence over Community Land if:

- the Plan of Management expressly authorises the lease or licence; and
- the purpose of the lease or licence is consistent with the core objectives for the category of land. The categories include sportsground, general community use,

park, an area of cultural significance and natural area. For example, if the Plan of Management categorises a property as sportsground, any lease or licence for that property must be for a purpose consistent with the core objectives for sportsgrounds; and

- the lease or licence is for a purpose listed in section 46(1)(b) of the *Local Government Act*.

There are only very limited exceptions to the above in s46 of the *Local Government Act*.

### **Crown Land classified as Community Land – Plan of Management**

As part of the implementation of the *Crown Land Management Act*, Crown Land managed by Council will be categorised as either Community Land or Operational Land. Properties classified as Community Land will be further categorised as either sportsground, general community use, park, an area of cultural significance or natural area. Those properties will be listed in a Plan of Management. Once the Plan of Management is adopted, leases or licences granted by Council for Crown Land categorised as Community Land will need to be in accordance with the express authorisation in the Plan of Management, for purposes consistent with the core objectives of the category of land.

### **3. PUBLIC NOTIFICATION OF PROPOSED LEASE**

The *Local Government Act* (s47 and s47A) sets out a public notification process that Council is required to follow for proposed leases or licences of Community Land. The public notification process generally involves:

- giving notice to adjoining land owners, putting a sign on the property and publishing certain details on Council's website;
- members of the public may make written submissions within the timeframe prescribed in the notice;
- Council considers those submissions when making a final decision on the proposed lease or licence; and
- if the submissions include an objection and the lease term is over 5 years, the matter must be referred to the Minister for Local Government for consent.

### **4. OTHER LEGISLATIVE REQUIREMENTS**

For proposed new leases or licences, there may be various legislative requirements that need to be met before a lease or licence can be granted, or before a tenant can commence a particular use of the property. For example:

- for Crown Land:
  - depending on the term of the proposed lease or licence, Council may need to obtain the Minister's prior consent to the granting of the lease or licence;
  - the proposed lease or licence is subject to obtaining Native Title Manager Advice under the *Crown Land Management Act* before the lease or licence can be granted by Council;
  - any undetermined Aboriginal land claims under the *Aboriginal Land Rights Act* will also need to be considered;

- in some circumstances, the tenant's proposed use of the property may require the tenant to obtain a development approval. The tenant would be required to obtain the development approval and comply with any development approval conditions at the tenant's cost.

#### **5. ELIGIBLE TENANTS**

A lease or licence under this policy may be granted to a Not for Profit Community Group. Council does not enter into leases or licences with individuals representing a group, such as committee members.

As Community Land is intended to provide benefits to the broader community, it is appropriate that occupation of Community Land listed in Attachment 1 is often by Not for Profit Community Groups, who will use the properties for predominantly sporting, recreation or other community purposes.

If Council decides to:

- lease or licence a property listed in Attachment 1 for commercial purposes; or
- lease or licence a property listed in Attachment 1 to an entity that is not a Not for Profit Community Group,

the terms of this policy will not apply to that lease or licence and Council may impose such commercial terms and conditions as Council determines.

#### **6. ASSESSMENT CRITERIA FOR ELIGIBLE TENANTS**

Attachment 4 sets out the general process for leasing or licensing the properties in Attachment 1 to Not for Profit Community Groups. As part of that process, the proposed tenant is assessed against the Assessment Criteria in Attachment 2.

Council recognises that many existing tenants of properties in Attachment 1 have strong historical, social and recreational ties to the properties they use. Although an existing tenant may have contributed to the development of a particular property over time, that does not convey permanent or preferential access to that property. However, the length of time the tenant has occupied the property and any improvements the tenant has made to the property are taken into account as part of the Assessment Criteria in Attachment 2.

There is increasing demand by Not for Profit Community Groups seeking to use Council owned and managed properties. When a Council property listed in Attachment 1 becomes available for lease or an existing tenant's lease is due to expire, Council may consider the existing usage of the property, the potential future usage for the property, the potential for the property to be used on a multi-user basis and changing community needs. As demographics and local needs change over time, Council may re-assess the demands of the community and the best possible uses of properties. It is important to continue to look for ways to ensure that properties covered by this policy are as fully utilised as possible, to increase the benefit provided to the community.

Where:

- Council acquires a new property classified as Community Land; or

- a property listed in Attachment 1 becomes vacant,

and Council intends to lease or licence that property to a Not for Profit Community Group for sporting, recreation or other community purposes, Council may elect to conduct an expression of interest process or tender process.

In the event an offer of tenure is made to a proposed tenant which is not accepted by the tenant within one month of the date of the offer, Council may withdraw the offer and seek to find another tenant for the property.

**7. GENERAL TERMS AND CONDITIONS OF LEASES AND LICENCES**

**Standard Lease and Licence Agreements**

Council has developed standard lease and licence agreements however, these documents vary over time and may be tailored to suit each property and the proposed usage by a tenant. Additional clauses will be included in the lease or licence when necessary to meet specific requirements of Council or the proposed tenant.

The terms of the lease or licence document entered into by the Council and the tenant will prevail over any inconsistent provisions in this policy. However, generally:

<b>Rent</b>	<p>The rent charged for the property will be determined in accordance with the guide in Attachment 3.</p> <p>The rent or licence fee sought by Council for properties covered by this policy is generally less than the market rent for the property. The difference between the market rent Council could obtain for the property and the amount payable by a tenant, is a rental rebate provided by Council to the tenant.</p> <p>Council's provision of this rental rebate is to assist Not for Profit Community Groups in their day to day operations, and is recognition of the benefits they provide to the local community.</p>
<b>Rates, charges, services</b>	<p><b>Rates:</b> if the property is rateable, tenants are to pay the rates (or a proportion of the rates, if the property leased/licenced to the tenant is part of a larger property);</p> <p><b>Charges:</b> tenants are to pay the charges for all services provided to the property – including both access charges and consumption/usage charges (water, sewerage, stormwater, waste, septic etc);</p> <p><b>Services:</b> tenants are to pay for their own services, such as electricity, gas, telephone etc.</p> <p>Given the Council has provided a rental rebate, it is expected that tenants leasing properties covered by this policy will generate sufficient income to pay for rates, charges and services. A tenant's demonstrated capacity to pay these amounts forms part of the Assessment Criteria in Attachment 2.</p>

## 8.8 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

(NEW DRAFT) Community Property Leasing and Licensing Policy

	<p>Some tenants may be eligible for a donation of some rates and charges. Tenants are referred to Council's "Donations – Rates and Charges" Policy on Council's website to determine if they are eligible.</p>
<b>Permitted use</b>	<p>The tenant must only use the property for the permitted use listed in the lease or licence. The tenant must seek the Council's prior written consent to any new or additional proposed uses. The lease or licence document would have been prepared and tailored to the particular use listed in the document. If a tenant proposes to introduce any new or additional uses, that may require a variation of the lease or licence document. It may also trigger the requirement for other approvals, such as development approvals, that the tenant would be required to apply for and obtain at the tenant's cost.</p> <p>For Community Land, the property must only be used for a purpose consistent with the requirements of the Plan of Management.</p>
<b>Repair and maintenance</b>	<p>Generally:</p> <ul style="list-style-type: none"> <li>the tenant will be required to keep the property, the services, and the tenant's own items in good repair and condition during the term. This would include, for example, arranging and paying for day to day repair and maintenance of the property, and the servicing of equipment;</li> <li>the Council will usually be required to attend to structural repairs, except where required because of the acts or default of the tenant or where the tenant carried out the original structural work/improvements.</li> </ul> <p>The repair and maintenance obligations of particular tenants may differ because of previous arrangements. For example, tenants may have procured building works themselves or may have historically been responsible for structural repairs/maintenance. Tenants may have also sought approval to carry out extensions or alteration works, and Council may have approved those works on the basis that the tenant agrees to be responsible for the ongoing structural repair, maintenance and replacement of those items.</p>
<b>Tenant alterations</b>	<p>The tenant must seek Council's prior approval of:</p> <ul style="list-style-type: none"> <li>any proposed extensions, alterations, additions or structural work to the property, or to the installation of items on the outside the existing building (such as solar panels, cement pads for split system air conditioning systems, fencing etc) (Alteration Works); and</li> <li>any proposed application for grant funding for Alteration Works.</li> </ul> <p>If the proposed Alteration Works are approved in principal, the tenant must seek and obtain at the tenant's cost any authority approvals required for the Alteration Works, which may include for example building approvals and/or development approvals. If</p>

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	<p>the work is on Crown Land, there will be Native Title considerations to be addressed before any work can commence.</p> <p>All work must be carried out by licensed tradespeople holding the insurances required by Council, and must be carried out and completed in accordance with the authority approvals and in compliance with all laws. A site induction may be required with Council staff.</p>
<b>Insurance</b>	<p>Generally the tenant must take out and maintain:</p> <ul style="list-style-type: none"> <li>• Public liability Insurance - in the amount required in the lease or licence. The certificate of currency provided to Council must note Ballina Shire Council as an interested party;</li> <li>• Contents Insurance – for any contents, chattels and other items stored in or on the premises;</li> <li>• Workers Compensation Insurance – appropriate workers compensation insurance as required by relevant legislation to provide protection for employees or volunteers;</li> <li>• Plate Glass Insurance – for the full replacement value of plate glass in the premises;</li> <li>• Products Liability Insurance – as required by relevant legislation for any goods or products made by the tenant (if applicable to the tenant's particular operations from the property).</li> </ul> <p>A certificate of currency for each insurance must be provided by the tenant to Council annually. Any claims, excess or deductions payable under the terms and conditions of the tenant's insurance policies are to be paid by the tenant.</p>
<b>Subletting</b>	<p>Depending on the type of property and the particular use of the property, the lease may allow a tenant to sublease part of the property. If the lease allows a tenant to sublease, the tenant may not sublease without Council's prior written consent (which may be given subject to conditions or may be withheld).</p> <p>If consent is granted to a sublease, Council may impose conditions on the consent. For example, if the sublease arrangement will generate income for the tenant that is more than what the tenant will need to meet its financial commitments under the lease or licence with Council (including for example the costs of meeting the tenant's repair and maintenance obligations, insurance costs, payment of rates, charges and services etc), it is reasonable for the Council to consider whether the tenant should remain eligible for the same level of rental rebate the tenant is at that time receiving from Council.</p>
<b>Casual use by other community groups</b>	<p>Council wishes to encourage existing tenants to allow the casual use of the property by other community groups whose use is permitted at that location and is consistent with the category of the property in the Plan of Management. This is to assist in having the property as fully utilised as possible. The introduction of other community group users is one of the criteria taken into account in</p>

	<p>the Assessment Criteria in Annexure 2. This will not be practical for all properties covered by this policy. For example, if the building is a simple, small storage shed, it may be impractical to allow the casual use of the shed by other community groups. However, some tenants occupy larger buildings with multiple rooms and facilities, and only use the property on a seasonal basis, or only for a number of hours per week. While there are other new or growing community groups seeking premises for their meetings and other activities. Any tenant wishing to introduce other users are encouraged to contact Council to discuss those opportunities. Lease documents can be drafted to accommodate these types of arrangements, provided the use by the other users is permitted in the Plan of Management and would not require a development approval or building works.</p>
<p><b>Term</b></p>	<p>The general position is that a lease or licence term of 4 years will be offered.</p> <p>To minimise costs, the general position is that leases of 4 years will not be registered on the title of the land, unless the tenant requests that it be registered. If a tenant requests that it be registered and Council agrees, the tenant must arrange the registration and pay all costs associated with registering the lease (which may include for example the cost of preparing lease plans and obtaining consents/approvals of any third parties).</p> <p>Under exceptional circumstances, Council may grant tenure of longer than 4 years. If a lease of 5 years or more is granted, the lease should be registered on the title of the land. In addition to the usual registration costs, tenants must also pay the costs of obtaining the Minister's consent (if required), the costs of preparing any required subdivision plans, and the costs of obtaining a development approval (noting that a lease of part of a parcel of land for more than 5 years requires a development approval to be obtained - <i>Conveyancing Act</i> and <i>Environmental Planning and Assessment Act</i>).</p> <p>If Council engages external lawyers to assist in the preparation, negotiation and registration of leases, the tenant must pay Council's reasonable legal costs.</p>
<p><b>Tenant reporting</b></p>	<p>As Council is providing a rental rebate on the basis that the tenant's use is providing community benefit, tenants are expected to report to Council:</p> <ul style="list-style-type: none"> <li>• the annual financial statements, detailing the tenant's income and expenditure (including any grants/sponsorships etc);</li> <li>• any changes in the committee members or office bearers of the tenant organisation and updated contact information;</li> <li>• membership numbers (if applicable);</li> <li>• details of any repair and maintenance works carried out by the tenant, and any proposed works;</li> <li>• information on usage of the property, to demonstrate ongoing community benefit.</li> </ul>



	The above reporting is important to ensure that the rental rebate provided by Council is warranted, as there is demonstrated ongoing benefit to the community by the tenant continuing to operate from the property.
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**POLICY IMPLEMENTATION AND PROCEDURAL MATTERS**

This policy is administered by Council’s Community Property Officers.

The general leasing process is outlined in the flowchart in Attachment 4.

**DEFINITIONS (FOR THE PURPOSES OF THIS POLICY).**

**Community Land** Land classified as community land under the *Local Government Act* or *Crown Land Management Act*. Classification as community land reflects the importance of the land to the community because of its use or special features and must be managed according to special requirements in the *Local Government Act* and *Crown Land Management Act*.

**Crown Land** Land owned by the State Government, where Council has been appointed as Reserve Trust Manager or Crown Land Manager.

**Operational Land** Council owned land or Crown Land classified as operational land under either the *Local Government Act* or *Crown Land Management Act*. Land classified as operational land is usually not intended for use by the general public. Operational land would ordinarily comprise of land held as a temporary asset or as an investment, land which facilitates the carrying out of Council’s functions, or land which may not be open to the general public, such as a works depot, wastewater facility, waste centre, quarry, office building etc. Council is able to deal with operational land in a similar manner that a person may deal with their private freehold land, and the special requirements applying to Community Land under the *Local Government Act* do not apply to Operational Land.

**Not for Profit Community Group** Means an organisation meeting each of the following requirements:  
(a) an association incorporated under the *Associations Incorporation Act* or a company limited by guarantee registered under the *Corporations Act*; and  
(b) involved in the promotion, arranging and managing of sporting, recreation or other activities for community purposes; and

- (c) a not for profit organisation included on the Australian Charities and Not-for-Profit Commission Register or registered with the NSW Department of Fair Trading as a Not for Profit Incorporated Association.

#### **SCOPE OF POLICY**

This policy applies to:

- Council staff
- Councillors
- Existing tenants and proposed tenants of property covered by this policy

#### **RELATED DOCUMENTATION**

Related legislation, policies and document:

*Aboriginal Land Rights Act 1983 (NSW)*  
*Associations Incorporation Act 2009 (NSW)*  
*Charities Act 2013 (Cth)*  
*Conveyancing Act 1919 (NSW)*  
*Corporations Act 2001 (Cth)*  
*Crown Land Management Act 2016 (NSW)*  
*Crown Land Management Regulation 2018 (NSW)*  
*Crown Land Management Rules, Policies and Guidelines*  
*Environmental Planning and Assessment Act 1979 (NSW)*  
*Local Government Act 1993 (NSW)*  
*Local Government (General) Regulation 2005 (NSW)*  
*Native Title Act 1993 (Cth)*  
*Real Property Act 1900 (NSW)*

#### **Plans of Management**

Ballina Shire Plan of Management for Community Land 2015  
Plan of Management for Williams Reserve 2007  
Hampton Park Plan of Management 2005  
Any Plan of Management adopted after the date of this policy which covers properties listed in Table 1

#### **REVIEW**

The Community Property Leasing and Licensing Policy will be reviewed every four years.

**ATTACHMENT 1 – PROPERTIES TO WHICH POLICY APPLIES**

**1A – Council owned properties to which this policy applies**

#	Property – Community Land
1.	Crawford Park Clubhouse, Lot 39 DP258802, Alston Avenue, Alstonville
2.	Community Preschool, Lot 1 DP1205880, Freeborn Place, Alstonville
3.	Ballina Community Youth Centre, Lot 13 & 14 DP1714, 32 Swift Street, Ballina (known as Wigmore Park)
4.	Community Preschool, Lot 1 DP781710, Fox Street, Ballina
5.	Ballina Players Theatre, Lot 7 DP668267 & Part Lot 70 DP1005100, 24 Swift Street, Ballina
6.	Quays Reserve Clubhouse, Lot 62 DP263861, 96-98 Kalinga Street, West Ballina
7.	Wigmore Hall, Lots 9 and 10 DP1714 and Lot 70 DP1005100, 26-28 Swift Street, Ballina
8.	Prospect Lake Boat Shed, Lot 105 DP871675, Links Avenue, East Ballina
9.	Lennox Head Preschool, Lot 415 DP 1244339 21 Mackney Lane, Lennox Head (note: part of yard is on Crown Land Reserve 97839. See separate entry in Crown Land Attachment 1B)
10.	Skennars Head Sports Fields Clubhouse and storage areas, Lot 13 DP1245669, 54 Skennars Head Road, Skennars Head
11.	Newrybar Hall, Lot 10 DP1202765, 13-15 Old Pacific Highway, Newrybar
12.	Northlakes Community Hall, Lot 139 DP 1010847, 11 Whiting Way, Ballina
13.	Power Drive Sports Clubhouse, Lot 99 in DP1196589, 33 Power Drive, Cumbalum
14.	Wardell and District War Memorial Hall, Lot 1 DP312334, Richmond Street Wardell
15.	Wardell Tennis Courts, Fitzroy Park, Lot 18 DP1129974, 32 Bridge Drive, Wardell
16.	Lyle Park Clubhouse, Lot 106 DP807798, Lyle Park, Cerreto Circuit, Wollongbar
17.	Community Preschool, Lot 266 DP1209571, 5 Hall Court, Wollongbar
18.	Wollongbar Community Hall, Lot 267 DP1209571, Hall Court, Wollongbar
19.	Cawarra Park Buildings, Cawarra Street, Ballina, Lots 2 and 3, Section 37 DP758047
20.	Lennox Community Gardens, Lot 31 DP787876, Ocean Breeze Park, Ocean Breeze Drive, Lennox Head
21.	Chickiba Sports Clubhouse, Lot 207 DP851318, Chickiba Drive, East Ballina

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#	Property – Community Land
22.	Ballina Aboriginal Child and Family Centre, Lot 1 DP1181025, 10 Hayman Street, West Ballina
23.	Geoff Watt Sports Clubhouse, Lot 85 DP239781, 2 Deegan Drive, Alstonville
24.	20 Megan Crescent Sports Clubhouse, Lot 74 DP774896, 20 Megan Crescent, Lennox Head
Property – Operational Land	
25.	Equestrian Centre, Lot 114 DP 755684, 70 Gallans Road, Ballina
26.	Pimlico Hall, Lot 3 DP561944, 580 Pimlico Road, Pimlico
27.	Naval Cadets Facility, Lot 69 DP778628, 26 Endeavour Close, Ballina
28.	Tennis Court Facility, Lot 2 DP1168781 Elvery Lane, Wollongbar
29.	Wollongbar Sportsfield Clubhouse, Lot 2 DP1168781, Elvery Lane, Wollongbar
30.	Mountain Bike Track Facility, Lot 12 DP814359, 240 Bruxner Highway, Alstonville
31.	Gap Road Alstonville Sporting Clubhouses, Lot 4 DP1130300, 486 Gap Road, Alstonville
32.	Gap Road Alstonville Storage Sheds, Lot 4 DP1130300, 486 Gap Road Alstonville
33.	Shed Facility, Lot 1 DP572329, 44 Fishery Creek Road, Ballina
34.	Childrens Centre, Lot 210 DP735156, 4 John Sharpe Street, East Ballina

### 1B – Crown Land managed by Council to which this policy applies

#	Property
35.	Lumley Park Tennis Courts, part Reserve 575670 for Public Recreation notified 12 December 1924 being part of Lot 333 DP755745 and whole of Lot 7004 DP92641, 2 Pearces Creek Road, Alstonville
36.	Croquet Clubhouse and croquet field, Part Reserve 540004 for the purpose of Public Recreation, notified 20 August 1886 being part Lot 561 DP 1119965
37.	Ballina Community Garden, Reserve No. R83963 for Public Recreation notified on 24 August 1962, Lot 4 DP1153430, Canal Road, Ballina
38.	Kingsford Smith Park Sports Complex, Part Reserve No. 82164 for purpose of Public Recreation notified on 20 November 1959 being part Lot 7064 DP1118403 and Lot 153 DP1098090
39.	Naval and Maritime Museum (incorporating Richmond-Tweed Family History Research Centre), Part Reserve 97786 for Public Recreation and Museum notified 10 May 1985, being part Lot 502 DP 729388, Regatta Avenue, Ballina
40.	Netball Clubhouse, part Reserve 82164 for Public Recreation notified 20 November 1959, being part Lot 7064 DP1118403, Owen Street, Ballina

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#	Property
41.	Saunders Oval Clubhouse, part Reserve 83963 for Public Recreation notified 24th August 1962 being part of Lot 495 DP 729297 known as Saunders Oval, Canal Road, Ballina
42.	Tennis Clubhouse and Tennis Courts, part Dedication (D540004) for Public Recreation notified 20 August 1886, being whole Lot 441 DP 45984 and part Lot 561 DP 1119965, known as Hampton Park, Burnet Street, Ballina
43.	Fripp Oval Clubhouse and Storage, Lot 1 DP1153430, Canal Road, Ballina
44.	Williams Reserve Clubhouse, Reserve No. Part 82927, Part Lot 473 DP 729088, Park Lane Lennox Head
45.	Community Preschool Yard Area, Reserve 97839 for Kindergarten notified 12 July 1985 being Lot 466 DP 729058, Mackney Lane, Lennox Head NSW (note: Part of Preschool is on Council owned land. See separate entry in Attachment 1A)
46.	Sailing Clubhouse, part reserve 87280 for Public Recreation notified 25 July 1969, being part Lot 1 DP 1051004, River Street Ballina
47.	Tintenbar Oval Clubhouse & Tennis Courts, Lot 371 DP729061, 56 Fernleigh Road, Tintenbar
48.	Hall, Lot 8, Sec 5A, DP758047, part Captain Cook Park, River Street Ballina

Note: Council may update the tables in Attachment 1 over time.

**ATTACHMENT 2 - ASSESSMENT CRITERIA**

An assessment will be conducted to determine the eligibility and suitability of a tenant by considering the objectives of this policy. The following factors will be considered as part of the assessment of the tenant and the tenant's proposed use of the property.

<b>A</b>	<p><b>Community benefit</b> Community benefit that will be provided by the tenant's activities.</p> <p>This includes consideration of the tenant's existing membership base (if the tenant is an organisation with members), and the likely extent of social, cultural, physical or intellectual benefit from the activities of the tenant conducted from the property</p>
<b>B</b>	<p><b>Best utilisation of the property</b> The proposed frequency of use of the property by the tenant (number of days per week, estimated hours per week, any months when the property will not be used, for example, if the tenant's proposed use is seasonal).</p> <p>This includes consideration of whether the tenant proposes to allow use of the property by other community groups (whose use is permitted at that location and is consistent with the category of the property in the Plan of Management), to ensure the property is as fully utilised as possible. This criteria will not be relevant to small storage shed style buildings, but may be relevant to other larger properties.</p>
<b>C</b>	<p><b>Eligible tenant</b> Whether the tenant is an eligible tenant (see part 5 of this policy).</p>
<b>D</b>	<p><b>Tenant's capacity to comply with lease obligations</b> The tenant's capacity to pay, including whether the tenant has demonstrated it has the capacity to pay:</p> <ul style="list-style-type: none"> <li>• rent;</li> <li>• rates and charges;</li> <li>• the cost of services (electricity, gas, water, waste etc);</li> <li>• insurance premiums to ensure the insurances required under the proposed lease are maintained throughout the term;</li> <li>• ongoing costs of complying with legislative requirements relevant to the tenant's proposed use;</li> <li>• the costs of obtaining any development approvals or other approvals required for the tenant's proposed use or required in order for a lease to be granted;</li> <li>• the costs of carrying out routine repair and maintenance, to ensure the property is kept in good repair and condition</li> </ul>
<b>E</b>	<p><b>Tenant's previous occupancy of the property</b> For renewals:</p> <ul style="list-style-type: none"> <li>• the length of time the tenant has occupied the property;</li> <li>• any improvements the tenant has made to the property;</li> <li>• the tenant's compliance with the terms of the previous lease, including, but not limited to, compliance with the repair and maintenance obligations, payment of all amounts under the lease or licence, and keeping the required insurances current during the full term;</li> </ul>

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	<ul style="list-style-type: none"> <li>if the tenant has had any previous issues with neighbours, whether the tenant has demonstrated a proactive approach to resolving issues</li> </ul>
<b>F</b>	<p><b>Suitability of the property for the proposed use</b> Consideration of:</p> <ul style="list-style-type: none"> <li>the impact of the tenant's use on the property</li> <li>suitability of the property for the proposed use: <ul style="list-style-type: none"> <li>whether the proposed use is consistent with the core objectives for the category of the property in the Plan of Management, and the type of lease to be granted is authorised in the Plan of Management</li> <li>planning requirements</li> <li>building requirements</li> <li>other statutory requirements</li> </ul> </li> </ul>
<b>G</b>	<p><b>Any works required or approvals to be obtained</b> Consideration of:</p> <ul style="list-style-type: none"> <li>whether Council would need to do work to the property prior to any occupation, and if so, whether Council agrees to do such work (taking into account Council financial plans/budgets and the Delivery Program and Operational Plan)</li> <li>whether the tenant would need to do work to the property prior to any occupation, and if so, whether Council agrees to that work being carried out</li> <li>any development approvals or other approvals that would be required in relation to the grant of the proposed lease, in relation to the tenant's proposed use, or in relation to any proposed works. Note that the Plan of Management may restrict the types of further development work that may take place on particular parcels of land.</li> </ul>
<b>H</b>	<p><b>Financial return to Council</b> Consideration of the financial return to Council and any future uses of the property that should be considered</p>

### **ATTACHMENT 3 – GUIDE FOR RENT ASSESSMENT**

#### **Background**

For Crown Land managed by Council, there is a mandatory requirement that Council charge not for profit tenants at least the statutory minimum rent set by the NSW Government. The statutory minimum rent is published by the NSW Government at [www.industry.nsw.gov.au/land/use/rents](http://www.industry.nsw.gov.au/land/use/rents). This has created some inequity between the rent charged by Council to tenants of Crown Land managed by Council and tenants of Council owned properties covered by this policy. For example, in some instances, tenants are occupying similar properties, with similar services, in similar locations, however, the tenant of the Council owned property may be paying \$1 per annum, while the nearby tenant on Crown Land would be paying at least the statutory minimum rent, which as at April 2020, is \$507 per annum. The statutory minimum rent increases each year in accordance with movements in the consumer price index.

#### **Minimum rent**

To create equity between tenants occupying Council owned properties and Crown Land managed by Council, Council will adopt the statutory minimum rent set by the NSW Government as the minimum rent for all leases and licences covered by this policy. Importantly, the statutory minimum rent will in most cases still be well below the market rent that could be obtained for the property, so a tenant paying the statutory minimum rent will still be receiving a rental rebate.

#### **Transition period**

For any existing tenants of Council owned properties paying *less than* the statutory minimum rent amount, to allow time for those tenants to prepare for the payment of the statutory minimum rent, the statutory minimum rent will be introduced in leases or licences entered into for periods after 30 June 2021. It will also give existing tenants time to consider whether there are opportunities to attract additional community groups to use part of the property, to ensure the property is as fully utilised as possible.

For clarity, there will be no change to the rent payable under any leases or licences that exist as at the date of this policy. For example, if a tenant has an existing lease or licence that does not expire until 31 January 2022, and the tenant is paying *less than* the statutory minimum rent under that lease or licence, the statutory minimum rent will not apply until after the expiry of the tenant's existing lease or licence.

#### **Some properties to attract rent higher than statutory minimum rent**

The statutory minimum rent will be applied to the majority of leases and licences covered by this policy. However, there will occasionally be some leases and licences for which Council resolves to charge a rent higher than the statutory minimum rent.

For example:

- where the tenant has received approval from Council to sublet or licence part of the property and under the arrangement the tenant will receive from the subtenant/licensee income that is more than what the tenant will need to meet its financial commitments under the lease or licence with Council (including for example the costs of meeting the tenant's repair and maintenance obligations, insurance costs, payment of rates, charges and services etc);
- where the Council has done particular upgrade works or other improvement works at the tenant's request, and part of the costs of that work is to be recovered by way of a higher rent;



## 8.8 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

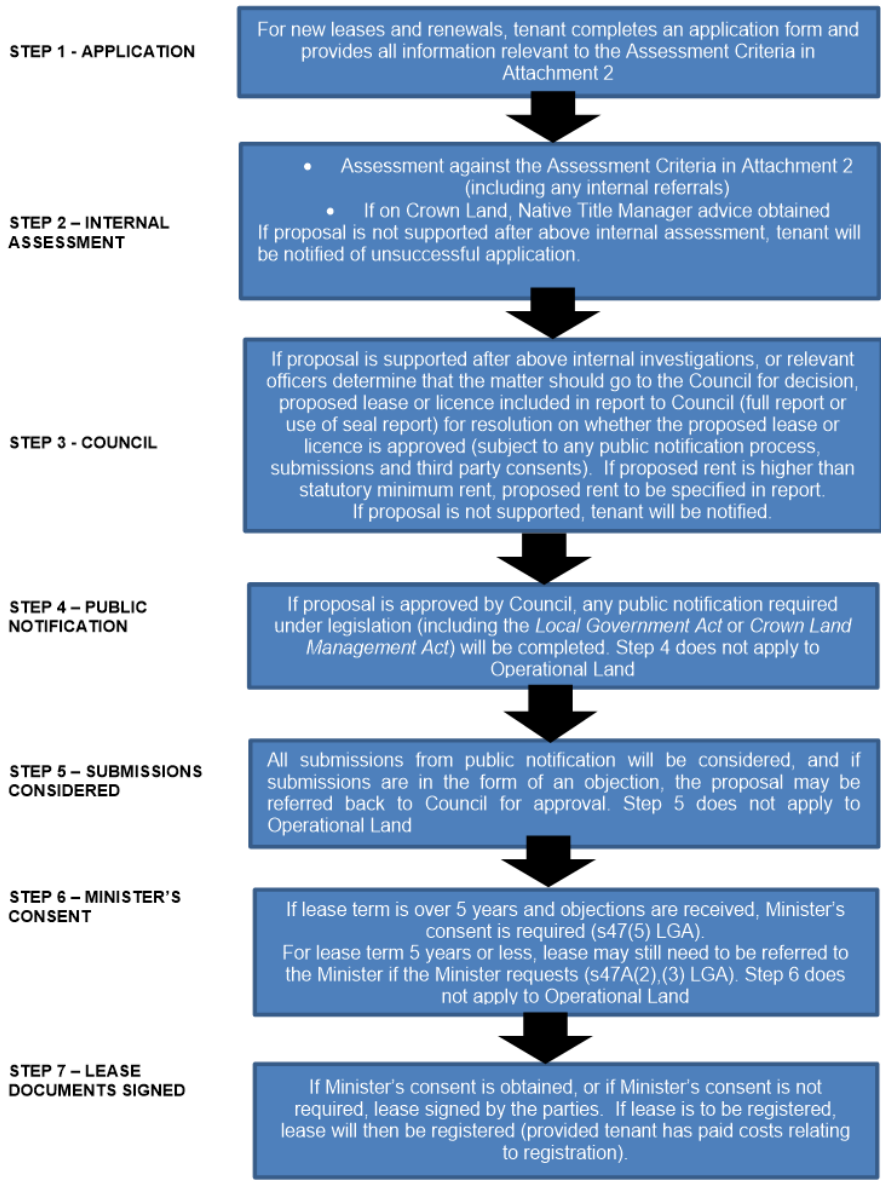
(NEW DRAFT) Community Property Leasing and Licensing Policy

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- where the tenant (or any sub-tenant or sub-licensee) holds a liquor licence that enables the sale of alcohol at the property on more than 52 occasions per year;
- whilst the tenant continues to predominantly use the property for sporting, recreation or other community purposes, there is a minor commercial activity undertaken at the property, such as a small kiosk . This is not intended to capture regular canteens, sausage sizzles etc commonly operated at sporting grounds as part of regular sports club fundraising activities.

If it is proposed that a tenant will be charged a rent higher than the statutory minimum rent for a lease or licence covered by this policy, the higher rent will be included in the report to Council for resolution under Step 3 of the General Leasing Process in Attachment 4.

**ATTACHMENT 4 – GENERAL LEASING PROCESS**



Note: The above is the general process that will apply to the majority of leases and licences covered by this policy. However, there may be property specific issues or particular tenant proposed uses that trigger additional steps in the process.



**ALSTONVILLE & DISTRICT  
FOOTBALL CLUB INC.**

PO BOX 61 ALSTONVILLE N.S.W. 2477  
www.alstonvillefc.com.au



SUBMISSION RE DRAFT COMMUNITY PROPERTY LEASING AND LICENSING POLICY

Alstonville & District Football Club appreciates the opportunity to comment on the Draft Community Property Leasing and Licensing Policy.

Alstonville FC is an incorporated association promoting community football. The club has used the Crawford Park facilities consistently for the past 37 years and is the current lease holder at Crawford Park, Alstonville. Between 1999 and 2003 the club made substantial improvements to the existing bunker to add clubhouse facilities and has continued to maintain the building. In 2019 grant funding was secured to improve the aging facilities and extend the building.

While there are substantial changes in the draft document the most concerning is Attachment 3 – Guide for Rent Assessment Background and Minimum Rent – “...the statutory minimum rent which at April 2020, is \$507 per annum. The statutory minimum rent increases each year in accordance with movements in the consumer price index.”

The principal of imposing a minimum rent of circa \$500 per annum on the Club, when it has invested its own funds to improve Council’s asset, is inequitable. The Club proposes to invest a further \$1.2M of funding into Council infrastructure and yet this policy completely ignores this fact and seeks to extract even more funds from a community based not-for-profit organisation. Surely, any policy of this nature should recognise, respect and value the investment that community organisations make towards Council infrastructure.

Our community sporting group is run entirely by volunteers for the provision and promotion of football in our local community, at an affordable cost, to allow inclusion of those who wish to participate. Volunteers are under continual pressure from the sport’s governing bodies to provide higher levels of accountability and to manage the ever- increasing costs imposed by them. This results in higher fees for players with little opportunity to increase the club’s income if we are to maintain a reasonable fee structure. Volunteers within the organisation with the time and expertise to offer, are increasingly difficult to attract. Further pressure from council to charge rent in addition to rate payments which continue to rise, as well as pay for building maintenance, makes the sustainability of local sport into the future very bleak.

Most of our members as ratepayers, do not expect to have additional council levies imposed through sport. The potential future result is less or no volunteers and less or no players being able to afford local sport. The costs imposed by council will continue to increase and expand.

Yours sincerely  
Jan Priddle  
Secretary – on behalf of Alstonville & District Football Club





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 www.alstonvillepreschool.com.au  
 ABN: 95 340 512 857

To whom it may concern,

Thank you for the opportunity to provide a submission on the Council’s proposed new *Community Property Leasing and Licensing* policy. The Alstonville Community Preschool is the lease holder of the land Lot 1 DP1205880 Freeborn Place, Alstonville. Our current lease commenced on 1 July 2015 and is not due to terminate until 30 June 2035. We are a not-for-profit preschool, providing for the needs of our community.

Please note that our address is 1A Freeborn Place, Alstonville and not 149 Wardell Road, where the notice regarding this policy was sent. Please update your database so that all future correspondence comes to us at 1A Freeborn Place, Alstonville.

**Background**

The Alstonville Community Preschool sits on land that was park land, and is zoned RE1. We understand that the land was re-categorised for community use in 2013 so that the preschool could be built.

There were no buildings or leases on the land prior to us building – it was parkland. A land value of \$50,000 is stated in the rates notice.

While the land and buildings are the property of Council, it was the Preschool who applied for funding, built the buildings and maintain the site. The Preschool was the applicant on the Development Application.

According to the lease, the Preschool is required to pay Council \$1 per annum. The Preschool receives a rates notice annually for water and waste charges, for which it receives a rebate.

**Response to the Draft Policy**

The following table outlines our view against the key features of the draft policy.

Feature	Alstonville Community Preschool Response
Leases and Licences to which the Draft Policy would apply	<p>Alstonville Community Preschool is a not for profit community group, registered with NSW Fair Trading and governed by a Committee of Management. The site is used exclusively as a community preschool.</p> <p>Alstonville Community Preschool considers that the policy should not apply to us as a 20 year lease is currently in operation.</p>

Feature	Alstonville Community Preschool Response
Encouraging Better Utilisation	<p>While we agree that this is important in principle, as an operating preschool it would be impossible to open up the site for multiple community groups.</p> <p>We believe that our lease provides us with the opportunity for exclusive occupation of the site.</p> <p>It is important that the policy provide for discretion in leasing property to ensure that community groups such as preschools are not required to be used by multiple community groups.</p>
Assessment Criteria for Tenants	<p>Alstonville Community Preschool supports the assessment criteria laid out in the draft policy. However, we are concerned that one of the criteria is the financial return to the council. Where services that are not provided by Council are provided on council land, such as preschools, this criteria should be waived or offset against the benefits.</p>
Term of Lease	<p>We support the increase in the standard lease from 3 years to 4. However, we consider that community service organisations, such as preschools, should have longer leases. This is because the works required to build facilities have long lead times and are expensive, buildings have generally not been built with Council money, and it is costly to relocate. As such, we consider that for community services, such as preschools, 20 year leases should be the norm, with an option to purchase the land and buildings during or at the end of the lease period.</p>
Rent	<p>Alstonville Community Preschool currently pays \$1 in rent per annum for the exclusive use of the building and site. The current statutory minimum annual rent is \$496, which would represent a very large increase in the rent without any compensating benefits.</p> <p>We consider that any change in rent should not occur while a lease is active, and should only apply prospectively in new or renewed leases. As such, we consider that there should be no change to Alstonville Community Preschool's current rent.</p>
Standard Lease Conditions	<p>We support the use of standard lease conditions but caution that casual use by other community groups should not be a part of a lease to an organisation such as a community preschool.</p>

Feature	Alstonville Community Preschool Response
Crown Land Management Act	We support the inclusion of information in the policy on the <i>Crown Land Management Act</i> . However, we would suggest Council include in the policy any mechanism for community groups to purchase the land and buildings either during or at the end of their lease. The policy should, therefore, also cover, in an appendix, the conversion of land to a category that can be sold under the Act.
Leasing Process	We support the general leasing process as outlined.

We agree that occupants of community properties, such as Alstonville Community Preschool, provide significant social benefits, which should be offset against the foregone rent and should be considered with the lease term.

We do not agree that foregoing commercial/market rent represents an economic loss for the Council. The Alstonville Community Preschool has, with its own funds and donations, built a building that is of significant benefit to both the community and the Council. Other community groups who have improved upon Council land have also provided a benefit to the Council and community. The loss of rent should be considered against these improvements to Council property.

#### Assessment Criteria

We are concerned that an explicit criteria for future leases is that the tenant would allow use of the property by other community groups. While this may be relevant to sporting clubs and the like, we consider that there are categories of use that should have exclusive tenure of the property, such as preschools. The nature of a preschool, and the investments made from fundraising, grants and surpluses, is such that other community groups should be excluded from access to these particular community leased properties.

We support improvements that a tenant has made to the property being a criteria for assessment for renewal.

We are concerned that the financial return to council is an assessment criteria, without any offsetting community benefit being assessed.

#### Guide for Rent Assessment

While we contend that we should not be covered by this policy as we are currently five years into a 20 year lease, Alstonville Community Preschool is concerned that, if covered by the policy in the future, our property may attract higher rent than the statutory minimum. The Alstonville Community Preschool is a commercial operation, and therefore is likely to be covered by the clause regarding commercial activities and higher rent. However, we are a community organisation, run for the benefit of the community, governed by a Committee of Management of the community. We provide a service that is not provided by Council or state or federal government. Therefore, we consider that more detail is required for when the Council would use its discretion to charge higher rents.

We consider that the Guide for Rent Assessment in Attachment 3 of the policy is too vague and should outline exactly what commercial activities Council intends to capture with higher rent requirements.

#### Conclusion

Alstonville Community Preschool generally supports the new leasing policy, however, we have some fundamental concerns including that:

- the policy should only apply prospectively for new and renewed leases
- the policy should not apply to Alstonville Community Preschool as we have a current 20 year leases
- the discretion to provide exclusive tenancy needs to be more detailed, as there are a number of community uses, such as preschools, where exclusive tenancy is required
- the discretion to charge higher rents for commercial activities needs to be more detailed
- there needs to be a pathway to purchase in the policy for relevant groups or use types.

Thank you again for the opportunity to provide comment. If you wish to discuss the contents of this submission, please email me [president@alstonvillepreschool.com.au](mailto:president@alstonvillepreschool.com.au)

Yours sincerely

**Management Committee**  
Alstonville Community Preschool

**LENNOX HEAD COMBINED SPORTS ASSOCIATION INC.**

Park Lane, Lennox Head NSW 2478

Contact: D.Vidler

vidler\_27@bigpond.com

26<sup>th</sup> August 2020.

**SUBMISSION re: COMMUNITY PROPERTY LEASING & LICENCING  
POLICY (Review)**

The Lennox Head Combined Sports Association is aware that Council is currently reviewing its' Community Property Leasing & Licencing Policy on Council owned & Crown community properties managed by Council throughout the Ballina Shire.

We understand that Councils preferred option to resolving the inequity that exists re: rent on Council owned "v" Council managed buildings, is to increase the rent on Council owned buildings & to bring it into line with the statutory minimum rent being charged on Crown Land managed by Council.

Currently, we have a "short term Crown Licence" on the Clubhouse on Williams Reserve & pay in excess of \$500 per annum, whilst one of our member clubs has a lease on the Council owned Clubhouse @ Megan Crescent & pays as little as \$1 per annum. Increasing their rent will come as a surprise to some, considering the investment they have made into developing the facility.

With the draft policy proposing to extend the standard term for a lease from 3 to 4 years, will Council be offering the same consideration to our Association & others who currently occupy buildings managed by Council on Crown Land?

As mentioned earlier, we've been granted a temporary Crown licence of only 12 months, whilst Council develops a new Plan of Management for Williams Reserve. Our preferred option is a 4 year lease. This will give our Association & our member clubs more security of tenure on the facility & confidence going forward.

With a new Plan of Management for Williams Reserve being developed, our Association would like to know when the major stakeholders, eg the Sporting Community of Lennox Head, is going to be engaged or consulted in the planning process. Also, is there a deadline for developing this draft Plan of Management.

Kind Regards

**Darel Vidler**

(President- Lennox Head Combined Sports Association.)

***Lennox Head Combined Sports Association represents  
the interests of over 2500 people, young and old:***

*Lennox Head Golden Oldies Rugby Club, Lennox Head Rugby Union Club, Lennox Head Junior Rugby League Club  
Lennox Head Fishing Club, Lennox Head Cricket Club, Lennox Ballina Boardriders (Le-Ba)  
Lennox Head Chamber of Commerce, Lennox Head Surf Life Saving Surf Club, Lennox Head Public School  
Ballina Police Touch Assoc., Lennox Longboarders*