

# » community property leasing and licensing information

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## » Background

The granting and renewal of leases and licences to groups such as sporting bodies, community groups and charitable groups (referred collectively as Not-For-Profit Organisations) for certain Council owned or managed land is administered under Council's Community Property Leasing and Licencing Policy ('the policy').

The policy applies to property, assets or land owned or managed by Ballina Shire Council that is predominately used for community (as opposed to commercial) purposes.

This information sheet provides some key information and details in relation to common enquiries for tenants (and prospective tenants) of community properties in Ballina Shire.

## » Tenure options

### 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. As per the policy, Council offers a standard term of three years. In special circumstances, tenants may be able to negotiate a longer lease term.

In such cases various costs such as costs for the subdivision of land may be incurred by the lessee.

### Licence

A licence is the granting of permission to use land for a specific purpose. A licence does not grant exclusive possession of a premise, and is generally not suitable in cases involving building improvements. The standard licence term is three years.

Peppercorn or nominal rental charges are often applied to leases and licences relating to community properties. However, it should not be assumed that this will be the case as Council may apply rental charges as it considers appropriate. This is considered having regard for the policy and particular circumstances of a proposal to lease or occupy a community property. Other costs aside from rent are typically applicable.

## » Prospective tenants

To be eligible to lease or licence community property an organisation must:

- Be an incorporated association.
- Be a not for profit community based organisation.
- Have an open membership (Constitution or Articles must state that membership is open to the general public).

- Demonstrate an ability to meet the financial obligations of a lease (provide a copy of the most recent audited financial statements and business plan where appropriate).
- Maintain appropriate insurances, including public liability. Public liability is to be maintained in the amount as directed by Council. Council must be notified immediately where insurance coverage is void.
- Each new lease or licence will be subject to a review and evaluation process. Requests for renewal of tenure do not automatically result in renewal.

## » Current tenants

### Responsibilities

A lease is a right to use land and facilities for an agreed purpose and term.

As a tenant, an organisation's committee members must be familiar with the terms and conditions of the lease especially the details of the term, permitted use and times of use.

A lease term will not usually be granted for more than three years. This is based on occupation being on a temporary basis allowing flexibility for both Council and the tenant.

### Costs and bills

The following is an example of the accounts and fees that may apply:

- Rent (set by Council).
- Rates.
- Services or utilities (such as electricity, water, gas, waste etc).
- Public liability insurance.
- Inspections (eg fire and electrical safety).

The extent to which these types of charges are applicable and are to be met by tenants is determined at the time a lease or licence is entered into. These matters are typically addressed in the lease or licence documentation.

### Inform Ballina Shire Council of any changes

It is important to advise Ballina Shire Council about:

- Changes to committee members.
- Changes to contact details.
- Proposed improvements or works at leased premises.
- Inability to maintain insurance coverage.

As occupants of properties owned by the community, tenants are also obliged to respond to requests for information from Ballina Shire Council.

## Maintaining the property

- Tenants are responsible for maintenance of leased premises or otherwise notifying Council of maintenance issues. The lease or licence sets out the extent to which tenants are directly responsible for maintenance in each lease or licence circumstance. Regardless, tenants must ask for Council's approval by contacting Council before making any significant improvements, modifications or structural changes to the building or site.
- It is important to recognise that some buildings contain hazardous materials (such as asbestos or lead paint) and the Work Health and Safety requirements associated with performing high risk maintenance works. Tenants must consider the presence of such materials and other potential hazards such as electrical work, working at heights and confined spaces. No works are to be undertaken where they may relate to such hazards unless authorisation in writing from Council has been received. As part of any such approval process, Council may review the proposed safe system of works to undertake such maintenance including verification of appropriate qualifications of the persons proposed to undertake the work.
- Tenants are responsible for keeping the premises clean and tidy and for repairing any damage that is caused by the tenant's occupation of the premises or changes to the building façade (including erection of signage).
- All maintenance must be undertaken in accordance with Work Health and Safety Act 2011 and Regulations.

## Casual Hirers Insurance

Public liability insurance is available to non-incorporated groups and individuals in certain circumstances through Council's Casual and Regular Hirers Policy. This insurance relates to public liability claims arising from the casual hiring of a Council facility. Council's policy only covers certain persons or groups who hire a facility for non-commercial or non-profit making purposes.

Incorporated bodies, sporting clubs, commercial entities, associations of any kind or profit making/commercial activities are not covered under the policy. These types of groups must hold their own liability insurance when hiring any facility.

For the benefit of both Council and facility users, it is important that Council is provided with information about user groups. At a minimum, Council requires lessees to report on the use of Council owned facilities (including a list of user groups, frequency of use and purpose of use) on an annual basis.

Separate to this annual reporting, Council must be notified immediately in the event of any incident that may result in a claim against the policy. Claims attract an excess of \$2000. The person or group making the claim may be required to pay this excess.

## Renewing a lease

Where an organisation currently has a lease, Council will usually make contact to discuss renewal around six months before it is due to expire. The standard renewal term for a lease is three years.

Organisations with leased or licenced premises need to fill out

a tenure renewal application form. When completing a tenure renewal application, Council recommends that organisations review the terms and conditions of the existing lease.

This includes the permitted operating hours and the use of the premises. If changes to any terms for the lease renewal are proposed by the tenants, these should be noted in the application for renewal.

Organisations must return the completed application forms along with copies of the following documents:

- Certified copy of the Certificate of Incorporation.
- Constitution.
- Most recent audited financial statements.
- Certificate of currency for public liability insurance.
- Current liquor/gaming licences (if applicable).

Tenants also need to note on the application form if the organisation is planning any development within the building or grounds over the term of the lease.

Council recommends completing in detail the costs outlined for any proposed improvement works and state if the proposed work will be subject to grant funding.

During the assessment process, Council staff will contact the organisation seeking tenancy if further information is required.

Where a renewal is approved, Council will prepare lease documents and arrange a meeting to discuss the tenure agreements. Organisations will then be asked to discuss the agreement with their committee and execute the document. Organisations need to place the Common Seal of the association where indicated and have two of the appropriately delegated (management committee) officers of the association sign the document.

For information about licence renewals contact Council.

## Building Ownership

At common law, ownership of a building or permanent structure on land follows ownership of the land, unless statute prescribes otherwise (eg. a telecommunications tower). A person who erects or improves a building on another person's land generally has no right to recover the benefit of the expenditure incurred.

Buildings and structures built on public land are effectively Council buildings. Community groups use and occupy these assets through leases and licences. Recognising the above, it is important to note that any application for a community grant will need to obtain Council's consent as land/asset owner prior to lodgement of grant application. Additionally, the Lessee must provide Council with a set of keys and not change the locks without Council's agreement.

Unauthorised occupation (including where there is no valid lease or licence) or breaches of lease or licence terms may be reported to the elected Council. In such instances, Council may cease meeting non-urgent maintenance and building costs that are Council's responsibility under a valid lease or licence. Tenants may also be evicted in certain circumstances. It is critical that in order to protect both Lessor and Lessee interests, a valid lease and licence document is entered into and adhered to.



**If you have any questions or please contact:**

**Strategic and Community Facilities Group | Phone 1300 864 444**



**ballina**  
shire council