

POLICY NAME: COMMUNITY PROPERTY LEASING AND LICENSING
POLICY REF: C02
MEETING ADOPTED: 28 July 2016
Resolution No. 280716/32
POLICY HISTORY:



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OBJECTIVE

The objective of this policy is to provide a process and criteria to assess the granting and renewal of leases and licences to sporting bodies, community groups and charitable groups (referred collectively to as Not-For-Profit Organisations ("NFPO") throughout this policy) for certain Council owned or managed land and buildings in a timely manner that meets legislative requirements.

This policy categorises lessee/licensees into three groups (A, B and C) which determines the amount of rent and outgoings payable, maintenance obligations, lease term and legal fees. It also provides assessment criteria to assist in assessing the suitability of the tenant. This will enable the establishment and management of a clear and transparent system for leasing and licensing of Council property, ensuring an equitable agreement is reached. These principles are shown in Attachment 2.

This policy will ensure that, when considering the leasing or licensing of Council owned and/or managed assets (including Crown Land), Council explores options and applies processes that are demonstrably equitable, consistent and transparent. The aim of this approach is to obtain beneficial economic and social outcomes for the residents of the Ballina Shire.

Note: This policy does not apply to sporting groups using sporting grounds for seasonal competitions, as this will be the subject of a separate policy following a sporting needs analysis.

APPLICATION

Land to which this policy applies

This policy applies to the land in Ballina Local Government Area set out at Attachment 1 to this policy and land classified as community land, and incorporates property, assets or land owned or managed by Ballina Shire Council that is predominately used for community (as opposed to commercial) purposes. This policy does not apply to all Council owned land and application is not solely distinguished by land classification.

Exclusions

This policy does not apply to:

- Licenses for occasional or short term hire of land or facilities;
- Hire of spaces within Council' Community Facilities (e.g. Ballina Surf Club, Lennox Head Cultural and Community Centre);
- Non-exclusive use of Council property;
- Roads;
- Crown Land not managed by Ballina Shire Council;
- Land or facilities owned by Ballina Shire Council as commercial investments or significant commercial components;
- Operational land or facilities owned by Ballina Shire Council (e.g., quarries, water facilities, waste facilities);
- Sporting grounds
- Emergency services; and
- Surf life saving facilities; (unless listed in Schedule 1)

This policy will apply to all new tenancy applications and any existing agreements that require renewal from 1 July 2016.

BACKGROUND

Prior to adopting this policy, Council did not have an adopted policy for the leasing or licensing requirements of public land. This policy provides a consistent and transparent framework for Council and the community to follow in relation to leasing, licensing and tenure matters. In the past, Council has entered into a number of agreements on community land which remain active and are unaffected by this Policy.

Community groups and organisations provide significant benefits to the broader community through the range of services and support programs they deliver. To assist groups with their activities, Council provides land and facilities to be used by these groups in their endeavours. Council also assists with the maintenance and day to day costs associated with the occupation of Council facilities. Often, community groups raise funds for their core activities which in turn provide benefits to the broader local community. Ballina Shire Council supports income generating activities by community groups, and also considers it appropriate that the community groups engage in activities which generate income to support the core activities of the group.

As income which is generated from activities conducted on public land provides a broader community benefit (whether or not funds are received by Council for the use of a property), it is appropriate that information regarding these benefits, both financial and non-financial, be made available to the community and supports the underpinning principles of Council's Community Strategic Plan.

LEGISLATION

The *Local Government Act 1993* requires Council to classify land owned by it as either "community land" or "operational land".

The *Crown Lands Act 1989* is land owned by the Crown and managed by Council under the Reserve Trust Management system. All such land has a "reserve purpose" and must only be used or leased in accordance with that reserve purpose.

Therefore, land leased by Council falls into three groups:

1. Operational land;
2. Community land; and
3. Crown land covered by the *Crown Lands Act 1989*.

There are different legal and management requirements for each type of land in these categories.

Community Land – General

Leasing of Council owned community land is governed by sections 45 to 47D of the *Local Government Act 1993*. Leases for community land must only be granted for uses consistent with the core objectives of the category of land, for a use prescribed by the Act or Regulations and expressly authorised by a Plan of Management for the land.

Operational Land - General

Operational land is used for Council's administrative and works functions and need not be kept for general community use.

If the Council property to be leased or licensed to a Lessee/Licensee is classified as "Operational" land, Council is at liberty to enter into a Lease or Licence of the Property without giving public notice or exhibiting the proposed Lease or Licence.

Crown Land

Leasing of Crown Land is governed by sections 41 to 50 of the *Crown Lands Act 1989*.

Licensing of Crown Land is governed by sections 108 and 109 of the *Crown Lands Act 1989*.

The Minister also retains powers to grant leases and licences over Reserve Trust land. This is governed by sections 34, 34A and 34AA of the *Crown Lands Act 1989*.

Other legislation

The Conveyancing Act 1919 and the *Real Property Act 1900* contain provisions and formal requirements for leases, and these provisions determine the length and terms able to be offered under a lease. These terms do not usually apply to licences.

DEFINITIONS (FOR THE PURPOSES OF THIS POLICY).

Community Group	A social organisation, club or association which is involved in the promotion, arranging and managing of leisure, welfare or sport activities.
Community Land	Land is dedicated for community use. 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 guidelines in the Local Government Act.
Community Benefits	Financial or non-financial outcomes which improve, enhance or add value to the community and/or its facilities.
Council Land	Land owned by Council, either classified as operational or community land, as defined in the Local Government Act
Crown Land	Land owned by State Government, where Council has been appointed as Reserve Trust Manager. As Reserve Trust Manager, Council controls the use of this land, in consultation with the State Government.

Charity	As per the Charities Act, an organisation must be not-for-profit, have only charitable purposes that are for the public benefit, not have a disqualifying purpose, and not be an individual, a political party or a government entity.
Lessee/Licensee	<p>An authorised person or incorporated body that has entered into or is proposing to enter into either a lease or licence with Council for the use of Council property.</p> <p>Council will only grant a lease or licence to specific persons, incorporated bodies, (that is, organisations that are incorporated under the Associations Incorporation Act 1984 NSW) or bodies corporate (as defined under the Corporations Act 2001 (Cth)). This means a lease or licence agreement cannot be made with people representing a group e.g. Committees or partnerships.</p>

SCOPE OF POLICY

This policy applies to:

- Council staff
- Councillors
- Community groups

RELATED DOCUMENTATION

Related documents, policies and legislation:

Charities Act 2013 (Cth)
Conveyancing Act 1919
Crown Lands Act 1989
Crown Lands Reserve Trust Handbook
Generic Plan of Management for Community Land
Government Information (Public Access) Act 2009
ICAC Guidelines – “*Direct negotiations – Guidelines for Managing Risk*”
Land Register
Local Government (General) Regulations 2005
Local Government Act 1993
Office of Local Government Guidelines
Public Land Management – Practice Note – Division of Local Government
Real Property Act 1900
Retail Leases Act 1994

POLICY

The purpose of this policy is to provide guidelines in relation to the leasing and licencing of public land by:

- Defining the general terms and conditions of Leases and Licences in respect of Council owned or managed property (see policy exclusions);
- Ensuring that leasing and licensing of Council owned or managed property is consistent, transparent, fair and impartial;
- Ensuring that all conduct in granting and renewing tenure documents is undertaken in accordance with ICAC guidelines (*Managing Risks in Direct Negotiations*)
- Ensuring that leases or licences are prepared and executed in accordance with the relevant legislation and regulations dependent upon their classification.

This policy does not alter the terms and conditions of any existing lease, license or estate granted over public land in the Ballina Shire. This policy will be applied should community partners wish to renew arrangements when existing agreements reach their expiration date.

LEASES AND LICENCES

Distinction between a Lease and a Licence

Council is able to grant leases and licences over public land.

A lease or a licence is a contractual agreement between Council (lessor or licensor) and another party (lessee or licensee) that binds both parties to the terms of the agreement.

The individual circumstances surrounding the land and buildings and the needs of the users will assist in guiding whether granting a lease or licence is appropriate.

The essential differences between the documents are:

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.

A licence does not create interest in the land and is not transferable

A licence is revocable.

Eligible Lessee/Licensees

A lease or licence may be granted to an individual, a company, an incorporated association or a local government body. For the purposes of this policy, Council applies the following categories of lessee/licensee.

Group A – Commercial

Group A lessee/licensees occupy Council property on a commercial basis. Examples of these tenants are commercial organisations which, whilst providing for community services or benefits have a commercial or business oriented profit objective and Government organisations. These groups include:

- For profit long day care facilities;
- Non government organisations receiving significant government funding;
- Government agencies

Group B – Community Groups, Clubs and Organisations

Group B lessee/licensees include recreational or community groups that provide a range of services to the Ballina Shire community. These tenants include member based sporting clubs, groups that charge fees for services and organisations that have the capacity to generate substantial revenue from use of the Council property or other activities consistent with the organisational purpose (but do not operate to make a commercial profit). The groups include:

- sporting clubs generating income through means additional to basic sources (such as membership fees, funding from the primary sporting body, canteen sales etc). Additional revenue sources include liquor sales, ticket sales and sponsorships;
- non-government organisations who receive government funding;
- corporate entities providing community services;

Group C – Not-for-Profit Community Groups (peppercorn)

Group C lessee/licensees include incorporated community groups that service the community and are not classified as a Group A or Group B entity. These tenants do not have the capacity to generate a significant amount of income and operate on a not for profit basis. These groups include

- Community based preschools and long day care centres
- Community halls (including properties occupied by Management Committees and Progress Associations with the objective of operating and maintaining the hall as a community space,)
- Toy libraries and play groups
- Scout/girl groups
- Historical societies, research societies

IMPLEMENTATION NOTE

Any rental which is applicable to the above categorisation will not be payable until two years after the implementation of this policy. This section of this policy is to be reviewed after 18 months of operation of the policy in preparation for its implementation. This is to allow for the collection of additional information from user groups to enable policy adjustments a required prior to the implantation of charges, to ensure that any charges are fair and consistent.

General Terms and Conditions of Tenure Documents

A lease or licence must be authorised in the Plan of Management relating to the land and be for purposes consistent with the core objectives for the category of land.

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 (s.46(2)); and
- The lease or licence is for a purpose listed in section 46(1)(b) of the *Local Government Act*.

Types of Leases

Types of leases or purposes for which leases may be granted, include:

- a. Retail businesses;
- b. Commercial and business ventures (non-retail);
- c. Non-profit sporting or community groups or clubs;
- d. Mixed uses, for example commercial activities on land leased to a non-profit organisation.

Leases and Licences for terms of 5 years or less in respect of Community Land (s47A *Local Government Act 1993*)

Once a lease or licence complies with s46 (explained above), Council must:

- Give public notice of the proposal
- Place a notice of the proposal on the land
- Notify owners adjoining the land
- Notify persons living in the vicinity of the land if Council believes that the land "is the primary focus of the person's enjoyment of community land"
- Consider submissions made about the proposal.

Council must call tenders for leases over 5 years, unless the lease is to be granted to a Group C non-profit organisation (s.46A).

Leases and Licences for terms of 5 to 21 years in respect of Community Land (s47 Local Government Act 1993)

Council may only grant leases or licences over community land for terms up to 21 years. For leases between 5 and 21 years Council must:

- Give public notice of the proposal
- Place a notice of the proposal on the land
- Notify owners adjoining the land
- Notify persons living in the vicinity of the land if Council believes that the land is the primary focus of the person's enjoyment of community land
- Consider submissions made about the proposal
- Refer the proposal to the Minister for Local Government if Council has received an objection to the proposal.

If an objection has been received, Council cannot grant the lease or licence and must refer the proposal to the Minister for approval.

Lease and Licence on a Crown Reserve

The term of a lease/licence should be as short as possible, taking into account the particular circumstances of the reserve and the lessee's proposed use of it. Council understands terms of more than 20 years will not normally be approved by Crown Lands.

A lease or licence of a Crown reserve can only permit the lessee/licensee to use the reserve in a way that is consistent with the reserve purpose (as stated when the reserve was dedicated or reserved).

However, temporary licences (licences for up to one year) can be granted for purposes listed in clause 31 of the *Crown Lands Regulation 2006*.

The devolution of care, control and management of reserves under the provisions of Section 48 of the *Local Government Act 1993*, authorises Council to enter into lease/licence agreements with the Minister's consent.

However, the Minister's consent does not need to be obtained before a lease or licence is signed if:

- It is a temporary licence (i.e. the term does not exceed one year) and it is for a use that comes within one of the permitted purposes under clause 31 of the Regulation; or
- If the reserve trust manager has obtained prior written consent under section 102A of the *Crown Lands Act* to enter into certain leases and licences without the need for Ministerial consent.

If the agreement is a lease for a term exceeding 5 years, arrangements are made to advertise the Minister's intention to give consent in accordance with Section 102(2) of the *Crown Lands Act*.

POLICY IMPLEMENTATION

This policy is administered by Council's Property Officer - Community Land.

Each new lease or licence may be subject to a review process which includes an internal referral (refer to flowchart Attachment 4).

The internal referral process provides relevant departments within Council an opportunity to comment and provide any additional information relating to the proposed lease or licence.

Where a proposed lease or licence is not opposed by departments through the internal referral process, a report may be required to seek Council approval, or alternatively, a delegate of the General Manager may commence negotiations and approve the lease or licence.

PROCEDURAL MATTERS

Expression of Interest (EOI) and Tenure Renewals

Council may decide to conduct an EOI process to determine a suitable lessee/licensee. The decision to conduct an EOI process for a Council property will be based on factors including the following:

- Size of the Council property
- Location of the Council property
- Value of the Council property
- Expected rental return
- Likelihood of multiple interested applicants and users
- Type of proposed or desirable service delivery
- Opportunity for innovative or flexible solutions for the Council property.
- The duration of occupation by the incumbent tenant.

Council recognises that many existing lessees or licensees of public land have strong historical, social and recreational ties to the facilities they use. In many cases, organisations have contributed cash or in kind contributions to the maintenance or improvement of these facilities.

In considering tenure renewals of such facilities, Council will take the following factors into account and upon a written request will not require Expressions of Interest or Tenders to be called unless there is a history of non-conformances with Council's requirements for the occupation of the property or there is a resolution of the Council requiring a different approach.

In circumstances where Council acquires community property or a property becomes vacant or is proposed for occupation by a new tenant, the expression of interest process will apply.

Rent Payable

Rent will be required to be paid in advance either annually, quarterly or monthly, as per the terms of the agreement. Payment must be paid within 14 days of receipt of an invoice or as requested by Council.

Rental Assessment

Market rental is assessed for all public land tenancies and included in the tenure agreement. Market rent may then be rebated to a lesser amount in consideration of the not for profit status of the organisation. To establish the eligibility of an organisation to pay the minimum fee, each organisation shall be requested to submit its annual report and financial statement through the terms of any lease or licence offered.

- a. A rental at less than market rate will apply in the following manner:
 - i. On Council-owned land, peppercorn rental will apply. Peppercorn rental is set each year in Council's fees and charges;
 - ii. On Crown Land, statutory minimum rental in accordance with s141A of the Crown Lands Act will apply. This rental amount is set quarterly by the Department of Primary Industries – Lands;
- b. The purposes of this market rent rebate is to provide financial support to NFPOs who are assisting the broader community by the services they provide. The rebated rental amounts will be reported annually to the elected council.

Council's intention in providing a rental rebate is to assist NFPO's in their day to day operations providing benefits to the local community. Activities undertaken by lessee/licensees are not activities which are being undertaken by or on behalf of Council.

Security Deposit

Council may request a security deposit from the lessee/licensee. The amount required will at a minimum be equivalent to one month's rent.

Council may call on the security deposit if the lessee or licensee does not comply with any of its obligations under the lease or licence.

GST

All tenants must pay GST and is payable in accordance with the requirements of Australian Taxation Law.

Market Rent Review

Rental reviews may be determined by the Council's valuer and will take into consideration the category assessment of the lessee/licensee.

Annual Reporting

All lessee/licensees must provide the Council with the following upon request:

- Annual reports of financial statements
- Details of membership.
- Business plan.
- Details of all contributions/sponsorships.
- A copy of the certificate of currency with respect to the insurance required under the lease or licence each year.
- Summary of all maintenance or building works carried out or planned in the next financial year.

Incorporation

Council requires all NFPOs who are occupiers of public land to be incorporated associations in accordance with the *Associations Incorporation Act 2009*.

Not for Profit Status

As public land is intended to provide benefits to the broader community, it is appropriate that the occupation of public land is by NFPO. To establish an organisation as NFPO for the purposes of this policy, inclusion on the Australian Charities and Not-for-Profit Commission Register or registration with the NSW Department of Fair Trading as a Not for Profit Association is acceptable.

Sub-letting

The lessee may not sub-lease the leased premises without Council's prior written consent (which may be given conditionally) and subject to approved terms and conditions. If consent is granted, Council may review and adjust the terms of the head lease.

Standard Lease and Licence

Council has developed standard lease and licence agreements and these will be used as the basis of all tenancies. The agreements may vary over time and will be prepared and tailored to each proposed lessee/licensee. Additional clauses will be included in the agreements when necessary to meet specific requirements of Council or the proposed tenant.

Term of Lease or Licence

The length of each lease or licence will be negotiated taking into account the particular circumstances of the Council property and lessee/licensee, including capital investment and long-term planning, the connection between facility use, the Council plan objectives, relevant strategies and the extent to which the facility is used for multi-purpose activities.

A licence term will not be granted for more than five years. A lease term will not 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.

Under exceptional circumstances Council may grant tenure that exceeds 5 years. This will require a public exhibition process and be subject to approval being granted by the relevant Minister.

If tenure exceeding 3 years is granted, any costs associated with obtaining Minister's consent, development approvals, subdivisions for leasing purposes, registration costs and any other costs of formalising the tenure will be borne by the lessee/licensee.

Withdrawal of Lease or Licence Offer

In the event an offer of tenure is made, which is not accepted by the lessee within three months of the date of the offer, Council may withdraw the offer and seek expressions of interest from other organisations for occupation of the property.

Resolution of Council

Decisions of Council to grant new leases and or licences, or renewals of leases and licences over owned or managed land are to be made by formal resolution of Council, including a resolution that the Common Seal of the Council be affixed to the lease or licence and related Real Property Dealing or supporting documents.

Leases and Licences of Crown Land – Minister's Consent

If the status of the land is Crown Land, vested in the care and control of Council or with Council as Reserve Trust Manager, the consent of the Minister responsible for the administration of the *Crown Lands Act 1989* must be obtained before the lease or licence is executed by Council.

Lessee/Licensee's Obligations

In lieu of a rebated market rental, it is expected that occupants of community facilities will:

- Attend diligently to day to day maintenance and repair of the facilities;
- Advise Council promptly of any major maintenance items requiring repair;
- Notify Council of proposed works and seek authorisation;
- Provide to Council on an annual basis a list of preventative maintenance items for consideration in Council's annual works program;
- Any improvements to public land or premises made by the lessee/licensee will become the property of Council or the Crown at the termination of the lease

Insurance

Lessees/licensees of public land must provide to Council evidence of the insurances set out below, whenever requested to do so. A copy of the policy must be provided to Council at the commencement of any new agreement. The evidence must be in a form acceptable to Council and should be as issued by the insurer (not an Insurance Broker or other intermediary).

It is the obligation of the lessee or licensee to ensure that public liability insurance is maintained for the duration of their lease.

Any claims, excess or deductions payable under the terms and conditions of the insurance policy are entirely the responsibility of the lessee/licensee. The lessee/licensee must provide Council a copy of the Certificate of Currency annually.

All lessee/licensees of Council property will be required to hold:

1. Public liability insurance - in an amount provided annually by Council. The Public Liability Insurance policy must be an insurer approved by Council and note the interest of Ballina Shire Council as owner of the land.
2. Contents Insurance – for any contents and/or private articles kept on the leased premises;
3. Workers Compensation Insurance – appropriate workers compensation insurance as required by the relevant legislation to provide protection for volunteers or casual employees;
4. Products Liability Insurance – as required by relevant legislation for any goods or products made by the lessee/licensee.

Ensuring Leasing and Licencing is Consistent, Transparent, Fair and Impartial

Council has an obligation to ensure all public assets are managed an open manner which provides transparency and benefits to the community. All leases and licences, as well as communications relating to renewal, are subject to the *GIPA Act*, which promotes the granting and renewing of tenure in a fair and impartial manner.

REVIEW

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

The organisation categorisation provisions under this policy are to be reviewed after 18 months of the operation of the policy.

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

ATTACHMENT 1 (periodically updated to reflect updated information)

#	Precis	Applicant (NAR)	Tenure	Term
1	Alstonville & District Football Club Inc, Crawford Park Clubhouse, Part Lot 161 DP247578 Bruxner Highway, Alstonville	Alstonville and District Football Club Inc	C004 Council Licence	4Y
2	Alstonville Plateau Historical Society, Crawford House, Lot 6 DP235088, 10 Wardell Road Alstonville	Alstonville Plateau Historical Society	C003 Council Lease	3Y
3	Alstonville Community Preschool, Lot 1 DP1205880, Freeborn Place, Alstonville	Alstonville Community preschool Incorporated	C003 Council Lease	20Y
4	Alstonville Tennis Club Inc, Lumley Park Tennis Courts, part Reserve 575670 for Public Recreation notified 12 December 1924 being part of Lot 333 DP 755745 and whole of Lot 7004 DP 92641, Alstonville	Alstonville Tennis Club Incorporated	C001 Crown Land Lease	3Y
5	Alstonville Tennis Club Inc, Russellton Tennis Courts, Part Lot 2 DP 1135399, 16 Kays Lane, Alstonville	Alstonville Tennis Club Incorporated	C003 Council Lease	1Y
6	Ballina and District Community Services Association, Ballina Community Youth Centre, Lot 13 & 14 DP1714, 32 Swift Street, Ballina (known as Wigmore Park)	Ballina and District Community Services Association	C003 Council Lease	4Y
7	Ballina and District Equestrian Club Inc, Ballina Equestrian Complex, Part Lot 114 DP755684 & Lot 386 DP 755684, "lease area of 4.8 hectares", Gallans Road, Ballina	Ballina and District Equestrian Club Inc	C003 Council Lease	4Y
8	Ballina Bowling and Recreation Club, Ballina Croquet Club, Part Reserve 540004 for the purpose of Public Recreation, notified 20 August 1886 being part Lot 561 DP 1119965,	Ballina Bowling and Recreation Club	C001 Crown Land Licence	6Y

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

#	Precis	Applicant (NAR)	Tenure	Term
9	Ballina Community Gardens Incorporated, Ballina Community Garden, Reserve No. R83963 for Public Recreation notified on 24 August 1962 and situated at Canal Road, Ballina	Ballina Community Gardens Incorporated	C005 Crown Temp Licence	1Y
10	Ballina Fox Street Preschool Inc, Fox Street Preschool, Lot 1 DP 781710, No. 84 Fox Street, Ballina	Ballina Fox Street Preschool Inc	C003 Council Lease	5Y
11	Ballina Hockey Club Inc, Ballina Hockey and Sports Complex, Part Reserve No. 82164 for purpose of Public Recreation notified on 20 November 1959 being part Lot 7064/1118403 being Ballina & Sports Complex	Ballina Hockey Club Inc	C001 Crown Land Lease	3Y
12	Ballina Naval and Maritime Museum Inc, Ballina Naval and Maritime Museum, Part Reserve 97786 for Public Recreation and Museum notified 10 May 1985, being part Lot 502 DP 729388,	Ballina Naval and Maritime Museum Inc	C001 Crown Land Lease	3Y
13	Ballina Netball Association Inc, Ballina Netball Clubhouse and Canteen, part Reserve 82164 for Public Recreation notified 20 November 1959, being part Lot 7064 DP1118403, Owen Street, Ballina	Ballina Netball Association Inc	C002 Crown Land Licence	3Y
14	Ballina Players Inc, Ballina Players Theatre, Lot 7 DP 668267 & Part Lot 70 DP 1005100, 24 Swift Street, Ballina	Ballina Players Inc	C003 Council Lease	4Y
15	Ballina River Street Children's Centre Inc, River Street Children's Centre, 2/1/758047; 5/1/758047; 6/1/758047; 7/1/758047; 8/1/758047	Ballina River Street Children's Centre Inc	C006 Council as Lessee/Licensee	Under review
16	Ballina Rugby Club Inc, Quays Reserve Clubhouse, Lot 62 DP263861, No. 96-98 Kalinga Street, Ballina (Quays Reserve), Clubhouse, Carpark and Playing Field	Ballina Rugby Club Inc	C003 Council Lease	4Y

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

#	Precis	Applicant (NAR)	Tenure	Term
17	Ballina Senior Citizens Inc, Wigmore Hall - Senior Citizens, Lots 9 and 10 DP 1714 and Lot 70 DP 1005100, 26-28 Swift Street, Ballina (known as Wigmore Hall).	Ballina Senior Citizens Inc	C003 Council Lease	4Y
18	Ballina Shire Band, Wigmore Hall - Ballina Band, Lots 9 and 10 DP 1714 and Lot 70 DP 1005100, 26-28 Swift Street, Ballina (known as Wigmore Hall). Ballina Shire Concert Band Inc occupy part of the Wigmore Hall being part Lot 70 DP 1005100	Ballina Shire Band Incorporated	C003 Council Lease	4Y
19	Ballina Sports Club Inc, 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	Ballina Sports Club Inc	C001 Crown Land Lease	3Y
20	Ballina Tennis Inc, Ballina Tennis Club, 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	Ballina Tennis Inc	C002 Crown Land Licence	3Y
21	Department of Education (Southern Cross K-12 School), Prospect Lake Boat Shed	Department of Education (Southern Cross K-12 School)	C004 Council Licence	3Y
22	Fripp Oval Sports Club Inc (Bombers ARFC & Bears Cricket Club), Fripp Oval Clubhouse and Storage, Canal Road Ballina Lot 494 DP729298	Fripp Oval Sports Club Inc (Bombers ARFC & Bears Cricket Club)	C002 Crown Land Licence	3Y
23	Girl Guides Association of New South Wales, Wigmore Hall - Girl Guides, Part of Lots 9 & 10 DP 1714 and Lot 70 DP 1005100, 26-28 Swift Street, Ballina (known as the Girl Guides Section)	Girl Guides Association of New South Wales	C004 Council Licence	4Y
24	Lennox Head Combined Sports Association Inc, Williams Reserve Clubhouse, Reserve No. Part 82927, Part Lot 473 DP 729088, Park Lane Lennox Head	Lennox Head Combined Sports Association Inc	C002 Crown Land Licence	5Y

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

#	Precis	Applicant (NAR)	Tenure	Term
25	Lennox Head Community Preschool Inc, Lennox Head Preschool, Lot 415 DP 755684 21 Mackney Lane, Lennox Head	Lennox Head Community Preschool Inc	C003 Council Lease	4Y
26	Lennox Head Community Preschool Inc, Lennox Head Preschool, Preschool Yard, Reserve 97839 for Kindergarten notified 12 July 1985 being Lot 466 DP 729058, Mackney Lane, Lennox Head NSW	Lennox Head Community Preschool Inc	C002 Crown Land Licence	3Y
27	Lennox Head Soccer Club Inc, Skennars Head Sports Fields Clubhouse, Licenced Area 1 - Part Lot 12 DP 1004858, Licenced Area 2 - Portion of Storage facility located on part Lot 12 DP 1004858	Lennox Head Soccer Club Inc	C003 Council Lease	3Y
28	Lennox Head Soccer Club Inc, LEBA Boardriders Club, Lions Club, Skennars Head Sports Fields Storage Shed	Under review	Under review	Under review
29	Lions Club of Ballina Inc, West End Hall, Lot 1 DP 721625, 3 Brunswick Street Ballina (occupation of hall and storage shed)	Lions Club of Ballina Inc	C003 Council Lease	4Y
30	Little Pelicans Playgroup, Ballina Playgroup, 2/1/758047, 5/1/758047, 6/1/758047, 7/1/758047, 8/1/758047	Little Pelicans Playgroup	C006 Council as Lessee/ Licensee	under review

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

#	Precis	Applicant (NAR)	Tenure	Term
31	Newrybar Community Hall Committee Inc, Newrybar Hall, Lot 1 DP 784894 & Lot 1 DP 918865, 13-15 Old Pacific Highway, Newrybar	Newrybar Community Hall Committee	C004 Council Licence	4Y
32	Northlakes Community Centre Management Committee, Northlakes Community Hall, Lot 139 DP 1010847 Whiting Way, Ballina	Northlakes Community Centre Management Committee	C004 Council Licence	4Y
33	Pimlico Ladies Charitable Organisation, Pimlico Hall, Part of Lot 3 DP 561944, 580 Pimlico Road, Pimlico	Pimlico Ladies Charitable Organisation	C003 Council Lease	1Y
34	Rainbow Childrens Centre Inc, Rainbow Childrens Centre, 210/735156, 4 John Sharpe Street, East Ballina	Rainbow Childrens Centre Inc	C003 Council Lease	5Y
35	Richmond River Sailing & Rowing Club Inc, Richmond River Sailing Club, part reserve 87280 for Public Recreation notified 25 July 1969, being part Lot 1 DP 1051004, River Street Ballina	Richmond River Sailing and Rowing Club Inc	C002 Crown Land Licence	3Y
36	Richmond-Tweed Family History Society Inc, 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	Richmond-Tweed Family History Society Inc	C002 Crown Land Licence	3Y

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

#	Precis	Applicant (NAR)	Tenure	Term
37	Surf Life Saving Far North Coast Branch Inc, Shelly Beach Surf Club Building, Reserve No. 1010068 for Public Recreation and Coastal Environmental Protection notified on 13 August 2004, part Lot 402 DP 755684, Shelly Beach Road, East Ballina	Surf Life Saving Far North Coast Branch Inc	C002 Crown Land Licence	1Y
38	Tintenbar East Ballina Soccer Club and Ballina Little Athletics Club Incorporated, Power Drive, Cumbalum Part Lot 99 in DP1196589	Tintenbar East Ballina Soccer Club Incorporated and Ballina Little Athletics Incorporated	C003 Council Lease	3Y
39	Tintenbar Oval Clubhouse & Tennis Courts	Under review	Under review	Under review
40	TS Lismore Australian Navy Cadets, TS Lismore Navy Cadets, Lot 69 DP 778628, No. 26 Endeavour Close, Ballina	TS Lismore Australian Navy Cadets	C003 Council Lease	4Y
41	Wardell Progress Association, Wardell and District War Memorial Hall	Wardell Progress Association	C003 Council Lease	3Y
42	Wardell Progress Association, Wardell Tennis Club	Under review	Under review	Under review

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

#	Precis	Applicant (NAR)	Tenure	Term
43	Wollongbar Alstonville Rugby Club Inc, Lyle Park Clubhouse, Lot 106 DP 807798, Lyle Park Wollongbar	Wollongbar Alstonville Rugby Club Inc	C004 Council Licence	4Y
44	Wollongbar Community Preschool Inc, Wollongbar Preschool, Lot 7 DP 778746, 5 Hall Court, Wollongbar	Wollongbar Community Preschool Inc	C003 Council Lease	10Y
45	Wollongbar Progress Association, Wollongbar Community Hall, Lot 41 DP 262103, Hall Court, Wollongbar	Wollongbar Progress Association	C004 Council Licence	4Y
46	Northern Rivers Dirty Wheels Mountain Bike Club Inc, Bruxner Highway, Alstonville, Lot 12 DP 814359,	Northern Rivers Dirty Wheels Mountain Bike Club Inc	C004 Council Licence	3Y
47	Cawarra Park, Cawarra Street, Ballina, Lots 2 and 3, Section 37 DP 758047,	Under review (Softball clubhouse) Under review (Boating compound)	Under review	Under review
48	Gap Road Sporting Facility, Gap Road, Alstonville, Lot 4, DP 1130300	Under review (Storage sheds) Under review (sporting facility)	Under review	Under review

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 criteria will be assessed in no particular order:

- Community benefit in accordance with objectives contained in Council's Community Strategic Plan;
- Financial return to Council
- Tenant's capacity to pay
- Future use of the Council property
- Impact on the Council property; and
- Suitability if the Council property for the proposed use:
 - Planning requirements
 - Building requirements
 - Other statutory requirements

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

Community Property Leasing and Licensing

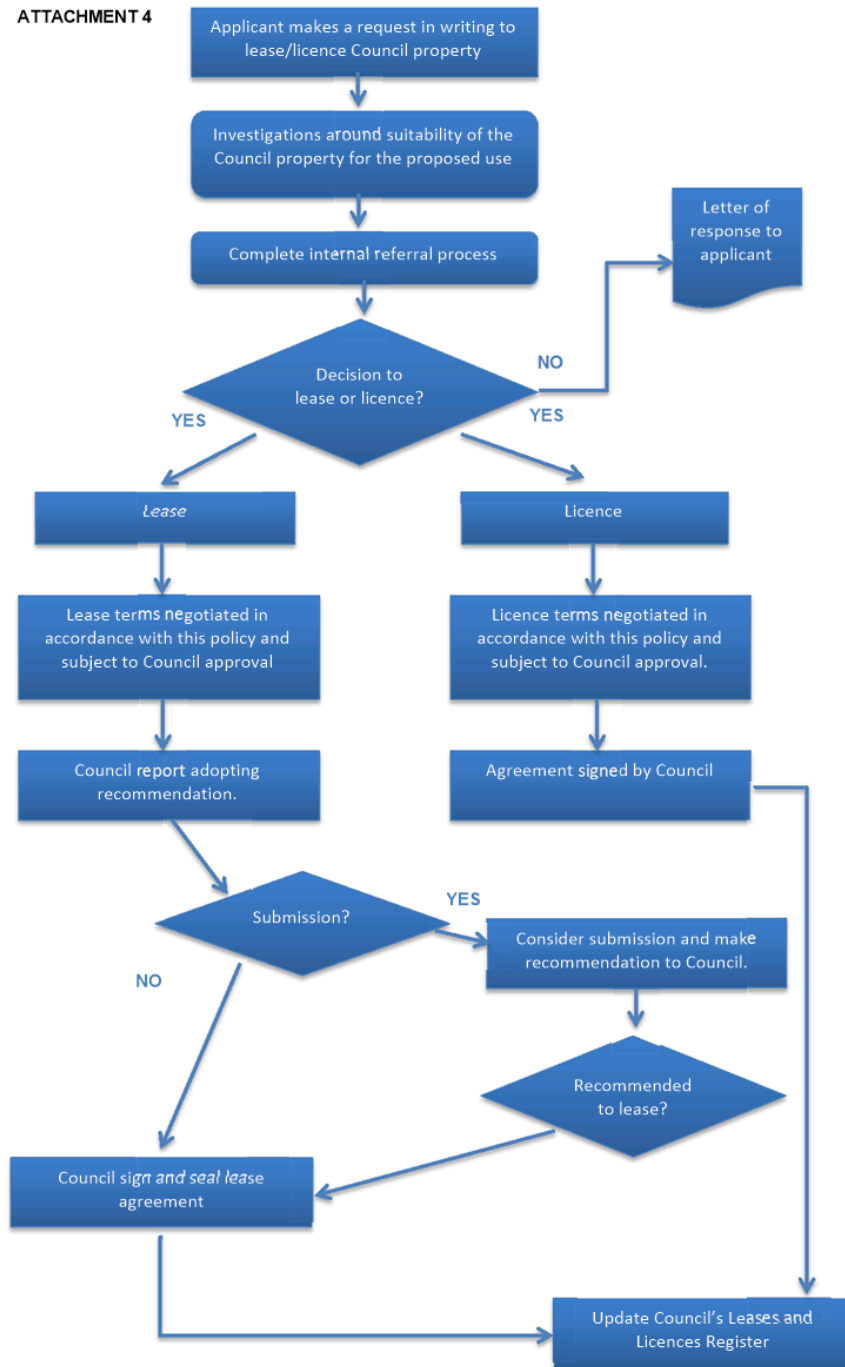
ATTACHMENT 3

Category Assessments

Category	Rent	Outgoings/ Utilities	Maintenance	Rent Reviews	Term
Group A	Commercial Rate determined by Council's valuer	100%	In accordance with the terms of the lease or licence	In accordance with the terms of the lease or licence	By negotiation
Group B <i>Council</i>	Reduced commercial rental rate as set in Council's yearly fees and charges	100% in accordance with Council's donations policy	In accordance with the terms of the lease or licence. Council to attend to structural or major maintenance or repairs.	Annual CPI increase	3 years
Group B <i>Crown</i>	Crown Statutory Minimum Rental				
Group C <i>Council</i>	Peppercorn rental as set in Council's yearly fees and charges	100% in accordance with Council's donations policy	In accordance with the terms of the lease or licence. Council to attend to structural or major maintenance or repairs	Annual CPI increase	3 years
Group C <i>Crown</i>					

10.3 **Policy (Review) - Community Property Leasing and Licensing**

ATTACHMENT 4



10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

(NEW DRAFT) Community Property Leasing and Licensing Policy

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:

Rent	<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>
Rates, charges, services	<p>Rates: 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>Charges: 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>Services: 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>

10.3 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>
Permitted use	<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>
Repair and maintenance	<p>Generally:</p> <ul style="list-style-type: none"> 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; 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. <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>
Tenant alterations	<p>The tenant must seek Council's prior approval of:</p> <ul style="list-style-type: none"> 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 any proposed application for grant funding for Alteration Works. <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>

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

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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>
Insurance	<p>Generally the tenant must take out and maintain:</p> <ul style="list-style-type: none"> • 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; • Contents Insurance – for any contents, chattels and other items stored in or on the premises; • Workers Compensation Insurance – appropriate workers compensation insurance as required by relevant legislation to provide protection for employees or volunteers; • Plate Glass Insurance – for the full replacement value of plate glass in the premises; • 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). <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>
Subletting	<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>
Casual use by other community groups	<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>

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

(NEW DRAFT) Community Property Leasing and Licensing Policy

	<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>Term</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>Tenant reporting</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"> • the annual financial statements, detailing the tenant's income and expenditure (including any grants/sponsorships etc); • any changes in the committee members or office bearers of the tenant organisation and updated contact information; • membership numbers (if applicable); • details of any repair and maintenance works carried out by the tenant, and any proposed works; • information on usage of the property, to demonstrate ongoing community benefit.

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.

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 <i>Local Government Act</i> or <i>Crown Land Management Act</i> . 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 <i>Local Government Act</i> and <i>Crown Land Management Act</i> .
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 <i>Local Government Act</i> or <i>Crown Land Management Act</i> . 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 <i>Local Government Act</i> 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 <i>Associations Incorporation Act</i> or a company limited by guarantee registered under the <i>Corporations Act</i> ; 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.

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

(NEW DRAFT) Community Property Leasing and Licensing Policy

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

10.3 Policy (Review) - Community Property Leasing and Licensing

Ballina Shire Council

(NEW DRAFT) Community Property Leasing and Licensing Policy

#	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.

A	<p>Community benefit 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	<p>Best utilisation of the property 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>
C	<p>Eligible tenant Whether the tenant is an eligible tenant (see part 5 of this policy).</p>
D	<p>Tenant's capacity to comply with lease obligations 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"> • rent; • rates and charges; • the cost of services (electricity, gas, water, waste etc); • insurance premiums to ensure the insurances required under the proposed lease are maintained throughout the term; • ongoing costs of complying with legislative requirements relevant to the tenant's proposed use; • 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; • the costs of carrying out routine repair and maintenance, to ensure the property is kept in good repair and condition
E	<p>Tenant's previous occupancy of the property For renewals:</p> <ul style="list-style-type: none"> • the length of time the tenant has occupied the property; • any improvements the tenant has made to the property; • 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;

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	<ul style="list-style-type: none">• if the tenant has had any previous issues with neighbours, whether the tenant has demonstrated a proactive approach to resolving issues
F	Suitability of the property for the proposed use Consideration of: <ul style="list-style-type: none">• the impact of the tenant's use on the property• suitability of the property for the proposed use:<ul style="list-style-type: none">○ 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○ planning requirements○ building requirements○ other statutory requirements
G	Any works required or approvals to be obtained Consideration of: <ul style="list-style-type: none">• 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)• 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• 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.
H	Financial return to Council Consideration of the financial return to Council and any future uses of the property that should be considered

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. 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;

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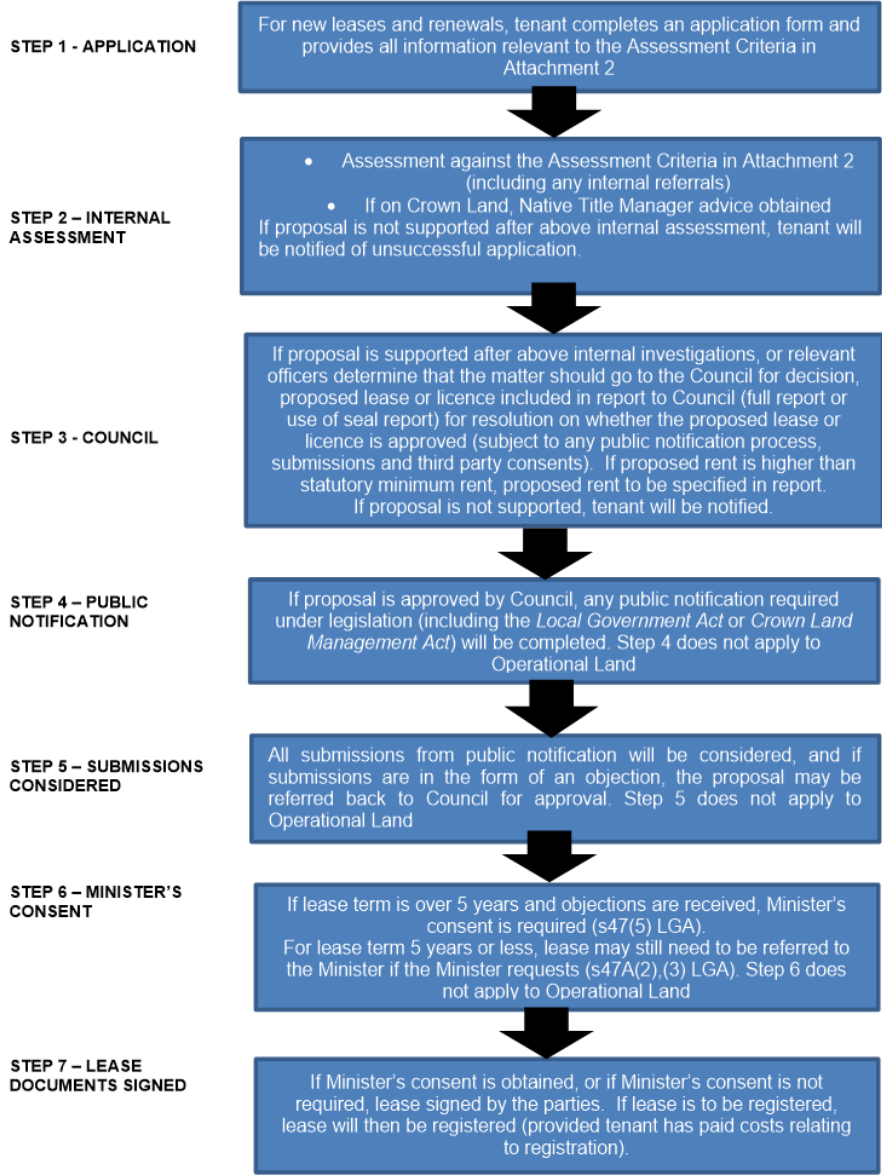
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- where the tenant (or any sub-tenant or sub-licensee) holds a liquor licence that enables the sale of alcohol at the property on more than 52 occasions per year;
- whilst the tenant continues to predominantly use the property for sporting, recreation 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.