

Guideline for Conditions of Tenure for Community Organisations

1 Purpose

The purpose of the Guideline for Conditions of Tenure for Community Organisations is to provide a structured, transparent framework for the leasing and licensing of Council owned/controlled properties.

2 Scope

The scope of the Guideline is to:

- Ensure responsible management of Council owned and managed assets and transparent and open accountability to rate payers for the direct and indirect cost of leases and lease subsidies.
- Maximise the use of Council owned and managed land and buildings by community groups through acknowledgement of the social contribution of the group and the application of an appropriate subsidy (where relevant).
- Assist not for profit and volunteer based organisation that offer activities and services to the Coffs Harbour community
- Ensure fair and transparent access to lease facilities and consistent lease conditions.
- Development of a partnership approach to asset management of facilities and maintenance in consideration for rent subsidies.
- Ensure leases encapsulate appropriate care, maintenance and development terms and conditions which ensure the long term preservation of Council's owned and managed assets.
- Ensure that Council's contribution to subsidies are properly accounted for as indirect grants
- Improve financial management and administration of Council property leasing
- Ensure that Council's contribution and assistance to community groups by way of subsidised rent is publically acknowledged
- Increase the accessibility of Council owned and managed land and buildings to eligible community groups

3 Procedure

3.1 Expressions of interest for use of Council owned and managed property

Community groups who wish to lease or licence Council owned and managed property should submit a written expression of interest outlining the proposed use and addressing the relevant eligibility criteria.

Expression of interest will be considered on a case by case basis on the merits of the application and proposed use and having regard to Council's planning policies, community plan and broader community interest.

3.2 Licence or Lease

This Guideline adopts the following distinction between leases and licences

Lease – is a right granted by the owner (landlord) to another person (tenant) to have exclusive possession of the land, or part thereof, for a fixed duration in return for rental payment. A

lease creates an interest in the land that is binding on third parties and is capable of being assigned, unless the lease specifies otherwise.

Licence – permits a person or group (Licensee) to occupy land, or part thereof, on particular conditions. The main distinguishing feature of licence over a lease is that the former does not grant nor permit exclusive occupancy of the land. A Licence does not create any interest in the land and the rights created by a licence attributable to the Licensee only and are not transferred with the land.

Licensing arrangements facilitate greater access and thereby use of the land and should be preferred to leasing unless Council considers the granting of the lease to be in the best interests of the community or required to support the commercial nature of a transaction.

3.3 Market rent value

Independent market rent will be established by value assessment.

3.4 Rent subsidy

Council acknowledges the valuable contribution made by the various community groups operating in the LGA through, amongst other things, subsidising accommodation costs for the respective groups. The rent subsidy equates to the difference between the market rent of the property and the rent payable by the tenant.

3.4.1 Reporting rent subsidy

Rent subsidies are in essence Council's contribution to the tenant organisation to the value of the difference between the market rent for the property and the subsidised rent collected. The value of imputed rent payments forgone through rental subsidies will be reported to Finance for inclusion in annual budget reports.

Council will compile and publish a legal use register which will disclose the category of tenant and the value of subsidy extended (where applicable)

3.4.2 Acknowledgement of subsidy

The agreement will expressly record the value of subsidy.

3.5 Rent review and CPI adjustments

All rents will be reviewed in line with the tenure agreement with the view to being increased annually by either a consumer price index adjustment or a fixed percentage adjustment whichever is the higher at the time of review. The preferred method of review is by way of a fixed percentage increase at a rate of 3% or as amended annually by Council's Schedule of Fees and Charges.

All leases will be subject to market rent reviews at least every 3 - 5 years. In such instances the following procedure will apply:

- a) Council will arrange for a valuation of the property to determine market rent.
- b) The tenant will be advised of the proposed new rental
- c) In the event the tenant objects to the new rental the matter will be referred to and determined by a Valuer appointed by the Australian Property Institute New South Wales Division with costs be shared equally between the parties. Such determination to be final and binding on both parties or as determined in the relevant agreement.

3.6 Additional Income

Council reserves the right to amend rental calculations if a subsidised tenant gains access to other commercial means of income (excluding fundraising) which was not accounted for in the original rental assessment and determination (for example additional income received from subletting, sponsorship for advertising on the premises and new or increased commercial ventures conducted on the premises, or as evidenced in financial statements provided).

3.7 Standard lease terms and conditions

Council will prepare and utilise standard lease and licence templates for the grant of tenure over Council owned or controlled lands, and any such templates issued by the Minister administering the Crown Land Management Act 2016 for use in Crown Reserve leasing and licensing agreements.

These templates will be applied to ensure consistency of terms and conditions over leasing and licensing agreements (other than commercial agreements).

The standard template agreement will be submitted to Council's solicitors for review at least every three years to reflect changes in legislative and administrative requirements.

In all instances lease and licence agreements will be prepared having regard to the proposed tenant and the specific property being the subject of the agreement. Additional clauses will be included in the agreement to meet the specific requirements of the parties.

3.8 Term

The term of tenure is influenced by the following legislative requirements:

- a) The *Local Government Act 1993* restricts the maximum lease term for community land to not more than 21 years.
- b) The *Local Government Act* requires Council to advertise and consult on all leases of community classified land
- c) A lease for a term exceeding 3 years should be registered on title to protect the lessee's interest.
- d) A lease of part of a portion of land more than 5 years, including any options to renew, must fully describe the affected part by reference to a registered plan. This provision necessitates the registration of a plan of subdivision for leasing purposes in some instances. In such circumstances appropriate lease conditions will be included in the agreement whereby the lessee meets all costs.
- e) If changes are required to be made by Council, Council will pay the associated costs.

The length of term of the negotiated tenure will be determined with regard to the circumstance of the property and the tenant. Including but not limited to:

- a) Legislative requirements
- b) The level of capital investment proposed by the tenant
- c) The long term planning proposed by the tenant
- d) Connection between the proposed facility use and Council long term plan for provision of such facilities or otherwise
- e) The extent to which the respective property can be put to multiple use by multiple organisations.

Generally tenure agreements with community groups will not exceed 5 years.

Council may elect to grant longer terms having regard to the above circumstances, for example, where the tenant invests substantially in the property or a fixed asset of the property.

3.9 Lessee to pay rates where applicable

When a property is leased the Tenant shall pay all (or in the first and last year of the term of Agreement the appropriate proportionate part) rates, taxes including land tax, assessments, duties, charges and fees outlined in the lease agreement.

3.10 Tenant to pay other charges

The Tenant shall pay all other fees, charges and impositions for which it may properly be liable which are imposed by an authorised third party and which are at any time during the term of Agreement payable in respect of the Premises or on account of the use and occupation of the Premises by the Lessee or Licensee - tenant.

3.11 Tenant to pay for services

The Tenant shall pay charges raised for gas, electricity, water or other services supplied to the Tenant or consumed in or on the Premises by the Tenant.

3.12 Tenant to pay cost of work

Whenever the Tenant is required or permitted to do or affect any work at the premises then such work and all required approvals shall be at the sole risk, cost and expense of the Lessee or Licensee / Tenant. Any additions, renovations or repairs ('works') to the building or fixtures require approval from Council prior to commencement.

Costs payable by Tenant to the landlord

A Tenant shall pay Council's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incidental to the preparation, variation and completion of the tenure agreement.

An application for grant of tenure will incur an application fee as set out in Council's fees and charges.

3.13 Building and contents insurance

Council will take out and maintain building insurance for buildings on Council owned or controlled land for a reasonable replacement value. Contents insurance for the tenant's possessions is the responsibility of the Lessee or Licensee / Tenant. In the event the tenant undertakes any additions, renovations or repairs ('works') to the building or fixtures on the land the tenant shall promptly advise Council of the value of the works to enable updating of insured values in Council's insurance schedule.

3.14 Public Liability

All tenants are required to take out and maintain for the duration of the tenancy a public liability insurance policy noting the interest of Coffs Harbour City Council and the owner of the land if Council is not the registered proprietor. The Policy must contain a cross liability clause and be for a minimum cover of \$20 million or such other reasonable sum as stipulated by Council from time to time.

Tenant will be required to submit a certificate of insurance currency with respect to the property at the commencement of the lease/licence and on an annual basis thereafter.

3.15 Permitted Use

The formal agreement will stipulate the permitted use for the property. In some instances certain uses will be expressly prohibited or constrained. The tenant must:

- a) Obtain Council's prior written consent for any change and/or additional use of the premises (in some circumstances Council may review the rent payable having regard to the new use of the property)
- b) Not use the property for any offensive, illegal purpose or carry on or allow to be carried on any noxious or offensive activity on the premises.
- c) Comply with all relevant laws and any requirements of an authority in connection with the premises and the tenant's use and occupation of the premises.
- d) Usage must comply with the relevant Plan of Management in relation to the tenured property.

Tenants may be required to allow Council to use the premises for a Council sponsored function at no cost to Council. Such use will be subject to the tenant being provided with at least 21 days' notice of Council's requirement for the premises, provided, however that such use does not unreasonably interfere with the tenant's use and plans for the property. Council will be responsible for any and all damage arising from its use of the property

3.16 Hours of use

The hours of use may be prescribed for all tenanted premises.

3.17 Nuisance

The tenant must undertake their permitted use without adversely impacting on the amenity of the nearby neighbours. Council reserves the right to terminate the tenancy or to restrict the use of the premises by the tenant in the event the tenant is perceived to be a nuisance to nearby neighbours or the community.

3.18 Smoking

Council has adopted a Smoke Free Workplace Procedure which requires Council controlled workplaces to be designated as non-smoking areas. Council encourages its tenants to adopt a smoke free environment for improvement of the health and welfare of all users of the tenanted premises.

Sporting bodies must comply with Section 6A of the *Smoke-free Environment Act 2000*.

3.19 Removal of assets and capital improvements

Unless otherwise specified in a tenancy agreement, Council retains ownership of all improvements, additions, structures and buildings installed or erected by the tenant on the premises during the term of the agreement.

Tenants in some instances may be required to remove all or specific improvements, additions, structures and buildings from the premises upon expiry of the term of the lease. Such requirement to be at Council's discretion unless otherwise provided for in the tenancy agreement.

Any capital contribution by tenants may be expressly recognised in the tenancy agreement in determination of rent levels and/or lease term.

The tenant may only remove assets that have been constructed or installed by them during the term of the lease on the express and written approval of Council.

3.20 Maintenance

Each tenant will be responsible to maintain the premises in accordance with a maintenance schedule attached to the tenancy agreement, using the service of an appropriately qualified tradespersons or as otherwise stipulated by Council.

Maintenance schedules will specify the responsibilities of Council and the tenant including maintenance and repair of:

- a) the structure
- b) roof and guttering
- c) fit-out including fixtures and fittings and infrastructure
- d) grounds including ground surfaces and subsurface infrastructure
- e) plumbing and sewer blockages and leaks
- f) consumables including changing of light globes, tap washers and smoke detectors
- g) control of all pests and vermin
- h) air conditioning refer clause 28.

3.21 Keys and locks

All keys should be compatible with a master set held by Council or otherwise be made available to Council to enable access to Council staff and contractors to carry out emergency services and essential maintenance.

3.22 Inspections and audits

Council staff will conduct periodic condition assessments of tenanted properties to ensure that appropriate and timely maintenance is undertaken and to verify that the permitted use requirements have been adhered to. In the event of adverse reports tenants will be directed to address the deficiencies. Where the assessment identifies an object failure on behalf of the tenant to maintain the property, the tenure may be terminated.

Tenants may be required to compile and maintain a regular condition audit of the premises, as determined by Council.

Council or Council's agent may enter the premises at any reasonable time and upon giving the tenant reasonable notice to conduct condition inspections and audits.

3.23 Assignment

Unless stipulated in the agreement or required otherwise by relevant legislation a tenant may not assign a community lease or licence.

3.24 Subletting and casual hire

Tenant may, with Council's prior written consent, sublet the premises to approved organisation for approved activities. Council may review and adjust rent payable under the head lease in such circumstances.

3.25 GST

Tenant will be required to pay GST if applicable in addition to rent calculated.

3.26 Liquor and gaming

Tenants seeking to apply for a liquor and gaming licence must first obtain Council's prior written consent. Council in its capacity as landlord will consider whether any application for liquor and gaming is in keeping with the nature and use of the tenanted property and any applicable Plan of Management and may refuse to give consent in its absolute discretion.

3.27 Annual Fire Safety Statements where applicable

The tenant shall ensure that it promptly complies with all essential fire prevention requirements consistent with the use of the premises including but not limited to the provision of Annual Fire Safety Statements to the regulatory authority upon demand.

3.28 Air-conditioning

The tenant shall be responsible for all repair and maintenance of air-conditioning systems (if any) provided with the tenanted premises. In the event that replacement is required and the unit has not been properly maintained the tenant will be held responsible for the full cost of replacement.

3.29 Pesticide Use

The Tenant shall comply with the requirements of Council’s Pesticide Use Notification Plan as published on Council’s website and reviewed from time to time.

4 Delegations

Any delegations in relation to this document are detailed within Council’s delegations database.

5 Definitions

Nil

6 Key Responsibilities

<i>Position</i>	<i>Directorate</i>	<i>Responsibility</i>
Mayor	Council	To lead councillors in their understanding of, and compliance with, this policy and guidelines.
General Manager	Executive	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy and guidelines.
Directors	All Directorates	To communicate, implement and comply with this policy and related guidelines.
Executive and Managers	All Directorates	To implement this policy and related procedures.
All Council officials	Council	To comply with this policy and related procedures

7 References

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Coffs Harbour Local Environment Plan 2013
- Crown Lands Management Act 2016
- The Crown Land Management Regulation 2018
- Conveyancing Act 1919
- Real Property Act 1900
- Retail Leases Act 1994
- Residential Tenancies Act 2010
- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2011

- Child Protection (Offenders Prohibition Orders) Act 2004
- Anti-Discrimination Act 1997
- Community Land Development Act 1989

8 Details of Approval and revision

- Approval date: 9/10/2018
- Responsible Section: Logistics
- Superseded policies/procedures:
- Next review date: 13/08/2021

Table of amendments

Amendment	Authoriser	Approval ref	Date