

FILE NO.: PSC2021-02605

TITLE: COMMUNITY LEASING, LICENCING AND TENANCY
GUIDELINE

OWNER: COMMUNITY SERVICES SECTION MANAGER

1. PURPOSE:

1.1. The Community Leasing, Licencing and Tenancy Guideline (guideline) is intended for use by persons applying for a community lease or licence and Council Officers responsible for the assessment and approval of leases or licences for Community operations on Council owned or managed land.

2. CONTEXT/BACKGROUND:

2.1 Port Stephens Council is party to a large portfolio of lease and/or licence transactions with various community groups in respect of Council owned land or land for which Council is (by virtue of legislative provisions) the trustee.

2.2 This guideline will support the Community Leasing, Licensing and Tenancy Policy by providing a consistent approach to issuing leases and licences to community groups. This will ensure fairness, equity and transparency in the allocation and ongoing management of Council's assets.

2.3 The guideline will ensure that all financial arrangements are transparent and provide clear direction with the setting of Council's fees and charges for community groups. Provide a defined assessment process to determine community rental discounts (where applicable) in return for a contribution to community outcomes in accordance with Council's Community Strategic Plan.

3. SCOPE:

3.1 The guideline is the delivery mechanism for the Community Leasing, Licensing and Tenancy Policy (policy). It does not apply to the following activities that may be subject to a different approval process:

- a) Groups or individuals not considered community based, not for profit or a registered charity.
- b) Groups or individuals on land that is not owned or managed by Council.
- c) Groups or individuals that are commercial by nature and undertake their activities on operational land.

3.2 All aspects of this guideline are limited by the leasing and licensing requirements of the Local Government Act 1993 and the Crown Lands Management Act 2016.

3.3 Council will enter into formal leases or licenses with community groups in relation to their tenancy arrangements. The form of agreement will be determined by taking into account:

- a) Exclusivity of use.
- b) Length of tenure.
- c) Land classification and zoning.
- d) Land management provisions of the Local Government Act 1993 and Crown Lands Management Act 2016.
- e) Other Legislative requirements.
- f) Social and community benefit.

3.4 Rents, fees or charges made by Council will be determined by taking into account:

- a) Council's annual schedule of fees and charges.
- b) Market rental evaluations relating to leases and licenses.
- c) Community Leasing, Licensing and Tenancy Assessment Rating Criteria.
- d) The total annual cost of maintaining the facility at agreed levels.
- e) Capital cost to Council of providing the facility.
- f) Contribution made by the community group to the capital costs or level of intended investment in the capital infrastructure.
- g) Assessment of social and community benefit.

3.5 Assessment process

3.5.1 Submission of an application does not constitute approval to the issuing of a lease or licence on Council owned or managed land. Applications will be assessed against the following criteria:

- a) Applicant's business details.
- b) Experience and professionalism in the proposed activity.
- c) Capacity to deliver the proposed activity.
- d) Compliance with insurance requirements, work health and safety, public safety and environmental risks.
- e) Suitability of the proposed activity for the requested site.
- f) Implications of the proposed activity on existing businesses or activities in the same area.

3.5.2 Applicants are required to submit the following supporting documents:

- a) Certificates of accreditation including; Business Registration, ABN Certification, Personnel qualifications.
- b) Certification from any relevant peak body, and supporting references.
- c) Details of any relevant insurance policies including public liability cover of \$20m noting Port Stephens Council or the Minister of the Crown as an interested party.

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- d) A Business Plan that details the projected viability of the activity and the proposed timetable for use of the site.
- e) A Plan of Management that outlines how the activity will be conducted that, at a minimum, addresses the site, safety, public and environmental risks associated with the business.
- f) A Risk Management Plan that details all risks associated with the activity on the site including treatments to ensure all risks are as low as reasonably practicable.
- g) A Working with Children Check for all personnel who will be involved with any child under the age of 18 years.
- h) A police check may be required at the applicant's expense upon request by Council.
- i) Lease applications will be assessed by Council's internal legal team.
- j) Licence applications will be assessed by the Community Contracts Team in consultation with Council's internal Review Panel where required.
- k) Successful applicants will be notified by email.

3.6 Expression of Interest Process

3.6.1 To ensure fairness and transparency vacant community facilities will be advertised through an Expression of Interest (EOI) process, specifying the purpose for which they are available and inviting submissions for use or occupation. Council may also seek submissions directly from specific community groups where:

- a) A prior public competitive process for the lease or licence of the land was unsuccessful, or there are overwhelming public interest considerations.
- b) In emergency situations.

3.6.2 Council reserves the right to offer existing tenants a new lease or licence agreement where an option period has not been identified and where it can be demonstrated that the tenant has delivered positive economic and community benefits with its service delivery across the Local Government Area. If supported, a business case will be required to go to Council for consideration and approval.

3.6.3 Applicants shall make a submission by lodging the Community Leasing, Licensing and Tenancy Application Form with all supporting documentation listed in the application form.

4. **DEFINITIONS:**

4.1 An outline of the key definitions of terms included in the guideline.

Community Leasing, Licensing and Tenancy Assessment Application	Completed to determine potential rental discounts that may apply to eligible community groups.
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Community Leasing, Licensing and Tenancy Assessment Rating Criteria	A rating scale used by Council for the purposes of determining an equitable schedule of rents for eligible community groups.
Community Group	A company or individual including registered charities that provide a service to the local or wider community who operates a business on a cost recovery basis and does not make a profit.
Community Lease	Where a landlord grants a tenant a legal right to exclusive possession of premises for a specified period of time in return for the payment of rent.
Community Licence	When a licensor grants a licensee a contractual right to occupy premises in return for the payment of a licence fee. In law, a licensee is not entitled to exclusive possession of the premises.
Crown Land	Land held in the name of the State of NSW and reserved under Crown Land legislation.
Crown Lands Legislation	The Crown Land Management Act 2016.
Expression of Interest	The process in which Council publicly advertises facilities, specifying the purpose for which they are available and inviting submissions for use or occupation.
Fees and Charges	Council's annual adopted schedule of fees and charges to be paid as rent for occupation of a community facility by a tenant.
Guideline	The mechanism for the delivery of the Community Leasing Licensing and Tenancy Policy.
LG Act 1993	The Local Government Act 1993.
Minimum Rent	Lowest amount that can be charged in accordance with Council's adopted fees and charges and Crown Land minimum rent requirements.

5. STATEMENT:

- 5.1 The aim of the guideline is to support the Community Leasing, Licensing and Tenancy Policy by providing a clear and transparent leasing and licensing framework to ensure fair and equitable negotiations and outcomes for all community groups. By ensuring a consistent approach to the approval and management of community leasing and licensing on Council owned or managed land, Council can facilitate the economic and social benefits across the community whilst also ensuring a diversity of quality tenants complimentary to each community facility and location.

6. RESPONSIBILITIES:

- 6.1 The Community Contracts Officer and the Community Contracts Coordinator are responsible for the implementing, complying with, monitoring, evaluating, reviewing and providing advice on the guideline.

7. RELATED DOCUMENTS:

- 7.1 Community Leasing, Licencing and Tenancy Policy.
- 7.2 Financial Assistance under Section 356 of the Local Government Act 1993.
- 7.3 Community Group Loans Policy.
- 7.4 Setting of Fees and Charges Management Directive.
- 7.5 Commercial Operators Policy.
- 7.6 Mobile Food Vehicle Guideline.
- 7.7 SEPP 2008 Division 2 Advertising and Signage Exempt Development Code.
- 7.8 Port Stephens Council Plans of Management for community land.
- 7.9 Local Government Act 1993 (NSW).
- 7.10 Crown Land Management Act 2016 (NSW).

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2021-02605	EDRMS record No.	22/274451
Audience	Council staff, service providers and community groups.		
Process owner	Community Services Section Manager		
Author	Community Contracts Coordinator		
Review timeframe	3 years in line with Community Leasing, Licensing and Tenancy Policy	Next review date	September 2025

VERSION HISTORY:

Version	Date	Author	Details
1	23/06/2015	Property Services Section	Original document.

Guideline

Version	Date	Author	Details
2	September 2022	Community Services Section Manager	Updated into new Guideline Template. Reviewed alongside Community Leasing, Licensing and Tenancy Policy.