

# Council's Policy for the Management of Community and Recreation Land and Facilities.

## 1. Purpose

The purpose of this Policy is to encourage new user groups and to ensure suitable usage arrangements for Council's land and facilities.

Council's land and facilities have traditionally been made available to sporting and community user groups, commercial entities and individuals via different agreements and based on the frequency, type of usage, income derived and the facility involved.

This policy addresses the following agreements:

- lease hold agreements
- licence agreements
- seasonal allocations
- casual, or permanent bookings
- one off or casual hire arrangements
- contracts for provision of services

This policy covers the broad range of organised activities of user groups including the general public, community groups, childcare services, sporting clubs, fitness instructors, social clubs, industry groups, businesses, commercial users, religious organisations which seek to utilise Council's land and facilities in an organised manner.

This policy does not cover general community uses that do not require a booking for individual pursuits such as walking, bushwalking, off leash dog areas, non-exclusive small family gatherings, informal uses of open space of parks and gardens.

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The policy ensures:

- (a) Compliance with Legislation, Plans of Management and related Council policies;
- (b) That requisite issues, terms and conditions are correctly negotiated and incorporated into the agreements;
- (c) That legal, administrative costs, together with operational liabilities are recovered.
- (d) That Council officers, departments and Councillors display a unified approach when dealing with user groups
- (e) That best sustainability practice is incorporated into the use of land and facilities.

This policy specifically overrides any prior policies, agreements and other long term arrangements for usage of Councils land and facilities which are not taken up in any pre-existing legal agreements.

The policy is covered over sections 1 – 8, whilst the procedures and detailed information is conveyed in the annexures.

## 2. Objectives

- To provide fair and equitable access to community, sporting and recreation facilities for user groups.
- To maximise use of Council's capital infrastructure and facilities.
- To assist non - profit community, educational and sporting organisations, in providing programmes and services which address the social, cultural, sporting and recreational needs of the Community.
- To encourage the provision of an appropriate range of support services in the area addressing all community needs consistent with the Community Plan.
- To establish more structured and transparent criteria and internal process for which Council's properties can be utilised.
- To ensure the administration and legal costs incurred are minimised.
- To ensure income return on the facilities in accordance with the Community Plan and Council's Charges.
- To ensure fee support (rebates and fee waivers) is provided and reported in appropriate areas in accordance with the Community Plan and adopted sporting and recreation strategies.

### 3. Definitions

For the purposes of this policy the following definitions apply.

**Agreement:** The contract between the user group and council to reflect the agreed terms and conditions for use of the land or facility. A lease, licence, permanent and/or casual hire and contract for provision of services is referred to as an agreement.

**Casual Hire:** Casual hiring arrangements pertain to a one off use, although continuous bookings over a limited defined period of time can be made for example for tennis courts for up to 10 weeks.

**Capital Contribution:** A DA approved monetary or other contribution (e.g. donated labour and materials) which improves, enhances, or adds value to the facility based on the replacement/refurbishment cost/s assessed in line with industry accepted quantity surveying principles.

**Commercial Group:** A group deemed for commercial purposes, any activity which does not fall under the ambit of not for profit, community or a sporting group.

**Community Group:** Is a specific entity which provides a benefit to the community on a non profit basis, has a constitution or charter and a program of services or activities which confirm a commitment to meeting the cultural, social and/or recreational needs of the community.

**Facility:** Part or all of a Council owned/managed land and/or building asset and associated infrastructure occupied by a community group/s to provide organised recreational, cultural, sporting and community service activities. They are generally situated on Council owned Operational and Community Land or Crown Land for which Council has long term management responsibility.

**Fee Waiver:** A discount/or waiver on the adopted fees and charges provided to a user group which qualifies under Council's Policy to waive or discount fees. Fee waivers only apply to casual hire and must be authorised by the Director Community.

**Lease:** A lease is a legal agreement for disposal of a defined lot of land for a defined term only. Valuable consideration for this right is returned to Council as rent. On completion of the defined term the area leased reverts to Council as per community lands provisions. Valuable consideration returned to Council is known as the 'Rent'.

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**Legislation:** Any relevant legislation pertaining to this policy, especially the Local Government Act 1993 and The Crown Lands Act 1989 and their Regulations.

**Licence:** A Licence is an agreement which provides user group exclusive rights to use the facility for a defined time and defined dates. This does not constitute a disposal of the land or facility only a passing of rights of use as detailed in the agreement. Valuable consideration returned to Council for such rights is known as the "Licence fee".

**Operational Costs:** The costs expended by Council to maintain the facility in good order and condition, suitable for its purposes.

**Organised Activities:** Any group of people (more than 5 people, or one that is commercially based) who are using any Council owned or managed land or facility on a regular basis (at least once in any eight week period) or require access to a locked or secured facility, or an area with established fees and charges for casual use (eg Tennis Courts) will be considered a user group and will therefore be required to comply with this policy.

**Permanent Hire:** Permanent hiring arrangements pertain to regular use of a specific facility generally for a specific period of time not exceeding 12 months.

**Plans of Management:** Refers to the requirement under the Local Government Act (1993) that all public land be classified as either "operational land" or "community land" and a Plan of Management must be prepared for land designated community land.

The granting of a lease or licence over a facility on community land, the conditions of the lease or licence and the potential uses of a facility are set down in the Plan of Management. The Act states: "A council may grant a lease or licence of community land, but only in accordance with Section 46 and (if relevant) section 47 NSW Local Government Act 1993."

**Rebate:** A Rebate is a rental subsidy granted by Council applying only to leases and licences. Council may only grant a rebate when a user group demonstrates requisite needs for the assistance and the level of rebate is granted pursuant to the Rebate Assessment Schedule in this policy. There is no rebate applicable to commercial, casual, permanent and seasonal hirers.

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**Regulation:** means the Local Government (General) Regulation 2005 and Crown Lands Regulation (2000).

**Seasonal Allocation:** Seasonal Allocation pertains to the majority of on-field sport ground facilities which are allocated to sports clubs or governing associations on a seasonal basis, with two allocations being undertaken per year to cater for summer and winter sporting activities. Seasonal allocation includes training and regular weekend competitions.

**Sporting Group:** A sporting group under this Policy is an entity which provides a benefit to the community on a non profit basis, has a constitution or charter and a program of services or activities which confirms a commitment to meeting the sporting and/or recreational needs of the community.

**User Group:** A user group under this Policy is an entity which provides a benefit to the community which meets the cultural, educational, social and/or recreational needs of the community. User Groups can be both not-for Profit or offer a fee for the provided service

## **4. Relevant Authorities - Legislation and Plans of Management**

### **4.1 Legislative Framework**

Council is both landowner and land manager and must deal with the land in accordance with relevant legislation.

Land owned by Council referred to as Community Land is regulated by the:

- **Local Government Act 1993, and**
- **Local Government General Regulation 2005.**

Land under the care, control and management of Council referred to as Reserve Trust Land is vested in the Department of Lands. The legislation governing the dealing of this land is:

- **The Crown Lands Act 1989, and**
- **Crown Lands Regulation 2005.**

When Council resolves to grant a lease or licence over Crown Land (Reserve Trusts), the dealing is subject to consent by the Minister of Lands.

### **4.2 Plans of Management**

Both sets of legislation dictate that Plans of Management must be created and adopted by Council for the use and management of the land. The Plan of Management sets out the purposes for usage and identifies any issues to be addressed. Agreements for use of Council owned and managed land may only be granted if it is authorised in a Plan of Management.

## **5. Arrangements with User Groups**

### **5.1 Leases and Licences up to a period of 21 years.**

21 year Lease and Licence arrangements pertain to the regular use of a specific facility for a permanent and specific period of time.

A lease provides for exclusive and continuous right for the lessee to occupy and deems in the lessee a legal right to possession:

- During the leased term
- On the defined land.

A lease 5 years and over must be registered on the title of the land.

A licence provides for an exclusive and continuous right for the licensee to use a facility within clearly defined dates, times and areas.

The licence does not deem a legal right over the land, but confers on the Licensee a legal right to use or occupy the land/facility for that specified period of time. Council is free to grant licences to other users outside the designated timeframes taken up in pre-existing licence agreements.

The facilities subject to these arrangements are:

- Golf Clubs
- Bowling Clubs
- Sports grounds
- Swimming Pool
- Sporting Club houses and canteens
- Childcare Centres

Rentals and Licence Fees are based upon an independent valuation of the land or facility and then subject to further methods of valuation application, for example, the Local Government formula for valuation of a bowling club.

These agreements are created when user groups have contributed significant capital to build or upgrade the land or facility so to ensure long term rights to the property.



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The lease or licence can be constructed as a 21 year term or reflect option periods, giving the user group the option to renew or not, depending on current contingencies.

Leases and Licences over Reserve Trust Land are subject to Ministerial Consent. A levy of 15% payable annually named the Public Reserve Management Fund (PRMF), is also payable and invoiced separately.

## **5.2 Leases and Licences up to a period of 5 years.**

5 year Lease and Licence arrangements pertain to the regular use of a specific facility for a permanent and specific period of time.

A lease provides for exclusive and continuous right for the lessee to occupy and deems in the lessee a legal right to possession:

- During the leased term
- On the defined land.

A lease 5 years and over must be registered on the title of the land.

A licence provides for an exclusive and continuous right for the licensee to use a facility within clearly defined dates, times and areas.

The licence does not deem a legal right over the land, but confers on the Licensee a legal right to use or occupy the land/facility for that specified period of time. Council is free to grant licences to other users outside the designated timeframes taken up in pre-existing licence agreements.

The facilities subject to these arrangements are:

- St Ives Showground
- Sporting Club houses
- Bowling Clubs
- Swimming Pool
- Childcare Centres
- Community Facilities

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Rentals and Licence Fees are based upon an independent valuation of the land or facility and then subject to further methods of valuation application, for example, the Local Government formula for valuation of a bowling club.

Leases and Licences over Reserve Trust Land are subject to Ministerial Consent. A levy of 15% payable annually named the Public Reserve Management Fund (PRMF), is also payable by the user group and invoiced separately. NO PRMF is applicable to amounts under 2k pa.

### 5.3 12 Month Temporary Licence Agreements

12 month Temporary Licences pertain to facilities made available for occupation for no more than one calendar year at a time generally commencing on the 1<sup>st</sup> of January each year.

These Licences are made when the legal and administrative costs of negotiating and preparing the agreement exceed the annual rental return (generally \$2k pa) or for short term commercial agreements.

Uses are limited to the following hire arrangements:

- Exclusive use of Community building which delivers services or programs identified in Council's Community Plan:
- A temporary licence for use as defined under the Crown Lands Act and Regulations on Crown Lands eg, Equestrian Events, Exhibitions, Sales, Markets, Sporting and organised recreation activities.
- A short term use of a Council facility such as a canteen or storage room for a use consistent with the relevant Plan of Management.
- A short term use of a Council facility that would be otherwise vacant.
- A short term use to allow a service to demonstrate it can meet Community needs identified with access to a Community Facility.

Land & Facilities to which this applies are strictly limited to:

- Community rooms located within larger facilities where shared access to common areas such as kitchens and toilets are provided by Council eg 177 Rosedale Road Community Building.
- Small, free standing properties that are made available for community services.
- St Ives Showground Facilities – Temporary Licences for uses consistent with the Plan of Management and Crown's Lands Act
- Other Crown Lands
- Vacant Community Facilities.

Times and places reserved under lease and licence agreements, permanent and seasonal allocations will always be prioritised.

Financial return to Council is assessed only by the calculating of a fee per square metre approved in Council's adopted and current fees and

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charges as set out in the relevant Management Plan and can be subject to change.

Agreements are deemed to commence each calendar year and hire applications are to be submitted by November 1, the preceding year and every December, all recommendations for hire and/or renewal are reported to Council for determination. This arrangement can only be varied during Council elections.

Temporary Licences for Periods less than 12 months can commence during the calendar year but will be required will be reviewed in November.

A Standard document is used to complete this arrangement and will not be altered, as the intention behind the creation of this document is to simplify the arrangement and reduce administrative and legal costs for both council and the user group. A Reference Schedule annexed to the document will qualify those terms and conditions.

#### **5.4 Seasonal Allocation**

Seasonal Allocation pertains to the majority of on-field sport ground facilities which are allocated to sports clubs or governing associations on a seasonal basis, with two allocations being undertaken per year to cater for summer and winter sporting activities. This results in best practice to facilitate multi-use of the grounds. Seasonal allocation includes training and regular weekend competitions

Facilities to which seasonal allocations apply generally are:

- Sports grounds/playing surfaces
- Access to toilet facilities and change rooms. (if available)
- Use of car park
- Use of floodlights (if available)
- Canteens

Seasonal allocation does not include access to clubhouses or approve storage of equipment which is generally organised through a licence agreement.

Seasonal Allocation fees are scheduled in Council's adopted and current Fees and Charges.

## 5.5 Permanent

Permanent hiring arrangements pertain to regular use of a facility for a permanent and specific period of time. This does not allow for full and exclusive rights to the facility.

Facilities for permanent hire:

- Sportfields and associated facilities.
- Community Halls and Meeting Rooms

Times and places reserved under lease and licence agreements, permanent and seasonal allocations will always be prioritised. The arrangement is basic and does not warrant the creation of a formal licence agreement.

Permanent Hire fees are scheduled in Council's adopted and current Fees and Charges

## 5.6 Casual

Casual hiring arrangements pertain to one off use, although continuous bookings over a limited period of time can be made this way.

Facilities for casual hire include but are not limited to:

- Tennis court hire
- Park hire
- St Ives Showground facilities
- Sportfields and associated facilities.
- Community Halls and Meeting Rooms.

Land and facilities reserved under licence agreements, permanent and seasonal allocations will always be prioritised.

Hire fees and public liability costs are scheduled in Council's adopted and current Fees and Charges.

The Fee Waiver Policy is only applicable to casual hire agreements.

## **6 Hire Arrangements**

### **6.1 Introduction**

Ku-ring-gai Council is committed to providing fair and equitable access to its community facilities, recreational and sporting facilities for residents and visitors. To deliver such services Council works to develop partnership agreements between Council and recreational sporting and community organisations for the best possible use of those facilities.

Council reserves the right to refuse any user group's application if the findings from the due diligence process weigh against the user group.

### **6.2 Accounts**

All invoicing and accounts will be established subject to Council's adopted Fees and Charges or as approved by Council for Leases and Licences.

Council officers will notify finance when a new agreement is executed to create a debtor account. Details of the user group, its incorporation details, postal and physical addresses and any other relevant details should be supplied.

Invoices are raised for payment for all types of usage.

The frequency of invoicing should be as follows:

Casual Hiring:	Prior to use.
Permanent Hiring:	Every 6 months.
Seasonal Allocation:	At the commencement of each season.
12 month agreement:	Once per year on execution of the agreement.
5 – 21 year Lease and Licences:	Once per year, on the anniversary and yearly review of the agreement.

User groups, lessees and licencees can make payment arrangements with Council's finance department if necessary.

Invoices issued for leases and licences subject to rental rebates must reflect the full market value, the rebated amount and the amount payable.

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Payment for tennis court and casual hirers is to be taken at the time of booking or in future by electronic banking, to confirm the booking. If credit cards cannot be used, payment must be made upon receipt of invoice within terms. If 2 or more invoices remain unpaid, the hirer's account will be flagged and prevented from further usage until the account is settled.

Hire, allocations, licence fees and rents are to be paid in full, with no offsets. Any claims for discount or fee waivers must be addressed independently and in writing.

If accounts remain unpaid after 90 days, recovery action will be commenced without further notice. The user group must also advise Council's Finance Section if any changes are made to payment addresses.

Finance will provide a report of unpaid accounts on quarterly basis to the relevant booking officers.

No arrangements will be renewed unless all outstanding amounts are settled.

### **6.3 Bookings and Booking System**

All booking details must be entered into Council's booking system, regardless of the agreement.

Booking Priority is given as follows: -

Leases and Licences	Priority 1
Seasonal Allocations	Priority 2
12 Month Temporary Licence	Priority 3
Permanent Hire	Priority 4
Casual Hire	Priority 5

The booking system is updated according to the above priority and a confirmation letter is issued to the user group.

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The following table refers to the priority, maximum length of booking agreement.

FACILITY /LAND	BOOKING TYPE & PRIORITY	Max length of Booking
<b>Tennis</b>	1. Permanent 2. Casual	52 weeks in total 3 months in advance
<b>St Ives Showground</b>	1. Lease 2. NCAS (Agricultural Society) 3. Licenced areas 4. Temporary Licences 5. Casual	As per agreement As per PoM and agreement As per agreement Up to 12 months Remaing available time for year.
<b>Sportsgrounds</b>	1. Permanent /Seasonal 2. Schools 3. Casual	Year / Season Calendar year in term Up to Service standards
<b>Sports Clubhouses</b>	1. Lease 2. Licence 3. Temporary Licences 4. Casual	As per agreement As per agreement Up to 12 months Remaing available time for year.
<b>Parks</b>	1. Casual	Up to 12 months in advance
<b>Halls and Meeting Rooms*</b>	1. Licence 2. Permanent 3. Casual	As per agreement Up to 12 months Remaing available time for year.
<b>Community buildings</b>	1. Lease 2. Licence 3. Temporary	As per agreement As per agreement Up to 12 months



#### 6.4 Fee Waivers and Discounts

There are various forms of financial assistance available to user groups.

A request to Waive or Discount Fees is a specific request for **casual hire only** not to be charged at the adopted Fees and Charges.

The request is assessed under the Policy to Waive or Discount Fees following a request in writing. Council offers fee waivers up to the value agreed in Council's annual budget. Once this amount is expended no further discounts can be offered.

Council offers a range of other financial assistance for user groups including:

- Rental rebates
- Grants programs
- Community rates for hire of Council facilities
- Seasonal rates for sporting groups
- Sponsorships

Requests for financial assistance must be in the prescribed format and Council reserves the right to refuse any requests. All requests are subject to available discount funds.

Financial assistance from other levels of government will be scrutinised to ensure assistance is fair and equitable.

## 7. Lease and Licence requirements

### **7.1 Renewal and Vacant Facilities for Leases and Licences exceeding a one year term**

In order to provide fair and equitable access to community land and facilities, the following requirements are considered when a property is requested: -

- The demonstrated need for the service in Ku-ring-gai
- The financial capacity relevant to the services or programs offered
- Facility assessment (size, location, maintenance, Plan of Management)
- Existing and surrounding users
- Any relevant environmental impacts and considerations.
- Where a significant capital contribution has been made by the user group

The Plan of Management will generally confirm whether a facility is suitable for community, sporting purposes or commercial purposes and in some cases a facility will be suitable for either group. Council is unable to consider an application not compliant with the existing Plan of Management.

Properties become available for a new service when:

- An existing agreement has expired and the current user elects not to renew or exercise an option, or fails to notify Council of their intention to renew.
- A council resolution to make available a certain property for usage.
- When a user breaches the terms of the agreement and notice to terminate is served.

## 7.2 Expression of Interest

An Expression of Interest (EOI) process is the usual method to select a suitable tenant/user group for all community properties and facilities which are vacant. Expressions of Interest allows Council to assess the benefits to Council and the community of a wide range of potential user groups

The Expression of Interest process publicly notifies the property and its desired or required uses. Interested parties are invited to provide submissions as to why they should be granted rights to use or occupy that property or facility.

The following steps are required under this policy:

- Preparation of an EOI document with relevant details, selection criteria, forms and details.
- A Public Notice in accordance with Council's Policy.
- Set closing date and time.
- A panel of no less than 3 Council staff and at least one independent representative to assess the submissions and select the most suitable applicant in keeping with probity requirements.
- Independent representative may be a nominee of the Community or Open Space Reference Committee.
- Recommendation to Council of the preferred user group.

Expressions of Interest will be required when:

- When a current lessee or Licencee fails to provide notice to renew or to exercise their options within the given terms of their agreement
- Where a facility is to be made available for a period more than 12 months.
- Where a facility is proposed or could be made available for commercial purposes.
- Is vacant or is a newly constructed facility.
- Is not exempted under s55 of the Local Government Act – Tendering Provisions

Council under the Local Government Act is not required to undertake an EOI for not for profit organisations. Therefore Council, subject to an adopted resolution, may prioritise or request a specific use or user group

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for a specific facility or a user group to be given priority to a new or vacant facility when completed.

In such cases the following points should be considered in the recommendation of not undertaking an EOI process:

- The facility being fit for purpose of the proposed usage.
- Council has specific plans or funding directed to support the user group in Ku-ring-gai.
- The use is supported and endorsed as a priority identified in the Community or Strategic Plan.
- Exempt from the tendering provisions of the Local Government Act.
- That fair competition has not been compromised.
- Compliance with Council's Code of Conduct

It may be more appropriate to utilise a temporary licence to ascertain the viability of the user group before entering a longer term agreement.

### 7.3 Valuation/Fee Methodology

Land and facilities subject to a lease or licence were historically required to be independently valued. Land and facilities subject to Commercial or Retail Leases are generally managed by the Manager - Strategic Assets.

The valuation is determined by comparing other similar type properties. **Size, use, location, improvements and income derived** are compared and used. From the collaboration of data the Market Value and Base Factor are assessed. Both indicators are used either together or separately to assess the rental value of the property.

Given the differing natures of Council Properties within the Community and Recreation Portfolio, specialised formulas and methods best suited to the specific types of properties, are applied to achieve the most equitable valuation. The relevant valuation methodology explained in the relevant procedural annexure.

The valuation reflects the zoning of the land as primarily open space or for community purposes and is not compared with commercial premises.

An annual valuation brief is issued around August each year for properties requiring a new valuation.

The cost of the valuation is met by Council.

### 7.4 Rebate Structure

A Rebate is a subsidy applying to leases and licences, and is granted when a user group demonstrates requisite need for assistance.

The level of the rebate is granted according to the Rebate Assessment Schedule in this policy.

In accordance with this policy, Council offers a maximum rebate level of up to 80% to sporting groups and 90% to frontline community groups. The rebate is offered as a commitment by Council to support appropriate community services provided by others in Council facilities.

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The rebate is assessed based on information provided on the *Application for Rebate Form* when commencing and/or renewing an existing agreement.

The level of rebate is assessed on the groups' responses:

- Why the user group requires a reduction in the rental component set by Council valuation method
- If the rent reduction is required for the short or long term
- What strategies the group has to meet future rental increases
- Current revenue raising activities
- If financial assistance from other government sources has been provided, and for what purposes.
- Justifiable need for the service
- Financial capacity to pay based on past audited financial reports

Council reserves the right to vary the rebate structure during the term of the agreement if the Annual Reports supplied by the user group demonstrates a change in the user group's financial capacity.

## **7.5 Eligibility for Rental Rebate**

The Application for Rebate Form will be the only methodology to ascertain the level of rebate in order to create uniformity in the application of rebates across similar user groups.

Rebates should not be a substitute for sound financial management.

Council officers may recommend a range of suitable rebates for Council to resolve as the most suitable. Rebates may be phased such as moving a group from a higher to lower level of rebate.

A rental spreadsheet advises Council of the total rebate offered during the terms of the lease or licence.

This policy clearly defines the four levels of rebate offered:

- **Community Service Frontline** – A service that meets Community needs clearly identified in the Community Plan for example, programs that meet the developmental needs of children and young people with disabilities. Usually not- for- profit.

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- **Community Partnership-** A service that provides services in partnership with the Community but does not address frontline Community issues. For example to improve the health of residents through participation in community sport.
- **Partially Assisted Service-** A service that demonstrates partial funding and support but requires some rental rebate from Council to provide service.
- **Funded Service** - where a service or user group is fully funded through an external or third party (eg Trust, State Government) than no rebate is applicable. Such users do not need Council financial support.

The complete criteria for reference are scheduled out in the Rebate Assessment Schedule

**Rebate Assessment Schedule**

Category	Annual Rent	Eligibility
<b>One: Community Service frontline</b> Examples: <ul style="list-style-type: none"> <li>• Not for Profit Kindergarten</li> <li>• Outreach Service</li> <li>• Meals on Wheels</li> <li>• Youth at Risk Program</li> <li>• Scouts at peppercorn rent</li> </ul>	10% of valuation (90% rebate) (exclusive of GST)	<ul style="list-style-type: none"> <li>• Satisfies all rebate eligibility criteria for Level One</li> <li>• Meets relevant actions in Council's Community Plan</li> <li>• Has limited revenue-raising ability (net of cost of service)</li> <li>• May be in need of Council's assistance to become established</li> <li>• Provides high level of community benefit</li> <li>• Provides optimal multiple use opportunities</li> <li>• Responsible for most maintenance of facility.</li> </ul>
<b>Two: Community Partnership</b> Examples <ul style="list-style-type: none"> <li>• Dog training Club</li> <li>• Sporting Club</li> </ul>	20% of valuation (80% rebate) (exclusive of GST)	<ul style="list-style-type: none"> <li>• Satisfies all rebate eligibility criteria for Level 2</li> <li>• Has limited revenue-raising ability (net of cost of service)</li> <li>• Provides high benefits for the community.</li> <li>• Provides reasonable multiple use opportunities.</li> </ul>

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<p><b>Three: Service – Partially Assisted</b> Discounted market rent Examples</p> <ul style="list-style-type: none"> <li>• Early Childhood Centre with funded positions and fee structure</li> <li>• Group funded by Federal Government)</li> </ul>	<p>20 - 50% of market valuation (50-80% rebate)</p>	<ul style="list-style-type: none"> <li>• Satisfies all eligibility criteria for Level 3</li> <li>• Provides some benefits for the community</li> </ul> <p>Only offers:</p> <ul style="list-style-type: none"> <li>• Limited or no multiple use opportunity</li> <li>• Responsible for day to day maintenance only</li> <li>• Has reasonable revenue raising ability from their activities, private sector sponsorship or government grants (net of cost of service)</li> </ul>
<p><b>Four: Self Funded Service</b> No rebate Service is fully funded by grants. Examples</p> <ul style="list-style-type: none"> <li>• fully funded service with \$ for rental by federal Government</li> </ul>	<p>Full market rent</p>	<ul style="list-style-type: none"> <li>• Does not complete Capacity to Pay Assessment form.</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>• Fully funded eg Service fully funded by Government or Private.</li> <li>• Commercial user</li> </ul>

### 7.6 Assessment under Capital Contribution Requirements

Sporting and Community Groups are increasingly willing to contribute capital to a Council facility to provide their Services.

Capital can be contributed to improve clubhouses and pavilions, sportsgrounds and other facilities such as lighting. Such contributions will be taken into consideration when assessing an application by that user group for a lease of licence for a clubhouse or pavilion.

Council acknowledges that grants, fundraising and other sources of funding will allow user groups to provide works not prioritised in Council's current Capital works program and that its contribution can bring projects forward in Councils program.



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Capital Contributions can only be considered for leases and licences only and not be used to offset any adopted seasonal, casual fees or charges which reflect the ongoing operation and maintenance costs.

User groups will request their Capital Contributions to be considered and assessed via a **Capital Contribution Form** to be submitted detailing the proposed contributions including:

- Contributions made or proposed during the term.
- Sources of funds for contribution and how they are applied
- Relevant development approvals for such works
- Support for the works by other facility user groups.

User groups should not use Ku-ring-gai Council's Rental Rebate to develop capital and then request further discounts for ongoing Capital Contribution which has been developed with Council support.

**Lease or Licence**

There is no nexus between capital contributions and the granting of a rebate to the user group.

Where a user group has made a significant Capital Contribution this will guarantee a recommendation for a longer term of tenure to allow for full capital depreciation benefits. The only exception where capital contribution will be considered together with an application for rental rebate is for frontline community services (eg Childcare and Disability Services) – refer to rebate Category One. In such circumstances the high level of rebate assists in returning greater levels of service to the community.

For Community facilities the capital contribution must be applied to the lease or licence of the facility improved. For sporting groups who contribute towards ground, lighting or facility improvements the contribution can be transferred to any relevant lease or licence of clubhouses at the improved facility.

All other improvements funded by user groups are regarded as philanthropic and Council cannot guarantee any financial offsets. All proposed Improvements should be supported by the Director Operations to ensure ongoing maintenance requirements are considered.

## 7.7 Pre Contractual Disclosure Documents

Prior to a lease or licence agreement being created the following documents must be provided before negotiations commence:

- **Application for Lease or Licence** – the complete application for a user group to request a land or facility.
- **Undertaking and Negotiation Protocol** – a document the user group signs to ensure the correct process is followed during negotiations as stated in the adopted policy and that the user group assumes liability for full legal costs and part administrative costs.
- **Application for Rental Rebate** - the information disclosed by the user group in this form is used to assess the demand for and the eligibility for financial assistance, for the specified land or facility. When renewing an agreement or submitting an expression of interest for a vacant property.
- **Assessment Form – Request for Information – Capital Contribution** - to be completed and submitted when proposing a Capital Contribution to the related land or facility.
- **Business Plan** – a business plan outlining the strategies and methods the applicant has planned and/or implemented to demonstrate to Council officers the club can sustain its on going expenses and liabilities.

Council Officers will assess this information holistically and determine the most suitable terms and conditions for the requested agreement. The user group is then invited to discuss the agreement in more detail.

## 7.8 Negotiation Stage

During the negotiation stage, the user group is free to request any further terms and conditions to the agreement.

The licence fee or rental amount for the first 5 year period of the agreement is disclosed in the form of a spreadsheet showing the amounts payable each year after the relevant reviews and rebates have been applied.

A pro forma Heads of Agreement is then completed, with the agreed legislative compliance and terms and conditions included. Upon finalisation of the Heads of Agreement, a report to council is be submitted requesting a resolution to grant the specific agreement.

## **7.9 Dispute Resolution**

This policy is designed to proactively reduce the possibility of a dispute arising.

In the course of any negotiation there is always potential for a dispute. The intention of this policy is to address the issues which have in the past lead to dispute and to create a cost effective, structured negotiation and administrative process, creating clear delineation of the roles of all interested parties.

If a dispute arises and negotiations are deemed to have halted, parties are given three months from the date the dispute is deemed to have existed, to settle. If after three months, a dispute is not resolved the matter will be reported to Council for determination recommending a cessation to negotiations and the commencement of an EOI process, inviting new user groups to apply for the property/facility.

This process is disclosed to the user groups prior to the outset of negotiations and applies to pre contractual negotiations.

If a dispute arises during the tenure of the agreement, parties must follow the dispute resolution procedure as set out in the lease or licence.

## **7.10 Annual Reporting Requirements**

Community and sporting groups must supply to Council on an annual basis:

- Audited financial reports
- Minutes from the most recent Annual General Meeting
- Evidence of updated and current mandatory insurances
- Any changes to the committee members, contact details, postal addresses, email addresses etc
- Club membership numbers and residential postcodes, if required
- Any changes to a clubs constitution
- A report of what actions have been undertaken to comply with relevant Plans of Management or Policies, as stated in the agreement.

## 8 General Requirements

### **8.1 Hours of Use**

The hours of use are prescribed for all facilities may be determined by Plans of Management or Development Consent and the user groups requirements.

### **8.2 Rent Reviews**

For a lease or licence the anniversary of each 5 year period, and when an option is to be exercised, a market review will be undertaken to set the new rental amount.

Every other year, the annual review will be subject to a ratchet clause (usually an agreed increase of between 3-5 %) in lieu of a CPI increase allowing user groups certainty in budgeting their future expenses.

### **8.3 Insurance**

It is the responsibility of all user groups to procure their own insurance. Insurance obligations are stated in every agreement from casual hire arrangement to a 21 year lease or licence.

Complete indemnification of the Minister and Council is obligatory. Failure to comply will result in immediate cessation of negotiations and/or termination of the agreement.

Council and/or the Minister for Lands are not liable for any damage suffered which may occur from the use of its facilities.

At the outset of any agreement and each year of a continuing tenure, evidence of current insurance certification is required by Council. Council reserves the right to terminate any agreements in breach of insurance provisions.

#### **8.4 Maintenance and Outgoings**

Responsibility for maintenance and outgoings are detailed in the agreements:

- Casual – generally to leave the land or facility in the order as allocated and/or pay for cleaning as required in fees & charges.
- Permanent/ Seasonal - generally to leave the land or facility in the order as allocated and/or pay for cleaning as required in fees & charges.
- Temporary licence - maintenance as per the standard maintenance schedule.
- Long term lease/licence- maintenance as per the standard maintenance schedule for the facility.

Any facilities requiring cleaning or additional cleaning by Council's staff or contract cleaners will be charged to the user group at Council's current & adopted fees and charges.

#### **8.5 Sub-leasing or assignment.**

Sub-leasing and assignment of agreements is prohibited.

#### **8.6 Removal of Assets**

The community or sporting group may remove any assets that have been constructed or installed by them during the term of the lease or licence, subject to the premises being returned to Council in its original condition. Council may request the demolition/removal of the asset if required by the lease/licence conditions. Any improvement not able to be removed at the end of the lease/licence shall remain in Council ownership.

#### **8.7 Capital improvements**

Community and sporting groups may only undertake capital improvements with the permission of Council as the asset owner.

Council retains ownership of capital improvements that cannot be removed unless otherwise specified in the lease or licence. Any capital contribution of community groups will be taken into account in assessing the length of lease/licence.

### **8.8 Acknowledgement of Council contribution**

The community group shall, in liaison with Council's Community Department acknowledge Council's contribution in their organisation's annual report and publications, any advertising and community event.

### **8.9 Nuisance**

Council requires that user groups undertake their permitted activities without adversely impacting on the amenity of nearby neighbours. Council reserves the right to terminate the tenancy or to restrict the use of premises by the user group and through casual hire arrangements.

### **8.10 Reporting requirements**

User groups with leases or licences occupying Council's land or facilities are required to report annually on performance indicators in relation to the facility and the group's activities. Council will provide guidance and advice on the collection of this information on relevant forms.

### **8.11 Conduct of Parties**

Ku-ring-gai Council has adopted a Code of Conduct that is applicable to both elected Councillors and employed staff. The Code of Conduct sets out principles to ensure the business of Council is carried out in an efficient, honest and impartial way.

User groups should be aware of the separation between the administrative role of Council officials and political functions of Councillors.

User groups should not attempt to influence Councillors or council officials to breach the Code of Conduct.

Relevant issues may include:

- Deriving personal benefit from the decision
- Political donations
- Offering gifts or bribes to influence a decision.
- Direct lobbying of Officers or Councillors during an EOI or licence negotiations.
- Requesting Councillors to intervene or direct officers to a particular decision.

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Council officers reserve the right to cease discussions and negotiations with a user group if found to be attempting to lure a political member into an administrative issue.

### **8.12 Bonds & Keys**

Cash bonds are required payable prior to hire, and refunded when the arrangement is settled. The amount of bond is determined by Council's adopted and current fees and charges.

Under Section 97 (5) of the Local Government Act 1993, a security deposit (or part) if repaid to the user group is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.

Council must cover administration and other costs incurred in the investment of these monies and interest earned on all deposits will be at the on-call rate received by Council.

Interest earned on security deposits will be used to offset the Security Deposit Administration and Compliance Fee.

Bank guarantees are only accepted for leases and licences 5 years and over and where the agreement returns over \$20K per year.

Keys or passes are provided to the hirer at the commencement of the agreement and must be returned to Council at the conclusion of the agreement. In the event of a key being lost or damaged, it is the responsibility of the hirer to pay for a replacement.

All keys are to be returned at the termination of the agreement and rangers will be instructed to ensure that activities are not being conducted without Council's authority.

Key audits to ascertain user group's compliance are conducted at Council's discretion.

### **8.13 Booking confirmation**

User groups are required to ensure their allocated times are reserved within Council's booking system. Depending on the venue, Council has specific requirements for confirmation of the actual booked times. When an agreement is finalised the booking system is to be updated and any potential booking clashes are identified and resolved as per the Booking Priority Schedule.

Access to the booked land or facility is strictly limited to the times and dates stipulated in the agreement (casual, permanent or licence).

### **8.14 Telecommunication Facilities**

Under the Telecommunications Act 1997, the Commonwealth has the power to erect any telecommunications device on State or Council owned land. User groups must accommodate any directions from Council in this regard.

No relationship is created between user groups and telecommunication companies.

### **8.15 Compliance and Operations**

Council Operational Staff reserve the right to close land and facilities for safety and maintenance purposes. Operational staff will advise Community and Recreation Services with the times the selected locations will be closed and the user group will be notified accordingly.

User groups must have regard to the requirements of operations staff and co-operate accordingly.

User Groups must also have regard to DA stipulations and all regulations made by Council.

Failure to comply with regulations and co-operate with Council's operational staff may render the user group's agreement invalid.

There is no automatic right to occupy or use a canteen and/or store equipment and belongings at sports facilities. Rights to canteens and storage areas run with Seasonal Allocations agreements or with a Clubhouse Licence. In some cases they can be licenced on a separate basis as a Temporary Licence.



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Council reserves the right to initiate any proceedings against any user groups unlawfully occupying or using a facility, canteen or storage areas.

#### **8.16 Illegal use of Council's Land and Facilities**

Usage and occupation must be subject to an agreement identified in this policy.

Users of Council owned or managed recreation and community facilities must comply with the relevant Council policies, bylaws and legislation that Council is obligated to observe, as well as all instructions from a Council Officer. Failure to comply with Council policies etc. or a lawful instruction from a Council Officer or ranger could result in the termination of a user groups' agreement.

Storage of chemicals and/or hazardous substances is prohibited.

Council reserves the right to remove and prosecute any user group breaching conditions, unlawfully occupying and/or using a Council owned facility.

#### **8.17 Helicopter Landings**

From time to time helicopters may be required to land on Council land. User groups are not entitled to any refund, discount or fee waivers if a helicopter landing disrupts its usage.

Helicopter landings are always given first priority.

## 9 PLANS OF MANAGEMENT AND ASSOCIATED DOCUMENTS

### **Relevant Plans of Management**

- St Ives Showground Plan of Management (29 June 1999)
- St Ives Village Green Plan of Management (11 August 1998)
- Ku-ring-gai Bicentennial Park (6 August 2002)
- Gordon and North Turramurra Golf Course Plan of Management (20 November 2001)
- Gordon Golf Course Clubhouse Precinct Plan of Management (20 November 2001)
- Canoon Road Recreation Area Plan of Management (20 June 2000)
- Swain Gardens Plan of Management (10 September 1996)
- Generic Plan of Management for Sportsgrounds (July 2003)
- Open Space Strategy (20 September 2005)
- Generic Plan of Management for Parks (20 September 2005)
- Sport in Ku-ring-gai Strategy (draft)
- Community Groups Centre (16 October 2001)
- Ku-Ring-Gai Performing Arts Resource Centre (20 March 2001)
- Community Halls and Meeting Rooms (17 October 2000)
- East Roseville Community Centre and War Memorial Hall (1 December 1999)
- Ku-Ring-Gai Performing Arts Resource Centre (March 2001)
- Lindfield Library Site (September 2002)
- Generic Children's Services (March 2002)
- Tryon Rd Lindfield
- All future adopted Plans of Management

### **Associated Documents**

- Temporary Licence Agreement template
- Application for Lease or Licence
- Application for Rental Rebate
- Assessment Form – Request for capital Contribution
- Heads of Agreement
- Seasonal Allocation Forms
- Casual and permanent Hire Forms

### **Associated Policies**

- Wet Weather Policy
- Fee Waiver Policy
- Public Notice Policy

## **PROCEDURES** **ATTACHMENT A**

### **Lease / Licence maximum 21 years**

#### **A.1 Purpose**

To establish the conditions precedent and create a procedure by which leases and licences up to the maximum term of 21 years are granted.

These are created for the purpose of providing secured long term tenure to user groups who have contributed significant capital to build or upgrade the land or facility.

Agreements can be structured with option terms to constitute the 21 years and provide a freedom to the lessee/licencee not to exercise the option if circumstances change throughout the term.

#### **A.2 Applicable Properties**

The applicable land and facilities are:

- Major sporting clubhouses
- Golf Club
- Bowling Clubs
- Facilities for Children's Services

#### **A.3 Legislative Framework**

The Local Government Act 1993 – Clauses 45 – 47A  
The Crown Lands Act 1989 – Clause 41-44 and 45 – 50.

For the sake of consistency in this policy, lease and licences, on both Community Land and Crown Reserves will be granted for a maximum period of 21 years.

#### **A.4 Due Diligence**

Prior to the commencement of negotiations, a standard due diligence process is to be undertaken to ensure necessary conditions precedent are achieved:

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1. That a signed undertaking by the applicant is provided to officers accepting responsibility for legal fees both for the user group's and Council's, and a administration fee and that the negotiation process is subject to the Negotiation Protocol.

NB: Legal fees are charged at Council's Legal Services Contracted rate and are discounted for all Community lease and licence negotiations.

2. That any environmental concerns are disclosed to the applicant
3. That the following information is to be provided to assess the user group's suitability as stated in clause 7.7 of the policy.

The information for assessment is:

- **Certificate of Incorporation** – due to legislative requirements regarding indemnification and liability, Council will only grant to incorporated entities agreements for the maximum term.
- **Audited Annual Financial Returns and projections** – to assess the incorporated entity's ability to meet their financial obligations by reviewing the last 5 years of its returns. Projections for income and expenditure to cover the next 5 years are also to be provided.
- **Evidence of improvements** – the incorporated entity must provide to Council a schedule of previous and intended capital expenditure on the relevant facility. Included should be details of past expenditure, dates when improvements were made, details of work done and expenditure, together with any details of any planned future improvements.
- **Internal Investigations** – Council officers will request information from other Council departments to assess the application.

Officers will consider issues such as:

- History of the relationship between the user group and Council
- Account history
- Disputes with Council
- Environmental Concerns
- Budget and operational costs

## **A.5 Timeframe**

For renewals of lease and licences – notice of intention to renew an agreement, or exercise an option, should be provided in writing 6 months prior to the expiry of the agreement.

Once due diligence items have been provided the negotiation process to the executed agreement should take no more than 3 months to complete.

## **A.6 Process**

### **Valuation**

The annual licence fee or rent is determined by multiplying the market value per square metre (as determined by the independent valuation) by the number of square metres

### **Negotiations**

The Negotiation Protocol sets out the process by which negotiations take place. The valuation and rebate amounts are not negotiable. Access areas, times, car parking, maintenance rates and outgoings and any other issues or reasonably requested special conditions are negotiated during this process.

Compulsory insurance provisions are not negotiable. Refusal to comply will render any application to lease/licence Council's facilities ineligible for further consideration.

### **Rebate Structure**

The applicable rebate structure is assessed according to the criteria set out in the Rebate Assessment Schedule and is subject to annual review.

### **Spreadsheet**

A payment schedule for the first 5 years of the agreement is disclosed to the user group. This includes the adjusted amount per year, increased by a fixed amount of 3 - 5 % (pursuant to cl 8.2 of this policy) together with the applicable rebate amount, deducted to reflect the new amount payable for that year. GST and PRMF (if applicable) are expressed in independent columns.

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**Heads of Agreement**

All negotiated terms are then to be written into the standard Heads of Agreement Form and signed by the user group and authorised Council Officer.

**Report to Council**

A report is then submitted to Council for resolution to grant the agreement. All relevant information is provided and the Financial Spreadsheet and Heads of Agreement are included in the form of attachments to the report.

**Public Notice**

Public Notice of Council's intention to lease or licence the land must be effected pursuant to the provisions of the Local Government Act cl 47 and Council's Public Notice Policy.

**Solicitor Brief**

Once public notice requirements are satisfied, Council's solicitors are instructed to prepare the documentation - the lease or licence agreement.

The solicitor will be provided with the:

- Heads of Agreement
- Rental Spreadsheet
- Council Report and Resolution and
- Any other relevant information.

No further changes by the user group are accepted during the drafting period. Council deems that all terms and conditions were agreed to prior to the signing of the Heads of Agreement.

If a dispute arises during the course of preparation of the documents, which cannot be reasonably resolved within a period of 30 days, Council officers may then submit a subsequent report outlining the issue and requesting resolution.

**Holding Over**

It is compulsory to include Holding Over clauses into these agreements to ensure tenure is guaranteed if the agreement expires and renewal has not occurred within a reasonable period of time.

Holding over clauses ensure the agreement remain alive until a new one is negotiated, however is limited to 12 months.

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If the licensee fails to notify Council of its intention to exercise its option within the given time and/or to renew the agreement 6 months prior to its expiry of this holding over Council will commence an EOI process for a new user.

### **Execution**

Document execution is undertaken in this order:

- Receipt of signed and stamped documents from the user group
- A Memorandum requesting the signatures of the Mayor and General Manager and that the Seal is affixed to the document.
- Signed and stamped documents are then returned to Council's solicitor for final execution. Documents will not be deemed executed until Council's Solicitor is in receipt of relevant bonds, Bank Guarantees, insurance certificates and any other mandatory documents.

The documents are then submitted to the relevant Minister for consent.

For administrative purposes all new leases and licences are deemed to commence on the first day of the closest month. Pre-existing agreements will remain valid agreements by virtue of the holding over clauses and will expire on the 31 December or 30 June.

### **A.7 Application of rent/licence fees ascertained by the valuation.**

The independent valuation obtained reflects the market value and base factor of the property which does not automatically reflect the correct licence fee or rental amount.

Further calculations are required for:

- **Bowling Clubs** - Circular No 84/9 issued from the department of Local Government on February 8, 1984 provides the formula to ascertain the rental payable.
- **Childcare Facilities** - market value is based on comparable rates per square metre for kindergartens and childcare centres. The applicable formula is multiply the rate per square meter by the number of children permitted by the centres licence.
- **Golf Clubhouses** - are assessed on market value per square meter, but historically this is provided as a base rent with additional income remitted to council by way of percentage turnover.
- **Sporting Clubhouses** - are based on the market value of land by square metre.

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When two or more clubs share the facility, the total annual market value (based on land area) is pro rated to the number of days and times as scheduled in the agreement.

Once the correct formulae and contingencies are applied, the correct rent/licence fee is determined. It is this amount which is noted in the Reference Schedule of the document. Any applicable rebates will then be deducted from that figure.

**A.8 Booking System Update**

To ensure the times and dates specified are reserved the Booking system must be updated upon execution of the documents.

Any additional requests for use of the land or facility must be confirmed by Council's Booking Liaison Officer, subject to availability. All additional bookings will be invoiced as per Council's adopted and current Fees and Charges.

**A.9 Fees and Charges**

An administration fee is payable by the user group at the outset of negotiations.

100% of the legal fees incurred for preparation of documents for both parties is payable by the user group.

Council's Solicitor will bill the user group after the documents have been finalised and accounts must be paid directly to the solicitor prior to execution of the documents.

**A.10 Cancellation or Termination**

Termination and expiration provisions are clearly taken up in all lease and licence agreements.

When licences provide usage in connection with a number of events, the events must be booked into the booking system at the commencement of each year. If an event requires cancellation due to wet weather, it may be rescheduled, subject to availability. If an event is cancelled without reasonable notice to council, or for any other reason, it will be taken up as an event day and not substituted. One event is equivalent to one day, unless pre booked and specified by the user group.

Any events booked over and above the allowed dates will be booked and charged on a casual basis.



## **ATTACHMENT B**

### **5yr standard Lease or Licence**

#### **B.1 Purpose**

To establish the conditions precedent and to create a procedure by which leases and licences up to the maximum term of 5 years are granted.

These agreements are created for the purposes of providing secured medium term tenure to user groups who may have contributed significant capital to build or upgrade the premises/facility in the past and/or who require the facility on a regular on going basis.

#### **B.2 Applicable Properties**

- Major sporting clubhouses
- Bowling Clubs
- St Ives Showground Facilities
- Childcare Facilities
- Community facilities, Halls and Meeting Rooms with an annual return to Council exceeding \$2000.
- West Pymble Swimming Pool

#### **B.3 Legislative Framework**

The Local Government Act 1993 – Clauses 45 - 47A  
The Crown Lands Act 1989 – Clause 41-44 and 45 – 50.

#### **B.4 Due Diligence**

Prior to the commencement of negotiations a standard due diligence process is to be undertaken. This process ensures that three major necessary conditions precedent are achieved:

1. That a signed undertaking by the applicant is provided to officers accepting responsibility for legal fees (both the user group's and Council's) and an administration fee and that the negotiation process is subject to the Negotiation Protocol.

A deposit may be required with the undertaking.

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- NB:** Legal fees are charged at tendered discounted, Community rates.
2. That any environmental concerns are disclosed to the applicant
  3. That the following information is to be provided to assess the user group's suitability as stated in clause 7.7 of the policy.

The information for assessment is:

- **Certificate of Incorporation** – due to legislative requirements regarding indemnification and liability, Council will only grant to incorporated entities agreements for the maximum term.
- **Audited Annual Financial Returns and projections** – to assess the incorporated entity's ability to meet their financial obligations by reviewing the last 5 years of its returns. Projections for income and expenditure to cover the next 5 years are also to be provided.
- **Evidence of improvements** – the incorporated entity must provide to Council a schedule of previous and intended capital expenditure on the relevant facility. Included should be details of past expenditure, dates when improvements were made, details of work done and expenditure, together with any details of any planned future improvements.
- **Internal Investigations** – Council officers will request information from other Council departments to assess the application. Officers will consider issues such as:
  - History of the relationship between the user group and Council
  - Account history
  - Disputes with Council
  - Environmental Concerns
  - Budget and operational costs

## **B.5 Timeframe**

For renewals of lease and licences – notice of intention to renew an agreement, or exercise an option, should be provided in writing 6 months prior to the expiry of the agreement.

Once due diligence items have been provided, Council anticipates the negotiation process to the executed agreement should take no more than 3 months to complete.

## **B.6 Process**

### **Valuation**

The annual licence fee or rent is determined by multiplying the market value (as determined by the independent valuation) per square metre by the number of square metres.

### **Negotiations**

The Negotiation Protocol sets out the process by which negotiations take place. The valuation and rebate amounts are not negotiable. Access areas, times, car parking, rates and outgoings and any other issues or reasonably requested special conditions are negotiated during this process.

Compulsory insurance provisions are not negotiable. Refusal to comply will render any application to lease/licence Council's facilities ineligible for further consideration.

### **Rebate Structure**

The applicable rebate is assessed according to the criteria set out in the Rebate Assessment Schedule and is subject to annual review.

### **Spreadsheet**

The applicable rebate structure is assessed according to the criteria set out in the Rebate Assessment Schedule.

### **Heads of Agreement**

A payment schedule for the 5 years of the agreement is disclosed to the user group. This includes the adjusted amount per year, increased by a fixed amount of 3 - 5 % (pursuant to cl 8.2 of this policy) together with the applicable rebate amount, deducted to reflect the new amount payable for that year. GST and PRMF (if applicable) are expressed in independent columns.

### **Report to Council**

A report is then submitted to Council for resolution to grant the agreement. All relevant information is provided and the Financial Spreadsheet and Heads of Agreement are included in the form of attachments to the report.

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**Public Notice**

Public Notice of Council's intention to lease or licence the land is subject to the provisions of the Local Government Act cl 47 and Council's Public Notice Policy.

**Solicitor Brief**

Once public notice requirements are satisfied, Council's solicitors are instructed to prepare the lease or licence agreement.

The solicitor will be provided with the:

- Heads of Agreement
- Rental Spreadsheet
- Council Report and Resolution and
- Any other relevant information.

No further changes by the user group are accepted during the drafting period. Council deems that all terms and conditions were agreed to prior to the signing of the Heads of Agreement.

If a dispute arises during the course of preparation of the documents, which cannot be reasonably resolved within a period of 30 days, Council officers may then submit a subsequent report outlining the issue and requesting resolution.

**Holding Over**

It is compulsory to include Holding Over clauses into every lease and licence agreement granted by Council to ensure tenure is guaranteed if the agreement expires and renewal has not occurred within a reasonable period of time.

Holding over clauses ensure the agreement remain alive until a new one is negotiated, however is limited to 12 months.

If the licensee fails to notify Council of its intention to exercise its option within the given time and/or to renew the agreement 6 months prior to its expiry of this holding over Council will commence an EOI process for a new user.

**Execution**

Document execution is undertaken in this order:

- Receipt of signed and stamped documents from the user group
- A Memorandum requesting the signatures of the Mayor and General Manager and that the Seal is affixed to the document.

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- Signed and stamped documents are then returned to Council's solicitor for final execution. Documents will not be deemed executed until Council's Solicitor is in receipt of relevant bonds, Bank Guarantees, insurance certificates and any other mandatory documents.

The documents are then submitted to the relevant Minister for consent.

For administrative purposes all new leases and licences are deemed to commence on the 1<sup>st</sup> of the closest month. Pre-existing agreements will remain valid agreements by virtue of the holding over clauses and will expire on the 31 December or 30 June.

**B.7 Application of rent/licence fees ascertained by the valuation.**

The independent valuation obtained reflects the market value and base factor of the property which does not automatically reflect the correct licence fee or rental amount.

Further calculations are required for:

- **Bowling Clubs** - Circular No 84/9 issued from the department of Local Government on February 8, 1984 provides the formula to ascertain the rental payable.
- **Childcare Facilities** – market value is based on comparable rates per square metre for kindergartens and childcare centres. The applicable formula is multiply the rate per square meter by the number of children permitted by the centres licence.
- **Sporting Clubhouses** – are based on the market value of land by square metre.
- **When two or more clubs share the facility**, the total annual market value (based on land area) is pro rated to the number of days and times as scheduled in the agreement.
- **St Ives Showground Facilities** are subject to a number of factors, have the improvements been regarded in the valuation=direct comparison with rentals of land analysed on a rate per square metre.
- **Community Halls and Meeting Rooms** with an annual return to Council exceeding \$2000. Direct comparisons with market values of older style office space.

**B.8 Fees and Charges**

An administration fee is payable by the user group at the outset of negotiations.

100% of the legal fees incurred for preparation of documents for both parties is payable by the user group.

The Solicitor will bill the user group after the documents have been finalised and accounts must be paid directly to the solicitor, prior to execution of the documents.

**B.9 Booking System Update**

To ensure the times and dates specified and agreed to, by both parties are protected, they must be booked into the Booking system upon signing of the HEADS OF AGREEMENT.

Any additional requests for use of the land or facility must be confirmed by Council's Booking Liaison Officer, subject to availability. All additional bookings will be invoiced as per Council's adopted and current Fees and Charges.

Licencees may request additional dates for postponed bookings, if relevant, subject to the Wet Weather Policy.

**B.10 Cancellation or Termination**

Termination and expiration provisions are clearly taken up in all lease and licence agreements.

When licences provide usage in connection with a number of events, the events must be booked into the booking system at the commencement of each year. If an event requires cancellation due to wet weather, it may be rescheduled, subject to availability. If an event is cancelled without reasonable notice to council, or for any other reason it will be taken up as an event day and not substituted. One event is equivalent to one day, unless pre booked and specified by the user group.

Any events booked over and above the allowed dates will be booked and charged on a casual basis.

## ATTACHMENT C

### 12 Month Temporary Licence Agreement

#### C.1 Purpose

To provide a temporary licence agreement for properties and facilities available for one year at a time.

#### C.2 Applicable Properties

- Community rooms located within larger facilities where shared access to common areas such as kitchens and toilets are provided
- Small, free standing properties that are made available for community services.
- St Ives Showground facilities

#### C.3 Legislative Framework

LOCAL GOVERNMENT ACT – S45 - 47

LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 116

CROWN LANDS ACT – S45 -49

#### C.4 Due Diligence

Prior to the commencement of negotiations for a new agreement, a standard due diligence process is to be undertaken.

The information for assessment is:

- **Evidence of the applicant being a Community Group:**

A Community Group under this Policy is an entity which provides a benefit to the community on a non profit basis, has a constitution or charter and a program of services or activities which confirm a commitment to meeting the cultural, social and/or recreational needs of the community.

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- **Audited Annual Financial Returns and Projections**

Council will assess the incorporated entity's ability to meet their financial obligations by reviewing the last 2 years of its returns. Projections for income and expenditure to cover the next 2 years are also to be provided.

- **Internal Investigations** – Council officers will request information from other Council departments to assess the application. Officers will consider issues such as:
  - History of the relationship between the user group and Council
  - Account history
  - Disputes with Council
  - Environmental Concerns
  - Budget and operational costs

#### **C.5 Timeframe**

Agreements are deemed to commence each calendar year and applications to renew are to be submitted by November 1 the preceding year. Each December, all recommendations for hire and/or renewal are reported to Council for determination.

#### **C.6 Process**

##### **Application**

All applications to create or renew a temporary licence must be received in writing by the 1 November each year and addressed to the Manager, Community and Recreation Services. Applications received after November 1 will not be accepted. It is the sole responsibility of the licensee to apply or apply to renew within the requested timeframes.

##### **Negotiations**

The standard terms and conditions of the licence, or compulsory insurance are not negotiable. Council reserves the right to accept or reject any other proposed terms by the applicant.

##### **Report to Council**

For the first OMC each November, a generic report to Council is submitted requesting that Council resolves to grant the mentioned licences for the following year.



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**Public Notice**

Public Notice of Council's intention to lease or licence the land must be effected pursuant to the provisions of the Local Government Act cl 47 and Council's Public Notice Policy.

**Solicitor Brief**

The solicitor will be provided with the Council resolution to grant the licences, together with details of the applicants and any approved additional terms to be included.

**Holding Over**

Holding over clauses are not included into the 12 month temporary licence.

**Execution**

Document execution is undertaken in this order:

- Receipt of signed and stamped documents from the user group
- A Memorandum requesting the signatures of the Mayor and General Manager and that the Seal is affixed to the document.

Signed and stamped documents are then returned to Council's solicitor for final execution. Documents will not be deemed executed until Council's Solicitor is in receipt of relevant bonds, Bank Guarantees, insurance certificates and any other mandatory documents.

No Ministerial Consent is required.

**C.7 Rental/Licence Fee Assessment Importation into contract**

The Temporary Licence is based on Council's adopted and current fees and charges and is charged on a square meterage basis.

**C.8 Booking System Update**

To ensure the times and dates specified and agreed to, by both parties are protected, they must be booked into the booking system upon receipt of the confirmation by the user group to renew the agreement.

**C.9 Termination and Cancellations**

The temporary licence can be cancelled if essential terms and conditions are breached.

When licences provide usage in connection with a number of events, the events must be booked into the booking system at the commencement of

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each year. If an event requires cancellation due to wet weather, it may be rescheduled, subject to availability. If an event is cancelled without reasonable notice to council, or for any other reason it will be taken up as an event day and not substituted. One event is equivalent to one day, unless pre booked, specified by the user group and permitted by Council officers.

Any events booked over and above the allowed dates will be booked and charged on a casual basis.

## ATTACHMENT D

### Permanent Hirer

#### D.1 Purpose

To establish the conditions precedent and to create a procedure by which the permanent hiring of Council's facilities and land can be achieved in the most time and cost effective manner.

Hire of facilities and land under this arrangement allows for a continuous arrangement, at set times. At other times, when the arrangement does not apply, the facility/land is available for other use.

#### D.2 Applicable Properties

Facilities for permanent hire:

- Sporting facilities and fields
- Community Halls and Meeting Rooms
- St Ives Showground facilities

#### D.3 Legislative Framework

Local Government General Regulation 2005 – Clause 116

#### D.4 Due Diligence

Create an undertaking at the outset of the agreement each year that:

- The user group has the financial capacity to meet their liabilities.
- Community or Commercial rates will be determined.
- Accounts will be settled in relevant timeframe.
- All public liability insurances are current and extending concurrently for the duration of the yearly agreement.

**Internal Investigations** – Council officers will request information from other Council departments to assess the application. Officers will consider issues such as:

- History of the relationship between the user group and Council
- Account history
- Disputes with Council
- Environmental Concerns
- Budget and operational costs

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Hire arrangements and booking times will not be confirmed until Council is in receipt of all the above documents.

**D.5 Timeframe**

Hire for up to one year only at a time.

**D.6 Process**

Land and facilities relevant can be either on Commercial and Community based arrangements.

All applications to create a new or to renew an existing permanent hire agreement must be received by the 1 November each year. The application must be made in writing and addressed to the Bookings Liaison Officer Community and Recreation Services. It is the sole responsibility of the user group to apply within the requested timeframes.

A Commercial hire arrangement applies to groups who are performing a commercial service or trade and charged commercial rates accordingly. Community hire arrangements are subject to Fees and Charges at a discounted rate.

Council reserves the right to request financial reports, Memorandum of Associations and any other relevant documentation to satisfy itself that the user is being charged on the correct basis, ie is the user group a community or commercial hirer.

Failure to provide to Council requested information will result in the group being charged at the commercial rate.

Permanent hirers have the option to request a renewal of their agreement for the following year. Forms sent by council in the preceding October are to be completed and returned prior to 24th December in order to be considered for ongoing arrangement.

If a user group wishes to terminate the agreement at any time, 6 weeks notice is required. A refund will be provided for any remaining bookings.

In the event of non payment of accounts, 90 days and over, the permanent hire agreement will be automatically terminated and all overdue amounts will be deducted from the bond Council holds. Legal action will be commenced to recover any balances outstanding over and above the value of the bond.

#### **D.7 Fees and Charges**

As per Councils adopted and current Fees and Charges and based on an hourly rate.

#### **D.8 Booking System Update**

To ensure the times and dates specified are protected, they must be booked into the booking system upon receipt of the confirmation by the user group to renew the agreement.

#### **D.9 Rescheduling & Cancellation**

All alterations to booking arrangements must be made in writing.

- Where (4) weeks or more notice is given, there will be no charge.
- Where less than four (4) weeks notice is given, the hire fee for the month will be charged in full.
- For changing bookings the Booking Administration fee will apply for confirming new bookings.

Council reserves the right to:

- Refuse bookings for functions it deems inappropriate.
- Relocate hirers to another facility or venue.
- Cancel any booking with one (1) month's notice.
- Cancel any booking should the venue be unfit for the purpose and will provide a full refund of all fees.
- Effect immediate cancellation of any function if deemed necessary by the General Manager.

Please note Council will not be liable for loss or damage or otherwise in consequence of the exercise of this right.

## **ATTACHMENT E**

### **Seasonal Allocation**

#### **E.1 Purpose**

The seasonal allocation process provides sporting groups with a fair and equitable system for sports field allocation in accordance with the season.

The procedure allows Council to assess the demand for each sporting facility and ensures requests from each club/association are adequately accommodated. It ensures a fair and practical assignment of sporting facilities to each club/association.

#### **E.2 Applicable Properties**

Council's sporting facilities include;

- Sportsgrounds
- Netball Courts
- Tennis Courts
- St Ives Showground – Main Arena only
- Cricket Practice Nets
- Canteens

Any future approved facilities will be subject to this procedure.

#### **E.3 Legislative Framework**

LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 116 (c)

#### **E.4 Due Diligence**

To assess the priority to which sporting groups are granted allocation for that season, an allocation pack is sent to all groups at prior to the commencement of the season:

The seasonal allocation forms must be completed and returned to Council by the date specified on the allocation pack for that season.

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Council officers will assess the applications and give priority based on:

- **Availability of the facility**
  - Any proposed capital works at the land or facility during the season dates.
  - Operational and maintenance requirements
  - Operational capacity (ie rest nights for Sportsgrounds)
  
- **User Group**
  - History and frequency of use
  - If there is a valid licence for the field clubhouse
  - If the user group is in dispute with Council for any other reasons apart from ground allocation.
  - Club numbers and demand for the facility.
  
- **Internal Investigations**

History of the relationship between the user group and Council

  - Account and allocation history
  - Disputes with Council
  - Environmental Concerns
  - Budget and operational costs

User groups who have a Capital Contribution Agreement with Council will not be given priority by virtue of the agreement, unless specified.

**E.5 Timeframe**

Allocation packs are sent three times each year:

- Summer Season – Allocated in June for September - March
- Winter Season – Allocated November for April - August
- Schools - Allocated in October for the next school year – valid for school days and hours only.

Each is given two weeks to complete and return the application to Council. Seasonal allocations are then processed onto Council's booking system and are prioritised over permanent or casual hire arrangements. Confirmation letters and a detailed spreadsheet confirming the allocated venue, dates and times are returned to the sporting group four weeks later.

During the period between summer and winter sporting activities, Council is deemed to have priority access to the facilities and land for ground preparation, maintenance, repairs etc.

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If a field is available before the season date, it can be allocated; however, no guarantee on preseason/postseason requests can be provided. This approval is subject to the discretion of the Operations department, who are responsible for preparation of the fields for the upcoming season.

**E.6 Process**

Council will only communicate with the named representative of the user group on the application forms.

If a location is requested by two or more clubs, each club will be notified by Council. It is the responsibility of the clubs to negotiate their requirements with one another and then to notify in writing to Council the details of their arrangements.

If a dispute cannot be resolved between two clubs, by the confirmation dates as specified on the allocation pack, the matter may be referred to Council's Open Space Reference Committee for discussion and resolution or an alternative option derived from any unallocated land or facility.

Refusal to comply will render any application to Council's facilities ineligible for further consideration.

**E.7 General Conditions**

Council's Operations Department will determine the capacity and standard services available at each facility. Hirers are responsible for the cost of any additional services or allocations requested.

Storage of equipment at Council facilities, is not permitted unless subject to an agreement. Council reserves the right to remove all unauthorised non-Council locks and remove and dispose of any equipment left in amenities buildings without written Council consent.

Council staff has access to facilities at all times for maintenance and cleaning purposes.

Council will not be held liable for any damage or loss of any property.

Council's floodlit facilities are controlled by an automated system. Where possible, appointed club representatives will be given floodlight control of specific facilities during designated allocations periods.

All hires must comply with Council's Wet Weather Policy.



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**Allocations Preferences**

Council will give preference to seasonal hirers as follows;

- Community or sporting clubs/associations
- Public/state schools
- Private schools
- General community/commercial and casual hirers

**Sunday allocations**

To ensure the community has access to public facilities Council will allocate a maximum of 15 Sundays per season to seasonal hirers. Council will not allocate Sunday bookings to hirers that do not nominate specific dates. Some land, sportsgrounds or facilities may not be available for Sunday allocation.

**Invoicing**

Invoices are raised as follows:

- Summer season – Once a year in October/November
- Winter Season – Once a year in May/June
- School allocations – Twice a year. Once in February (Term 1 and Term 2) and once in July (Term 3 and Term 4)

Requests for use of facilities outside the terms and dates of the seasonal allocation period or any additional allocations made after the start of the season are to be charged as casual rates under Council's adopted and current fees and charges.

**E.8 Booking System Updates**

Council will not process any allocations without submission of a completed Council bookings request form or allocation pack.

To ensure the times and dates specified and agreed to, by both parties are protected, they must be booked into the Booking System upon receipt of the confirmation by the user group to renew the agreement.

Bookings are not confirmed until times and dates are entered into the booking system and written confirmation has been sent from Council.

**E.11 Fees and Charges**

As per Council's adopted and current Fees and Charges

## E. 12 Cancellations and rescheduling

All cancellations or alterations to booking arrangements must be made in writing.

- Where the hirer cancels their allocations after confirmation has been provided, the hirer will be responsible for all seasonal costs of hiring that facility during the period it is not allocated to another user group.
- (4) four weeks notice is given, the hire fee for the month will be charged in full.
- A Booking Administration Fee will always apply.

Council reserves the right to:

- Cancel any booking with (1) month's notice or if the venue is unfit for the purpose of the intended hire.
- Relocate hirers to another facility or venue fit for the purpose of the intended hire with reasonable notice.
- Effect immediate cancellation of any function if deemed necessary by the General Manager.
- Refuse bookings for functions it deems inappropriate.
- 

Council will not be liable for loss or damage or otherwise in consequence of the exercise of this right.

The Booking Administration Fee is non-refundable.

## E.12 Associated Documents and Requirements

- **Ku-ring-gai Insurance Inspection Requirements** - Organisations using any netball courts, ovals, playing fields and/or designated areas for the purpose of organised sport and/or other activities agree to do so under these terms and conditions.
- **Sportsground Wet Weather Policy** – This policy is intended to apply in situations where Council's sportsgrounds are affected by wet weather and the decision to play or train on sportsgrounds adversely affected will cause damage to the playing surface
- **Seasonal Conditions of Hire Netball Courts, Ovals, Sportsgrounds and Other Designated** – There are general conditions to hiring Council's sporting facilities that include the time of use (weekdays/nights and weekends, usage of floodlights, pre and post season bookings, casual bookings).

## ATTACHMENT F

### Casual Hire

#### F.1 Purpose

Casual hiring arrangements pertain to one off use, although continuous bookings over a defined period of time can be made this way.

Land and facilities reserved under lease or licence agreements, seasonally allocated and permanent hire arrangements take priority over the causal arrangement.

#### F.2 Applicable Properties

- Facilities for casual hire:
- Tennis court hire
- Parks and reserves hire
- St Ives Showground facilities
- Sporting facilities and fields
- Community Halls and Meeting Rooms
- Other miscellaneous Community Lands

#### F.3 Legislative framework

LOCAL GOVERNMENT (GENERAL) REGULATION 2005 - REG 116

#### F.4 Due Diligence

N/A

#### F.5 Timeframe

No notice is required and the facility is provided subject to availability.

#### F.6 Process

Facilities for casual hire may be booked by telephone or email. Casual hire arrangements will only be made if the facility is free and not subject to reservations or allocations under a lease or licence; seasonal allocations or booked for permanent hire.

Payment should be made by credit card/eftpos prior to use.

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A bond may be required. Determination of a bond is subject to the Council officer's discretion and depending on the facility and the type of use the bond can range from \$330 to \$1000.

Keys are handed over to the casual hirer, once the hire fee is paid and any bond collected. Keys are to be returned at the end of the hire period. If keys are misplaced or damaged, the cost of replacement is deducted from the bond.

In the case of bookings for the purposes of large parties, Council officers will request or recommend the hiring of a professional and independent security service. Details and proof of retention must be provided to Council officers prior to the event.

Compulsory insurance provisions are not negotiable. Refusal to comply will render any application to hire Council's facilities ineligible for further consideration.

#### **F.7 Fees and Charges**

All casual hire arrangements are subject to Council's adopted and Current Fees and Charges.

Applications for fee waiver are assessed under the Policy to Waive or Discount Fees following a request in writing.

#### **F.8 Booking System Updates**

To ensure the times and dates specified and agreed to, by both parties are protected, they must be booked into the booking system upon the causal booking.

#### **F.9 Cancellations and Rescheduling**

All cancellations or alterations to booking arrangements must be made in writing.

- Where (2) weeks or more notice is given, there will be no charge.
- Where less than two (2) weeks notice is given, the hire fee for the booking will be charged in full or the hirer has the option of selecting an alternative day or facility.
- For changing bookings the Booking Administration fee will apply for confirming new bookings.

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Council reserves the right to:

- Refuse bookings it deems inappropriate.
- Relocate hirers to another facility or venue
- Cancel any booking with two (2) weeks notice.
- Cancel any booking should the venue be unfit for purpose and provide a full refund of all fees.
- Effect immediate cancellation of any function if deemed necessary by the General Manager.

Please note that the Council will not be liable for loss or damage or otherwise in consequence of the exercise of this right.

## **ATTACHMENT G**

### **Contract for Provision of Services**

#### **G.1 Purpose**

To establish the conditions precedent and to create a procedure by which contracts for provision of services can be created.

#### **G.2 Applicable Properties/Facilities**

Usually a contract is required to reflect an agreement between Council and a user group for a provision of a service related to Council's land and/or facility.

A lease or licence agreement cannot adequately facilitate this agreement.

Examples of where contracts for the Provision of Services are required are:

- Contract for the supply of professional services for the golf club, ie professional services and teaching;
- Contract to manage a council owned facility such as the swimming pool, where the service required is the operation of the swimming pool, lessons, management etc.

#### **G.3 Legislative Framework**

S55 Local Government Act – tendering requirements

#### **G.4 Due Diligence**

An Expression of Interest Process is undertaken to select the best suited contractor. Unless otherwise approved, at the expiry of the contract, a new EOI will be commenced.

#### **G.5 Timeframes**

No times frame is specified as EOI requirements are specific for the purpose of the requested contract.

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**G.6 Process**

There is no set process for the creation of this type of contract due to the differing service requirements for which it can provide. This policy deems the process will be developed and finalised by Council officers and finalised by Council's solicitor following a resolution to enter into the specific contract for provision of the required service.

A contract for the provision of services may or may not attract a regular payment to Council.