

## LEASES AND LICENCES OF COUNCIL PROPERTY:

### NOT-FOR-PROFIT ORGANISATIONS 1.49

#### POLICY STATEMENT

Council is the registered proprietor of property, classified under the *Local Government Act 1993* as “Community” and “Operational” Property.

Not-For-Profit Organisations (“NFPO”) enter into Leases or Licences of Council Property with Council and the classification of that land may be “Community” or “Operational” Property.

The purpose of this policy is to provide benefits to the Council and its residents by:

- defining the general terms and conditions of Leases and Licences to Not-For-Profit Organisations in respect of Council Property;
- ensuring that leasing and licensing of Council Property is consistent, transparent, fair and impartial;
- ensuring that the lease or licence is in accordance with the *Local Government Act 1993*, *Local Government Regulations* and *Office of Local Government Guidelines*;
- encouraging sound management of Council Property.

It should be noted that this Policy does not apply to road reserves or Telecommunications Facilities. Leases of roads are dealt with under the *Roads Act 1991*. Leases for telecommunications facilities are dealt with under the *Telecommunications Act 1997*.

#### RELATED LEGISLATION, CIRCULARS OR GUIDELINES

*Local Government Act 1993*  
*Real Property Act 1900*  
*Office of Local Government Guidelines*  
*Crown Lands Act 1989*  
*Crown Land Reserve Trust Handbook*

#### DOES THIS DOCUMENT REPLACE AN EXISTING POLICY, PROCEDURE OR PLAN?

Yes.



# Policy

1.23 Lease of Council Land - Personal Guarantees  
1.49 Lease of Council Land - Unsolicited Applications

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## RELATED COUNCIL POLICY OR PROCEDURE

Wingecarribee Shire Council Code of Conduct  
Statement of Business Ethics  
Asset Management Policy  
Leases and Licences of Council Property – Community Land

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## COUNCIL POLICY

### 1. Evidence of not-for-profit status and capacity

Council is to ensure that Leases or Licence of Council Property do not impose an unreasonable burden on general revenue. Council is to obtain a reasonable community dividend (cost neutral) from the use of community land or building having regard to:

- (i) proposed Lessee or Licencee's capacity to pay;
- (ii) the merit of the service or facility provided by the proposed Lessee or Licensee.

In the interests of probity and transparency, it is necessary for the proposed Lessee or Licensee of Community Land to provide:

- (a) evidence that the proposed Licencee or Lessee is an organisation which is not incorporated for profit purposes or private gain by providing certificate of registration with Australian Charities and Not-for-Profits Commission (ACNC) and/or certificate issued by Director General stating registration status, registered name, official address and terms of constitution;
- (b) demonstrated capacity of Licencee or Lessee to meet the commitments under lease or licence terms, prior to the lease or licence being granted;

### 2. Resolution of Council

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

### 3. Licences of Crown Land – General



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

#### 4. **Leases or Licences of Operational Land – General**

If the Council Property to be leased or licensed to a NFPO is classified as “Operational” land, Council is at liberty to enter into a Lease or Licence of the Property without giving public notice or exhibiting the proposed Lease or Licence.

#### 5. **Leases or Licences of Community Land – General**

Pursuant to its charter, Council is obliged to comply with the Local Government Act 1993 with respect to the Lease or Licence of Council Property that is classified as “Community” land. The relevant sections of the Local Government Act 1993 have been set out below:

##### **Section 46 (Local Government Act 1993)**

- (a) Prior to preparing the lease or licence, it must be established that a plan of management exists for the community land and that the plan expressly authorises the grant of a lease for the stated public purpose.
- (b) Leases of community land cannot exceed 21 years, inclusive of any term(s).
- (c) Leases or Licences for five years or less do not require advertising or the grant of the consent of the Minister for Local Government, subject to the Regulations and exceptions set out in those Regulations.

##### **Submissions/Objections to the Lease – Section 47(4) and (5)**

- (a) Details of all submissions must be included in a report to Council to enable the proposal to be reconsidered, having regard to the content of each submission.
- (b) If possible, the advertising of the development application and the section 47 notice should occur at the same time. This will enable the public to comment on the lease and development proposal in one submission. Otherwise, an objector may end up making two similar submissions, requiring Council to consider the proposal on two separate occasions.

##### **Application for the Minister’s Consent - Section 47(6)**



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- (a) If a person makes a submission by way of objection, Council must obtain the Minister's consent prior to granting the lease or licence. If no objections are received, then the Minister's consent is not required.
- (b) The application to the Minister should be by letter which must be signed by the General Manager.
- (c) If a draft lease has been prepared, then a copy should be sent with the application to the Minister. Otherwise, a summary of the key lease or licence terms should be included in the application.

## 6. **Payment of Rates**

- (a) NFPOs that are Lessees or Licensees of Council Property are not required to pay rates levied against the Council Property including land rates, water access and sewerage charges.
- (b) Council will pay the rates referred to in clause 6(a) levied in respect of Council Property that is under Lease or Licence to a NFPO.

## 7. **Payment of Outgoings**

NFPOs that are Lessees or Licensees of Council Property are required to pay 100% of outgoings with respect to the property including but not limited to electricity, gas, telephone, internet, water usage and waste charges.

## 8. **Public Liability Insurance**

- (a) All Lessees or Licensees of Council Property are required to effect and maintain Public Liability Insurance for a minimum of Twenty Million Dollars (\$20,000,000) against any accident, injury or damage resulting from or incidental to the use or occupation of the Council Property. The Public Liability Insurance policy must be with an insurer approved by Council and note the interest of Council as owner of the land.
- (b) All Lessees or Licensees of Council Property must furnish to Council in each year a Certificate of Currency of Public Liability Insurance.

## 9. **Development Approval**

NFPOs that are Lessees or Licensees of Council Property are required to ensure that application is made for development approval in respect of the property. All costs in respect of the application for development approval are borne by the applicant. It should be noted that while Council's General Manager will endorse consent on an application as Property Owner, Council as local consent authority is responsible for the approval or otherwise of applications for development.



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## 10. **Asset Management Policy**

This policy should be read in conjunction with Council's Asset Management Policy.

## 11. **Administration and Management**

Administration and management of leases and licences of Council's Property will be undertaken in accordance with the provisions of this policy.

### **BREACHES OF THIS POLICY AND RELATED PROCEDURES**

A breach of this policy will be taken to be a breach of the relevant Code of Conduct and complaints alleging a breach of this policy must be made in accordance with the relevant Code of Conduct and will be dealt with in accordance with the provisions of the *Procedures for the Administration of the Model Code of Conduct*.

### **APPLICATION AND DISTRIBUTION**

**It is mandatory for all Council officials to comply with this Policy.**

This policy and guidelines are available on Council's website under Policies.

<b>APPROVED BY: Council MN 326/14</b>	
<b>EFFECTIVE: 26 November, 2014</b>	<b>REVIEW DATE: November, 2016</b>
<b>DISTRIBUTION: All Managers, Councillors, Intranet, Internet,</b>	
<b>RESPONSIBLE COUNCIL DEPARTMENT/OFFICER: Property Officer Finance (Property)</b>	



## KEY RESPONSIBILITIES

Position	Responsibility
Mayor	To lead Councillors in their understanding of and compliance with this Policy and Procedures.
General Manager	<p>To lead employees (either directly or through delegated authority) in their understanding of and compliance with this Policy and Procedures.</p> <p>To approve resources to develop, implement and review this Policy and Procedures.</p>
Responsible Officer	<p>As the “principal officer” under the Government Information (Public Access) Act (GIPA), the General Manager is responsible for determining the outcome of GIPA applications. The General Manager has delegated his responsibility to other Council employees as outlined below.</p> <p>The GIPA employees are responsible for making initial decisions regarding release of information within the time periods stipulated in the GIPA Act. In this function, the GIPA employees may deal with prospective applicants and liaise with organisation units regarding access to information.</p>
Deputy General Managers	To communicate, implement and comply with this Policy and related Procedures.
Deputy General Manager Corporate & Strategy	<p>To ensure (directly or through delegation) the distribution and communication of the Policy and Procedures to specified persons.</p> <p>To ensure (directly or through delegation) the approved Policy and Procedures are available in hard copy and electronically on Council’s website.</p>
Human Resources Unit Leader	Facilitate the provision of regular training to all Council officials on their role and responsibilities in relation to this Policy and related procedures.
Group Managers and Managers	<p>To implement this Policy and related procedures.</p> <p>To lead employees in their understanding of, and compliance with, this Policy and Procedures</p>
Information Technology Manager	To assist with the development of systems to support public access to this Policy, Procedures and related information. To ensure IT requirements are available to facilitate compliance with the Act.
All Council employees	To comply with this Policy and related procedures.

