



# POLICY MANUAL

<b>Policy title:</b>	<b>LEASING OF COUNCIL PROPERTIES POLICY</b>
<b>Policy number:</b>	<b>1.8.25</b>
<b>Objective:</b>	<b>That Council owned property assets are leased on a basis that provides optimum benefit to the Lismore community</b>
<b>Link to community vision/service:</b>	<b>Civic Leadership/Management</b>
<b>Program Area:</b>	<b>Assets and Support Services</b>
<b>Policy created: 9/12/08</b>	<b>Council reviewed: 8/01/14</b>
<b>Last reviewed by staff: 8/01/14</b>	<b>TRIM Ref: ED10/15864 &amp; ED16/27268</b>

## Introduction

Council owns or is reserve trust manager for a range of properties throughout the Lismore City Council area. Many of these properties are tenanted under lease agreements. Some are tenanted on a commercial basis and many are tenanted on the basis of varying arrangements depending on the circumstances of the case. In particular community groups often seek reduced rental or other subsidies e.g. payment of rates, to assist in the provision of their services to the local community. These subsidies are often a vital ingredient to the ability of a community group to sustain their operations and deliver their services.

In the past Council has considered requests from community groups for financial assistance in the form of reduced rental or other subsidies relating to their occupation of Council properties (e.g. payment of rates) on an ad-hoc and case by case basis. This has highlighted the need for a consistent and transparent approach to the leasing of all Council properties.

## Objectives:

The objectives of this policy are:

- To link the subsidised leasing of Council property to Council's Strategic Plan.
- To provide a consistent, transparent and fair approach for the leasing of Council Property.
- To ensure Council's Building Assets are adequately funded and maintained.
- To ensure that legislative requirements are met.
- To define the circumstances in which Council will consider providing assistance to community groups in the form of rental relief or other subsidies related to their occupation of a Council owned or managed property.

## Application of Policy

This policy applies to all Council owned or managed property/ building assets where lease agreements would normally apply, subject to the exclusions below.

The policy does not apply to:

- Leases or other arrangements involving the occupation of land only.

- Leases or other arrangements involving the use of Council owned or managed land or building assets that are occupied by emergency services. These arrangements are the subject of separate agreements and some have specific legislative requirements to be met.
- Leases or other arrangements involving buildings that are owned by other parties, but which have been constructed upon land owned or managed by Council.
- Leases or other arrangements that apply to properties on Crown land. These properties are subject to specific requirements of the Crown.

### **Policy Statement**

Council's policy is to earn a commercial return on any property asset that it leases to third parties.

Council may at its discretion subsidise a lease arrangement and these circumstances are set out later in this document.

### **Guidelines for Lease Agreements**

All lease agreements will take the form of a conventional commercial lease and as such will include the following features:

- It will confer a right of exclusive possession on the Lessee (tenant). A Lessor (landlord) is usually only entitled to enter and remain upon the leased premises in limited, defined circumstances. Allied to this are the Lessor's implied covenant to the Lessee for quiet enjoyment, and non-derogation from the grant.
- It will define the amount and method for paying and reviewing rent and outgoings. Outgoings include land tax, utility bills, rates, repairs and maintenance costs and insurance calculated as a proportion of total leasable floor area in the building occupied by the tenant.
- It will impose obligations on the Lessee to only use the leased premises for a permitted purpose, and to comply with obligations defined in the Lease to ensure the tenant does not damage (and thereby affect the value of) the leased premises.
- It will define limited powers for the Lessor to enter and remain upon the leased premises for repair and maintenance.
- The term of a lease agreement will generally be five years with the right to renew for a further five years, subject to the requirements of any legislation that may influence the term of a lease e.g. community land.

As Lessee, a tenant's responsibilities will include:

- Paying rent to Council.
- Paying all fees and statutory charges (including land rates, electricity and water consumption).
- Cleaning and security.
- Minor maintenance of the building and surrounds within the capacity of the organisation. (Minor maintenance is defined to be maintenance that does not extend the life of the building).
- Notifying Council of maintenance issues that may, if not corrected, be detrimental to the longevity of the building or hazardous to occupants.

As the Lessor, Council's responsibilities will include:

- Maintaining the building in accordance with statutory obligations.
- Assessing and responding to maintenance requests received from the Lessee.

### **Subsidised Lease Arrangements**

Council will consider subsidising lease arrangements for community based groups in certain circumstances.

To be considered eligible for a rental or any other subsidy as part of the lease the community group or organisation must first demonstrate that they are:

- A not for profit community based organisation.
- Have open membership, i.e. membership is open to the general public.
- An incorporated association.
- Providing a necessary and beneficial service to the general community.

In addition, Council will require that any community based group proposing to lease a Council owned property, whether at a subsidised rental or not:

- Demonstrate an ability to meet the financial obligations of a Lease arrangement (provide a copy of the most recent audited financial statements and a business plan where appropriate).
- Maintain appropriate insurances, including public liability and comprehensive contents insurance.

Applications for subsidised rental will be considered on a case by case basis and must be made in writing to Council. The written application must address the six criteria outlined above and provide any further information considered relevant or requested by Council.

Potential Lessees who seek and are eligible for a rental or other subsidy must indicate the amount which they would be prepared to pay, and the reasons for requesting the subsidy.

As part of Council's consideration of the application, the methodology outlined below will be applied to determine the amount of subsidy sought. The commercial based rental amount (including consideration of statutory charges such as rates etc.), will be determined and the difference between this amount and the amount offered by the community group will be the value of the subsidy sought.

Once Council makes a determination on the amount of subsidy to be provided, if any, there will be no further consideration of the matter until the term of the current lease expires.

### **Methodology to Determine Rental Amount**

In order to determine the rental that should apply to any Council property, a process will be adopted that may include any or all of the following, depending on the circumstances of the case:

- An independent rental valuation report will be obtained from a qualified valuer.
- Advertising for a potential Lessee by Expressions of Interest or tender.
- Consideration of any offer by a potential Lessee to undertake certain maintenance activities that would otherwise be a cost to Council.
- In cases where potential Lessees offer to undertake maintenance activities that would otherwise be a cost to Council, an assessment of their capability to actually complete those activities.
- Council Community Services staff may assist in the decision making processes.

### **Lease Renewals**

At the expiration of an existing lease, the Lessee is not guaranteed or entitled to a new lease for the premises. Where properties become vacant, either following the expiration of an existing lease, or for any other reason, Council will as a minimum follow any requirements of the Local Government Act. Usual practice for Council will be to conduct an expression of interest or tender process to identify and determine a Lessee for the property. Where an expression of interest or tender process is not to be conducted, the matter will be reported to Council for approval, prior to renewing or entering a lease.