



# **DRAFT Policy**

## **Leasing and Licensing**

**2021**

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## Information about this document

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### Document History

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E2020/2468		Draft Policy

### Further Document Information and Relationships

Related Legislation	Byron Local Environmental Plan 2014 and planning legislation Crown Land Management Act 2016 Local Government Act 1993 Real Property Act 1900 Residential Tenancies Act 2020 Retail Leases Act 1994 Roads Act 1993 Work Health and Safety Act 2011
Related Policies	Community Strategic Plan, community objective 5.6 Policy 12/008 Section 356 Donations Rates, Water and Sewerage Charges Policy 5.52 Commercial Activities on Coastal and Riparian Crown Reserves Policy Children's Services 2019 Policy Community Initiatives Program (Section 356) 2016 Policy Debt and Financial Hardship Policy 2019 Policy Road Airspace 2019 Policy Supporting Partnerships, 2019
Related Standards, Procedures, Statements, documents	Byron Shire Council Business Ethics Statement 2020 including requirements of Resolution (17-585) Byron Shire Council Guidelines – Partnership Proposals 2017 Byron Shire Council Internal Procurement Guideline 2019 (E2020/34505). ICAC Direct Negotiation Guidelines 2018. Office of Local Government NSW – Public Private Partnerships Guideline 2005

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.



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## 1. Objectives

To provide a transparent framework for the leasing and licensing of Council owned and managed facilities.

## 2. Scope

The Policy applies to Council:

- owned land and facilities excluding Holiday Parks, and
- managed Crown Land and facilities,

that are suitable for long-term leasing and licensing.

## 3. Definitions

List here all the terms and acronyms used in the Policy, and their definitions. List in alphabetical order.

<b>Policy acronym</b>	<b>Definition</b>
Community Land	means Council owned land classified as community land under the Local Government Act 1993 (NSW).
Council	means Byron Shire Council.
Facilities	means buildings and other improvements built on the land excluding service infrastructure and connections.
Lease	means exclusive use of land and or facilities for an agreed purpose and term in exchange of rent.
Licence	means non-exclusive right to occupy land and/or facilities for an agreed purpose and term in exchange for rent.
Long-term	means a lease or license contract term over twelve-months.
Operational Land	means Council owned land classified as community land under the Local Government Act 1993 (NSW).
Plan of Management	means a plan adopted by Council under provisions of the Local Government Act 1993 (NSW) for the management of Community Land and must expressly authorise the grant of a lease or licence.



<b>Policy acronym</b>	<b>Definition</b>
Structural repairs	means repairs that Council deems essential to ensure the structural integrity of a facility as defined in clause 4.2(2) of this Policy.
Tenant	means the person named as the lessee or licensee in the contract.

## 4. Statement

Byron Shire Council owns and manages a wide range of community facilities, commercial properties, and lands suitable for long-term leasing and licensing contracts.

### 4.1 Management Principles

Leasing and licensing of Council owned, and managed land and facilities aims to:

1. provide benefits to the community,
2. encourage environmentally sustainable initiatives,
3. ensure facilities are well managed and maintained for the contract term, and
4. require consistency and transparency in the granting of leases and licenses.

### 4.2 Eligibility

Leases and licenses will only be granted over Council owned and managed facilities and land where the proposed occupation is:

1. for a lawful purpose, and
2. permitted by relevant planning instruments, and
3. in accordance with relevant legislation, if for use of community land or community facilities, and
4. following community consultation.

A lease or license may only be granted to:

1. not-for-profit or charity organisation that can demonstrate:
  - a. a not-for-profit or charity status,
  - b. use of the facility or land will meet a community or Council need,
  - c. governance capacity and financial viability to hold a lease or license, and
  - d. relevant insurance covers.
2. Individuals and companies that can demonstrate:
  - a. Australian Business Number or Australian Company Number,
  - b. insurance covers, and
  - c. the commercial arrangement will provide an economic benefit to Council and community, and
  - d. the lease or license arises because of:



- i. an expression of interest,
- ii. a tender,
- iii. a public private partnership, or
- iv. unsolicited proposal that has been assess and approved by the Elected Council.

### 4.3 Selection Process

Leases and licenses will only be granted:

1. by direct negotiation if permitted by the Independent Commission Against Corruption ('ICAC') Direct Negotiation Guidelines, or
2. by competitive process for all other.

The grant of a lease or license will require:

1. a resolution of the elected Council, or
2. approval of the General Manager or a Director when the term and value of the lease and license permits.

### 4.4 Term

The maximum term of tenure is determined by:

1. the Plan of Management for community or managed Crown land and facilities and outcomes of mandatory community consultation. Consent from the Minister for the *Local Government Act NSW* may be required for a term greater than 5-years over community land and facilities, or
2. relevant legislation or Council Policy for Operational Land for example the Roads Act or Retail Leasing Act.

### 4.5 Annual Rent

Annual rent must be based on market rent and the following methodologies apply:

1. Not-for-profit organisation may be eligible for subsidised rent as determined by relevant Council Policy. Market rent will be calculated at either 6% of the unimproved capital land value or assessed by a registered Valuer. The tenant must pay annual rent to the value of minimum rent as set by clause 38(1) of the *Crown Land Management Regulations* with Council to subsidise the remainder of the rent by a section 356 of the *Local Government Act* donation.
2. All other tenants must pay market rent as assessed by a registered Valuer or as set by Councils annual fee and charges.

Exceptions to the above methodologies may apply when:

1. a Tender or Expression of Interest process invites an alternative mechanism for calculating market rent, or



2. a lease or license forms a component of an unsolicited proposal assess and approved by the Elected Council and or a public private partnership authorised under the *Local Government Act*, or
3. legislation authorises rebates or subsidies permitting rent to be set a minimum legislated value.

Rent will be reviewed annually in accordance with the following methodologies:

1. Consumer Price Index (all groups Sydney) at the time of the review; or
2. fixed percentage increase expressly set in the lease or licence; or
3. in accordance with legislation.

Annual rent will not decrease because of an annual rent review.

## 4.6 Outgoings

Unless otherwise resolved by Council:

1. Not-for-profit organisations may be eligible for subsidised Council fixed rates and charges in accordance with '*Policy 12/008 Section 356 Donations Rates, Water and Sewerage Charges*'. The tenant must bear the cost of all:
  - a. connected services usage charges, insurances, regulatory inspections, permits and certifications to carry out the permitted use and annual pest inspections. Annual fire inspections and pest controls that will remain with Council.
2. Other tenants bear the cost of all Council fixed fees and charges for the land and facility including connected service usage charges, regulatory inspections, permits, and certifications including for example annual fire safety statements, pest inspections and controls and insurances.

## 4.7 Maintenance

Unless otherwise resolved by Council:

1. All tenants bear the cost of maintenance and repair to a facility including but not limited to:
  - a. Internal maintenance and repair including painting, and
  - b. maintenance, repair, pump out and cleaning of an on-site-sewerage management system and water storage tanks, and
  - c. maintenance of grounds, fencing repairs and renewals, cleaning of all gutters and first flush devices, maintenance and replacement of electrical water pumps and water filter devices, the filling of potable water tanks, the filling of gas tanks, internal plumbing repairs and maintenance and rectification of plumbing blockages between the facility and the trunk main, electrical repairs including replacement of electrical bulbs, tagging and testing of all electrical devices, replacement of broken glass and external building cleaning, and



- d. all building upgrades to meet legal requirements arising from the use of the facility, for example requirements specific to the operation of an Early Childhood Education and Care service or a food premises, and
    - e. maintenance, repair, and replacement to tenant owned improvements on the land, including for example pergolas, sunshade structures, playground equipment, internal fit outs, and tenant-installed security systems.
  2. Generally, Council will bear the cost of structural repairs, except where the damage was caused by the tenant's use of the facility. Structural repairs may include:
    - a. external gutters, downpipe, and roofing renewals,
    - b. renewals to the building exterior envelope for example external cladding,
    - c. plumbing blockages in the trunk mains, and
    - d. repair works that Council considers are essential to maintain the basic functions of stability and weather resistance in the floors, walls, and roof, including but not limited to repairs and replacements to the footings and foundations, columns, beams, joists, bearing walls, perimeter walls and floor slab and roof structure of the building.
  3. Leases and licences will contain terms that govern structural repairs and circumstance where leases/licences may be terminated if structural repairs are unable to be funded by Council.
  4. All tenants bear the cost of obtaining development consent and all necessary approvals to carry out works and use the facility. Additional 'owner's consent' from Council will be required for applications for approvals. Council retains the discretion to determine requests for owner's consent.
  5. Council reserves the right to issue a tenant a notice of non-compliance of maintenance obligations in accordance with terms of the lease or licence. The failure by a tenant to unreasonably comply with the terms and timeframe of the notice may result in termination of the tenant's tenancy. A tenant has a right to appeal the termination of the tenancy in writing within 28-days from the date of the notice setting out grounds for the appeal. An appeal must be determined by the General Manager of Council.

## **4.8 Assignment, transfer, and sub-letting**

Consent of Council is required to assign or transfer leased/licenced rights and for authority to sub-let part or whole of a leased/licenced facility.

## **4.9 Hardship**

Council may resolve to defer rent and outgoings payable under a lease/licence where Council's Debt Management and Financial Hardship Assistance Policy applies.

## **4.10 Legal Costs**

Unless otherwise resolved by Council, all tenants bear the cost of establishing a lease or licence agreement in accordance with Council's Fees and Charges and to cost of registering a lease.





## 5. Legislative and strategic context

### 5.1. Sustainability

Leasing and licensing should contribute to quadruple bottom line outcomes.

### 5.2. Social

Leases and licences should provide benefits to the community and must:

- meet a demonstrated community need,
- provide equitable and fair use of Council facilities, and
- be consistent with Council's adopted ethical business policies and resolutions.

### 5.3. Environmental

Lease and licences should support environmental sustainability to:

- improve environmental performance such as installation of solar, energy and water efficiency devices and implementation of waste minimisation strategies, and
- consistency with Council's Zero Emissions Byron Policy and positive contributions towards the Shire's net zero emissions by 2025 target.

### 5.4. Economic

Leases and licences must contribute positive economic outcomes for Council and the community and:

- ensure maintenance of Council's facilities during the term of the lease/licence require payment of fair and reasonable rent.
- support not-for-profit organisations providing community services

### 5.5. Governance

To maintain good governance, leases and licences must be managed to ensure:

- consistency and transparency in granting leases/licenses; fair, transparent, and accountable leasing and licencing processes, and
- compliance with applicable laws.