



the bushland shire

creating a living environment

SUPPLEMENTARY ATTACHMENTS

ORDINARY MEETING

**Wednesday, 12 August, 2009
at 6:30 pm**

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ATTACHMENT/S

REPORT NO. CC61/09

ITEM 34

**1. CODE - LEASE LICENCE OF COUNCIL LAND AND
BUILDINGS TO COMMUNITY GROUPS**

CODE REGISTER



HORNSBY SHIRE COUNCIL
"creating a living environment"

CODE TITLE: LEASE/LICENCE OF COUNCIL LAND AND BUILDINGS TO
COMMUNITY GROUPS

FOLDER NUMBER: F2007/00307

POLICY OWNER / DIVISION: Corporate & Community Division

POLICY OWNER / BRANCH: Administration Services Branch

FUNCTION: Council Property & Land

RELEVANT LEGISLATION:

CODE ADOPTION/AMENDMENT DATE: 8 April 2009 **REPORT NUMBER:** CC12/09

REVIEW YEAR: 2011

AMENDMENT HISTORY: 9 May 2007 (Report CC36/07)

RELATED POLICIES:

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Lease/Licence of Council Land and Buildings to Community Groups

A. Introduction

Hornsby Shire Council's land and building assets are managed by a variety of Divisions. It is important to develop an open and transparent code that relates to all Council owned/managed land and buildings assets used or to be used by community groups under lease/licence arrangements.

Council leases/licences a number of its land and building assets to community related groups, clubs and incorporated organisations at subsidised rates for a variety of purposes.

This Code will provide the framework for the assessment of existing and future community user groups to lease or licence Council owned/managed land and buildings prior to the consideration of the matter by Council. It establishes the requirement for all community groups to demonstrate the community benefit arising from their use of the Council owned/managed land and buildings and sets out reporting requirements to ensure accountability to Council and recognition of Council's contribution. The code sets out terms and conditions to be used as the basis for negotiating leases/licences.

B. Definitions

For the purposes of this code the following definitions apply.

Facility:

Part or all of a Council owned/managed land and/or building asset and associated infrastructure occupied by a community group/s under a lease/licence to provide and organise 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.

Community Group:

A community group under this Code 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. Community based Kindergartens/Preschools, occasional and regular hirers of Sporting facilities and/or community/cultural facilities are not covered by this Code.

Capital Contribution:

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.

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."

C. Purpose of the Code

The purpose of this code is to provide Council with a framework for the equitable, efficient and effective lease/licence of its land and building assets to community groups, whilst ensuring that financial allocations to community groups reflect Council's commitment to its community development role and to encourage

creative, relevant, community driven initiatives within the Shire.

Through implementation of this code Council aims to provide optimal use of facilities by community groups and maximise the community benefit arising from such use whilst ensuring accountability and sustainable economic management of these assets.

D. Objectives of the Code

Council aims to achieve a number of outcomes from the Code including:

- Ensuring the community has the opportunity to benefit from an appropriate range of support services and activities which address identified community needs;
- Assisting community groups, to provide programs and services which address the social, cultural and/or recreation needs of the community;
- Providing lease/licence guidelines which are clear and easily understood by the community and community groups;
- Encouraging optimal use by the community of Council facilities to cater for a range of community groups and to minimise duplication of services by determining the most appropriate occupancy;
- Optimising contributions from community groups towards the cost of providing use of Council facilities;
- Ensuring Council owned facilities are used to meet demonstrated community needs consistent with Council's Vision, policies and Social Plan;
- Ensuring fair and consistent lease/licence conditions between tenant community groups and equitable access to leased/licensed community assets;
- Providing accountability for Council expenditure on lease/licence subsidies, as they constitute donations;
- Ensuring that Council-owned facilities are appropriately maintained, developed and occupied responsibly having regard to the interests of local communities and the care of the assets;
- Ensuring sound financial management and effective administration of Council community leasing/licensing;
- Recognising the value and benefits of services and activities organised and provided by community based groups and to subsidise these groups as appropriate.

E. Management Philosophy

- Council facilities which are not required for delivering Council services and which the Council has determined are suitable for lease/licence by community groups will be subject to the conditions and guidelines outlined herein. The terms of occupation will be generally in accordance with the provisions contained in Council's standard lease/licence agreement for community use of Council facilities.
- Facilities will generally be managed in a manner which preserves and maintains their flexibility and availability for current and future residents of the Hornsby Shire. Wherever possible, Council will implement a strategy of multiple shared uses between groups.
- The allocation of an available facility to any community group shall have regard to the existing level of support (financial and non-financial) already provided by Council to that community group.
- Council seeks to recover a proportion of the total operating costs of all facilities.

F. Eligibility

To be eligible to lease or licence part or all of a Council facility, a community group will be assessed against the following eligibility criteria.

The criteria indicated with an asterisk (*) are mandatory and must be met to enable assessment of an application. A weighting of the remaining criteria will be applied to assist in the assessment process.

Community Group Criteria

- The community group is one which is not operating for the profit or gain of its individual members, whether these gains would be direct or indirect
- The community group is a legal entity registered under appropriate legislation (such as the Associations Incorporation Act (NSW) 1984). *
- The community group is financially sustainable, with annual financial statements provided to Council, audited where it is required as a prescribed association under the Associations Incorporation Act.
- The community group complies with relevant legislation governing its activities, and holds any licences or registration certificates required for it to operate.*
- The community group has a committee of management or other like governance structure and appropriate governance arrangements, with established accountability and reporting methods to members of the community group and / or to the community.
- The community group adheres to all relevant Council policies and has complied with the terms of any previous lease/licence and/or financial assistance from the Council.*
- The community group has a constitution or charter which confirms the group's commitment to either the cultural, social and/or recreational well being of the community.*

Community Benefit Criteria

- Use of the facility will increase social engagement and promote health and well-being of the Hornsby community.
- A plan for the facility's use is provided including current and projected hours of operation and participant and / or membership numbers.*
- The community group provides a service or a program of activities which can be demonstrated to address an identified cultural, social, recreational or other need in the community.*
- Facility use is consistent with Council's vision and the goals outlined in Council's Social Plan.
- The support already being provided by Council to a community group both financial and non financial.
- The service or activity is non-discriminatory: it will be open to all residents who meet clearly stated criteria for participation that are directly related to the nature of the service or activity, or geographic catchment area.
- The service or activity can be accessed by disadvantaged groups, with strategies in place to review and remove any barriers to participation.
- The community group's promotion and support of volunteerism.

Facility Management Criteria

- Proposed use of the facility is suitable for the nature of the site and the neighbourhood.*
- The community group will keep the facility in good repair and undertake upkeep in accordance with the maintenance schedule included in this code.
- Utilisation of, and community access to, the facility will be maximised, through shared use with other community groups, consistent with any special requirements of the head tenant.
- The community group is willing to undertake significant/identified capital works as necessary to develop the facility as an asset for the long term benefit of the community.
- The community group is able to fulfil relevant insurance requirements as determined by Council's Risk and Insurance Manager.*

The eligibility requirements indicated above will be applied in the assessment of an initial request for a Council facility lease or licence and an application to renew a lease or licence.

G. Lease/Licence Provisions

Council recognises that many groups have a strong historical affiliation with the facilities which they use, and have contributed in cash and kind to their development. Generally Council supports the continued occupation of those facilities by those groups but with a preference for a shared multi-use basis where it does not currently occur.

Where a current licence, lease or other formal agreement exists, this will be honoured until its expiry. A review of future management options for the facility will be undertaken within the last 24 months of the agreement period. Community groups wishing to renew a lease or licence will be subject to a reassessment of their eligibility. Reassessment will refer to the eligibility criteria as noted in this code (refer Section F). It will also take account of existing usage rates and the potential for the facility to be used on a multi-user basis, in line with changing community needs and in consultation with the community.

An Expressions of Interest process will be undertaken for facilities covered by this code which become vacant.

A standard lease/licence will be developed reflecting the contents of this code and relevant legislation.

1. Lease Term

The period of a lease/licence will give consideration to the community groups and Council's estimation of the capital contribution made by a community group to that facility as follows:

Less than 5 years	=	0-10% of capital contribution
5 years	=	11-30% of capital contribution
5 -10 years	=	31-50% of capital contribution
11 - 15 years	=	50% and above capital contribution

Where a community group estimates it has made a capital contribution greater than 50% consideration will be given by Council to the granting of a longer lease/licence term on a case by case basis.

2. Rental

i) Rent Subsidy

The level of rental payable by Community groups who satisfy the requirements under Section F above will be based on the extent to which the group meets the criteria indicated in Table 1 Rent Subsidy Categories set out below.

The compliance of a community group against the criteria will be reviewed annually. Should a community group's category change the revised level of rental payable will be subject to the approval of Council.

Table 1 Rent subsidy categories

Category	Annual Rent	Eligibility
Nominal (excludes users of rooms within Community Centres)	\$280 per annum (exclusive of GST) as at date of adoption of Code and annually adjusted by CPI	<ul style="list-style-type: none"> • Satisfies all eligibility criteria under Section F • Provides high level of community benefit (i.e. at least four target groups identified in the Hornsby Shire Council Social Plan) • Provides optimal multiple use opportunities (i.e. fully utilised or nature of community groups operations precludes multiple use) • Responsible for all capital and full maintenance of facility • Has limited revenue-raising and grant funding ability net of cost of service (no access to grants or fund raising opportunities) • May be in need of Council's assistance to become established
Community Partnership	25% of market valuation (exclusive of GST)	<ul style="list-style-type: none"> • Satisfies all eligibility criteria under Section F • Provides high benefits for the community (i.e. one to three targeted groups identified in the Hornsby Shire Council Social Plan) • Provides reasonable multiple use opportunities (say 3 or more groups per week) • Undertakes some capital development and full maintenance of facility • Has limited revenue-raising and grant funding ability net of cost of service (access to funds/grants no greater than 20% of total revenue raising abilities)

Discounted market rent	50% of market valuation (exclusive of GST)	<ul style="list-style-type: none"> • Satisfies all eligibility criteria under Section F • Provides some benefits for the community (i.e. one or more targeted groups identified in the Hornsby Shire Council Social Plan. • Limited or no multiple use opportunity (i.e. nature of community groups operations and capital investment by group supports minimal multiple usage. • Responsible for day to day maintenance only • Has reasonable revenue raising ability from their activities, private sector sponsorship or government grants (net of cost of service)
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Market Rental Definition: The rent that would reasonably be expected to be paid for the facility, determined on an effective rent basis having regard to:

- 1) The rent that would reasonably be expected to be paid for the facility if they were unoccupied and offered for rent on the open market.
- 2) The highest and best uses for which the facility would be physically suitable and which would be permissible under the zoning of the land and by any plan of management.

ii) Adjustments of Rents.

The rent payable under the nominal category will be adjusted annually in accordance with the Consumer Price Index. The rent payable under the community partnership and discounted market rent categories will be adjusted by CPI annually with a market review to be undertaken every five years.

New rent and subsidy levels will be introduced in all new leases and licences following adoption of the code, including any new lease or licence developed with current tenants.

iii) Reporting on Rent Subsidies

The value of imputed rent payments foregone through rental subsidies will be included in annual Council budget papers.

3. Maintenance of Council Facilities

All community groups signing leases or licences following commencement of this code will be required to contribute towards the maintenance of the facility occupied. The level of maintenance responsibility will be determined by the function of the facility, the degree of community benefit, and the community group's ability to generate revenue. In broad terms maintenance responsibilities will be as outlined in Table 2 below, which should be seen as a general guide only. Specific responsibilities will be negotiated with each community group taking into account the nature, age and condition of the facility and included in a schedule to that community group's lease or licence.

Maintenance Definitions:

Maintain /repair: Keep in good condition in accordance with Australian Standards. Ensure useful life of the asset is met and does not deteriorate during the term of the lease/licence.

Replace: Replace at end of useful life. Replace if broken or damaged beyond repair.

Full Maintenance: Maintain, repair and replace

Table 2- Indicative Summary of Maintenance Responsibilities

Category	Facility Component	Community Group Responsibility	Council Responsibility
Nominal	Building Shell erected by Group	Full maintenance	
	Building Shell erected by Council	Maintain/repair	Replace
	External surfaces, including painting, pathways, fences, car parks, brickwork	Full maintenance	
	Fixtures / Fittings (toilet pans, taps, door furniture)	Full maintenance	-
	Interior Surfaces (painting, carpet, tiling)	Full maintenance	-
	Building services (water supply, gas, sewerage, electrical)	Full maintenance	-
	Essential services	-	Full maintenance
	Routine services (gutter cleans, pest control)	Maintain/repair	-
	Grounds (landscape features, external furniture)	Full maintenance	-
	Specialist ground surface and equipment (e.g. playground equipment, synthetic playing surface, trees planted by group)	Full maintenance	-
	Existing Trees	-	Full maintenance
Community Partnership	Building shell erected by Council	Maintain/repair	Replace
	External surfaces, including painting, pathways, fences, car parks, brickwork	Maintain/repair	Replace
	Fixtures / Fittings (toilet pans, taps, door furniture)	Full maintenance	-
	Interior Surfaces (painting, carpet, tiling)	Full maintenance	-
	Building services (water supply, gas, sewerage, electrical)	Maintain/repair	Replace
	Essential services	-	Full maintenance
	Routine services (gutter cleans, pest control)	Maintain/repair	-
Community Partnership Cont/.	Grounds (landscape features, lawns, external furniture)	Full maintenance	-
	Specialist ground surface and equipment (e.g. playground equipment, court synthetic playing surface, trees planted by Group)	Full maintenance	-
	Existing Trees	-	Full maintenance
Discounted market	Building shell erected by Council	-	Full maintenance
	External surfaces, including painting, pathways, fences, car parks, brickwork	-	Full maintenance
	Fixtures / Fittings (toilet pans, taps, door furniture)	-	Full maintenance
	Interior Surfaces (painting, carpet, tiling)	Maintain/repair	Replace
	Building services (water supply, gas, sewerage, electrical)	-	Full maintenance
	Essential services	-	Full maintenance
	Routine services (gutter cleans, pest control)	-	Full maintenance

	Grounds (landscape features, lawns, external furniture)	-	Full maintenance
	Specialist ground surface and equipment (e.g. playground equipment, court synthetic playing surface, Trees planted by Group)	Full maintenance	-
	Existing Trees	-	Full maintenance

Where a group voluntarily undertakes extensions or improvements to the exterior of a facility (e.g. pergola, sun shade) they are responsible for the maintenance and presentation of those improvements. NB: Such groups will need to comply with any relevant statutory approval processes (e.g. Development Consent).

Unless mentioned above, users of the facility should be responsible for all internal maintenance of the facility. Where more than one group uses a facility, contributions and responsibility for maintenance should be shared.

4: Statutory Outgoings

The community group shall be responsible to pay 50% of Council and Water Sewerage rates levied on a facility. If the community group utilises only part of a building, a contribution for statutory outgoings may be negotiated and included in the lease/licence agreement.

5: Operating Costs

Community groups will be responsible for the costs associated with services provided to a leased/licensed facility (e.g. electricity, water usage and gas) and any applicable taxes (including GST and stamp duty). If the community group utilises part of a building a contribution for associated services may be negotiated and included in the lease/licence agreement.

6: General

(i) Hours of use

The hours of use may be prescribed for all leased/licensed premises and determined by Plans of Management or Development Consent.
Sub-leasing

(ii) Sub-leasing

Community groups may only sub-lease with council permission to approved organisations for approved purposes and subject to approved terms and conditions. Generally council will use the same criteria to assess the sub-lease as the head lease. The subsidy level of the head tenant may be reviewed when a sub-lease is developed and may be adjusted if the rent is more than cost-recovery. Any financial gain from subletting may in part be payable to council rather than to the community group except where an agreed strategy is developed to assist the community group with occupancy and operational costs or to reinvest in the facility.

(iii) Insurance

A community group must maintain its own liability insurance to a value determined by the Council's risk assessment officer as detailed in lease/licence documents. Generally Council will fully insure all improvements on a leased/licensed premises, however if the community group chooses to pay their own building insurance, this contribution will be recognised when determining the level of rent. Community groups may choose to insure their own contents. Council will not insure contents.

(iv) Legal Fees

Council will pay 50% legal costs associated with the establishment of a new lease/licence agreement provided it conforms to Council's standard lease or licence document. The community group will be responsible for the cost of any independent legal advice and assistance sought by the community group.

(v) Removal of Assets

The community 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.

(vi) Capital improvements

Community 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 rent levels and length of lease/licence.

(vii) Acknowledgement of Council contribution

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

(viii) Nuisance

Council requires that community 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 community group and through occasional hire arrangements if this requirement is not adhered to.

(ix) Reporting requirements

Community groups and organisations using Council's facilities will be 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.

H. Legislative Considerations

Community facilities will be managed in a manner which ensures a close nexus with various legislation and Council policies including the Local Government Act, the Crown Lands Act, Entertainment (Management) Act, Copyright Act, Noise Control Act and Council's Social Plan and Cultural Plan. Where applicable, in a manner consistent with the values and directions of the Plans of Management for Community and Crown Land.

I. Implementation of Code

The code will apply to all leases and licences developed or renewed following adoption of the code by Council. In addition all community groups with current leases/licences will be asked to provide annual reports against the eligibility criteria during the term of the current lease/licence, to assist Council in achieving its aim of accountability for expenditure on lease/licence subsidies and sustainable economic management of these assets.