

COMMUNITY LEASE POLICY

POLICY ADMINISTRATION

Dates	Policy approved 22/06/2020 This policy is effective upon its approval. Policy is due for review June 2023
Approved by	Council Meeting 22/06/2020 Council Resolution CCL042-20
Exhibition Period	20 January 2020 to 27 March 2020
Policy Owner	Manager Community and Cultural Development – Community and Culture Directorate
Related Documents	Supporting documents, procedures & forms for this policy: Grants, Donations and Sponsorship Policy Local Approvals Policy – Use of Public Land Procurement Policy Council’s internal guidelines for Procedures for the Management of Gifts and Benefits.
References & Legislation	Crown Lands Management Act 2016 Crown Land Management Regulation 2018 Land Acquisition (Just Terms Compensation) Act 1991 Local Government Act 1993 Native Title Act 1993 Property Acquisition Standards Real Property Act 1900 Roads Act 1993
Document Identifier	Policy #: Pol-028.02 Doc #: D17/68304
Breaches of Policy	Breaches of any policy will be dealt with and responded to in accordance with adopted codes and/or relevant legislation.
Record Keeping	All documents and information obtained in relation to the implementation of this policy will be kept in accordance with the NSW State Records Act 1998, Georges River Council’s Corporate Records Policy and adopted internal procedures.

PURPOSE

The purpose of this policy is to provide a framework through which Council can determine the eligibility of community groups to occupy Council owned and managed land and buildings (such as community centres, scout and guide halls) in an equitable and transparent manner and in accordance with relevant legislative requirements.

It is noted that all commercial lease or licences owned and managed by Council outside of the scope of this Policy will be assessed and determined based on the probity principles of value for money, fairness, transparency, equity and accountability.

The policy also includes Council owned sporting and recreational facilities, such as sporting amenities blocks.

Council owned commercial or retail properties (such as Premium Facilities including but not limited to aquatic facilities, golf clubs, Netstrata Jubilee Stadium and the Norm O'Neill Cricket Centre) are excluded from consideration under this Policy.

SCOPE

Georges River Council's community land and facilities must be managed in accordance with the provisions of the Crown Lands Management Act 2016, the community provisions of the Local Government Act 1993 and associated Regulations.

This policy aims to ensure that a wide range of community groups and individuals are given equal opportunity to occupy community land and buildings while alleviating some of the financial burden on Council.

The policy also aims to ensure that the best operator (and where possible, the best financial return on commercially operated facilities) is obtained and that the required level of service is provided to the community.

The primary issues addressed under this policy:

1. Ensuring that occupants have the capacity to meet lease or licence obligations;
2. Set clear criteria for subsidised rents for community facilities by community groups;
3. Provides a standardised approach to agreement terms;
4. Encourages multiple uses of land and buildings, rationalising exclusive occupancies when current occupants are not appropriately using or utilising premises; and,
5. Ensuring a competitive and transparent process is undertaken at all stages of the process.

DEFINITION OF TERMS

Term	Meaning
<i>Community groups</i>	Community, sporting and other organisations which are <u>incorporated</u> as not for profit organisations which prohibit private gain
<i>Community land</i>	Means Community land under the Local Government Act 1993 and Crown Lands Management Act 2016
<i>Community facility</i>	Council asset or facility on community land administered under the Local Government Act 1993 and land under Crown Lands Management Act 2016
<i>Council Manager</i>	Means any local council that is a Crown land manager of dedicated or reserved Crown land
<i>Crown land</i>	<p>Land that was Crown land as defined in the Crown Lands Act 1989 immediately before the Acts repeal.</p> <p>Land that becomes Crown land because of the operation of a provision of the Crown Lands Management Act 2016.</p> <p>Land vested, on and from the repeal of the Crown Lands Act 1989, in the Crown.</p>
<i>Crown Land Manager</i>	In relation to Crown Land, means a person appointed as a Crown land manager under Division 3.2 of the Crown Lands Management Act 2016
<i>Ground Lease</i>	Means a lease over land where a tenant has constructed, at its own cost, a building on Council owned or managed land and has fully maintained that building (including structural and capital maintenance) throughout the term of the lease
<i>Lease</i>	Includes leases for exclusive use
<i>Licence</i>	Includes licence for non-exclusive use
<i>Sporting and Recreational facility</i>	Council asset or facility used primarily for sporting and recreational purposes (which may or may not be capable of supporting a commercial return)

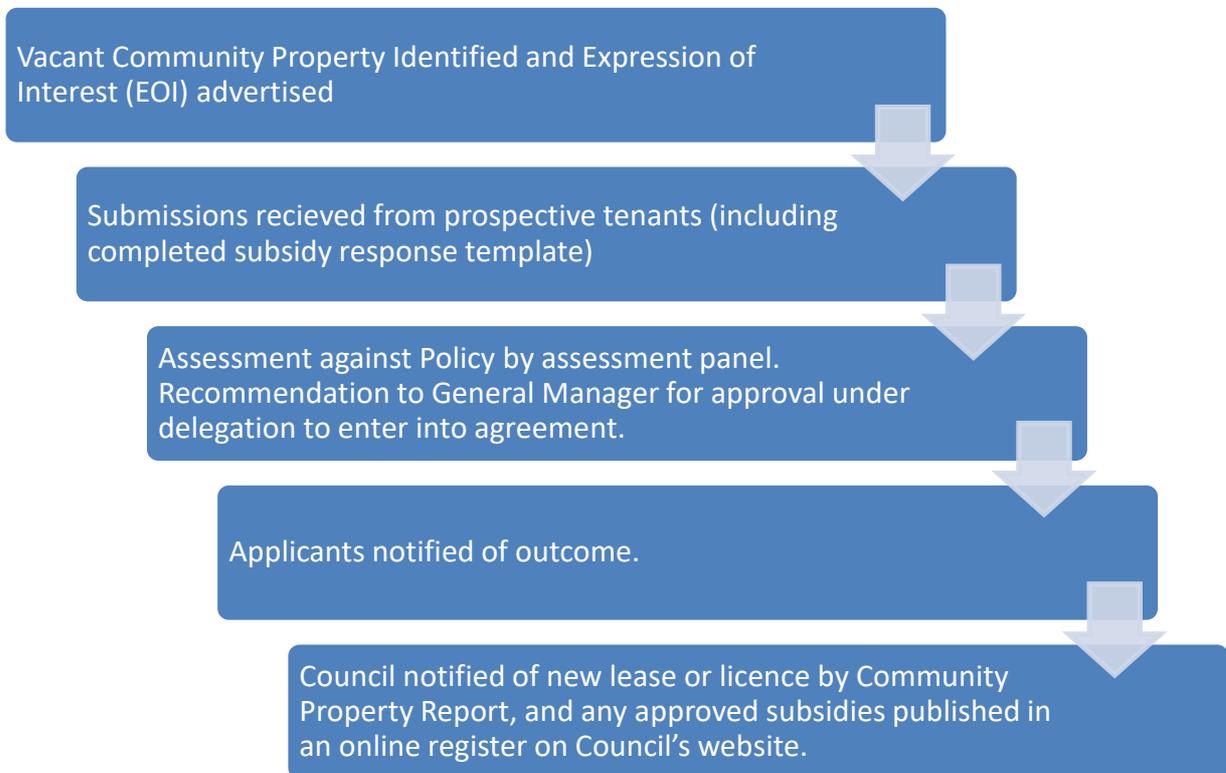
POLICY STATEMENT

The Community Lease Policy enables Council to clearly communicate its intentions in relation to the following:

1. Approvals

- 1.1. On 24 September 2018, Council resolved to delegate authority to the General Manager under section 377 of the Local Government Act 1993 to negotiate and execute lease and licence agreements for periods not exceeding 21 years.
- 1.2. Any approvals to grant occupation agreements of Council owned or managed land and buildings exceeding 21 years are subject to a resolution of Council (and approval of the Crown if appropriate).

Figure 1 - Lease/Licence Approval Process



2. Capacity

- 2.1. Ensures that all tenants, prior to entering any agreement, have the authority to enter into a lease or licence by confirming their status as an incorporated entity, and have the capacity to meet financial obligations under each occupation agreement, or lease / licence.

3. Leases and Licences

- 3.1. The term of all community leases and licences will be assessed on an individual case basis having regard to the facts provided by the prospective tenant and information obtained by Council through public registers and on request to the prospective tenant. The criteria for assessment of each tenancy will include

assessment of facts and evidence provided by the potential tenant and also obtained by Council through public register searches or by request of information to the prospective tenant. Information to consider in the assessment of a prospective tenant will include;

- a) the nature of the proposed use of the facility,
- b) the need for security of tenure (eg: to secure grant funding),
- c) Council's longer term plans, including any POM or Council Strategy for the facility and the benefit to the community that would occur as a result of the occupation of a facility by a particular group.
- d) value of monetary return to Council,
- e) feasibility of the prospective tenants' financial position in relation to the premises to ensure payment of rent and maintenance of the premises is feasible for the duration of the lease or licence,
- f) consideration to past tenancy performance (where applicable).

3.2. Short Term Leases and Licences

3.2.1. Short term leases and licences of up to 5 years inclusive of any options for extension may be preferable in circumstances where Council is reviewing the longer term use of a facility or where surrounding land uses are likely to change in the short-medium term or where the life expectancy of a facility is ending. Shorter term leases or licences can allow better asset management and community services planning.

3.3. Long Term Leases and Licences

3.3.1. Long term leases or licences, of periods greater than five years inclusive of any options for extension, should be considered where a community group is offering significant capital investment in a facility, and where the community service or benefit provided by the group cannot be provided by Council.

3.3.2. Caution should be exercised in the granting of long term leases or licences to ensure that Council and the wider community are not excluded from gaining access to a range of community buildings/facilities.

3.3.3. Subject to the Local Government Act, 1993 lease or licence terms of greater than five years inclusive of any options for extension should only be offered where tenants can prove to Council's satisfaction, that they intend to spend at least \$100,000 in new capital works approved by Council as landlord, or where a five year term is insufficient to write off the capital cost or secure finance for the proposed works.

3.4. Multiple Uses of Buildings

3.4.1. Where possible, Council encourages multiple uses of all community facilities. Therefore, compatible users should be accommodated together, in order for Council to effectively manage asset costs and expenses.

3.4.2. Council needs to determine, before granting a lease or licence, whether other community groups can share the facility, or if the existing tenant can share another facility. Council should ensure that suitable community

groups have equal opportunities to occupy community facilities under lease or licence. Low-use facilities are to be reviewed as historically, poorly maintained buildings have been returned to Council when leases or licences are terminated eg: scout halls.

3.4.3. Council is committed to supporting community organisations in delivering services to our local community through the provision of community facilities, as such, subleasing of community facilities may be allowed, subject to Council approval in writing, to be given at its sole discretion.

3.4.4. Future community facilities should be of designs suitable for use by more than one user group and should be offered to community groups through an advertised public tender or expression of interest process.

4. Leases or licences on Crown Land

- 4.1. Where Council is the Crown Land Manager for facilities located on Crown Land, lease or licences will be administered in accordance with the Crown Lands Management Act 2016, the Crown Lands Management Regulations 2018, the Local Government Act 1993, and with reference to the Native Title Act 1993.
- 4.2. Leases or licences of Crown reserves can be granted in accordance with the Local Government Act 1993, must be consistent with the dedicated purpose of the reserve, and be allowed under the approved Plan of Management. All proposed leases or licences must be advertised for a period of at least 28 days, giving the public an opportunity to comment via lodgement of a submission.
- 4.3. When negotiating leases or licences for commercial activities on Crown land, Council will invite competitive tenders or proposals in order to attract the best operator and financial return for the property. On reserves designated for public recreation purposes, commercial uses should not result in exclusivity for individuals or groups or clubs.
- 4.4. Prior to any lease or licence being entered into, Council must be satisfied that the core use in relation to the lease or licence is consistent with the Plan of Management associated with a park, sportsground or other designated area in accordance with the community provisions of the Local Government Act 1993.

5. Subsidised Rentals

- 5.1. Subsidised rents are an indirect form of financial support to community groups and should be considered in circumstances where a community group can demonstrate a special benefit or service provision to the greater community. Notwithstanding existing lease or licence agreements, all future subsidised rentals will be calculated and the revised annual rental (inclusive of the subsidy) will be written into lease or licence agreements and will be subject to annual review by the Council.
- 5.2. Applications for subsidised rentals by community organisations must answer each criterion, providing as much information as possible to allow Council to accurately assess the application. Responses should be submitted using the subsidy response template provided by Council.
- 5.3. The criteria for determining subsidised rents are set out in Table 1 (Subsidy Criteria) below.

5.4. Rental Subsidy Assessment Process

5.4.1. Applications for rental subsidies will be assessed by an internal panel in accordance with this Policy to determine the relevant subsidy amount.

5.5. Form a Rental Subsidy Assessment Panel

5.5.1. The panel will consist of a minimum 3 Council staff members.

5.5.2. Panel members may be chosen across any of Council's business units.

5.5.3. All panel members will be required to declare any conflict of interest prior to the assessment of the rental subsidy. Where a panel member declares a conflict of interest, the panel member will step down from that assessment panel and will be replaced by another Council staff with no conflict of interest in the assessment.

5.6. Rental Subsidy Assessment

5.6.1. The formed panel will meet and review the information supplied for the rental subsidy assessment. If required, subsequent meetings will be held to assess any further information supplied after the first assessment meeting if the initial information supplied is insufficient to make an assessment and recommendation based on the criteria in section 13 of this Policy.

5.6.2. Assessment of the rental subsidy request will be made using the response provided by the prospective tenant and the criteria guidelines in section 13 of this Policy.

5.6.3. Further information, including audited financial statements, may be requested by the panel if insufficient information is supplied by the prospective tenant in the Rental Subsidy Assessment template form.

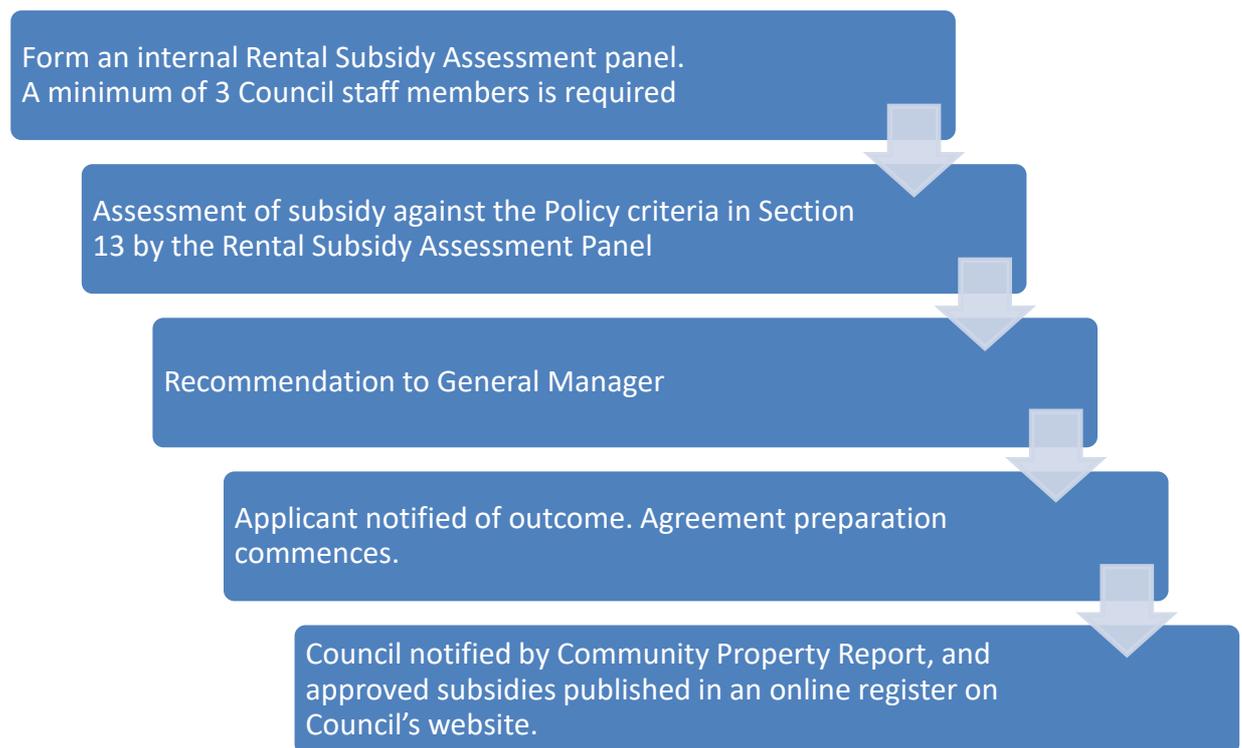
5.6.4. Upon finalisation of the subsidy assessment by the panel, a recommendation will be made to the General Manager, seeking approval to enter into the agreement. The General Manager has delegation to negotiate and approve lease/licence agreements with a term not exceeding 21 years.

5.6.5. The tenant will be notified of the outcome, and agreement preparation will commence.

5.6.6. The approval will be reported to Council in the Community Property Report.

5.6.7. Approved subsidies will be published in an online register on Council's website.

Figure 2 - Subsidy Assessment Process



6. Sporting and Recreational Facilities

- 6.1. All commercial lease or licences (and other types of commercial agreements) of sporting and recreational facilities will be subject to an open and competitive public process such as tender or expression of interest at the expiration of each lease or licence period. This is as per legislative requirements of the Local Government Act 1993.

7. Community Facilities (Ground leases or licences)

- 7.1. Where a community group owns a building or facility located upon Council owned land or Crown land, the relevant community group that occupies the building shall be entitled to automatic renewal of the ground lease or licence for a period not exceeding 5 years.
- 7.2. The minimum rental for a ground lease or licence to a community group shall be no less than the 'Minimum Annual Rent – Ground Leases or licences as determined in Council's annual fees and charges, and may be subject to an annual review.
- 7.3. Should a community group not require renewal of a ground lease or licence, the community facility will be subject to an open and competitive public process for future leases or licences.

8. Community Facilities (Council/Crown owned buildings and land)

- 8.1. All leases or licences (and other types of agreements) of community facilities (excluding ground lease or licences) will be subject to an open and competitive

process such as tender or expression of interest in cases where, in Council's view, a facility has been underutilised or becomes vacant.

- 8.2. The minimum rental for a building lease or licence to a community group shall be no less than the 'Minimum Annual Rent – Community Building' as determined in Council's annual fees and charges, and may be subject to an annual review.

9. Negotiation Protocols

- 9.1. When negotiating leases and licence agreements, Council staff will adhere to the following protocols to ensure probity, integrity and confidentiality in the process:
- Ensure confidentiality is adhered to for the information supplied from the prospective tenant;
 - Declare any conflict of interest using Council's internal processes to declare any interest prior to commencement of negotiations, or alternatively removal of the staff member from the negotiation process to ensure probity;
 - Adhere to the Community Lease Policy and other related policies and procedures.

10. Policy Exclusions

10.1. This policy does not apply to the following:

- Council community facilities covered by the Georges River Council Venue Hire Grants Program;
- Sport and recreational facilities that are subject to Georges River Council's seasonal ground allocation process (not leased or licenced) and associated adopted fees and charges;
- Council owned commercial or retail properties (such as Premium Facilities including but not limited to aquatic facilities, golf clubs, Netstrata Jubilee Stadium and the Norm O'Neill Cricket Centre).

11. General Conditions

- 11.1. The minimum rental for a ground lease or licence to a community group (including after the application of any subsidies) shall not be less than the 'Minimum Annual Rent – Ground Lease or licence as determined in Council's annual fees and charges, and may be subject to an annual review.
- 11.2. The minimum rental for a building lease or licence to a community group (including after the application of any subsidies) shall not be less than the 'Minimum Annual Rent – Community Building' as determined in Council's annual fees and charges, and may be subject to an annual review.
- 11.3. Unless exempt by legislation or Council resolution, applicants/tenants shall be responsible for the payment of the relevant Administration Fee listed under the Lease or licences/Licences/Easements of Council Property and Statutory Property Matters section of Council's adopted Fees and Charges as well as the payment of Council's legal costs associated with the preparation of lease or licence documentation, capped at \$2,000+GST.

- 11.4. Tenants may be expected to pay a Key bond, 3 months rental bond and will be charged for any lost keys as per Council's adopted Fees & Charges.
- 11.5. Tenants must indemnify Council from any liability arising from their use of the premises. All tenants shall hold public liability insurance to the value of \$20 million and note Council as an interested party. Tenants may also be required to hold appropriate contents, building and plate glass insurance.
- 11.6. Statutory Costs: Section 47 and 47A of The Local Government Act 1993 requires lease or licences on community land to be advertised. Advertising costs are included in the administration fee.
- 11.7. Tenants are liable for outgoings and day to day operational costs including (but not limited to) cleaning, electricity, telephone, data, washroom, water usage, commercial waste, pest control, security, garden maintenance, and be responsible for routine maintenance resulting from ordinary use of the premises and generally in accordance with their lease or licence.
- 11.8. Where a "ground lease or licence" has been entered into, the tenant is responsible for all upkeep and maintenance costs associated with the building in addition to normal operational costs. (Major structural repairs are generally excluded from this provision unless specified within the lease or licence). Council at its discretion may direct a tenant to perform any maintenance works it sees fit especially in the interests of safety. All buildings are expected to be kept in good order and must not be left in a state of disrepair. Failure to maintain upkeep of buildings could result in termination of the lease or licence.
- 11.9. Any alterations made to Council's asset by a tenant must be approved by Council in writing, and are the sole responsibility of the tenant to maintain (eg. installation of air conditioning, kitchens/appliances, lifts, internal walls, etc).
- 11.10. At the end of the tenancy, Council may direct the tenant to remove any alterations and 'make good' the property. Council may conduct these works, especially where electrical or water services are affected, and charge the costs back to the tenant.
- 11.11. Any fees, charges or obligations incurred in complying with approved development conditions (including the creation of land title or other property restrictions) will be the responsibility of the applicant, irrespective of whether those conditions are levied against Council's land.
- 11.12. Should community facilities become available for lease or licence, Council in general terms will seek new tenants through a competitive and transparent public process such as an expression of interest or tender process.
- 11.13. Calculation of rental will be based on independent valuation advice taking into consideration all operational costs of the facility.
- 11.14. Upon application by any community group for rental subsidy, Council at its sole discretion will determine the level of subsidy applicable in accordance with the criteria set out below. Note that community groups will be expected to pay the minimum rental as described in the general conditions, section 11.1 or 11.2, as well as the application fee described in section 11.3.

11.15. Council will conduct ingoing and outgoing condition reports at the commencement and finalisation of each tenancy, as well as conducting annual property inspections as required.

12. Managing unsolicited proposals

12.1. Where an unsolicited proposal for a lease or licence to a community land property is received, Council staff must ensure the guidelines for leasing or licencing a property is adhered to under this Policy by way of a public EOI and the guidelines in this policy.

12.2. Unsolicited proposals may be placed in an interest register where, if a future vacancy is available through an EOI process, applicants may be contacted to apply for the tenancy through the Policy's EOI process.

13. Criteria for Determining Subsidies To Community Groups

13.1. The criteria set out in Table 1 will be used as the assessment criteria for all rental subsidy assessments by the Rental Subsidy Assessment Panel.

13.2. Note: Information supplied by the prospective tenant to Council for the rental subsidy assessment will be kept confidential by Council.

Table 1 - Subsidy Criteria

Criteria	Each Answer Worth 4 Points	Each Answer Worth 3 Points	Each Answer Worth 2 Points	Each Answer Worth 1 Point	Each Answer Worth 0 Points
Social and community benefit	Service is unique and meets high level of need or service meets identified social or community needs, with most service users from low socio-economic background	Service meets identified social or community needs, with most service users from a range of socio-economic backgrounds	Service meets broad social or community need	Service is valued by community but is not focused on meeting an identified social or community need	Does not meet criterion
Extent of service provided by organisation	Broad community is a beneficiary of service provided	Service is significantly used by a number of specific sections of the local community	While the organisation provides a direct service to only a small number in the local community, it forms part of a larger service provision	Service only used by a small number of the local community	Does not meet criterion
Extent of accessibility of facility to community	Facilities are accessible to many in Georges River community	Facilities are generally accessible to Georges River community	Facilities have limited access to local community	Facilities have access to organisation only	Does not meet criterion
Number/type of service provided	A unique kind of service	One of a number of service providers of a community service	One of a number of providers of less critical community needs	Provider meets social or recreational needs only	Does not meet criterion
Capacity to pay rent	Limited or no ability to raise revenue and/or pay rent	Some ability to raise revenue and charge fees which may be varied to reflect ability of clients to pay	Has ability to charge fees and raise revenue	Has capacity to pay market rent	Does not meet criterion

Access to funding sources	No access to other funding sources	Limited access to other sources of funding (no more than 5%)	Access to other sources of funding - state, federal and local which provides between 5-30% of total funding	Access to other sources of funding - state, federal and local which provides more than 30% of total funding	Does not meet criterion
Do they provide direct competition to commercial ventures	No, main activity is not commercial	While main business is not commercial, some aspects of the business are in direct competition	In direct competition with commercial providers but provide additional or differentiated service to users	In direct competition with commercial providers	Does not meet criterion
Does their service impact on Council's need to provide a similar service	Without this service provision, Council would be required to provide additional service	Lack of service would have some impact on Council provision	Service is not core responsibility of Council but could be provided	Service is responsibility of Council	Does not meet criterion
Organisation status and structure	The organisation is locally based, stand alone and not for profit. It has a voluntary management committee made up of local area representatives	The organisation is locally based, has a regional focus, is stand alone and not for profit. It has a voluntary management committee partly made up of local area representatives	The organisation is locally based service, outlet or project that is part of a larger not for profit organisation. It has a voluntary advisory committee comprised partly of local area representatives	The organisation is locally based service, outlet or project that is part of a larger not for profit organisation. There is limited or no local area representation on the advisory committee or similar	Does not meet criterion

Capacity to undertake a range of administrative and management responsibilities	Dependent on assistance from volunteers for all administrative and management functions	Paid staff undertake some of the administrative and management functions and volunteers assist with other tasks	Staff undertake the majority of administrative and management functions with assistance provided by umbrella organisation	Umbrella organisation carries out the majority of administrative and management functions.	Does not meet criterion
Contribution to structural maintenance of building	Assumes full responsibility for long term maintenance (structural integrity) of building	Makes some contribution to long term maintenance (structural integrity) of building	Makes minimal contribution to long term maintenance (structural integrity) of building	Council responsible for long term maintenance (structural integrity) of building	Does not meet criterion
Reactive, routine & ongoing maintenance	Takes responsibility for internal & external reactive, routine and ongoing maintenance as per agreement	Takes responsibility for almost all of internal & external reactive, routine and ongoing maintenance as per agreement	Takes responsibility for some of internal & external reactive, routine and ongoing maintenance as per agreement	Does not take responsibility for internal & external reactive, routine and ongoing maintenance as per agreement	Does not meet criterion

14. Calculating the level of Subsidy:

Category	A	B	C	D
Score	48 - 37	36 – 25	24 – 13	12 - 0
Level of Subsidy	100%	75%	50%	No Subsidy

RESPONSIBILITIES

Position	Responsibility
<i>Councillors</i>	<ul style="list-style-type: none"> To endorse by resolution this policy. To promote this policy when dealing with community organisations.

<i>General Manager</i>	<ul style="list-style-type: none"> To approve and execute leases and licences not exceeding a period of 21 years, in accordance with Council resolution FIN070-18.
<i>Director Community and Culture</i>	<ul style="list-style-type: none"> Review recommendations of new agreements. Report to Council via Community Property Report. Provide point of contact for Councillor enquiries.
<i>Manager Community and Cultural Development</i>	<ul style="list-style-type: none"> Provide a point of contact about the meaning and application of the policy. Update the policy when necessary.
<i>Coordinator Programming & Operations</i>	<ul style="list-style-type: none"> Provide a point of contact about the meaning and application of the policy. Update the policy when necessary. Ensure compliance with the policy.
<i>Community Property Officer</i>	<ul style="list-style-type: none"> Adhere to this policy. Review and update the strategy when required. Develop and adhere to related procedures. Report new community leases/licences to Council.
<i>Staff</i>	<ul style="list-style-type: none"> To adhere to this policy. To file related documentation into Council's Electronic Document and Records Management System.

VERSION CONTROL AND CHANGE HISTORY

Version	Amendment Details	Policy Owner	Period Active
1.0	Complete new Georges River Council Community Lease Policy Council Resolution CCL203-17	Manager, Strategic Property	04/09/2017 – 22/06/2020
2.0	Updated version of Georges River Council Community Lease Policy Council Resolution CCL042-20	Manager Community and Cultural Development	22/06/2020 – ongoing