

## LEASING POLICY

### **INTENT**

To regulate the provision of leasing services to external bodies (Cook Shire Council as Lessor) so that all agreements are standardised by Lessee type with reference to rental payments and terms and conditions, and to ensure Council breaks even in the provision of leasing services.

### **SCOPE**

This policy:

- a) applies to all employees (inclusive of management and elected representatives) engaged in Lease negotiation *and* funding agreement negotiation from which leasing arrangements stem; and
- b) any/all parties, groups or persons proposing to Lease, or currently leasing, or applying for a Leased property, from Cook Shire Council; and
- c) any agreement type whereby Cook Shire Council occupies the role of Lessor (or other like title) and periodical payments are made to (or waived by) Cook Shire Council, in exchange for occupancy of land, buildings, or part thereof, on a temporary, short or long-term basis, other than a single instance i.e. the booking of a hall.

### **PROVISIONS**

#### **1. LEGISLATION**

This Policy has been made with reference to the Queensland *Local Government Act 2009* and the *Local Government Regulation 2012*: Part 3, Default Contracting Procedures.

### **DEFINITIONS**

**Commercial Organisation**

An entity that is **not** defined as not-for-profit and/or is funded by the public or commercial activity i.e. the provision of

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service in exchange for monetary concerns.

**Community Organisation**

A self-funded entity that is incorporated (pursuant to the Associations Incorporations Act 1981) and is a not-for-profit entity (as defined by the Australian Taxation Office), sourcing revenue solely for the purpose of continuing the operations of the entity.

**DOGIT**

Deed of Grant in Trust, or Trustee Leases, typically negotiated for the intention of providing the community with a particular service - Likely to involve State of Federal Government and imposed conditions.

**Government Organisation**

Program or organisation (or division of) funded primarily by federal, state or local government.

**Social / Community Housing**

Housing provided based on means testing, or other criteria, as part of Council's community service obligation.

**Lease(s)**

Any arrangement whereby a party, group or person occupies property, on a temporary, short, or long-term basis, other than a single instance, in exchange for payment to the Lessor (or where payment is officially waived) - also known as a Tenancy Agreement or a Rental (or derivatives thereof).

**Lessee or Tenant**

The party to which Cook Shire Council Leases or rents property, land or buildings (or part thereof).

**Lessor**

the party or persons to whom payment is made. Cook Shire Council for the purpose of this policy.

**Licence to occupy**

A form of Lease - inclusive of all its connotations.

**Periodical Payment**

Those payments made by the Lessee to the Lessor in exchange for the Lessee's right to occupy.

**Private Association**

An entity that is funded solely through the provision of subscription fees and/or donations and/or fundraising and/or grants or government subsidies.

**Property**

Land, buildings, or part thereof.

**Rental**

A form of Lease - inclusive of all its connotations.

**Sporting Association**

An entity that is funded solely through the provision of subscription fees and/or donations and/or fundraising occupying, for the purposes of this policy, land only, and self

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funding for all structural improvements to property.

**Tenancy**

A form of Lease - inclusive of all its connotations.

**Unimproved Land**

Land rented with no structural improvements upon which an association may place improvements for the sole purpose of that association.

**2. SECURING OF LESSEE**

**2.1. Advertising the Property**

As per the *Local Government Regulation 2012, Section 227*:

- All property available for Lease will be advertised (under tender) for 21 days in a newspaper or circular deemed to reach the majority of constituents. The advertisement will clearly state the criteria by which the property will be Leased to the successful applicant.

**2.2. Exceptions to the requirement for Tender/Auction will be considered in line with the relevant legislation**

Where no provision for the determination of Tenants is provided for in the Tendering or Auction process, selection will be in accordance with the *Local Government Act 2009*: Sound Contracting Principles, namely:

- a) value for money; and
- b) open and effective competition; and
- c) the development of competitive local business and industry; and
- d) environmental protection; and
- e) ethical behaviour and fair dealing.

**2.3. Evaluating Submissions**

All parties interested in leasing property from Council will be reviewed in light of any/all legislative requirements and shall also be selected in line with Cook Shire Council's endorsed goals and objectives.

**3. LEASE TYPE**

All Leases whereby an interest in land is offered, and if required by legislation, will be lodged with the Department of Environment and Resource Management, inclusive of, but not limited to, Trustee Leases.

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Where no lodgement is intended, the Lease will be classified as either a “Tenancy Agreement” or a “Licence to Occupy” unless otherwise determined.

#### 4. LEASE CONDITIONS

All leasing Terms and Conditions will be standardised across Leases, Tenancy Agreements and Licences to Occupy.

Key to the provisions in each arrangement is the requirement for the Tenant to provide for their own services either through direct engagement or to reimburse Council for the provision of those services. Where Council provides services, an administration fee will be charged. Services include, but are not limited to:

- a) Phone and Data
- b) Electricity
- c) Water
- d) Sewerage
- e) Gas
- f) Rates
- g) Gardening and Landscaping
- h) Cleaning
- i) Security
- j) Refuse removal

Major Maintenance i.e. renewal and structural repairs will be undertaken by the Lessor with the rent set to cover forecast costs. Minor and operational maintenance will always be the responsibility of the Lessee.

Exemptions to the requirement for the Tenant to provide for their own services will be considered only where Council receives an equitable benefit of equal or greater value to the expense incurred by Council.

#### 5. TERM

The Term of any lease will be no less than one (1) year and no greater than thirty (30) years. Exceptions will be by negotiation with Council.

#### 6. RENTAL SCHEDULE

All rental (for property) shall be charged according to the following schedules<sup>‡</sup>. Amounts as detailed in the policy shall be reviewed years in accordance with the relevant CPI Index<sup>†</sup> and

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new rental agreements shall be charged at the indexed price.

✘ Exceptions to the endorsed rental schedule shall:

- a) form part of Council’s Community Service Obligation; and
- b) will be considered only where Council receives an equitable benefit of equal or greater value to the expense incurred by Council.

Organisation Type *	Base Rental	Annual Increase	Administrative Fee ‡
Government, Commercial and Private	Market Rate	CPI †	10%
Community	The average forecast cost of owning the property excluding depreciation, insurance and administration.	CPI †	10%
Land (Sporting)	Nominal rate by negotiation.	CPI †	10%
State or Federally Funded Not for Profit/Community	All Cost Recovery Including Allocated Amount for Significant Pending Outlay in Accordance with the Asset Management Schedule/Register. Costs to have on-cost applied.	CPI †	10%
Social Housing	Determined Annually by Council Budget or by State Mandated Criteria	N/A	N/A
DOGIT	Determined on a case by case basis, by Council Budget or by State Mandated or Legislated Criteria	N/A	N/A
Land	Market Value	CPI †	10%

\* All associations will be incorporated prior to leasing from Council.

† “CPI” means the Consumer Price Index (All Groups) Brisbane figure published from time to time by the Australian Bureau of Statistics or, if no Consumer Price Index (All Groups) Brisbane figure is published at the relevant time by the Australian Bureau of Statistics, an index that the Australian Statistician nominates as appropriate (whether by public notice or by specific advice to the Principal or the Contractor). CPI shall be calculated as follows:

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**On each anniversary of the Contract Commencement Date during the Term the Contract Price shall be adjusted by applying the formula:**

$$\text{Contract Price} \quad \times \quad \frac{\text{Index 2}}{\text{Index 1}}$$

‡ The administrative fee is a percentage of the service cost and is applied under the following circumstances:

- where services are supplied in Council’s name and Council invoices the tenant for the services; or
- where services are provided by Council (including: Electricity, Data, Phone, Gas, Gardening and Landscaping, Cleaning, Requested Improvements above that scheduled by Council, Pest Control, Refuse Removal, Air Conditioning etc).

*THIS POLICY IS TO REMAIN IN FORCE UNTIL OTHERWISE DETERMINED BY COUNCIL.*

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