

Policy Owner/Responsible Officer	Manager Commercial Services
Department	Engineering & Works
Council resolution	22/127OC
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## 1. Policy statement/Objectives

Kiama Municipal Council recognises the significant impact community based groups have in providing and managing Council facilities and services. In some cases, these contributions have existed over a long period of time. Additionally, contemporary circumstances may give rise to the reliance on community groups in managing facilities or services.

Under the Local Government Act 1993, provision exists for Section 355 Committees to be established. Committees are established by a resolution of Council and is the recognised way for a Council to delegate certain functions. On the basis that Council facilities are owned by the local community for which Council is responsible, all management and activities undertaken by a Committee must be in accordance with the requirements of the Local Government Act.

Once established, a s355 Committee is required to operate the facility or service in accordance with an adopted Charter. This provides the s355 Committee and Council with clearly defined responsibilities for the use, management and reporting on the facility for the term of the respective s355 Committee.

## 2. Scope

For Council Section 355 Committees.

## 3. References

- Kiama Municipal Council Procurement Policy
- Kiama Municipal Council Meeting Code of Practice
- Kiama Municipal Council Code of Conduct

## 4. Consultations

- Property Team

## 5. Definitions

Nil.	
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## 6. Variation and review

Council reserves the right to review, vary or revoke this policy.

Date reviewed	Date adopted/ endorsed	Brief detail of amendments
June 2022	28 June 2022	22/001OC ...amend the s355 Committee Policy to remove reference to the Jamberoo Youth Hall Committee operating under the <i>Local Government Act 1993</i> .
September 2020	22 September 2020	20/253OC ...amend the Section 355 Committee Policy by formally recognising the Jamberoo Youth Hall Committee and the adopted Committee Charter to be the "care, control and management of the Jamberoo Youth Hall."
N/A	18 August 2020	New policy

## Policy

### 7. Functions and delegations

Under sections 355 and 357 of the Local Government Act, Council is able to delegate some functions to a Committee of Council. Council uses this delegation to appoint community members to manage facilities or services on its behalf through the adopted s355 Committee.

The appointed s355 Committee facilitates the involvement of community members in the management of Council facilities or services. For Council this enables functions to be performed by others and provides the necessary security for the Committee to operate under Council's structure. A s355 Committee appointment facilitates direct level community involvement in managing community facilities.

Council appoints a s355 Committee at its discretion and following an Expression of Interest process. Each s355 Committee has a charter that describes the functions that have been delegated by Council. A Charter can only be amended by a resolution of the Council.

While the s355 Committee is responsible for the management of the nominated facility or service in accordance with this Policy and the Charter, Council is responsible for monitoring the actions and performance of the s355 Committee.

The s355 Committees established by Kiama Municipal Council including their charters are listed in Appendix 1.

### 8. Appointment and membership

All nominations for the formation of the initial s355 Committees are required to be formally submitted in writing to Council for consideration. To hold office and be responsible for the management of a Council facility, all s355 Committee members must be appointed by Council. New (including replacement) s355 Committee members must also be appointed by Council, before being able to vote and take part in meetings of the s355 Committee. Advertisements for s355 Committee positions is the responsibility of Council and the s355 Committee must advise Council of vacancies needing to be filled.

A s355 Committee can only be dissolved by a vote to that effect by elected Councillors. In the event a s355 Committee is dissolved, assets and funds of the s355 Committee shall, after payment of expenses and liability, be passed to Council.

Council will call for nominations for the formation of a s355 Committee, including replacement s355 Committee positions during the term, through an open expression of interest process that all members of the community can nominate.

The term of office for s355 Committees will be the same term as the elected Council plus 3 months. Section 355 Committee members are eligible for re-appointment in the new term by re-submitting individual nominations in writing to the new Council or by holding a s355 Committee meeting and forwarding the proposed nominations to Council for approval. Council has ultimate discretion in the endorsement or otherwise of the s355 Committee in this situation.

At each Annual General Meeting (AGM) of the s355 Committee, office bearers and s355 Committee members need to stand down and positions re-filled. A Returning Officer, appointed at the meeting, will call for nominations for the positions of office bearers. Details of appointments are to be notified in writing to Council within 14 days of the AGM.

The membership of s355 Committees shall not be less than four members and no more than 10 as appointed by Council, including office bearers, unless otherwise decided by Council.

Council reserves the right to appoint one of its members (and an alternate) to each s355 Committee at any time irrespective of the maximum number of members prescribed above.

Vacancy of a committee member will arise in the following circumstances:

- i. upon the death of a member
- ii. if the member becomes bankrupt
- iii. if the member becomes mentally incapacitated
- iv. if the member resigns membership by notice in writing to the s355 Committee
- v. if the member is absent for more than three consecutive meetings without leave of the s355 Committee
- vi. while serving a sentence (whether or not by way of periodic detention) for a felony or any other offence, except failure to pay a fine
- vii. Council passes a resolution to remove the member from the s355 Committee
- viii. if the member fails to comply with Council's Code of Conduct.

## **9. Responsibility and conduct**

### **9.1. Responsibilities:**

The appointed Section 355 Committee is responsible for the facility or service as described in the Charter. A Committee may not make decisions regarding:

- i. setting charges or fees for use of the facility (excluding recommendations to Council regarding fees and charges)
- ii. borrowing of any monies without the written consent of Council
- iii. the sale, lease, sub-lease or surrender of any land and or other property vested in its care under the provisions of the Local Government Act 1993
- iv. the acceptance of tenders which are required to be called by Council. The s355 Committee may invite and accept quotations for minor works, goods and services as outlined in Council's Procurement Policy
- v. the payment or making of any gift to its members. This includes the payment of allowances or travelling expenses incurred whilst attending s355 Committee meetings
- vi. the payment of any monies outside the scope of the s355 Committee's function
- vii. the carrying out of any works on or to the facility including alterations or construction without the prior consent of Council
- viii. unreasonably withholding consent for the use/hire of the facility to any organisation which agrees to comply with and adhere to the rules adopted for use of the facility.

The exercise by the s355 Committee of its power and functions will be subject to such limitations and conditions as may be imposed by law, specified by resolution of the Council or in writing by the Chief Executive Officer to the s355 Committee. The s355 Committee will observe any Rules and Regulations made by the Council, in relation to the facility/function under its management and control. If at any time the s355 Committee is deemed to be functioning outside the limits of its powers prescribed by this Policy and the Charter, all powers may be revoked by written notice to the s355 Committee signed by the Chief Executive Officer or his/her representative.

## **9.2. Conduct**

Kiama Municipal Council has a Code of Conduct that is applicable to elected Councillors, employed staff and Committee members. This Code of Conduct sets out the principles to ensure the business of Council is carried out in an efficient, honest and impartial way. As s355 Committees operate as part of Council, it is important for s355 Committees to be aware of and conform to this Code of Conduct. Failure to comply with the Code of Conduct could result in removal from the s355 Committee.

## **10. Conduct of meetings**

Meetings are to be conducted in accordance with Council's Code of Meeting Practice including but not limited to:

- i. that a quorum be present (quorum number to be determined at first s355 Committee Meeting)
- ii. that appropriate notice of meetings and business is given including the agenda (minimum 48 hours)
- iii. that business on the agenda is properly conducted
- iv. that minutes are recorded and any relevant correspondence related to that are sent to Council within 14 days of the meeting
- v. a majority of votes is required for a motion to be carried with the Chairperson having the casting vote
- vi. minutes are confirmed at the s355 Committee's next meeting and observing any comments or directions of Council in relation to them.

The Chief Executive Officer of Council may attend any meeting, including nominated staff. Members of the public are entitled to attend s355 Committee Meetings as observers if the s355 Committee allows.

## **11. Legal**

Section 355 Committees of Council need to be aware that they are acting on Council's behalf. Legally, the s355 Committee is 'Council' and any actions which the s355 Committee undertakes are Council's responsibility. Council has delegated its authority to the s355 Committee to act on Council's behalf and the Council can withdraw this delegation at any time if deemed necessary.

The s355 Committee is also a legal entity and the delegated authority of Council is made to a particular Committee by name or title. The s355 Committee cannot change this name without advising the Council of the intention to adopt a new name. A s355 Committee cannot merge with another party without prior notice and input from Council. Only Council can change the charter of a s355 Committee.

## **12. Records management**

Outgoing correspondence from the s355 Committee is effectively outgoing correspondence on behalf of Council. Council's name and logo is to be incorporated into correspondence and any letterhead design must indicate that the function is a Committee of Kiama Municipal Council. Documentation can only be signed by the Chairperson of the s355 Committee as delegated by Council.

Electronic document management of records associated with the s355 Committee is required including all meeting agendas and minutes. Records of the business and activities of Council Committees will be retained in accordance with the State Records Act.

### 13. Financial management

Section 355 Committees are subject to the same rules and regulations as set out in the Local Government Act, Local Government Regulations and Accounting Standards.

Section 355 Committees are established to benefit the community and are made up of members of the community. Funds raised, received or spent are subject to public scrutiny, just the same as Council. Council's requirement to be publicly accountable involves the responsibility to ensure that s355 Committee funds are used in the manner for which they were intended and that full disclosure of the s355 Committee's financial activities is available.

Council requires s355 Committees to provide financial reporting when requested in addition to the Annual Report. The Chief Executive Officer has the authority to direct s355 Committees to process financial records and transactions in any way that the Council deems appropriate.

A Section 355 Committee may, with the vote of the full Council, undertake its own banking. In this regard, the following must be adhered to with regard to banking and financial management:

- i. a bank account must be opened at a branch of a recognised financial institution within Kiama LGA. The account shall be in the name of the Committee
- ii. the Committee can draw on its account for such sums as it may require in the performance of its delegated function but under no circumstances will the account be overdrawn
- iii. all monies received by the Committee must be banked within 24 hours of receipt
- iv. information on income and expenditure needs to be kept up to date, preferably electronically or hard copy
- v. receipting – payments are accepted via direct deposit into the Committee's bank account. Where payments are made by other method, receipts need to be kept for auditing
- vi. purchasing – payments are to be made by EFT. A tax invoice is required for every payment record and any GST charged be clearly shown
- vii. the Committee may authorise the Chairperson and Treasurer to sign on its behalf with one authoriser for each payment,
- viii. records will be made available for inspection whenever required by an authorised officer or Council or Council auditor,
- ix. a quarterly report of the financial affairs must be provided to Council in line with GST reporting. At each quarter this report should include profit and loss statement, balance sheet and BAS and received by Council by the end of the second week of the following month OR, a financial report summarising the income and expenditure and including a bank reconciliation be reported to each ordinary meeting of the Committee
- x. the Committee will be entitled to spend the monies raised in the management of the facility under their control. These monies can only be expended strictly in accordance with conditions expressed in Council's s355 Policy, by the Council and its delegations, and only upon the facility/function of the Council for which the Committee has been constituted
- xi. an annual Profit and Loss Statement for the Committee must be submitted to Council within 30 days from the end of the financial year
- xii. at the discretion and direction of the Chief Executive Officer, a Committee may at any time have to process their financial records through the Council's financial system if the Chief Executive Officer is of the opinion that this is the most appropriate method of managing and recording financial transactions.

## **14. Procurement and purchasing**

Under the Local Government Act, s355 Committees benefit by utilising the purchasing power of Council to reduce costs. Council also has robust systems in place regarding suppliers and supply chains to ensure effective purchasing takes place.

All purchasing undertaken by a s355 Committee is to be done in accordance with Council's Procurement Policy and Council may at any time undertake audits to ensure compliance with procurement practices and policy.

## **15. Insurance**

Council maintains Property Insurance, Public Liability Insurance, Group Personal Accident Insurance and Community Support Liability Insurance. The Property Insurance generally covers building structural elements and materials. Public Liability Insurance generally covers the appointed s355 Committee in the event a claim for damages is made against them by a third party. Group Personal Accident Insurance covers Committee members performing their roles within the scope of the s355 Committee's charter and delegations.

Council's Community Support liability policy is in place to provide the necessary coverage for users of the Council facility (being unincorporated or volunteer groups) for low risk bookings such as weddings or birthdays, formerly known as casual hirer's insurance. Users need to be advised by the s355 Committee that the policy is in place to protect them against claims as the hirer and an excess applies to every claim payable by the hirer.

Other groups must have and provide the s355 Committee with proof of their Public Liability insurance policy in the sum of not less than \$20M. It is the s355 Committee's responsibility to ensure that users of the facility have adequate Public Liability insurance.

## **16. Management of the facility**

Fees and Charges for the use and hire of public land and buildings are set by Council. The s355 Committee can make recommendations to Council as part of the annual Fees and Charges review process. Council commences its annual review process for all fees and charges in January. Proposed new Fees and Charges are publicly exhibited and adopted by Council for the next financial year during June.

Council has standard processes and conditions of hire for public buildings that it directly manages. The standard conditions for hiring are to be used by s355 Committees for the facility under their management control.

## **17. Maintenance**

Section 355 Committees are responsible for ensuring that the facility under their control is maintained in a state of reasonable repair, fit for purpose and presents no WHS risk for s355 Committee members and users/hirers. For the purposes of this policy, maintenance is defined as those matters listed in the Maintenance Schedule at Appendix 3. Council may request the Committee at any time to provide a schedule of works and repairs undertaken to the facility.

The s355 Committee must ensure that suppliers of goods and services, including cleaning and maintenance works, are carried out by professional contractors who, as a minimum, must:

- i. provide a copy of the public liability insurance and workers compensation policy (\$20 million) to the s355 Committee prior to undertaking works
- ii. demonstrate compliance with WHS standards and regulations
- iii. comply with the Building Code of Australia and relevant Australian Standards
- iv. have an ABN

- v. be registered on Council's Supplier List.

Council staff inspect facilities periodically as part of scheduled asset management. However, the Committee is responsible for keeping Council informed on any capital renewal or replacement requests which can be considered with each capital works program and new budget.

## 18. Related forms/Documents

Nil.

## 19. Attachments

Appendix 1	List of s355 Committees and Charters
Appendix 2	S355 Committee member positions
Appendix 3	Maintenance schedule

## 20. Authorisation

Name: Jane Stroud | Chief Executive Officer

Date: 28 June 2022



## Appendix 1 – s355 Committees and Charters

Section 355 Committees	Committee Charter
Nil	

## **Appendix 2 – Committee member positions**

1. Chairperson
2. Vice-Chairperson
3. Secretary
4. Treasurer
5. Bookings Officer
6. Committee Members

## **Appendix 3 – Maintenance schedule**

Maintenance means the care and maintenance of the property as well as rectifying any non-structural defects that become apparent in the property under normal use. All maintenance and repair works must comply with all applicable codes and standards. Maintenance includes, but is not limited to, maintaining the property in a neat and tidy condition as follows:

### ***Maintenance generally***

1. The Committee must maintain the property throughout their term in its condition at the commencement date of the Committee assuming management control of the facility.

### ***Weeding and rubbish removal***

2. The Committee must remove rubbish and weed growth that occurs and re-occurs throughout the property. This work must be carried out regularly so that at weekly intervals the area can be observed in a completely clean and tidy condition.

### ***Building internal***

3. The Committee must:
  - 3.1 maintain and repair all doors, hinges, locks, windows, glazing and window frames and keep them in working order
  - 3.2 keep all drains and pipes clean and unblocked
  - 3.3 replace blocked drains and pipes, missing or damaged wall and floor tiles and coverings, spent light globes, broken power points and hot water systems
  - 3.4. maintain and repair all plumbing fittings and fixtures and electrical fittings
  - 3.5 maintain all electrical wiring, water supply and sewerage services in working order
  - 3.6 observe all fire safety measures in accordance with relevant standards and the Fire Safety Schedule for the facility
  - 3.7 re-paint internal wall, ceiling and doors/architraves at no less than seven year intervals.

### ***Building external***

4. The Committee must:
  - 4.1 keep gutters free of debris and silt build up
  - 4.2 keep external wall surfaces including glazing clean
  - 4.3 keep drainage pits free of debris and leaf litter
  - 4.4 keep clean all eaves of the building.