

DONATION OF COUNCIL PLANT HIRE POLICY



Responsible Department: Infrastructure Delivery
Responsible Section: Infrastructure Delivery
Responsible Officer: Director Infrastructure Delivery

Objective

- To provide a guide to Councillors, Staff and the community in relation to the use of Council plant to local non for profit organisations.

Policy

When Council plant is used to carry out private work at the request of a local non-profit organisation, a donation equal to the plant hire shall be made to the applicant subject to:-

- (a) the work being carried out at a time which does not adversely affect Council's work program;
- (b) the plant being operated by an approved Council staff operator;
- (c) the operator volunteering his/her services;
- (d) plant relocation costs being borne by the applicant;
- (e) direct operating costs and consumables eg fuel, being borne by the applicant;
- (f) appropriate insurance cover being arranged;
- (g) an appropriate hire agreement (as per this Policy) and indemnity being executed by the applicant;
- (h) any requests shall be referred to General Manager for approval and reported to Council on a quarterly basis (*vide* Minute No 501/2007).

References

- *Local Government Act (NSW) 1993*

**Donation of Council Plant Hire for Non-Profit Local Organisations
Hire Agreement form**

Agreement For Hire Of Plant And Equipment

This Agreement is made on the Day of 20.....

Between: Narrabri Shire Council
of 46-48 Maitland Street
Narrabri NSW 2390 (“owner”)

And:

of

..... (“hirer”)

Recitals:

- R1. The owner is the proprietor of the plant and equipment (“equipment”) listed in the schedule to this Agreement (“schedule”).
- R2. The hirer will hire the equipment specified in the schedule from the owner upon the terms and conditions in this Agreement.

Operative Part:

1. Hire of plant and equipment

- 1.1. The hire of equipment will commence from the commencement date specified in the schedule and continue for the term specified in the schedule.
- 1.2. The hirer is entitled to use the equipment for the hire period and for any agreed extension of the period, (requested in writing by the hirer, authorised person and approved in writing by the owner, authorised person).
- 1.3. The hirer agrees to return the equipment to the address of the owner on or before the end of the hire period as outlined in the schedule.
- 1.4. The owner will not refund any hire charge monies if the hirer elects to return the equipment prior to the end of the hire period, regardless of reason.

2. Payment for rental

- 2.1. The hirer agrees to pay the owner direct operating costs and consumables (eg fuel)..
- 2.2. The hirer agrees to pay the owner any plant relocation costs.

3. Use, operation and maintenance

- 3.1. The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- 3.2. The equipment shall not be used by anyone other than the agreed operator(s) without the expressed permission of the owner.

3.3. The hirer agrees the equipment will be operated, maintained and stored in strict accordance with any instruction provided by the owner, with due care and diligence, only for its intended use and in accordance with any manufacturer's instructions and recommendations whether supplied by the owner or posted on the equipment as to the operations, maintenance and storage thereof.

3.3.1. The hirer agrees to comply with all occupational health and safety laws relating to the use of the equipment and related operations.

3.3.2. The hirer shall ensure the equipment is returned to the owner clean of soil or any other foreign matter and any spray tanks and spray equipment shall be thoroughly cleaned. Fuel tanks on any equipment shall be full of fuel when the equipment is returned to the owner. In the event that these requirements are not complied with the hirer shall pay the owner the reasonable costs of compliance with these requirements.

4. Hirer's warranties

4.1. The hirer warrants that:

4.1.1. the equipment will be used in accordance with the conditions outlined in the schedule;

4.1.2. the particulars in the schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;

4.1.3. the agreed operator holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;

4.1.4. the equipment will not be used for any illegal purpose;

4.1.5. the hirer's vehicle is suitable for towing the equipment;

4.1.6. the hirer will not, without prior written consent of the owner, modify, or permit any modification of, the equipment in any way; and

4.1.7. the hirer agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.

4.1.8. the hirer and agreed operator will not represent themselves as a Narrabri Shire Council employee or Narrabri Shire Council representative.

5. Indemnity

5.1. To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.

6. Loss, damage or breakdown of plant and equipment

6.1. The hirer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred (fair wear and tear excepted) during the hire period.

6.2. If there is a breakdown or failure of the equipment then the hirer shall contact the owners Authorised person, and return the equipment to the owner at the hirer's expense and the hirer shall not attempt to repair the equipment.

7. Insurance

7.1. The owner will maintain current insurance policies in respect of the equipment to its full insurable value and provide to Council, before the commencement of the hire period, a copy of the certificate of currency of any and all relevant insurance policies.

8. Liability

8.1. The hirer will assume all risks and liabilities for and in respect of the equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer's possession, use, maintenance, repair or storage of the equipment.

- 8.2. the hirer will have current Public Liability Insurance Policy with a minimum value of \$20,000,000, to cover any liability that may arise out of use of the equipment until the completion of the hire period (Clause 12).

9. Disclaimer

- 9.1. To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.

10. Title to equipment

- 10.1. The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer does not have any right to pledge the owner's credit in connection with the equipment and agrees not to do so.
- 10.2. The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the equipment or make any addition or alteration to, or repair of, the equipment.

11. Repossession

- 11.1. The owner may retake possession of the equipment if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.
- 11.2. If repossession takes place, the owner shall only charge the hire fee (and any costs associated with taking possession ie transport cost) up to and including the time of repossession.

12. Completion of the hire period

- 12.1. The hire period is completed when the equipment has been returned to the owner:
- 12.1.1. in the same condition as when it was hired, (cleaned and refuelled); and
- 12.1.2. on or by the date and time outlined in the schedule.

13. Non-merger

- 13.1. The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

14. Severance

- 14.1. If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

15. Governing law

- 15.1. This Agreement is governed by the laws of the state of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this Agreement.

16. Interpretation

- 16.1. In this Agreement, unless the context otherwise requires:
- 16.1.1. A reference to the singular includes the plural and vice versa;
- 16.1.2. A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;

16.1.3. A reference to an individual shall include corporations and vice versa; and
16.1.4. If a word or expression is defined, its other grammatical forms have a corresponding meaning.

16.2. In this Agreement, headings are for convenience only and do not affect interpretation.

Schedule

- 1. **Equipment:**
(one piece of "equipment" only, plus attachments)
- 2. **Hire fee (if any):**
- 3. **Hire period:** From to
- 4. **Hour Meter at the Commencement of Hire:**
- 5. **Agreed Operator(s):** 1.....
2.....
- 6. **Public Liability Insurance Policy Number:**
- 7. **Public Liability Insurance Company:**
- 8. **Copy of Certificate of Currency Attached Yes/No**

Conditions of use specific to the equipment:

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Upon Return

Hour Meter at the completion of hire(hours)

The equipment specified in this schedule has been returned on(date) at
.....(time) in accordance with this agreement and all costs owed in relation
to this agreement(amount) have been paid. (Receipt No:.....)

Owner Authorised Person:

Executed as an Agreement

For and on behalf of; Narrabri Shire Council. ("the owner").

Authorised Person:

Title: Fleet and Supply Manager

Signature:

Date:

Hirer: ("the hirer")

Authorised Person:

Signature:

Date:

History

MINUTE NUMBER	MEETING DATE	DESCRIPTION OF CHANGE
19/2013	5 February, 2013	Adopted
164/2017	15 August 2017	Reviewed