Section 355 Guidelines

EQUESTRIAN CENTRE MANAGEMENT COMMITTEE

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1. Introduction - What is a Section 355 Committee?

Section 355 (b) of the NSW Local Government Act 1993 makes provision for Council to delegate certain functions to Committees to undertake functions on behalf of the Council.

Council may use this authority and appoint a Section 355 Committee to manage facilities on its behalf. The assistance and efforts of volunteers from Inverell Shire Council community is essential to look after the many Council facilities and provide a venue for community activities.

These Guidelines are designed to implement the requirements of the Local Government Act and other Acts, Regulations, and Guidelines to ensure Council and the 355 Committees are complying with legislation. Also, and importantly, they are designed to clearly outline in broad terms the roles and responsibilities of both Council, and the 355 Committee, to make it a truly effective and valuable partnership.

Due to the varied functions that each Committee carries out, across many different areas and assets, separate delegation and terms of reference documents are developed between the Council and each individual Committee which outline in detail the implicit roles and duties of each Committee.

Whilst no particular qualifications are necessary for a person to serve on a Section 355 Committee, a positive commitment to the activities of the committee and a willingness to be actively involved in supporting the community is essential, as is basic knowledge of meeting procedures and Councils code of conduct.

The benefit of the 355 Committee arrangement is that once appointed, Section 355 Committees are effectively a volunteer extension of Council. As a result, Section 355 Committees can access Council's professional staff and advisers and can take advantage of Council's purchasing and accounting services for support and advice where required and possible. Section 355 Committees are protected by Council's insurance arrangements in certain circumstances.

As the Section 355 Committee is acting on behalf of Council, Committee members are required to adhere to Council's Code of Conduct, Code of Meeting Practice and other corporate governance policies. Therefore, it is important that members uphold the principles of fairness, equity and honesty.

1.1 Responsibilities

A Section 355 Committees will be responsible for the activities determined by Council. The responsibilities conferred on the Committee is set out in the Plan of Management for the Committee.

1.2 Limitation of Powers

There are limits to the powers Councils are allowed to delegate to Committees under Section 355 of the Local Government Act 1993. Those which **cannot be delegated** to Committees include:

- employing staff
- the making of a charge;
- the fixing of a fee;
- the borrowing of money;
- the allocation of money for expenditure on other Council works, services or operations;
- the acceptance of tenders which are required under the Act to be invited by Council;
- a decision under Section 356 to contribute money or otherwise grant financial assistance to persons;
- the making of an application, or the giving of a notice, to the Governor or Minister;
- this power of delegation;

 any function under this or any other Act that is expressly required to be exercised by resolution of Council.

The exercise by the Committee of its powers and functions is subject to such limitations and conditions as may from time to time be imposed by law, specified by resolution of Council or in writing by the General Manager or his representative to the Committee. The Committee will observe any rules and regulations made by Council, in relation to the facility or function under its care, management and control. If at any time the Committee is deemed to be functioning outside the limits of its powers, all powers may be revoked by written notice to the Committee signed by the General Manager or their representative.

1.3 Code of Conduct

All Committee Members are responsible for complying with <u>Council's Code of Conduct</u>. There are also General Conduct Obligations contained within the Code which are enforceable standards of conduct. The area of the Code of Conduct which will most likely affect Committee members is in respect to conflict of interests. A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.

There are two kinds of conflict of interests, pecuniary (financial) interest and non-pecuniary interest. The Council's Code of Conduct places similar obligations on Committee members as it places on Councillors in relation to conflict of interests.

1.4 Pecuniary Interest

A "pecuniary interest" is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. Chapter 14 of the Local Government Act 1993 includes a framework for handling alleged breaches of the pecuniary interest provision of the Act. The Act is about openness, accountability and transparency in decision making by Councils. Where a "pecuniary interest" exists, it is the responsibility of the Committee member:

- To disclose to the Committee meeting any pecuniary interest in a matter to be considered by the Committee or raised during the Committee meeting.
- To leave the meeting and be out of sight of the meeting and not to participate in discussion of that matter in which the member has a pecuniary interest while it is being considered by the meeting.
- Not to vote on the matter being considered by the meeting in which the member has a pecuniary interest. The obligation to disclose is a strict duty, and the person's motives for participation are irrelevant if an interest is said to exist.

1.5 Non-pecuniary Interest

A "non-pecuniary" conflict of interest can arise when a Committee member has another involvement or interest which makes it difficult for them to remain impartial when involved in discussions and decision making or a particular matter. These can include the following situations:

- business or professional activities;
- employment or accountability to other people or organisations;
- membership of other community organisations or service providers;
- ownership of property or other assets.

The conflict may lead to:

- financial benefit, e.g. sale of goods or privileged knowledge (this would be a pecuniary interest); or
- personal benefit, e.g. career advancement or increased standing in the community.

Essentially, the Committee member needs an 'unfettered mind' when making decisions on Committee matters.

1.6 Dealing with Conflicts of Interest

If a potential conflict arises, it should be declared as soon as possible and must be recorded in the Minutes of the Meeting where such conflict is declared.

The potential actions that should be taken in relation to a significant non-pecuniary conflict of interest include:

- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict;
- b) have no involvement in the matter, by leaving the meeting and not taking part in any debate or voting on the issue. This should be recorded in the minutes.
- c) As a last resort it may be necessary for a Committee member to resign from the Committee where the nature of the conflict is so pervasive that the above actions are not appropriate methods of handling the conflict. Advice should be sought before taking this course of action.

Further advice can be obtained by contacting Council's General Manager.

1.7 Grievances

1.7.1 Committee Member

If a Committee member has a grievance about any aspect of their tasks, or with another Committee member, the following procedure should be followed:

Step 1 Approach the person directly to discuss the issue if comfortable in doing so.

Step 2 The Committee member can approach the nominated Council contact for discussion and advice on how to best resolve the issue. This discussion should be treated as strictly confidential.

Step 3 If Step 2 does not help resolve the problem, then the issue should be notified to the General Manager of Council in writing.

Step 4 The General Manager or their representative will provide the Committee member with a written response. The response will include, (if applicable) the reasons for implementing or not implementing any proposed remedy.

1.7.2 Outside the Committee

Where individual community members disagree with a resolution of the Committee, these parties may refer their grievances to Council in writing for consideration. Where such notice in writing is referred to Council, Council will request a report on the issue from the Committee. Upon receipt of the report, Council officers will endeavor to liaise and mediate the matter with the parties. If there is no resolution, the matter will be referred to Council for resolution. Upon Council adopting a resolution, the details of Council's deliberations will be advised to the Committee and the individual or group who referred the matter to Council.

2. Appointment of Members

2.1 Nominations

Council will make a public call for members of the community to 'self nominate' for possible appointment to the Section 355 Committee. The nominations shall be in writing, in a form specified by Council.

Current members of the Section 355 Committee or previous members are eligible to nominate.

2.2 Council Determination

Council shall determine the persons to be appointed to the Committee. The appointment shall be by a resolution passed at a meeting of Council.

2.3 Term of Appointment

The term of appointment for a Section 355 Committee member is four years. This mirrors the tenure of the Council that resolves to appoint members to the Committee.

Generally, the term of the Committee will commence within three months of the Council taking office and terminate when a new Council appoints a new Committee.

2.4 Dissolution of Committee

The Council may dissolve a Committee at any time.

Upon the Committee being dissolved, all assets and funds of the Committee shall, after payment of liabilities, be handed over to Council.

2.5 Vacation of Office

A person shall cease to be a member of the Committee if the:

- Committee is dissolved by Council.
- A member resigns from office by notification in writing to the Committee.
- A member is absent without leave from 3 consecutive meetings of the Committee.
- Council passes a resolution to remove the person from the Committee.
- Council may remove a person from the Committee due to a breach of Councils code of conduct.
- Member is convicted of a criminal offence under the *Crimes Act 1900*.
- Member is prohibited from managing a corporation under Corporations law.

3. Conduct of Meetings

3.1 Meeting Procedures

Meetings are to be conducted in accordance with Council's Code of Meeting Practice), particularly:

- that a quorum be present
- that appropriate notice is given
- that business on the agenda is properly conducted
- that accurate minutes of the meeting are recorded.

3.2 Quorum

This refers to the minimum number of members who must be in attendance to transact business. Council regulations state:

- A quorum is reached when more than one half of the members are present. For a Committee with an even number of voting members, half that number plus one must be present. For a Committee with an odd number of voting members, a majority must be present,
- If a quorum is not present within half an hour after the appointed starting time, the meeting will be adjourned to a time fixed by the Chairperson/President; or those present can hold an informal meeting to discuss matters. However, any decisions taken by the Committee are not recognised until a meeting has ratified them, where a quorum is present.

3.3 Agenda

The Agenda is a list of headings of all items, in order, that will be discussed at the meeting. Late matters can be added to the Agenda at the opening of the meeting as the Chairperson calls for discussion on the Agenda.

3.4 Voting

The Committee Chairperson shall determine the method of voting. Voting can be conducted in one of three ways.

Vote verbally

The chairperson asks people to say 'for' or 'against' and then decides which group is the largest.

Vote by show of hands

The chairperson asks people in favour of a decision to raise their hands, firstly those in favour, counts hands and announces the total, and does the same for those against.

Vote by secret ballot

Members vote on paper.

For all motions, the Committee needs to have an agreement concerning the way a vote will be decided, e.g. for the vote to be carried, you will need a simple majority (more than half);

4. Financial Management

The Terms of Reference for each committee will outline the process for procurement according to the committee's purpose and functions. Section 355 Committees are given authority to operate by Council and are subject to the same rules and regulations. These rules are set out in the Local Government Act, Local Government Regulations and Accounting Standards and must be adhered to. Funds raised, received or spent are subject to public scrutiny, just the same as Council. The concept of public accountability involves a responsibility to ensure that Committee funds are used in the manner for which they were intended and that a clear and full disclosure of the Committee's financial activities is available.

In most cases Section 355 Committees will not have a separate bank account or any delegated authority to conduct purchasing on behalf of Council. Where Committees do not have banking functions, purchasing will be officially authorised by an approved Council officer in the form of an approved purchase order.

4.1 Oversight

The General Manager has the authority to direct Committees to process their financial records through the Council's financial system if he/she is of the opinion that this is a most appropriate method of recording those financial transactions.

4.2 Accounting

Council requires the following conditions to be met by all Section 355 Committees who wish to maintain their own bank account. Council does not recommend that Section 355 Committee's keep their own bank accounts but will allow this subject to the requirements of this manual.

- a) A Bank Account must be opened at any branch of a recognised financial institution within the Inverell Shire Council Local Government Area (LGA). The account will be in the name of the Council Committee.
- b) All monies received by the Committee must be banked within 24 hours of receipt or as soon as practicable.
- c) The Committee is authorised to draw on its account for such sums as it may require in the performance of delegated function but under no circumstances will the account be overdrawn.
- d) Information on income and expenditure must be kept electronically. An excel spreadsheet or suitable accounting software should be used.
- e) Receipting: Preferably, payments are accepted via direct deposit into the Committee's bank account. Where cash or cheque are received, receipts, in the name of the Committee, will be issued for charges and other monies received and duplicates of receipts will be retained for audit.
- f) Purchasing: Payment should be made by EFT (electronic funds transfer) or, only when necessary, can be made by cheque. In every case evidence of the need for the payment is to be documented. A tax Invoice is required to be obtained and attached to payment records. A credit card receipt is not a Tax Invoice. Ensure receipts say 'Tax Invoice' and clearly show any GST charged. Where a Tax Invoice is not supplied a "Statement by a supplier" (on an approved ATO Form) must be supplied with the account for payment. Note the 'Statement by supplier' will only be required once per year for each supplier that does not have an ABN.
- g) The Committee may authorise four (4) Committee members (ideally the Chairperson, Secretary or Treasurer and one other person) to sign on its behalf on the basis that two signatures are required for each payment.
- h) All records and books will be made available for inspection whenever required by any inspector of

- local government accounts, Council's auditor or an authorised officer of Council.
- i) A financial report summarising the income and expenditure and including a bank reconciliation be reported (where available), to each ordinary meeting of the Committee.
- j) An annual report of the financial affairs must be provided to Council. This report should include the Cashbook and bank reconciliations. All supporting documentation including bank statements, the deposit book and receipt books, and copies of all tax invoices that support payments made. This information should be submitted to Council by the third week of July each year for audit.
- k) The Committee will be entitled to spend all monies raised in the management of the facilities under their control. These monies can only be expended strictly in accordance with conditions prescribed in these guidelines, by the Council, and their delegations, and only upon the facility/function of the Council for which the Committee has been constituted.

4.3 Keeping records

Committees are required to keep complete and accurate records. The following guidelines and procedures have been prepared to give members of Committees a greater understanding of the tasks they have undertaken. Steps required to keep complete and accurate records:

- 1. Open and maintain a bank account in the Committee's name.
- 2. Make as many payments as you can electronically (internet banking). Avoid paying cash.
- 3. Bank receipts promptly into the bank account.
- 4. Record details in the electronic income and expenditure record. Keep the record updated regularly at least monthly.
- 5. Reconcile the bank account regularly –monthly or each time a bank statement is received and at the end of the financial year.
- 6. Retain supporting documentation or evidence of payments.
- 7. The Income Tax Assessment Act requires records to be retained for seven years. It is important to retain invoices and other supporting documentation and that these be provided to Council.

4.4 Purchasing

Under the Local Government Act, Council can assist Committees by purchasing goods to be used in association with the delegated function of the Committee. The benefit to the Committee is to utilise the purchasing power of Council to reduce costs. Where purchases are made that involve a significant amount of GST, Council can make the full payment of the Tax Invoice and the Committee reimburses the Council the invoiced amount less the GST, as Council can claim back the GST Input Credit.

4.5 Out of Pocket Expenses

A Committee member cannot incur out of pocket expenses without prior approval by the Committee. This approval and a monetary limit is required to be recorded in the meeting minutes. Tax Invoices for these out of pocket expenses e.g. fuel, stationery, telephone, are required to be presented to the Treasurer before reimbursement is made (no invoice – no reimbursement).

4.6 Goods and Services Tax

There is no requirement for a Section 355 Committee to obtain an ABN or to register for the GST.

Section 355 Committees are part of Council. Therefore, it is Council's responsibility to ensure that GST on income derived by the Committees, and input tax credits on acquisitions made by the Committees, are properly recorded and included in the Council's Business Activity Statement. The Committee is undertaking

activities under the banner of Council, with Council having delegated the appropriate authority under Section 355 and 377 of the Local Government Act 1993.

Council as an entity is required by law to have an Australian Business Number (ABN) and be registered for GST. This requirement means that this also applies to the finances relating to the Committees as they are carrying on a function on behalf of Council.

In this regard it is requested that Committees:

- a) Utilise the Australian Business Number of Inverell Shire Council being 72 695 204 530, showing this number on receipts and invoices issued.
- b) Apply GST to fees and charges for use of the facility where appropriate in accordance with Council's adopted fees and charges.
- c) Provide Council with a summary of revenue and expenditure at the end of each quarter during the financial year and the amount of GST collected on revenue and the amount of GST that can be claimed as input tax credits on expenditure.
- d) At the end of each quarter during the financial year if the GST amount collected on revenue exceeds GST input tax credits on expenditure then remit the difference to Council.
- e) At the end of each quarter during the financial year, if the GST amount collected on revenue is less than GST input tax credits on expenditure then Council will reimburse the Committee the difference. Council will then include the quarterly summary from the Committee in its Business Activity Statements lodged with the Australian Taxation Office.
- f) Financial records that relate to the GST calculations are to be kept for at least 7 years so these need to be passed in full to Council at the end of each year

5. Risk Management

The Committee is responsible for preventing and minimising the adverse effects of risk that may occur at the facility.

A draft hazard assessment checklist is attached as **Appendix 1**.

Council's Risk Officer can assist the Committee with the further development of risk management procedures for the facility.

6. Insurances

6.1 Property Insurance

All Council facilities are covered for risks such as fire, theft and malicious damage. Committees should be aware of the excess applicable to these policies.

6.2 Public Liability

Council's Public Liability Policy covers appointed Committee members when performing activities within the scope of the Committee's delegation. This insurance does not preclude the Committee from having to exercise due diligence and all Council policies and procedures.

This Policy also covers Council and the Committee against claims made by members of the public for personal injury or injury to personal property arising from a negligent act or omission of Council and/or

the Committee.

Committee members are also covered under the Councillor and Officer Liability Insurance, should a casual hirer take legal action directly against a Committee member. This is subject to appropriate conduct, ie criminal, fraudulent, dishonest or malicious act or omission committed by a Committee member will negate insurance cover.

6.3 Personal Injury

Committee members are covered if injured whilst undertaking duties relating to their role in the Committee. Volunteers carrying out activities approved by the Committee are also covered. The Volunteer Attendance Register (**Attachment 2**) must be completed by each volunteer.

6.4 Hirers' Insurance Liability

Persons or groups must have and provide the Committee with proof of their Public Liability insurance policy in the sum of not less than \$20 million

7. Management of the Facility

7.1 Purpose

The Committee's main purpose is to present the facility in a manner that it is available for hire by the community, as well as raising funds from various activities to fund the maintenance and improvement to the facility.

7.2 Conditions of Hire

The committee shall determine, from time to time, the conditions that govern the hire of any part of the facilities.

The current 'Conditions of Hire' is attached as **Appendix 3**.

7.3 Budget and Fees/Charges

Each year the Committee shall set a budget for the maintenance and improvement of the facility.

As part of this process, the Committee shall recommend to Council a proposed fee/charge schedule that shall apply in that budget period.

7.4 Fun Days

The Committee may organize an annual fun day for the purpose of furthering the objective set out in the Plan of Management and to raise funds for the maintenance and improvement of the facility.

7.5 Volunteer Labour

Volunteers participating in a 'working bee' or assisting with a 'Fun Day' are covered by Council's Volunteers

Insurance Policy. Where projects involve volunteers, it is essential that details are provided to Council's insurers.

Volunteers must not commence work on any project without first completing a site induction and signing the volunteer registration form. These forms should be forwarded to Council immediately following completion.

Any incident must be reported as soon as possible together with all relevant documentation. Council officers are responsible for notifying Council's insurer. The officers, or the insurer, may require further investigation.

Inverell Equestrian Centre Hazard Inspection Checklist

Clearly signed First Aid services and fire

extinguisher locations

Location:					
Date:					
Conducted	d by:				
	ı		I		
Checked (Tick)	Event Ri	sk Item	Date	Signed	Comments
Access and	d Egress				
	1	exit areas are clearly signed and le for workers and expected attendees			
		xit area are adequate for emergency emergency services			
	Thoroug marked	hfares are well defined and clearly			
Traffic Flo	w				
		lefined areas for traffic that are from pedestrian areas			
		n for safe passage of emergency / other through pedestrian traffic			
		e parking areas to cater for the d vehicle numbers attending the event			
	Disabled	parking is provided			
Amenities					
		e provision of toilets and hand washing (including disabled facilities)			
		ity of sufficient drinking water for and attendees			
	1	e catering facilities for food tion and clean up			
Signage					
	Adequat facilities	e signage for entries, exits, toilets , etc.			
П	Adequat	e signage for any hazardous areas			

Checked (Tick)	Event Risk Item	Date	Signed	Comments		
Maintena	Maintenance					
	Qualified and competent personnel to undertake maintenance/repairs					
	Records kept of any maintenance undertaken					
Fire Preve	ntion					
	Suitable fire extinguishers / fire blankets are in appropriate areas, tested and in date					
	All workers and volunteers are aware of the fire evacuation procedures					
Emergenc	y Procedures					
	Emergency Response Plan documented and in place					
	Emergency Response Team trained to carry out plan					
	Current site maps available to all workers, emergency services and other relevant parties					
First Aid						
	First Aid Stations suitably located, stocked, clearly signed and accessible					
	First Aid facilities and numbers of trained first aiders suitable for type of event					
Electrical ,	/ Generators					
	Residual circuit devices (RCDs) are used where required					
	All portable electrical equipment including leads are tagged and tested					
	(6 or 12 months in accordance with AS/NZS 3000:2000 and AS/NZS 3760					
	Adequate protection of the public from electric shock and any trip hazards					
	All electrical leads and electrical equipment are placed in safe locations (e.g. not in a tree or on top of unstable surfaces)					
	All leads, plugs, etc are protected from the weather and hazards such as water, etc.					
	Generators are placed in a safe location and are sectioned off from the public					

Checked (Tick)	Event Risk Item	Date	Signed	Comments		
Staging, St	taging, Structures and Platforms					
	All stages and other temporary structures are signed off by a licenced rigger/scaffolder and are erected by personnel with appropriate training and certifications (as required)					
	Platforms are continuously monitored, particularly in extreme weather conditions					
	Adequate access and egress around all staging and platforms for event patrons and emergency services					
Work at H	eights					
	Ladders are well maintained and suitable for work undertaken					
	Assistance of a second person is provided where required					
Manual H	andling					
	All workers and volunteers are trained to assess each task and use safe technique when lifting or carrying					
	Loads are delivered as close as possible to area using vehicle or mechanical aid (e.g. trolley)					
Equipmen	t					
	Equestrian equipment is in good clean condition.					
	Stables are clean and in good condition					
	Grandstands are in good condition					
	No damage to fencing					
	Arena is clear of any sharps and unsafe objects					
Liquid Pet	Liquid Petroleum Gas (LPG) and Heaters					
	Small gas cylinders are used wherever possible					
	LPG cylinders are secured to increase stability					
	LPG cylinders are clear of ignition sources and are in a well-ventilated area					
	LPG cylinders are out of public reach and not stored indoors / an enclosed space					

Checked (Tick)	Event Risk Item	Date	Signed	Comments	
	LPG cylinders are checked to ensure they do not exceed 10 years of the stamped test date				
	Compliance with AS/NZS 1596:2002 – the Storage and Handling of LP Gas				
Weather C	Conditions				
	Weather conditions are checked (e.g. from www.bom.gov.au)				
	Weather conditions are planned for and monitored (e.g. non-slip mats, shade, sunscreen and drinking water available)				
	Wind speeds are monitored and amusement structure operation ceased in accordance with manufacturer's specifications (inflatable structures must cease operation when wind speed reaches 40km per hour)				
Personal P	Protective Equipment (PPE)				
	All tasks undertaken by workers and volunteers are checked for the PPE required and PPE provided if needed (e.g. gloves, aprons, earplugs, closed toe shoes, waterproof jacket, etc.)				
	Personnel are trained in using, maintaining and storing PPE				
Security					
	Appropriate security has been employed for the event (including out of hours)				
	Back of house and hazardous areas are locked off				
	Cash handling safety procedures are implemented				
Accessibility					
	Ramps are in place to provide access into buildings				
	Parking is available close to the event				
	The event is easily accessible (e.g. for patrons in wheelchairs, with prams, using walking aids, etc.)				
Other					

Checked (Tick)	Event Risk Item	Date	Signed	Comments
	Covid Safe Signage in place			
	Adequate Hygiene Supplies			
	User record book available and in prominent place			
	Signs as Remote Supervision Sign visible and without damage?			
	IEC Guidelines/Conditions of entry signage in place			
	Any other hazards identified? Place corrective actions below			
	Facility is in safe condition for use			

For all risk items that cannot be ticked, generate an action to correct each finding:

Corrective Action	Allocated To (Person)	Due By (Date)
Person(s) Carrying out Inspection:		

APPENDIX 2

APPENDIX 3