

Community Leasing and Licensing Policy

Department:	Property and Facilities
Document ID:	454614
Approved by:	Council Resolution:
Effective date:	June 2022
Next review:	June 2025

Purpose:

To provide a consistent and equitable framework for community leases and licences of Council-owned property and facilities to eligible community groups.

Principles and objectives:

The policy has been established to achieve the following aims:

- To strengthen communities through offering land and buildings at concessional rentals
- To ensure that the granting of occupancy is fair, accessible and responsive to community needs
- To establish consistent guidelines by which community groups may occupy council land and buildings for sporting, recreational, community services and educational purposes
- To establish fair criteria to determine how groups with income derived through the exclusive use of a facility are charged to offset associated costs

Scope:

The policy applies to all community leases and licences over council owned land and buildings. Both ground leases and premises leases are covered by the policy.

The policy applies to all Council Community Leasing and Licensing agreements where they allow and will be applied at rent review to all other agreements. The policy applies where aspects of an existing other agreement are silent or ambiguous.

The policy does not apply to the following:

- Residential tenancies
- Commercial leases and licences
- Easements
- Short term hire of council facilities (see Council's Fees and Charges)

Definitions:

Affiliation fees	Any money paid by a community group, club, or tenant to belong to a regional or national association.
	This is distinct from affiliation fees charged by a community group, club, or tenant to its members.
Commercial lease/licence	A lease/licence with a person or group carrying out activities for the primary purpose of generating funds for profit or who occupy the land for the purposes of private use or private gain.
Community lease/licence	A lease/licence to a group carrying out activities on a not-for-profit basis who use their funds to develop and maintain the group or invest them for the betterment of the local community. Community leases are made according to the terms set out in this policy.
Council	Council refers to Central Otago District Council
Ground lease or licence	An agreement applicable where the Council owns the land and the group owns the building.
Premise lease or licence	An agreement applicable where the Council owns the land and buildings.
Income	<p>Any income derived by a community group or tenant through the use of a facility.</p> <p>This includes:</p> <ul style="list-style-type: none"> any subscription income (money paid by permanent or casual members of a group on a periodic basis to belong to the group), casual memberships (including green fees, entry fees, charges by the group for use of parts of a facility) and other types of income derived from the use of the facility. <p>Groups without members may still derive an income from the use of the facility.</p>
Lease	An agreement where the Council grants the tenant the right to exclusive use of a defined area ('leased area') as set out in the lease, which may include the whole or part of a council-owned building and/or land.
Licence	An agreement where the Council grants the tenant the non-exclusive right to use a defined area ('licenced area') as set out in the licence, which may include the whole or part of a council-owned building and/or land.
Open membership	Membership is open to any persons able to use a group's services and willing to accept the responsibilities of

	membership without gender, social, racial, political or religious discrimination.
Tenant	A person or group an agreement is made with.

Policy:

Eligibility

Community lease and licence agreements may be granted to community groups or club undertaking activities beneficial to the community. To be eligible, groups must be able to demonstrate the following:

- Groups must be non-profit organisations or associations of people who have the primary aim of providing services, benefits, or recreation to the community;
- Any funds a group generates must be used to maintain and develop the organisation to support its community services and activities;
- Groups must have open membership criteria; and
- Membership or participation fees reflect the reasonable costs of providing the activity.

The group should be an incorporated society or trust, or otherwise able to demonstrate how the group spends money it raises, what happens to any surplus, and what additional benefits they bring to the community.

Assessment

All applications and renewals will be assessed against assessment criteria to determine suitability for granting a community lease or licence.

The following criteria apply:

Strategic purpose	The group's purpose and activities must be consistent with the Council's strategic direction as defined in key strategic documents, such as the Long-term Plan.
Financial sustainability	The group must be sustainable in terms of membership and/or users for the term of agreement. The group must be in a financial position to fulfil its obligations under the agreement.
Utilisation	The land and buildings must be utilised to the fullest extent possible.
Sustainability	The activity must not have the potential to adversely affect open space values or cause environmental harm.

Community support

There must be demonstrated support and need within the community for the activity.

Each application will be considered on its merits by council staff who will make recommendations to the relevant Community Board or the Council for approval.

In the case of lease renewals, assessment criteria will also include:

Continued alignment

Ensuring the lease or licence will continue to be consistent with the Council's objectives

Prior contract

That the terms and conditions of the previous lease/s or licence/s were met

Unless there is evidence that the above are not met, a renewed lease will be offered to the lessee.

In instances where the activity the lease was originally granted for has changed significantly, the Council may require an application for a new lease.

Expressions of Interest

An Expression of Interest process is generally conducted to determine the most suitable occupant or user of the land. In some instances, Council may target Expressions of Interest from or toward particular community organisations that meet specific community needs.

Council will assess all applications against this policy and any additional eligibility and assessment criteria specified in the Expression of Interest documentation to select a suitable occupant or user. If a suitable occupant or user is not identified the Council may determine not to grant tenure to any applicant.

Public Notification

Where applications are made outside of an Expression of Interest process, Council will publicly notify the availability of the land in question.

Notification may not occur in the following circumstance:

- Agreements exempted through sections 119 and 120 of the Reserves Act 1977, including:
 - Agreements conforming with the approved management plan for the reserve,

- A proposed agreement is subject to a resource consent that was notified under section 93(2) of the Resource Management Act 1991.

Minor leases or licences to adjacent landowner

A lease or licence may be applied outside the above process in the following circumstances:

- For a minor lease or licence granted to an adjacent landowner, and
- where the expense involved with the Expression of Interest process and notification would outweigh the public interest in doing so, and
- where the ability to grant the lease falls within staff delegations.

Fee determination

Community leases or licences are offered at a concessional rate, set significantly below potential market rent. Council is able to support community groups and achieve community outcomes through this policy. The concessional rate is charged to assist in offsetting related property and other costs.

Annual rentals are calculated at 2.5% of the tenant's income less any affiliation fees.

For the purposes of this policy, income is calculated from any income related to the use of the facility. This includes subscription or membership fees, casual entry, green fees, and other income derived from the use of the facility (such as room or venue hire). It does not include member derived income, other than subscriptions.

Income is calculated over the most recent 5 year period for which the group has filed financial accounts. Where a group does not have 5 years of financial accounts, the rental fee will be calculated as an average over the financial statements that are available. This rental fee shall apply for the first 5 years of the lease or licence or until a rent review is completed.

In exceptional circumstances where there are ongoing or direct costs involved with the property or lease, the tenants and Council may agree to an alternative method of determining rent if it is considered that the standard method will produce an unjust outcome.

Rent reviews occur every 5 years. The same assessment criteria is applied, based on the most recent 5 years of financial accounts. Rent reviews are authorised by the Chief Executive Officer.

The tenant is required to submit full copies of their financial accounts to Council to assist with this.

Council will consider proposals for community leases and licences of endowment land and will determine rent in a manner consistent with the conditions of the endowment.

Tenure Framework

The standard length of lease and licence agreements is 15 years with a further 15 years right of renewal.

Where the land or buildings in question have been identified in Council strategic documents or plans as having a potential alternative use, the standard length of agreement will be 5 years with a further 5 years right of renewal.

The Council reserves the right to terminate an agreement with six months' notice if it requires part or whole of the occupied area for other activities.

A shorter tenure may be granted in circumstances not limited to the following:

- The life expectancy of the building is less than the standard tenure applicable
- A shorter tenure is required by a management plan
- Where Council and the tenant agree a shorter tenure is necessary.

A longer tenure may be granted in circumstances not limited to the following:

- Where groups amalgamate or share facilities
- Where a significant investment has been or is going to be made which results in the area being used to its fullest extent
- In exceptional circumstances where the Council and tenant agree that a longer tenure is necessary.

Standard Terms and Conditions

Allocation of responsibilities

The table outlines standard tenant responsibilities in relation to the functions contained within.

	Energy and water	Rates	Building Insurance	Structural maintenance	Non-structural maintenance
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Council-owned land/buildings	Tenant	Tenant	Council	Council	Tenant
Community-group owned buildings	Tenant	Tenant	Tenant	Tenant	Tenant
Rooms within council building*	Council	Council	Council	Council	Council

*Where a tenant occupies a room in, or part of, a council building service charges may be incurred. Service charges represent a fair portion of utility costs incurred as a result of occupancy.

The above schedule of responsibilities will apply unless the tenant and Council otherwise agree.

Subleasing

Tenants may not transfer, sublet, or dispose of their interest in a lease or licence without prior written approval from Council.

Subleasing will only be considered where the sublessee and its activities comply with the policy, applicable legislative requirements and management plans. If the land is classified as a reserve, the sublessee's activities must enhance the primary purpose of the land.

If a tenant is given approval to enter into a sublease, the tenant will be responsible for:

- Preparing the sublease and all associated costs
- Recovery of all fees and charges associated with the sublease
- Obtaining approval of the sublease agreement
- Providing Council with an executed copy of the sublease agreement.

Additions and alterations

Where a tenant wishes to erect any new building or improvement or alter any existing building or improvement, landowner approval must be obtained first. This applies whether the building or improvement is council-owned or not.

Landowner approval must be obtained prior to seeking any approval from the Council in its regulatory capacity.

Where an agreement is nearing expiry, has expired, or is terminated by either party, and it has been decided that a new lease will not be granted to the existing lessee, any buildings or structures owned by the tenant:

- May be removed by the tenant; or
- May transfer to Council ownership if the Council wishes to accept ownership; or
- May be transferred to another community or recreation group, if agreed to by Council.

Maintenance

All buildings and structures must be maintained to a standard that meets the requirements of legislation relating to buildings (such as the Building Act 2004). In addition, all buildings, structures and vegetation should be kept in a tidy condition and must not detract from the environment. Vegetation must not become a hazard to public safety.

Fees and Charges

Groups are liable for all legal costs and expenses relating to the preparation of any renewal or variation of the lease or licence and any other associated costs including, but not limited to, advertising, surveying and obtaining building or resource consent. The Council will not charge for the reasonable use of Council staff time.

Use of fields, grounds and facilities for sporting competitions, tournaments or other events are provided for separately and are subject to the Council's annual fees and charges and booking processes.

Relevant legislation:

- Property Law Act 2007
- Reserves Act 1977
- Resource Management Act 1991

Related documents:

- Grants Policy
- Reserve Management Plans