

Leases and Licences for Sporting and Community Organisations Policy



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Responsible Manager	Manager Recreation & Leisure Services
Other key internal stakeholders	Director Assets & Environment Director Community & Cultural Development Manager Community Development and Engagement Manager Parks Operations Manager Buildings Assets & Environment Water Resources Specialist Manager Civil & Water Operations
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PURPOSE

The purpose of this policy is to establish a set of clear guidelines for the consideration of applications for the granting of leases or licenses to sporting and community groups on community land.

This policy will determine the criteria Council Administration use to assess and grant a lease; or renewal of lease, for up to a total five year term. All community or sporting groups that seek leases longer than the five years, or seek additional special conditions, will be considered by Council prior to proceeding to community engagement if required under the *Local Government Act 1999*.

POLICY

Council will consider the granting of a lease or licence for any suitable land, venue or facility to groups, organisations or residents, in light of the following:

- Equitable needs based distribution of facilities and land
- Ensuring high occupancy rates for facilities
- Ensuring consistent tenure conditions
- Defining responsibilities and costs associated with the construction, maintenance and operation of facilities
- Acknowledging the value of community organisations through the development of partnerships and shared values in the development of healthy and sustainable communities.

Council will only enter into a lease or licence agreement under this Policy, once the club or organisation can demonstrate that:

- It is a not for profit organisation under Australian Tax Office definitions
- It is an incorporated body (i.e. an incorporated association) or other legal entity. Neither a trust nor a business name are legal entities capable of entering into a lease or licence
- It has an Australian Business Number (ABN).
- It is financially viable by providing three years of annual financial statements to Council
- It has a prepared business plan and a structured committee that holds regular meetings and represents users of the local community
- It can demonstrate capacity to maintain the facilities in accordance with the agreement
- It complies with relevant legislation and regulations governing its activities.

Exclusions

This Policy relates to community groups that are eligible not for profit enterprises, educational institutions of an early learning focus, kindergarten's and schools (primary or secondary). All other leases and or licences will be based upon market conditions at the point in time that a lease is negotiated and will be assessed outside of this Policy.

Community groups that use the premises for gambling activities including totalisator operations and/or electronic gaming machines will not be entitled to a lease in accordance with this Policy.

Commercial leases or licences with Council are not bound by this Policy and will be subject to separate negotiations outside of this Policy.

Licences and/or Leases on sites whereby the lease only occupies a portion of the building

Council may grant a Licence over a building, venue or facility.

The fee structure applied to a licence will attract a higher initial fee than that of a lease. Fees will be determined in accordance with subsidy criteria and in consideration of the times of use granted.

A licence may be suitable for multi-use facilities, provided that:

- An appropriate agreement is in place
- Each licensee is responsible for payment of a licence fee to Council representing their share of the cost of maintenance and outgoings relating to the facility
- The proportioned payment for each licensee has been determined:
 - by the proportion of the square meterage of the facility that is used by the licensee; or
 - if the licensee's use the same area, but at or for different times - then determined by the proportion of time each licensee uses the premises relative to the other licensee(s).

Leases

The following conditions apply in relation to the leasing of a building, venue or facility, exclusively occupied by a sporting or community organisation.

Tenant Responsibility

The Tenant will be responsible for:

- Entering into a formal lease agreement with the Council
- All day-to-day repairs and maintenance of a non-capital nature as specified in the lease agreement (e.g. Emergency Service Provisions, fire and safety maintenance, replacement of light globes, washers, taps, carpet repairs, waste disposal costs, signage, graffiti removal within the leased premises, internal painting and Property, Plant and Equipment)
- Public liability and contents insurance
- All direct outgoings as specified in the lease agreement (e.g. electricity, water (buildings) and gas and other identified costs such as cleaning)
- Selecting their gas retailer and paying associated costs (if applicable)
- Electrical tagging and testing
- Selecting their electricity retailer and contracting directly with that retailer for the supply of electricity and paying associated costs including installation of necessary meter(s)
- Ensuring compliance with the *Liquor Licensing Act 1997*
- Seeking approval from the lessor for any changes or improvements to fixtures or fittings
- Seeking council approval prior to sub licencing of any grassed based playing surfaces
- Complying with all relevant legislation, regulations and standards in respect of the facilities contained under their lease agreement (e.g. hazardous substances, building codes)
- Removal of weeds within the lease area and/or adjoining carpark spaces
- Maintenance of hard or synthetic playing surfaces, including line marking requirements
- Complying with any restrictions regarding the use of the playing surface
- Displaying posters or information in prominent areas about current societal issues when required by Council.

- Establishment of a sinking fund for any required financial contribution to the future replacement of synthetic playing surfaces (if applicable to the site)

A Tenant may hire out the leased facility providing that this is in accordance with their lease agreement. Any fees charged must not be higher than Council's Fees and Charges register. Formal subleasing and assignment of leases will be considered by Council on a case by case basis.

The Tenant may apply to Council for financial assistance to upgrade a leased / licensed facility, in accordance with Council's External Capital Works Application process.

Council Responsibility

Council will Provide the Tenant with a point of contact within Council:

- Nominate and be responsible for building insurance
- Nominate the water provider
- Carry out inspections of the facility twice yearly
- Be responsible for structural repairs (to provide weather proofing as a minimum)
- Maintain trees and vegetation within a precinct
 - Arrange for the completion of maintenance obligations of the Tenant, at the expense of the Tenant (should the Tenant request council to complete the work and/or the Tenant fails to complete the work in accordance with any lease or licence agreement)
- Repair and replace carparks
- Provide external painting of shared use facilities.
- Provide direction to the Tenant regarding any playing surface restrictions (eg. to balance usage with surface maintenance requirements)

Council's responsibility may be subject to the prioritisation of resources.

Maintenance of grass playing surfaces and leased premises

Council will undertake the grass cutting of playing surfaces where the playing surface is freely open to the public for passive recreational activities.

Maintenance of grass playing fields for surfaces freely open to the public for passive recreational activities will be undertaken by Council in accordance with horticultural maintenance standards to be established for each reserve within the terms of the lease or license.

Grass cutting and maintenance of playing surfaces of a specialist nature will be undertaken by the lessee (e.g. bowling and croquet greens, turf cricket wickets, closed sporting facilities), at the Lessee's expense.

100% publically accessible hard based playing surfaces (tennis and netball courts, synthetic surfaces) will be maintained by the Council.

Restricted access hard based playing surfaces (tennis and netball courts, synthetic surfaces) will be maintained by the lessee unless otherwise stipulated via the terms of the lease.

Council will maintain the base course for all tennis and netball courts' synthetic surfaces.

Maintenance of leased premises (excluding buildings and playing surfaces) will be undertaken in accordance with the terms agreed with each club or organisation.

Line marking on grass playing surfaces remains the responsibility of the Lessee, at the Lessee's expense.

Replacement of synthetic playing surfaces

To ensure that sufficient funds are available for the replacement of synthetic playing surfaces, Council will require the Tenant to establish a 'sinking fund'.

It is estimated that an Artificial Grass Pitch (AGP) has a life span of approximately ten to fifteen years depending on factors such as pitch type and quality, usage and maintenance. It is therefore necessary that a mechanism be put in place to recognise this and provide finance to replace the pitch when appropriate.

Each year, the Tenant will be required to quarantine the allocated annual amount into their sinking fund – these funds should not be used for any other purpose or initiative and must be held separately from clubs day to day finances.

It is expected the Tenant will contribute 50% towards the future cost of the synthetic playing surface replacement.

The annual contribution to the sinking fund will be calculated as followings:

$$\text{Annual Contribution} = \text{Cost of Playing Surface Replacement} / \text{Estimated Life of Playing Surface} \times 50\%$$

As the cost of the replacement is in the future, then the sinking fund must account today for a future amount. The annual contribution required by the Tenant will be reviewed bi-annually to ensure the sinking fund reflects the forecast future contribution required.

The bi-annual review will be calculated as followings:

Step 1 - *Future Contribution = Cost of Playing Surface Replacement X 50% less funds held in sinking fund*

Step 2 - *Revised Annual Contribution = Future Contribution / Estimated Remaining Life of Playing Surface*

The Tenant will be required to submit to Council annually a reconciliation of the sinking fund. The above will apply to existing facilities, to be phased in over a period not less than two years.

Water Costing and Provision

The Tenant will be responsible for all costs and outgoings in relation to water usage and water rates for buildings contained under the lease agreement (e.g. clubrooms and change rooms).

Water costing and water provision for reserves and playing surfaces will be in accordance with the following categories:

- Council will be responsible for water costs for playing surfaces with bore water / mains water and/or recycled water where the general public has access and use of the playing surface. The Tenant will be responsible for all electricity costs associated with the pumping of water and any additional watering above the Council nominated allocation for the site
- The Tenant will be responsible for water costs where there are dedicated playing surfaces which do not allow general public access or use of the playing surface
- Council may consider a remission of watering charges when there are significant trees on the premises and in the vicinity of the watered location. Any requests will be considered on a case by case basis.

Water provision for sites receiving recycled water will be in accordance with Council's Recycled Water Policy. Where required under the Water Industry Act 2012 and ESCOSA, water supply and costing arrangements may be varied to suit.

In the event that the Tenant is availed of a water discount / cost reduction / no water provision charge, Council reserves the right to limit water supply delivery as Council deems appropriate (e.g. drought conditions).

Sports Field Flood Lighting

The Tenant is responsible for all electricity costs and outgoings for sports field flood lighting. Council will undertake and be responsible for all maintenance of such equipment (e.g. globe replacement and repair of technical faults).

Upgrade, renewal or new installations of sports field flood lighting will be managed in accordance with Council's Sports Field Floodlighting Policy.

Tenure Arrangements

Council's model is predicated on a ten year incentive for capital investment. On this basis the maximum term available under Council's subsidy criteria will be a term of 10 years. Any requests for terms greater than 10 years based will be considered on a case by case basis.

All community or sporting groups that seek leases longer than the five years, or seek additional special conditions, will be considered by Council prior to proceeding to community engagement (if necessary) as per section 202 of the *Local Government Act 1999*.

Should a new organisation or group seek to occupy land owned by Council, which they have not previously occupied, any offer of a lease and/or licence greater than a period of eight (8) months will be presented to Council for consideration.

Rights of renewal will only be offered to a maximum occupancy of 10 years and will be subject to community engagement.

Council will include in the standard lease / license agreement a right for the Tenant to terminate their lease / license by way of mutual agreement with a three month notice period.

The annual lease / licence fee will be calculated at 6% of the current written down value of the leased areas as per Council's Asset Register.

The Subsidy Criteria set out in Attachment 1 will be used by Council to assess the level of subsidy applied to reduce the calculated annual lease / licence fee.

The lease/licence fee determined will be in place for the length of tenure, and will be indexed by the Consumer Price Index on an annual basis.

Clubs and organisations receiving an increased leased fee under the new model will have any increase phased in over a period of three years as shown below:

- Year 1 of the lease = 25% of the increase of the annual lease fee (after subsidies have been applied)
- Year 2 of the lease = 50% of the increase of the annual lease fee (after subsidies have been applied)
- Year 3 of the lease = 100% of the increase of the annual lease fee (after subsidies have been applied)

LEGISLATIVE FRAMEWORK

Emergency Procedures

All buildings must have in place adequate emergency management, warning and evacuation procedures. This includes appropriate location of operable hose reels, fire hydrants, fire extinguishers, fire blankets, alarms and emergency / exit lighting. All facilities must have clearly visible and easy to follow warning and evacuation procedures. The lessee is responsible for compliance of maintenance of such items, unless otherwise agreed with Council.

Council will be responsible for developing and providing to the lessee emergency evacuation plans for the premises. The Lessee will be responsible for developing compliant emergency evacuation procedures.

The following legislation applies to this policy:

Local Government Act 1999

Section 49 of this Act requires Council to prepare and adopt a policy on contracts and tenders, including a policy on the sale and disposal of land or other assets.

Section 196 of this Act requires Council to prepare, publicly consult, and adopt one or more Community Land Management Plan(s) (CLMP) for its community land if among other things the land is, or is to be, occupied under a lease or licence agreement.

Section 201 of this Act prohibits Council from leasing or licensing community land unless Council does so in accordance with the Act, including those sections of the Act mentioned below.

Section 202 of this Act permits Council to grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve). Prior to Council granting a lease or licence relating to community land, it must follow the relevant steps as detailed in Councils Community Engagement (Public Consultation) Policy, except where:

- (a) The grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less; or
- (b) The regulations provide, in the circumstances of the case, for an exemption from compliance with a public consultation policy.

Section 202 also places restrictions on Council's power to grant a lease of licence including that a lease or licence may only be granted for a term not exceeding 42 years and the lease or licence may be extended but not so that the term extends beyond a total of 42 years. However a new lease or licence may be granted at the expiration of the 42 year term (subject to the other requirements of the Act or any other law).

[Development Act 1993](#)

Where a lease or licence is to be granted for a term greater than six years and is for a portion of an allotment where there is no building that is both suitable and used for human occupation (e.g. reserve with no clubrooms), the lease or licence constitutes the division of an allotment and requires approval under this Act.

[Retail and Commercial Leases Act 1995](#)

This Act applies to both leases and licences, granted by the Council to a lessee or a licensee, if the lease or licence is in respect of a “retail shop” (see section 4 of the Act).

There are a number of exemptions where the Act does not apply (see section 4(2) of the Act).

If the Act applies, it imposes a number of obligations on Council as lessor. Some of these obligations are as follows:

- A disclosure statement must be given to the lessee / licensee before a lease / licence is granted or renewed / extended (section 12 of the Act)
- Council cannot impose a requirement or obligation for the lessee / licensee to make capital expenditure except in limited circumstances (section 13 of the Act)
- The lessee / licensee must be given a minimum 5 year term (section 20B of the Act) unless the lessee / licensee obtains an ‘exclusionary certificate’ (section 20K of the Act) or the lease / licence falls within an exemption (see section 20B(3) of the Act)
- Council must not less than 6 months, but not more than twelve months, prior to the end of the term give the lessee / licensee written notice either offering a renewal or extension of the lease / licence or informing the lessee / licensee that Council does not propose to offer a renewal or extension of the lease (section 20J of the Act)
- Council must provide estimates and explanations of outgoings (section 31 of the Act) and must provide written reports (prepared by a company auditor) of all expenditure by the Council toward which the lessee / licensee is required to contribute during an “accounting period” (section 32 of the Act).

[Crown Land Management Act 2009](#)

This Act applies to Crown land of which the Council has care, control or management.

Section 22 of this Act requires Council to obtain Ministerial consent to a lease, before the lease is granted to the lessee. If consent is not obtained, the lease is of no effect.

Other references

Council’s documents including:

- Asset Register
- Community Engagement (Public Consultation) Policy
- Fees and Charges Register
- Sports Field Flood Lighting Policy
- Recycled Water Policy
- External Capital Works Application process
- Open Space Asset Management Plan
- Open Space Policy

External documents including:

- Electricity Act 1996
- Electricity (General) Regulations 2012
- Liquor Licensing Act 1997
- National Electricity (South Australia) Act 1996
- National Energy Retail Law (South Australia) Act 2011
- Water Industry Act 2012

STRATEGIC PLAN/POLICY

Strategic Plan

Theme	Objective	Comments
HEALTHY AND SAFE	<i>A community where people have easy access to places, spaces and services that support good health.</i>	Our community is healthy and safe
PROSPEROUS AND CONNECTED	<i>A community that participates in meaningful community and economic activities.</i>	Our local economy prospers and people feel a sense of purpose and belonging
VIBRANT AND LIVEABLE	<i>A city that is made up of places and spaces that are appealing and easy to access. A place that expresses a unique character and identity, an area that inspires pride in its residents and one that people enjoy visiting.</i>	Our city is a desirable and sustainable place to live

Leases and Licences enable a Club to continue operating in the City of Tea Tree Gully and provide a facility that is valued by club members, is unique in this city and supports community participation in activities that support good health.

Policies

Council's Community Engagement Public Consultation Policy determines the nature and extent of community engagement required for this matter.

Council's Open Space Policy describes the principles and framework that guides the provision, development and management of accessible and diverse open spaces that maintain and improve sustainable environmental outcomes and our community's individual and collective health and wellbeing.

Council's Sports Field Floodlighting Policy describes Council's position in regard to the installation and maintenance of sports floodlighting to Council owned properties. This Policy determines the level of financial contribution that will be made by Council and the relevant sporting and community organisations towards new or upgrade lighting.

Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The themes most relevant to this report are: People and Leadership; Customers and community relations; Governance; Finance and systems, Continuous improvement.

DEFINITIONS

For the purposes of this policy the following definitions apply.

CLMP

Community Land Management Plan.

Differentiating between a Lease and Licence

The right of exclusive use is the prime consideration in determining whether an agreement is deemed a lease or licence. An example of where a licence is appropriate is where two groups share a multi-use facility and neither therefore has exclusive use, and in such a circumstance a licence is the appropriate agreement.

ESCOSA

Essential Services Commission of South Australia.

Lease

A contractual agreement by which one party (lessor) conveys a leasehold estate in land to another party (lessee), for a specified term, subject to various conditions. The lessor still retains ownership of the property.

Licence

A contractual agreement by which one party (licensor) grants a contractual right to occupy land to another party (licensee), for a specified term, which may also only permit the licensee to occupy the land during specified hours on specified days during the term, subject to various conditions. The licensor still retains ownership of the property. The licensor does not grant a leasehold or other legal interest in the land.

Retail Shop

Business premises at which goods are sold to the public by retail, or at which services are provided to the public or to which the public is invited to negotiate for the supply of services. This definition is broad and many community leases and licences are subject to the Retail and Commercial Leases Act 1995. For example, a lease to a local sports / community club who conduct weekly sausage sizzles or operate canteens will be caught by the Retail and Commercial Leases Act 1995.

Tenant

An entity that pays a fee to use or occupy land, a building, or other property owned by another. This Policy refers to the Lease or Licence holder as the Tenant.

POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

ACCESSIBILITY

This Policy and Council's Fees and Charges Register are available to be downloaded free of charge from Council's website: www.cttg.sa.gov.au

Hard copies, for a fee, can be provided in accordance with Council's Fees and Charges Register at Council's Civic Centre at 571 Montague Road, Modbury SA 5092.

SUBSIDY CRITERIA

Council offers subsidies on the annual rent fee for eligible tenants. The eligibility criteria for each category are summarised in the table below.

Subsidy Criteria	%
The organisation can demonstrate that they are responsible tenants who have complied with the condition of current or previous lease or licence agreements with Council	20%
The organisation can demonstrate through its audited annual financial reports that it has limited capacity to generate revenue from the use of the facility or from the other activities consistent with its purpose	15%
The organisation can demonstrate that the use of the facility will increase social inclusion, community participation and/or will promote health and wellbeing of the City of Tea Tree Gully community	10%
The organisation provides an annual plan to Council detailing the use of the facility including anticipated opening hours and participant and or membership numbers	10%
The organisation can demonstrate that use of the facility is consistent with Council's strategic plan	5%
The organisation can demonstrate that the activity or service they provide is non-discriminatory and is open to all residents who meet clearly stated criteria for participation	5%
The organisations can demonstrate that it promotes and supports volunteerism	5%
Shared use of the facility by general public or other community clubs and organisations (any fees charged must not be higher than Council's fees and charges register)	15%
Maximum subsidy available	85%
Council will offer a further subsidy to recognise the capital contribution of lessee / licensee (up to last 10 years)(Contribution can be grant funded) *note: max subsidy 100%	1% for every \$5,000 contributed (max of \$250K) * (note: max subsidy 100%)

In-kind or volunteer contributions will be assessed at the market rate of what the cost would be in the event that the organisation or club completed these works with a third party organisation.