

**LEASES POLICY FOR COMMUNITY AND RECREATION  
GROUPS**

October 2012

# APPENDIX 2

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## **1. Introduction**

The Council plays a central role in promoting healthy lifestyles and building strong communities. This role includes providing recreational and sporting opportunities as well as facilitating community networks.

The Council leases land and/or buildings at a subsidised rental to a wide range of community and recreation groups (groups). As Council owned land and buildings are a limited resource, Council needs to allocate this resource in a way that maximises the use of its assets and responds to changing demands.

The Leases Policy for Community and Recreation Groups (Policy) sets out Council's role in leasing land and/or buildings to groups and provides guidance on:

- Granting leases of land and/or buildings to community and recreation groups;
- Managing leases relating to the groups; and
- The standard to which land and/or buildings will be maintained to ensure appropriate asset management.

## **2. Policy Objectives**

The objectives of the Policy are to:

- Ensure maximum community benefit is derived from Council owned land and buildings.
- Strengthen participation and engagement in community and recreational activities.
- Ensure leases are managed fairly, processes are transparent and Council officers (officers) have the flexibility to respond to community needs.

## **3. Scope of Policy**

This Policy applies to all community and recreation groups who lease Council owned land and/or buildings. The provisions of this Policy will be applied to existing leases where they allow or where aspects of the existing leases are silent or ambiguous.

The Policy does not apply to:

- Community Centres and Halls;
- Early Childhood Centres; and
- Recreation Centres.

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### 4. Guiding Principles

The following set of principles will govern the Council's response to groups when granting and managing leases:

1. The Council will support groups whose activities contribute to Council's priorities and long term community outcomes. This support is primarily in the provision of subsidised access to Council owned land and/or buildings.
2. The relationship between the Council and groups will be collaborative.
  - There will be open communication between the Council and groups.
  - Both parties will work collectively in a transparent manner to achieve Council's social and recreational outcomes.
  - The Council will treat all groups fairly. This will be done by equally distributing support and resources and consistently applying rental fees and charges.
3. Land and buildings will be responsibly managed.
  - All buildings, whether owned by the Council or the group will be maintained to the standard required under the lease, for their economic life.
  - Groups will be encouraged to adopt a sportsville or amalgamation model to effectively utilise land and/or buildings where groups wish to do so or if Council believes it would be beneficial. Council may encourage groups who are facing financial hardship, have a declining membership, utilisation of land and/or buildings is low or where a similar activity is provided by other groups in close proximity to adopt this model.
  - The terms and conditions within leases will be consistently applied.
4. A flexible approach will be taken when responding to changing community and recreational activities and levels of demand.

### 5. Leasing Process

A group can apply for a ground or premises lease. A ground lease is applicable where the Council owns the land and the group owns the building. A premises lease is applicable where Council owns the land and building.

On occasion, it may be more suitable to grant a licence. For example, licences may be appropriate due to the nature of the activities proposed, or where the land classification does not allow for exclusive use. In these instances the leasing process (section 5) and assessment criteria (section 7) will be applied.

Management plans and Council strategies will be used by officers to ascertain what activity or structure can be permitted on an area of land. Where there is

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no management plan, the proposed activity will be tested against the purpose for which the land is held and/or classified.

In the Council's capacity as administrator and trustee of reserve land, it has the responsibility to ensure the land is managed in accordance with the Reserves Act 1977 (Reserves Act). If an activity is not anticipated in a management plan or sits outside of Council's delegations under the Reserves Act, final consent from the Department of Conservation will be required.

All non-reserve land that is held by the Council for public amenity or open space purposes will be treated in accordance with this policy. This will ensure consistency in decision making and public scrutiny.

When an application for a new ground or premises lease is made by a group, officers will undertake the following process:

1. Officers will discuss the leasing process with the group and assess whether granting a lease can be considered or is appropriate.
2. If granting a lease can be considered or is appropriate, the group will be asked to make a formal application.
3. Officers will assess the application using the assessment criteria outlined in section 7 of the policy.
4. If the application meets the assessment criteria, officers will consult with Iwi.
5. Officers will prepare a committee or subcommittee report to seek approval to grant a lease, subject to public notification and obtaining approvals required by any relevant legislation. Public notification will be required for reserve land and land managed as reserve. Refer to section 6 for further information on the public notification process.
6. Any sustained objections received through the public notification process will be presented to a committee or subcommittee to consider, if necessary.
7. If no objections are sustained and all approvals required are obtained, a lease will be prepared and executed.

### **6. Public Notification**

The Reserves Act contains exceptions to the public notification requirements set out in sections 119 and 120 of the Reserves Act. The exception applies if the proposed lease conforms with the approved management plan for the reserve, or if the proposed lease is subject to a resource consent that was notified under section 93(2) of the Resource Management Act 1991.

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In the interests of transparency, all proposed leases of reserve and non-reserve land will be publicly notified in accordance with the process set out in sections 119 and 120 of the Reserves Act.

Land that is managed as reserve but is not classified as such will also be publicly notified. Although the public notification process will not be undertaken in accordance with the Reserves Act, Council will follow the process outlined in the Reserves Act.

### 7. Assessment Criteria

The assessment criteria will be applied when assessing:

- New lease applications;
- Granting lease renewals;
- Granting new leases to existing lessees; and
- Varying existing leases.

<b>1. The group's purpose and activities must be consistent with Council's strategic direction to promote healthy lifestyles and build strong communities</b>
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*Key questions: What is the group's purpose? What are the additional facilities and programmes proposed? What additional benefits will the proposal bring to the community?*

<b>2. The group must be an incorporated society or trust</b>
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*Key questions: How does the group spend the money it raises and what happens to any surplus? What is the group's structure and are there clear governance and management processes?*

<b>3. The group must be sustainable in terms of membership and/or users of the service for the term of the lease</b>
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*Key questions: Is there evidence that the group's membership numbers and trends justify and necessitate the proposal? Is there an open membership policy? Does the application support a sportville or amalgamation model?*

<b>4. The group must be in a financial position to fulfil its lease obligations for the term of the lease, including but not exclusive to, rent, insurance and building and grounds maintenance</b>
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*Key questions: How does the group fund its activities? Has a scheduled maintenance programme been developed and is there evidence that the group are able to afford implementation of the programme?*

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### **5. The land and/or buildings must be utilised to the fullest extent practicable**

*Key questions: How often will the building be used and what activities are planned? Are there any plans to sublease or hire out the building or part of the building? What alternatives have been considered by the group and why have they been rejected? Is there potential for the group to share facilities with other existing lessees?*

### **6. The activity cannot have the potential to adversely affect open space values or other legitimate activities**

*Key questions: Is the activity consistent with the Reserves Act, Resource Management Act and any applicable management plan?*

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

*Key questions: Is there support from the wider community and those expected to benefit from the activity? Are similar activities to the one being proposed, delivered by other facilities that are accessible to the group and the wider community?*

Each case will be considered on an individual basis by officers who will make recommendations to a committee or subcommittee for approval.

If at renewal time, a lessee does not meet all the assessment criteria, officers will prepare a committee or subcommittee report to seek approval to revoke the renewal and terminate the lease. If the lessee does meet all assessment criteria, officers will renew the lease.

If an existing lessee applying for a new lease does not meet all the assessment criteria, officers will prepare a committee or subcommittee report recommending that a new lease is not granted. If the lessee does meet all the assessment criteria, officers will seek committee or subcommittee approval to grant a new lease.

If at any time during the term of the lease, the lessee does not meet one or more of the assessment criteria, officers will provide assistance to the lessee in meeting the necessary criteria. If such assistance is unsuccessful, officers may prepare a committee or subcommittee report to seek approval to terminate the lease prior to its expiry.

Any application from an existing lessee or new group to undertake a commercial activity on Council owned land and/or buildings will be required to meet the criteria in section 8.8 Commercial Activities.

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Where applications do not meet relevant legal requirements (for example, those defined in the Reserves Act) or comply with applicable management plans, the application will be declined.

### 8. Primary Terms and Conditions of Lease

The lease is a legally binding document which records the obligations of the Council and lessee in relation to the land and/or buildings leased. The primary terms and conditions of the lease are outlined below.

#### 8.1 Rental Determination

The rental for ground and premises leases will be calculated using a 'sliding scale' based on a square metre rate, as shown in the table below:

Area	Rental Rate/m <sup>2</sup>
≤ 250	\$1.60
251 - 500	\$1.20
501 - 1000	\$0.60
1001 - 2500	\$0.48
2501 - 5000	\$0.40
5001 - 7500	\$0.32
≥ 7501	\$0.20

For example, the rental for 500m<sup>2</sup> of land would be calculated at \$1.60 for the first 250m<sup>2</sup> and \$1.20 for the remaining 250m<sup>2</sup>. This equates to a rental of \$700.00 per annum plus GST or \$1.40 per square metre overall.

The rental model provides for equitable rentals between lessees and provides a rental subsidy of 86.67%.

Rent reviews will be applied to all new leases and existing leases where the lease provisions allow. Tri-Annual rent reviews will be undertaken in accordance with the percentage change in the Consumer Price Index (CPI) and a market based review will be undertaken every third review (i.e. Every 9 years) by an independent registered valuer.

Where existing lease provisions allow for the rental model to be adopted, rental increases greater than \$500 per annum will be phased in over a period of three years (i.e. one third increase each year).

A rental reduction may be considered where the leased area is open to the public for use when not in use by the lessee.

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### 8.2 Maintenance Fee for Premises Leases

A maintenance fee is applied to each premises lease to help cover Council's costs relating to scheduled maintenance, reactive maintenance, and exterior renewals.

Maintenance fees are calculated on a proportional basis for all premises leases and are calculated as follows:

**Step 1:** total maintenance costs ÷ total area of buildings leased in the premises lease portfolio =  $m^2$

**Step 2:** individual leased area ×  $\$m^2$  × 20%, 50% or 100% = maintenance fee

The maintenance fee will be charged on an annual basis and is CPI adjusted.

For the first year of this Policy, Council will recover 20% of the maintenance fee as calculated using the formula above. In year's two to four, Council will recover 50% of the fee and from year five onwards, lessees will be responsible for 100% of the maintenance fee.

Lessees will be advised in writing of the annual maintenance fee and works to be undertaken by Council yearly.

In some cases a reduction in rental or the maintenance fee may be considered where a community or recreation group is facing demonstrated financial hardship. In these circumstances all community and recreation groups will be considered on a case by case basis and any reductions will be negotiated with individual groups.

### 8.3 Tenure Framework

The standard tenure for leases relating to reserve or fee simple land is ten years plus a ten year right of renewal.

A shorter tenure may be granted in the following instances:

- Declining trends in an activity;
- Alternative use of the land and/or buildings is anticipated by Council;
- Life expectancy of the building is less than the standard tenure applicable;
- The group does not have an existing relationship with the Council or is not a known entity to the Council;
- A shorter tenure is required by a management plan;
- The group requests a shorter tenure.

A longer tenure may be granted where groups amalgamate; share facilities or a significant investment has been or is going to be made which results in land and/or buildings being utilised to their fullest extent practicable.

### 8.4 Reporting Requirements

The Council is interested in the ongoing performance of its lessees so that it can monitor the achievement of the strategic objectives set for the City, as well as ensure lessees meet the assessment criteria (section 7) throughout the tenure of their lease. All lessees are required to fulfil their reporting requirements on an annual basis. Reporting requirements may be tailored to a particular lessee and will generally include:

- Membership numbers and usage rates;
- Community events undertaken from the leased land and/or building;
- Hireage of land and/or buildings;
- Financial information; and
- Works the lessee has undertaken on its building in accordance with the scheduled maintenance plan.

### 8.5 Allocation of Responsibilities between Council and Lessee

Where the lessee owns a building situated on Council owned land, the lessee is responsible for:

- Legal obligations associated with the building (for example, building and contents insurance, building warrant of fitness);
- Legal obligations associated with the activities of the lessee;
- All interior maintenance (including but not exclusive to plumbing and painting) and exterior maintenance;
- All surface and subsurface structures which includes but is not limited to, pipes and drains to the point of connection to the mains network, whether that connection is located inside or outside the leased area;
- Rubbish control and grounds maintenance of the leased area;
- Keeping the premises properly secured at all times;
- Fencing;
- Outgoings including but not exclusive to water, electricity, gas, telephone;
- Payment of rent; and
- Payment of rates if applicable.

The Council is responsible for:

- Monitoring compliance with lease provisions.

Where the Council owns the building and the land, the lessee is responsible for:

- Legal obligations associated with the activities of the lessee;
- All interior maintenance (including but not exclusive to plumbing, painting);

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- All surface and subsurface structures which includes but is not limited to, pipes and drains to the point of connection to the mains network, whether that connection is located inside or outside the leased area;
- Rubbish control and grounds maintenance of the leased area;
- Keeping the premises properly secured at all times;
- Fencing;
- Outgoings including but not exclusive to water, electricity, gas, telephone; and
- Payment of rent;
- Payment of annual maintenance fee; and
- Payment of rates if applicable.

The Council is responsible for:

- Legal obligations associated with the building (building insurance, building warrant of fitness);
- Exterior maintenance; and
- Monitoring compliance with lease provisions.

Where ownership of a building is shared between the lessee and Council, maintenance obligations will be determined on a case by case basis and will be specified in the lease.

### **8.6 Access-ways and Paths**

- Where the lessee has exclusive use of an access-way or path, the lessee is responsible for its maintenance.
- Where an access-way or path is shared between lessees, the responsibility for maintenance will be appropriately shared between the lessees.
- Where an access-way or path is shared between the public and a lessee, and the public specifically needs to use the access-way path, the maintenance costs will be shared between the lessee and Council as specified in the lease.

### **8.7 Insurance**

Where a lessee owns a building, structure or has significant equipment on Council owned land, the lessee must hold full replacement insurance cover.

If a lessee has significant issues with meeting their insurance obligations, Council will work with the lessee to resolve the issues and in exceptional circumstances, will assess whether full replacement insurance is required.

Buildings owned by Council will be insured for full replacement value.

If a building owned by the Council is partially or totally destroyed, Council has the absolute discretion to decide whether the building will be rebuilt. If a decision is made to not rebuild, the lease will be extinguished immediately.

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All lessees must hold public liability insurance to the value specified in the lease.

### **8.8 Commercial Activities**

The Reserves Act allows commercial activities on recreation reserve provided that the activity is necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve.

Groups who wish to carry out commercial activities within an area leased under this policy must first seek approval from Council – any approval to carry out such an activity will only be permitted to the extent that:

- The commercial activity is ancillary to the group's primary community or recreational activity; and
- Any excess funds generated by the group are in the first instance applied to any maintenance obligations the group has under the lease and then to the group's community or recreational activity.

### **8.9 Subleasing**

Lessees may not transfer, sublet, or dispose of their interest in a lease 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 reserve, the sublessee's activities must enhance the primary purpose of the land.

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

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

Any application for a sublease proposing to undertake a commercial activity on Council owned land and/or buildings will be required to meet the criteria in section 8.8 Commercial Activities.

### **8.10 Additions and Alterations of any Building or Improvement**

Where a lessee wishes to erect any new building or improvement or alter, reinstate or extend any existing building or improvement, landowner approval must be obtained from officers whether the building or improvement is Council owned or not. Landowner approval must be obtained prior to seeking any approval from Council in its regulatory capacity.

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All additions and alterations require landowner approval from Council.

Approval for significant additions or alterations (for example, building a deck, removing a wall, extending the building footprint) will be assessed in accordance with the assessment criteria (section 7).

Committee or subcommittee approval will be required if any proposed additions or alterations result in an extension of the leased area and a new lease or variation to the existing lease will be required.

Lessees proposing to make additions or alterations to any building or improvement will need to contact Council in its regulatory capacity to ensure their proposal complies with the Building Act 2004 and the Resource Management Act 1991.

### **8.11 Ownership of Buildings and/or Structures on Expiry or Early Termination of Leases**

Where a lease is near 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 lessee:

- May be removed by the lessee;
- May revert to Council's ownership, if the Council wishes to accept ownership;
- May be transferred to another community or recreation group.

Where the building and/or structures are in a poor condition, the lessee will be responsible for removing the building and/or structures at their expense.

No compensation will be paid to a lessee where a lessee's building reverts to Council ownership.

Any assignment is subject to the new group going through the leasing process (section 5) and meeting the assessment criteria (section 7).

Any lessee wishing to sell their building to another community or recreation group will need to:

- Ensure the building has been maintained in accordance with the requirements of the lease;
- Seek confirmation from Council that the proposed purchaser would be granted a lease under this Policy;
- Maintain its status as an incorporated society or trust throughout the sale process; and
- Apply any sale proceeds to the lessee's community or recreational activity, or in the event that the group ceases to operate then the proceeds must be transferred to Council.

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Any group that has ceased, or intends to cease, operating as an incorporated society or trust cannot sell or transfer its building – in this instance, the building will revert to Council’s ownership without compensation payable.

Where existing lessees or new groups decide to amalgamate and operate from an existing or new building, landowner approval for amalgamation may be contingent on any surplus buildings being removed or demolished.

Where buildings become unoccupied, officers may decide not to advertise them to the community as being available if there is limited demand or if the building requires significant capital investment.

### **8.12 External Signage**

Lessees are required to obtain landowner approval from Council for any signage they wish to erect on the land and/or building. In respect of this:

- All signs must comply with the relevant legislative requirements, District Plan and management plans.
- One sign may be erected showing the name of the lessee, any logo associated with the lessee, the use of the land and or/building and contact details.
- The design and appearance of signs must not detract from the amenity of the area.
- Temporary signs relating to special events are permitted with the prior written approval of Council.

Additional signage may be erected where required to give effect to the approved use of the land and prior written approval is obtained from Council.

In general, commercial advertising is prohibited in leased areas; however existing and future sponsorship advertising relating to the activity shall be permitted where the wording is only readable from within the leased area or the area relating to where the associated activity is held.

### **8.13 Fees and Charges**

All groups are liable for all legal costs and expenses relating to the preparation of a new lease, renewal or any variation and any other associated costs, including but not exclusive to advertising, surveying and obtaining resource consent.

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### Definitions

**Applicant:** A community or recreation group applying to Council for a lease of Council owned land and/or buildings.

**Expired Lease:** The end of the initial term and any renewal terms, if applicable.

**Exterior Renewals:** A programme to replace or renew assets before the end of their functionality, for example, painting (renewal), reroofing (replacing).

**Governance:** The process by which the governance, board, or trustees set and monitor strategic direction and priorities; set policies and management performance expectations; and monitor and evaluate organisational achievements.

**Ground Lease:** A lease granted where the Council owns the land, and any buildings on the land are owned by the community or recreation group.

**Initial Term:** The first term provided for in a lease.

**Landowner Approval:** Written approval from Council officers.

**Lessee:** A community or recreation group to who a lease is made.

**Management:** Management have the responsibility of implementing policies and strategic direction developed and put in place by the governance, board or trustees as well as managing day to day operations of the community or recreation groups as set by the governance, board or trustees.

**New Lease:** A lease granted to a community or recreation group that has not previously held a lease with Council or a lease granted to an existing community or recreation group that has an expired lease.

**Premises Lease:** A lease granted where the Council owns the land and buildings.

**Reactive Maintenance:** Repairing an asset back to its functionality, for example, repairing a boiler, and removing graffiti.

**Renewal Term:** The further term(s) provided for in a lease.

**Scheduled Maintenance:** Systematic programme to maintain the functionality of assets for example, building compliance obligations (building warrant of fitness), and electrical checks.

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**Sponsor:** An organisation or person who has specifically provided funding for the activities of the community or recreational group. For example, funding competitions, and team uniforms.

**Sportsville Model:** A model where sports clubs form partnerships or collaborate with other clubs. The sportsville concept can involve sports clubs sharing ideas, resources, knowledge and skills. In some cases sports clubs will share buildings or amalgamate. The model aims to foster a sustainable future for sports clubs.

**Sustained Objections:** An objection which Council officers have been unable to resolve and/or where the objector wishes to be heard by a committee or subcommittee.