

Lease and Licence for Community Land and Buildings Policy

Classification	Council Policy		
Responsible Officer	Group Manager Assets & Infrastructure		
Relevant Legislation	<i>Local Government Act 1999</i>		
	<i>Retail and Commercial Leases Act 1995</i>		
Related Policies	Public Consultation Policy		
	Financial Internal Controls Policy		
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1. Introduction

- 1.1. The Town of Walkerville recognises the community value of sporting and community clubs and community land within the Town of Walkerville.
- 1.2. This Policy aims to implement administrative procedures and authority for issuance of Occupancy Agreements for Council-controlled community land and buildings.
- 1.3. Council acknowledges its responsibilities and recognises that it needs to provide:
 - a balanced approach towards the use of community land for community purposes and
 - authority over its community land use for community, private or commercial purposes.

2. Scope

- 2.1. The Policy relates to Council assets, including Council owned land and buildings and Crown Land under Council's care, control and management, where an occupancy agreement is to be offered to a community group or other organisation. Occupancy agreements covered by the Policy include:
 - Lease (exclusive occupancy).
 - Licence (non-exclusive occupancy).
 - Management Agreement (Organisation operating from a Council owned facility to provide services to the community).
- 2.2. Occupancy agreements not covered by this Policy are:
 - Ad-hoc casual or regular hire of halls and other facilities.

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3. Policy Statement

3.1. Terms of Agreements

- 3.1.1. Under the Local Government Act 1999 (the Act), a lease or licence may be granted or renewed for a term not exceeding 42 years. Legally, Council has no obligation to grant a 42-year lease in any instance.
- 3.1.2. Council will consider shorter term agreements of 5 years but will also consider requests for long term leases, up to 42 years, on a case-by-case basis. The terms and conditions of all occupancy agreements may be reviewed on a regular basis consistent with the content of the agreement.
- 3.1.3. When considering the maximum term for an Agreement, Council seeks to undertake good governance in accordance with the principles of Section 8 of the Act by ensuring that Council resources are used fairly, effectively and efficiently and provide opportunities and availability for new businesses and community organisations to access facilities.
- 3.1.4. For both community and commercial agreements, Council recognises the need to periodically test the broader market to ensure Council is achieving the best community outcome and / or best financial return for the asset.
- 3.1.5. The policy does not cover all the requirements that pertain to community and Local Government land as these requirements are set out in the Act and form part of Council's legal obligations. It does, however, take into account requirements of the relevant state authority that should be considered when dealing with dedicated lands owned by the Crown.
- 3.1.6. The principles of this policy will be applied initially to those leases and licences which have expired and where renewal is pending. The remaining leases/licences will follow as and when their current agreement requires renewal, or as new leases and/or licences are taken up on Council owned or managed community land.
- 3.1.7. Unless otherwise delegated to the CEO, the Council will consider all applications to grant new leases and/or licences or grant the renewal of leases and/or licences of Council-controlled community land and buildings.
- 3.1.8. The power to approve the renewal of these existing leases and/or licences may be delegated to the CEO by the Council, provided the terms and conditions are in accordance with Council policies and procedures.

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Where the terms and conditions have been substantially varied, the Council will consider the renewal application.

3.2. Formation and Renewal of Agreements

- 3.2.1. Occupancy agreements for vacant premises will be entered into following an Expression of Interest process unless Council resolves otherwise. Assessment of the submitted Expression of Interests will be on a case-by-case basis and consider the intended use of the site, the type of facility, the proposed activity and the benefit the proposal would bring to the community. The basis of the assessment will be in achieving the policy statement and Council's other relevant Strategic Plans.
- 3.2.2. At expiry of existing agreements, subject to Council's plans for the land or building, existing lessees will be granted first option for a new agreement provided the lessee has not committed any serious breaches of their agreement during the preceding term and the use remains consistent with any relevant Council Plans and Policies.
- 3.2.3. Applications under Section 200 of the Local Government Act 1999 for the business use of Community Land will be considered on merit and must be consistent with the Community Land Management Plan.
- 3.2.4. Where an occupancy agreement is proposed to be granted over Community Land, the proposed use must be consistent with the Community Land Management Plan.

3.3. Eligibility

- 3.3.1. Commercial Organisations
 - It is a registered business entity with an Australian Business Number (ABN).
 - It provides evidence of financial viability.
 - It complies with legislation and regulations relevant to its activities.
 - It can demonstrate it provides community and economic benefits.
 - It has good professional capacity and experience.

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- It has adequate insurances.

3.3.2. Non-profit Organisations

- It is a not-for-profit entity according to Australian Tax Office definitions.
- It is an incorporated body or under auspice of an incorporated body or Government entity.
- It has an Australian Business Number (ABN).
- It provides evidence of financial viability.
- It complies with legislation and regulations relevant to its activities.
- It can demonstrate it provides benefits for the community.
- It has good governance capacity and processes.
- It has adequate insurances.

3.4. Types of Occupancy Agreements

3.4.1. Recreational and/or Sporting Facilities Lease

- 3.4.1.1 specific and exclusive rights of use for a third party to occupy or use a community recreational and sporting facility.

3.4.2. Recreation and/or Sporting Facilities Licence

- 3.4.2.1 long term use or occupation that does not provide sole/specific rights to the land and/or buildings.

3.4.3. Commercial Lease

- 3.4.3.1 long or short term use or occupation by a sole proprietor, partnership, company, government or not for profit entity for the purpose of conducting a business. It provides sole/specific rights to the land and/or buildings.

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3.5. Fees

3.5.1. Commercial Users

- Requests from private individuals to lease buildings or vacant community land within townships will be assessed on merit in accordance with Council's strategic direction and operational requirements.
- Proposals to establish a commercial enterprise on any community land will be subject to individual consideration by Council.
- A market rate will apply.

3.5.2. Sporting and Recreational bodies

- To establish balance in assessing a reasonable contribution amongst the various sporting and recreational clubs, where an organisation has the ability to enjoy profit from either an annual membership fee, sponsorship, canteen facilities, licensed facilities, or a combination of all, rental fees and charges shall reflect this.

3.5.3. Community based bodies

- Council recognises the benefit of providing support, financial and non-financial, to community groups and organisations including not for profit bodies. These include service clubs, craft groups, or associations and community based health or social welfare agencies.
- This fee structure principles will apply to not for profit organisations, however individual circumstances may apply in each case, taking into account the cost of any improvements on the land and the responsibility for the maintenance of those improvements.

3.5.4. Rent Arrears and Non-Compliance

- Where an agreement holder is in arrears with their invoiced rent and / or outgoing liabilities by a period of 120 days or more, or where an agreement holder has not supplied all required performance outcomes evidence, subsidy information, or other required compliance documentation to Council within 120 days of an annual written request, then Administration will provide a report to Council at the next General Meeting, subject to agenda preparation deadlines in place for determination to be made.

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3.6. Public Consultation

3.6.1. Consultation will be undertaken in accordance with the Local Government Act 1999 and Council's Public Consultation Policy.

3.6.2. An Occupancy Agreement -

- not exceeding five (5) years on community land (excludes operational land) does not require public consultation to be undertaken as long as the intended purpose of use is authorised in an approved management plan.
- not exceeding five (5) years on community land (excludes operational land) requires public consultation to be undertaken if the intended purpose of use is not authorised in an approved management plan.
- for a term over five (5) years inclusive of any rights of renewal, on community land (excludes operational land) requires public consultation to be undertaken in accordance with Council's Public Consultation Policy.
- for any term on operational land (excludes community land), does not require public consultation to be undertaken however it may be undertaken in accordance with Council's Public Consultation Policy.

3.7. Crown Land

3.7.1. Council may issue a lease or licence over Crown Land under the care and control of the Council. The State Government requires the application to be referred to the relevant Minister to seek approval for both renewals and new application leases or licences. Third party occupation is limited to licence tenure of up to 5 years unless otherwise agreed by the Minister. This procedure is to ensure:

- Dedicated lands are not developed where the nature of the development contemplates use that is at variance to the purpose for which the land has been dedicated.

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4. Availability of Policy

- 4.1.** This Policy will be available for inspection at Council's principal office during ordinary business hours and on Council's website www.walkerville.sa.gov.au
- 4.2.** Copies will also be provided to interested members of the community upon request and payment of associated fees in accordance with Council's schedule of fees and charges.

5. Review

- 5.1.** This Policy shall be reviewed once every council term, or more frequently if required by legislation or Council.