

Leases Policy for Community and Recreation Groups

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Leases Policy for Community and Recreation Groups

1. Introduction

Manawatu District Council provides leases of land and/or buildings to a number of community and recreation groups. As Council-owned land and buildings are a limited resource, the 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 sets out the 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
- the standard to which land and/or buildings will be maintained to ensure appropriate asset management.

2. Policy objectives

- 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 that Council has the flexibility to respond to community needs.

3. Scope of policy

This policy applies to all community and recreation groups that 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
- recreation centres
- community and recreational groups engaging in commercial activities
- commercial leases.

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 the Council's Vision and long-term community outcomes.
2. The relationship between the Council and groups will be collaborative.
 - There will be open communication between the Council and groups.

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- Both parties will work collectively in a transparent manner to achieve the Council's community outcomes.
 - The Council will treat all groups fairly and consistently apply 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.
 - All land will be maintained to the standard required under the lease.
 - 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 the Council owns the land and buildings.

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 6) will be applied.

Council will apply Management plans and Council strategies will be used to ascertain what activity or structure can be permitted on an area of land. Where there is 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 the 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 a group applies for a new ground or premises lease, the process will be as follows:

1. Council 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. Council officers will assess the application using the assessment criteria outlined in section 6 of the policy.
4. Council officers will submit a report to Council seeking approval to grant a lease, subject to public consultation and obtaining approvals required by any relevant legislation.

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5. Any sustained objections received through the public consultation process will be presented to a committee or subcommittee to consider, if necessary.
6. If no objections are sustained and all approvals required are obtained, a lease will be prepared and executed.

6. Assessment criteria

The assessment criteria will be applied when:

- assessing new lease applications
- granting lease renewals
- granting new leases to existing lessees
- varying existing leases.

1. The group's purpose and activities must be consistent with the Council's strategic direction.

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?

2. The group must be an incorporated society or trust.

Key questions: How does the group spend the money it raises and what happens to any surplus? What is the group's structure and is there a clear distinction between governance and management?

3. The group must be sustainable in terms of membership and/or users of the service for the term of the lease.

Key questions: Is there evidence that the group's membership numbers and trends justify and necessitate the proposal? Does the application support a sportsville or amalgamation model?

4. The group must be in a financial position to fulfill its lease obligations for the term of the lease, including but not exclusive to, rent, insurance, building and grounds maintenance.

Key questions: How does the group fund its activities? Has a scheduled maintenance programme been developed and is there evidence that the group is able to afford implementation of the programme? Is there an open membership policy?

5. The land and/or buildings must be utilised to its maximum potential.

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?

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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 ones 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 Council officers, who will make recommendations to Council for approval.

If at renewal time, a lessee does not meet the assessment criteria, Council officers will prepare a report for Council seeking approval to revoke the renewal and terminate the lease. If the lessee does meet the assessment criteria, Council officers will renew the 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 does not fall within the scope of this policy. Such proposals will be assessed on a case-by-case basis and will consider the status of the land and the applicable legislation. Assessment against the Reserves Act will be a primary consideration. Any commercial activity which is approved by the Council will require a separate commercial lease, licence or concession. The Council may look to increase the rentals above those derived by the rental mechanism in this policy.

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

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7. 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.

7.1 Rental determination

The rental will be calculated as 5% of the value of the land on which the building occupies.

Rent reviews will be applied to all new leases and existing leases where the lease provisions allow. Triennial 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 nine years) by an independent registered valuer.

7.2 Tenure framework

The standard tenure for leases relating to reserve or fee simple land is 10 years plus a 10-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 the 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 or share facilities, which result in maximum use of land and/or buildings.

7.3 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 district. 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
- works the lessee has undertaken on its building in accordance with the scheduled maintenance plan.

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7.4 Allocation of responsibilities between the Council and lessee

- a) 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 if applicable
 - outgoings including, but not exclusive to, water, waste, electricity, gas and telephone
 - payment of rates and/or service charges if applicable.

The Council is responsible for:

- monitoring compliance with lease provisions.

- b) 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)
- 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
- keeping the premises properly secured at all times
- fencing if applicable
- outgoings including, but no exclusive to, water, electricity, gas and telephone
- payment of rates and/or service charges if applicable.

The Council is responsible for:

- legal obligations associated with the building (building insurance, building warrant of fitness)
- exterior maintenance
- monitoring compliance with lease provisions.

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

7.5 Accessways and paths

- Where the lessee has exclusive use of an accessway or path, the lessee is responsible for its maintenance.

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

7.6 Insurance

All insurances shall be the responsibility of the lessee.

Buildings owned by the Council will be insured to a level of cover adequate for the condition and use of the building.

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

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

7.7 Subleasing

Lessees may not transfer, sublet, or dispose of their interest in a lease without prior written approval from the 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 the 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 does not fall within the scope of this policy. Such proposals will be assessed on a case-by-case basis and will consider the status of the land and the applicable legislations. Assessment against the Reserves Act will be a primary consideration. Any activity approved will require a separate commercial lease, licence or concession. The Council may look to increase the rentals above those derived by the rental mechanism in this policy.

7.8 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 Council

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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.

Any significant additions or alterations will be assessed in accordance with the assessment criteria (section 6).

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 the Council in its regulatory capacity to ensure their proposal complies with the Building Act 2004 and the Resource Management Act 1991.

7.9 Ownership of buildings and/or structures on expiry or early termination of leases

Where the 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 the Council's ownership if the Council wishes to accept ownership
- may be assigned 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 6).

Any lessee wishing to assign their building to a community or recreation group by way of sale will need to fulfil the following requirements:

- There must be demand for the building.
- The lessee must retain its status as an incorporated society or trust.
- The building must be in a condition that is acceptable to the Council.
- Any proceeds from the sale of the building must be invested into the lessee's activity.

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.

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7.10 External signage

Lessees are required to obtain landowner approval from officers 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.

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.

7.11 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. The Council will not charge for Council officer time.

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

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8 Definitions

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

Commercial activity: An activity undertaken by a group that consistently generates funds that are in excess of what is required to support the community or recreational activity, or an organisation whose purpose it is to derive private profits.

Expired lease: The end of a lease's initial term and any renewal terms, if applicable.

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 which a lease is made.

New lease: A lease granted to a community or recreation group that has not previously held a lease with the 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.

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

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 clubs form together to create a stronger and more collaborative organisation with close links to schools and the Council. The model creates strategic and operational partnerships that foster a sustainable future for club sport.

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.