

POLICY– COUNCIL

Leasing and Licencing of Council’s Community Land and/or Buildings

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1. Document control

Author – name and position (to whom changes are recommended)	Team Leader Property Transactions
Stakeholders (audience and engagement groups)	Public, Ratepayers, Occupants, Persons and Groups interested in leasing, licencing, managing Council's facilities
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Approved by (document owner)	Council
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Document location	Original: Insert text here Published: Insert text here

Electronic version on the intranet or website is the controlled version.

2. Preamble

The contents of and the commitments that council makes in this policy are not intended to be and should not be interpreted to be any more than a statement of the City of Onkaparinga's general position in relation to those matters, and to facilitate its aspirations wherever it is reasonable to do so.

Key to draft policy:

- **Text in blue** denotes policies that are required by legislation, or are an endorsed council position and are therefore non-negotiable
- **Text in green** denotes policies that are accepted or historic policy of council, often embedded in Occupancy Agreements, other policies, or Fees and Charges and are therefore no surprise to tenants
- **Text in yellow** denotes policies that are new or altered and represent a new way of doing things, potentially including options and therefore require direction from council and input from lessees.

3. Policy purpose

- a. **The purpose of this policy is to:**
 1. **Ensure an open, equitable and transparent process for the occupancy of council's Community Land and/or buildings, with a focus on achieving optimal outcomes for council and its ratepayers, both financially and non-financially.**
 2. **Guide council decisions in relation to the type of agreement, tenure, conditions and fee structure to be applied to the occupancy of council's Community Land and buildings.**
 3. **Guide council decisions in relation to the selection of new Occupants and the renewal of agreements with existing Occupant.**
 4. **Administer occupancy agreements in accordance with council's endorsed strategic directions and policy, and relevant legislation and obligations.**
- b. **It is acknowledged that any legislative requirement that affects council will take precedence over council's policies and procedures.**

4. Scope

- c. **This policy applies to the administration of occupancy agreements for Community Land and/or buildings owned by or under the care and control of council.**
- d. **This policy excludes agreements related to public roads, temporary permits or licenses for events, and agreements for residents of council's Tourist Parks in accordance with the Residential Parks Act 2007.**
- e. **This policy does not apply to land that has been excluded from the Community Land provisions of the Local Government Act 1999.**

5. Definitions

Community Land	All local government land (excluding roads) owned or managed by Council as classified under Chapter 11 of the <i>Local Government Act 1999</i> .
Commercial Organisation	An organisation, including incorporated body, co-operative society, partnership or sole trader conducting activities for the purposes of deriving a financial return to the proprietors or shareholders.
Community Organisation	Incorporated associations (under the <i>Associations Incorporation Act 1985</i>) and other community groups whose primary objective is service to the community and whose members do not receive the profit that may be generated by activities of the organisation.
Emergency Service	Service providers that respond to emergencies and provide other safety-related services either as part of their on-the-job duties or as part of the main mission of their business (eg CFS, Surf Life Saving).
Ground Lease	An agreement in which an Occupant is permitted to develop land during the Lease period, after which the land and all improvements are turned over to the property/landowner.
Lease	A contract by which Council (as landlord) grants exclusive rights to occupy land and/or premises to an Occupant for a specified time and under certain terms and conditions.
Licence	A contract by which Council (as licensor) grants non- exclusive contractual rights to occupy land and/or premises to a licensee, for a specified time and under certain terms and conditions.
Management Agreement	An agreement under which an organisation manages land (or part of) owned by Council or under Council's care, control and management for the purpose of managing a community facility. This can sometimes be referred to as Partnership and Management Agreement.
Not-for-Profit (NFP)	Organisations that provide services to the community and do not operate to make a profit for their members (or shareholders, if applicable) as defined by the Australian Taxation Office.
Occupancy Agreement	An agreement with an organisation wishing to occupy council's Community Land and/or buildings, which could take the form of a hire, Licence, Lease, Ground Lease, Management, or other agreement.
Occupant	An organisation or entity occupying council's Community Land and/or buildings.
Permitted Use	The use of the Premises as described in the Occupancy Agreement and within the relevant Community Land Management Plan (where applicable) and in ensuring compliance with relevant Land Use and Building codes.
Premises	The Premises as described in the Occupancy Agreement also referred to as the Leased or Licenced Area and includes all present and future improvements thereon and the Council's Equipment.
Sub-lease, sub-licence or sub-user agreement	An agreement between council's Occupant and another organisation that stipulates the negotiated fees, charges, conditions and times of use for the period of the agreement.

6. Strategic context

- a. City of Onkaparinga Community Vision 2034 guides the way council leases and licences its facilities, particularly its Community Vision Statement:

It's friendly here. People connect with each other across a range of celebrated differences. No matter what age, ability, gender or cultural identity, there are things to do, safe places to go, groups to join, arts to experience, opportunities to learn, and ways to be active. Everyone has the capacity to look after their personal and collective wellbeing and, when times are tough, find support.

7. Policy Objectives

Council is committed to:

1. Providing opportunities to access safe, welcoming and inclusive facilities on council land in a fair, equitable, inclusive and consistent manner through Lease, Licence or Management Agreement.
2. Ensuring council assets are utilised effectively and efficiently, facilitates optimum use and outcomes, and in a manner that aligns with council's strategic directions.
3. Managing council assets in a manner that respond to a range of uses including sporting, recreation, educational, cultural, and emergency services and commercial pursuits that meet the needs of a diverse community.
4. Supporting not-for-profit groups and organisations to increase their capacity and capability, recognising the significant role they play in delivering social and physical community wellbeing, and acknowledging that many of council's Occupants are heavily reliant on volunteers.
5. Supporting and encouraging not-for-profit groups and organisations to be financially sustainable and transparent in their operations, adopt good governance principles and meet their legislative obligations.
6. Providing fair, open and equitable opportunities for the commercial use of council's Community Land and/or buildings where not required for sole community benefit or the delivery of community services.
7. Ensuring that the commercial occupancy of council's Community Land and/or buildings does not generate a financial burden for council or the wider community.
8. Ensuring council assets are fit-for-purpose and managed in a manner that is accountable, responsible, safe, sustainable, and provides benefit to the community.
9. Ensuring that community services performed, and facilities provided on land owned by council are provided in a manner that is welcoming, equitable, accessible, inclusive, and affordable.
10. Ensuring that the financial risks associated with council assets are not a burden to council and the wider community.
11. Where appropriate, ensuring certain costs are shared equitably between the Occupant and the council in a manner that reflects levels of community access and benefit.

8. Occupancy Agreements

- a. Council will enter into an Occupancy Agreement for the use of council's Community Land and buildings that aligns with council's strategic directions, the needs of the community, the intended purpose of the facility, the needs of the Occupant, and legislative obligations.
- b. A **Hire Agreement** will be used for once-off, occasional or short-term use of council's Community Land and/or buildings
- c. A **Licence Agreement** will be used for regular and ongoing non-exclusive use of council's Community Land and/or buildings
 1. Licence Agreements may be granted on a seasonal basis after considering the needs of the community, the strategic directions of council and the needs of the Occupant.
 2. Licence Agreements usually up to 5 years however may be granted for periods of time greater than five years where occupied for the purposes of delivering emergency or government services, or where aligned with the strategic directions of council.
- d. A **Lease Agreement** will be used for exclusive use of council's Community Land and/or buildings.
 1. Lease Agreements will generally be granted for a period of up to five years but may be granted for periods of time greater than five years after considering:
 - 1.1 The level (actual or committed by way of a long-term agreement) of capital investment in the facility by the Occupant.
 - 1.2 The use of the land for the purposes of delivering emergency services.
 - 1.3 The use of the land by State or Federal government agencies.
 - 1.4 The amount of rent negotiated.
 - 1.5 The scale, specialist nature and/or significance of the facility.
 - 1.6 The outcomes of a competitive tender process.
 - 1.7 The desire to attract private investment to develop a public asset.
 - 1.8 Public consultation outcomes and other legislative requirements
 - 1.9 In relation to Multi-Use Sporting Facilities (MUSFs), Council approved at its meeting on 18 February 2025 long-term leases of up to 15-years to its 12 MUSFs at each MUSF's request and subject to Public Consultation outcomes in accordance with Section 202 of the Local Government Act 1999.
 - 1.10 Where Lease Agreements are provided for periods of time longer than five years, rights of renewal periods will be subject to any notices of breach, meeting key performance indicators, and any other non-compliance with the terms and conditions detailed in the Lease Agreement to council's satisfaction. This is to ensure periodic reviews in the context of council's strategic objectives, community need, and in the interests of open, transparent and equitable use of council land.
 - 1.11 Lease Agreements may be granted for periods of time shorter than five years after considering the needs of the community, the strategic directions of council and the needs of the Occupant.
- e. A **Ground Lease Agreement** will be used for regular and ongoing exclusive use of council's Community Land for periods where improvements are funded by and to be placed under the care and control of the Occupant.
 1. New Ground Lease Agreements will generally be granted for a period of up to 42 years after considering:
 - 1.1 The nature, age and structural integrity of the asset (as assessed by a reputable asset auditing engineer at the cost of the proposed Occupant)

- 1.2 The level (actual or committed by way of a long-term agreement) of capital investment in the facility by the Occupant.
 2. The amount of rent negotiated.
 3. The outcomes of a competitive tender process.
 4. The desire to attract private investment.
 5. Will require improvements and alterations made after execution of the Lease (after obtaining council's prior written consent) to be under the care and control of the lessee during the period of the Lease, vesting in the council when the Lease is surrendered or when otherwise agreed by both parties.
 6. Whilst improvements to land under a Ground Lease Agreement will generally be under the care and control of the Occupant, Council reserves the right to enforce any legislative obligations that may apply.
 7. Upon expiry, surrender or termination of the Ground Lease, council may require the Occupant to remove all improvements and remedy the land to its condition prior to the Ground Lease.
- f. A **Management Agreement** will be used for shared use of council's Community Land and buildings where council is seeking to partner with other organisation(s) for the delivery of council services and/or where other complex partnership arrangements may apply. Management Agreements will be for periods generally up to 5 years but may be in some cases up to 42 years. Management Agreements can be comprehensive and cover arrangements for funding, cost sharing, legal responsibilities, maintenance, use, supervision, staff and access. A Management Agreement will clearly establish and document the rights and responsibilities of all parties.
- g. In accordance with the *Local Government Act 1999*, terms of agreement for Leases or Licences over council Community Land will not exceed 42 years inclusive of any rights of renewal.

9. Selection of an Occupant

- a. To ensure fairness of opportunity, Council may select an Occupant via an Expression of Interest (EOI) process:
 1. Prior to the establishment of a new Lease, Licence or Management Agreement
 2. Prior to the expiration of an existing Lease, Licence or Management Agreement where:
 - 1.1 The Lessee has surrendered the Lease and vacated the premises,
 - 1.2 The Lessee has a history of breaching obligations,
 - 1.3 The Lessee remains in 'holding over' for a period of 6 months or greater, or
 - 1.4 The premises has become vacant for any other reason.
 3. Council is otherwise legally obligated to do so.
- b. Council may select a new Occupant without an Expression of Interest (EOI) process where:
 1. The Occupancy Agreement would be with a State or Federal Minister, or for the purpose of emergency services.
 2. Council is satisfied that there is likely to be an absence of competition in relation to occupancy of the land and/or building.
 3. Council is otherwise legally obligated to do so.

10. Sub-Letting and Hire of Facilities

- a. Sub-letting and hire of facilities is encouraged where subservient to the primary use of the tenancy, encourages wider community benefit and participation, increases facility usage, and encourages the efficient use of council facilities.
- b. Occupants wishing to sub-let must first gain the written consent of council before entering into any negotiations with third party proponents.
- c. Council may require the Occupant to impose a sub-let fee having regard to:
 1. The extent to which the proposed sub-let use meets the needs of the community in relation to the facility's primary use in the context of city-wide facility demand and supply.
 2. The extent to which the proposed sub-let use excludes the wider community from being able to access the facility due to availability and/or cost.
 3. The extent to which the proposed sub-let encourages wider community benefit and participation.
 4. Market competition and benchmarking, having regard to the principles of competitive neutrality, with an appropriate fee to be calculated by an independent valuer based on comparable market evidence.
 5. Legislative requirements.

- d. Not-for-profit Occupants intending to sub-let to commercial organisations undertaking a commercial use of council Community Land and/or buildings must:
 - 1. Do so via a genuine, open and competitive process to the satisfaction of council.
 - 2. Charge a market commercial rate, having regard to the principles of competitive neutrality.
 - 3. Satisfy Council that it has the capacity to manage a commercial sub-lease.
- e. The sub-letting of council Community Land and/or buildings by a not-for-profit Occupant to an organisation at a rate that is higher than its own Lease Agreement fee will trigger a review and possible variation of the existing Agreement. Council may deem it to be a commercial operation, and certain conditions of consent will be applied to be assessed on a case-by-case basis, such as; 12.a
- f. the rent may be reviewed to fair market rent in accordance with 12.a.2.
- g. Council may require the rental income derived to be directed to a sinking fund to contribute to facility maintenance or infrastructure renewal
- h. Council may require the Occupant to negotiate with it to assume additional repair and maintenance responsibilities under the Lease Agreement, taking into account:
 - 1. The extent of the Occupant's expenses in relation to maintenance and operation of the facility, remuneration of volunteers, and operation of the organisation.
 - 2. Any upcoming maintenance or asset renewal requirements.
- i. The balance of the money derived by the head lessor from the sub-lease must be used solely in connection with the Permitted Use under the head lease.
- j. Occupants are encouraged to hire facilities out to the wider community using an appropriate fee

11. Public Consultation

- a. Public consultation will be undertaken on a draft Lease of Licence in accordance with the *Local Government Act 1999*:
 - 1. Where the proposed tenure period is greater than five years, including any right of renewal, and
 - 2. Where the amendment of the relevant Community Land Management Plan is required.
- b. Council may undertake additional public consultation in relation to a Licence, Lease or Management Agreement at its complete discretion and in accordance with its Public Consultation Policy.

12. Fees and Charges

- a. Council will apply a fee to Occupancy Agreements based on:
 - 1. Council's Schedule of Fees and Charges with respect to hire arrangements.
 - 2. Commercial market rates with respect to commercial Occupants (which may incorporate a management fee to be applied in connection with the management and administration of the occupancy agreement), or in situations where there is a competing market and the principles of competitive neutrality apply.
 - 3. A contribution towards building facility maintenance with respect to not-for-profit organisations charged as a service fee (rent) to lessees based on the following Council endorsed formula

Building facilities maintenance: 1.5% of the Building Value

Subsidy: 80%

Calculation: (Building Value x 1.5%) x 20% = annual service fee
 - 4. Case-by-case negotiations with respect to Management Agreements.

- b. Fees may apply for the maintenance of facilities such as hard courts and turfed spaces and are applied in accordance with council's Schedule of Fees and Charges and the cost sharing principles for sporting club fees approved by Council at its meeting on 18 July 2023.
- c. Other fees and charges may apply, including security services, building insurance premiums, Emergency Services Levy, rates and taxes.

13. Maintenance, Outgoings and Improvements

- a. Maintenance responsibilities will be clearly specified in the form of a maintenance schedule attached to the Occupancy Agreement, with council generally taking on the structural maintenance obligations associated with buildings, except in the case of a Ground Lease, in which case all assets will be the responsibility of the Occupant.
- b. Occupants will be responsible for the cost of all utilities and outgoing associated with their operations.
- c. Where turfed sportsgrounds are leased for exclusive use, the Occupant will be required to provide public access when not being used by the Occupant for scheduled training and matches. In recognition of this:
 - 1. Council will take on the maintenance of turfed sportsgrounds and recover a percentage of the annual costs of maintenance from the Occupant via a Sports Ground Maintenance Fee
 - 2. For turfed sportsgrounds irrigated using mains water, council will pay the cost of irrigation applied to turfed playing surfaces (pitches and ovals) at the relevant industry standard, calculated 'Kilolitres multiplied by the current SA Water or Reclaimed water sources price per Kilolitre'.
 - 3. For turf sportsgrounds irrigated using bore water, council will provide advice and support in relation to the ongoing maintenance of bore water systems in accordance with the Occupancy Agreement.
- d. The maintenance and irrigation of fine turf playing surfaces (such as bowling and croquet greens, and turf cricket wickets) are the full responsibility of the Occupant.
- e. For the renewal of synthetic turf playing surfaces at the end of their asset life (as determined by council depending on usage, condition and demand), council will require the establishment of a sinking fund at a rate to be determined by council.
- f. Where hardcourts are leased for exclusive use, the Occupant will be required to provide reasonable public access when not being used by the Occupant via hire or other arrangement. In recognition of this:
 - 1. Council will take on the maintenance of hardcourts as specified by the Occupancy Agreement, including minor maintenance associated with court surfaces, fencing and lighting, as well as the periodic recoating of courts.
 - 2. Council will recover a percentage of the costs of maintenance from the Occupant via a Court Maintenance Fee, that is specified in council's Schedule of Fees and Charges and charged annually.
- g. As part of the Occupancy Agreement, council may require the lessee to establish a sinking fund to fund major maintenance or repairs.
- h. Before undertaking any alteration, addition or modification to a facility, an Occupant is required to obtain the prior written consent of council in accordance with council's Landowner Consent Procedure, together with all necessary development approvals.

14. Governance and Reporting

- a. Not-for-profit organisations operating on council land are expected to implement and maintain system(s) of governance that reflects council and community expectations, including good

leadership, transparent decision-making processes, appropriate financial management, and a culture of safe, welcome and ethical behaviours.

- b. Any agreement with a not-for-profit organisation or government entity will require the provision of an annual report by the Occupant to council detailing its performance against the key performance indicators detailed in the agreement. Non-compliance may be deemed a breach of the terms and conditions of the Occupancy Agreement and potentially impact the Occupant's chances of entering into new future agreements with council.

15. Gaming, Alcohol and Smoking

- a. Gambling activities, including the installation or operation of gaming machines, is not permitted on council land.
- b. Activities that are deemed to be fundraiser lotteries under Part 2, Division 1 of the *Lotteries Regulations 2021* are permitted if they are undertaken in accordance with relevant legislation, do not adversely affect the carrying out of the Occupant's primary purpose of the Lease, are aligned with council's objectives for its leased community facilities, and are undertaken to provide revenue to assist delivering its core functions, support maintenance of the facility or otherwise further its objectives.
- c. With the Council's consent, and in the case of a new Occupancy Agreement, an Occupant may retain and operate any pre-existing gaming machine that was operated by the Occupant prior to the commencement of a new Occupancy Agreement. Council reserves its right to refuse to provide its consent in its absolute discretion.
- d. The Lessee must not serve, sell or provide to persons; or consume or allow persons to consume alcoholic beverages on the Premises without the Council's consent, which may be granted by Council subject to whatever conditions it sees fit.
- e. the Lessee must not allow any activities to be carried out on the Premises that would require a liquor licence under the *Liquor Licensing Act 1997* (SA) without the Council's consent, which may be granted by Council subject to whatever conditions it sees fit. Council will require assurance that the supply of alcohol would be secondary to the primary use of the facility. Council may withdraw its support and terminate its approval at any time, at which time the Occupant will be required to make application to Consumer and Business Services to surrender any liquor licence over the council owned premises.
- f. Council is committed to ensuring the comfort and enjoyment of members of the community seeking to use council-owned land. Smoking and vaping is prohibited on the Premises and council may direct the Occupant to take action to prevent smoking or vaping on the Premises. Occupants will also be required to comply with the requirements of the *Tobacco and E-Cigarette Products Act 1997* and council's No Smoking and Vaping Policy as a condition of their occupancy.

16. Signage and Naming Rights

- a. Council holds the naming rights to all community and sporting facilities on council owned land.
- b. When Occupants wish to encourage sponsorship through fixed signage, council's written consent must first be obtained in accordance with council's Landowner Consent Procedure, together with all necessary development approvals.

17. Competitive neutrality

- a. In all matters relating to hire, leasing, licencing and management arrangements council will ensure it meets its obligations in relation to the principles of competitive neutrality.

18. Delegations

- a. Council or its officers with delegated authority will, when implementing decisions under this Policy, act in accordance with delegated and financial delegated authority, Council's budget, relevant policies, strategies, plans, agreements and resolutions.
- b. The Chief Executive Officer will refer to Council for consideration any proposed agreement where there is a public objection in accordance with council's Public Consultation Policy.
- c. At their discretion, the Chief Executive Officer may choose to refer to Council for consideration any proposed agreement.

19. Relevant legislation and references

- a. *Local Government Act 1999*
- b. *Associations Incorporation Act 1985*
- c. *Crown Land Management Act 2009*
- d. *Landlord and Tenant Act 1936*
- e. *Residential Tenancies Act 1995*
- f. *Retail and Commercial Leasing Act 1995*
- g. *Lotteries Act 2019, and Lotteries Regulations 2021*
- h. *Liquor Licensing Act 1997*
- i. *Tobacco and E-Cigarette Products Act 1997*
- j. *Planning, Development and Infrastructure Act 2016*
- k. *South Australia's Competitive Neutrality Policy*

20. Further information

- a. Council may revise or review this policy at any time (but not so as to affect any process that has already commenced).
- b. This policy is also available for inspection, downloading or printing from www.onkaparingacity.com.au