

4 LEASE TERMS AND CONDITIONS

4.1 RENTAL FRAMEWORK

4.1.1 Standard Lease Rentals

The following process is used to set the rental for a lease:

1. An average value for open space land across the city has been established.
2. The area of the ground lease is established.
3. The **commercial rental** of open space land per annum is set at 6% of the value of the land covered by the lease.
4. This commercial rental is reduced by 2/3rds (down to 2% of the land value) to reflect the restrictions on the use of such land. This is the **assessed rental**. The restrictions recognise that the land is held in public ownership and that the majority is either classified as reserve or carries Town Belt status. Alternative uses are minimal or expensive to achieve.
5. An 80% subsidy is then applied to the assessed rental.

This subsidy is based on the historical levels of subsidy that have been experienced, the benefits that are gained from the activities of recreation and community groups and the ability-to-pay of such groups.

In certain cases, there may be a need to recognise prior formal agreements or investment arrangements in setting rental levels. However, the start point is that this Policy sets a fair rental level across the board.

4.1.2 Rental Phase-in Period

Where a group faces a rental increase as a result of signing a fresh lease the following phase-in periods to increase to the full amount will apply:

- Under \$100 per annum: None – increase is paid immediately.
- Between \$100 and \$500 per annum: First year 50%, second and subsequent years 100%
- Greater than \$500 per annum: First year 33%, second year 66%, third and subsequent years 100%.

This phase-in period only applies to the first fresh lease signed under this Policy and only applies to leases signed before September 2003. After this time there will be no

phase-in period as groups will have had time to prepare and budget for any rental increases.

4.1.3 Rental Review

Rentals will generally be reviewed every three years. However, the review period may be shortened where the lease is for a shorter period than 10 years.

4.2 TENURE FRAMEWORK

The standard tenure for leases is **ten years plus one further term of ten years**.

There may be the occasional, specific case where it is appropriate to use a degree of flexibility in the length of tenure for a lease. For example, there may be asset investments on behalf of a group or the Council that need to be recognised.

Alternatively, shorter tenure may be used to recognise declining trends or uncertainty in an activity.

Reasons for shorter or longer tenure that may be considered include:

Shorter Tenure:	Longer Tenure:
<ul style="list-style-type: none"> • Declining trends in an activity, • Evolution of activities that will compete for assets, • Alternative uses are planned by the Council for the lease asset (for example, demolition of buildings in X years), • Life expectancy of facilities/assets is less than lease tenure, • Group asks for a shorter tenure. 	<ul style="list-style-type: none"> • Recognition of past asset investment • Proposed asset investment, • To provide certainty for external funding purposes, • Dependence by community or membership on continuity of a key activity.

This flexibility should be used carefully and is at Council’s discretion. It is designed to allow Council to respond to changing community needs and asset management issues. Lessees have the ability to seek a fresh lease (lease renewal) at any time during the term of the lease.

If there are reasonable grounds, the Council may seek early termination of a lease. The grounds where Council might seek to terminate a lease will be included in the standard lease document. Such grounds include the situation where a group or organisation is:

- declining to a level where it cannot function or remain sustainable,
- becoming or is bankrupt or insolvent,
- unable to meet the terms and conditions of the lease,
- proposing to change its activity to one that is not supported by Council.

Before the Council undertakes any action to terminate a lease, it will seek other solutions in discussion with the lessee (see also section 2.6).

4.3 ASSESSMENT OF AFFORDABILITY

An assessment of affordability will only be undertaken if an applicant believes that they cannot meet the costs of servicing the lease terms and conditions (such as maintenance, rental and insurance costs).

Affordability will look at the sum total of costs incurred by the group. This includes the rent, utility charges, loan repayments, maintenance costs, rates and any other costs and payments.

It should be noted that only in exceptional cases will the Council consider affordability issues where a group is in effect transferring liabilities to the Council. This may occur where a group proposes capital investment on the basis of a loan that means that it is not able to meet the costs of servicing a lease.

The Council may also be able to assist groups with seeking funding (such as providing contacts for grants schemes and advice about grant applications) and advice about rating differentials.

In recognising the importance of addressing affordability it should be noted that the initial position of the Council is that the subsidies are already significant. If a group wishes to seek an increase in subsidy it will need to provide the Council with enough information to establish why affordability is an issue. This may include information on:

- Size/number of members/users,
- Membership/user group demographic profile,
- Short and medium term financial position (including ability to raise revenue),
- Asset ownership,
- Access to “external” funding sources.

If necessary, Council officers will make an assessment of the situation to determine appropriate changes to the lease terms and conditions.

4.4 STANDARD LEASE FORMAT

The Council will use a **standard lease format** that will cover the following terms and conditions:

4.4.1 Reporting Requirements

The Council is interested in the ongoing performance of community and recreation groups so that it can monitor the achievement of strategic objectives for the city. Of particular relevance to this Policy are the areas of recreation, community development, arts and culture. The provision of leases is only one of a number of ways of meeting these objectives. Sharing information allows the Council to look at the health of the community.

The reporting requirements should not be seen as the only communication pathway between the lease partners and are not a control mechanism. The Council will assist

groups with their reporting requirements so that the information is useful to both parties. Reporting may be tailored to a particular group but will generally include:

- Membership numbers and usage rates,
- Community events run through the lease,
- Financial information.

Reporting requirements will be tailored to reflect the size and activities of each group, asset ownership and any risk. The reporting requirements will be included in the lease.

4.4.2 Allocation of Responsibilities Between Lessee and Lessor

The community/recreation group will be responsible for:

- Legal obligations associated with any **group-owned** building or facilities (including holding appropriate insurance),
- Exterior maintenance and deferred maintenance of any **group-owned** building or facilities,
- Interior maintenance of all buildings or facilities,
- Rubbish control and grounds maintenance for the area of land subject to the lease,
- Legal obligations associated with the activities of the group,
- Utilities including water, electricity, gas, telephone as applicable,
- Payment of rates if applicable.

The Council will be responsible for:

- Legal obligations associated with any **Council-owned** building or facilities (including holding appropriate insurance),
- Exterior maintenance and deferred maintenance of any **Council-owned** building or facilities,
- Monitoring of compliance with lease terms and conditions (such as maintenance).

4.4.3 Rates, Water and Other Utilities

Lessees of Council land are responsible for rates and utilities just as private property owners are. Water charges may be on a metered basis or incorporated into the rates charge.

- Rates are the responsibility of the lessee. Special rates are available to community and recreation groups.
- Water charges are the responsibility of the lessee except where public facilities (such as dressing rooms, shower or toilets) are contained within the leased building or area and these do not have a separately metered supply. In the case where a water meter is not, or cannot, be installed a specific water charge will be negotiated as part of the lease.
- The cost of other utilities (such as electricity) is the responsibility of the lessee. Where public facilities are a significant component of the lease the Council may contribute towards the public use of the utilities.

4.4.4 Maintenance of Buildings, Structures, Vegetation and Land

All buildings and structures must be maintained to a standard that meets the requirements of legislation relating to buildings (such as the Building Act 1991). In addition, all buildings, structures and vegetation should be kept in a condition that does not detract from the environment. Vegetation must not become a hazard to personal safety.

As a general rule, **prior written approval** is required from Council before any work is undertaken on Council buildings, vegetation or on the exterior of buildings owned by lessees. The respective responsibilities of the Council and Lessees are:

- The lessee is responsible for the interior maintenance of all buildings, and the exterior maintenance of buildings owned by the lessee.
- The Council is responsible for the exterior maintenance of Council-owned buildings and will recover a proportion of the cost of the maintenance from the lessee as a charge associated with the lease. This charge is based on a standard figure that applies to all Council-owned buildings. It is based on average maintenance costs and excludes the characteristics of heritage, age, location or design that may increase the maintenance costs for specific buildings. The charge also recognises issues of affordability.
- A rental rebate may be considered where a lessee offers to maintain Council-owned dressing rooms/shower blocks/toilets that are located in the proximity of, or part of, the lease.
- The lessee is responsible for the proper maintenance of all structures (such as fences, paths), vegetation (such as trees and hedges) and land (such as litter control) for the leased area, as well as on the boundaries of the leased area.
- The lessee must consult the Council where tree removal and exterior painting is being considered prior to any work being undertaken.
- Where a lessee has an exclusive access-way the lessee is responsible for its maintenance. Where an access-way is shared between lessees the responsibility for maintenance is also appropriately shared.
- Where an access-way is shared between the public and a lessee, and the public specifically needs the access, the Council will have responsibility for maintenance of the portion of the access-way that is shared.

4.4.5 Insurance

The Council wishes to see a standardisation of insurance cover. This may impose an extra cost on groups but is done to reduce the need for the Council to fund shortfalls between insured amounts and actual costs to restart an activity following a destructive event.

All lessees must hold **full replacement** insurance cover for group-owned buildings, structures and significant equipment except in exceptional circumstances where specific arrangements are negotiated with the Council. Where the Council is the owner of the leased assets, a proportion of the insurance cost will be charged to the lessee depending on the number of groups using the building and whether there is any public access separate from the group's activities.

Lessees must also hold public liability insurance. Generally cover to \$1million will be required.

4.4.6 Subleasing

Lessees may not transfer, sublet, or dispose of their interest in a lease without prior written approval from Council. This is to ensure that leases remain consistent with Council's objectives. In general, subleases will only be considered where the transferee or sub-lessee is an organisation whose aims and objectives are the same as those of the head lessee. The Reserves Act 1977 also places restrictions on the types of activities that subleases may be granted to. In addition:

- The head lessee will be responsible for the preparation of the sub-lease documents and the recovery of all fees and charges from the sub-lessee.
- A copy of the sub-lease agreement must be provided to the Council.

4.4.7 Granting Security Against a Lease

There may be instances where a group wishes to secure finance using a lease as a form of security. However, any security will be bound by the conditions of the lease and by Council policy on the use to which leases are put. In particular, the following provisions apply regarding security:

- Registration of security against a lease will generally only occur where the lessee owns the buildings associated with the lease.
- Assignment or transfer of rights under a lease will be subject to the prior written approval from Council as to the solvency and suitability of any assignee or transferee.
- Leases will be specific as to what uses are permitted.
- Where a lease is reassigned as a result of a loan default the rental will be reviewed.

The above provisions will be specifically written into the lease so that all parties are aware of the requirements

4.4.8 Additions and Alterations

Where a group wishes to extend or make alterations to their premises, permission must first be obtained from the Council. The start of this process is to seek endorsement from the Council's property managers to any building plans.

Where the addition or alteration does not require additional land prior written approval from Council is required. Where extra land is required the lessee will need to seek a variation to the lease.

In all cases any addition or alteration must also meet any relevant requirements of the Building Act, Resource Management Act or Reserves Act. This process is separate from the approval of Council as landowner.

4.4.9 Determination of Leases: Buildings and Structures

Leases will identify the ownership of buildings and structures. Where a lease is expiring and will not be renewed or where a lease is being relinquished, any buildings or structures owned by the lessee:

- may be removed by the lessee,
- may be assigned to another lessee subject to Council's permission,
- may be transferred to the ownership of the Council if Council wishes to accept ownership.

Where Council does not wish to accept ownership (for example, if the buildings or structures are in a dilapidated condition or in an inappropriate location) they will need to be removed at the lessees' expense as per the lease agreement. The Council may wish to move buildings or structures that are transferred to its ownership to another part of the city or to sell them.

The Council will discuss with the lessee the future of any buildings or structures at least three months before a lease expires.

If Council decides not to issue a fresh lease, and the lessee has met the terms and conditions of the lease and has met Council's objectives over the term of the lease, then compensation for buildings and structures may be claimed from Council.

4.4.10 External Signs

As many leases are on reserve or open space land the Council is conscious of the impact on public amenity that activities can have. Signs can add significantly to this impact. In respect of this:

- All signs must comply with the relevant Council bylaws, District Plan, management plans and guidelines.
- One sign may be erected per lease showing the name and any logo of the lessee and/or sponsor as well as the use of the premises and contact details.
- Additional signs may be erected where these are required to give effect to the approved use of the land and prior written approval is obtained from Council.
- The design and appearance of the signs must not detract significantly from the amenity of the area by being obtrusive. No flashing, illuminated or moving signs or signs painted with fluorescent colours will be permitted.
- The Council reserves the right to refuse permission for the display of material that may offend any section of the community.
- Temporary signs relating to special events are permitted with the prior written approval of the Council.

Where a lease is on land that is not managed as open space the above criteria may be waived at the discretion of the Council. Existing Council signs cannot be removed or modified without Council permission.

4.4.11 External Commercial Advertising Within Leased Areas

In general, commercial advertising will not be allowed in leased areas (including on buildings). However some sponsorship advertising may be appropriate where it relates to the activities of the lessee. An organisation/individual shall be considered to be a

sponsor where funding is specifically provided for the activities involved (for example, funding competitions, events, uniforms or equipment).

- Other commercial advertising must only be readable from within the leased area and any structures supporting the advertising must be sited as unobtrusively as possible.

4.5 REGISTRATION OF LEASES

If a group has a valid reason for seeking to have a lease registered against the title (such as to secure a loan to develop facilities) they may do so provided the Council's agreement is obtained prior to a lease being drafted. A memorandum of lease can then be drafted. The lessee is liable for all costs associated with registration including the issuing of a title if this is required.

4.6 FEES AND CHARGES

Applicants are liable for any application fees, legal costs associated with document preparation and any other costs that may arise as part of the lease application process (such as survey costs, hearings and the obtaining of resource consents). The Council will not charge for its own internal administration costs associated with applications.

The Council has the ability to waive any or all of these fees and charges. Waivers are more likely to be considered in relation to ability-to-pay and less likely to be considered where applicants are seeking extensive changes to standard documents (such as the standard lease format).

4.7 DISPUTES AND TERMINATION

The Council will endeavour to maintain an open communication approach so that issues or breaches of lease agreements are addressed as they are identified. If there is a serious or ongoing breach then the Council may terminate the lease. Where possible independent mediation will be used to resolve disputes.