

<b>Policy Name</b>	<b>Lease, Licence and Property Agreements</b>
<b>Policy Number</b>	TS17
<b>Responsible Section</b>	Property & Building Assets
<b>Responsible Department</b>	City Assets
<b>Date Last Adopted</b>	8 October 2019
<b>Date of Next Review</b>	October 2024
<b>Applicable Legislation</b>	<ul style="list-style-type: none"> <li>• Development Act 1993</li> <li>• Planning Development and Infrastructure Act 2016</li> <li>• Crown Lands Management Act 2009</li> <li>• Environment Protection Act 1993</li> <li>• Retail and Commercial Leases Act 1995</li> <li>• Local Government Act 1999 (Section 193 - 199) – Community Land and Management Plans.</li> <li>• Local Government Act 1999 (Section 200) – Business Use of community land</li> <li>• Local Government Act 1999 (Section 202) – Alienation of community land by lease or licence and their respective subordinate Regulations in South Australia.</li> <li>• Local Government Act 1999 (Section 221) – Authorisation for Alteration to a Public Road</li> <li>• Local Government Act 1999 (Section 222) – Permit for the Business Use of a Public Road</li> <li>• Local Government Act 1999 (Section 223) – Public Consultation in relation to Road Use</li> </ul>
<b>Related Governance Documents</b>	<ul style="list-style-type: none"> <li>• Sports Development Plan 2017-2022</li> <li>• Community Engagement Policy</li> <li>• Lease, Licence and Property Agreements Guidelines</li> <li>• Community Centres and Hall Hire Policy</li> <li>• Council's Schedule of Fees and Charges</li> <li>• Open Space Strategy</li> <li>• Outdoor Dining Policy</li> </ul>
<b>City Plan Theme</b>	Leadership Community Placemaking

## PURPOSE/OBJECTIVE

The City of Port Adelaide Enfield manages assets on behalf of the community. The purpose of this policy is to ensure a fair, equitable and transparent approach to make land and buildings available to community groups and other organisations.

The Policy ensures Council assets are managed appropriately to meet Council's strategic objectives and the needs and expectations of the community.

Council aims to ensure a high level of use of its land and building assets for the greater benefit of the community. The Policy provides guidance on what terms and conditions are offered by Council to community groups and other organisations.

## **SCOPE**

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).
- Seasonal licence (non-exclusive occupancy – winter or summer).
- Road reserve authorisations.

Occupancy agreements not covered by this Policy are:

- Ad-hoc casual or regular hire of halls and other facilities.

## **PRINCIPLES**

The following principles guide the development of occupancy agreements for Council land and buildings:

1. Council land and buildings are used to meet demonstrated community needs consistent with the objectives set out in the City Plan 2030.
2. Council land and buildings provide inclusive and equitable access by the community.
3. Support organisations that offer diverse activities and services that support community wellbeing.
4. Encourage social inclusion, diverse participation and active and healthy lifestyles.
5. Ensure transparent and equitable process of granting, renewing and administering occupancy agreements.
6. Ensure a shared approach between Council and lessees as to the cost of management and maintenance of land and buildings.
7. Ensure lessees and licensees pay fair and reasonable costs based on clear and consistent calculation methodologies.
8. Ensure lessees and licensees are accountable for meeting their operational responsibilities and meeting agreed targets.
9. Reduce the environmental impact of Council assets through energy and water efficiency measures and other sustainability initiatives.
10. Ensure that Council assets are well maintained.
11. Ensure sound financial management and effective administration of occupancy agreements.

12. Council encourages new and existing Lessees to be aware of the limitations of sporting buildings to meet the demands of the community. Council will endeavour to provide sporting buildings that facilitate shared use for all potential users.
13. Residential and commercial (market based) leases may be managed by an external (third party) registered real estate agent.

## **POLICY**

This Policy provides a framework for entering into agreements to occupy Council buildings and land that support the objectives set out in the City Plan 2030.

Council seeks to maximise the community benefits that can be obtained through the use of its facilities whilst ensuring consistent, transparent and responsible management of its occupancy agreements.

The Policy sets out the terms, conditions and principles upon which occupancy agreements will be developed. The Policy is to be used in conjunction with Council's *'Lease, Licence & Property Agreements Guidelines'*

### **Terms of Agreements**

Terms of leases and licences will not exceed five (5) years unless Council resolves to grant a longer term. Occupancy agreements longer than five (5) years will set out terms for capital development of the land or building over the term of the agreement.

Terms of authorisations for alterations to a public road will not exceed forty two (42) years.

Terms of permits for the business use of public roads will be offered for terms of up to five (5) years.

### **Formation and Renewal of Agreements**

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 principles of the policy herein and Council's other relevant Strategic Plans.

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.

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.

Where an occupancy agreement is proposed to be granted over Community Land, the proposed use must be consistent with the Community Land Management Plan.

## **Eligibility**

Council will enter into an occupancy agreement once the organisation can demonstrate it meets the following eligibility criteria.

Non-profit organisations:

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

Commercial organisations:

1. It is a registered business entity with an Australian Business Number (ABN).
2. It provides evidence of financial viability.
3. It complies with legislation and regulations relevant to its activities.
4. It can demonstrate it provides community and economic benefits.
5. It has good professional capacity and experience.
6. It has adequate insurances.

## **Commercial Agreement Rent/Fees**

Commercial Agreements will generally have a market rent or fee set to provide a commercial return to Council, however in selecting a commercial lessee, Council will have regard to how the proposed use or business will contribute to the delivery of the City Plan and the likely impact or benefit to the community. This may affect the level of rent applied, and would be subject to a Council resolution.

Council will recover outgoings and legal expenses where applicable, in accordance with any restrictions imposed by the Retail and Commercial Leases Act 1995.

## **Community Agreement Rent/Fees**

Community Lease Agreements and associated Licence Area Rent/Fees will be charged at a peppercorn rental. Associated or standalone Licence Areas will have a Licence Area Maintenance Fee applied based on estimated usage consistent with Councils' Schedule of Fees and Charges.

Seasonal Licences will continue to be charged in accordance with Council's Schedule of Fees and Charges.

## Types of Occupancy Agreements

Type of Group or Activity	Type of Agreement	Fee
<b>Exclusive commercial or residential</b>	Lease	Market based fee
<b>Exclusive building or facility occupation by a single community organisation or a joint tenancy arrangement agreed between parties.</b>	Lease	\$1.00 per annum (if demanded)
<b>Ongoing non-exclusive use of land for Community or Recreation Purposes longer than a season</b>	Licence, subject to Licence Area Maintenance Fee	Licence Fee: \$1.00 per annum (if demanded) Licence Area Maintenance Fee: Applied based on estimated usage consistent with Councils' Schedule of Fees and Charges.
<b>Shared use facility with a head lessee</b>	Head Lease with Sub Licence Agreements	Head Lessee permitted to on-charge reasonable costs but must be consistent with Council's Schedule of Fees and Charges
<b>Community or recreation groups that seasonally utilise premises</b>	Seasonal Licence	In accordance with Council's Schedule of Fees and Charges.
<b>Groups or people that use a facility on other basis which does not require exclusive year round - or season long access</b>	Hire Agreement or ad hoc Licence (not covered by this policy)	In accordance with Council's Schedule of Fees and Charges
<b>Use of Community Land for Business Purpose</b>	Permit issued under Section 200 of the Local Government Act 1999	By negotiation in consideration of Council's Schedule of Fees and Charges and Market Value
<b>Use of Road Reserve for a Structure or Encroachment (no business use)</b>	Authorisation issued under Section 221 of the Local Government Act 1999	Market based fee subject to minimum as specified in Council's Schedule of Fees and Charges
<b>Use of Road Reserve for sub surface infrastructure</b>	Authorisation issued under Section 221 of the Local Government Act 1999	Market based fee subject to minimum as specified in Council's Schedule of Fees and Charges
<b>Use of Road Reserve for business Purposes</b>	Permit issued under Section 222 of the Local Government Act	Market based fee subject to minimum as specified in Council's Schedule of Fees and Charges
<b>Structure or Encroachment on Road Reserve (business use)</b>	Combined Authorisation and Permit issued under Sections 221 & 222 of the Local Government Act 1999	Market based fee subject to minimum as specified in Council's Schedule of Fees and Charges

## DEFINITIONS

**Agreement** pertains to a legal agreement in the form of a lease or licence made between Council and an organisation for exclusive or part use of a community facility for a period of time in excess of 6 months.

**Lease** grants the lessee exclusive occupancy of the subject land or building.

**Lessee** means a Tenant, Licencee, Lessee, or Authorisation/Permit Holder irrespective of the object of the Agreement (i.e. whether building or hoarding). In the case of a multi-user Agreement it refers to the head Tenant/Lessee/Licencee or Management Committee as applicable.

**Licence** grants the party a non-exclusive right to the use the subject land or building at defined times.

**Licence Area Maintenance Costs** means all costs reasonably and properly incurred by the Council to keep the Licence Area in good repair and condition as determined by the Council from time to time. The costs may be incurred periodically over a number of years to manage the replacement and maintenance of hard court and other surfaces, and equipment from time to time.

**Licence Area Maintenance Fee** is a contribution towards all or part of the Licence Area Maintenance Costs (as reviewed from time to time).

**Section 221 Authorisation (*Local Government Act 1999*)** is used to grant consent for the alteration to a public road- this would be used for sub-surface pipelines, outdoor dining structures etc

**Section 222 Permit (*Local Government Act 1999*)** is used to grant consent for the use of a public road for business purposes, such as outdoor dining, or trading from the side of a road.

**Section 200 Permit (*Local Government Act 1999*)** is used to grant consent for the business use of community land.

**Not-for-profit and Community Organisations** are incorporated associations whose primary objective is service to the community rather than profit. Organisations wishing to have their Not for-profit status recognised when using a Community Facility will need to demonstrate their status via a declaration within their Constitution which is then made available to Council.

**Commercial Agreements** are those Agreements entered into for a consideration giving a commercial return to Council, which may or may not be at a market rate.

**Community Agreements** are those Agreements generally entered into with Not-for-profit and Community Organisations

**Community Facilities** are Council properties which may include halls, ovals, open space, playing fields, clubrooms, courts, car parks, spectator facilities and/or any combination of the above.