

# Community Leases Policy

## Parks and Property



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# Community Leases Policy

## Conditions

1. Formal agreements shall be required where organisations occupy Council land or buildings.
2. Rent for the exclusive use of Council buildings or land will normally be set at the presiding market rate for a comparable building or piece of land.
3. Where a market rate is not available the valuation of land for rental purposes shall be based on the Rateable Value. Where an organisation occupies a Council building and land, the Capital Value will be used to assess the rent level.
4. Rent in either case will be set with the intention of making a rate of return of 1-4%, subject to the following provisions.
  - a) Rent will in general be calculated on per/m<sup>2</sup> basis for Community Leases not subject to intensive capital development i.e. sportsfields and rural property
  - b) Where land has been intensely capitalised (eg urban areas) including town centres, and in the opinion of the Parks and Property Manager (or other nominated Officer), there is merit in providing for a community lease, such lease may be provided at a rent based on the capital value of the site solely.
  - c) No Community Lease rent will be less than \$200.00 pa.
5. Community leases for whole or part of Council owned buildings will be advertised when they become vacant so that all community groups have an opportunity to submit expressions of interest.
6. Buildings on Council land may be sold, conditional on agreement with Council, the building being advertised, and the prospective buyer obtaining a Council lease to occupy the land.
7. Applicants for leases or licences will be evaluated in line with the Criteria for Community Leases identified in this Policy.
8. Applications for Community Leases need to identify how the proposal meets Council's strategic objectives and will require the applicant to meet a range of criteria relevant to the outcomes identified in the LTP.
9. Successful applicants will be required to provide an annual report to Council detailing achievement of key performance areas relevant to the area of provision; use; membership; provide a copy of their annual accounts, and any other information deemed necessary to clarify the relevance of the Lessee's operation to Council outcomes.
10. Officers may grant a lease where-
  - The lease term does not exceed five years (including any rights of renewal); and/or
  - The concession is not required to be registered against the title of the property; and/or
  - no objections have been received following public notification; and/or
  - the annual concession fee for the proposed term of the concession is within the Council Officer's financial delegation.
11. Applications for community leases in excess of five years will be referred to Council for a resolution.
12. Negotiations relating to new community leases need to be resolved prior to the organisation taking occupancy and in any case six months from the initial application. Where negotiations are not complete in this timeframe, a notice to sign has been issued by Council, and the Lessee refuses to sign, the offer of a community lease may be withdrawn with one month notification in line with clause 113.5 of the Reserves Act.
13. Notwithstanding (12) above where an alternative community organisation expresses an interest in leasing the same property Officers may discontinue negotiations with the initial applicant in favour of the alternate organisation having given one month notice in advance.
14. Where an existing community Lessee wishes to renew a lease on expiry it will need to provide notification as per the existing lease, and complete negotiations within three months of its final expiry unless agreed otherwise at the sole discretion of Council.
15. For the three month intervening period or other such period agreed with Council, the lease will be on a month by month basis and should negotiations not be complete within that timeframe Council may choose to withdraw the lease and either (a) offer it to an alternative community organisation, or (b) cancel the lease.

## Criteria for granting community leases

1. Only incorporated societies or organisations with “registered charitable status” or those that can demonstrate that for tax purposes they are considered “not for profit” will be eligible for community leases under this policy. This will include clubs but not private members clubs.
2. Applications must demonstrate the contribution the project will make to Council's Community Outcomes and Long Term Plan priorities and the vision and goals for HDC.
3. Preference is for applications that leverage additional funding from other funders.
4. Those organisations which have identified a range of funding initiatives (e.g. fees, fund-raising, income from other sources e.t.c) by way of reducing dependency on ongoing Council funding will be preferred.
5. Applications must be for, and clearly detail, specific service(s) and/or outcome(s) that will result from the granting of a lease.
6. Other factors that will be considered are:
  - The benefit of the project to the community in comparison to the cost to Council.
  - The level to which the wider community will be involved in the project.
  - The past achievements, or future potential of the organisation.
  - The ability of the organisation to successfully administer its organisation and deliver the relevant outcomes.
  - A project's contribution towards achieving the goals of other Council policies and strategies
7. In addition to the criteria set out above, Council may at times choose to focus assistance on particular Council priorities. The decision on focus area can be made at two different points. It can be made during the Annual Plan process, to be implemented the following financial year, or as a lease comes up for renewal but not where the renewal is a right under the terms of the existing lease.

## Reporting

1. All recipients of community leases will provide an annual report documenting how their activities have contributed to the objectives for which the lease was provided.
2. Recipients that fail to submit reports will receive up to two written notices asking them to rectify the situation.
3. Holders of community leases may be considered in breach of lease and have their lease terminated if they fail to present the relevant reports.

## What this policy does not cover

1. The Community Leases Policy does not cover the following circumstances. The list provided is indicative and is not intended to cover all instances that may fall outside the provisions of this policy.
  - Council Controlled Organisations.
  - Council funding for major community initiatives budgeted for separately through Council's community plan/annual plan processes.
  - Commercial arrangements where a not-for-profit organisation is contracted to deliver a paid service for Council.
  - Commercial arrangements.
  - Council support for regional facilities.
  - Council owned facilities.
  - Primary and Secondary Schools (for ordinary operational costs), hospitals or other groups funded substantially from Central Government or who have other independent means or regular income.
  - Visitor Accommodation.
  - Community leases apply only to community organisations. A community lease will not be issued to a religious, political, or other exclusive organisation.

# Application of Policy

## General Information

1. Council owns numerous reserves through-out the Horowhenua District. These in general terms fall into the categories of Recreation Reserve or Local Purpose Reserves.
2. For the purpose of this policy, recreation reserves are broken down into two categories those being Sportsgrounds and Parks.
3. Whether the reserve is a sportsground or a park will determine the type of lease that may be granted for that reserve. For example, a lease to construct a sports hub would not be granted for a park but would be considered for a sportsground.
4. Open Spaces are those areas which are not classified as reserves but are zoned 'Open Space' in the District Plan. For the purpose of this policy Open Spaces will be treated as recreation reserves and as such in general terms will be classified as Park or Sportsground.
5. Any person or organisation seeking a community lease must apply to Council's Parks and Property team.
6. Any application for a lease on reserve land must include the following information:
  - a description of the proposed activity for which the lease is requested;
  - a description identifying the place(s) where the proposed activity will be carried out;
  - a description of the potential effects of the proposed activity; and any actions which the applicant proposes to take to avoid, remedy, or mitigate the adverse effects;
  - a statement of the proposed duration of the lease and the reasons for the proposed duration;
  - reasons as to why the proposed activity is required to take place on reserve land and what steps have been taken to obtain a lease on private land (if any);
  - relevant information relating to the applicant, including:
    - any information relevant to the applicant's ability to carry out the proposed activity;
    - any information relevant to the applicant's ability to meet its ongoing financial obligations under the concession;
    - any information relevant to the applicant's membership (if a body corporate or unincorporated club or society); and
    - any information relevant to the proposed benefactors of the lease.
7. Upon receiving an application for a lease Council Officers may require the applicant to provide such further information as considered necessary to enable a decision to be made, including the preparation of an environmental impact assessment in the form set out in Schedule 4 of the Resource Management Act 1991, or in such other form as Council Officers may require.
8. Where inspection of a Lessee's account indicates that a community lease is to all intents and purposes of a commercial nature, it will constitute a breach of lease. On such evidence coming to light, Officers will consider whether the activity should continue. Should investigation dictate that the activity should remain on the Council property the community lease will cease and be replaced by a commercial lease subject to the provisions contained within Council's Commercial Lease, Concessions and Permit Policy.
9. Council Officers, at the expense of the applicant, may:
  - commission a report or seek advice from any person on any matters raised in relation to the application, or ongoing use of the site, including a review of any information provided by the applicant;
  - obtain from any source any existing relevant information on the proposed activity or structure that is the subject of the application; and/or
  - consult with lwi or other interested party who may be affected by the application.

## Incomplete applications

1. An application will be deemed to be incomplete if it does not include all of the information required under the provisions contained above; or if the applicant does not provide further information if requested by Officers.
2. An incomplete application may be declined by Officers 20 working days after the date of a letter being sent to the applicant advising them further information is required.
3. Officers may grant an extension to the time required to provide further information if the information required is onerous and is unlikely to be provided within 20 working days of the date of the request for the information.

## Public notification and consultation

1. The requirements to undertake Public Notification and Consultation are contained within the Reserves Act 1977, Conservation Act 1987 and Local Government Act 2002.
2. Where consultation is required, the applicant must first consult with interested parties and provide Council with written evidence confirming that consultation has occurred along with the outcome of consultation.
3. Where an interested party opposes the granting of a concession or has not been consulted, Council Officers may consult directly with that interested party.
4. Where one or more objections are received following public notification, the matter requires submission to Council, and the objector(s) wish to speak to their submission, the matter will be referred to Council's Hearings Committee to make a decision having regard to the applicable provisions of the Reserves Act 1977 and Conservation Act 1987.
5. Where one or more objections are received following public notification and the objector(s) do not wish to speak to their submission, the matter will be referred to Council to make a decision having regard to the applicable provisions of the Reserves Act 1977 and Conservation Act 1987.

## Assessment of applications

1. In considering an application for a lease Officers must have regard to the following matters:
  - the legal status of the entity applying for a community lease;
  - sources of income;
  - membership fees (if any);
  - membership numbers;
  - financial accounts for the last financial year;
  - why assistance is required;
  - any other information deemed relevant to the application.
2. In addition to the above, Officers in evaluating a request for a lease will have a mind to-
  - the nature of the activity and the type of structure or facility proposed to be constructed (if any);
  - the effects of the activity, structure or facility;
  - any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity;
  - any relevant environmental impact assessment, including any audit or review;
  - any relevant oral or written submissions received as a result of any public notice;
  - the proposed activity's fit with Council's community outcomes, strategic goals in the Long Term Plan and other Council strategies (such as the Open Spaces Strategy)
  - consistency with any applicable Reserve Management Plan;
  - the impact the proposed activity will have on community wellbeing;
  - any consenting requirements; and
  - any risks or liabilities to Council as a result of the proposed activity.

## Effects of application being declined

1. Where an application for a community lease has been declined, the applicant may not apply for the same or similar lease for a period of one year unless Council Officers grant the applicant the right to make a further application.
2. Council Officers may grant an applicant the right to make a further application where:
  - the application was declined due to insufficient information and the applicant provides the additional information requested along-with a new application form;
  - the application is sufficiently different from the original so that, in the Council Officer's opinion, it is likely that the new application will meet the criteria for granting a lease; or
  - circumstances have changed from the date of the original application so that, in the Council Officer's opinion, it is likely that the new application will meet the criteria for granting a community lease.
3. To seek a new application, an applicant must complete and return the prescribed form to Council Officers.



# Applications for assistance (Subsidised rental)

## General

1. Applicants may apply for a community rate of rental as detailed in this policy in advance, or contemporaneously of requesting a community lease.

## Content of application

1. Any application for community rate of rental must include the following information:
  - the legal status of the entity claiming the subsidy;
  - sources of income;
  - steps taken to increase income and/or income sources (if any);
  - membership fees (if any);
  - membership numbers;
  - financial accounts for the last financial year (if available);
  - why assistance is required; and
  - any other information deemed relevant to the application for assistance.
2. Upon receiving an application for a community rent officers may require the applicant to provide such further information as considered necessary to enable a decision to be made.
3. In addition to the above applicants may be required to provide additional information which may include.
  - the nature of the activity and the type of structure or facility proposed to be constructed (if any);
  - any consenting requirements;
  - any applicable legislation; standards; or code of practice;
  - an Environmental Impact Assessment (EIA);
  - any other information relevant to the activity.

# Schedules

## Schedule 1: criterion for community rent

Assessment Criteria	Points	Grade Criteria
Legal Status of Entity	5.	Charitable Trust
	4.	Incorporated Society
	1.	Club
Relevance of service to community objectives	5.	Services of high relevance and contribute to 3 or more community outcomes
	3.	Services of medium relevance and contribute to a minimum of 2 community outcomes
	1.	Services relevant to Council strategic/community outcomes (contribute to a single outcome)
Sources of Income	5.	4 or more sources of income or initiatives but unable to meet financial obligations
	4.	2-3 sources if income or initiatives but unable to meet financial obligations
	1.	1 source of income and or initiative but unable to meet financial obligations
Membership numbers	5.	Membership of 100 +
	4.	Membership of 51 - 100
	3.	Membership of 31 - 50
	2.	Membership of 21 - 30
	1.	Membership of 11 - 20

## Schedule 2: Qualification Criteria

1. Applicants will not receive community assistance if  
(a) they fail to score under legal status of entity, or  
(b) Relevance of service to community objectives.

## Schedule 3: Level of subsidy

2. The following subsidies will be applied based on the weighting of matrix criteria:

Value of	Points
16 +	90% financial assistance relevant to specific policy
11 - 15	75% financial assistance relevant to specific policy
5 - 10	50% financial assistance relevant to specific policy
< 5	Doesn't qualify for community assistance



# Specific Provisions

1. All concessions granted pursuant to the Reserves Act 1977 must include the applicable provisions contained in Schedule 1 of that Act.
2. Where any of the provisions contained in this schedule conflict with those contained in the Reserves Act, those contained in the Reserves Act will be preferred.
3. All concessions granted pursuant to the Reserves Act 1977 must include provisions that provide for the termination of the lease of the land if, in the opinion of Council Officers, it is not being used or not being sufficiently used for the purpose of the concession.



# Other Provisions

1. Leases of Council Land must include clauses that give effect to the following provisions:
  - **Alterations and Additions:** The Lessee must obtain the prior written approval of Council's Parks and Property Manager or other nominated officer prior to undertaking any alterations or additions. The Lessee is required to obtain all necessary consents and must strictly adhere to these.
  - **Assignment and Subletting:** The Lessee must not assign, sublet or otherwise part with possession of the land without first obtaining the written approval of Council's Parks and Property Manager or other nominated officer.
  - **Compensation for Improvements:** Council leases will have no provisions for compensation for improvements.
  - **Default Interest:** 10% default interest shall be applied if the Lessee is in breach of the lease.
  - **Health and Safety:** Such provisions shall be included to ensure Council can meet its legal obligations as land owner under the Health and Safety in Employment Act 1992 and/or Health and Safety at Work Act 2015 and any subsequent amendment.
  - **Indemnity:** The Lessee will indemnify the Lessor against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Lessor resulting from the Lessee's act or omission, except where section 268 Property Law Act 2007 applies.
  - **Insurance:** The Lessee will at all times during the lease term insure and keep its assets insured for full replacement value.
  - **Keep Premises Clean:** The Lessee must keep the premises clean, tidy and free of rubbish.
  - **Lessor's Right of Entry:** The Lessor may, with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time without notice in the case of an emergency), enter the Lessee's building to:
    - inspect the condition and state of repair of the Premises;
    - carry out repairs or other works which are the Lessor's responsibility under this lease or which the Lessee has failed to carry out at the Lessee's cost where applicable, in such situations the Lessor may recover the full cost of repairs from the Lessee; or
    - carry out any works to comply with any statutes, regulations, bylaws, ordinances, orders, proclamations, requirements of or notices by any Authority or the requirements or recommendations of the Building's insurer at the Lessee's cost where applicable;
    - Audit the site for compliance
  - **Maintenance:** The Lessee is required to maintain the leased area and any improvements erected thereon in a reasonable state of repair. The Lessee must have sufficient financial reserves to meet ongoing maintenance requirements.
  - **Outgoings:** The Lessee is responsible for paying the following outgoings:
    - All rates, charges, levies, assessments, duties, impositions and fees from time to time payable by the Lessor to any Authority relating to the Building.
    - All charges for and costs relating to the supply of electricity, telephones, gas, water, sewage, drainage, rubbish collection and other utilities and services supplied to the Building.
    - All costs incurred in complying with the requirements contained in any Compliance Schedule relating to Systems and Features provided in the Building and in obtaining an annual Warrant of Fitness for the Building.
    - All costs of maintaining and servicing fire detection and fire fighting equipment.
    - All costs of painting, repairing and maintaining the roof and exterior of the Building unless otherwise allowed for.

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- **Reporting Provisions:** all leases will contain the requirement the Lessee report annually as per this policy.
  - **Review of Rent:** Annual rent is to be reviewed every three years in accordance with Council policy.
  - **Use of Premises:** The Lessee must use the premises for the purpose specified in the Lease and utilised to an acceptable level in the reasonable opinion of Council Officers.
- 2) In all other matters Council Officers will have the discretion to negotiate suitable lease terms.
  - 3) Where an existing lease is in place all terms and conditions and provisions relating to that lease shall remain current and constitute the lessee's relationship with the lessor (being HDC).
  - 4) Where an existing lease's final term may have expired it will forthwith come under the provisions of the Community Leases Policy.



