

# Commercial Leasing, Concessions and Permit Policy

## Parks and Property



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# General Policy Conditions

## Objective

1. The purpose of this policy is to provide guidance and directions to Council Officers in how they consider the granting of concessions with respect to Council's various land-holdings (other than as identified in the Community Leases Policy). It is intended to create consistency in how concessions are granted, to create a fair and transparent process and to ensure compliance with the principles contained in section 14 of the Local Government Act 2002.
2. This policy supplements other Council documents such as the Long Term Plan and is designed to assist Council Officers in meeting the targets set in such documents.

## Scope

1. This policy applies to Council concessions on:
  - Reserve Land under the Reserves Act 1977
  - Land zoned 'Open-Space'
  - Commercial Properties
  - General Properties
  - Endowment Properties.
2. This policy does not apply to the management of Council's halls and other community facilities.

## Effective Date and Application

1. Subject to any statutory or legal right of ongoing use, from the effective date of this policy, all future requests for commercial concessions on Council land will be treated in accordance with this policy.
2. All current concessions will continue to be upheld in accordance with their conditions, until the full term of the concession has expired.

## Review

1. It is intended that this policy will be reviewed by Council Officers every three years to ensure it continues to meet the requirements of HDC.

2. In the event that this policy is not reviewed in accordance with the above provision, this policy shall remain in full force and effect until such time as it is either reviewed and its provisions amended; or replaced by another policy.
3. This policy may be reviewed prior to the expiration of three years if a change in legislation, Council direction, or other external matter means the provisions of this policy will no longer comply with Council's legal or strategic obligations.

## Decision-making and Signing of Documents

1. This policy delegates authority to Council Officers, including Council's Chief Executive Officer to negotiate and agree to concession terms.
2. The signing of all leases and licences to occupy must be undertaken by Council's elected representatives unless specifically allowed for otherwise.
3. The signing of licences to trade and permits may be undertaken by Council Officers.

## Proposal

1. Formal agreements shall be required where organisations occupy Council land or buildings.
2. Valuation of land for lease rental purposes will be at market rate for the property where a market rate is not available the rent shall be based on achieving a minimum return of 6% on land value. Returns may be higher in line with market conditions.
3. Where an organisation occupies a Council building and a market evaluation is not available the Capital Value will be used to assess the rent level at a minimum return of 6%. Returns may be higher in line with market conditions.
4. Officers may grant a lease where-
  - The lease term does not exceed five years (including any rights of renewal);
  - the concession is not required to be registered against the title of the property;
  - the annual concession fee for the proposed term of the concession is within the Council Officer's financial delegation.
5. Applications for commercial leases in excess of five years will be referred to Council for a resolution.

# Reserves and Open Spaces

## Reserves Act

1. The Reserves Act (the Act) allows for the classification of reserves as recreation; historic; scenic; nature; scientific; Government purpose; or local.
2. Section 48 of the Act allows for the granting of Easements and Rights of Way. Sections 54, 56, 58A provide for the granting of leases not exceeding 33 years in recreation; scenic; and historic reserves respectively and issuing of licences. Section 67 for leasing for the purpose of a racecourse and 73 for the purpose of grazing, afforestation (40 yrs) etc. Section 74 allows for issuing licences to occupy. The Act requires other activities to be permitted else the individual or group undertaking the activity be committing an offence against the act.

## Concession Types

1. The concession granted will be determined by the need for the concession type. The following are guidelines as to when a lease, licence to occupy or permit will be granted.
2. A **lease** will be granted where:
  - Exclusive possession of land is required;
  - The term of the concession is for one or more years;
  - The applicant will utilise an existing building; and / or
  - Significant expenditure is required to erect a new building or improvement.
3. A **licence** will be granted where:
  - Exclusive possession of land is not required;
  - The concession is required for a greater period than a specific event(s) but under 12 months; and/or
  - Minor expenditure may be required by the applicant.
4. A **permit** will be granted where:
  - The applicant requires the land for a specific event(s).

## Commercial Activities on Reserve Land

1. Commercial activities on reserve land will only be granted where the proposed activity is necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of the persons using the reserve. In general, concessions will only be granted for trading purposes where this is identified in the appropriate Reserve Management Plan.
2. Council Officers may grant existing concessionaires the right to trade from their leased or occupied area where the concessionaire is a not-for-profit group and the monies obtained from trading will be used to support the concessionaires' recreational activities including, but not limited to, servicing its rental or licence fee obligations. In such circumstances, the concessionaire will be liable for any costs associated with trading including, but not limited to, any impact on rates.
3. Concessions for commercial activities on local purpose reserves will only be granted in accordance with the provisions of the Reserves Act 1977.
4. Concessions for commercial activities will only be granted if the applicant can show the granting of the concession will not create conflict with existing reserve recreational users.
5. Council Officers may in their discretion, set a concession fee for commercial activities on reserve land by undertaking an independent market valuation, via a tender process, or in accordance with this policy.
6. Where there is more than one application to manage a concession on Council land and such a request is approved in line with the preceding conditions Council will let a maximum of three concessionaires undertake the same, or largely the same, function. Where Council determines only one concession be allowed it may run a competitive tender for provision of the service(s).









  
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# Concession Fee

## Commercial Leases on Reserve

1. In general, Council Officers will set commercial leases on Reserve land at the presiding market rate. A commercial rate set at less than 100% of the presiding commercial return for that operation will only be considered where:
  - The asset may be obsolescent; require significant investment; earthquake prone; or exhibit some other physical restraining factor;
  - The proposed use is of significant benefit to users of the Reserve;
  - Other extenuating circumstances.
2. In any case a reduced rent will not be less than 90% of the market rate.
3. Where no market rate is available the lease will be subject to an annual rent calculated on a return generally at a minimum of 6% of the rateable land value.
4. Where a lease is for a building situated upon reserve land, the annual licence fee will be calculated on the basis of a market valuation with a view to achieving a rate of return of at least 6%.
5. Council may amend its fees annually, or at other times should market conditions change or strategic or other driver dictate it. This provision will include changes required by legislation. In all such situations negotiations need to be completed and leases signed within six months of application unless an extension for negotiations is agreed at the sole discretion of Council.
6. Lessees who have requested new leases on Reserve land, may not commence operations until the relevant lease is signed by Council and the Lessee.
7. In all such situations negotiations need to be completed and leases signed within six months of application unless an extension for negotiations is agreed at the sole discretion of Council.

8. Where negotiations are not concluded in this timeframe and the Lessee has been issued a notice to sign the offer may be removed after the expiry of one calendar month from issue of notice.
9. Where an existing Lessee is requesting renewal all negotiations need to be complete prior to final expiry or the lease will be withdrawn.

## Licence to Occupy

1. Licences to Occupy will be subject to a flat annual licence fee calculated on the basis of the presiding commercial rate of the rateable land value of the area to be occupied, plus GST. Rent will be charged on a daily basis for the term of occupation and paid as determined by the licence.
2. Where a licence to occupy is for a building situated upon reserve land, the annual licence fee will be calculated on the basis of a market valuation with a view to achieving a rate of return of reflecting the presiding market return for the licence.

## Permit and Licences to Trade

1. Permits will be subject to a fee based on area required for the proposed activity. The following fees will apply for permits:
  - a. \$35 plus GST per day for an area up to and including 50m<sup>2</sup>
  - b. \$50 plus GST per day for an area 51m<sup>2</sup> - 100m<sup>2</sup>
  - c. \$100 plus GST per day for an area 101m<sup>2</sup> - 150m<sup>2</sup>
  - d. 0.25% of rateable or capital value per day plus GST where a full parcel of land is required.
2. Where a permit is granted for a regular and ongoing activity, Council Officers will apply the Licence to Occupy fee structure for assessing the applicable fee.

# Commercial Property

## Commercial Leases

1. Council owns a small number of land-holdings that it considers to be commercial in nature. The intent of Council's commercial properties is to (a) return a profit to Council or, (b) provide an environment for business where such an arrangement may in part contribute to community outcomes, where it is not prejudicial to Council's commercial interests or legislative requirements placed upon it. However, it is recognised in line with (b) that in some instances historically, commercial rentals have been set below market value to encourage business in the Horowhenua.
2. Notwithstanding (b) above in general Council Officers will set commercial leases at the presiding market rate. A commercial rate set at less than 100% of the presiding commercial return for that operation will only be considered where;
  - A commercial tenant has not been forthcoming at the market rate;
  - The asset may be obsolescent; require significant investment; earthquake prone; or exhibit some other physical restraining factor;
  - Movement of the leaseholder out of the community would have wider implications for economic and community sustainability;
  - The use will bring a disused building into use; or
  - Other extenuating circumstances.
3. Council Officers have the ability to negotiate a commercial lease that has an annual rental no less than 10% of the current market valuation.
4. Following marketing, where it becomes evident that Council is unlikely to achieve an annual rental within 10% of the current market valuation, Council's Chief Executive Officer may provide Council Officers the ability to negotiate a lease at less than 90% of the current market valuation.
5. Commercial land-holdings will be subject to leases only.

## Lease Rental

1. All Commercial leases will be subject to market valuation with a view to achieving the presiding market rate of return.
2. Where a valuation is not available Officers will seek a minimum (generally 8-11%) return on Capital or Land value whichever is relevant. Council Officers will only negotiate an annual rental less than market value as expressly permitted by this policy.

## Marketing of Commercial Leases

1. In the event that a Commercial Lease expires or is terminated, Council Officers will first adhere to the lease provisions as to disposal and obtaining a new tenant.
2. In all other circumstances, Council Officers will first obtain a current market valuation from a registered independent valuer.



# General Property

## Background

1. Where land does not fall into Council's reserves, commercial, or endowment portfolios it is deemed to be 'General Property'.

## Marketing of General Property Concessions

1. In the event that a General Property Lease expires or is terminated, Council Officers will first adhere to the lease provisions as to disposal and obtaining a new tenant.
2. Council Officers will have the discretion as to how a lease is marketed. Generally, this will either be through a fixed-price to be advertised, or via tender.



# Endowment Property

## Background

1. Pursuant to Section 21 of the Reserves and Other Lands Disposal Act 1956, the Foxton Harbour Board was abolished and its land holdings were endowed to the Chairman, Councillors and Inhabitants of the County of Manawatu ('Endowment Land').
2. Following the Local Government (Manawatu-Wanganui Region) Reorganisation Order 1989 (Gazette 1989, p 2351) the Foxton Borough Council (as it was then called) was dissolved with its land-holdings transferred to the Horowheuna District Council. These land-holdings are currently subject to 21 year leases that provide for perpetual rights of renewal.

## Management of Endowment Leases

1. The management of Endowment Land leases will be in accordance with the existing lease terms.
2. Lessee's will be encouraged to purchase the freehold title of the leased land in accordance with their lease terms and/or section 13 of the Reserves and Other Lands Disposal Act 1968.





# Grazing, Mowing and Baling of Council Land

## Grazing Licences

1. Council has the ability to minimise its costs and make a return by providing third parties the right to graze or mow and bale Council land. This is beneficial for all parties involved and has been a common practice of Council.

## Management of Grazing / Baling Concessions

1. Council Officers may, in their discretion, directly approach third parties with a view to entering into a grazing licence or a licence to mow and bale.
2. Alternatively, Council Officers may in their discretion, approve a grazing licence or a licence to mow and bale when approached by a third party.

## Fees

1. Fees will be set having regard to:
  - The benefit Council receives from the land being grazed and/or mowed and baled; and/or
  - The current market value of baling or grazing rights.

2. Council Officers, may in their discretion, not require a fee to be paid where:
  - Council's costs will be reduced; and
  - The area to be grazed or mowed is minimal; and / or
  - Where the grass is to be donated to a not-for-profit community organisation.
3. Whether the area is minimal or not is a matter for Council Officers to determine on a case by case basis.

## Form of Concession

1. All grazing concessions must be recorded in writing
2. Council Officers may record the right to graze and/or mow and bale via letter or permit where no concession fee is required.
3. Where a concession fee is to be paid, a licence to occupy or permit for the purpose of mowing and/or grazing is required.





# Schedules

## Schedule 1: Standard Clauses for Leases

### Reserves Act 1977

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 concession 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.

### Standard Provisions - Land Leases

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 Property Team 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 Property Manager.
    - **Compensation for Improvements:** On termination of the lease under the termination clause of the lease or by effluxion of time, surrender, breach of conditions, or otherwise, the land, together with all improvements thereon, shall revert to the lessor without compensation payable to the lessee or otherwise.
    - **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.
- **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 of the Property Law Act 2007 applies.
  - **Insurance:** The Lessee will at all times during the lease term insure and keep the building insured to its 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:
    - o inspect the condition and state of repair of the premises;
    - o carry out repairs or other works which are the Lessor's responsibility under this lease or which the Lessee has failed to carry out; or
    - o 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.
  - **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:
    - o All rates, charges, levies, assessments, duties, impositions and fees from time to time payable by the Lessor to any Authority relating to the building.
    - o 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.
    - o 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 interior and exterior of the building including the roof, soffits, gutters windows and all other external features.
  - **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.
2. Officers may include other clauses as deemed necessary

## Schedule 2: Standard Provisions – Licences to Occupy Council Land

1. Licences to Occupy Council Land **must** include clauses that give effect to the following provisions where applicable:
- **Alterations and Additions:** The Licensee must obtain the prior written approval of Council's Property Team prior to undertaking any alterations or additions. The Licensee is required to obtain all necessary building and resource consents and must strictly adhere to these.
  - **Assignment and Subletting:** The Licensee must not assign, sublet or otherwise part with possession of the land without first obtaining the written approval of Council's Property Team.
  - **Default Interest:** 10% default interest shall be applied if the Lessee is in breach of the licence to occupy.
  - **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.

- **Indemnity:** The Licensee will indemnify the Licenser against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Licenser resulting from the Licensee's act or omission, except where Section 268 of the Property Law Act 2007 applies.
- **Keep Premises Clean:** The Licensee must keep the premises clean, tidy and free of rubbish.
- **Licensers Right of Entry:** The Licenser 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 premises 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; 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.
- **Maintenance:** The Licensee is required to maintain the licensed area and any improvements erected thereon in a reasonable state of repair.
- **Review of Licence Fee:** The annual licence fee is to be reviewed every three years in accordance with Council policy.
- **Use of Premises:** The Licensee must use the premises for the purpose specified in the Licence to Occupy.

## Schedule: Council Officer Discretion

1. In all other matters Council Officers will have the discretion to negotiate suitable concession terms.

