



COMMUNITY AND CHILDCARE LEASE POLICY

POLICY TYPE	DOCUMENT CONTROLLER	RESPONSIBLE MANAGER	POLICY ADOPTED	REVIEW DUE
Council	Executive Coordinator	General Manager	23 August 2021	July 2023
PURPOSE	To establish a consistent and equitable approach to the development of leases and licences of Council property to community groups and childcare facilities.			
SCOPE	<p>All community groups and childcare tenants who lease or licence Council owned buildings on Council owned or leased land, or who conduct their operations on or from Council owned or leased land. The terms and conditions of this Policy apply to all new lease and licence agreements and upon the renewal of any existing lease or licence.</p> <p>The conditions of this Policy will not be varied unless it is essential to meet the special needs of the property or lessee.</p>			
DEFINITIONS	<p>For the purposes of this policy, the following definitions apply:</p> <p>Lease – a legally binding agreement that details terms and conditions of the exclusive use of land or facility for a period of time in return for the payment of rental.</p> <p>Licence – a legally binding contractual agreement that details terms and conditions of a contractual right to the use of land or facility for a period of time in return for the payment of a licence fee.</p> <p>Community groups and organisations - Organisations whose primary objective is to serve the community (including service clubs and community-based agencies) are supported by Council. Council recognises the benefit of supporting community groups and organisations within the community.</p> <p>Childcare - Childcare facilities refer to Council owned buildings that are utilised to care for children. Council acknowledges the not-for-profit status of these childcare facilities.</p> <p>Building maintenance schedule – a document detailing building and maintenance responsibilities of both the Landlord and Tenant</p> <p>Head lease – A primary lease arrangement between two parties – generally the Crown and Council in respect of this Policy.</p> <p>Sub lease – A secondary lease arrangement between two parties where a Head Lease exists – generally Council and a community or childcare organisation in respect of this Policy.</p> <p>Non-commercial licence agreements – Agreements with community and childcare groups, or residents who licence Council land for exclusive private purposes of a non-commercial nature.</p>			

POLICY

1. **Fee Schedule/Determination of Rent**

1.1 Community groups

This rate will be a nominal amount taking into consideration ability to pay and existing precedents. The amount payable for community groups will be reviewed annually.

1.2 Childcare facilities

Childcare facilities will be charged an amount totalling 50% of the rates charged against the property per annum.

1.3 Non-commercial licence agreements may also be subject to a separate fee.

2. **Validation of Lease or Licence Agreement**

Council land and/or buildings shall only be occupied pursuant to a formal signed lease or licence.

Failure to execute the lease agreement by signature may result in the discontinuation of lease negotiations or an existing agreement (if a lease renewal) with the tenant.

Once lease terms have been finalised, Council reserves the right to commence rental charges even if the agreement remains unsigned.

If the lease remains unsigned for a period of more than 30 days, 90 days' notice to vacate the premises (building and/or land) may be given to the tenant if they are occupying the premises.

3. **Risk Management Obligations**

Lessees of Council owned or managed buildings will be required to have Public liability insurance for a minimum of \$20 million. A copy of the lessee's Certificate of Currency is to be provided to Council at the commencement of the agreement, upon lease renewal, and annually for the duration of the lease.

It is the responsibility of the lessee, in conjunction with Council, to ensure the minimisation of all risks including public safety, hazardous materials and waste removal. The lessee is also required to comply with emergency evacuation procedures and risk management practices at the direction of Council.

4. **Maintenance Schedule/Issues**

Prior to an agreement being made, a condition statement shall be produced to determine the condition of the facility, and maintenance responsibilities determined.

Building Maintenance Schedules (BMS) are developed to ensure consistency and clarity regarding maintenance of Council premises and stipulate responsibilities of both Council and the lessee.

BMS documents will be reviewed every five years in line with the term of the agreement, or as required, i.e. following significant building or infrastructure amendments.

Where an organisation has exclusive use of a Council owned facility, there is an expectation that they assist in funding maintenance costs and contribute towards capital improvement of the facility.

Where improvements on the leased land are owned by the lessee, they have sole responsibility for internal and external maintenance.

5. Term

Lease agreements will be granted for a period of no more than five years, with a further five-year term option offered.

6. Rent Reviews/Increases

Rental fees for community groups and childcare facilities will be reviewed annually in conjunction with budget preparation and the setting of annual rates, fees and charges.

Council reserves the right to amend the rental if a lessee gains access to other commercial means of income, other than fundraising, that is generated during the term of the agreement.

7. Outgoings

7.1 Lessees will be responsible for the costs of all utilities, including electricity, phone and all other outgoings related to the property including water usage charges.

7.2 Council will be responsible for water and sewerage service charges; rates (100% of annual rate charges for community groups; 50% of annual rate charges for childcare facilities); and land tax for community groups and childcare facilities.

7.3 An incremental percentage application of the rental may apply for organisations commencing a lease agreement with Council, based on the following rate:

Year 1 – 25%

Year 2 – 50%

Year 3 – 75%

Year 4 (and further years)– 100%

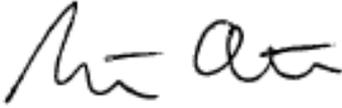
This will be assessed on a case by case basis, and subject to the financial capacity of the lessee to pay.

8. Determination of Leases

When a facility or building premises becomes vacant, Council will consider the ongoing future use of the premises in determining a suitable tenant. Factors to consider include:

- most appropriate use;
- local community needs; activities within the community that are unrepresented or under-represented;
- historical connection to the facility/location; and
- Council's strategic direction.

	<p>9. Sub Leases</p> <p>Terms and conditions of any sub-lease must be in accordance with the terms and conditions of the head lease, including the length of the lease term. Council may require the sub-lessee to contribute to charges incurred by Council from Crown or third party, for the head lease.</p> <p>Lessees who wish to sub-let the leased premises are required to seek written permission from Council prior to making such arrangements.</p> <p>Any group to whom a property is sub-let. must provide Council with a copy of their Certificate of Currency and must have public liability insurance of at least \$20million.</p> <p>Any subleasing arrangements made must not extend beyond the term of the head lease.</p> <p>10. Other Provisions</p> <p>Other lease provisions may be negotiated as required.</p> <p>11. Delegation and Signing</p> <p>11.1 The General Manager is delegated by Council to finalise and sign lease agreements.</p> <p>11.2 An authorised signatory of the lessee will be required to execute the lease and a copy of the agreement, once duly executed by both parties, will be returned to the lessee for their safe keeping. The other copy will be recorded as a Vital Record by Council and placed in the Vital Records Register and a hard copy held in Council's document storage facility.</p> <p>12. Legislation and Statutory Compliance</p> <p>It is necessary for lessees and Council in the development of lease agreements to ensure compliance with Council's corporate and statutory responsibilities.</p> <p>Legislative requirements need to be determined and stipulated in the lease. Compliance may also extend to the obtaining of permits from Council; liquor licensing requirements; place of assembly licences; adherence to food handling guidelines; and relevant Council by-laws.</p>
<p>LEGISLATION AND RELATED DOCUMENTS</p>	<p><i>Local Government Act 1993</i> <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> <i>Building Act 2016</i> <i>Building Regulations 2016</i> <i>Public Health Act 1997</i> <i>Food Act 2003 (where applicable)</i> Devonport City Council Strategic Plan 2009-2030 Place of Assembly Licence (where applicable) Food Licencing (where applicable)</p>
<p>ATTACHMENTS (IF APPLICABLE)</p>	<p>N/A</p>

STRATEGIC REFERENCE	5.3.1 – Review and amend structures, policies and procedures to adapt to changing circumstances			
MINUTE REFERENCE	21/173			
OFFICE USE ONLY	Update Register	Y	Training/Communication	Y
	Advise Document Controller	Y	Advise HR / MCO	Y
	Management Sign Off:  Date: 23 August 2023			