Community Facility Lease and Licence Policy

CITY OF PROSPECT

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Responsibility:	Director City Strategy, Community and Culture
Responsible Officer (s):	Manager Community Relations and Programs
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Legislation:	Associations Incorporation Act 1985 Child Safety (Prohibited Persons) Act 2016 Crown Land Management Act 2009 Environment Protection Act 1993 Gambling Machines Act 1992 Gambling Administration Act (Commencement) Proclamation 2020 Government Business Enterprise (Competition) Act 1996 Liquor Licensing Act 1997 Local Government Act 1999 Planning, Development and Infrastructure Act 2016 Real Property Act 1886 Recreation Grounds Rates and Taxes Exemption Act 1981 Retail and Commercial Leases Act 1995
Related Documents:	Community Facility Hire Policy Prospect, Creating Community, Strategic Community Plan 2023 - 2027 Community Engagement and Consultation Policy Disability Access and Inclusion Plan Fees & Charges Register

1 Purpose

1.1 The Community Facility Lease and Licence Policy (The **Policy**) provides a framework for the City of Prospect (**Council**) and its existing and potential tenants when entering into an Occupancy Agreement.

1.2 The Policy is based on broad outcome-oriented principles and aims to provide a standardised, fair and transparent policy for establishing and managing formal occupancy agreements to make Council land and buildings available for use by the local community.

1.3 The Policy aligns with Council's vision, strategy and values and seeks to optimise the use of community facilities to deliver a tangible community benefit. Council generally

prioritises community based not-for-profit organisations, and recreational, sporting, educational, social and health benefits over commercial cost recovery. In particular:

1.3.1 Prospect, Creating Community, Strategic Community Plan 2023 - 2027 – maximising community value for community assets.

2 Definitions

2.1 **Act** - Means the *Local Government Act 1999*.

2.2 **Lease –** A contractual right granted by the owner of an asset (lessor) to another person or organisation (lessee) to have exclusive use of that asset for a fixed period in return for the payment of rent and subject to applicable terms and conditions.

2.3 **Licence -** A contractual right granted by the owner of an asset (licensor) to another person or organisation (licensee) to non-exclusive (shared) use of that asset for a fixed period and subject to applicable terms and conditions.

2.4 **Tenant –** The occupier of an asset under an Occupancy Agreement.

2.5 **Occupancy Agreement** – A binding agreement in the form of a lease or licence between Council and an organisation or natural person that confers a right to use (on an exclusive basis or otherwise) a Community Facility for a specified period.

2.6 **Asset** – Land, buildings, or other tangible goods and chattels either owned by, or under the care, control and management of, Council.

2.7 **Local Community –** A group of interacting people residing in a common location.

2.8 **Community Organisation** – Incorporated associations and other community groups whose primary objective is service to the community and whose members do not receive the profit that may be generated by activities of the Community Organisations.

2.9 **Community Benefit** – The social, cultural, health, and economic benefits provided to the community through the provision of sport, community and other recreational activities.

2.10 **Community Facility/Facilities** - Any Council real property or related asset that is/are open to and available for use by the public (subject to any Occupancy Agreement) for recreational, educational, sporting, artistic or social activities, which may include halls, playing fields/ovals, clubrooms and sports courts.

2.11 **Community Land** – As defined in the *Local Government Act 1999*.

2.12 **Facility Improvement Plan –** Planning document submitted by a club/incorporated association that identifies the club's position in relation to future development of activities and associated improvement needs for the facility that they lease/license from Council (see Clause 6.2.3).

2.13 **Operations Report** – A documented report regarding the use of the facility provided to Council by the tenant on an annual and 3 yearly basis (or as and when requested by Council) that includes a report on usage and facility/asset management/maintenance (see Clause 6.2.1).

3 Scope

3.1 The Policy applies to all Community Facilities within the Council's area, including facilities located on:

3.1.1 land owned by Council; or

3.1.2 Crown Land under Council's care, control and management - where an Occupancy Agreement is in place or may be entered into for the use of those Community Facilities.

3.2 Depending on the building, land type and status, different legislation with specific terms and conditions can apply to an Occupancy Agreement. Council will ensure that each Occupancy Agreement is prepared in accordance with the applicable legislative requirements.

3.3 This Policy also serves to ensure sound financial management and adequacy of records management processes to facilitate the accuracy of Council's Lease and Licence Register.

3.4 The principles of this Policy will be applied initially to new Occupancy Agreements including those Occupancy Agreements that have expired and where renewal is pending. The balance of existing Occupancy Agreements will be managed in line with this Policy as and when they approach expiry or renewal.

4 Legislative and Corporate Requirements

4.1 The Policy is to be read and implemented in conjunction with relevant legislation and Council's other relevant policies, strategies and documents including but not limited to:-

4.1.1 Local Government Act Sections 49, 201 and 202.

4.1.2 Sale or Disposal of Assets Policy.

4.1.3 Community Engagement and Consultation Policy.

5 Policy Statement

5.1 Council is committed to providing a range of community facilities in line with Council's strategic plans based on community priorities.

5.2 The aim of this Policy is to ensure an equitable and consistent approach to entering into and managing Occupancy Agreements by applying the following Key Result Area principles, each of which are to be given due consideration when assessing proposals for an Occupancy Agreement. The **Key Result Areas** are:

5.2.1 **Inclusion, Accessibility and Diversity** – Balancing a wide variety of different uses including sporting, educational, cultural and recreational activities which reflect community needs and embrace the vibrancy, needs and energy from different people (eg age, gender, culture, socio-economic and ability/disability see Council's Disability Access and Inclusion Plan).

5.2.2 **Optimal and Sustainable Use** – Ensuring Council assets are fit for purpose and managed responsibly in the interest of the community including certain costs being shared between the tenant and Council where appropriate. Developing initiatives on environmentally sustainable outcomes (including response to climate change) alongside wellbeing, cultural and economic objectives.

5.2.3 **Innovation & Collaboration** – Establishing and maintaining 'key stakeholder' partnerships to increase our collective capacity to meet community expectations and aspirations, that create dynamic clubs, inspired volunteers and shared community projects.

5.2.4 **Activation, Engagement and Safety** – Create facilities that encourage families and the general community to be out and about enjoying recreation and sporting facilities, while ensuring public safety and child protection outcomes are maintained.

5.2.5 **Governance and Probity** – Incorporated Associations and other community groups operating on Community Land are expected to develop, implement and maintain a robust system of governance that suits their particular needs and circumstances, is in line with their constitution and reflects leasing obligations for the site they operate from. Council's expectations around ethical culture, good leadership, sound decision making, reviewing performance, and appropriate financial controls will facilitate appropriate management of community, sport and recreation sites.

5.3 The Council will usually enter into an Occupancy Agreement that falls within one of the following categories:

5.3.1 **Commercial Lease** – A lease agreement (which is not a Nominal Rent Lease) by which Council (as lessor) grants exclusive rights to the tenant to occupy a Council building or other Council land for long-term or short-term use for the purpose of conducting a business.

5.3.2 **Recreational or Sporting Facilities Lease** – A lease agreement by which Council (as lessor) grants exclusive rights to a club, that operates primarily for recreation or sporting purposes, for the use of a nominated Council recreational or sporting facility for an agreed period of time.

5.3.3 **Nominal Rental Lease** – A lease agreement pursuant to which nominal rent is payable to Council, which will usually (but not always) be contemplated where a community facility is to be used by a community organisation that will deliver a community benefit and will also offer a minimum level of broader community use.

5.3.4 **Standard Licence** – A contract by which Council (as Licensor) grants non-exclusive contractual rights to a licensee to occupy Council land and/or buildings for a specified time pursuant to approved terms and conditions.

5.3.5 **Recreational or Sporting Facilities Licence** – A contract by which Council (as lessor) grants non-exclusive rights to a club, that operates primarily for recreation or sporting purposes, for a nominated Council recreational or sporting facility for an agreed period of time.

5.3.6 **Education Lease** – A contract by which Council makes a community facility available for use by the Department for Education on agreed terms.

5.4 Whilst this Policy serves to outline Council's intentions in relation to Occupancy Agreements, Council will apply a merit-based approach to determining proposals for an Occupancy Agreement and may depart from the Policy where there are compelling reasons to do so, in which case, reasons for decision-making will be recorded.

5.5 When considering new or renewed Occupancy Agreements for Community Facilities, Council will apply a qualitative evaluation process to determine the relative Community Benefit presented by the proposed use of the facility in question. The qualitative criteria considered in this evaluation will be reflective of the principles of Clause 5.2 above.

6 Application of Policy

6.1 Term of Occupancy Agreement and associated public consultation.

6.1.1 Council may grant a lease or licence over Community Land under section 202 (Alienation of community land by lease or licence) of the Act for a term not exceeding 42 years (inclusive of any right of renewal). Council is not obligated to grant a lease for the maximum term and Council's preference is generally to enter into leases for a shorter term which may include rights of renewal.

6.1.2 The degree to which a proposal aligns with the principles set out in paragraph 5.2 above will be taken into account in determining the term of an Occupancy Agreement. The starting point for longer-term Occupancy Agreements will be to grant a maximum term of five years. This is to enable Council to periodically review Occupancy Agreements in accordance with Section 8 of the Act and, in particular, having regard to Council's obligation to seek to ensure that Council resources are used fairly, effectively and efficiently and to facilitate equitable access to Community Facilities. Requests for an Occupancy Agreement for a term of more than five (5) years will be assessed on a case-by-case basis.

6.1.3 The Chief Executive Officer shall refer to Council for consideration any proposal by a current or future tenant for an Occupancy Agreement that is for a term longer than five (5) years. In this event, Council will consider whether it supports the proposed Occupancy Agreement 'in principle' before any public consultation is undertaken in accordance with paragraph 6.1.5. For the avoidance of any doubt, Council is not bound when making its final decision in relation to a proposed Occupancy Agreement (following any public consultation) by the previous decision of Council to support a proposed Occupancy Agreement 'in principle'.

6.1.4 Unless there is good reason to do otherwise an Occupancy Agreement will usually be granted for an initial term of three (3) years with a right to renew for a further two (2) years. The right to renew will, in most cases and subject to any legislative requirements, only be exercisable by the tenant where Council is satisfied that satisfactory achievement of key result areas (see Clause 5.2) have been met during the initial term.

6.1.5 Council will undertake public consultation prior to granting an Occupancy Agreement over Community Land(unless Regulation 22 of the *Local*

Government (General) Regulations 2013 applies) , under the following circumstances:

(1) the grant of the lease or licence is not authorised in the approved management plan for the relevant land; or

(2) the term of the proposed Occupancy Agreement exceeds five (5) years and Council has given 'in principle' support to the proposed Occupancy Agreement.

6.1.6 As at 26 March 2024 Regulation 22 of the *Local Government (General) Regulations 2013* states "Pursuant to section 202(3)(b) of the Act, a council is not required to comply with its public consultation policy with respect to a lease or licence over community land if

a) the lease or licence is being granted to the Crown, or to a Minister or other agency or instrumentality of the Crown; and

b) it is a term of the lease or licence that there is to be no substantial change in the use of the land (disregarding trifling, insignificant or subsidiary uses)."

6.2 Operational Management

6.2.1 In this clause, **Operations Report** means as a minimum:

(1) An Annual Report which shall include:-

(a) Annual information relating to activities, participation, hours of use and user fees and charges required by the Tenant to engage with club services or facilities;

(b) The Tenant's Annual Report including financial statement;

(c) Information on the then-current office bearers of the Tenant, by name and title;

(d) Annual and current membership numbers of the Tenant, together with the proportion of members residing within the City of Prospect;

(e) A list of notable events and activities promoted locally by the Tenant throughout the previous year; and

(f) A report identifying club and facility performance against Key Result Areas, as set out in clause 5.2 of this Policy.

(2) An annual Facility Management Report which shall include:-

(a) Details of all maintenance and/or repair works undertaken by the Tenant on the facility or its services;

(b) Details of any known faults in the facility structure or services;

(c) Details of any damage to the facility, and information on whether this damage has been (or is scheduled to be) repaired;

(d) Details relating to essential safety systems testing and emergency management drills;

(e) Details of the current status of the facility's security and locking systems, their functionality, and their effectiveness;

(f) Any other information the Tenant/occupant believes to be relevant to the current status, condition and/or performance of the facility; and

(g) Any other information requested by Council staff to form part of the Facility Management Report for that facility.

[Note : The current lease, license and/or occupancy agreement may prescribe additional reporting requirements that are to be addressed by a Facility Management Report that are specific to that facility and/or user.]

6.2.2 Annual and 3 Year Reporting

(1) Any agreement with a community organisation or State Government entity will:

(a) be subject to the entity providing an annual Operations Report to demonstrate the ongoing viability and capability of the Tenant;

(b) be in a form acceptable to Council based on its standard template lease/ licence document; and

(c) require a three yearly formal summary update to be provided by the Tenant to the Council which will include an Operations Report including how the arrangement is continuing to meet the principles set out at Clause 5.2; and an optional Facility Improvement Plan (see Definitions and 7.2.4).

6.2.3 Facility Improvement Plan (FIP)

(1) A FIP should include:-

(a) identification of improvements, timing, need, business case and/or community value and supporting documents.

(b) trend information in relation to growth/expansion

(c) Proposed Club/organisation contribution to improvements.

(2) A FIP should be sufficient in detail to achieve the desired business case and plans constituting a 'wish list' and/or without sufficient supporting information will not be considered.

(3) FIPs will be considered by Council staff, and subject to an assessment of merits, will be presented to a future Council budgeting process for consideration. Submission to a budget process, or support for funding, may be contingent on other factors considered relevant to Council (eg availability of internal/external grant funding; club financial and in-kind support; reasonableness of scope; Club's upkeep and maintenance standards of the facility; public access to the facility etc)

(4) FIPs are optional unless requested by Council. If requested by Council the club/lessee shall provide such a plan to Council within 6 months from the date of the request.

(5) General maintenance and upkeep of a facility shall not form part of a FIP and shall instead be dealt with through the Lease/Licence agreement and annual Operations reporting.

6.2.4 Council must ensure that any Occupancy Agreement granted in respect of community land is consistent with the community land management plan for that land (as required by Section 202(6) of the Act).

6.2.5 Any Occupancy Agreement with a commercial entity or that includes or is associated with the delivery of a complex project will be drafted to meet the specific circumstances that are relevant to the situation.

6.2.6 Any tenant holding or seeking a Nominal Rental Lease over a Council facility shall make any open or playable areas of the facility accessible and usable to the general community. Council reserves the right to recall a current lease, and/or refuse a lease renewal to any Nominal Rental Lessee that fails to provide such access to the ongoing satisfaction of Council.

6.2.7 Except with the prior written approval of Council, facilities subject to a Nominal Rental Lease, shall not be used for any purpose that generates profit or gain for an individual or for-profit organisation of any kind. (Note: Incidental use of such facilities for club fundraising and/or not-for-profit revenue are permissible). In the event a breach of this Policy clause is identified, Council reserves the right to trigger an immediate review of the lease arrangements for that facility.

6.3 Council/Tenant Relationship

6.3.1 Council will provide tenants with the contact details of the relevant staff member with whom they can liaise on any areas of concern arising from their Occupancy Agreement.

6.3.2 Council will acknowledge tenant reports arising out of their reporting obligations under Clause 6.2 of this Policy within a reasonable timeframe and provide feedback where appropriate.

6.3.3 Regular dialogue between Council and tenants arising out of this reporting and related feedback will be encouraged.

6.4 Fees & Outgoings and Performance Evaluation

6.4.1 Council will optimise the use of land and buildings for the benefit of the community whilst ensuring an appropriate return is derived in line with the principles articulated in this Policy. An Occupancy Agreement will be offered in exchange for some form of consideration whether financial, volunteer effort or in the nature of a community benefit.

6.4.2 Council will evaluate the effectiveness of Occupancy Agreements subject to the satisfaction of certain Key Result Areas (**KRAs**) at the initiation/renewal of such agreements, and periodically throughout the term of such agreements. (see Clause 5.2 above).

6.4.3 Council reserves the right to consider performance against such KRAs in establishing future or ongoing terms in Occupancy Agreements and may utilise such information to guide decision making in relation to setting rents, prioritising capital improvements, awarding grants or upgrading works.

6.4.4 Annual fee indexations in line with the Consumer Price Index (based on the published CPI figure by the Australian Bureau of Statistics for annual Adelaide All Groups CPI, applicable for the period between April and March of the prior year) will be applied where Council considers appropriate.

6.4.5 Outgoings, including in relation to the consumption and supply of services to the premises subject to the Occupancy Agreement will generally be the responsibility of the tenant.

6.5 Maintenance:

6.5.1 The Occupancy Agreement will set out the applicable maintenance responsibilities, which will be determined in line with Council's asset management plans.

6.5.2 Generally, the tenant will be responsible for the maintenance and upkeep of a community facility in accordance with the terms of the Occupancy Agreement.

6.5.3 Where a licence is granted for the use of a shared facility, the tenant will be required to pay maintenance and other costs (i.e. outgoings) on a proportional basis in line with the percentage of the tenant's use of the community facility. Alternatively, the tenant may be required to pay an annual fixed amount under the Occupancy Agreement by way of a maintenance contribution.

6.5.4 Contribution by Council to general maintenance costs will be negotiated where land, assets or buildings are made available for use by the wider community and are not exclusively occupied by the tenant.

6.5.5 Council is committed to undertaking a regular asset audit of all its buildings for the purpose of identifying short, medium and long-term maintenance and capital expenditure in line with legislative and risk management objectives.

6.6 Capital Improvements:

6.6.1 Capital Improvements and renewal projects will be based on Council's Asset Management Plans and approved Lessee Facility Improvement Plans. These plans will be used to inform Council's Long Term Financial Plan.

6.6.2 Where a community or sporting body is in a position to make a suitable contribution towards future capital upgrades or desired improvements, Council will consider this positively when prioritising budget expenditure for such works.

6.6.3 Pursuant to the Retail and Commercial Leases Act 1995, Council will generally be responsible for the costs of capital improvements in connection with a Commercial Lease, unless otherwise specified in the Lease. Any capital improvements will be carried out at Council's discretion or otherwise in accordance with the terms of the Lease.

6.6.4 The Department for Education, when entering into a lease with Council for a school or kindergarten, is responsible for maintaining and improving properties utilised for the purpose of a school or kindergarten as required.

7 Roles and Responsibilities

7.1 This Policy will be administered on behalf of Council by the:

7.1.1 Director City Strategy, Community and Culture

7.1.2 Director City Growth and Development

7.1.3 Director City Works and Presentation

8 Review

8.1 The Policy will be reviewed once per Council term or as required by legislation, or to address any relevant legislative change.

9 Access to the Policy

9.1 The Policy is available for public inspection on Council's website www.prospect.sa.gov.au and from Customer Service at Payinthi, 128 Prospect Road, Prospect SA 5082.

10 Further Information

10.1 For further information about this policy please contact:

Director City Strategy, Community and Culture
City of Prospect
128 Prospect Road, Prospect SA 5082

Ph 8269 5355
Email admin@prospect.sa.gov.au