

Community Occupancy Policy

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1. INTRODUCTION AND SCOPE

This Policy is concerned with the management of Council-owned or administered land and associated buildings through leases and licences to community Groups (Community Occupancies).

Community Occupancies may relate to land, land and buildings, or spaces within buildings.

Gisborne District Council (Council) plays a role in fostering the well-being and strength of communities. This includes facilitating community networks, providing recreation opportunities and supporting community facilities.

Council provides Community Occupancy Agreements (for land and buildings) to a wide range of Groups undertaking a wide range of activities. Council seeks to optimise potential benefit to Tairāwhiti from use of Council administered lands. Council will allocate resources to meet community needs and aspirations and in alignment with the Council's strategic plans including the Long-Term Plan, Community Facilities Strategic Framework, Parks and Open Places Plan, Sports Facilities Plan and Play Spaces Plan, relevant Reserve Management Plan, and strategies and plans to mitigate the impacts of climate change.

The purpose of this Policy is to:

- Outline the framework for making decisions regarding Community Occupancies.
- Optimise Community Benefit arising out of Community Occupancies.
- Support the role of Community Groups by providing a significant rental subsidy for Community Occupancy.

This Policy does not supersede existing legal agreements. Where an existing formal agreement does not cover all the necessary aspects of leasing or licencing Council land or buildings, this Policy will be used to address any gaps.

This Policy should be read in conjunction with Te Tairāwhiti Piritahi; Fostering Māori Participation in Council Decision Making Policy, the Community Facilities Strategic Framework, the Significance and Engagement Policy, Te Tiriti Compass (2002). The Long-Term Plan, the Reserves Act 1977, the relevant Reserves Management Plan and any current applicable Standard Operating Procedure/Staff Guidelines for Application Assessment and Decision Making.

In Scope

This Policy applies to the use of land and buildings by 'Groups'. Groups are defined as:

- A not-for-profit organisation that is incorporated, either under the Incorporated Societies Act 2022 or the Charitable Trusts Act 1957 or established under any other statute and provides a Community Service or Benefit.
- Does not make distributions of profits to its members.
- Does not have a primary purpose of promoting party politics.
- Any funds generated are used to maintain and develop the organisation to support its community services and activities.
- Has open membership.
- Restrictions are not imposed, such as setting membership or participation fees at a level that exclude most people who might want to participate.

While iwi and hapū entities are likely to meet the definition of a 'Group' above, requests from iwi and hapū entities to occupy Council administered land and buildings will be considered in the context of Te Tiriti o Waitangi and guided but not constrained by this Policy.

Out of Scope

This Policy does not apply to entities not considered a 'Group' as defined by this Policy, or casual hireage of Land and/or Buildings.

Leases, licences or easements for private benefit or use (for example encroachments on Council land or Reserves, grazing) and/or making private profits are not subject to this Policy. These will be negotiated on a commercial basis.

Grazing of Council Reserves is generally out of scope of this Policy. Although there are situations in which community grazing of Council Reserves is considered desirable by Council (for example where grazing can suppress weeds), in general these activities are not carried out by a Community Group as a community service/benefit.

2. OBJECTIVES

The objectives of the Community Occupancy Policy are:

- To give effect to the principles of the Treaty of Waitangi and Treaty partnerships.
- To uphold Treaty Partner relationships by encouraging applicants to engage directly with Treaty Partners in respect of their proposed activity prior any application being lodged with Council.
- To uphold Council's relationships as a Treaty Partner by engaging early with Treaty Partners early on in any process to consider applications received by Council for Community Occupancies and maintaining good faith with our Treaty Partners by openly sharing information where we can.
- To optimise Community Benefit arising from the use of Council managed or owned land and buildings.
- To strengthen participation and engagement in community and recreational activities.
- To consider the effects of climate change and adverse effects on the environment. For example, Council will seek land use activity that would minimise or mitigate environmental impacts and carbon emissions. Where new facilities or buildings are constructed by groups, seek they be constructed so that they are resilient to the potential impacts of climate change and minimise impacts on climate both in construction and ongoing operation.
- To ensure Occupancies are granted and managed fairly and equitably, processes are transparent and staff have the flexibility to respond to community needs.
- To strengthen communities through leasing land and buildings to groups at subsidised rentals (i.e., at less than market-based rentals).

This Policy does not choose particular groups that the Council will support. Rather it provides a process whereby the types of activities that generally assist the council in achieving its strategic direction can be supported.

3. GUIDING PRINCIPLES

- Council will support Groups whose activities contribute to Council's priorities and long-term Community Benefit outcomes by making land and/or buildings available for occupancy.
- This support is primarily in the provision of subsidised access to Council-owned/managed land and/or buildings.
- Council seeks to support groups to optimise the Community Benefit outcomes arising from their activities as defined in the Long-Term Plan, Community Facilities Strategy and other strategies and plans.
- Council seeks to support positive outcomes for iwi and communities through Community Occupancies
- Council will endeavor to ensure equity, consistency and transparency in the allocation of Occupancy.
- Council will endeavor to maximise Community Benefit from Occupancy.
- Council will encourage shared/multi-use of land and/or buildings to optimise Community Benefit.
- Council will seek to balance maximising open space with enabling growth and responding to future community needs and trends.
- The relationship between Council and Groups will be collaborative:
- There will be open communication between the Council and Groups.
- Both parties will work collectively in a transparent manner to achieve social and recreational outcomes.
- Council will treat all groups fairly.
- Land and buildings will be responsibly managed. All buildings, whether owned by Council or the group, will be maintained to the standard required under the lease/licence for their economic life.

4. DEFINITIONS

| Definition | Detail |
|-------------------|--|
| Applicant | A community or recreation Group applying to the Council for a Lease or Licence of Council-owned land or buildings. |
| Buildings | Council-owned or funded buildings made available by the Council for use by Groups. |
| Council | Gisborne District Council and includes any Council Committee, subcommittee or person acting under delegated authority. |
| Community Benefit | Facilities and activities which benefit a community and have few barriers to access and participation. Community benefit is likely to be greater where facilities /activities meet a demonstrated community need, and where practicable, uses partnerships and collaboration optimise opportunities and benefits to the wider public |

| | |
|--------------------------------------|---|
| Community Occupancy waiver / subsidy | The waiver/ subsidy applied to Fees and Rentals by Council to Community Groups for Community Occupancies in recognition of Community Benefit and outcomes. |
| Fees | Application Processing Fee and Annual Occupancy Management Fee updated annually as part of Council's Fees and Charges Schedule. |
| Group(s) | A Group which is a not-for-profit organisation that is incorporated, either under the Incorporated Societies Act 1908 or the Charitable Trusts Act 1957 or established under any other statute, and: (a) provides a Community Service, (b) does not make distributions of profits to its members, (c) does not have a primary purpose of promoting party politics, (d) any funds generated are used to maintain and develop the organisation to support its community services and activities, (e) has open membership; and (f) restrictions are not imposed, such as setting membership or participation fees at a level that exclude most people who might want to participate. |
| Land | Council-owned or administered land made available by the Council for use by Groups |
| Lease | A Community Group Lease; a legal tenancy/ occupancy agreement between a Group as Occupier and Council as lessor granting the Group exclusive use and occupation of specified Land and/ or Buildings for Purposes and Services. |
| Lessee | A Group to which a Lease is made (the tenant). |
| Lessor | The Council (the landlord) as grantor of a Lease |
| Licence to Occupy (Licence) | A Community Group Licence to Occupy; a legal agreement between a Group as licensee and the Council as licensor granting the Group a non-exclusive right to occupy specified Land and/ or Buildings. |
| Licensee | A Group to which a Licence is made (the tenant). |
| Licensor | The Council as grantor of a Licence to Occupy. |
| Occupancy(ies) | The community occupancy of Land and/ or Buildings by a Group for Purposes pursuant to an Agreement. |
| Occupancy Agreement(s) | A community Group Lease or Licence to Occupy. |
| Occupier(s) | Lessee or Licensee. |
| Policy | The Community Occupancy Policy formed by the contents of this document or successor updates. |
| Purpose(s) | Activities which benefit Gisborne District/ Tairāwhiti communities rather than being aimed at benefitting a particular individual. |
| Rental | Payment by the Occupier to the Council for the use of Council land and / or Buildings. Subject to Community Occupancy waiver/subsidy. |
| Right of Renewal | Provision in a lease or licence under which the occupier has the right to renew the agreement for a further term. |
| Service(s) | Activities, facilities, and programmes provided by a Group |
| Staff | Staff of the Council. |

| | |
|----------------------|--|
| Strategies and Plans | Council's adopted Strategies and Plans. |
| Sub-lease | The letting out of all or part of a leased property to a third person (sub-tenant). First tenant (head lessee) will be responsible for payment of rent and all charges to the landlord (lessor) and for any damage caused by the sub-tenant to the property. |
| Sustained Objections | An objection which Council staff have been unable to resolve and/ or where the objector wishes to be heard by a committee or subcommittee. |

5. ELIGIBILITY CRITERIA

To be eligible for consideration for Occupancy, Groups shall:

- a. Meet the definition of 'Group' as defined by this Policy.
- b. Provide a 'Service' as defined by this Policy.
- c. Provide and demonstrate a Service that supports the Council's vision and outcomes as defined in the 10-Year Plan, as well as Strategies and Plans.
- d. Not impose restrictions that may unreasonably exclude people who might want to participate.
- e. Be sustainable for the term of the Occupancy in terms of:
 - financial viability to fulfil obligations, and;
 - membership and/ or users of the service.
- f. Demonstrate a clear and effective governance structure.
- g. Demonstrate accountability through reporting requirements.
- h. Any other requirements as determined by Staff from time to time.
- i. Provide proof of public liability insurance.

The eligibility criteria must be met throughout the term of the Occupancy Agreement.

6. PROCESS

Groups wishing to apply for a new or renewed Community Occupancy Agreement may register their interest by contacting Council.

Premises Vacancy

In cases of a vacant Building, space or Land identified as appropriate for development, or a Group decides not to exercise its renewal option at the end of the term (or earlier) for a Council-owned building or space, Council will seek applications through:

- Public advertisement
- An expression of interest process, or
- Direct notification to Groups who have signaled interest
- Direct notification to Treaty Partners.

Applications will be assessed by Council staff on a case-by-case basis.

Overview of Application Process

1. A Group approaches Council seeking a Lease/Licence (new or re-issue). Council staff will outline the application process and whether a Lease/Licence can be considered or is appropriate.
2. If an application is considered appropriate, the Group will be asked to make a formal application. A 'Pre-Application' meeting with Council staff will be offered to outline the process and requirements of making an application. Groups will be advised to consult widely with local iwi, community and other community groups to explore how the proposal can optimise positive community benefit. The application form is available on the Gisborne District Council website or via post if requested.
3. The completed application is returned to Council and staff will assess the application. Staff will seek further information and clarification if required.
4. If the Group is not considered eligible, staff will communicate this to the Group via written correspondence and there will be the opportunity to discuss with staff why the application is considered ineligible.
5. If the Group is considered eligible, staff will further assess the application as per the *Community Occupancy Assessment and Decision-Making Guidelines*, including consultation with Iwi, consistency with all relevant legislation, assessment of effects of the application and an assessment of the community benefits arising from their proposal.
6. Depending on whether the application is for a Lease (exclusive occupation) or Licence, staff will make a recommendation with supporting documentation) to Council, Council Subcommittee or delegated Council staff decision maker, for consideration whether to approve or decline the application subject to public notification and obtaining other approvals required by any relevant legislation.
7. If public notification of the intention to grant a lease or licence is required, Public Notice will be placed for a minimum of 20 working days (to meet the requirements of section 120 of the Reserves Act 1977).
8. Submissions and objections received via public notice will be considered and, if requested, a Hearing by Council Committee or subcommittee will be held. The Hearing Committee will make a recommendation to Council regarding the application.
9. If no objections are received via public notice, Council staff will progress the application and put a recommendation to Council for decision.
10. Lease decisions will be in the form of a Council Resolution. Licence to Occupy decisions will generally be made by the Chief Executive of Council (unless delegated). Staff will notify the Group as soon as practicable of decisions.
11. The Group and the Council will then enter an Occupancy Agreement in the form of a Lease or Licence to Occupy. The Occupancy Agreement terms will be agreed between Council and the Group in accordance with the Policy.

Commercial Activities

Community groups that wish to operate a Commercial Activity within a Lease or Licence area under this Policy must first seek approval from the Council.

A Commercial Activity as part of Community Occupancy will only be considered for approval where:

- if the land is subject to the Reserves Act 1977, the activity must be necessary to enable the public to obtain benefit and enjoyment of the reserve **or** for the convenience of persons using the reserve, **and** in conformity with and contemplated by any relevant approved Reserve Management Plan. (Types of activities that may be supported include pro-shops, canteens and kiosks).
- The commercial activity is aligned to the Group's permitted core community activity.
- The commercial activity caters primarily for the members or users of the Premises and park.
- The commercial activity supports the sustainability of the Group.
- Any excess funds generated by the Group are in the first instance applied to any maintenance obligations the Group has under the Lease/Licence and then to the Group's core activity as set out in the Occupancy Agreement.

One-off fundraising activities (e.g. sausage-sizzle, gala event) do not generally require Council approval as a commercial activity, however food registration requirements still apply. Ongoing trading activities (e.g. pro-shop, bar, canteen, kiosk) require Council approval.

There is no ability for groups leasing land or buildings under section 54(1)(b) of the Reserves Act 1977 to sub-lease to a commercial entity/ operator. A lease under section 54(1)(d) of the Act may be appropriate.

Groups will be responsible for obtaining any additional relevant consents, permits or licenses required to operate a Commercial Activity prior to operation e.g. food registration.

7. APPLICATION ASSESSMENT

Council's *Community Occupancy Policy Guideline for Application Assessment & Decision-Making* details the process and relevant matters for consideration that will be undertaken by Council staff to give effect to this Policy.

This guideline will be reviewed and updated as required.

Matters for consideration

The decision-making process will consider (but not be limited to) consideration of the following:

- The Land under application, including its history, use and legal status.
- Description and assessment of cultural, physical and social effects – including any measures to avoid/remedy or mitigate potential adverse effects.
- The outcome of the applicants and Council's engagement with Iwi on the proposed application.
- Assessment of consistency with purpose for which land is held under the Reserves Act and/or other relevant classifications, zonings or purposes (e.g., Deed of Gift).
- Consistency with the provisions of all relevant planning documents (including the Tairāwhiti Resource Management Plan).
- Health and safety considerations.
- An assessment of community benefit.

- The outcome of any public notification process (if relevant).
- Any proposed special conditions to be applied to the Occupancy Agreement.

8. COMMUNITY BENEFIT ASSESSMENT

Applications will be assessed on the degree of Community Benefit resulting from the activities/facilities provided by the group calculated as per the Community Occupancy Community Benefit weightings table, attached as Appendix A. These assessment criteria are derived from the Community Facilities Strategy.

<https://www.gdc.govt.nz/recreation/parks-and-reserves/community-facilities-strategy>

The application process will encourage Groups to consult with iwi and others to work through how their proposal can maximise potential Community Benefit arising from their proposals.

Activities and facilities will be scored on a 4-point scale from poor (1) to exceptional (4) against a number of weighted principles:

- Demonstrated Community Need;
The degree to which the proposed activity facility meets the needs of the community within its catchment area
- Wider Benefit;
The degree to which the proposed activity / facility stimulates broader goals for social and cultural development.
- Efficiency;
The degree to which an activity /facility complements existing or proposed activities and facilities in the community, including avoiding duplication. Facilities should enable multiple uses wherever possible to ensure facilities are used to their maximum.
- Financial affordability of Participation;
The degree to which the community can afford to participate in the services, activities and programmes provided.
- Accessibility;
The extent to which community activities and facilities are accessible. That is, they are equitably located within the region; they are physically accessible for people of all abilities; people are aware of their availability for the public to use; and they reflect the social, demographic and cultural needs of the community in their facility catchment.
- Partnership and Collaboration with others.
Working together with partners to develop and operate community facilities and activities will become increasingly important. Partnerships allow the pooling of resources such as land, people and funding and are a key tool for maximising efficiency of the network.
- Strategic Fit;
The level of contribution of the activity / facility to the strategic objectives of national umbrella organisations and Council's strategic community outcomes and plans (including the Long-Term Plan and Community Facilities Strategy).

Scores will be added and averaged to suggest Community Benefit of:

| Score | |
|----------|--|
| 0 to 1.9 | Poor or undemonstrated Community Benefit |
| 2 to 2.9 | Minor Community Benefit |
| 3 to 3.9 | Good Community Benefit |
| 4 | Exceptional Community Benefit |

Council staff will support Groups throughout the application process to optimise Community Benefits arising from their activities and proposals.

9. DECLINE OF APPLICATIONS

Applications will be declined where:

- The proposed activity is inconsistent with the purpose for which the land is held.
- The proposed activity is inconsistent with the relevant statutory Management Plans.
- The applicant has not provided sufficient information to assess the application or the applicant's ability to conduct the activity and has not responded to requests for further information from Council.
- Adverse effects of the proposal cannot be avoided/remedied or mitigated (noting that some proposals may also require Resource Consent and that this is a different process to the assessments made under the Reserves Act 1977 and Local Government Act 2002).

10. COMMUNITY OCCUPANCY AGREEMENTS

Community Occupancy Agreements shall be in place prior to Occupancy. If the group and Council are unable to negotiate acceptable terms and conditions, the Occupancy cannot proceed, and the granting of the Lease or Licence will be terminated.

Community Occupancy Agreements will take the form of either a:

- Lease; or
- Licence to Occupy.

In some circumstances it may be more suitable to grant a Licence to Occupy due to the nature of the proposed service, where the premises or land classification does not allow for exclusive use, or where alternative use of the premises is anticipated by Council in the near future.

Council has developed Community Group Lease and Licence templates to standardise the terms and conditions of Community Occupancies. These documents will be available on the GDC website.

Types and Terms of Agreements

| Type of Agreement | Category | Length |
|-----------------------------------|--|--|
| Community Group Licence to Occupy | Non-exclusive occupation of Council-owned (or administered) Land only, or Land and Buildings or space within a multi occupancy | <ul style="list-style-type: none"> ○ Five years standard, with a further five-year right of renewal ○ 10-year term total |

| | | |
|-----------------------|---|---|
| | Council-owned Building | <ul style="list-style-type: none"> o Licence term may be extended if linked to a Lease |
| | | <p>Recommended for newly established Community Groups:</p> <ul style="list-style-type: none"> o One year standard, with a further one year right of renewal o Two-year term total |
| Community Group Lease | Council-owned Land and Building | <ul style="list-style-type: none"> o 11 years standard, with a maximum further two 11-year right of renewal o 33-year term total¹ (Land held under the Reserves Act 1977) o 21-year total (other land) |
| | Occupier-owned Building on Council-owned Land | <p>Recommended for newly established Community Groups:</p> <ul style="list-style-type: none"> o Five-year standard, with a further five--year right of renewal o Ten-year term total |
| | | <ul style="list-style-type: none"> o 11 years standard, with a maximum further two 11-year right of renewal o 33-year term total² Land held under the Reserves Act 1977) o 21-year total (non-Reserve land) |

There may be specific cases where it is appropriate to be flexible in the length of tenure for a Lease/Licence. For example, limitations under the Reserves Act and potentially the Resource Management Act, or there may be asset investments on behalf of a group or the Council that need to be recognised. Alternatively, shorter tenure may be used to recognise declining trends or uncertainty in an activity.

Reasons for shorter or longer tenure that may be considered include:

¹ NB – 33 years is the maximum term permitted for leases under the Reserves Act

² NB – 33 years is the maximum term permitted for leases under the Reserves Act

| Shorter Tenure | Longer Tenure |
|--|---|
| <ul style="list-style-type: none"> Declining trends in an activity Evolution of activities that will compete for assets Alternative uses are planned by the Council for the lease asset (for example, demolition of buildings in X years) Life expectancy of Premises/ assets is less than lease tenure Group asks for a shorter tenure | <ul style="list-style-type: none"> Recognition of historic or required investment into the asset Proposed asset investment To provide certainty for external funding purposes Dependence by community or membership on continuity of a key activity |

This flexibility should be used carefully and is at Council's discretion. It is designed to allow Council to respond to changing community needs and land/asset management issues.

11. FEES

All Groups are liable for all legal costs and expenses relating to the preparation of a new Lease/Licence, renewal or any variation and any other associated costs. Expenses include (but are not limited to):

- One off application fees (as per the Council's Fees and Charges schedule)
- External advertising costs
- Survey costs
- Obtaining resource consent

12. AGREEMENT TERMS AND CONDITIONS

Rent Determination

The objective of this Policy is to support the ongoing provision of not-for-profit community services and/or recreational opportunities that provide a benefit to the community.

The rental that shall be paid by a group for use of land and buildings will be calculated by first determining a market rate (Step 1), applying a rental subsidy (Step 2), and then considering Exceptional Circumstances and Financial Hardship (Step 3).

Market Rates (Step 1)

Where there is a high likelihood of demand for the Council land or building, Council staff will likely obtain an independent valuation to assess the market rate for the land. Otherwise, Market Rates will be determined via an in-house assessment as set out below:

1. Identify the Rateable Value of the land (RV) and calculate the RV per sq m of the land.
2. Establish the area (sq m) to be occupied by the Lease or Licence.
3. Multiply RV per sq m by area occupied and the expected rate of return to determine the occupied areas base rental amount.

Rental Subsidy (Step 2)

A rental subsidy of **up to 90%** shall be applied to the Market Rate, based on an assessment of Community Benefit (described above).

Activities/facilities resulting in **Good** or **Exceptional** Community Benefit will have a **90% subsidy** applied **unless**:

- The Group has a total annual actual or forecast revenue more than \$2,000,000 **and**
- The Group has an actual or forecast financial surplus more than \$100,000 **and**
- The Group already receives Central Government Funding in support of their community outcomes.

Activities/facilities resulting in **Minor** Community Benefit will have a **60% subsidy** applied.

Activities/facilities resulting in **Undemonstrated or Poor** Community Benefit will be subject to a **10% to 50% subsidy**.

Consideration of Exceptional Circumstances and Financial Hardship (Step 3)

Community Groups may apply for a further rental subsidy based on exceptional circumstances and/or financial hardship. Applications will be assessed on a case-by-case basis and in alignment with Council's Rates Remission considerations.

Rental Review

Where agreements allow for rent review, any change in annual rental shall be applied from the anniversary of the Occupancy Agreement and in accordance with the Occupancy Agreement rent review frequency.

Rentals will generally be reviewed every three years as a condition of the occupancy. However, the review period may be shortened where the Lease/Licence is for a shorter period than six years.

Rent Phase In

Rental increases greater than 30% on the preceding year rent/fee will be phased in over a period of three years (i.e., a one third increase each year).

Community Occupancy Management Fee

Council will charge an annual Management Fee to cover the cost of staff time and resources to manage a Community Occupancy Agreement. This fee will be set in the Council Fees and Charges Schedule and applied when rentals are reviewed (generally every three years).

This fee will be calculated on a per hour cost recovery basis and subsidised by Council in recognition of community benefit.

Occupancy Responsibilities

The following table outlines standard outgoing occupancy responsibilities in addition to rent:

| | Utilities | Rates* | Building Insurance | Structural maintenance | Non-structural maintenance |
|------------------------|-----------|----------|--------------------|------------------------|----------------------------|
| Council-owned building | Occupier | Occupier | Council | Council | Occupier |

| | | | | | |
|-------------------------|----------|----------|----------|----------|----------|
| Occupier-owned building | Occupier | Occupier | Occupier | Occupier | Occupier |
|-------------------------|----------|----------|----------|----------|----------|

*Community Groups may be eligible for a rates remission as per the Operative Rates Remission Policy

Re-issue of Leases/ Licences

In the absence of a Right of Renewal in an Occupancy Agreement, the Occupier shall have no rights to occupancy continuance after agreement expiry. The Occupier may make a new application for a new occupancy agreement in terms of the Policy.

Where the current Occupier is seeking a re-issue of an existing Lease/ Licence the Council recognises that groups will have made investments in assets.

Shared/ Multi-use

Council owned buildings and land are a limited resource. Groups will be strongly encouraged to cluster and share Premises in order to optimise use and resources. Council will allocate Occupancy to ensure maximum use of assets and to respond to changing demographics, demands and trends.

Groups will be encouraged to share/multi-use land and/or buildings in order to:

- optimise use and resources;
- improve sustainability and flexibility of use;
- acknowledge the community benefits of co-locating services and activities.

Variations to Standard Terms and Conditions

Council reserves the right to vary the standard terms of any Occupancy Agreement on a case-by-case basis.

Groups may request that Council vary the standard terms of any Occupancy Agreement. Such requests will be dealt with on a case-by-case basis. Council will not be required to accept any variation requested.

Should Council consider it necessary to obtain advice from the Council Solicitor or external solicitors regarding any request associated with the Occupancy Agreement, the applicant will be responsible for payment of all reasonable legal costs incurred by Council in obtaining such advice.

Sub-leasing/Sub-licensing/Assignment

Occupiers may not transfer, sublet or dispose of their interest in a lease/licence without the prior written approval from Council. This may be withheld at the discretion of Council.

Sub-leases or Sub-licences will only be considered where the transferee or subtenant and its activities comply with this Policy, applicable legislative requirements and management plans.

In general, the sub-tenant will need to be an organisation whose aims, and objectives are the same as those of the head lessee. The Reserves Act 1977 also places restrictions on the types of activities that sub-leases may be granted to.

If an Occupier is given approval to enter a sub-lease, the head lessee will be responsible for:

- The preparation of the sub-lease documents and associated costs.
- The recovery of all fees and charges associated with the sub-tenant.
- Providing Council with a copy of the sub-lease agreement.

- Payment of rent and all charges to the lessor (Council).
- Any damage caused by the sub-tenant.

Disputes and Termination

The Council will maintain an open communication approach so that issues or breaches of Occupancy Agreements are addressed as they are identified. If there is a serious or ongoing breach, then the Council may terminate the Occupancy Agreement. Where possible, independent mediation will be used to resolve disputes.

If there are reasonable grounds, the Council may seek early termination of an Occupancy Agreement. The grounds where Council might seek to terminate an Occupancy Agreement will be included in the standard Lease/Licence document. Such grounds include the situation where a Group or organisation is:

- In significant breach of the Occupancy Agreement as determined by Council.
- Demonstrates poor governance as determined by Council.
- Declining to a level where it cannot function or remain sustainable.
- Becoming or is bankrupt or insolvent.
- Unable to meet the terms and conditions of the Occupancy Agreement.
- Proposing to change its activity to one that is not supported by Council.
- Undertaking illegal activities on the Lease/ Licence site.

Before the Council undertakes any action to terminate an Occupancy Agreement, it will seek other solutions in discussion with the Occupier.

Expiry of Community Occupancy Agreements

Groups must make written applications for a new Occupancy to Staff a minimum of six months prior to the expiration date of their existing Occupancy Agreement. All such applications will be considered in accordance with the Policy.

Upon expiry, Occupancy Agreements will automatically hold over on a month-by-month basis until a decision is made regarding any new application.

Council may end a month-by-month Occupancy by giving one month's notice of termination.

Granting Security Against a Lease

There may be instances where a group wishes to secure finance using a lease as a form of security. Any security will be bound by the conditions of the lease and by Council Policy on the use to which leases are put. In particular, the following provisions apply regarding security:

- Registration of security against a lease will generally only occur where the Occupier owns the buildings associated with the lease.
- Assignment or transfer of rights under a lease will be subject to the prior written approval from Council as to the solvency and suitability of an assignee or transferee.
- Leases will be specific as to what uses are permitted.
- Where a Lease is reassigned because of a loan default, the rent/licence fee will be reviewed.

The above provisions will be specifically written into the Lease so that all parties are aware of the requirements.

Registration of Leases

If a group has a valid reason for seeking to have a lease registered against the title (such as to secure a loan to develop premises), they may do so provided the Council's agreement is obtained prior to a lease being drafted. A memorandum of Lease can then be drafted. The lessee is liable for all costs associated with registration including the issuing of a title if this is required.

Council allowing Lease registration will be at the discretion of Council.

Ongoing Reporting Requirements

Council is interested in the ongoing performance of Occupiers so that it can monitor the achievement of the strategic objectives set for the Rohe, as well as ensure Occupiers meet the eligibility criteria for Community Occupancy throughout the tenure of their Lease/ Licence.

Groups will be required to report annually on the following:

- a) Statement of service performance (where applicable)
- b) Annual report
- c) Annual accounts (Council may require these to be audited accounts)
- d) Adopted budget for the forthcoming year
- e) Membership numbers and usage rates
- f) Community events undertaken from the leased / licensed land and/ or building
- g) Hireage of land and/ or buildings, and
- h) Works the Occupier has undertaken on building/s in accordance with the Scheduled Maintenance Plan.

Groups may be required upon request by staff to provide further information from time to time.

13. MONITORING AND IMPLEMENTATION

The Policy shall be effective from the date Council adopts it.

The Director Liveable Communities will monitor the implementation of this Policy.

The Policy will be reviewed every three years or at the request of Council, or in response to emerging best practice, changed legislative and statutory requirements, or in response to any issues that may arise.

APPENDIX A

Community Occupancy Community Benefit Outcomes – Weightings Table