	# *Lease and Licence Policy*
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Related Policies or Documents:	Community Engagement Policy KI Council Fees and Charges Rates and Rebate Policy Use of Boat Ramps and Boat Moorings Terms and Conditions
Associated Forms:	Application to use Local Government Land or Roads
Responsible Manager:	Chief Executive Officer
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Lease and Licensing Policy

1. Preamble

1.1. Kangaroo Island Council owns or has care and control over community and Local Government Land. Council seeks to optimise the use of its land holdings for the benefit of the community.

1.2. Kangaroo Island Council enters into agreements for the use of community and Local Government Land, as well as Council-controlled roads, including leases, licences, authorisations and permits, with a diverse range of parties, including individuals, community groups, sporting clubs, State Government agencies and commercial entities. Council seeks to make these spaces reasonably available to support community benefit and economic development.

1.3. Kangaroo Island Council recognises the value of land and buildings under its care and control and their contribution to Council's Strategic Management Plan, as well as other plans, objectives and community priorities. Council is committed to providing local community groups, individuals and commercial entities with access to various Council land and buildings on the basis that:

1.3.1. The community derives benefits from the use of the land and buildings.

1.3.2. Use of land and buildings are optimised under terms and conditions that benefit the community.

2. Purpose

2.1. This policy provides guidance for consideration of applications to lease or licence Council Owned Land, Community Land, and the terms by which such leases or licences will be granted. Additionally, it identifies the basic criteria used to assess and award a lease or licence, or renewal of a lease or licence.

2.2. The aim of this Policy is to ensure an equitable, consistent and transparent approach to leases and licences that encourages high utilisation, diversity of use and supports the sustainability of organisations occupying Council facilities.

3. Scope

3.1. This Policy applies to all Local Government Land, including community land, operational land, buildings, parks and reserves, foreshores, public spaces and public infrastructure that is owned by, or under the care and control of, Council and is leased or licensed to another party.

3.2. The principles of this Policy apply to existing agreements upon renewal, expired agreements pending renewal, and all new agreements for the use of Council-owned or managed land.

4. Definitions

4.1. **Agreement** means either a lease, licence, authorisation, or permit.

4.2. **CEO** means the Chief Executive Officer of the Kangaroo Island Council.

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4.3. **Commercial** means an agreement between Council and an external business operator who uses the land and/or buildings to undertake business, retail or other commercial activities including small business.

4.4. **Community land** means any *'local government land'* as defined in the *Local Government Act 1999* that has not been excluded or revoked of its classification as community land, including land owned by Council or under Councils care control and management, and including reserves.

4.5. **Council** means Kangaroo Island Council

4.6. **Dedicated land** means Crown land that has been dedicated for a purpose and placed under the care, control and management of a custodian (Council).

4.7. **Development** refers to improvements proposed to Council owned or controlled land by a tenant, or occupier which requires Development Approval.

4.8. **Emergency Service** means a service provider that responds to emergencies and provide other safety-related services either as part of their on-the-job duties or as part of the main mission of their business (e.g. CFS Stations, Coast guard, SA Health etc).

4.9. **Incorporated body** means any not-for-profit group or organisation that is incorporated under the *Associations Incorporation Act 1985.*

4.10. **Lease** is an agreement by which exclusive use of local government land or part thereof, owned or under Council's care and control, is granted to another party (the lessee) for a specific period of time in accordance with agreed conditions and to the exclusion of all others. This can be a land lease only or inclusive of existing facilities and infrastructure on the site or a building only on a particular land parcel.

4.11. **Licence** provides an agreement by which non-exclusive use of local government land or part thereof, owned or under Council's care and control, is granted to another party (the licensee) for a specific and limited term, in order for the licensee to do something particular or carry on a specific activity or business from the land which may or may not have the effect of restricting or reasonably interfering with the general public's access to that land during the licence term.

4.12. **Local Government Land** means land owned by Council or under Council's care, control and management.

4.13. **Maintenance** means that facilities are maintained; in good repair and condition; conform to relevant legislation and codes; are free of graffiti and other acts of vandalism; and includes preventative maintenance approaches.

4.14. **Minor upgrade** refers to improvements proposed to Council owned or controlled land by a tenant or occupier, which does not meet the criteria of Development Approval

4.15. **Not-for-profit Organisation** means an organisation that provides services to the community and do not operate to make a profit for its members [or shareholders, if applicable]. All profits must go back into the services the organisation provides and must not be distributed to members.

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4.16. **Peppercorn Rent** means a nominal lease fee of $1.00 per annum, payable only if demanded.

4.17. **Retail premises** means a business premises at which goods are sold to the public by retail; or at which services are provided to the public, or to which the public is invited to negotiate for the supply of services; or as otherwise defined in the *Retail and Commercial Leases Act 1995*.

4.18. **Underlessee** means the person or persons who signed and paid for an underleased berth with Council and who conducts themselves within the underlease Terms and Conditions and the Rules of the Boating Facility.

5. Policy Statement

5.1. The power to grant a lease or licence over Community Land is a function of Council. Council may delegate its powers or functions under section 44 of the *Local Government Act 1999* (the Act), including to the Chief Executive Officer (CEO). Section 44(4) of the Act provides that a delegation to the CEO authorises sub-delegation unless Council determines otherwise. The power to determine rent, where Council has resolved to grant a lease, is provided under section 36(1)(c) of the Act.

5.2. The policy should be read in conjunction with the *Local Government Act (1999)* [the Act], specifically *Chapter 11 – Land*.

5.3. Section 201(1) of the Act allows Council to sell or otherwise dispose of an interest in land vested in the Council in fee simple (outright ownership) or vested in the Council as lessee.

5.4. Section 201(2)(c) of the Act allows Council to grant a lease, licence, authorisation or permit in accordance with the Act for community land.

5.5. The policy should also be read in conjunction with the *Retail and Commercial Leases Act (199)* [the RCL Act], specifically *Part 4A—Term of lease and renewal*.

5.6. The policy should also be read in conjunction with the *Crown Land Management Act 2009* [the CLM Act], specifically Section 22 – *Lease of dedicated land* and Section 22A – *Licences granted in relation to dedicated land.*

5.7. For all new Leases or Licences, applicants must complete and submit the Application to Use Local Government Land or Roads Form. Application fees apply in accordance with the Schedule of Fees and Charges.

5.8. **Leases – Not for Profit**

5.8.1. Council supports and encourages community initiatives throughout Kangaroo Island.

5.8.2. The following criteria must be met to lease a community facility to a Not-for-Profit Organisation to the satisfaction of the Delegated Officer:

a. Is a Not-For-Profit Organisation.

b. The Community Organisation is an incorporated body and legal entity with an Australian Business Number (ABN).

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c. Is financially viable.
d. Has the capacity to meet its rental, maintenance, and on-going obligations under the Lease.
e. Has good governance capability.
f. Will meet a community need and contribute to the well-being of the Kangaroo Island Community.
g. The intended use is in accordance with the CLMP, Councils Strategic Plans as well suiting the Community Facility and the community.

5.8.3. The following conditions apply to leasing a Community Facility that is to be occupied by a Community Organisation:

a. A standard lease period of ten (5+5) years applies for all agreements except where Council has approved a longer term.
b. In cases where Council has determined that a lease fee other than a Peppercorn lease fee is to apply, the lease fee is to be indexed by the Consumer Price Index annually on the anniversary of the commencement date of the lease.
c. The Lessee must not sublet or licence the Premises (or any part of it) without Council's prior written consent. If consent is given, the Lessee must provide details of any income received from subletting or licensing.
d. It will be a condition of the lease that all sub-letting and hiring out arrangements will be in line with this Policy and that lessees must seek Council approval to the terms and conditions prior to sub-letting.
e. The lessee is responsible for all outgoings related to the use of the building, land or facility, including water rates and usage, electricity usage, all insurance costs, Council rates and charges and any other charges that apply.
f. The lessee is responsible to repair and maintain the Facility in accordance with the lease agreement.
g. The Lessee may, at its own cost, undertake capital works with the prior written approval of Council, including obtaining all required building and planning approvals. Unless otherwise agreed in writing at the time of approval that the works may be severed from the lease, all structural improvements to the facility will become the property of Council and must not be removed by the Lessee.

5.8.4. Council will be responsible for the installation and maintenance of an Automated External Defibrillator (AED) only where the building is required to have an AED under the provisions of the Automated External Defibrillators (Public Access) Act 2022. The Lessee must promptly notify Council of any fault, damage, vandalism, malfunction or other issue affecting any AED installed at the premises.

5.8.5. In circumstances when Council is the owner of the building, Council will be responsible for the installation and maintenance of Fire Safety Equipment as per the requirements of the National Construction Code and Australian Standards. The Lessee must promptly notify Council of any fault, damage, vandalism, malfunction or other issue affecting any Fire Safety Equipment installed at the premises.

5.8.6. Council has a Standard Not-for-profit Lease Agreement which is used as the foundation and template for all new lease agreements.

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5.8.7. Where a lease term is to be greater than 5 years, public consultation will be undertaken in accordance with the *Local Government Act 1999* and Council's Community Engagement Policy, the key elements for consultation will include:

i. The Land;
ii. The Leased Area;
iii. The Lessee;
iv. The Term; and
v. The Permitted Use.

Schedule – Not-for-Profit

Obligations	Demonstrate that the organisation is financially viable. Demonstrated contribution to the well-being of the local community. Demonstrate investment in exchange for longer lease term.
Term	Standard lease term of 10 (5+5) years. Period greater then 10-years will require Council's approval.
Commencement Rent	Discounted rate based on permitted use not being commercial in nature and subject to discount criteria eligibility.
Annual Rent Increase	Adelaide CPI on Consumer Price Index annually on the anniversary of the commencement date of the lease.
Insurances	Lessee to pay all insurances associated with the land, buildings, occupation and public liability.
Rates, Services and other outgoings	Lessee to pay all applicable council rates and service charges, water service charges and usage, electricity, gas etc.
Asset Management	Council owned assets: Maintenance and repair – Lessee responsible. Replace at end of useful life/structural – Council Lessee owned assets: Maintenance and repair – Lessee responsible. Replace at end of useful life/structural – Lessee

5.9. Special Condition for 'Not for Profit, Community, Recreation and Sporting Groups

5.9.1. Council resolves that in the absence of any legislated rebate, all new leases and licences to Not-For-Profit community, recreation or sporting groups of rateable local government land include the special condition that a discretionary rates rebate of 75% of the fixed and general component of the rates assessment is to be granted and applied. Minute: C195:2023.

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5.9.2. Not-For-Profit Organisations can apply to Council for a further rates rebate above the 75% of the fixed and general component and/or a rebate to any service charges.

5.10. Not-For-Profit Organisation Discount Criteria

5.10.1. Not-For-Profit Organisations may be entitled to a discount to the lease base rent annual amount.

5.10.2. The eligibility criteria are for Not-For-Profit Organisations that are a registered incorporated association, and the organisation must be based on Kangaroo Island.

5.10.3. The discounts to be applied to the lease base rent are as follows: -

a. 20% No sub-lease within the leased area;
b. 20% Inclusive use of leased facilities e.g. open to the public, available for hire;
c. 15% Good governance – copies of constitution and regulations provided
d. 15% Good financial management – copies of audited financials provided
e. 10% Buildings owned by Lessee or land only lease
f. 10% Volunteer based organisation – no paid committee or board positions
g. 10% Social inclusion – membership is inclusive and open to everyone

5.10.4. The minimum lease base rent amount will be $150 +GST per annum.

5.11. **Leases - Commercial**

5.11.1. Council supports and encourages economic development business opportunities throughout Kangaroo Island.

5.11.2. A commercial entity wishing to occupy a Council asset needs to demonstrate that:

a. It is financially viable.
b. It provides a financial benefit or return to Council.
c. It meets a community need or interest.
d. It is capable of meeting the rental, maintenance, and on-going obligations of the lease.
e. It contributes to the economic well-being of the Community.

5.11.3. Commercial leases are governed by the *Retails and Commercial Leases Act 1995* (RCL Act). Under the RCL Act leases for retail premises must be of a minimum term of 5 years, unless they are short term (a fixed term of 6 months or less) or another legislative exception applies.

5.11.4. Under the RCL Act leases issued to either the Crown or an agency or instrumentality or the Crown are excluded from the operation of the Act, and as such the minimum 5-year term does not apply to these leases.

5.11.5. Under the RCL Act leases entered into after 1 July 2020 where the amount of rent payable under the lease does not exceed $50 000 per annum (exclusive of GST) and where the lessee:

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a. is registered under the Australian Charities and Not-for-profits Commission Act 2012 of the Commonwealth; or

b. is an entity that is not carried on for the purposes of profit or gain to its individual members and that is, by the terms of its constitution, prohibited from making any distribution, whether in money, property or otherwise, to its members; or

c. uses the premises the subject of the lease for the provision of health, welfare, community, cultural, sporting or recreational services on a non-commercial basis

i. are excluded from the operation of the Act, and as such the minimum 5-year term does not apply to these lessees whilst they satisfy the requirement of the exemption.

5.11.6. The RCL Act requires a Disclosure Statement to be issued by Council and returned before issuing a lease for signing.

5.11.7. A lease term of 10 years (5 + 5) will apply to commercial leases with Kangaroo Island Council, unless otherwise approved by Council. Council is not obligated to apply a maximum term of 10 years.

5.11.8. Terms greater than identified above should be considered on a case-by-case basis and subject to Council being satisfied that a longer-term arrangement would:

a. Return significant capital investment in the facility

b. Assist a lessee secure finance and grow the business model.

5.11.9. Commercial lessee is responsible for all outgoings related to the use of the building, land or facility (e.g. water rates and usage, electricity usage, insurance costs, other rates, taxes and charges etc).

5.11.10. Council will be responsible for the installation and maintenance of an Automated External Defibrillator (AED) only where the building is required to have an AED under the provisions of the Automated External Defibrillators (Public Access) Act 2022. Any costs associated with the maintenance of the AED will be on-charged to the Lessee as an outgoing. The Lessee must promptly notify Council of any fault, damage, vandalism, malfunction or other issue affecting any AED installed at the premises.

5.11.11. In circumstances where Council is the owner of the building, Council will be responsible for the installation and maintenance of Fire Safety Equipment as per the requirements of the National Construction Code and Australian Standards. Any costs associated with the maintenance of the Fire Safety Equipment will be on-charged to the Lessee as an outgoing. The Lessee must promptly notify Council of any fault, damage, vandalism, malfunction or other issue affecting any Fire Safety Equipment installed at the premises.

5.11.12. Commercial fees for existing established leased areas will be determined by an independent evaluation report and is subject to CPI increase annually on the anniversary of the commencement date of the lease.

5.11.13. Commercial fees for a newly established leased area will be determined by a set formula based on an independent evaluation report and is subject to CPI increase annually on the anniversary of the commencement date of the lease.

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5.11.14. Where a lease term is to be greater than 5 years, public consultation will be undertaken in accordance with the *Local Government Act 1999* and Council's Community Engagement Policy, the key elements for consultation will include:

i. The Land;
ii. The Leased Area;
iii. The Lessee;
iv. The Term; and
v. The Permitted Use.

Schedule – Commercial Agreements

Obligations	Demonstrate that the commercial operation is financially viable. Demonstrated contribution to the economic well-being of the local community. Demonstrate investment in exchange for longer lease term.
Term	Maximum lease term of 10 years (5+5) for new commercial tenants.
Commencement Rent	Commencement of lease – Based on Independent Market Assessment Objection by tenant to Councils assessment of the commencement rent is by decision of Council.
Rent Reviews	Every 5 years.
Annual Rent Increase	Adelaide CPI on Consumer Price Index annually on the anniversary of the commencement date of the lease.
Insurances	Lessee to pay all insurances associated with the land, buildings, occupation and public liability.
Rates, Services and other outgoings	Lessee to pay all applicable council rates and service charges, water service charges and usage, electricity, gas etc.
Asset Management	Council owned assets: Maintenance and repair – Lessee responsible. Replace at end of useful life/structural – Council Lessee owned assets: Maintenance and repair – Lessee responsible. Replace at end of useful life/structural – Lessee

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5.12. **Leases Emergency Services**

5.12.1. Council supports Emergency Services throughout Kangaroo Island

5.12.2. An Emergency Service wishing to occupy a Council asset need to demonstrate that it:

a. Is a Prescribed Emergency Service Organisation.
b. Has the capacity to meet its rental, maintenance, and on-going obligations under the Agreement.
c. Will meet a community need and contribute to the well-being of the Kangaroo Island Council.
d. Has a good governance modelling.
e. Meets the definition of 'Emergency Service' as provided in the Definitions of this Policy.

5.12.3. A maximum lease term of 21 years (5+5+5+6) will apply to Emergency Services. Council is not obligated to apply the maximum term of 21 years.

5.12.4. Lessee is responsible for all outgoings related to the use of the building, land or facility (e.g. water rates and usage, electricity usage, insurance costs, other rates, taxes and charges etc).

Schedule – Emergency Services

Obligations	Demonstrate that the organisation is financially viable. Demonstrated contribution to the well-being of the local community.
Term	Maximum lease term of 21 years
Commencement Rent	As determined by Council.
Annual Rent Increase	Adelaide CPI on Consumer Price Index annually on the anniversary of the commencement date of the lease.
Insurances	Lessee to pay all insurances associated with the land, buildings, occupation and public liability.
Rates, Services and other outgoings	Lessee to pay all applicable council rates and service charges, water service charges and usage, electricity, gas etc.
Asset Management	Council owned assets: Maintenance and repair – Lessee responsible. Replace at end of useful life/structural – Council Lessee owned assets: Maintenance and repair – Lessee responsible.

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	Replace at end of useful life/structural – Lessee

5.13. **Lease – Christmas Cove**

5.13.1. The following criteria must be met to lease a recreational boat mooring to the satisfaction of the Delegated Officer:

a. The permitted use is for mooring of a vessel registered in the name of the Underlessee for recreational purposes and not for commercial or other purposes.

b. There is a requirement for the Underlessee to have public liability insurance to the amount specified by Council.

5.13.2. The following conditions apply to leasing a berth at Christmas Cove

a. Lessee acknowledges that there is no electricity or water supply to the mooring facility.

b. Lessee must comply with the Use of *Boat Ramps and Boat Moorings Terms and Conditions* relating to Christmas Cove.

c. Lessees must not disclose or provide the access code for entry to the leased mooring area to any person other than those authorised under the lease agreement.

d. Council is not responsible for undertaking any dredging or maintaining a minimum depth of water in the marina.

5.13.3. Lease fees will be determined by the independent evaluation report and is subject to CPI increase annually on the anniversary of the commencement date of the lease.

5.13.4. Each lease will be granted for a maximum term of two (2) years. Upon expiry of the lease term, the Lessee may submit a new application for Council's consideration.

5.14. **Licence**

5.14.1. Council may grant licences over Council land, buildings or facilities where it is considered appropriate to support community, commercial, recreational or other approved activities consistent with Council's strategic objectives and legislative obligations. In determining whether to grant a licence, the Delegated Officer will consider factors including the proposed use, community benefit, risk, operational impacts, compliance history and the suitability of the applicant.

5.14.2. Licences are provided where:

a. Exclusive use of a facility is not required.

b. The intended use is consistent with any relevant Community Land Management Plans.

c. The intended use is deemed appropriate by the Delegated Officer for the Community Facility or Community Open Space.

5.14.3. The Licensee will be responsible for all costs and outgoings associated with the licensed premises or permitted activity unless otherwise agreed by Council in writing. Outgoings may include, but are not limited to:

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a. electricity, gas, water and sewer charges;
b. waste collection and recycling charges;
c. telecommunications and internet services;
d. cleaning and maintenance costs attributable to the Licensee's use;
e. statutory compliance costs associated with the Licensee's use; and
f. inspection, testing and maintenance costs for equipment or infrastructure where assigned to the Licensee under the agreement.

5.14.4. All licences granted by Council will be subject to conditions considered necessary or appropriate by Council having regard to the nature of the use and the risks associated with the activity. Licence conditions may include requirements relating to:

a. permitted use and hours of operation;
b. maintenance and cleanliness of the premises;
c. repair of any damage caused by the Licensee;
d. compliance with all relevant legislation, standards and approvals;
e. public liability insurance and risk management requirements;
f. workplace health and safety obligations;
g. protection of Council assets and infrastructure;
h. reporting, inspection and audit requirements;
i. termination, suspension or revocation provisions; and
j. any other conditions deemed necessary by Council.

5.14.5. Council reserves the right to suspend, amend or terminate a licence where the Licensee breaches the conditions of the agreement, poses a risk to persons or property, or where Council reasonably requires the land or facility for another purpose.

5.14.6. Licence fees will be determined by the Chief Executive Officer or his delegate as per the Councils *Schedule of Fees and Charges* and may take into consideration:

a. the nature and extent of the permitted use;
b. whether the use is community, not-for-profit, commercial or private in nature;
c. the level of exclusive or shared use granted;
d. market value considerations;
e. maintenance and operational costs incurred by Council; and
f. any demonstrated community benefit arising from the use.

5.14.7. Council may apply annual increases to licence fees, including increases based on the Consumer Price Index (CPI), fixed percentage increases, market review or as otherwise determined by Council.

5.15. **Crown Land**

5.15.1. The *Crown Land Management Act 2009* needs to be read in conjunction with the *Local Government Act 1999* when considering a lease or licence of

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dedicated land owned by the Crown but under the care and control of the Kangaroo Island Council.

5.15.2. Section 22 of the *Crown Land Management Act 2009* requires the application to seek Ministerial approval to grant a lease over dedicated land.

5.15.3. However, Council does not need to comply with the *Crown Land Management Act 2009* under Section 22(5) if:

a. A Council is granting a lease in relation to dedicated land in accordance with section 202 of the *Local Government Act 1999,* this section does not apply to the grant of that lease if;

i. The lease will not cause any development (within the meaning of the *Planning, Development and Infrastructure Act 2016);* and

ii. The Council is satisfied that the grant of a lease –

A. Would not detract from any existing public use and enjoyment of the land, and

B. Would not prevent the land being used for the purposes for which it was dedicated and;

C. Would not otherwise in the opinion of the Council, be improper or undesirable.

6. Availability of Policy

6.1. This Policy will be available for inspection via the Council's website: www.kangarooisland.sa.gov.au

6.2. Copies will be provided to the public upon request, and upon the payment of a free in accordance with the Council's Schedule of Fees and Charges.

SIGNED: 

Chief Executive Officer

Date: 10 November 2026

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History:		
Date Reviewed:	Version:	Reason for Amendment:
Adopted 08 / 12 / 2015	Version 1	Being a new Policy developed at the recommendation of the Local Government Authority for legislative clarity and compliance.
14 / 11 / 2017	Version 2	Periodic Review. Minute Ref# C343:2017
10 / 11/ 2026	Version 3	Comprehensive review of Policy

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