

# PARK LANDS LEASE AND LICENCE POLICY

*Date this document was adopted*

*non-legislative*

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## PURPOSE

This policy outlines the City of Adelaide's approach to managing its leasing and licensing arrangements on Community Land under its care and control within the Adelaide Park Lands for the benefit of the community.

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## STATEMENT

### Eligibility

Only incorporated businesses, educational institutions and community organisations will be granted a lease or licence over the Park Lands. Individuals will not be granted a lease or licence.

### Permitted Activities

Council will consider granting a lease or licence to an organisation where the proposed activity:

- is consistent with the objectives of the Adelaide Park Lands Management Strategy and/or Adelaide Park Lands Community Land Management Plan
- provides community benefit
- supports the outdoor recreational use of the Park Lands

Core activities of community leases and licences will relate to outdoor recreational use of the Park Lands. Secondary activities may relate to services that provide general community benefit and where appropriate, include commercial activities, enabling wider community participation of leased and licensed facilities and supporting the financial sustainability of lessees and licensees.

Commercial activities occurring within community lease/licence settings must be appropriate and subservient to the activities of the head lessee/licensee.

Core activities of commercial leases and licences will contribute to the experience and enjoyment of visiting the Park Lands.

The occupation of a leased building by a paid staff member or volunteer for administrative purposes will not be supported, except where it is integral to the daily operations of the business or activity as prescribed in the lease agreement, and/or will result in increased community use of the facility (eg tennis coaching).

Caretakers are not permitted to occupy any part of the leased or licensed area.

### Tenure

A standard lease or licence agreement will be granted for a tenure period of five years.

Where a significant capital contribution is proposed, a lease or licence may be granted for a period up to 21 years, including any right of renewal. Leases or licences with State or Federal Ministers (or their agencies) may be granted for a period up to 42 years, including any right of renewal.

The City of Adelaide acknowledges the Kurna people as the Traditional Owners of the Country where the city of Adelaide is situated, and pays its respect to Elders past, present and emerging.

Break clauses will be incorporated into leases and licences that are ten years or longer.

### **Community Engagement**

As per the *Local Government Act (SA) 1999*, community engagement will be undertaken for a minimum of three weeks (21 days) on a draft lease or licence, where:

- it proposes a tenure period of greater than five years, including any right of renewal
- or
- it is not consistent with the Adelaide Park Lands Community Land Management Plan, irrespective of the proposed tenure period

### **Parliamentary Process**

As per the *Adelaide Park Lands Act (SA) 2005*, before Council Administration can execute a lease or licence with a proposed tenure period of ten years or greater, including any right of renewal, the lease or licence must be laid before both Houses of Parliament and follow a prescribed legislated process.

This process will only occur after the lease or licence has been considered by Kadaltilla/Park Lands Authority and Council, and at the completion of community engagement.

### **Selection of Lessee/Licensee**

The selection of a lessee or licensee will be through an Expression of Interest (EOI) process.

Council Administration may deal directly with an organisation without calling an EOI when:

- the lease or licence being granted is for a tenure period of two years or less
- or
- the lease or licence will be with a State or Federal Minister (or their agencies)
- or
- the existing lessee or licensee has previously been granted a lease or licence through an EOI process and has occupied the same leased or licensed area for a period of less than 15 years
- or
- the facility to be leased or licensed has been designed to support a specific use and there is likely to be an absence of competition to lease or licence the facility

An EOI will be promoted to the public and will be open for a minimum of three weeks (21 days).

EOI submissions will be assessed by a panel against a pre-determined selection criteria that will be publicly available. In the case of a competitive EOI, the findings will be presented to Kadaltilla/Park Lands Authority and then Council for a formal Council Decision.

### Lease and Licence Fees

Commercial lease and licence fees will be informed by an independent market assessment and reviewed periodically.

Community lease and licence fees will be adopted annually as part of Council's fees and charges and will be calculated on area (ie building footprint and extent of outdoor facilities). The calculation of fees will also take into account the level of accessibility to the outdoor facilities when not in use by the lessee or licensee (eg fenced v unfenced).

Following the calculation of lease and licence fees, Council Administration will consider granting discounts to community lessees and licensees on the following basis:

Objective	Measure	Maximum Discount
Sound Governance	Complete and maintain accreditation in a recognised club development program	5%
	Compliance with conditions of the lease or licence agreement	10%
	Hold an Annual General Meeting with audited financial statements	5%
Environmental Sustainability	Develop and action an environmental management plan to improve energy, waste and water management (eg electricity contract with an all-renewable electricity retailer, toilets flushed with recycled water (GAP) or rainwater)	10%
Social Inclusion	Programs, activities and initiatives implemented at the leased or licensed facility that specifically target and cater for: <ul style="list-style-type: none"> <li>• Aboriginal and Torres Strait Islanders</li> <li>• Female participation</li> <li>• LGBTQIA+ community</li> <li>• People living with a disability</li> <li>• People from Culturally and Linguistically Diverse backgrounds</li> <li>• Socially disadvantaged people</li> </ul>	15%
Optimal Utilisation	Extent of approved sub-letting agreements	15%
	Extent of casual hires by sporting and non-sporting community organisations	15%
Total Maximum Discount		75%

Guidelines will be developed to inform how these measures are assessed. To be considered for any of these discounts, lessees and licensees will need to annually submit evidence to Council Administration demonstrating how they have achieved the objectives. Where objectives have been satisfactorily met, a discount will be applied to the following year's fees.

Council may consider a request from lessees or licensees for a reduction or deferment of its fees if it is experiencing financial hardship. A reduction in fees because of hardship will require a formal Council Decision.

### **Sub-letting and Casual Hire**

Sub-letting and casual hire of leased and licensed facilities is encouraged. Fees will be determined by Council Administration and based on benchmarking with other councils and related facilities.

Community lessees and licensees must use reasonable endeavours to make their facilities available to community groups and organisations when not in use by the lessee or licensee. The lessee or licensee must provide a contact person for managing enquiries for use of their facilities and not charge or impose more onerous obligations on the use of their facilities than Council would charge or impose.

If Council Administration is of the view that the lessee or licensee has not made their facilities sufficiently available, Council Administration will require the lessee or licensee to submit a plan to increase the level of community access.

Where a commercial or community lessee or licensee is considering a commercial organisation to utilise its facilities, the relationship must be captured within a sub-letting agreement and submitted to Council Administration for approval. Approval of such arrangements will consider the appropriateness of the proposed activity and be subservient to the activity of the head lessee/licensee.

All sub-letting agreements must be approved by Council Administration annually and comply with the conditions of the (head) lease or licence agreement.

The tenure period for a sub-letting agreement will not exceed five years, or the remaining tenure period of the (head) lease or licence if less than five years.

A sub-letting agreement with a proposed tenure period of more than five years will require a formal Council Decision.

### **Maintenance, Inspections and Insurance**

Commercial lessees and licensees will:

- be responsible for the maintenance and upkeep of its facilities including buildings and associated outdoor infrastructure
- be liable for all costs associated with operating and maintaining their facilities including appropriate levels of insurance
- report any safety or risk concerns to Council Administration immediately
- retain records of their maintenance for the duration of their lease or licence
- submit sub-letting agreements at least annually to Council Administration for approval via an on-line portal
- submit an annual report to Council Administration detailing:
  - customer/visitation/participation numbers
  - sub-letting and casual hires and income received

Community lessees and licensees will:

- be responsible for the maintenance and upkeep of its facilities including buildings, associated outdoor infrastructure and playing surfaces (where applicable)
- be liable for all costs associated with operating and maintaining their facilities including appropriate levels of insurance

- ensure all playing surfaces are safe and fit for purpose including conducting match day inspections (where applicable)
- retain records of their maintenance and inspections for up to five years
- report any safety or risk concerns to Council Administration immediately
- submit sub-letting agreements at least annually to Council Administration for approval via an on-line portal
- submit an annual report to Council Administration detailing:
  - evidence of performance against the fee discount objectives
  - membership/participation/visitation numbers
  - sub-letting and casual hires and income received

Council Administration will:

- provide a mowing service to all community lessees/licensees (where applicable)
- conduct an annual inspection of leased and licensed facilities
- conduct an annual Park Lands lease and licence forum including sub-lessees

### **Ownership of Improvements**

All fixed improvements proposed upon a leased or licensed area will require the approval of Council and be vested in Council at the expiry of the lease or licence agreement.

The removal of any fixed improvements by a lessee or licensee at the expiry or sooner determination of the lease or licence will require the approval of Council.

### **Compensation**

Any new lessee or licensee will not be required to compensate the previous lessee or licensee, nor will Council compensate a lessee or licensee at the end of its tenure term despite an agreement not being renewed, or where an agreement is terminated early by the lessee, licensee or lessor.

### **Liquor Licence**

A lessee or licensee (including sub-lessees and casual use hirers) must not sell, serve or supply to persons, or allow persons to consume alcohol on or from their facilities without first obtaining the consent of Council Administration and all required consents from any relevant Statutory Authorities as per the *Liquor Licensing Act (SA) 1997*.

### **Signage**

Permanent signage upon lease and licence areas will be consistent with Council's Wayfinding Strategy. Temporary signage will be supported where it is promoting specific events, activities or initiatives to be delivered by the lessee or licensee (including sub-lessees and casual use hirers) within their leased or licensed area and as per the Planning and Design Code (SA) 2022:

- not exceed 2m<sup>2</sup>
- not be displayed more than one month prior to the event and one week after the event concludes

- not move or flash, reflect light, use internal lighting or principally advertise brands or products

### **Car Parking**

A lessee or licensee will be granted one annual vehicle permit per leased or licensed area for the purpose of undertaking general maintenance of their facilities. Vehicles dropping off and/or picking up supplies, materials, equipment, etc are not permitted to park outside of designated parking areas when unattended.

Requests for a vehicle permit from holders of an Australian Disability Parking permit will be considered where they are a committee/board member of a lessee or licensee and there is no viable alternative.

### **Naming Rights**

All proposals to name a leased/licensed facility that are contrary to the naming of the related park require a formal Council Decision.

### **Gaming Machines**

Gaming machines will not be permitted in leased or licenced facilities.

### **Park Lands Events**

Council Administration and event organisers will foster cooperative business opportunities and minimise disruption to commercial and community lessees and licensees in the Park Lands.

### **Delegations**

Kadaltilla/Park Lands Authority will provide advice on, and Council will formally consider:

- the appointment of a lessee or licensee following a competitive EOI process (ie more than one eligible submission)
- a lease or licence that is for a tenure period of more than five years, including any rights of renewal
- a lease or licence that is not consistent with the Park Lands Community Land Management Plan
- a sub-letting agreement that is for a period of more than five years
- a lease or licence where significant negative issues are raised through community engagement
- a proposal to name a leased or licensed facility that is contrary to the naming of the related park

In addition to the above, Council will formally consider:

- a request from a lessee or licensee for a reduction of its fees if it is experiencing financial hardship

Council Administration will:

- appoint a lessee or licensee following a non-competitive EOI process (ie only one eligible submission)

- negotiate a lease and licence in accordance with this policy where it is consistent with the Park Lands Community Land Management Plan and is for a period of five years or less
- finalise a lease or licence agreement where it is for a period of greater than five years and/or is not consistent with the Community Land Management and has been subject to community engagement, providing no significant negative issues have been raised through the community engagement process
- approve a sub-letting agreement that is consistent with this policy
- enter into a surrender, variation or assignment of an existing lease or licence where the agreement is consistent with this policy (and does not have a Common Seal affixed)

### Limitations of this Policy

This Policy does not apply to:

- Activities or works on public roads through the Park Lands (pursuant to sections 221 and 222 of the *Local Government Act 1999*)
- City Works permits
- Community gardens
- Depasturing licences granted to individuals to allow horses on Lefevre Park/Nantu Wama (Park 6)
- Leases or licences outside of the Adelaide Park Lands or Park Lands areas not under the care and control of the City of Adelaide
- Park Lands Event licences
- Park Lands hire agreements and permits
- Temporary works and compounds
- Tenants within the Adelaide Aquatic Centre and North Adelaide Golf Course as part of business operations
- The lease and licence granted to the Minister for Transport and Infrastructure for Adelaide Oval – these are provided for in the *Adelaide Oval Redevelopment and Management Act 2011*

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## OTHER USEFUL DOCUMENTS

### Related documents

- Active City Strategy
- Adelaide Events Guidelines 2022
- Adelaide Park Lands Management Strategy
- Adelaide Park Lands Community Land Management Plan
- Planning and Design Code 2022

### Relevant legislation

- *Adelaide Park Lands Act (SA) 2005*
  - *Crown Land Management Act (SA) 2009*
  - *Liquor Licensing Act (SA) 1997*
  - *Local Government Act (SA) 1999*
  - *Planning, Development and Infrastructure Act (SA) 2016*
  - NOTE: The *Retail and Commercial Leases Act 1995* does not apply to the Adelaide Park Lands pursuant to an Order granted by the Minister for Business Services and Consumers on 28 December 2011.
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### GLOSSARY

Throughout this document, the below terms have been used and are defined as:

**Adelaide Park Lands:** Those areas of the Park Lands defined by the *Adelaide Park Lands Act 2005*, which have been Gazetted by Parliament and defined to be under care and control of the City of Adelaide.

**Adelaide Park Lands Community Land Management Plan:** A document required under the *Local Government Act (SA) 1999*, that informs how community land under the care and control of the City of Adelaide will be managed in accordance with the Adelaide Park Lands Management Strategy, including the identification of leased and licensed areas.

**Adelaide Park Lands Management Strategy:** A document required under the *Adelaide Park Lands Act (SA) 2005*, that sets the strategic framework for the overall planning and management of the Adelaide Park Lands.

**Break Clause:** A clause in a lease or licence giving rights to the lessee or licensee to terminate their agreement at a particular point in time.

**Building Floor Area:** The combined total of indoor building floor space measured to the inside wall lines.

**Building Footprint:** The ground level area of a building measured to the outside wall line, not including open hardstand areas.

**Casual Hire:** Relates to one off or irregular use of leased or licensed facilities by an organisation.

**Commercial Lease/Licence:** Where the lessee or licensee's core activity involves the selling of goods or services for profit.

**Community Lease/Licence:** Where the lessee or licensee provides services to the community and does not operate to make a profit for its members. Not for profit clubs and associations, peak sport and recreation bodies and educational institutions are considered community lessees and licensees. Any commercial activity undertaken by a community lessee/licensee is done so for the purpose of reinvesting back into the service for the benefit of its members and the community.

**Community Engagement:** A formal process where Council seeks community feedback.

**Core Activity:** The primary purpose for which a lease or licence is granted to an organisation.

**Expression of Interest:** A formal process where any eligible organisation is invited to submit an interest in leasing or licensing an identified area of the Park Lands.

**Expression of Interest (Competitive/Non-Competitive):** Where more than one eligible submission is received following an expression of interest process, it will be deemed to be a competitive expression of interest. Where only one eligible submission is received and it satisfies the selection criteria, it will be deemed to be a non-competitive expression of interest.

**Fees:** Charges applied annually by Council to a lessee or licensee. Commercial lessee/licensee fees to be informed by an independent market assessment. Community lease/licence fees to be approved annually by Council. Sub-letting fees to be set by Council (Administration) and informed through benchmarking.

**Improvements:** Any fixture, fitting or structure constructed or installed on the leased or licensed area by the lessee/licensee or lessor.



**Independent Market Assessment:** Where Council seeks the services of an independent valuer to ascertain the appropriate fees to be charged to a commercial lessee or licensee based on similar market circumstances.

**Lease:** A lease confers an exclusive contractual right to a lessee to use the land, whereby the lessee facilitates access via an appropriate means (eg membership, sub-lease, casual booking, and entry ticket). A lease is generally provided for buildings that require a level of security of tenure. It may also apply to an outdoor sports facility or field that is fully fenced.

**Lessee/Licensee:** An organisation that has a direct legal relationship with Council via a lease or licence.

**Licence:** A licence confers a non-exclusive contractual right to first right of use of the licensed area, but allows public access when not in use by the licensee (and any sub-licensees). A licence is generally provided for open areas such as playing fields.

**Maintenance and Upkeep:** This relates to all direct and indirect costs and tasks associated with maintaining leased and licensed facilities to ensure they remain fit for purpose for the intended activity.

**Mowing Service:** To be defined

**Parliamentary Process:** A formal process contained within the *Adelaide Park Lands Act (SA) 2005*, that requires Council to submit a draft lease or licence agreement, with a tenure period of ten years or more, to the South Australian Parliament.

**Right of Renewal:** Where a lease or licence contains a clause to continue occupancy at the end of a prescribed renewal tenure, but does not confer rights that exceed the agreed maximum tenure of the lease or licence.

**Significant Negative Issues:** Where feedback is received through community engagement, that if adopted, would materially change the intent of the proposed lease or licence.

**Sub-letting:** Where a lessee or licensee enters into an agreement with another organisation to utilise the leased or licensed facilities.

## ADMINISTRATIVE

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every **five** years unless legislative or operational change occurs beforehand. The next review is required in **2027**.

### Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits

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