

Community Occupancy Guidelines

Auckland Council – July 2012

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**Auckland
Council**

Te Kaunihera o Tāmaki Makaurau



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Introduction

These guidelines have been developed to assist local boards in making decisions regarding the allocation of community occupancy agreements and to provide an overview of standard terms and conditions.

The guidelines are also intended to provide community groups wishing to apply for a community occupancy agreement an overview of:

- eligibility criteria
- the application process
- standard terms and conditions.

The standard terms and conditions within these guidelines have been developed based on best practice in community leasing, and are a result of consultation with local boards and communities.

Although the standard terms and conditions presented will form the basis for council officer recommendations, they are only guidelines. Local boards may, at their discretion, choose to vary from these recommendations on a case-by-case basis as they deem appropriate.



Scope

In scope

Community occupancy agreements may be granted to community groups undertaking community activities. 'Community groups' are defined as:

- a non-profit organisation or association of persons who have the primary aim of working to provide services and benefits to the community;
- any funds generated are used to maintain and develop the organisation to support its community services and activities;
- having open membership criteria; and
- restrictions are not imposed, such as setting membership or participation fees at a level that exclude most people who might want to participate.

Occupancy agreements issued may cover several types of spaces, including:

- council-owned land
- council-owned buildings
- rooms within larger council-owned buildings
- land held by council for public amenity and parkland purposes, including land held under the Reserves Act 1977
- land and/or buildings on-leased by council.

Out of scope

The following types of arrangements are out of the scope of these guidelines:

- leases, licences and other agreements on regional parks, which are subject to the terms and conditions outlined in the relevant Regional Parks Management Plan¹.
- leases or licences on land subject to special agreements or co-governance arrangements (e.g. volcanic cones)²
- occupancy agreements for commercial purposes
- the ad-hoc use of council buildings and parkland.

¹ For more information (including a list of regional parks and a copy of the Regional Parks Management Plan 2022), <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/topic-based-plans-strategies/parks-sports-outdoor-plans/regional-parks-management-plans/Documents/regional-parks-management-plan-2022.pdf>

² Any further encumbrances on Crown land administered by Council that is included in the deeds of settlement that cover Tamaki Makaurau must be approved by the relevant iwi and/or the co-governance body.

Criteria

Eligibility criteria

To be eligible for a community occupancy agreement, community groups should:

- be legal entities and have not-for-profit status (e.g. be registered as an incorporated society or charitable trust)
- meet the definition of a community group as defined by the Community Occupancy Guidelines
- provide activities, services or programmes that align with, and promote strategic outcomes for, the community as defined by the relevant local board through its local board plan³
- meet needs identified by the respective local board and the community within the local board area
- demonstrate the benefits of their activities in terms of outcomes achieved
- have complied with any occupancy or other arrangement the group may have had with council (including any legacy council) during the three years preceding the application
- be able to demonstrate its viability to deliver its services or activities through:
 - voluntary contributions, and/or
 - financial commitments, as determined through an analysis of current accounts and budgets provided
- demonstrate a clear and effective governance structure
- provide proof of public liability insurance.

Land held under Reserves Act 1977

If a proposed lease or licence is of land held under the Reserves Act 1977, applicants must demonstrate that the occupation is necessary to enable the public to obtain the benefit and enjoyment of the reserve or for the convenience of persons using the reserve⁴.

Assessment criteria

In addition to general eligibility requirements, the following factors should be considered in assessing community occupancy applications.

- Suitability of the building or space for that particular community group, in terms of:
 - location
 - physical characteristics
 - accessibility (i.e. building / fire safety / Occupational Safety and Health (OSH) considerations)
 - compatibility with reserve values and classification as defined by the Reserves Act 1977
 - potential impact on neighbours and other users
 - statutory requirements or resource consents.

³ Local board plans can be viewed at:
<http://www.aucklandcouncil.govt.nz/EN/AboutCouncil/PlansPoliciesPublications/localboardplans/Pages/home.aspx>.

⁴ For parkland held under the Reserves Act 1977, the proposed activity must meet the requirements outlined in the Act under sections 54, 56, 58A or 61. To view the Reserves Act 1977, see: <http://www.legislation.govt.nz/act/public/1977/0066/latest/DLM444305.html>

Other factors to consider are:

- the costs involved in altering the building or space to accommodate the group, or the ability of the group to resource and undertake any changes itself
- whether other groups in the community are offering similar services and/or activities
- other options the community group may have for accommodation
- the history and sustainability of the community group within that community
- the willingness of the community group to share resources and/or space with other compatible groups
- the ability of the group to pay the tenant's outgoings.

Exclusions

It is suggested that the following groups and activities be excluded from consideration for a community occupancy agreement:

- groups and entities who do not meet the definition of a community group as defined in the guidelines
- groups where religious worship or the promotion of party politics is the primary purpose
- groups applying for a lease or licence on land subject to special agreements or co-governance arrangements (e.g. volcanic cones)
- groups applying for a lease or licence on a regional park.



Parkland considerations

Each application for a new building on parkland must be considered against the criteria presented in this section. The term 'parkland' is used within these guidelines to encompass:

- parks (land not reserved under the Reserves Act 1977 and generally administered under the Local Government Act 2002);
- reserves (land that is reserved under the Reserves Act 1977); and
- mixtures of the two (e.g. the former Auckland Regional Council regional parks).

Criteria

Applications for community occupancy agreements associated with new buildings on parkland will be considered against the following:

- the consistency with both the zoning for the parkland under the relevant District Plan and the reserve classification for parkland if managed under the provisions of the Reserves Act 1977
- the consistency with all additional acts that guide council in the management of the area of interest, such as the Historic Places Act 1993 and the Conservation Act 1987
- whether the proposal conforms with and contemplated in the approved management plan for the parkland
- the consistency with other approved consents, concessions, leases and licences relating to the area of parkland under consideration
- the suitability of the site (i.e. land stability and sea level rise) and whether other planning requirements (such as wastewater, stormwater, access, egress and parking) can be met in the location
- whether any adverse effects, including cumulative effects of the proposal on the park values, park infrastructure, approved activities, the enjoyment of other park users and adjoining communities can be sufficiently avoided, mitigated or remedied
- the degree to which persons affected by the proposal (including tangata whenua) support the application through any relevant submissions received
- the potential to set a precedent that could give rise to similar activities, which in combination may result in adverse cumulative effects on regional parks in the future
- the degree to which exclusion of the public is necessary for the protection of public safety, the security or competent operation of the proposed activity
- the benefits to the local and regional communities and tangata whenua
- whether the proposal could reasonably be undertaken in another location on the park, on another park entirely or on another location which is not on a park, where the potential adverse effects would be significantly less.

Reserves Act 1977 considerations

Public notification and prior consent from the Minister of Conservation is required in the event a proposed lease or licence of reserved land does not conform with or is contemplated by the relevant reserve management plan. The only exception to this requirement is if the associated resource consent application for the proposal had been publicly notified under section 93 of the Resource Management Act 1991.

Where a community occupancy agreement is granted on land held under the Reserves Act 1977, it shall be for a term not exceeding 33 years, with or without a right of renewal, perpetual or otherwise, for the same or any shorter term.

Community occupancy agreements on parkland held under the Reserves Act 1977 that include a commercial use must show that the trade, business or occupation must be necessary to enable the public to obtain the benefit and enjoyment of the reserve, or for the convenience of people using the reserve.

Additional considerations

Conditions may be imposed on any community occupancy agreement to protect the park environment, the health, safety and wellbeing of visitors, and to facilitate park operations. These include but are not limited to:

- the location and duration of the activity
- the times of day or year the activity may be undertaken
- measures for mitigating adverse effects on the environment and natural and heritage resources
- measures for monitoring the effects of the activity
- the number of people (including participants, spectators and support staff / volunteers) who may participate
- the use of park facilities or services
- health and safety factors
- a trial period to assess the effects of the activity on the park
- meeting accreditation and/or training requirements
- any modifications / alterations to the proposed activity and associated infrastructure
- sub-leasing
- the review of the approval and/or any conditions imposed
- any other matter council considers relevant to ensure the activity is compatible with the objectives of this plan.

These conditions may be reviewed where:

- additional buildings and/or structures are proposed
- the scale and/or nature of use is proposed to change or has changed over time
- adverse effects are occurring on the park environment or on other park users
- the park environment has substantially changed through natural processes (e.g. coastal erosion)
- monitoring has identified that the lessee or licensee is under-utilising a building or space in relation to the original terms and conditions of their lease or licence.

Application process

Groups wishing to apply for a community occupancy agreement may register their interest by contacting the council call centre.

In cases of a vacant building, space or land identified as appropriate for development, council will seek applications through:

- public advertisement
- an expression of interest process
- direct notification to groups who have registered interest.

Applications for community occupancy agreements will be assessed on a case-by-case basis as and when they become available.

If a group decides not to exercise its renewal option at the end of the term (or earlier) for all council-owned buildings or spaces, availability will be publicly notified and expressions of interest called for⁵.

Groups that own their own buildings have an automatic right to re-apply at the end of their occupancy terms without public notification.

Process

The following process will apply to all groups seeking a community occupancy agreement from council:

1. Application forms available online⁶ or via post upon request.
2. Application form submitted to council.
3. Council officer(s) meet with group to discuss application.
4. Council officer(s) assess application based on the assessment criteria outlined within the Community Occupancy Guidelines.
5. Council officer(s) submit recommendation (along with supporting documentation) to relevant local board⁷. Local boards may request that group attends a formal local board meeting to discuss application.
6. Council officer(s) and local board members work with group to develop a Community Outcomes Plan, which identifies the:
 - benefits that the group will provide to the community
 - measures used to review the group's performance against the plan over time.
7. Occupancy agreement terms negotiated between local board and the group in accordance with the Community Occupancy Guidelines and standard agreement terms.

⁵ Community occupancy agreements for community halls and community houses may not necessarily be publicly notified.

⁶ Applications can be found on the Auckland Council website: <http://www.aucklandcouncil.govt.nz/EN/newsevents/culture/communityfundingsupport/Pages/communityoccupancy.aspx>

⁷ If a proposed lease or licence of land is not included within the relevant reserve management plan, an additional process and/or consultation may be required to meet the requirements outlined in the Reserves Act 1977.

Types and terms of agreements

Community occupancy agreements may take the form of either a:

- licence to occupy; or
- lease.

The main types and terms of occupancy agreements are outlined in the table below:

Type of agreement	Category	Length
Licence to occupy	Council-owned land with no fixed assets	<ul style="list-style-type: none"> • five years standard, with a further five year right of renewal • 10 year term total • term may be extended if linked to a lease.
		<p>Recommended for newly established community groups:</p> <ul style="list-style-type: none"> • one year standard, with a further one year right of renewal • two year term total.
Lease	Council-owned land and building	<ul style="list-style-type: none"> • five years standard, with a further five year right of renewal • 10 year term total.
		<p>Recommended for newly established community groups:</p> <ul style="list-style-type: none"> • one year standard, with a further one year right of renewal • two year term total.
	Community group-owned building on council-owned land	<ul style="list-style-type: none"> • 10 years standard, with a further 10 year right of renewal • 20 year total term.



Variation by Local Boards

The terms outlined in the table on page 11 are standard recommendations. Where a local board wishes to vary the length of term offered it may do so, however it is suggested that the varied terms align to one of the terms recommended.

Example: a group in a council-owned building may be offered a 10 + 10 year term as suggested for community-owned buildings, rather than the 5 + 5 year term recommended.

Development of facilities by community groups

Where a community group wishes to develop a building and requires access to adjoining open space (i.e. sports clubs), a lease may be granted for the building and a separate licence to occupy may be granted for conditional access to the adjoining open space.

In order to seek exclusive use of open space, the group must demonstrate:

- the need for exclusive use of open space (i.e. evidence that the space is already exclusively used by the group); and
- that significant investment in a new building would not be fiscally wise if unrestricted public access to the adjoining open space was allowed.

In addition, the term of a licence to occupy may be extended when linked to a lease.

Where a group is granted a community occupancy agreement and wishes to develop its own building on council-owned land, it may be offered a temporary licence to occupy the land to bridge the time between approval and building competition. The group will be transferred onto a lease with the standard length of term upon completion of the building.

Rental fees and charges

The standard rental amount shall be a proposed administration fee of \$1,300 per annum if requested. Additionally, a community group will be required to meet any necessary compliance costs associated with the agreement (e.g. resource consents, building consents, liquor licences, food licences etc.).

If a community group generates significant revenue over expenditure, the relevant local board may choose to charge a percentage rental at rent review, unless lessees can provide evidence of:

- planned building upgrade, development or maintenance; and
- planned programmes, services or activities.

Responsibilities

The following table outlines standard tenants' responsibilities in relation to:

- energy and water
- rates
- building insurance
- structural maintenance
- non-structural maintenance.

	Energy and water	Rates	Building Insurance	Structural maintenance	Non-structural maintenance
Council-owned building	Tenant	Council	Council	Council	Council
Rooms within council buildings	Tenant	Council	Council	Council	Council
Community group-owned building	Tenant	Council	Tenant	Tenant	Tenant



Council-owned buildings

Exclusive use

Community groups with exclusive occupancy of council-owned buildings are requested to pay a proposed annual subsidised maintenance fee, as outlined in the table below:

Leased building / space size	Proposed maintenance fee (per annum)
Less than 100m ²	\$2,500
Over 100m ² and less than 500m ²	\$5,000
Larger than 500m ²	\$10,000

Maintenance fees are comprised of the following components:

- building insurance
- compliance costs associated with:
 - Building Warrant of Fitness
 - Health and Safety in Employment Act
 - Fire and egress codes (including signage)
- maintenance provided by council as outlined in the terms of the occupancy agreement.

The tenant shall reimburse council for the cost to repair damage caused through misuse or neglect, including (but not limited to):

- plumbing stoppages
- interior graffiti
- broken glass.

Non-exclusive use

Community groups occupying rooms within larger council buildings are required to pay an operational charge for the space occupied. The amount charged to groups is based purely upon recovery of the direct costs to council of providing the premises.

Operational charges are made up of the following components:

- building insurance
- share of overheads incurred (e.g. electricity and water charges)
- maintenance provided by council as outlined in the terms of the occupancy agreement.

The tenant shall reimburse council for the cost to repair damage caused through misuse or neglect, including (but not limited to):

- plumbing stoppages
- interior graffiti
- broken glass.

Accountability

Community groups are required to submit an annual report, complete with an accountability form based on the agreed Community Outcomes Plan as a condition of tenancy. The Community Outcomes Plan will include information on the group's activities, membership and revenues.

Council reserves the right to audit community group annual reports.

Community Outcomes Plan

Upon being granted an occupancy agreement, community groups will work with council officers and the relevant local board to develop a Community Outcomes Plan that identifies the:

- benefit that the group will provide to the community; and
- measures that will be used to review the group's performance against the plan over time.

Although the Community Outcomes Plan will be binding, council will work with community groups to address any issues that may arise that are preventing the group from meeting agreed outcomes.

Council retains the right to terminate an occupancy agreement should a community group fail to achieve agreed outcomes.

Termination

Community groups will be subject to annual performance reviews to ensure that the community benefits identified in the Community Outcomes Plan are being realised.

Lease and licence holders may be required to meet with the relevant local board to answer questions relating to performance as part of the annual performance review.

Council reserves the right to investigate and terminate an occupancy agreement on notice in accordance with the terms of the agreement if:

- a group is in significant breach of the occupancy agreement as determined by council
- a group consistently fails to achieve the outcomes outlined in the agreed Community Outcomes Plan
- the group demonstrates poor governance as determined by council
- the land is required for another purpose
- a group is undertaking illegal activities on the lease / licence site
- council considers that the premises are not being used in accordance with the terms of the occupancy agreement.

General provisions

Sharing of facilities

Community groups will be encouraged to cluster and share buildings and spaces in order to:

- optimise the use of council buildings and land; and
- acknowledge the community benefits of co-locating services and activities.

The relevant local board may require groups to share the premises they have been allocated should they consider that the premises are not being fully utilised in accordance with the terms of occupation.

Right to require relocation

The relevant local board may choose to move community groups occupying council-owned buildings and spaces if:

- other premises available are determined to be equally or more suitable for the group; or
- another group is determined to be better suited to use the premises already occupied.

Sub-leasing

Sub-leasing is generally not permitted in council-owned buildings, although the relevant local board has discretion to approve sub-leasing arrangements as deemed appropriate.

Sub-leases within community-owned buildings on council land should be publicly advertised and subject to an open and transparent application process. The relevant local board will receive officer recommendations and decide sub-leases as appropriate; however, the views of the head lessee will be considered as part of the process.

The Community Occupancy Guidelines do not preclude sub-leasing to commercial operators, although such arrangements require approval from the relevant local board.

Ad-hoc hireage to other groups and members of the public is permissible, in compliance with the terms and conditions of the Auckland Council hireage policy.

Ownership⁸

Where a community group-owned building is no longer required by the group (or where council decides that the group is no longer feasible or requires the land for another purpose), the following options will be made available:

- council may choose to purchase the building from the group for a mutually agreed price; and
- the group may choose to remove the building and relocate it to another site and reinstate the land to the satisfaction of council.

Where neither of the above options is appropriate, the group will be held responsible for the demolition and removal of the building and reinstatement of the land to the satisfaction of council.

⁸This provision should be considered alongside the provisions outlined in schedule one of the Reserves Act 1977.

Expiry of community occupancy agreements

Upon final expiry, a community occupancy agreement will automatically roll over on a month-by-month basis under the same terms and conditions as the original agreement until a new agreement is reached.

Allocating buildings and spaces for community occupancy

Where there is a commercial lease in a council service building, the relevant local board has the option of making the space available for community occupancy upon final expiry. However, the relevant local board should consider the impact of doing so on its operational budgets before making such determinations.

Additional assistance

Where a group holds a community occupancy agreement with council, it may not apply for additional funding through other council funding schemes for costs associated with occupancy (e.g. rental, maintenance fees, and building / resource consents) unless otherwise deemed appropriate by the relevant local board.

Guidelines review

These guidelines will be reviewed every three years or when otherwise deemed necessary by council.



Glossary

Term	Explanation
Community group (otherwise referred to as a “group”)	<ul style="list-style-type: none"> • a non-profit organisation or association of persons who have the primary aim of working to provide services and benefits to the community • any funds generated are used to maintain and develop the organisation to support its community services and activities • has open membership criteria • restrictions are not imposed, such as setting membership or participation fees at a level that exclude most people who might want to participate.
Community purposes	<ul style="list-style-type: none"> • activity where the local community or community of interest gains a public good benefit, but does not benefit any particular individual.
Lease	<ul style="list-style-type: none"> • contract for possession of a defined premise and/or property, for a defined term, for consideration (value) and for exclusive use • creates an interest in the landowner’s land.
Lessee	<ul style="list-style-type: none"> • community group which is about to enter into or which has signed a community occupancy agreement with Auckland Council • if an agreement has been signed it is the named group in the agreement, including any lessee’s successors, permitted assignees including staff, agents, contractors and invitees of the lessee.
Licence to occupy	<ul style="list-style-type: none"> • contract that allows a party to come onto a defined premise to carry out an activity, usually on a regular and/or frequent (can be continuous) basis, usually for a shorter term than a typical lease • licence does not create an interest in the landowner’s land.
Parkland	<ul style="list-style-type: none"> • parks (land not reserved under the Reserves Act 1977 and generally administered under the Local Government Act 2002) • reserves (land that is reserved under the Reserves Act 1977) • mixtures of the two (e.g. the former Auckland Regional Council regional parks).
Right of renewal	<ul style="list-style-type: none"> • provision in a lease or licence under which the occupier has the right to renew the agreement for a further term.
Renewal	<ul style="list-style-type: none"> • opportunity for lessee and council to review the occupancy agreement • if both parties are satisfied that the community group is meeting its objectives, agreement is reached to continue the occupancy agreement for another defined period.
Sub-lease	<ul style="list-style-type: none"> • the letting out of all or part of a leased property to a third person (sub-lessee) • first tenant (head lessee) will be responsible for payment of rent and all charges to the landlord and for any damage caused by the sub-lessee to the property • there is no agreement between the landlord and the sub-tenant but landlord’s consent to the sub-lease is required.

