



ADELAIDE PARK LANDS LEASING AND LICENSING POLICY

Approved: By Council on 27 January 2016

Owner: Program Manager – Infrastructure Management

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1. Introduction

- 1.1. Council regularly receives requests for the use of the Park Lands within its care, management and control.
- 1.2. This document should be read in conjunction with the Park Lands Leasing and Licensing Operating Guidelines.

2. Definitions

- 2.1. For the purposes of this policy, the following definitions apply:

- Adelaide Park Lands: Those areas of the Park Lands defined by the Adelaide Park Lands Plan and held in the care and control of the Adelaide City Council (community land), including buildings.
- Commercial operation/use is one delivered by the private sector which provides some public benefit and contributes to people actively using or enjoying the Park Lands.
- Community sport is that organized by groups within the general population without unreasonable limitations on participation. Such activity may include operations of a commercial nature such as kiosks and social functions but which are aimed at supporting the sporting activity in a not-for-profit capacity.
- Community Use is use of a facility by the community including members of a club, institution, association or incorporated body who has a lease/license or sub-lease/license over the facility. The level of community use of (or access to) a facility is measured by the level of usage that occurs, irrespective of whether that usage is structured or unstructured.
- Educational sport is that provided by educational institutions within a broader curriculum for the benefits of its students.
- Lease: A lease confers an exclusive contractual right to a lessee to use the land, whereby the lessee facilitates access via an appropriate means (e.g. membership, sub-lease, casual booking, and entry ticket). A lease is generally provided for buildings that require a level of security of tenure however a lease may also be secured over land i.e. a ground lease. May also apply to an outdoor sports facility or field that is fully fenced.
- Licence: A licence confers a non-exclusive contractual right to occupy the licensed area and is generally provided for playing fields and grants first right of use to the licensee, but allows general public access when not in use by the licensee (and any sub-licensees).
- Current Market Review: Means the highest rent obtainable for the premises taking into account all the relevant market evidence and variables on the basis of occupation of the Premises on substantially the same terms and conditions as in the lease but excluding and disregarding any cash payment or other payment, goodwill, lessee's fixtures and fittings on the premises, allowance, abatement or other concession paid or offered to the lessee under the lease or offered to lessee's of comparable premises.
- Sporting Clubs and Associations operate as not for profit organisations,

reinvesting revenue into facility development and management, and administration and promotion of the sport. As such, any commercial activity undertaken by a sports club or association is done so for the purpose of reinvesting into the sport for the benefit of its community.

- Sporting uses predominantly relate to outdoor sporting activities conducted by community and educational organisations consistent with the recreational purpose of the Park Lands.

3. Purpose of this document

- 3.1. To support, through the granting of leases and licenses, the undertaking of sporting and commercial activities on the Park Lands which underpin their use and activation for both formal and informal recreation.
- 3.2. To provide a consistent framework for the establishment and management of leasing and licensing arrangements for the Park Lands to ensure that Council:
 - 3.2.1. Satisfies the principles of Council's strategic and corporate policies, specifically (as may be amended from time to time):
 - City of Adelaide Strategic Plan
 - Adelaide Park Lands Management Strategy
 - Park Lands Community Land Management Plans
 - Active City Policy
 - Active City Strategy
 - Asset Management Policy
 - Adelaide Park Lands Sports Infrastructure Master Plans
 - 3.2.2. Considers sporting and commercial operations which support outdoor recreational use of the Park Lands and current community trends;
 - 3.2.3. Applies processes that are equitable and transparent;
 - 3.2.4. Complies with all legislative requirements;
 - 3.2.5. Facilitates optimal community sporting use of the Park Lands, through the granting a leases or licences, and be of significant community benefit.

4. Background

- 4.1. Adelaide City Council has care and control of approximately 80% of the Park Lands and has, since the earliest days of the City, granted leases and licences for the use of portions of the Park Lands for both sporting (community) and commercial uses.
- 4.2. Sporting Uses
 - 4.2.1. In 1908 there were 221 sporting permits in use in the Park Lands. In 2015 there are approximately 31 sporting licenses and leases (together with a number of sporting sub-let arrangements). These licenses and

leases provide for the playing of over 20 different sports, occupy approximately 13% of the Park Lands and (with approximately 1.7 million visits) account for approximately 20% of total Park Lands uses.

4.3. Why Council grants sporting leases and licences

- 4.3.1. The provision of licenses and leases for sporting purposes provides a means to support the provision of organized sport for community and educational organisations.
- 4.3.2. Such uses broaden the diversity of the Park Lands and provide a means of improving them through partnerships with external (non-Council) organisations.
- 4.3.3. Sporting leases and licences may be granted if the proposed use is consistent with long terms plans for the area as expressed in the Adelaide Park Lands Management Strategy and the Park Lands Community Land Management Plan.

4.4. Why Council grants commercial leases and licences

- 4.4.1. Leases for commercial activities such as restaurants and kiosks support people's enjoyment of the Park Lands and provide a service which may be more efficiently delivered by the private sector.
- 4.4.2. Other commercial leases may exist to complement or support specific recreational uses.

5. **Strategic Context – Guiding Strategy and Policy**

- 5.1. The Adelaide Park Lands Act 2005 and Adelaide Park Lands Management Strategy (2010) are the lead legislation and planning documents (respectively) guiding management and decision making for the Park Lands.
- 5.2. These documents provided the policy context for the provision of leases and licences for sporting and commercial purposes to support formal and informal use of the Park Lands.
- 5.3. Adelaide Park Lands Act 2005

The Statutory Principles in the Adelaide Park Lands Act 2005 include the two following relevant statements used to guide the preparation of this policy:

- 5.3.1. the Adelaide Park Lands should be held for the public benefit of the people of South Australia, and should be generally available to them for their use and enjoyment (recognising that certain uses of the Park Lands may restrict or prevent access to particular parts of the Park Lands).
- 5.3.2. the Adelaide Park Lands reflect and support a diverse range of environmental, cultural, recreational and social values and activities that should be protected and enhanced.

5.4. Adelaide Park Lands Management Strategy

The draft Adelaide Park Lands Management Strategy recognises the Park Lands as Adelaide's hub for sport and recreation, with strategies that aim to:

- 5.4.1. Strengthen the role of the Park Lands as a regional destination for competitive sport and a variety of active and passive forms of recreation.
- 5.4.2. Optimise the use of sport and recreation areas outside of game and training times.
- 5.4.3. Support activation of the Park Lands by upgrading and enhancing buildings and structures responsive to their park settings.

The following actions in the draft Park Lands Strategy relate to the role and objectives of this policy:

- 5.4.4. Ensure that leasing and licensing of sporting and recreation areas in the Park Lands is undertaken in a transparent and equitable manner.
- 5.4.5. Upgrade playing areas, buildings, viewing areas, exercise equipment and other facilities to support sport and recreation.
- 5.4.6. Provide sports-specific facilities in designated locations to increase the diversity of sports opportunities available to the community.
- 5.4.7. Deliver a variety of facilities, including clubrooms and small-scale commercial operations, to support community use and participation in sport and recreation.
- 5.4.8. Deliver improved playing surfaces (natural and synthetic) and lighting to maximise activation of sports fields and courts.
- 5.4.9. Permit commercial services to operate where they provide community benefit and support recreational use of the Park Lands.
- 5.4.10. Provide for unrestricted community access to sports fields and recreation areas outside of designated game and training times, ensuring there is a reasonable definition of required ground maintenance and rest periods.

5.5. Park Lands Community Land Management Plan (CLMP)

The Park Lands CLMP identifies areas to be used for sport. For a lease or licence to be granted it must be consistent with the CLMP.

5.6. Active City Strategy

This Strategy sets the direction for the provision of recreation and sport opportunities that support and encourage people to be physically active in the City. A key outcome envisaged in the Strategy is 'community sports associations and educational institutions lead the development of sports facilities and their activation'.

6. Policy Objectives

- 6.1. Ensure compliance with the Local Government Act 1999.
- 6.2. Ensure a transparent and consistent process is undertaken when negotiating and entering into leases and licences in the Park Lands.
- 6.3. Establish clear assessment criteria to determine the suitability of the Lessee and appropriate lease term.
- 6.4. Ensure sound financial management and adequacy of records management processes to ensure the completeness of the Council Community Lease and Licence register.
- 6.5. Ensure all Lessee's pay fair and reasonable rentals based on clear eligibility criteria and calculation methodologies.
- 6.6. Ensure that Council's properties in the Park Lands are leased or licensed in a way that is consistent with the objectives of Council's Strategic Plans and maximises the use of Park Lands community assets in a responsible way.
- 6.7. Ensure that Council's property is maintained, upgraded and occupied responsibly.
- 6.8. To facilitate services to the community through external organisations.
- 6.9. To optimise the use of Park Lands for sport and outdoor recreational purposes whilst balancing formal and informal use.
- 6.10. Ensure the permitted use in any lease or licence is cognisant of all adjacent land uses, commensurate with Council's strategies and policies and is determined on a case by case basis.

7. Policy Statements

- 7.1. Assessment Principles for Leasing and Licensing Proposals
 - 7.1.1. The principles of inclusivity, diversity, collaboration and resilience (which are consistent with the statutory principles of the draft Adelaide Park Lands Strategy and statutory principles of the *Adelaide Park Land Act 2005*) together with a need and demand analysis, will be used to guide the assessment of the suitability and outcomes of proposed Park Lands uses and to determine an appropriate length of tenure.
- 7.2. The criteria used to assess the alignment of proposals against these principles are included in the Operating Guidelines and are summarised below:
 - 7.2.1. Inclusivity
 - The Park Lands will provide shared open space for the benefit, use and enjoyment of all and perform as a regional open space for the people of metropolitan Adelaide, particularly for organized sport and community events.
 - Minimising areas alienated from public access and use.
 - 7.2.2. Diversity
 - Encouraging and balancing a wide variety of varying uses including sports, events, cultural activities and informal recreation which are sensitive to the landscape.

- Supporting outdoor recreation use and house services which complement park activities.

7.2.3. Collaboration

- Establishing and maintaining partnerships across government, stakeholders and the community to increase our collective capacity to meet community expectations and aspirations.
- Fostering the role and capacity of the community to act as custodians for the Park Lands.

7.2.4. Resilient

- Seeking opportunities for the use of recycled or harvested water and incorporating water sensitive urban design.
- Designing and maintaining landscapes that can adapt to climate change and mitigate its impacts and which contribute to the comfort of Park Lands users.

8. **Tenure**

- 8.1. The degree to which proposals align with the assessment principles will determine the period of tenure which, in general, will be a period of less than ten (10) years, with no right of renewal.
- 8.2. Periods of tenure of up to 21 years may be considered where the proponent has demonstrated, excellent alignment with the principles, and a responsible, community orientated use of Community Land.
- 8.3. The Adelaide Park Lands Act 2005 provides for tenure of up to 42 years (taking into account any right of extension). For the purposes of this policy, such tenure may be granted in exceptional circumstances or where Council determines the project is of State/City Strategic Value.
- 8.4. Other projects of State Significance (eg, Adelaide Oval and New Royal Adelaide Hospital) will continue to be managed by the Government of South Australia.

9. **Lease & Licence Fees**

- 9.1. Fair and reasonable lease and license fees will be applied, whilst taking into consideration the level of priority use for sporting facilities or the commercial nature of the activity. Such fees will respect the high values placed on the Park Lands by the South Australian community.
- 9.2. To this base figure, a series of discounts are applied (except for commercial activities) according to:
 - 9.2.1. Responsibility for maintenance
 - 9.2.2. Whether the occupant is an educational institution or a community organisation.

- 9.3. The application of fees does not differentiate between public and private educational institutions or whether they are primary / secondary or tertiary in nature.
- 9.4. Ground fees are determined through a benchmarking exercise taking into account fees levied by other local governments for sporting purposes.

10. Lease & Licence Fee Review

- 10.1. Where applicable, any lease granted over a building for a term longer than five years (including any rights of renewal) will be subject to a current market rent review (inclusive of discounts where applicable) at the commencement of the sixth year and every five years thereafter.
- 10.2. Licence fees will be reviewed annually as part of Council's adopted fees and charges.

11. Subletting Arrangements

- 11.1. The lessee must obtain the written consent of Council prior to entering into any agreement with another organisation for use of a facility (with the exception of Casual Use agreements).
- 11.2. Sub-letting fees associated with a Community Lease/Licence should not exceed 50% of the sum of any fees and maintenance costs associated with the area.
- 11.3. Casual hire fees should not exceed Council's casual hire fees listed in its adopted fees and charges.
- 11.4. Any sub-leasing should not exceed 5 years, unless a report has been submitted to Council seeking Landlord consent for the arrangement.

12. Sporting Related Activities

- 12.1. Social events are essential to the success of community sport and therefore social activities of an appropriate nature and scale will be permitted in leased and/or licensed areas where they relate to identified sporting uses.
- 12.2. Revenue generating activities are essential in ensuring that clubs remain financially sustainable and have the capacity to meet their management and maintenance responsibilities. These activities, while commercial in nature, must be conducted on a not-for-profit basis, ie revenue generated must be used for the benefit of the sport.
- 12.3. To ensure financial viability of sporting clubs, revenue generating activities will be permitted (subject to all associated approvals) including, but not limited to:
 - 12.3.1. The operation of small scale cafes/kiosks to provide for participants, spectators and other Park Lands users.
 - 12.3.2. The holding of club-related events.
 - 12.3.3. Sports clinics operated by private or public sport and recreation organisations using the clubs facilities, or similar such activities.

- 12.4. Consideration will be given to the granting of limited liquor licenses to support the activities of the sporting organisation.
- 12.5. In granting licences over areas of the Park Lands, licensees must work with Council to ensure optimal use of fields outside of designated game and training times, ensuring (for instance) there is a reasonable definition of required ground maintenance and rest periods.

13. Selection of Lessees/Licensees

13.1. Vacant Land and/or Buildings – New Leases

In the case of vacant land and/or building a new lessee will be selected by way of Expression of Interest unless there are exceptional circumstances (in which case a Council resolution will be required).

14. Legislative Provisions and Process Related to the Granting of Leases And Licenses

- 14.1. Council's ability to grant leases and licenses over community land is provided for in the Local Government Act 1999 and Adelaide Park Lands Act 2005.
- 14.2. For a lease or licence to be granted it must be consistent with the relevant Community Land Management Plan.
- 14.3. The Local Government Act 1999 identifies the need for a Council to undertake public consultation before it grants such a lease / licence except when it is:
 - 14.3.1. provided for in a CLMP and the term is five years or less; or
 - 14.3.2. when the lease / licence is being granted to the Crown / Minister and there is no substantial change in use of the land.
- 14.4. Public consultation will be undertaken on any proposed lease / licence either through the Community Land Management Plan process when up to five years, or through a specific consultation exercise if the proposal exceeds five years.
- 14.5. If a proposed lease or licence is consistent with a Community Land Management Plan and exceeds five years then Council must first undertake public consultation.
- 14.6. The Adelaide Park Lands Act 2005 states that Adelaide City Council may grant or renew a lease or licence over land in the Adelaide Park Lands for up to 42 years (taking into account any right of extension).
- 14.7. However in regard to any proposed lease or licence of ten years or longer, both Houses of Parliament must be provided with the opportunity to disallow such a lease or licence.
- 14.8. The Local Government Regulations 2013 allow a Council to not comply with its public consultation policy.
- 14.9. The Retail and Commercial Leases Act 1995 does not apply to leases or licences in the Adelaide Park Lands granted by the Adelaide City Council (pursuant to an Order granted by the Minister for Business Services and Consumers on 28 December 2011).

- 14.10. Other legislation, including the Crown Land Management Act 2009 and Development Act 1993, also provide legislative context.

15. Delegations

- 15.1. Council delegates to the Chief Executive Officer (CEO) the right to:
- 15.1.1. Negotiate the renewal of existing leases and licences in accordance with the Community Land Management Plan and this policy.
 - 15.1.2. Issue landlord's consent for any reason as may be required from time to time pursuant to the lease or licence.
 - 15.1.3. Enter into a surrender, variation or assignment of an existing lease or licence where the agreement is in accordance with the principles of this document.
- 15.2. Delegated powers the CEO may possess cannot over ride specific legislative provisions.
- 15.3. The CEO can only act to finalise a lease / licence where it is consistent with the CLMP and is for a period of five years or less – unless it has been subject to public consultation.

16. Limitations of this Policy

This Policy does not apply to:

- 16.1. 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.
- 16.2. Specific purpose leases such as those for the Adelaide High School extension building, the proposed Bureau of Meteorology weather station and the lease granted to SA Health for the Park Lands fronting the hospital at the intersection of Port Road and North Terrace.
- 16.3. Events - provided for in a separate Council policy.
- 16.4. Activities or works on public roads through the Park Lands (pursuant to sections 221 and 222 of the Local Government Act 1999).
- 16.5. Depasturing licences granted to individuals to allow up to 20 horses to reside in and graze on Nantu Wama (Park 6) – as provided for in the CLMP.
- 16.6. Leases and licences provided for up to 12 months, or for those within the Adelaide Aquatic Centre and North Adelaide Golf Course as part of business operations.
- 16.7. Leases or licences outside of the Park Lands. These leases and licences are included in the Acquisition & Disposal of Land and other Infrastructure Assets Policy and Operating Guidelines.

16.8. Building design

This matter is addressed through the Adelaide Park Lands Management Strategy (which states that sports buildings must, in general, be of high design standards and complement the Park Lands setting (including suitable scale and location) and the Park Lands Building Design Guidelines.

16.9. Location of playing fields and courts

These facilities must be located in a manner consistent with the Adelaide Park Lands Landscape Master Plan, Active City Strategy and the Adelaide Park Lands Sports Master Plan.

16.10. The use of synthetic surfaces

Council’s Active City Strategy states that playing fields may include synthetic surfaces to optimize programming opportunities. Such surfaces increase use levels, reflect player requirements, and generally facilitate use in the same way that paths and courts do.

16.11. Car parking associated with sporting facilities.

17. Monitoring and Implementation

This Policy will be implemented by the Chief Executive Officer and managed in accordance with Council’s scheme of delegations and policy authorisations.

18. Review

This Policy will be reviewed in 2018.

19. Revision History

Revision Summary	Approval Date	ELG Council or Committee	Decision #	TRIM Reference	Related policy documents