

**QLDC Council
28 July 2016**

Report for Agenda Item: 1

Department: Property & Infrastructure

Community Lease and Licence Terms

Purpose

The purpose of this report is to determine a standard set of terms to be included in new lease and licences granted to community groups.

Recommendation

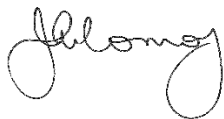
That Council:

1. **Note** the contents of this report;
2. **Accept** the proposed standard terms and conditions for community leases shown below:

Type	Term	Termination Clause	Treatment on Early Termination	Examples
Sporting, Arts, Cultural or service group in Council building	3 years, with two renewals of 3 years each by agreement of both parties	1 year (but not in the first 3 year term)	N/A e.g. they can just walk away	DQ Qtn Arts Centre Wanaka Art Centre CAB
Sporting, Arts, Cultural or Service Group on Council Land, where their investment is less than \$50,000	3 years, with two renewals of 3 years each by agreement of both parties	1 year (but not in the first 3 year term)	Lessee can choose to remove improvements and make good or improvements revert to Council ownership	Mt Bike Club Wanaka Bike Club Wanaka Pony Club
Sporting, Arts, Cultural or Service Group on Council Land, where their investment is between \$50,000 and \$250,000	10 years with a renewal by agreement of both parties for a further 10 years	2 years (but not in the first 3 years of lease)	Lessee can choose to remove improvements and make good or improvements revert to Council ownership	Wanaka Soccer Club (proposed new lease) Wanaka Plunket assn.
Sporting, Arts, Cultural or Service Group on Council Land, where their investment is between \$250,000 and \$500,000	20 Years	5 years	Lessee can choose to remove improvements and make good or improvements revert to Council ownership	

Type	Term	Termination Clause	Treatment on Early Termination	Examples
Sporting, Arts, Cultural or Service Group on Council Land, where their investment is over \$500,000	33 years	5 years	Compensation or relocation costs payable by Council.	Arrowtown Sports Trust Wakatipu Coastguard
Sporting, Arts, Cultural or Service Group on Council Land, where the value of their asset is over \$500,000 but their prior lease has expired.	20 years	5 years	Compensation payable by Council.	Frankton Kindergarten Kingston Community Association

Prepared by:



Joanne Conroy – APL
Property Advisor

13/07/2016

Reviewed and Authorised by:



Peter Hansby
General Manager, Property & Infrastructure

15/07/2016

Background

- 1 Every year new leases and licences are granted to a number of community, sporting and cultural groups. The majority are ground leases that enable the group to improve the land (with a building or other development) and occupy it for a period of time.
- 2 The principles contained in the Community Pricing Policy clearly outline Council's position in regards to community occupation of Council land, namely that Council wants to ensure that:
 - community, sporting and cultural groups prosper and deliver services and facilities to their members and the wider community
 - groups share facilities to maximise their efficient use and reduce the cost to the community
 - using community facilities is affordable (particularly for youth) and is not a barrier to participation.

- when public facilities are used for private commercial gain, the community should receive a fair return for the use of the communities' facilities.
- 3 The policy acknowledges that occupation of land and buildings by sporting and cultural groups provides a number of community benefits:
 - a. ***Healthy Community***

Clubs provide an important function in the provision of recreation and social opportunities within the community.
 - b. ***Facility Development***

Clubs can through the voluntary efforts of their members raise significant capital for facility development and maintenance.
 - c. ***Amenity Provision***

Where clubs occupy land they can often manage and maintain land for the benefit of the wider community via the provision of improved amenity.
 - 4 New facilities and significant upgrades would generally be funded through a community fundraising programme, ie they are paid for by local ratepayers and residents.
 - 5 Where some of the funding is obtained from Trusts (eg Central Lakes Trust) the Trust would need to be confident that the building has a reasonably long life. They would not contribute funds to build a community building on Council land where a short term lease is in place.
 - 6 There have in the past been instances where a community group has tenure of land but during the term of the lease, the land becomes essential for a core infrastructure project. It makes it difficult for Council to facilitate the development with a lease in place, regardless of how important the project is. An example is the Gun Cub at Shotover Delta where Council had to pay the club a substantial sum in order for them to agree to terminate the lease. The lack of an early termination clause might delay or derail an important or essential project.
 - 7 Leases granted pursuant to the Reserves Act 1977 cannot have the initial term longer than 33 years. While not all leases are on reserves, using 33 years as the maximum term will create some uniformity. The Reserves Act does allow for a further renewal, but the Resource Management Act 1991 stipulates that where a lease is granted for longer than 35 years (including any renewal provisions), it requires a subdivision if the lease is not over the entire area of the legal parcel. Again, this would not apply to all community leases but because the majority would be captured by this requirement, renewals beyond 33 years have not been recommended.

Comment

- 8 It is important that there is a balance between giving community groups (and their funders) some security of tenure over the land without jeopardising future development projects that benefit the greater community. In order to achieve such a balance, the value of the investment by the Lessee is a reasonable way of determining the term and any early termination notice period so that the higher the investment, the longer the lease. Please refer to table 1 below.

Table 1: Proposed Community Lease durations and break clauses

Type	Term	Termination Clause	Treatment on Early Termination	Examples
Sporting, Arts, Cultural or service group in Council building	3 years, with two renewals of 3 years each by agreement of both parties	1 year	N/A e.g. they can just walk away	DQ Qtn Arts Centre Wanaka Art Centre CAB
Sporting, Arts, Cultural or Service Group on Council Land, where their investment is less than \$50,000	3 years, with two renewals of 3 years each by agreement of both parties	1 year	Lessee can choose to remove improvements and make good or improvements revert to Council ownership	Mt Bike Club Wanaka Bike Club Wanaka Pony Club
Sporting, Arts, Cultural or Service Group on Council Land, where their investment is between \$50,000 and \$500,000	10 years with a renewal by agreement of both parties for a further 10 years	2 years	Lessee can choose to remove improvements and make good or improvements revert to Council ownership	Wanaka Soccer Club (proposed new lease) Wanaka Plunket assn.
Sporting, Arts, Cultural or Service Group on Council Land, where their investment is over \$500,000	33 years	5 years	Compensation or relocation costs payable by Council.	Arrowtown Sports Trust Wakatipu Coastguard
Sporting, Arts, Cultural or Service Group on Council Land, where the value of their asset is over \$500,000 but their prior lease has expired.	15 years with two renewals for a further five years each by agreement of both parties.	2 years	Compensation payable by Council at the depreciated value of the asset.	Wakatipu Kindergarten Kingston Community Association

- 9 We have sought feedback from Central Lakes Trust to this proposal. They have raised two concerns:
 - a. Where a group is seeking to invest say \$450,000 on a project, the proposal would only allow ten year's confirmed lease. This would make it difficult for the Trust to fund the project. However, if the lease included a right of renewal for a further ten years, then that would likely satisfy the Trustees.
 - b. Where Council terminates the lease early and the Lessee opts for the improvements to revert to Council ownership, it should be for the benefit of the community.
- 10 Rights of renewal leave the decision to renew with the Lessee, not Council. If the Lessee wishes to renew, then the Lessor is obliged to (assuming all of the conditions of the lease have been met). In most cases, there is little point including a right of renewal – a longer term would achieve the same thing for the Lessee. It is usual for commercial leases to have a number of rights of renewal to give them flexibility but community groups don't need that flexibility.
- 11 We have also received feedback from Frankton Kindergarten (Kidsfirst) and their legal representative. That feedback is attached as appendix 1, but to summarise:
 - a. They would be happy with a 15 year term if they had two rights of renewal for 5 years each (or a right to a further ten years).
 - b. They do not think 2 years termination notice is sufficient and that 5 years would be better.
 - c. They would like to see an explanation as to what the definition of a "core infrastructure project" would be.
 - d. However, any early termination would be hard to manage. Either they would need to close altogether or relocate for a period incurring significant cost and disruption.
 - e. They believe education should be a separate category as it is an important in the community.
- 12 It would be hard to define what constitutes a "core infrastructure project" because while we could define that today, we do not know what that might include in 10, 20 or 30 years as technology changes. Council would need to prove that a project was for "core infrastructure" prior to instigating the termination clause.
- 13 While there is no doubt education is important, most community groups could make the same argument. For example, Citizen's Advice is important to the community, as are recreational and art activities.
- 14 Taking the comments of CLT and Kidsfirst into account, we have redrafted the proposed table of terms as shown in table 2.

Table 2: Proposed Community Lease durations and break clauses (version 2 following consultation)

Type	Term	Termination Clause	Treatment on Early Termination	Examples
Sporting, Arts, Cultural or service group in Council building	3 years, with two renewals of 3 years each by agreement of both parties	1 year (but not in the first 3 year term)	N/A e.g. they can just walk away	DQ Qtn Arts Centre Wanaka Art Centre CAB
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Sporting, Arts, Cultural or Service Group on Council Land, where their investment is between \$250,000 and \$500,000	20 Years	5 years	Lessee can choose to remove improvements and make good or improvements revert to Council ownership	
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- 15 Please refer to Attachment B which shows draft terms to be included in the lease or licence documents to cover the early termination conditions including how compensation would be calculated.

Options

- 16 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

- 17 Option 1 Adopt the durations and break clauses detailed in Table 2 as the standard for new community leases and licences.

Advantages:

- 18 Gives community groups (and funders) some certainty about Council lease and licence terms.
- 19 Will result in consistency of lease and licence terms.
- 20 Will give Council a right to terminate the lease or licence early if the land is required for a core infrastructure project.

Disadvantages:

- 21 Creates some inflexibility
- 22 Option 2 Status Quo – the terms for each new lease or licence be determined based on the merits of the project or application.

Advantages:

- 23 Allows maximum flexibility.

Disadvantages:

- 24 Community groups (and their funders) have no idea of probable lease and licence terms.
- 25 Leases and licences continue to have varied terms without any consistency.
- 26 Termination clauses may not be included in new community leases.
- 27 Option 3 That duration and break clauses different to those suggested be adopted for new community lease and licences.

Advantages:

- 28 As per option 1 above.

Disadvantages:

- 29 As per option 1 above.

30 This report recommends **Option 1** for addressing the matter as it will result in some uniformity within community leases.

Significance and Engagement

31 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because individuals, organisations, groups and sectors could be affected by the decision.

Risk

32 OR11, Decision Making as documented in the Council's risk register. The risk is classed as moderate.

Financial Implications

33 There are no operational and capital expenditure requirements or other budget or cost implications resulting from this decision.

Council Policies, Strategies and Bylaws

34 The following Council policies, strategies and bylaws were considered:

- Community Facilities Pricing Policy.

35 The recommended option is consistent with the principles set out in the named policy/policies

36 This matter is not included in the 10-Year Plan/Annual Plan and does not affect it.

Local Government Act 2002 Purpose Provisions

37 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring community leases and licences are granted with suitable terms.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

38 The persons who are affected by or interested in this matter are potential new community Lessees.

39 The Council has consulted with the Central Lakes Trust and Kidsfirst about this matter.

Attachments

- A. Letters from Mortlock McCormack Law and Kidsfirst about the proposed community lease terms.
- B. Draft early termination clauses to be included in leases and licences.

13 July 2016

APL Property Queenstown
PO Box 1586
QUEENSTOWN 9348

BY EMAIL: joanne.conroy@aplproperty.co.nz

FOR: Joanne Conroy

Queenstown Lakes District Council to Canterbury Westland Kindergarten Association Incorporated (Kidsfirst) - New Lease for Frankton Kindergarten, Queenstown

- 1 We are writing in relation to your email of 7 July 2016 which provided a copy of the proposed recommendation to Queenstown Lakes District Council (Council) for the various types of community leases.
- 2 You have asked us for some initial feedback in relation to the details proposed. In that regard we **enclose** a submission to Council from our client, Canterbury Westland Kindergarten Association Incorporated (Kidsfirst). In addition we comment as follows:

Term and Renewals

- 2.1 Kidsfirst has indicated that it would be comfortable with a 15 year term coupled with two 5 year rights to renew the lease for further terms of 5 years each, or alternatively one right to a further term of 10 years.
- 2.2 However, we note that the proposed renewal periods are not at the option of the Tenant (as would usually be the case, and is the case in the lease for the Wakatipu Kindergarten), but are by mutual agreement between Council and the Tenant. This would leave Kidsfirst in a position whereby it has no certainty beyond the expiry of the initial 10 year term of the Lease, which is proposed to be subject to a 2 year termination notice period in favour of Council.

Termination Notice

- 2.3 Firstly, our client does not consider that a termination provision of any length is reasonable in the circumstances, given the type of service to the local community our client provides.
- 2.4 Even if a termination notice was confirmed by Council as being required (which we would strongly object to), our view is that the following matters should be taken into account:

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law@mmlaw.co.nz · www.mmlaw.co.nz

Level 2 · 299 Durham Street North · PO Box 13 474 · Christchurch 8141 · New Zealand

- 2.5.1 The proposed termination notice period remains at 2 years. In our view a 5 year notice period would be more reasonable in the circumstances, on the basis of the importance that the Kindergarten has to the community and the time it may take for a suitable replacement site to be found.
- 2.5.2 According to your email the termination notice would only be issued for "*core infrastructure projects*". A definition of exactly what is defined as a core infrastructure project would be useful in order to provide an additional level of clarity. In addition, we would expect that this definition, as well as the requirement that the termination notice can only be given in such circumstances, both be included in the Deed of Lease itself.
- 2.5.3 The method of determining compensation for improvements to be paid to the Tenant in the event of the termination clause would need to be further clarified and agreed. As well as the obligation to pay compensation, we would also expect an obligation on Council to work with Kidsfirst in an attempt to find a suitable replacement site to lease on similar terms.
- 2.5.4 On the basis that any proposed core infrastructure projects may well be provided for in the current District Plan we wonder whether a proviso might be inserted into the Lease whereby the termination clause (notwithstanding any other provision of the lease) cannot be exercised by Council before the expiry of the District Plan that is current at the time of signing of the Lease.

Categorisation of Lease

- 2.5 We would have expected to see Education specified as a separate category for the purpose of the proposed community lease durations and break clauses, particularly given the importance of the Education Sector to the local community. This category of lease, we would expect, should be regarded as having significant standing.

General

- 2.6 We note the table should refer to the Frankton Kindergarten, not the Wakatipu Kindergarten.
- 3 We look forward to hearing from you once you have had the chance to review these comments.

Yours faithfully
Mortlock McCormack Law



Chris Egden
Associate
Direct Dial: 343 8584
Email: chris@mmlaw.co.nz

13 July 2016

To whom it may concern
Queenstown Lakes District Council

Background Information

Frankton Kindergarten is one of 71 kindergartens that come under the umbrella of Canterbury Westland Kindergarten Association Incorporated, trading as Kidsfirst Kindergartens, a not-for-profit organization with over 100 years of experience of providing high quality early childhood education to our youngest learners. Prior to 01 January 2016 Frankton Kindergarten, along with six other Central Otago Kindergartens, came under the auspices of Central Otago Kindergarten Association Incorporated.

Why should the Council support/invest in the provision of early childhood education?

The benefits to all children, their families and to society of investing in high quality early childhood education (ECE) are well researched and evidenced.

Early childhood education is a private and public good, and as such warrants local district councils' influence and investment. ECE benefits individual children, their families and whanau and, in the long term society.

Frankton Kindergarten

The Frankton Kindergarten was established approximately 20 years. From the establishment of the kindergarten until now it has enjoyed being located on its current site whereby the kindergarten occupies land leased from the Queenstown Lakes District Council and the Department of Conservation. The kindergarten building, outdoor sheds and playground fixtures and equipment are owned by the association

Through the combined efforts of the local community, local businesses and organisations, local funding providers and assistance from the association, the kindergarten (building and outdoor playground) has been developed, nurtured and enhanced over the years to provide a high quality learning environment for children of the Frankton community. This kindergarten has seen over 7,500 local children and their families/whanau come through its doors and as such has become an important connection point for families, whanau and the wider community.

The Kindergarten is currently licensed for 50 children aged from two to five years of age and operates between the hours of 9.00 am – 3.00pm Monday to Friday following the primary school education year.

We have a commitment of employing only registered and qualified early childhood education teachers as research evidence shows these teachers working with young children have more meaningful interactions, improved cognitive instruction and develop greater social competence in children.

According to the latest Education Review Office Report [July 2015] the key features of the Frankton kindergarten are:

- ✦ children's strong friendships and sense of belonging
- ✦ the settled and welcoming environment where parents are encouraged to stay and learn alongside their child
- ✦ the well-resourced areas that allow children to play and increase the complexity of their learning over time.

We are always mindful of the commitment and dedication given to our kindergartens over many years and as our way of giving back to our communities, Frankton Kindergarten, along with the other 69 kindergartens in our network, provide up to 30 hours a week of high quality early childhood education free for children and their families which in turns provides benefits to over areas of the Frankton and Queenstown economies.

The Future

The association has always enjoyed strong and healthy working relationships with over eight local districts councils in Canterbury, Christchurch, the West Coast and now in Central Otago. I am not aware of any issues that have arisen through any of the lease arrangements that we have in place that would give rise to being only offered *"a term of 10 years with two renewal periods of five years (but only by mutual agreement with Council) with the right of the Council to terminate at any time by giving 24 months' notice."*

If the Council has a right to terminate at any time by giving 24 months' notice it seems to contradict the term of the lease and the right of renewal being offered.

To be forced to relocate through the issuing of a termination notice by the Council would see this kindergarten close, staff made redundant and a valuable social and education resource lost to the community as it would be beyond the financial resources of the association to relocate the kindergarten to another site within the Frankton area even if land was available. A site totaling 2683 square metres would be required and to build a new kindergarten would be in excess of \$2.0 million without including the purchase price of the land.

If we are able to relocate the building, the disruption to our service would be extremely hard to recover from as it would be challenging to keep our community of learners together. Temporary accommodation would be needed and we would be faced with increased costs as any temporary premises must be fully compliant with the Education (Early Childhood Services) Regulations 2008. This would mean having to fund buildings and a site to the standard required and then having to walk away from this investment once a permanent solution was found.

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Therefore the legacy that has been invested in this kindergarten, over the last twenty years, by so many people and organisations would be lost to the very community that should be benefiting from having access to high quality early childhood education.

We would asked that the Council provide at least a ten year term with a further ten year right of renewal so that we can continue to play our part in ensuring that our youngest learners grow up as competent and confident learners and communicators, healthy in mind, body, and spirit, secure in their sense of belonging and in the knowledge that they make a valued contribution to society.

Yours sincerely



Sherryl Wilson
Chief Executive

QLDC – BREAK CLAUSE OPTIONS

1. Lessor Termination Right

1.1 **Termination Notice:** If the Lessor requires possession of the Premises for:

1.1.1 the provision of core infrastructure services (being drinking water supply, waste water collection and treatment, stormwater management and discharge, roading and footpaths);

then the Lessor may terminate this Lease on not less than [] months' prior written notice to the Lessee (**Termination Notice**). A Termination Notice may only be served on the Lessee [] years after the Commencement Date] *[Note: To decide whether or not Council can only terminate after a certain number of years or whether this right should be exercisable at any time].*

1.2 **Surrender of Lease:** On the expiry of the period specified in the Termination Notice the Lessee will be deemed to have surrendered the estate and interest of the Lessee in this Lease and the term will expire. The Lessee will yield up vacant possession of the Premises and [all provisions of the Lease applicable on expiry of the term will apply] / [the Lessee shall be required to leave the Premises in a clean and tidy condition but shall not be required to comply with its reinstatement and make good obligations under the Lease] *[Note: To decide whether the Lessee is required to comply with its reinstatement obligations on the termination date]*

1.3 **Compensation:** *Elect one of the following options:*

1.4 **No compensation:** The Lessee may not recover from the Lessor any damages or compensation of any kind, or obtain any order, injunction or other remedy against the Lessor as a consequence of receiving the Termination Notice or the operation of this clause.

OR

1.5 **Compensation:** On the date that the Lessee yield up vacant possession of the Premises [and complies with its reinstatement obligations] in accordance with clause 1.2 above the Lessor will pay to the Lessee an amount (plus GST) calculated in accordance with the following formula:

$$A - \frac{(A \times B)}{C}$$

Where:

A = [the cost of the Lessee's improvements installed or to be installed at the Premises (as certified by a quantity surveyor)] / [the value of the Lessee's improvements installed at the Premises (as certified by a registered valuer)] or \$[] *[Note: Value of improvements can either be assessed or a value agreed up front between the parties]*

B = the number of days from and including the Commencement Date, or (if applicable) the earliest date on which a Termination Notice may be served, to and including the expiry of the notice period under the Termination Notice

C = the number of days from and including the Commencement Date or, (if applicable) the earliest date on which a Termination Notice may be served, to and including [insert the date the Lease would have expired if the Termination Notice had not been served]

PROVIDED that the Lessee shall not be entitled to any compensation pursuant to this clause if a Termination Notice is served after [insert date]. *[Note: To decide whether or not compensation should cease to be payable after a certain date]*

The Lessee will not otherwise recover from the Lessor any damages or compensation of any kind, or obtain any order, injunction or other remedy against the Lessor as a consequence of receiving a Termination Notice or the operation of this clause.