

COMMUNITY OCCUPANCY GUIDELINES

CONTENTS

1. Introduction
2. Application Process
3. Assessment Criteria
4. Community Occupancy Agreements
5. Rental
6. Commercial Activities
7. Facility Development Proposals
8. Fees and Charges
9. Monitoring and Implementation

REVISION HISTORY

<i>Revision #</i>	<i>Guidelines Sponsor</i>	<i>Approval Date</i>	<i>Council or Committee Decision</i>	<i># TRIM Reference</i>	<i>Related Policy</i>
1	General Manager Community	27 February 2014	Council	D-1347138	Community Occupancy Policy
2	General Manager Community	15 November 2018	Council	D-2751142	Community Occupancy Policy

1. INTRODUCTION

These Community Occupancy Guidelines (Guidelines) have been developed to assist Council staff (Staff) in the administration of Hamilton City Council's Community Occupancy Policy (Policy).

These Guidelines will assist Community Groups in understanding the process to be followed when applying for Community Occupancy (Occupancy) and how their application will be assessed. These Guidelines must be read in conjunction with the Policy. The Guidelines use the defined terms from the Policy.

2. APPLICATION PROCESS

At any time, a Community Group (Group) wishing to apply for Occupancy may register their interest by contacting Staff.

Applications for Occupancy will be considered on a case-by-case basis, either when Buildings or Land become available or prior to the expiry of an existing Occupancy Agreement (Agreement). The application process can take a number of months to complete, depending on the Council meeting schedule.

The following process will apply to all Groups seeking Occupancy:

1. The Group should make initial contact with Staff. Staff will discuss the process with the Group and assess whether submitting an application for a Occupancy Agreement is appropriate or whether an alternative arrangement such as casual use of the Building and/or Land may be more appropriate.
2. If an application for Occupancy is considered appropriate, the Group will be asked to make a formal application. Application forms are available on the Hamilton City Council website or via post upon request.
3. The completed application form should be returned to Staff for assessment.
4. Staff will meet with the Group to discuss the application and any queries or issues they may have.
5. Staff will assess the application based on the eligibility criteria defined in the Policy.
6. If the Group is not considered eligible, Staff will communicate this to the group via written correspondence and there will be the opportunity to discuss with Staff to discuss why the application is considered ineligible.
7. If the Group is considered eligible, Staff will further assess the application based on the assessment criteria.
8. Staff will make a recommendation (with supporting documentation) to the Council for consideration¹ as to whether to approve or decline the application. Staff may request that the Group attend a Committee Meeting to discuss their application.
9. The decision will be in the form of a Council Resolution.
10. Staff will notify the Group as soon as practicable of the terms of the Council Resolution.
11. If the Council approves the application, Staff will work with the Group to develop a community outcomes plan (Outcomes Plan) in accordance with the Policy.
12. The Group and the Council will then enter a Occupancy Agreement in the form of a Licence to Occupy or Lease. The Occupancy Agreement terms will be agreed between Staff and the Group in accordance with the Policy and these Guidelines.

¹ If a proposed lease or licence is of land under the Reserves Act 1977, and the proposed lease or licence 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.

13. There is an expectation that the Occupancy Agreement will be finalised (including signing) within a maximum of six months of the Council Resolution.

Groups are encouraged to contact Staff if they need advice on completing an application.

2.1 Reserves Act 1977 Considerations

If the proposed Occupancy relates to land held under the Reserves Act 1977, public notification is required if the proposed Community Occupation Agreement is not in conformity with and contemplated by the relevant approved reserve management plan before confirming. An exception to this is if the associated resource consent has been publicly notified under Section 93 of the Resource Management Act 1991.

2.2 Facility Vacancy

When a facility becomes vacant, staff will consider options to identify whether community occupancy is deemed the most appropriate strategic direction for the future use of the site.

In cases of a vacant 'Building, space or Land' (Facility) identified as appropriate for Occupancy, Staff will seek applications through:

- Public advertisement; or
- An expression of interest process; or
- Direct notification to Groups who have registered interest.

The Council will allocate occupancy to ensure maximum community benefit and to respond to changing demands. Groups will be assessed against eligibility and assessment criteria as per the Policy and Guidelines.

2.3 Expiry of Community Occupancy Agreements

Groups must make written applications to Staff a minimum of 12 months prior to the expiration date of their existing Occupancy Agreement. All such applications will be considered in accordance with the Policy and these Guidelines.

Upon expiry, Occupancy Agreements will automatically roll over on a month-by-month basis until a decision is made by the Council.

3. ASSESSMENT CRITERIA

If a Group is considered eligible for Occupancy, Staff will further assess the application based on the following assessment criteria which will then form the basis of the recommendation to the Council:

1. Level of community benefit provided by the Group from the occupancy;
2. Level of contribution to supporting Council's vision and community outcomes as defined in the 10-Year Plan, City Strategies and Plans;
3. Alignment of the Community Service (Service) provided by the Group to Council's other policies, strategies and plans;

4. Alignment of Service to respective sporting codes and/or other umbrella organisations strategic directions (e.g. Regional and National Sports Organisations, Sport Waikato, Creative Waikato/ New Zealand);
5. The history and sustainability of the Group in terms of:
 - financial viability to fulfil obligations; and
 - membership and/or users of the Service.
6. The Groups relationship with Staff during the three years preceding the application. If the relationship is less than three years, then for the duration of the relationship;
7. Whether similar Services are offered in Hamilton;
8. Whether the Service could reasonably be undertaken in a more suitable location or collaboratively with another Group;
9. Suitability of the Facility for that particular Group, in terms of:
 - Location;
 - Physical characteristics;
 - Accessibility (i.e. building / fire safety / Occupational Safety and Health (OSH) considerations);
 - Potential impact on adjoining land and other users;
 - Statutory requirements including compliance with District Plan requirements or resource consent conditions.
10. Whether the proposed use is considered to be the optimal use of the Facility;
11. Consistency with other approved consents, concessions, Occupancy Agreements, Leases and Licences relating to the Facility which are under consideration;
12. Willingness of the Group to share use of resources and/or the Facility with other compatible groups to optimise use;
13. The costs involved in altering the Facility to accommodate the Group, or the ability of the Group to resource and undertake any changes itself;
14. If the land comprising the Facility is held under the Reserves Act 1977, consistency with the reserve classification and conformity with relevant reserve management plan;
15. Any other relevant criteria Staff considers appropriate.

4. COMMUNITY OCCUPANCY AGREEMENTS

Community Occupancy Agreements will take the form of either a:

- Community Group Licence to Occupy; or
- Community Group Lease.

Staff has developed a standard Community Group Licence to Occupy and a standard Community Group Lease to standardise the terms and conditions of Community Occupancies. These documents are available on the HCC website or via post on request.

In some circumstances it may be more suitable to grant a Licence to occupy. For example, a Licence may be more appropriate due to the nature of the proposed Service, where the Facility does not allow for exclusive use, or where alternative use of the Facility is anticipated by Council in the near future.

4.1 Reserves Act Considerations

If the land comprising the Facility is subject to the Reserves Act 1977, then the provisions required and any regulations made under the Reserves Act 1977, shall be included in the Community Occupancy Agreement.

4.2 Variations to standard terms and conditions

Council reserves the right to vary the standard terms of any Occupancy Agreement on a case-by-case basis.

Groups may request that Staff vary the standard terms of any Occupancy Agreement and all such requests will be dealt with on a case-by-case basis. Staff will not be required to accept any variation requested.

Should Council consider it necessary to obtain advice from the City Solicitor in regard to any request associated with the Occupancy Agreement, the applicant will be responsible for payment of all reasonable legal costs incurred by Council in obtaining such advice.

4.3 Tenure of Occupancy

Maximum tenure will be in accordance with the Policy.

If a Group wishes to make a significant investment in the Facility, they will need to enter into discussions with Staff in respect of that investment and, if appropriate, a new Occupancy Agreement will be entered into.

A shorter tenure may be granted by the Council in the following circumstances:

- The Group requests a shorter tenure;
- The sustainability of the Group is of concern;
- Where alternative use of the Facility in the near future is anticipated by Council;
- The Group is newly established or does not have an existing relationship with Council;
- Life expectancy of the building comprising the Facility is less than the maximum tenure;
- A shorter tenure is required by a relevant approved reserve management plan.

4.4 Shared/multi-use

Council owned Buildings and Land are a limited resource. Groups will be strongly encouraged to cluster and share Facilities in order to optimise use and resources. Council will allocate occupancy to ensure maximum use of assets and to respond to changing demographics, demands and trends.

Groups are not to unreasonably restrict hireage of Facilities when not required by the Group.

4.5 Community Outcomes Plan

Groups will need to develop a Outcomes Plan in accordance with the Policy. Staff will collaborate with Groups to assist in the development of the Outcomes Plan.

Groups are expected to update their Outcomes Plan annually. The plan shall form part of the Groups annual reporting requirements accountability, as per the Policy.

Staff has developed a Outcomes Plan template to standardise the information required. The template is available on the Hamilton City Council website or via post on request.

5. RENTAL

5.1 Rental Rate

The rental payable by Groups will be determined in accordance with the Policy.

5.2 Building Categories

Buildings will be categorised by an independent registered valuer in accordance with the criteria in the Policy.

An explanation of each category is outlined below:

Category 1

- High Amenity
- Good Location
- High Market Value
- Good Quality
- Good Tenant Demand

The Building is situated in a primary location and provides a good standard of accommodation that could be leased on a commercial basis without the requirement for additional works or fit-out by a commercial tenant. Additional amenities are provided by way of features such as car parking or internal fit-out. The Building would have good tenant demand and attract a reasonable level of rental if offered to the market for lease on a commercial basis.

Category 2

The Building is situated in a good to average location and provides a good standard of accommodation that could be leased on a commercial basis with minimal works or fit-out required by a commercial tenant. Some additional amenities are offered such as limited car parking. The Building would have reasonable tenant demand if offered to the market for lease on a commercial basis.

Category 3

- Medium Amenity
- Adequate Location
- Moderate Market Value
- Fair Quality
- Limited Tenant Demand

The Building is situated in an average location and could be adapted for commercial use if required. Additional amenities such as car parking are limited and would be seen to restrict the utilisation of the Building on a commercial basis. The Building would have limited tenant demand if offered to the market for lease on a commercial basis.

Category 4

The Building is situated in a secondary location and is of fair quality. Very limited amenities are offered. It would be expected that the Building would suffer extended periods of vacancy and that the Building would have little demand if offered to the market for lease on a commercial basis.

Category 5

- Low Amenity
- Secondary Location
- Low Market Value
- Low Quality
- Low Tenant Demand

The Building is situated in a secondary location, removed from other commercial development in a low profile area and is of poor quality. Basic additional amenities are offered. The possible utilisation of the Building on a commercial basis is very limited. The Building would have very limited tenant demand if offered to the market for lease on a commercial basis.

Category 6

- A Building near the end of its asset life
- Limited alternative use
- Minimal tenant demand

The Building is poorly situated for commercial use and is of poor quality and dated. The Building offers no amenities and the possible utilisation of the Building on a commercial basis is unlikely. The Building would not be considered to be leasable on commercial terms.

5.3

5.3 Council Subsidy

A subsidy will be applied to the rental to compute the annual rental payable by the Group for Occupancy in accordance with the Policy.

Where a Commercial Occupancy Agreement (commercial activity operated by a commercial entity) has been approved, a rental subsidy in accordance with the Policy will be applied to the square metre area of the Facility used for that purpose. In the case where an area is only used part of the time for commercial activity, a percentage reflecting usage (commercial/community split) will be applied.

5.4 Exceptional Circumstances

Council may use its discretion to adopt a different rent where exceptional circumstances apply. The General Manager Community has the authority to recommend, or decline to recommend to the Council any applications for a further rental subsidy.

Groups need to apply in writing. To demonstrate exceptional circumstances, Staff will consider whether the Group:

- provides an exceptional level of service/benefit to the community;
- has provided significant investment into assets that is open to public use;
- rental rate results in extreme financial hardship and possible closure;
- other factors e.g. strong alignment with Council's strategic policy/community outcomes, lack of long term tenure at location.

Regardless of any exceptional circumstances, Groups must meet the eligibility criteria as defined by the Policy.

5.5 Occupancy Responsibilities

The following table outlines standard outgoing occupancy responsibilities in addition to rent:

	Utilities	Rates*	Insurance	Renewals and replacement	Day-to-day repairs and maintenance
Council-owned Building	Lessee	Lessee	Council	Council	Lessee
Community group owned building	Lessee	Lessee	Lessee	Lessee	Lessee

**Community and recreation groups may be eligible for a rates remission*

Groups who have an agreement for a space within a building, are responsible for a proportion of the outgoing costs.

6. COMMERCIAL ACTIVITIES

Commercial Activities are considered to be sale of goods or services, aligned to the community Purpose. Groups that wish to operate a Commercial Activity within a Lease or Licence area must seek approval.

One-off fundraising activities (e.g sausage-sizzle, gala event) do not require Council approval. Ongoing trading activities (e.g pro-shop, bar, canteen, kiosk) require the Council approval.

There is no ability for Groups leasing Land or Buildings under section 54(1)(b) of the Reserves Act 1977 to sub-lease to a commercial entity/operator. A Lease under section 54(1)d of the Act may be appropriate.

Groups will be responsible for obtaining any additional relevant consents, permits or licenses required to operate a commercial activity prior to operation e.g food registration.

6.1 Requirements

A commercial activity will only be considered for approval, where:

- The land is subject to the Reserves Act 1977, the activity must be necessary to enable the public to obtain benefit and enjoyment of the reserve or for the convenience of persons using the reserve, and in in conformity with and contemplated by any relevant approved reserve management plan. Types of activities that may be supported include but are not limited to; pro-shops, bars, canteens and kiosks.
- The commercial activity is ancillary to the Group's permitted core activity.
- The commercial activity caters primarily for the members or users of the Facility and park.
- The commercial activity supports the sustainability of the Group.
- The Group demonstrates that any surplus funds generated by the Group will be;
 - Firstly, be applied to maintenance responsibilities (e.g building repairs); and
 - Secondly, to the Group's permitted core activity as set out in the Occupancy Agreement.

6.2 Approval Process

There are two scenarios by which a Commercial Activity may be operated:

a. Operated by the community Group

1. Any commercial activity proposed to be operated by a Group, will be assessed against the requirements outlined in 6.1.
2. If supported in principle, Staff will include as part of a Community Occupancy application to the Council. The approval would be part of a Group Agreement.
3. Where an existing Occupancy Agreement is in place, staff will assess any new commercial activity proposals in alignment with the Agreement and in conformity with the Policy and Guidelines.

b. Operated by a separate commercial entity

1. Any commercial activity proposed to be operated by a commercial entity, will be assessed against the requirements outlined in 6.1.
2. If supported in principle, Staff will make a recommendation to the Council for consideration as to whether to approve or decline the application.
3. If the Council approves the application, the Agreement would take the form of a 'Community Group Commercial Occupancy Agreement' linked to the Community Group Occupancy Agreement.
4. The Group may then enter into an agreement with the commercial operator with the approval of Council.
5. The Group will be responsible for developing an agreement with the commercial operator, which must align to the head Lease with the Council and be to the approval of Staff.

7. FACILITY DEVELOPMENT PROPOSALS

Council's goal is to retain and enhance open space. This includes ensuring that built form (including structures such as fencing) is minimised and avoids contributing to the net loss of open space. Council recognises that community facilities are important in enabling active communities to thrive and new or expanded facilities may be necessary to respond to changing demographics, demands and trends. Council will prioritise developments that maximise community benefit through multi/shared-use and hub concept.

The scale and nature of the project will determine how much detail will be required for the proposal and the process for approval. Where appropriate, an application for Community Occupancy will be considered in conjunction with the facility development proposal, prior to a Community Occupancy recommendation to Council.

7.1 Assessment criteria for Facility Development

Facility developments or redevelopments proposals will be assessed against the following criteria:

1. Demonstrate clear evidence of need or demand for facility (e.g number of members/users, trends, facility gaps);
2. Demonstrate strategic alignment with regional/national umbrella body plans (e.g Waikato Regional Sports Facilities Plan, Waikato Creative Infrastructure Plan);
3. Demonstrate viability and sustainability of the facility concept using a lifecycle approach (i.e feasibility assessment);
4. Demonstrate how the facility development/redevelopment will:
 - be limited to the smallest feasible footprint (including parking);
 - optimise community benefit, shared/multi-use, hub concept, flexibility of use;

- be sympathetic and to enhance the surrounding open space (e.g. building's relationship with the park, connectivity and access, parking requirements, landscaping);
5. Compliance with relevant statutory plans and processes²;
 6. Compatibility with the relevant (Council endorsed or adopted) reserve management plan;
 7. General suitability of the facility for the development (e.g. whether the proposal creates any adverse effects on surrounding amenity, including but not limited to cumulative effects on facility values, facility infrastructure, approved activities, the enjoyment of other facility users and adjoining communities);
 8. The potential to set a precedent that could give rise to similar activities, which in combination may result in adverse cumulative effects on Council facilities in the future;
 9. The degree to which exclusion of the public is necessary for the protection of public safety, the security or competent operation of the proposed Service, and;
 10. Any other requirements as determined by Council.

8. FEES AND CHARGES

Groups applying for Community Occupancy will be responsible for payment of the costs incurred in processing the application for Occupancy and completing the Occupancy Agreement or any variation (e.g. legal fees, public notification, administration costs). An invoice will be issued towards the end of the application process.

9. MONITORING AND IMPLEMENTATION

These Guidelines will be, updated or amended from time to time by Staff for the purpose of assisting in the administration of Community Occupancies. These Guidelines must be consistent with the Policy.

² Activities must comply with applicable legislation including the Building Act 2004, Resource Management Act 1991, Reserves Act 1977, Historic Places Act 1993 and the Conservation Act 1987.