

## 1 PURPOSE

The Burnie City Council holds a significant and on-going investment in the provision and maintenance of public places for community, recreation and sporting purposes.

The purpose of this Policy is to identify the different types of agreements which may be available to permit use of a public place.

The Policy furthers the Council's goal to support provision and availability of public places which assist the health and well-being of the community.

## 2 OBJECTIVE

The objective of this Policy is to provide Use Agreements which -

- a) are clear, certain, and consistent;
- b) are fair, equitable and inclusive;
- c) apply for both regular and occasional use of a public place;
- d) optimise cost effective and safe opportunity for use of a public place in accordance with community need and facility capability; and
- e) are approved, recorded, and regulated by Council

## 3 DEFINITIONS

In this Policy –

**Authorised officer** means as in the current Burnie City Council By-law applicable for a public place.

**Council** means the Burnie City Council

**Multiple Use** means co-location, or simultaneous or shared use, of a public place by two or more Users in order to maximise operational efficiency and optimise opportunity for community access and use

**Public Place** means as defined in the Burnie City Council Public Places By-Law, and includes any building, facility or place provided by the Council and made available for use by the public, including for community, recreation, and sports purposes, together with any structure or elements that may support use of that place such as toilets, change rooms, grandstand or scoreboard.

**Season** means a period of fixed duration during which a competition or series of events in a particular sporting code or other activity is to be conducted. A sports season is typically a period of six months

between 1 October and 31 March (summer season) or between 1 April and 30 September (winter season); but may be of a longer or shorter duration and commencing at any other time.

**Use** means an organised community, sports or recreation activity; public event; commercial undertaking; or an organised private event, whether or not by invitation, such as a wedding, family reunion, or school picnic.

**Use Agreement** means a legally binding and enforceable arrangement issued between Council and a User for use for a nominated use in or on an identified public place for a specified period and at specified times; and includes a permit issued under a Burnie City Council By-Law for use of a public place.

**User** means a person or incorporated body who is a party to a current User Agreement.

#### **4 SCOPE**

This Policy applies where Council approval is required for a person to access and use a public place, including for any purpose for which a permit is required under a Burnie City Council By-Law.

#### **5 POLICY**

##### **5.1 Use Agreements**

A Use Agreement must be in place between Council and any person prior to commencement of a use in or on a public place.

The purpose of a Use Agreement is to –

- a) enable Council to –
  - i. be aware of who is using a public place, for what purpose, when, and for how long;
  - ii. confirm a public place is available and appropriate for a proposed use; and
  - iii. program use of a public place to optimise utilisation, and to avoid interference and conflict with other users or with construction and maintenance activity;
- b) inform the User of the applicable rules and requirements for use; and
- c) provide the User with a record of approval

A Use Agreement is non-transferrable; and unless specified, will not give the User an exclusive right of use.

Council will maintain a record of all User Agreements on a central register within its current document management system.

Council will monitor compliance to a Use Agreement, and will take action as necessary to rectify a breach.

A Use Agreement does not affect or exempt any requirement to obtain any approval, authorisation, consent or permit under the law of Tasmanian or the Commonwealth of Australia to carry out the use identified in the Agreement.

Council may prepare and issue

## **5.2 Types of Use Agreement**

Council may only approve use of a public place under one of the following forms of Use Agreement.

### **a) Occasional Use Agreement**

An Occasional Use Agreement is a written agreement entered into between Council and a User which will provide the User with a lawful right to access and use an identified public place only on a specified day or days and at a specified time or times for a nominated activity.

An Occasional Use Agreement –

- i. Will be required for any organised public or private gathering, such as a wedding, family reunion, or school picnic, or for any commercial or professional undertaking;
- ii. Will typically be issued for a one-off, occasional, or short-term use;
- iii. May provide an exclusive or priority right of use for the period of the Agreement;
- iv. May be issued to optimise use of a public place at the same time during which there is other approved use;
- v. May also be issued to provide an additional period of use outside the period specified under a Licence, including for pre-season training or to a re-schedule a competition game; and

An Occasional Use Agreement will not be required –

- i. for informal and casual personal use of a public place, other than a building, a sporting ground, or a specialist facility, if carried out in a manner consistent with the notified purpose and conditions for use of that place; or

- ii. for a person or group attending a public place as a participant, spectator, or client of a use which has been issued with a Use Agreement, such as a sporting event, performance, exhibition or conference

Council will wherever practicable prepare and issue standard forms of Occasional Use Agreement. An Agreement may typically be a simple standardised statement of written permission containing generic terms and conditions.

However, more complex and particular forms of Occasional Use Agreement may apply subject to the nature of the public place and the permitted use, including for performance, exhibition and conference use in the Burnie Arts and Function Centre.

An Occasional Use Agreement may be approved and issued by an authorised officer of the Council.

#### **b) Licence Agreement**

A Licence is a written agreement entered into between Council and a User which will provide the User with a non-exclusive right to use an identified public place over an extended and defined period on specified days and at specified times for a nominated purpose.

A Licence will generally apply to secure long term access for on-going and regular use in or on a public place, such as a programmed community gathering or a sporting competition.

A Licence will apply where Council seeks to optimise opportunity for use of a public place through shared or multiple use. Council will encourage and facilitate development and transition of exclusive use facilities to a shared, multiple, and diversified model of access and use wherever appropriate to the capabilities of the public place and the needs of the community.

A User under a Licence Agreement must pay the applicable fees and charges set by the Council; and must be responsible for the health, safety and amenity of people, property and the environment during the defined period and times of use.

Council will wherever practicable use standard forms of Licence Agreement relevant to the purpose for which the public place is used.

Council will provide a Guide to Licence Agreements.

A Licence Agreement may be approved and issued by the Council or by the General Manager or a person authorised by the General Manager.

#### Club Rooms and Social Facilities

A Licence may be offered at discretion of Council for occupation of a building or part of a building as a club room or social premises for use by an individual club or association.

Council expects the User must allow access to the clubrooms or social premises by other persons, including other approved users of the public place within which are located.

#### Seasonal Use

A Seasonal Licence may be issued for use of a public place to conduct a program of use, including a sporting competition.

Council's preference is that a seasonal Licence for use of a sports ground, building or facility be issued to the organising association rather than to an individual participating club.

An individual club may apply for a Seasonal Licence to access and use a public place for regular training during the summer or winter season.

Seasonal Licence agreements will not provide the User with an exclusive use of the public place during the Licence period; and must be renewed annually.

#### **c) Lease Agreement**

A Lease is a written User Agreement entered into between Council and a User which will provide the User with possession and an exclusive right to access and use an identified public place during a defined period for a nominated purpose.

A Lease will only be considered where–

- i. the purpose and nature of a public place excludes opportunity for multiple use;
- ii. the arrangement will facilitate increased opportunity for multiple use consistent with the capabilities of the public place and the identified needs of the community;
- iii. the proposed User has the approval of Council to make a significant capital or operational investment in the provision or improvement of a public place; or
- iv. the public place is surplus to the needs of the community, but Council has determined not to make a permanent disposal

In order to grant a Lease the Council must be satisfied –

- i. the arrangement is in the best interests of the community, as opposed to the interests of the applicant;
- ii. no existing or potential other user of the facility will be disadvantaged or displaced;
- iii. a Lease is necessary to achieve effective and sustained use of the public place; and

- iv. the User has demonstrated a clear financial capacity, technical expertise, and relevant experience to manage and maintain the facility for the intended purpose and at the agreed standard during the period of the Lease

A lease will be offered for a term in accordance any community lease Policy adopted by the Council.

Grant of a Lease of a public place may be subject to the public land disposal provisions under Part 12 Division 1 *Local Government Act 1993*.

The User will be responsible during the term of the Lease to meet all costs in accordance with the Community Leases Policy.

### **5.3 Content of Use Agreement**

A Use Agreement must be in writing and be signed and dated by each of the Council and the User or by a person with authority to represent the User.

Council will wherever practicable prepare and use standard forms of Use Agreement.

Council may, at its sole discretion, add to, delete, modify or substitute common terms and conditions in a standard Use Agreement having regard to the circumstances of the User, the public place, and the purpose and nature of the use.

In order to provide certainty, consistency and clarity, a Use Agreement is to set out –

- a) the public place or part of a public place to which it applies;
- b) the person to whom the Agreement is issued;
- c) the purpose, nature and intensity of the use to be carried out on the public place;
- d) the period of the Agreement, including the day on which it is to commence and the day on which it will end, and the days, dates, and times between those days during which the approved use may be carried out;
- e) the rights, obligations and duties of the Council and the User during the term of the Agreement;
- f) terms and conditions of use;
- g) arrangements for the management of risk and liability;
- h) fees and other charges payable to Council or other entities and providers;

- i) arrangements for monitoring and enforcement of compliance;
- j) arrangements for suspension or termination; and
- k) a dispute resolution process

#### **5.4 Procedures and Guidelines**

The General Manager may approve operational procedures and user guidelines providing general or particular instruction or advice in relation to the agreements to access and use a public place.

## **6 LEGISLATION**

Local Government Act 1993  
Burnie City Council Public Places By-law

## **7 RELATED DOCUMENTS**

Community Leases Policy CP-CCS-CG-036  
Annual Schedule of Fees and Charges (as approved by Council)

<b>Policy Endorsement</b>	
Responsibility:	It is the responsibility of the Director Land and Environmental Services to oversee this policy and ensure its implementation. It is the responsibility of all staff with responsibilities in facilitating the use of Public Places, to adhere to the provisions of this policy. It is the responsibility of the Governance Unit to maintain this document in the Corporate Document Framework.
Minute Reference:	AO107-22
Council Meeting Date:	28 June 2022
Strategic Plan Reference:	Strategy 7.1.1 Formulate policy that is equitable, inclusive and responsive to current needs, and ensure decision-making is informed and accountable.
Previous Policies Replaced:	This is the first policy relating to Use Agreements for Public Places.
Date of Commencement:	28 June 2022
Publication of policy:	Members of the public may inspect this policy at the City Offices, or access it on Council's website <a href="http://www.burnie.tas.gov.au">www.burnie.tas.gov.au</a>