

Council Policy

Council policy title:	Lease and Licence Policy 2018
Council policy owner:	Director Corporate Services
Adopted by:	Bayside City Council
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1. Policy intent

Council is the custodian of land and building assets that support a wide range of community uses. Council will effectively and transparently manage the occupancy of its leased and licensed assets to optimise the public value it provides to the Bayside community.

2. Policy purpose

The policy supports decision making in relation to occupancy arrangements on Council land in accordance with obligations under the *Local Government Act* 1989. It provides clarity on approach to leasing and licencing for the community and commercial use of Council land.

It supports consistency and transparency in occupancy arrangements and provides direction on maximising occupancy and utilisation of Council managed assets including colocation, clustering and multi-use that reflects the community expectations and prioritises use for the service delivery needs that benefit the local community. The policy supports the sustainability of Council's property and building assets through appropriate and equitable contribution towards maintenance and other costs.

The Policy has considered to and is compatible with Council's obligations under the Charter of Human Rights.

3. Glossary - Definitions and Abbreviations

Term	Meaning
DELWP	The Department of Environment, Land, Water and Planning of the Victorian State Government
Lease	A lease is a right granted by the owner of the land (landlord) to another person (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment. A lease creates an interest in land that is binding on third parties and is capable of being assigned, unless the lease specifies to the contrary.

Licence	A licence permits a person (licensee) to occupy land (or part thereof) on particular conditions. The main feature that distinguishes a licence from a lease is that a licence does not permit exclusive occupancy of the land. Unlike a lease, a licence does not create any interest in the land and the rights created by a licence are personal and do not run with the land.
LGA	Means the <i>Local Government Act 1989 (Vic)</i> as amended from time to time.
RLA	Means the <i>Retail Leases Act 2003 (Vic)</i> as amended from time to time.
Tenant	Means an authorised person or incorporated body that has entered into or is proposing to enter into either a lease or licence with Council for the use of Council owned or managed premises.
Group One – Commercial	Group One Tenants occupy the premises on a commercial basis. Some examples of premises that are leased to Group One Tenants include the following: <ul style="list-style-type: none"> • Commercial sport and recreation e.g. Royal Avenue Tennis Centre, Golf Clubs. • Infrastructure e.g. telecommunications towers. • General commercial e.g. Ricketts Point Tea House, North Road Pavilion Café.
Group Two – Not-for-Profit Community Groups	Group Two Tenants includes community groups that serve the community or an underprivileged or disadvantaged group and these Tenants do not have the capacity to generate a significant amount of income and operate on a not-for-profit basis. Some examples of Group Two Tenants include the following: <ul style="list-style-type: none"> • Kindergartens. • Playhouses. • Community youth groups. • Senior citizens. • Scouts and Guides. • Neighbourhood Houses and Learning Centres.
Group Three – Other Clubs and Organisations	Group Three Tenants includes recreational or community groups that service the community and are readily available to Bayside residents. These tenants include member based fee-paying clubs and organisations that have the capacity to generate revenue from use of the facility or other activities consistent with the organisational purpose (but do not operate to make a commercial profit). Some example of Group Three Tenants include the following: <ul style="list-style-type: none"> • Tennis clubs. • Bowling clubs. • Lifesaving clubs

4. Scope

This policy applies to Council owned and managed assets for:

- Commercial leases and licences; and
- Community leases and Community licences.

It does not apply to seasonal sports ground allocation, ad-hoc or casual hire of halls.

5. Policy statement

The policy provides the guiding principles that will assist in the effective management and use of Council's buildings and land so as to maximise the return to Council and benefit to the community. Council seeks to maximise the community benefits from the use of land or buildings and ensure responsible management and accountability for the direct and indirect subsidies on leases and licences. This policy will:

- Ensure Council owned land and buildings are used to meet community needs and objectives consistent with Council's vision policies and Council Plan.
- Ensure clear, consistent and transparent approach to establishing leases and licences on Council owned and managed land and buildings.
- Ensure the appropriate assessments of community groups are undertaken and provide guidance on the most appropriate agreement to maximise utilisation and benefit to be provided from an agreement.
- Provide guidance on the appropriate contribution by community groups that consider the community benefit provided by the tenant, the capacity of the tenant to raise funds, maintain a community asset and allows for equitable access to Council land and buildings. Rental for commercial organisations will be set according to a market rental determined by market testing or sworn valuation.
- Ensure that Council owned land and buildings are maintained, developed and occupied responsibly taking into consideration the community benefit provided and the ongoing costs maintain and renew the assets.
- Provide an equitable and transparent process for dealing with Council's leased and licensed assets.
- Provide accountability for Council expenditure related to occupancy agreements and lease subsidies as they constitute an indirect grant.

5.1 Standard Terms and Conditions

Standard lease and licence agreements developed by Council will be used as the basis of all tenancies. Where required the DELWP standard documents will be used and amended to include Council related clauses for agreements on Crown Land.

Generally the lease or licence term will be set at a maximum of nine years. However, a longer term may be considered under one or more of the following circumstances:

- substantial contributions to capital / structural works are to be made by the tenant;
- commercial return is enhanced;
- conditions required by other funding bodies on the tenant regarding the length of term;
- demonstrated long-term community benefit is evident.

The term of commercial leases will be assessed on an individual basis as a result of market testing. Council will only grant a lease or licence to specific persons, incorporated bodies (that is, organisations that are incorporated under the *Associations Incorporation Act 1981*) or bodies corporate (as defined under the *Corporations Act 2001* (Cth)).

6. New Lease

6.1 Commercial Property

At its absolute discretion, Council may seek to negotiate with a commercial tenant prior to end of lease term in relation to a new lease. A decision to negotiate with a tenant for a future lease will be dependent on an assessment of the need and community benefit of the property. Consideration will include the performance of the tenant in relation to the current lease, any ongoing or proposed investment, application of the Retail Lease Act, Crown Land Reserves Act and any other factors or specific requirements related to the property. In such a negotiation the minimum rental will be based on a market rent assessment undertaken by a qualified independent valuer taking all relevant conditions into account.

Where it is determined to undertake market testing when a commercial premises has become vacant, or at the expiry of the term, a tender or an expression of interest process will be carried out by way of a public marketing campaign.

6.2 Community Property

When community premises become vacant or at the expiry of the term the ongoing future use of the premises will be assessed to ensure any future lease or licence delivers value to the community. Existing tenants and prospective tenants will be required to provide evidence of the community value they will deliver and the sustainability of the organisation. A new tenant may be sought through a tender or expression of interest process. The terms and conditions of any new lease will be negotiated with the tenant and shall be consistent with the principles of this policy.

6.3 Assessment of Rental

Criteria to assess the level of support will be used for community tenants. These criteria will include:

- Use aligns to Council's vision, goals and strategies outlined in the current Council Plan or other adopted strategies
 - Activities complement Council services
 - Meets an identified community need
- Community access provides broad public benefit as opposed to private benefit
 - Provides equitable access to services for the Bayside Community
 - Accessible to a broad resident base
 - Offers programs otherwise unavailable to residents
 - Encourages broad participation in the community
 - Supports an under represented or vulnerable group
 - Demonstrate that a significant percentage of users that benefit are Bayside residents
 - Prepared to maximise utilisation of facility as requested by Council.
- Capital and financial contribution
 - A group that improves or provides a new Council asset or infrastructure
 - Level of maintenance capability
 - Capability and capacity to raise funds to contribute to the cost associated with the facility
 - Not funded by State or Commonwealth Government
 - Not part of larger organisation.

6.4 Negotiations

Council will allow a reasonable time for tenants to enter into or renew a lease or licence. Where lease or licence negotiations have been ongoing for six months or longer without reasonable circumstances, tenants may be provided with a deadline for conclusion. If the deadline has passed and a lease or licence has not been agreed or an extension of the deadline has not been granted, tenants will be deemed to have repudiated any rights to occupy the land. In this circumstance, a decision of Council will be sought in relation to the lease or licence.

6.5 Rental

6.5.1 Group 1 – Commercial Tenants

Commercial tenants will pay a rental that is market driven and may be determined by a market rental assessment carried out by a valuer, or as the result of an expression of interest process or similar program.

6.5.2 Group 2 Not for Profit Community Groups

Rental will be determined based on 6.3 Assessment of Rental. The minimum rental that can be set will be in accordance with Council's Schedule of Fees and Charges.

6.5.3 Group 3 Other Clubs and Organisations

Rental will be determined based on 6.3 Assessment of Rental. The minimum ground rental which can be set will be in accordance with Council's Schedule of Fees and Charges; and / or a building rental.

6.5.3.1 Ground Rental Only

A ground rental will be charged in the following two situations:

- (1) where a tenant has the sole occupation of Council owned or managed land, that is, land that is fenced in and cannot be used for open space by the public when the tenant is not using it e.g. bowling greens and tennis courts. The minimum ground rental that can be charged will be in accordance with Council's Schedule of Fees and Charges, as amended annually.
- (2) where a tenant has constructed, at its own cost, a building on Council owned or managed land and has fully maintained that building (including structural and capital maintenance) throughout the term of the lease. The minimum ground rental for these tenants will be calculated at \$1.00 per square metre of the area occupied by the building, as amended by Council's Schedule of Fees and Charges.

6.5.3.2 Building Only

A building rental will be charged to those tenants occupying a Council owned or managed building. The minimum rental calculation for these tenants is 0.1% of the current asset value.

6.5.3.3 Ground and Building

Tenants who exclusively occupy a Council building and also have sole occupation of the adjoining Council owned or controlled land, e.g. bowling and tennis clubs will be charged both a ground rental and a building rental.

6.5.3.4 Sinking Funds

Tenants with exclusive occupancy of court surfaces on Council owned or controlled land will be required to create a sinking fund in anticipation of the capital cost to renew or undertake significant maintenance of the playing surfaces.

6.5.3.5 Community Group Discount for Capital Investment

Group Three tenants who at their own expense contribute to the cost of the construction/refurbishment of the building may receive a discount on their building rental. The discount will apply on the basis of the level of the contribution as a proportion of the current asset value. A set discount period will apply depending on the contributions made by the tenant as follows:

- A set discount rental period of five years will apply to contributions less than 25% of the total asset value.
- A set discount rental period of 10 years will apply to contributions made between 26-99% of the total asset value.
- Tenants who contribute 100% of the total asset value and fully maintain the building will not be charged a building rental. They will be charged a ground rental only.

6.5.4 Commencement of Policy Rental

A rental discount will be given to all new lease or licence agreements that are negotiated with Group Two and Three Tenants within two years of the adoption of this Policy where the rental increases more than 50%. The purpose of this discount is to provide a period of time for clubs and organisations to budget for significant increases in rental.

The new rental will be phased in over three years with a rental increase of not more than 20% of the previous rent in the first year and not more than 40% of the previous rent in the second year. In the third year the full new rental will apply.

All tenants must pay Goods and Services Tax (GST) at a level determined by the federal government on rent. GST is payable in addition to the rent calculated using the above formulas, unless otherwise stated.

6.5.5 Rental Increases

Rent will be increased annually by either the consumer price index or 5%, whichever is the higher at the time of review.

Annual rentals may also be subject to a market review on the exercise of an option and/or every five years of the term. This will generally apply to Group One Tenants only.

6.5.6 Telecommunication Rental

Council will retain the entire rental payable under a lease by a telecommunication provider (or similar service provider) for use of Council owned or controlled land or building and will use that rent for the benefit of the whole community. This rental will not be shared with individual clubs or organisations that use part of the land upon which the telecommunication lease is situated.

Individual clubs, organisations and tenants must not negotiate directly with any telecommunication provider (or similar service provider) in relation to the use of Council owned or controlled land or building.

6.5.7 Additional Income

Council reserves the right to amend the rental if a tenant obtains an on-premises licence, packaged liquor licence, general licence or gaming license, or gains access to other commercial or fortuitous (but not fundraising) means of income generated during the term of the agreement e.g. rent received from sub-letting, revenue received from advertising on the premises. Consent by Council is required for any such use.

6.5.8 Rates, Taxes and Outgoings

Generally, tenants must reimburse Council or pay the relevant authority directly for all outgoings including rates, charges and taxes levied against the premises. User charges including water, sewerage, telephone, gas, electricity are generally to be paid directly to the relevant service provider by the tenant.

6.5.9 Insurance

Council will take out and maintain building insurance for buildings on Council owned or controlled land for the full replacement value. The tenant shall reimburse Council the cost of the building insurance and any excess in respect of any claim made. For Group 2 community groups occupying historic buildings with limited financial means, an application to waive the insurance reimbursement can be made and will be considered by the Manager Commercial Services.

All tenants are required to take out public liability insurance, noting the interest of Council and the Policy must contain a cross liability clause. A minimum cover of \$20 million must be provided, or such other sum as stipulated by Council. Tenants must give a copy of their certificate of currency to Council on or before the commencement date of the lease and annually thereafter.

6.6 Use of the Premises

Group Two and Three Tenants must also allow Council to use the premises for Council's sponsored functions at no cost to Council. Such use will be subject to Council giving the tenant at least 30 days written notice of its need to use the premises, provided that Council's use of the premises does not unreasonably interfere with the tenant's use of the premises. Council must also rectify any damage to the premises due to Council's use of the premises.

For tenants who occupy premises under a licence agreement, Council may also use the premises or allow others to use the premises outside the normal hours of the tenant business operating from the premises, provided that such use of the premises does not unreasonably interfere with the tenant's use of the premises.

6.7 Removal of Assets

All improvements, additions, structures or buildings on the premises-installed or erected by the tenant during the term of the lease or licence are the property of Council, unless otherwise specified. Tenants who constructed the building may be required to remove the building, all fixtures, fittings, plant and equipment at the expiry of the term of the lease, unless otherwise specified.

If Council requires the tenant to remove any assets that have been constructed or installed by them during the term of the lease, then the tenant must make good any damage caused by their removal.

6.8 Liquor and Gaming Licence

Group Two Tenants must not apply for a liquor or gaming licence. Depending on the permitted use of the premises, Group One and Three Tenants may request Council's consent to allow them to apply for a liquor or gaming licence. Council in its capacity as landlord (as opposed to Responsible Authority) will consider applications for liquor and gaming licences and may refuse to give its consent (as landlord) in its absolute discretion.

7. Monitoring, evaluation & review

The policy will be reviewed on a 4 year basis or when significant changes in property related legislation occur.

Council will publish a register of occupancy agreements. Council will report on an annual basis the subsidy for each occupancy on the basis of the asset consumption set in the Building Asset Management Plan.

The following performance measures will be monitored;

- The level of rental return against the value of the assets being occupied will be reported, an annual increase in this indicator is desired
- The number of occupancy agreements in overholding
- Annual reporting of subsidy

8. Roles & Responsibilities

Director Corporate Services is responsible for ensuring the policy is reviewed and approved by Council.

Director Corporate Services has the following delegated powers associated with this policy

That Council:

- 1.1 delegates to the member of Council staff holding, acting in or performing the duties of, the office or position of Director Corporate Services, the power to lease any land under section 190 of the *Local Government Act 1989* (Act) including giving public notice of any proposed lease; and
- 1.2 authorises the member of Council staff holding, acting in or performing the duties of, the office or position of Director Corporate Services to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act in relation to any proposal to lease.
- 1.3 delegates to the member of Council staff holding, acting in or performing the duties of, the office or position of Director Corporate Services, the power to sign all leases and licences and any other documents required to be signed in connection with a lease or licence of any land,

unless:

- (a) submissions are received in response to a proposal to lease;
- (b) the annual rental payable is more than \$50,000 (including GST); or
- (c) where a Councillor requests that the matter be dealt with by Council

Commercial Services Manager is responsible for the implementation and ongoing management of this Policy including maintenance of a lease register, reporting on lease subsidies and ensuring occupiers of Council land have an appropriate lease or licence in place and deliver their obligations in accordance with the lease.

The Manager Commercial Services is also responsible for assessing requests for community groups occupying historic buildings to waive insurance reimbursement payment.

Tenants occupying Council owned or managed land are responsible for complying with occupancy agreements.

9. Related documents

Legislation	<i>Local Government Act 1989. Local Government (General) Regulations 2004. Retail Leases Act 2003. Retail Leases Regulations 2003. Crown Land (Reserves) Act 1978 (Vic). Occupational Health and Safety Act 2004. Residential Tenancies Act 1997. Planning and Environment Act 1987. Health Act 1958. Children's Services Act 1998. National Competition Policy. Charter of Human Rights Environment Protection Authority, planning permit provisions (including liquor licence provisions)</i>
Policies	Bayside Planning Scheme. Council Plan.
Strategies/Plans	Property Strategy Approved Master Plans. Open Space Strategy. Community Engagement Strategy
Procedures/Processes	Leasing Policy – procedures
Other	

Please note: This policy is current as at the date of approval. Refer to Council's website (www.bayside.vic.gov.au) to ensure this is the latest version.