

Organisation Policy

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| Council policy title: | Lease and Licence Policy 2023 |
| Council policy sponsor: | 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 2020. 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 |
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| Applicant | Means a person or legal entity applying for a lease or licence of Council land |
| Community Lease | Means a lease or (for the purposes of this document) licence of Council land by an applicant that falls within either Category 2 or Category 3 of 5.3 of this Policy |
| Commercial Lease | Means a lease or (for the purposes of this document) licence of Council land by an applicant that falls within either Category 1 of 5.3 of this Policy |
| Expression of Interest process | Means a competitive process whereby Council will invite offers to lease or licence a site from the market. |
| Rent(al) | Means any amount that is charged under an agreement in exchange for the right to occupy or use Council land or buildings. It includes (for the purposes of this Policy) a licence fee or other fee charged pursuant to the terms of a licence or other occupancy agreement. |

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 season sport ground and pavilion allocation and ad-hoc or casual hire of halls or other buildings.

5. Policy statement

5.1 Principles

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.

5.2 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; or
- 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 Reform Act 2012*) or bodies corporate (as defined under the Corporations Act 2001 (Cth)).

5.3 Tenant categories

Generally speaking, applicants for leases or licences will fall into one of three categories. The categories are relevant for the calculation of commencing rent and the criteria for assessment that will apply to the application for a lease or licence.

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| <p>Group One – Commercial</p> | <p>Group One Tenants occupy the premises on a commercial basis. Some examples of premises that are leased to Group One Tenants include the following:</p> <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. |
| <p>Group Two – Not-for-Profit Community Groups</p> | <p>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:</p> <ul style="list-style-type: none"> • Kindergartens. • Playhouses. • Community youth groups. • Senior citizens. • Scouts and Guides. • Neighbourhood Houses and Learning Centres. |
| <p>Group Three – Other Clubs and Organisations</p> | <p>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:</p> <ul style="list-style-type: none"> • Tennis clubs. • Bowling clubs. • Lifesaving clubs |

6. Application for a new lease or licence

Applicants for new leases or licences will be required to complete Council's Application for a new Agreement form. The form sets out the relevant information required by Council to enable an assessment of suitability against the criteria set out below. Given that commercial and community agreements have different objectives, these two forms of agreement have different criteria for assessment.

Before considering an application for a new lease, Council may undertake a local needs assessment based on demographics and existing uses within the relevant local area to establish a need for the proposed activity.

6.1 Direct negotiation

Where it is determined to undertake market testing when an existing commercial or community 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.

At its absolute discretion, Council may seek to negotiate with an existing tenant or licensee prior to the end of a lease/licence term in relation to a new agreement for the same premises without conducting market testing. A decision to negotiate with a tenant/licensee for a future agreement will be dependent on an assessment of the need and community benefit of the property. Consideration will include the performance of the tenant/licensee in relation to the current agreement, 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. The criteria listed below will apply should Council decide to directly negotiate a new lease.

6.2 Commercial Agreement Criteria

The criteria for assessment of Commercial Lease applications are included in the application form for commercial agreements (for direct negotiations) and otherwise will be set on a site specific basis as part of an Expression of Interest process.

6.3 Community Agreement Criteria

Criteria for assessment of Community Lease applications will include (as applicable):

1. Sustainability

- The purpose or mission of the group or organisation addresses the climate emergency and meets Council's sustainability outcomes.
- Changes to practices to reduce environmental impact of the proposed activity.
- Financial capacity to meet sustainability objectives (no use of single plastics, green energy etc.)
- Proposed investment in environment or sustainability at the proposed premises.

2. Community benefit

- Type of activity.
- Charitable status.
- Whether the proposed activity complements existing Council services.
- Specific benefit to Bayside residents.
- Alignment to Council objectives.

- Meets a local community need identified through analysis with reference to demographics and benchmarking against similar services in Bayside or other municipalities.
- Provides equitable access.
- Demonstrates that a significant percentage of users are Bayside Residents.
- Diversity of governance structure (board/committee) members.

3. Utilisation

- Number of members.
- Plan for increasing utilisation/membership (if not 100% utilised).
- Amount of utilisation proposed (e.g. times, days of the week the building will be used).
- How the leased premises will be managed to maximise use of facilities for the community.
- Demonstrates a need and defined use for all of the area included in the application.
- Available to a broad number of community members.
- Whether the application includes a plan to amalgamate or partner with other existing clubs.

4. Capital and financial contribution

- Potential revenue generation.
- Whether part of a larger organisation.
- Level of maintenance capability.
- Funding sources (e.g. government, umbrella organisation, fundraising).
- Capital investment proposed.
- Capacity to raise funds to contribute to maintenance and outgoings.

6.4 Calculation of rent

6.4.1 Group 1 – Commercial Tenants

Commercial tenants and licensees 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.

6.4.2 Group 2 – Not for Profit Community Groups

Not-for-profit tenants and licensees will pay a minimum rent calculated in accordance with Council's Schedule of Fees and Charges, if the proposed use meets the criteria set out in 6.3 and on the basis that the premises are not:

- used for commercial or revenue generating activities; and
- sub-leased or sub-licenced to a third-party commercial operator for profit.

If the premises are used to generate revenue (either as part of the applicant's proposal or during the term of the agreement, Council may reconsider the application of the

minimum rent and charge an additional amount of rent commensurate with the revenue generated by the tenant/licensee.

6.4.3 Group 3 – Other clubs and organisations

Not-for-profit tenants and licensees will pay a rent calculated in accordance with the applicable formula set out below.

6.4.3.1 Ground Rental Only

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

- (a) 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.
- (b) 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.

6.4.3.2 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.

6.4.3.3 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.

6.4.3.4 Revenue generation

If the premises are proposed to be used to generate an income (either as part of the applicant's proposal or later during the term of the agreement), Council will charge an additional amount of rent commensurate with the income generated by the tenant/licensee (net of cost of service).

6.4.3.5 Rental Subsidy for Group 3

Group Three applicants may request from Council a reduction to the rent that would otherwise be payable. This will form a subsidy to the commencing rent to be negotiated between the Applicant and Council (at its discretion) on a sliding scale basis. In order to qualify for a rent subsidy, a Group 3 applicant must be able to demonstrate that it will:

- (a) use the premises in a manner that meets the criteria set out in 6.3;
- (b) take primary responsibility for maintenance of the premises;
- (c) expend capital on the premises during the term of the lease; and
- (d) has a revenue-generating ability that is limited due to the community-based activities undertaken.

6.4.3.6 Community Group Discount for Capital Investment

Group Three applicants 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) A set discount rental period of five years will apply to contributions less than 25% of the total asset value.
- (b) A set discount rental period of 10 years will apply to contributions made between 26-99% of the total asset value.
- (c) Applicants 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.

7. Other Matters

7.1 Capital Investment by Council

Council may at its discretion contribute funds to the redevelopment or construction of a building which is intended to be leased. In the event of such a contribution, the terms of the resulting lease must be documented in a signed Heads of Agreement before Council will commit to funding.

A contribution to maintenance separate from rent may be payable for Group 2 and Group 3 Tenants where Council has made a significant capital contribution to the construction or refurbishment of the premises before a lease is granted.

7.2 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.

7.3 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.

7.4 Rental increases

Rent will be increased annually with reference to the consumer price index.

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.

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 Use of the Premises

Group Two and Three tenants/licensees 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.

For leased sites, Council may (based on the utilisation level indicated by an applicant's completed application form) require the tenant to establish a booking system for multi-purpose or function spaces (as applicable) to facilitate use of these spaces by other community groups when not in use by the tenant.

7.10 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.

7.11 Liquor and Gaming Licence

Group Two Tenants must not apply for a liquor 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 licence. Council in its capacity as landlord (as opposed to Responsible Authority) will consider applications for liquor licences and may refuse to give its consent (as landlord) in its absolute discretion.

No tenant may apply for a Gaming Licence

8. 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;

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

9. 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 115 of the Local Government Act 2020 (Act) including undertake community engagement process in accordance with Council's community engagement policy; and

1.2 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 \$100,000 (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.

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

10. Related documents

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| Legislation | <i>Local Government Act 2020.</i> <i>Local Government (General) Regulations 2004.</i> <i>Retail Leases Act 2003.</i> <i>Retail Leases Regulations 2003.</i> <i>Crown Land (Reserves) Act 1978</i> <i>(Vic).Occupational Health and Safety Act2004.Residential Tenancies Act 1997.</i> <i>Planning and Environment Act 1987.</i> <i>Health Act 1958.</i> <i>Children’s Services Act 1998.</i> <i>Emergency Management Act 2013.</i> <i>Marine and Coastal Act 2018.</i> <i>National Competition Policy.</i> <i>Charter of Human Rights</i> <i>Environment Protection Authority,</i> <i>Planning permit provisions (including liquor licence provisions)</i> |
| Policies | Bayside Planning Scheme Council Plan |
| Strategies/Plans | Property Strategy 2022 Approved Master Plans Open Space Strategy Community Engagement Strategy Municipal Public Health and Wellbeing Plan 2021—2025 Emergency Management Plan |
| Procedures/Processes | Leasing Policy – procedures |
| Other | Victorian Water Safety Strategy and Plan Occupation and use of Crown Land by Life Saving Clubs Policy 2018 |

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.