




Policy Category: Asset Management

Title: Property Leasing and Licensing Policy

Adoption Method: CEO Council **Date Adopted:** 8 February 2011

Review Period: Annually Other **Date Last Reviewed:** 8 February 2011

Responsible Officer: Administration Officer - Property **Next Review Date:**

CEO Signature:  **Date:** 8 February 2011

Purpose / Objective:

The purpose of this policy is to provide guiding principles that will support the leasing and licensing of Council properties.

- The objectives of this policy are to:
- Optimise occupancy of Council owned and managed properties.
 - Ensure that Council owned and managed properties are appropriately maintained, developed and occupied having regard to the best interest of the community and Council.
 - Ensure that community groups are provided with properties that reasonably meet their needs.
 - To maximise sustainable use of Council assets.
 - Ensure compliance with related Legislation.

Who is Affected by this Policy?

This policy applies to staff that prepare leases, licences and occupancy agreements for Council owned or controlled properties.

This policy affects community groups and tenants of Council owned or controlled properties.

This policy does not apply to casual users of facilities.

Background / Reasons for Policy:

This policy provides the foundation for property leasing and licensing decision making and guidelines for the development of occupancy agreements that define the roles and responsibilities of both Council and tenants. It ensures the best use of Council's properties is achieved and a clear relationship is established between Council and its tenants.

Scope:

This policy only applies to properties that Council owns or has delegated authority to manage.

Policy Content:

Council will only grant a lease or licence to specific persons, incorporated bodies or body corporates. This

Risk Management

Council will require appropriate risk management measures in all leases and licences which will include requiring tenants to;

- Release and indemnify Council for all claims resulting from any damage, loss, death or injury in connection with the premise unless such claims arise out of Council's negligence;
- Maintain adequate public liability insurance;
- Ensure that appropriate documentation and insurance is in place for occasional or hired use of the premises by third parties;
- Require tenants to comply with emergency evacuation procedures and risk management practices implemented by Council;
- Require tenants to implement a risk management plan that identifies the risks associated with the tenant's use of the premises and how such risks will be addressed.
- Only use appropriately qualified tradespeople to undertake repairs.

Tenant Categories & Rental Levels

Tenants are categorised to assist in determining the appropriate rental to be charged.

Tenant Category	Description	Characteristics	Examples	Rental
Group One - <i>Commercial</i>	Occupy the premises on a commercial basis.	Commercially operated business.	33 Main St Maldon (Pharmacy); Maldon & Castlemaine Caravan Parks; 65 Templeton Street Castlemaine (BRIT)	Market value.
Group Two - <i>Not for Profit Volunteer & Community Service Groups</i>	Includes community groups that service the community or are an underprivileged or disadvantaged group.	Volunteer Run & Community Service organisations.	Senior Citizens clubs; Small Historical Societies; Event organisers; Mens Sheds; Kindergartens; Neighbourhood & Community Houses; Newstead RTC;Etc	\$104 per annum or as amended by Council.
Group Three - <i>Sporting Clubs</i>	Includes recreational groups that serve the community and whose services are readily available to residents in exchange for a participation fee or membership.	Sporting Clubs	Tennis Clubs; Bowling Clubs; Football & Netball Clubs; Etc	Ground Rental = \$104 per annum or as amended by Council. Building Rental = \$104 per annum or as amended by Council. Ground & Building Rental = \$208 per annum or as amended by Council.

Subsidy

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

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

Transition Arrangements for Current Leases

Currently most community organisations are charged an annual rental of either \$1 or \$100. In order to provide a period of time for clubs and organisations to budget for an increase in rental, a rental discount will be given to all new lease or licence agreements that are negotiated with existing Group Two and Group Three tenants, within two years of the adoption of this policy.

The new rental will be phased in over three years with a rental increase of not more than 20% or \$30 (whichever is the greater) of the previous rent in the first year and not more than 40% or \$75 (whichever is the greater) of the previous rent in the second year. In the third year the full rental will apply.

GST

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

Rental Increases

Rent will be increased annually by either the consumer price index or a fixed percentage. The preferred method of review is by fixed percentage. The applicable percentage at the time of this policy is 3% as amended annually by Councils Schedule of Fees and Charges.

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

Rental of Property by a Telecommunications Provider

Council will retain the entire rental payable under a lease by a telecommunications provider for use of Council owned or controlled land and building and will use that rental for the benefit of the whole community. The 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 in relation to use of a Council owned or controlled land or building. All telecommunication structures will provide a community benefit aesthetically (colour, structure type, heritage style) and in function (shelter) being guided by the use of the surrounding land.

Occupancy Conditions

General Maintenance

To provide a consistent and fair framework for the conduct of maintenance on Councils premises, maintenance schedules have been developed and each tenant is required to maintain the facility in accordance with the maintenance schedule attached to the lease or licence. The maintenance schedule will specify the responsibilities of Council and the tenant including responsibility for maintaining the structure, the building fixtures and fittings and grounds. The level of maintenance responsibility outlined in the relevant schedule will be determined by the tenant category and any special

maintenance requirements by the tenant.

Condition Audits

Tenants may be required to participate in a regular condition inspection and report of the premises as determined by Council. The regularity of the review will depend on the use and type of tenant. Council or Council's agent may also enter the premises at any reasonable time after giving the tenant at minimum of one weeks notice to conduct condition audits.

Related Policies and Procedures

The leasing process will be carried out in accordance with the following principles and procedures:

- Approved Master Plans / Strategic Plans
- Council Plan

Definitions:

In this policy the following definitions apply

DSE means the Victorian Department of Sustainability and Environment and its successors.

A lease is a right or grant by the landowner (landlord) to another person (tenant) to have exclusive possession of that land, or part thereof, for a fixed term or 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. Council will generally grant a lease where the premises will be occupied exclusively by the one group and Council considers that granting a lease is in the best interests of the community.

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 omit exclusive occupancy of the land. Unlike a lease, a licence does not create any interest in the kind and the rights created by a licence are personal and do not run with the land.

Related Policies:

- Risk Management Policy
- Asset Management Policy

Related Legislation:

- Local Government Act 1989
- Local Government Act (General) Regulations 2004
- Retail Leases Act 2003
- Crown Land (Reserves Act) 1978 (Vic)
- Occupational Health & Safety Act 2004
- Residential Tenancies Act 1997
- Planning and Environment Act 1987
- Health Act 1958
- Children's Services Act 1998

References:

- Standard Council Lease & Licence Templates
- Standard DSE Lease and Licence Templates
- Commercial and Community Lease process diagrams
- Casual Hire Guidelines & Template Forms