

Lease and Licence Policy

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1 Policy Alignment

The following key vision statement articulated by “Our Vision” in the Cardinia Shire Council Plan 2021-25 underpins this Policy.

‘How we respond balances the needs of our people, businesses, our productive land and natural environments.’

The following objectives in the Council Plan relates to management of Councils Facilities:

‘2. Liveable places

2.1 Advocate, plan for and deliver accessible community infrastructure and services that address community need.

5. Responsible Leaders

5.1 Build trust through meaningful community engagement and transparent decision-making.

5.2 Manage our finances responsibly and leave a positive legacy for future generations.

5.4 Maximise value for our community through efficient service delivery, innovation, strategic partnerships and advocacy.’

2 Purpose

The Leasing Policy (Policy) establishes guiding principles to support shared use of Council Facilities, preferably with uses that complement each other and achieve the greatest community benefit. It promotes responsible management through an efficient and equitable approach to the occupation of Council owned and controlled land and buildings, allowing Council and Tenants to work together collaboratively.

3 Scope

This Policy will apply to all new Leases and Licences, for Council owned or controlled Land, with the exception of, seasonal allocations and casual hire arrangements. The Recreation Reserve Management and Usage Policy provides guidance for the establishment of seasonal allocations. Furthermore, the Policy will provide guidance where Council enters into a Lease or Licence as the Tenant.

4 Policy Description

4.1 Background

This Policy provides guidance for the occupation of all Council Facilities that are:

- occupied by community group and not for profit organisations, for example neighbourhood houses, historical societies, Scouts, U3A etc.;
- Leases with sporting organisations that have exclusive occupation of Council Facilities, for example bowls and tennis clubs; and
- occupied for a commercial or residential use, for example Emerald Lake Park Kiosk, Emerald Lake Park boat hire, Telecommunication Towers, cafes, grazing licences and residences.

4.2 Principles

The Principles of the Policy are to: -

- Provide a framework to ensure Council Facilities are used to provide the greatest benefit to the community, consistent with the Council Plan;
- Ensure that all Tenants are treated consistently with fair and equitable terms and conditions;
- Ensure Council Facilities are open and available to the wider Cardinia community;
- Ensure Council Facilities are shared, where possible to ensure the greatest use of Council Facilities;
- Manage risk by documenting rights and responsibilities and enforcing those obligations for the benefit of the community at large;
- Foster wellbeing and healthy lifestyles for Cardinia ratepayers;
- Provide the community with the broadest range of opportunities;
- Support not for profit and volunteer base community organisations and sporting groups to achieve their goals by providing facilities that meet the needs of the community;
- Ensure that no advantage is gained by Tenants of Council Facilities over organisations running similar activities in privately owned facilities by the application of discounted rents in line with National Competition Policy.

4.3 General

Council aims to provide diverse facilities that can be shared, achieving greater community benefit with higher usage rates as opposed to exclusive occupation to individual Tenants. The shared use of facilities will be managed under a Licence agreement with occupiers. A Lease will only be offered if it is in the best interest of the community and meets the goals of the Council Plan.

4.3.1 Tenants Categories

Council will only enter a Occupancy Agreement with incorporated associations or other legal entities. Council has absolute discretion to manage Council Facilities and Tenancies, however generally Tenants will be grouped into the following five categories and suitable terms and conditions will be applicable:

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| Category 1 | Commercial/Residential Tenants
This group will include companies and private individuals who occupy Council Facilities either for financial gain (i.e. telecommunication facilities and cafes) or for private purposes (i.e. residential properties and grazing licences). |
| Category 2 | Not for Profit Community Organisations
This group of Tenants are not for profit organisations that offer services or benefits to the community, including community centres, historical societies, Scouts, U3A, kindergartens, affordable or social housing, managed by a registered Housing Provider etc. |
| Category 3 | Sporting |

- Tenants that provide sporting services and occupy Council Facility on an annual basis with a long-term agreement, for example, tennis and bowls clubs. Other sporting Tenants that would generally fit within the annual seasonal allocation process but have contributed to the establishment of the Council Facility maybe granted long term occupation of Council Facilities. This may include football clubs that have contributed to the construction of social club rooms.
- Category 4 Seniors Housing
Tenants that satisfy the eligibility criteria published in the Government Gazette from time to time (most recent notice dated 1 October 2020) and are generally over 65 years of age (50 years for indigenous persons) and require housing assistance because of their health or financial situation.
- Category 5 Council as Tenant
Where Council occupies a property under an Occupancy Agreement as the Tenant, this may include government land where Council is not the committee of management, such as railway land or Emerald Rail Tourist Board land or privately owned land, such as car parks.

4.3.2 Standard Documentation

Council will apply standard agreements for similar Tenants, both new and for renewals of agreements for reasons of administrative ease and fairness.

4.3.3 Rental

Rentals will be consistent and transparent to ensure the greatest community benefit is achieved from Council Facilities, either by maximising the financial return or with a subsidized rental that attracts a Tenant, supporting the needs of the community.

The following rental approach will apply for each Tenant Category:

- Category 1 Commercial or residential Tenants will pay a market rental, determined by a valuer or through a competitively tested market campaign.
- Category 2 Not for profit Tenants will receive a rental subsidy, allowing a peppercorn rental as provided in the annual fees and charges schedule and will be reflective of the limited ability to earn income and the substantial community benefit provided by the organisation.
- Category 3 Sporting Tenants will pay an amount as provided in the annual fees and charges schedule.
- Category 4 Residents occupying senior housing will pay a rental which is proportionate to their income.

A 3% rental increase will apply annually for all rental categories except Category 4, unless rents are amended in the annual fees and charges schedule. Furthermore, Category 1 Tenants may also have an increase to market every 5 years or as agreed as part of the market tested process. Category 4 Tenants will have a rental increase based upon their increase in annual income.

4.3.4 Form of Agreement and Period of Tenure

Council encourages maximum use of Council Facilities and will support shared and multi-use arrangements. Where Council Facilities are shared or hours are limited for Tenants, Council will enter into a Licence agreement with the Tenant. A Licence will have a term, including options of not more than 3 years. This will allow Council to work with Tenants to make sure maximum co-location benefits apply.

Council will only enter into a Lease agreement (providing exclusive occupation) where there is substantial community benefit, by either developing healthy, connected and resilient communities, promoting investment and local industries, encouraging biodiversity, fostering community relations or providing health or education service. A Lease will have a maximum term of 5 years, as future

Councils should not be unduly bound by decisions which excessively encumber land. Council will only consider a longer term in circumstances where the Tenant has substantially invested in the Council Facility or there will be community benefit derived by a longer Lease term.

4.3.5 Maintenance Requirements

Maintenance requirements are as specified by the Buildings and Facilities Maintenance Policy. At the commencement of a Lease/Licence Council may carry out a condition audit of the Council Facility and then carry out condition inspections at the end of the term to ensure compliance with maintenance requirements and any make good requirements within an occupancy Agreement.

4.3.6 Keys and Locks

All Council Facilities will have Council locks or Council Salto locking system and changes to the Salto locking system may occur during the life of an Occupancy Agreement. Tenants must not change locks or instal padlocks to limit Council access to Council Facilities and provide details of any security arrangements made by a Tenant, in order that Council can gain access in case of emergency or for essential safety inspections.

4.3.7 Reporting Requirements of Tenants

Category 2 and 3 Tenants will be required to report regularly to ensure:

- that Council is informed of the activities and usage of Council Facilities,
- that Council understands the ongoing viability of Tenants,
- the Tenants goals are aligned to the objectives of the Council Plan, and
- that Tenants meet legislative and compliance requirements.

4.3.8 Subletting, Assignment, Hiring and Change of Use

Council encourages maximum use of Council Facilities and will support the shared and multiuse of Council Facilities. Council encourages casual hire arrangements for uses that are supportive of the Council Facilities use and are in the best interests of the community. However, a hiring agreement must be in place and public liability insurance provided, either by the organisation hiring the Facility or the Tenant on behalf of the hirer. Fees for hiring and a standard hire agreement are to be approved by Council officers annually. Income derived from hiring may be retained by the Tenant and must be used to assist with maintaining the condition of the Facility and general operation of the Council Facility.

Subject to the application of the *Retail Lease Act 2003* community Tenants will not be permitted to deal with their interest in the land, including assigning or subletting the Lease unless the Tenant has obtained Council prior written consent. Approval is also required to change the use of a Council Facility. A change in use or subletting that is not compatible with the Facility use will not be allowed, without express permission of the General Manager Governance, Facilities and Economy or their nominated representative and Council may end an agreement or vary the rental where such a change occurs.

Council may request access to use a Council Facility for occasional events, up to three times per year at no cost to Council.

Any rental derived from a sublease for a commercial use, (such as telecommunication facilities or Café operations) must be paid to the Council.

Council will not allow subletting under a Licence.

4.3.9 Outgoings

Subject to the application of the *Retail Lease Act 2003* all outgoings for services, rates, taxes, levies and waste removal charges will be passed on to the Tenant, except where it is impractical for separate

metering to occur or a proportion of the costs to be passed on, in which case Council may negotiate a flat rate contribution. Council will pay legal costs associated with Lease/Licence preparation for Category 2, 3 and 4 Tenants.

Legal costs incurred by Council in respect of requests for consent or default will be passed on to the Tenant.

4.3.10 Liquor License and Gaming License

All liquor license applications must be considered by Council as landowner, prior to applications for planning approval to the Liquor Licensing Commission. A liquor License application will only be considered if a license is not considered to conflict with the use of the Council Facility.

Tenants of a Council Facility must not apply for a gaming license in accordance with Council's Responsible Gaming Policy.

4.3.11 Risk Management

All Tenants will be required to:

- hold adequate public liability insurance, which will extend to third party hirers, where applicable,
- hold contents insurance;
- provide copies of insurances to Council annually; and
- have an emergency evacuation plan and procedures or where Council Facilities are shared commit to act in accordance with the Council Facility emergency evacuation plan and procedure.

If the Council's Municipal Emergency Management Plan is enacted, Council will have the right to enter all Council Facilities and to remain in these buildings without prior notice and for the duration of the emergency

4.3.12 Sinking Funds

Where Council has granted exclusive occupation by way of a Lease to recognise land and building improvements made by a Tenant, the Tenant will be required to establish a sinking fund (repair and replacement fund) to ensure repair and replacement of the Tenants Improvements can occur as required, and to ensure Council Facilities are maintained to a suitable condition for use by the community.

4.3.13 Sustainability and Waste

Council has a commitment to protecting and enhancing our natural environment and all Tenants are required to practice appropriate environmentally sustainable practices and act in accordance with the *Sustainable Environment Policy 2018-28*. Tenants are to ensure devices are switched off following use (e.g. heating and cooling equipment and lighting). Tenants must consider that many Council buildings have environmentally sustainable design features and equipment maybe programmed to operate in an efficient way. Tenants are required to work with Council to ensure all efficiencies gains are captured by following Council directions.

4.3.14 Commercial Agreements

Commercial occupancy agreements will only be offered where there is:

- a Financial return,
- a community benefit,
- an opportunity to activate a location,
- an opportunity to achieve a goal of the Council plan, or
- An opportunity to attract a service that is otherwise not available.

All commercial agreements must be for a purpose that doesn't conflict with an identified approved service provided by or for Council and must be on commercial terms including a market rental determined by a valuer or through a competitively tested market campaign. Lease terms and conditions will also be market driven and will be established by a market tested campaign such as an expression of interest.

4.3.15 Council as a Tenant

In situations where the Council is the Tenant Council will:

- only enter into an Occupancy Agreement for a new Property for the provision of a direct Council service if there are no suitable alternative Council properties;
- not enter into an Occupancy Agreement for a property on behalf of a third-party organisation,
- from the commencement of this Policy not enter into an Occupancy Agreement for more than 10 years, unless Council or the landlord for the benefit of Council, has carried out substantial improvements to the property;
- not pay more than a market rental for the Occupancy Agreement of a property.

4.3.16 New Tenants and Renewal

Competitive Process

When Council Facilities become vacant a competitive selection process will be undertaken to determine a suitable new Tenant unless a direct negotiation would achieve a better outcome for the community. This process is not applicable for Category 4 Tenants.

A competitive process may include a tender or an expression of interest (EOI) and be suitable for either a Community or Commercial Tenant. A competitive process ensures probity, addresses any conflicts of interest and will assist with decision making. It provides the opportunity for interested parties to compete for the right to occupy a Facility.

When assessing an application either via a competitive process or via direct negotiation the merits of the application should be assessed to ensure derived benefits satisfy the goals of the Council Plan,

Direct Negotiation

There are many occasions where a competitive process is not suitable, and it would be more appropriate to carry out direct negotiations. Direct negotiations could be considered in the following circumstances, where:

- an existing Category 2, or 3 Tenant has an interest to remain in a Council Facility and the existing service, program or activities provided by the Tenant align with the Council Plan;
- the cost to run a competitive process maybe greater than the achievable return;
- there is no competition for the Council Facility for the desired use;
- a sitting Tenant has offered capital investment that is considered to be of significant benefit to the community and would not be offered by a competitor.

Where a decision is made to proceed with a new Occupancy Agreement via direct negotiation, a Occupancy Agreement will not be offered to an existing Tenant until:

- a request is received in writing from the Tenant, identifying their goals and how they support the Council vision for the community and align with the Council Plan or other Council adopted strategies;
- An internal referral is carried out to ensure:
 - the Tenant has satisfied the terms and conditions of the expiring Occupancy Agreement;
 - there is an ongoing demand by the community for the provision of such a service;
 - the use is suitably located in a Facility that best meets the needs of the community;
 - the users of the Facility complement each other;

- all rent and outgoings have been paid;
- the Tenant provides the optimal use for the Facility;
- the Tenant is financially viable; and
- where appropriate the use is in accordance with the Recreation Reserve Management and Usage Policy.

Category 4 Tenants who are eligible in accordance with the eligibility criteria provided in the Government Gazette will be wait listed and when a vacancy becomes available will be selected from the top of the wait list.

4.4 Responsibilities

Councillors and Management have a responsibility to promote the guiding principles of the Policy. Officers with a direct relationship with Tenants of Councils Facilities, are responsible to administer the Policy.

5 Compliance

Officers will ensure compliance with the Policy by ongoing management of Tenants in accordance with Lease/Licence agreements. This will include regular meetings with Tenants, compliance with reporting requirements and condition audits.

5.1 Recourse for non-compliance

Non compliance with the Policy will be administered via the terms and conditions of the Occupancy Agreement and may result in the termination of an occupancy agreement.

Related Documents

Type of document	Title and/or HPRM reference
Commonwealth/Victorian legislation	<ul style="list-style-type: none"> • <i>Local Government Act 2020</i> Section 115 establishes a 50 year restriction on lease terms and also requires consultation to be carried out in accordance with the Community Engagement Policy in certain circumstances, including Leases of 10 years or greater or market rentals of \$100,000 or greater. • <i>Retail Lease Act 2003 and then Retail Lease Amendment Act 2020</i> controls Leases in relation to facilities that have any retail sales or services component and at times may apply to community leases. • <i>Crown Land Reserves Act 1978</i> establishes requirements for Occupancy Agreements of DELWP land and may relate to Facilities of which Council acts as the Committee of Management. • <i>Residential Tenancy Act</i> controls Leases for any residential properties
Policies	<ul style="list-style-type: none"> • Recreation Reserve Management and Usage Policy, • Recreation Reserves Facilities Standards Policy, • Building and Facilities Maintenance Policy, • Responsible Gaming Policy, • Asset Management Policy, • Community Engagement Policy
Strategies	<ul style="list-style-type: none"> • Property Strategy

6 Glossary of terms

Council Facilities for the purposes of the Policy means land and/or buildings owned by Council or that Council has management responsibilities for i.e. Committee of Management for Department of Environment, Land, Water and Planning (DELWP)

Council Plan Cardinia Council plan 2021-25

Lease for the purposes of the Policy means a document granting another party the right to occupy a property exclusively for the term of the agreement.

Licence for the purposes of the Policy means a document allowing another party the right to use all or part of the Facility for specified times or days, but which does not provide a right to exclusive occupation.

Occupancy Agreement for the purpose of the Policy includes a Lease or Licence agreement.

Tenant for the purposes of the Policy means an occupier of a Council owned or controlled building, which is a tenant in the case of a Lease or licensee in the case of a Licence.