

11 LEASING POLICY

FILE REFERENCE INT1862652

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RECOMMENDATION

That Council endorse the attached Leasing Policy.

Attachments

1 [↓](#) Leasing Policy 6 Pages

EXECUTIVE SUMMARY

Council have been operating on an ad-hoc basis in relation to property management of our tenants and it is considered appropriate that a leasing policy (Policy) be adopted to provide guidance for officers in the establishment of standards for the ongoing management of lease and licence agreements.

BACKGROUND

Council has 107 tenants/licensees and there is currently a number of agreements that are out of date.

To date officers have prepared lease and licence agreements as required and on terms as negotiated by each department, but all occupiers are not treated with consistency. It is proposed that with the adoption of a Policy, guidance will be provided for officers in relation to the negotiation of lease and licence agreements. Following the implementation of the Policy, officers will be able to negotiate agreements with a consistent approach and treat tenants equitably with standardised documents, rents and maintenance requirements.

POLICY IMPLICATIONS

The Policy, as attached, will be a new policy for Council, as currently no policy exists in relation to the leasing and licencing of Council land and buildings. The Policy will apply for all lease and licence agreements, with the exception of the residential leases for the existing community housing at Cockatoo and Pakenham as these are considered to be anomalies and will not suitably fit within the Policy. Also seasonal ground allocations and hire arrangements will not be captured by the Policy as they relate to short term arrangements.

It is expected that the Policy will apply for not for profit organisations that occupy Council facilities, sporting clubs that have exclusive occupation of premises and any commercial leases.

The Policy will establish guidance for the requirements to be included in lease and licence agreements, such as the basis for rental and other charges, length of tenure, subletting and maintenance requirements.

RELEVANCE TO COUNCIL PLAN

The Policy is driven by the Council plan and relates to the following objective:

'3.1. Provision and maintenance of assets on a life-cycle basis

3.1.4 Manage Council's assets like roads, drainage footpaths and buildings etc. in a way that ensures they are adequately maintained over their life.'

CONSULTATION/COMMUNICATION

Consultation has been carried out internally the various departments that have a relationship with Council occupiers.

Benchmarking has also been carried out with a number of other municipalities and a review of various leasing policies has assist in the development of this Policy.

FINANCIAL AND RESOURCE IMPLICATIONS

There will be no financial implications associated with the adoption and implementation of this Policy.

CONCLUSION

That the Policy be endorsed in order that officers may start implementing standard leasing and licensing terms and condition with occupiers of Council property.

Attachment 1



Leasing Policy

HPRM number	35-55-13		
Policy owner	Governance		
Adopted by	Council		
Adoption date	17/09/2018	Scheduled review date:	1/09/2020
Publication	CardiNet and website		
Revision/version number	Draft Version1		

1 Policy Alignment

The following key vision statement articulated by “Our Vision” in the Cardinia Shire Council Plan 2017 underpins this Policy.

‘Cardinia Shire will be developed in a planned manner to enable present and future generations to live, healthy and productive lives and to enjoy the richness of the diverse and distinctive characteristics of the shire.’

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

‘3.1. Provision and maintenance of assets on a life-cycle basis

3.1.4. Manage Council’s assets like roads, drainage, footpaths and buildings, etc. in a way that ensures they are adequately maintained over their life.’

2 Purpose

The Leasing Policy (Policy) establishes guidance for Council and Tenants of Council Facilities. It will establish an efficient and equitable approach to the occupation of Council owned and controlled land and buildings and allow all parties to work together to achieve the greatest community benefit from Council Facilities.

3 Scope

This Policy will apply to all new Leases and Licences, for all Council owned or controlled Land. It will not apply to leases for community residential housing, seasonal allocations and casual hire arrangements. The Recreation Reserve Management and Usage Policy provides guidance for the establishment of seasonal allocations and they will not form part of those agreements dealt with under this Policy.

4 Policy Description

4.1 Background

Council owns and/or controls Land within the Shire, brought together by the amalgamation of the Shire of Pakenham and the Shire of Cranbourne.

Leases and Licences have been negotiated for many years on an ad-hoc basis and it is considered appropriate that guidance be established, to ensure consistency and equity with occupancy arrangements that will clearly define the rights and responsibilities of all parties.

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

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

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;
- 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 lifestyle of resident;
- 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 community and discounted rents.

4.3 General

The following approach will apply for the occupation of Council facilities for Leases/Licences.

4.3.1 Tenants Categories

Council will only enter into a Lease/Licence with incorporated associations or other legal entities. Tenants will be grouped into the following three categories and suitable terms and conditions will be applicable:

- | | |
|------------|---|
| 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 etc. |

- Category 3 Sporting
 Tenants that provide sporting services and exclusively occupy Council Facility on 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.

4.3.2 Standard Documentation

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

4.3.3 Rental

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 pay 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.

Leases/Licences will provide that rental increases will apply annually to all rental categories based upon a 3% annual increase, unless amended in the annual fees and charges schedule. Category 1 Tenants may have an increase to market every 5 years or as agreed as part of the market tested process.

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 enter into a Lease agreement where an organisation has exclusive occupation of a Council Facility. A Lease will have a maximum term of 5 years, as future Councils should not be unduly bound by decisions which excessively encumber land. However, Council will consider a longer term Lease in circumstances where the Tenant has substantially invested in the Council Facility or there will be community benefits derived by a longer Lease term.

4.3.5 Property Condition 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 annually and at the end of the term to ensure compliance with maintenances requirements.

4.3.1 Reporting Requirements of Tenants

Lease and Licence agreements will establish reporting requirements for Tenants to ensure that Council is regularly informed of the usage of Council Facilities and the ongoing viability of Tenants. Reporting requirements may include the following, depending upon the use of the Council Facility and type of Tenant:

- Annual Insurance coverage;
- Fees charged for services;

- Financial reports;
- Office bearers;
- Membership statistics, including the proportion of Cardinia ratepayers; and
- Compliance with Working with Children Act 2005 and Child Safety Standards.

4.3.2 Keys and Locks

Leases and Licences of Council Facilities will establish requirements for Tenants to comply with the Council's master key system and provide details of security arrangements made by a Tenant in order that Council can gain access in case of emergency or for essential safety inspections.

4.3.3 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. 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.

Subject to the application of the *Retail Lease Act 2003* a lease to a community Tenant must include a condition prohibiting the Tenant from dealing with their interest in the land, including assigning or subletting the lease unless the Tenant has obtained Council prior written consent

Income derived from hiring may be retained by the Tenant and must be used to assist with maintaining the condition of the property and general operation of the Council Facility. However, a Lease will allow Council to re-negotiate the Tenants rental. Any rental derived from a sublease for a commercial use, (such as telecommunication facilities or Café operations) must be paid to the Council.

A Lease will include a condition that requires a Tenant to seek Councils permission for a change of use for a Council Facility and Council may terminate an agreement if such permission is not sought.

4.3.4 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; however, any advice required by a Tenant must be funded by the Tenant. Legal costs incurred by Council in respect of requests for consent or default will be passed on to the Tenant.

4.3.5 Liquor License and Gaming License

Leases and Licences will provide that liquor licenses applications must be considered by Council as landowner, prior to applications for planning approval to the Liquor Licensing Commission.

Leases and Licences will provide that a Tenant of a Council Facility must not apply for a gaming license in accordance with Council's Responsible Gaming Policy.

4.3.6 Risk Management

Leases/Licences will contain risk management measures to ensure that Tenants:

- indemnify Council against any claims for loss or damage arising from the Tenant's use of the premises, unless the Council has contributed to such loss by its negligence;
- effect adequate public liability, building (where applicable) and contents insurance; and
- have appropriate documentation and insurance in place for occasional or hired use of the land by third parties.

4.3.7 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 is 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.

4.3.8 Sustainability and Waste

Council will encourage Tenants to practice appropriate environmentally sustainable practices and leases/licences will provide for waste management costs will be paid by Tenants.

4.3.9 Commercial Agreements

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.

4.4 Responsibilities

Councillors and Management have a responsibility to promote the guiding principles of the Policy and the 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

If Council does not have a consistent approach to leasing, Tenants of Council Facilities may not be dealt with equitably and suitable access may not be available for the greater community to Councils Facilities.

6 Related Documents

Type of document	Title and/or HPRM reference
Commonwealth/Victorian legislation	<ul style="list-style-type: none"> • <i>Local Government Act 1989</i> Section 190 establishes a 50 year restriction on lease terms and also provides requirements on the need to give public notice and hear submissions in certain circumstances, including leases of 10 years or greater or market rentals of \$50,000 or greater. • <i>Retail lease Act 2003</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 leases and licences 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	Recreation Reserve Management and Usage Policy, Recreation Reserves Facilities Standards Policy, Building and Facilities Maintenance Policy, Responsible Gaming Policy, Asset Management Policy

7 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)

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.

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.

FINANCIAL REPORTS