

## Leasing of Council Owned and Managed Property Policy

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Policy Classification	- <b>CEO Directorate</b>
Policy No.	- <b>POL/563</b>
Policy Status	- <b>Current</b>
Responsible Service Unit	- <b>Legal, Governance and Risk</b>
Authorised by	- <b>Executive Management Team (EMT)</b>
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*This policy is part of a suite of policies adopted by Council or the Executive Management Team (EMT).*

*New or replacement policies can be created and developed within Service Units but can only be added to Council's Policy Register by Governance Services following the approval of the policy by Council or the EMT.*

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## **1. INTENT**

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The intent of this policy is to ensure that the grant of leases and licences in respect of Manningham Council land, building assets and crown land managed by Manningham Council, meets legislative requirements and document the governance processes to be adopted for property leases and licences.

## **2. PURPOSE**

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A lease is the conveyance of an interest in land for an agreed time period, usually in exchange for rent. The tenant's right to possession of that land is exclusive (the tenant can exclude all others). In many scenarios, tenants are afforded additional legislative protections which can even override the terms of the lease instrument.

It differs from a licence in that a licence conveys only a contractual right (it does not, even temporarily, convey any interest in land), the parties rights exist only in the contract and the licensee occupies the land or space on a non-exclusive basis. Licences are more flexible and better suited to more casual arrangements but are also less secure, they are typically easier to bring to an end than leases because they tend not to attract legislative protections.

This policy sets out the principles which are to apply to all leases and licences, namely:

- (a) Reduce the risk to Manningham Council in respect of occupied land and buildings while clearly setting out the respective parties' obligations.
- (b) Ensure that occupation of land meets with the Council's strategic direction and plans, while maximising the use of Council owned facilities.
- (c) Ensure that all leases with commercial tenants are on commercial terms, achieving the best value return for the Council.
- (d) Ensure that prospective tenants are solvent, hold appropriate insurances and are capable of meeting their obligations under the terms of lease or licence.

The policy does not apply to residential tenancy agreements, seasonal sports ground allocation or hire of the Manningham Council Function Centre or other hireable venues.

### 3. GENERAL PRINCIPLES FOR LEASES AND LICENCES

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The following principles will apply to all leases and licences of Manningham Council owned land:

- (a) Manningham Council will only enter into leases and licences with legal entities. A lease or licence will only be granted to a community organisation which is an incorporated association.
- (b) Manningham Council supports the maximization of the occupancy of facilities and where possible, will encourage shared and multi-use arrangements to provide for collaborative opportunities where permitted use and services are compatible.
- (c) Long term leases may be considered in situations where the proposal is considered not to impact on the Council's strategic plans and future requirements, where the potential use is deemed desirable to meet community needs and/or where the prospective tenant proposes to improve the land and building at its own cost.
- (d) Manningham Council may withhold its consent to an assignment of an existing lease if the *Retail Leases Act* 2003 does not apply to the existing lease and the assignment would result in the Act applying to the lease either during the unexpired term or as a result of the grant of a lease for any further term.
- (e) Depending on the permitted use, the terms and conditions of the lease and licence must include clauses requiring compliance with environmental laws regarding contamination, clean up and remediation, including immediate notification to Manningham Council, the Environment Protection Authority and other relevant Authorities.

### 4. GUIDING PRINCIPLES FOR COMMUNITY USE LEASES AND LICENCES

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Community use leases and licences will be granted to tenants or licensees who exist for the purposes of providing or promoting community, cultural, sporting, recreation or similar activities or objectives and will provide such activities from the premises or the licensed area.

The tenant's and the licensee's rules of association must provide for any profits to be applied in promoting its objectives and prohibit the payment of any dividend or other amounts to its members.

Where the rent for the leased premises is \$10,000 or greater per annum, the community use lease will operate pursuant to the *Retail Leases Act 2003*.

The grant of a community use lease or licence is to be determined having regard to:

- (a) A demonstrated community need for the purpose for which the premises or licensed area is proposed to be used, or that use meeting the Council Plan goals.
- (b) Whether the premises or the licensed area is fit for purpose and therefore does not require Manningham Council to incur expense for alterations or other works to accommodate the permitted use.

The following principles will apply to community organisation tenants and licensees:

- (a) The leases and licenses will be offered for a maximum term of 4 years.
- (b) Longer tenure will be considered in circumstances where a Government Department or Government Agency commits to enter into a Capital Funding Agreement with Manningham Council and a proposed tenant to fund wholly or substantially the construction or renovation of a dedicated premises for a specific use which has an identified community benefit.
- (c) The annual rent will be determined as part of the Council's budget.
- (d) Leases and licences will be a standard document setting out standard terms and conditions as well as incorporating special conditions or clauses in connection with the permitted use. For crown land leases, the Department of Environment, Land, Water and Planning's standard Section 17D lease will be used but the clauses in connection with general repairing obligations including insurance and indemnities will be varied to match the terms for Manningham Council owned facilities.
- (e) The lease will contain a maintenance schedule setting out each party's respective responsibilities for repair and maintenance obligations.
- (f) Tenants who have constructed the buildings and/or improvements will remain responsible for all maintenance, repairs and insurance of such improvements. Unless agreed with Manningham Council, the buildings or improvements constructed or installed by the tenant are to be removed at the end of the term and the premises made good. If the parties agree that the building or improvements are to remain at the end of the lease, the tenant will not be entitled to any compensation from Manningham Council.
- (g) As a condition of providing consent to a sub-lease, Manningham Council may require an increase in the head lease rent if the tenant secures a financial benefit from a sub-lease arrangement.

- (h) Manningham Council reserves the right to terminate the lease if there is a change of permitted use and the tenant has failed to obtain Manningham Council's consent in the first instance, and/or a planning permit is required but not obtained in respect of the changed use.
- (i) In addition to other reasons for determination, the lease will be terminated immediately if the tenant is de-registered as an incorporated association.
- (j) If the Municipal Emergency Management Plan (MEMP) is activated and the leased premises or Licensed Area is a designated Neighbourhood Safe Place – Place of Last Resort or an Emergency Relief Centre, Manningham Council has the right to suspend the permitted use of the premises or Licensed Area on written notice. The premises or Licensed Area will remain under Manningham Council's control for the duration of the MEMP's activation. The tenant or licensee will not be entitled to any compensation for the suspension of use nor any costs incurred in conducting its business from an alternative premises and will be given notice of the date upon which occupancy can be resumed for the permitted use.
- (k) Leases or licenses in respect of premises in a bushfire prone area are to include a provision obliging the tenant or licensee to develop a fire management plan and further, prohibit the tenant or licensee to access or use the land and building during any period in which a catastrophic fire danger rating is in force.
- (l) An early termination clause will be included in any lease and licence allowing Manningham Council to terminate the lease or licence upon specified written notice if Council requires the land and building for its own use.
- (m) Prior to the end of the term, Manningham Council may advise the tenant or licensee if the tenant or licensee can continue to occupy the premise or licensed Area under the overholding provisions, or offer the tenant or licensee a new lease on such terms and conditions which accord with Manningham Council policy, subject always to the satisfaction of legislative requirements.

## 5. GUIDING PRINCIPLES FOR COMMERCIAL LEASES AND LICENCES

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Commercial leases apply to premises which are used for the carrying on of a business but where there is no retail activity involved. Essentially, a commercial lease would apply to premises which is used for warehousing, industrial or office space. A retail lease on the other hand applies to premises which are used wholly or predominantly for the retail sale or hire of goods or services or the carrying on of a

business type specified by the Minister under section 5 of the *Retail Leases Act* 2003.

While there are similarities between commercial and retail leases, there is a distinct legal difference between the two in that retail leases are governed by the *Retail Leases Act* 2003.

Leases with commercial tenants are to be negotiated to include:

- (a) Commercial terms and conditions with rent being at current market value with an agreed annual rent review (either fixed percentage or CPI).
- (b) Early termination or relocation clause, in respect of long term leases as appropriate to ensure that the land (and building) is returned to Manningham Council in the event that it is required for Manningham Council purposes.
- (c) specific clauses related to the permitted use.

## 6. APPROVAL PROCESS FOR LEASES

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### ***New Leases***

If an existing lease ends or Manningham Council acquires or constructs a building and Manningham Council does not require the premises for its own purposes:

- (a) The Property Management Officer, in conjunction with the Chief Legal and Governance Officer, will undertake an assessment to determine whether the best use of the property is a community purpose or for a commercial tenancy having regard to: the above Guiding Principles, any preferred use put forward by an Executive Team Member after notification to the Executive Management Team, the suitability of the site for commercial or community tenant respectively, the potential commercial return available, the costs of any upgrade of the facility, and the need or demand for a community or commercial facility of the size and style of the available property. The Property Management Officer, in conjunction with the Chief Legal and Governance Officer, will prepare a report detailing the assessment and make a recommendation to the CEO on the best use of the premises.
- (b) The Facility Management team will undertake a condition report to ascertain the physical condition of the property and its fixtures and fittings prior to lease.
- (c) The Property Management Officer will facilitate community consultation in accordance with section 7 of this report (where required).

### ***Community Use – Expression of Interest (EOI) process:***

Where a determination is made that the property is best suited for community uses, Manningham Council will run an Expression of Interest (EOI) process to source potential tenant(s).

Where Manningham Council considers that certain services are required to service the needs of the community, the information for the EOI should detail the type of services targeted to fill the gap in existing service availability. The EOI will be facilitated by the Property Management Officer, with assistance from the Manningham Council service unit which “owns” the recognized service gap.

The Service Unit’s roles and responsibilities will encompass:

- (a) Assessment and determination of the best use of the land and building to best meet existing service gaps and in the case of a shared building, consideration of compatible or complementary uses to the existing available services.
- (b) Discussion with Statutory Planning to determine any prohibited uses or uses requiring planning approval.
- (c) Compilation of all relevant information relating to the building or part of building including:
  - i. a plan delineating the leased (or licensed) area, including any common areas or additional licensed areas,
  - ii. the proposed term (duration) of the lease and any further term,
  - iii. applicable rent/licence fee as well as estimated outgoings for which the tenant/licencee will be responsible, including the apportionment (%) of outgoings for shared or common areas;
  - iv. maintenance schedule detailing each party’s responsibilities; and
  - v. any special considerations or conditions that would be applicable (such as in the case of a licence, the days and hours of the licensee’s use of the licensed area).

Following approval from the relevant Service Unit Manager, the Property Management Officer will arrange to publish the EOI on Manningham Council’s website for a minimum of 28 days, and if considered applicable, place a notice at the building for the same 28 day period.

***Commercial Use – Tender process:***

If a determination is made that the property is best suited for commercial purposes, the Property Management Officer will facilitate a tender process to source the potential tenant.



The information for the tender should set out the range of uses that would be suitable, note that any lease is conditional on any planning approval required, the term (including any options), the current market rent and escalation process, position on outgoings and any special conditions.

The Property Management Officer will arrange to publish the tender opportunity on Manningham Council's website for a minimum of 28 days, and if considered applicable, place a notice at the building for the same 28 day period.

### ***Leases Containing an Option for a Further Term***

If a further term is specified in the lease, Manningham Council will grant a new lease for the further term if the tenant:

- (a) Gives written notice requesting a new lease (not earlier than 6 months or later than 3 months) before the end of the term.
- (b) Has remedied any breach of which the tenant has received written notice.
- (c) Has not persistently defaulted under the existing lease.
- (d) Complies with reasonable requirements of Manningham Council, including if the tenant is a corporation, procuring the directors or shareholders of the tenant to execute the guarantee contained in the lease.

### ***Leases where the Retail Leases Act 2003 Applies***

If the retail lease contains an option for a further term, Manningham Council must provide the tenant with written notice advising of the date after which the option is no longer exercisable at least 6 months and no more than 12 months prior to that date. Manningham Council is not required to provide the notice if the tenant exercises, or purports to exercise the option before being notified of the date.

If the retail lease does not contain an option for a further term, Council is required to give the tenant notice, at least 6 months but not more than 12 months before the lease expiry date either offering a renewal of lease on terms to be specified in the notice or informing the tenant that Manningham Council does not propose to offer a renewal of lease.

## **7. EVALUATION AND AWARD PROCESS**

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The Evaluation Process for consideration of responses to EOI and/or tenders for new leases will encompass the following steps:

- (a) The development of assessment criteria to compare any responses to an advertised EOI or tender received by the relevant Service Unit (for community leases) or the Property Management Officer (for commercial leases).

- (b) The relevant Service Unit or Property Management Officer establishing a panel comprising at least 3 Officers, including always the Property Management Officer, to evaluate the submissions received. For community leases or licenses a Chair from the relevant Service Unit must be appointed by the panel.
- (c) The panel members must be provided copies of the submissions together with an evaluation form requiring Officers to certify whether they have a Conflict of Interest, as determined and managed in accordance with Council's Conflict of Interest Policy.
- (d) The evaluation criteria for all prospective tenancies must include an evaluation of the prospective tenant's existing business experience and/or financial circumstances, to ensure prospective tenants are solvent and able to meet lease obligations.
- (e) The appointed Chair drafting a report which documents details of the site, particulars of the EOI including the number of submissions received, justification for selection of the preferred candidate including the overall evaluation scores, and the panel's recommendation of the preferred candidate together with details of their evaluation and scores.
- (f) The report must be sent to the relevant Executive Team Member and Chief Legal and Governance Officer for approval, who may approve the report, or in consultation with the CEO, refer the decision on the lease to the Council for decision.
- (g) Following approval, the Property Management Officer will draft the lease or licence for negotiation with the successful EOI participant or tenderer.

## 8. COMMUNITY ENGAGEMENT

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In accordance with Section 115 of the **Local Government Act 2020** Manningham Council will include any proposal to lease land (or change an existing lease) in the financial year in the budget where that lease is:

- (a) for one year or more and:
  - i. the rent for any period of the lease is \$100,000 or more a year; or
  - ii. the current market rental value of the land is \$100,000 or more a year; or
- (b) for 10 years or more.

Where a proposed lease (or changes to an existing lease) meets the above criteria and is not included in the budget, a community consultation process will be undertaken in accordance with Manningham Council's Community Engagement Policy, with the following requirements as a minimum:

- (a) **Consulting** the community in relation the proposed lease by publishing a notice on Manningham Council's website for a minimum of 28 days.
- (b) Inviting the community to provide a submission to Manningham Council for their consideration by the conclusion of the 28 day period.
- (c) Ensuring any submissions are tabled and considered by any evaluation panel established to consider the lease.
- (d) **Informing** any submitters and the broader community of the final decision in relation to the lease by letter and written notice on the Manningham Council website.

## 9. EXECUTION OF LEASES AND LICENCES

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Manningham Council will issue the lease or licence (in duplicate or triplicate for crown land) to the tenant or licensee for execution by that party.

Upon return of all copies of the executed document, the documents with completed Documents for Sealing form (signed by the relevant Officer and the Chief Legal and Governance Officer) is to be forwarded to the Governance team for listing on the Council meeting agenda for the Council's ratification.

One executed, one lease is to be retained for Council records and the second document is to be returned to the tenant. In the case of crown land leases and licences, all 3 copies will be forwarded to the Department of Environment, Land, Water and Planning for approval of the terms and conditions after which 2 will be returned to Manningham Council (one for retention and the second to be sent to the other party).

## 10. MANAGEMENT OF LEASES AND END OF LEASE PROCEDURES

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The Property Management Officer will be the principal point of contact for property management matters.

The Property Management Officer will prepare for the Chief Legal and Governance Officer a monthly report on rents and outgoings to be charged to tenants for authorisation.

All maintenance or condition issues of leased buildings are to be logged on Manningham Council's CRM by Tenant Liaison Officers or the Property Management Officer for investigation by the Facility Management team. The Property Management Officer, in consultation with the Facility Management team, will determine the respective party's responsibility for the repair and maintenance requests having regard to the provisions of the lease.

The Facility Management Team will undertake condition inspections of buildings on a two yearly cycle capturing historical information and compiling overall building condition ratings.

These inspections will assess the condition of:

- (a) The exterior building construction - roof, walls, eaves and fascia.
- (b) The overall condition of the internal elements including door frames, doors, window frames, floors, floor coverings, skirting boards, internal joinery, kitchen and bathroom fixtures etc.

Identified defects are programmed for cyclical and capital maintenance for future budgeting to ensure that funds are allocated as required to ensure compliance and that the buildings remain fit for purpose.

In addition, Manningham Council Officers, as part of their tenant liaison roles, who visit buildings will advise the Property Management Officer of any observations made in relation to tenant obligations, any required maintenance or structural concerns. The Property Management Officer will log a CRM for investigation by the Facility Management team.

Where a tenant is to exit a leased building, the Property Management Officer will:

- (a) Arrange an inspection of the building in the company of a tenant representative, Council's Facility Management team representative and the tenant liaison officer. Staff attending the inspection will complete Manningham Council's End of Lease/Exit Inspection checklist identifying any issues requiring action by the exiting tenant, prior to exit.
- (b) Ensure all keys to the leased building are returned by the Tenant.

Systemic or ongoing issues with the condition of a leased building, or unaddressed exit conditions issues on the End of Lease/Exit Inspection checklist will be escalated to the EMT member responsible for the service area (for community tenants) and the Chief Legal and Governance Officer (for commercial tenants) for further action in conjunction with the Property Management Officer.

## **11. PERFORMANCE REPORTING**

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The Property Management Officer will maintain a lease register of all Manningham Council leases and licences, and prepare a bi-annual report for the Chief Legal and Governance Officer detailing for the previous period:

- (a) Details of new and renewed leases and licences.
- (b) Details of terminated or expired leases or licences.

- (c) Details of leases in overhold, together with an estimate timeframe for new leases to be completed.
- (d) Any issues with tenant performance issues, including payment or maintenance issues.
- (e) Number of EOI or tender processes undertaken for new leases, and details of the facility or building.
- (f) Issues of concern with facility inspections undertaken in the reporting period.
- (g) Details of any expired tenant insurance requirements, and process and timeframe to bring insurance requirements into compliance with the lease.

The bi-annual report will inform updates to the lease register.

## **12. RENT RELIEF**

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Manningham Council recognizes there may be circumstances affecting a tenant's business operations resulting in financial hardship, including Council initiated works or improvements to a building, a pandemic or other business interruption activity.

Council will assess the effects of the disruptive event on a tenant's activities, giving consideration to rent or outgoings relief or deferral only where a formal written request detailing the impact supported by documentary evidence substantiating any significant and financial impacts has been received and assessed.

Approval for rent or outgoings relief or deferral will only be granted by the Council, or the CEO in accordance with approved delegations. The CEO may refer a request for rent relief or deferral to Council for a decision.

## **13. ADMINISTRATIVE UPDATES**

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Manningham Council may, from time to time, change this document. Where an update does not materially alter this document, such a change may be made administratively.

Examples may include changes of a Council department, change of name of a Federal or State Government department, and a minor update to legislation which does not have a material impact.

Any change or update which materially alters this document must be by agreement of the Executive Management Team.

## 14. REVIEW

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The next review of this policy is scheduled for completion by 30 November 2026.

## 15. DOCUMENT HISTORY

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<b>Policy Title:</b>	Leasing of Council Owned and Managed Property Policy
<b>Responsible Officer:</b>	Chief Legal and Governance Officer
<b>Responsible Officer Position:</b>	Property Management Officer
<b>Next Review Date:</b>	30 November 2026
<b>To be Included on Website?</b>	Yes

Last Updated	Meeting Type? Council or EMT	Meeting Date	Item Number
28/11/2022	EMT	17/11/22	Item 5
30/06/2021	EMT	15/7/2021	
	EMT	05/04/2011	Item 2
	EMT	20/01/09	Item 1
	EMT	24/05/00	