

## Leasing of Council Owned and Managed Property Policy

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Policy Classification	- <b>City Services</b>
Policy No.	- <b>POL/563</b>
Policy Status	- <b>Current</b>
Responsible Service Unit	- <b>Property Services</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 Council land and building assets and crown land managed by Council meets legislative requirements.

Further, the policy is updated to provide for the implementation of the provisions of new Local Government Act 2020.

## 2. PURPOSE

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

- (a) reduce the risk to Council in respect of occupied land and buildings while clearly setting out the respective parties' obligations;
- (b) ensure that occupation of land and buildings meets with Council's strategic direction and plans;
- (c) ensure that leases or licences for crown land accord with the purposes for which the land has been reserved;
- (d) maximise the use of Council owned or managed land and buildings by providing for multi-use where possible and the permitted use is compatible with other tenants and will complement the existing services;
- (e) ensure that all leases with commercial tenants are on commercial terms and achieve the best return for Council; and
- (f) ensure that prospective tenants are solvent and capable of meeting their obligations under the terms of lease or licence.

2.2 For the avoidance of any doubt, this policy does not apply to residential tenancy agreements, seasonal ground allocation or casual or regular hire of Council's hireable venues.

## 3. GUIDING PRINCIPLES FOR ALL LEASES AND LICENCES

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

- 3.1 Council will only enter into leases and licences with legal entities. A lease or licence will not be granted to a community organisation which is not an incorporated association registered under the *Associations Incorporation Reform Act 2012*;
- 3.2 tenants of premises with exclusive occupancy of 1 year or longer tenure must have a current lease. For tenants occupying premises for a term which is less than 1 year, it will be sufficient for the parties to sign a letter which clearly sets out the parties' agreement on the terms and conditions of occupancy;
- 3.3 Council supports maximising occupancy of land and buildings and where possible, will encourage shared and multi-use arrangements to provide for collaborative opportunities where permitted use and services are compatible with the object of benefiting the service recipients and the community in general;
- 3.4 long term leases will be considered in situations where the proposal is considered not to impact on Council's strategic plans and future requirements for the land and building, the potential use is deemed desirable to meet community benefit and the prospective tenant proposes at its own cost to improve the land and building;
- 3.5 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;
- 3.6 dependent on the permitted use, the terms and conditions of the lease and licence must amongst other things include appropriate clauses in respect of the leasing or licencing party's obligation to comply with environmental laws in connection with contamination including the obligation for immediate notification to Council, the Environment Protection Authority and any other appropriate Authority and clean up and remediation requirements;
- 3.7 where the lease provides for an option for a further term and there has been no breach of the essential terms, the tenant will be advised of the latest date on which to option can be exercised;
- 3.8 community engagement will be undertaken, as required particularly in relation to new leases, to satisfy the requirement of s115 of the ***Local Government Act 2020***; and
- 3.9 where appropriate, all new leases are to be promoted on Council's website that will support the requirements of the above.

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

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- 4.1 Community use leases and licences will be granted to tenants and 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 further, 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 come under the operation of the *Retail Leases Act 2003*.
- 4.2 The grant of a community use lease and licence is to be determined having regard to:
- a demonstrated community need for the purpose for which the premises or licensed area is proposed to be used;
  - the premises or the licensed area is fit for purpose and therefore, does not require a Council injection of funds for alterations or other works to accommodate the permitted use;
  - the proposed use meeting the Council Plan goals of community benefit and wellbeing; and
  - the benefit to those who are socially isolated, financially disadvantaged or with special needs.
- 4.3 The following principles will apply to community organisation tenants and licensees:
- 4.3.1 the leases and licenses will be offered for a term of 4 years to correspond with the budget process;
- 4.3.2 longer tenure will be considered in circumstances where a Government Department or Government Agency commits to enter into a Capital Funding Agreement with the Council and a proposed tenant to fund wholly or substantially the construction or renovation of a dedicated premises for a specific use and there is an identified community benefit for the service to be provided by the proposed tenant;
- 4.3.3 the annual rent will be determined as part of the Council's budget;
- 4.3.4 the lease 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 Council owned land and buildings;
- 4.3.5 the lease will contain a maintenance schedule setting out each parties respective responsibilities for repair and maintenance obligations;
- 4.3.6 tenants who have constructed the buildings and/or improvements will remain responsible for all maintenance, repairs and insurance of such improvements. Unless agreed with Council otherwise, 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 improvement are to remain at the end of the lease, the tenant will not be entitled to any compensation from Council;
- 4.3.7 as a condition of providing consent to a sub-lease, Council may require an increase in the head lease rent if the tenant secures a financial benefit from a sub-lease arrangement;
- 4.3.8 the Council reserves the right to terminate the lease if there is change of permitted use and the tenant has failed to obtain Council's consent in the first instance and/or a planning permit is required but not obtained in respect of the changed use;
- 4.3.9 in addition to other reasons for determination, the lease will be terminated immediately if the tenant becomes deregistered as an incorporated association;
- 4.3.10 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, the 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 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;
- 4.3.11 an early termination clause will be included in any lease and licence allowing Council to terminate the lease or licence upon specified written notice if Council requires the land and building for its own use.
- 4.3.12 prior to the end of the term, the 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 offering the tenant or licensee a new lease on such terms and conditions in accordance with Council policy and conditional on the satisfaction of legislative requirements; and

4.3.13 leases or licences 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 code red fire danger rating is in force.

## 5. GUIDING PRINCIPLES FOR COMMERCIAL TENANTS

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5.1 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*.

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

5.3 The leases with commercial tenants are to be negotiated to include:

5.3.1 commercial terms and conditions with rent being at current market value and include agreed annual rent review (fixed percentage or CPI);

5.3.2 early termination or relocation clause, as appropriate, in respect of long term leases to ensure that the land (and building) is returned to Council on the provision of the required notice in the event that it is required for Council purposes; and

5.3.3 specific clauses related to the permitted use.

## 6. APPROVAL PROCESS FOR LEASES

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6.1 Leases Containing an Option for a Further Term

6.1.1 If a further term is specified in the lease the tenant, 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 and Council has provided written notice; and
- (d) complies with reasonable requirements of Council including if the tenant is a corporation, procuring the directors or shareholders of the tenant to execute the guarantee contained in the lease.

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

- 6.2.1 If the retail lease contains an option for a further term, 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. The Council is not required to provide the notice if the tenant exercises, or purports to exercise the option before being notified of the date.
- 6.2.2 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 Council does not propose to offer a renewal of lease.

## 6.3 New Leases

If an existing lease ends or the Council acquires or constructs a building and the Council does not require the premises for its own purposes, Council will depending on the building determine the best use, including the opportunity for multi-use and if the building is:

- 6.3.1 best suited for community service uses, run an Expression of Interest (EOI) process to source potential tenant(s). Where 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; and
- 6.3.2 best suited for commercial purposes, run a tender process to source the potential tenant. The information for the tender should set out the range of services that would be suitable, conditional on planning approval.

In both instances, an assessment and evaluation of submissions would be made to determine the prospective tenant based on the tenant's existing business experience and financial circumstances to ensure that the prospective tenant is solvent and will be able to meet its lease obligations.

## 7. EXECUTION OF LEASES AND LICENCES

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

- 7.2 Upon return of all copies of the executed document, the documents with completed Documents for Sealing form (signed by the relevant Officer and the Manager Property Services) is to be forwarded to the Director City Services for authorisation to enable the matter to be listed on the agenda for Council's ratification.
- 7.3 One executed documents is to be retained for Council records and the second document is returned to the other party. In the case of crown land leases and licences, all 3 copies need to 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 Council (one for retention and the second to be sent to the other party).

## **8. RENT RELIEF**

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- 8.1 Council recognizes that there may be circumstances that could affecting a tenant's business operations resulting in financial hardship. A recent example being the COVID-19 pandemic and ever changing restrictions and where operations are permitted to continue, strict limited capacities.
- 8.2 In relation to commercial tenants, the Council will comply with the State Government's Commercial Tenancy Relief Scheme and ensure that commercial tenants eligible for support, are provided rent relief.
- 8.3 For community use tenants, Council will assess the effects on the tenant's activities and will give consideration to rent relief, where appropriate.

## **9. ADMINISTRATIVE UPDATES**

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- 9.1 Council will, from time to time, may change this document. Where an update does not materially alter this document, such a change may be made administratively.
- 9.2 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.
- 9.3 However, any change or update which materially alters this document must be by resolution of Council.

## **10. REVIEW**

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- 10.1 The next review of this policy is scheduled for completion by 30 June 2024.

## DOCUMENT HISTORY

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<b>Policy Title:</b>	Leasing of Council Property Policy
<b>Responsible Officer:</b>	Graham Brewer
<b>Responsible Officer Position:</b>	Manager Property Services
<b>Next Review Date:</b>	30 June 2024
<b>To be Included on Website?</b>	Yes

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