
8 GOVERNANCE AND CORPORATE PERFORMANCE

8.1 LEASING AND LICENSING POLICY

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File No: CM/03/005

Attachments: 1. Draft Leasing and Licensing Policy

SUMMARY

Mitchell Shire Council owns numerous properties as well as managing properties on behalf of the Crown. A number of these properties are made available to community groups, service providers, sporting bodies, private residents or commercial operators, by way of an occupancy agreement over the land.

Leasing and licensing of property establishes the formal agreement between Council, as the property owner or manager, and the tenants of Council properties to ensure properties are used for community benefit, that there is appropriate stewardship of the property and to apportion legal, insurance and risk management responsibilities related to occupation of Council property.

The proposed Property Leasing and Licensing Policy provides a framework to manage both community and commercial occupancy agreements. However, it is the community use of facilities (more so than Commercial use) that warrants a greater focus of attention due to the complexity and variety of user groups Council interrelates with.

Examples of community service providers are the State Emergency Service (SES), local sporting clubs, childcare centers, Riding for Disabled or Scouts among many others.

This Policy will provide for fair, equitable and transparent decisions and processes such that the community and tenants have a clear understanding of how property is to be allocated by Council and managed by tenants.

This report does not specify the cost structure for use of Council property. The Lease and License Policy focus is on establishing terms and conditions of use of Council property.

While the Property Leasing and Licensing policy will include coverage of some properties in receipt of a Funding and Services Agreement (FASA), the occupancy agreement process is separate to any financial support that may subsequently be provided to tenants of Council properties, and therefore funding arrangements are not discussed in this report.

The intention is for Council to endorse this draft policy prior to undertaking extensive community consultation. Community input will be considered in revising the final draft before adoption by Council.

LEASING AND LICENSING POLICY (CONT.)

RECOMMENDATION

THAT Council:

1. Release the draft Property Leasing and Licensing Policy for consultation purposes and invite feedback for consideration.
2. Officers present a final draft policy to Council for adoption at a later meeting incorporating community feedback.

BACKGROUND

Council does not have an existing Property Leasing and Licensing Policy to direct officers in their efforts to secure occupancy agreements with tenants of Council property and to ensure occupancy agreements are managed consistently and equitably.

The current practice of issuing and renewing community occupancy agreements is currently performing unsatisfactorily with no policy in place or a subsequent procedure document which would include the mapping of Council's processes for issuing occupancy agreements.

The draft policy makes clear compliance requirements and defines roles and responsibilities of Council as landlord, and community groups as tenants, to best manage properties based on the intended use/service being delivered from the property, while seeking to maximise the utilisation of properties to accommodate more community services.

ISSUES AND DISCUSSION

The draft policy sets out some key objectives, which will translate to better management practices by Council and improved compliance from tenants.

The objectives include;

- to ensure a consistent, equitable and transparent process in relation to leasing and licensing of Council Property.
- to optimise the use of Council Property by providing facilities that encourage higher usage rates, support multi-use and co-location of Tenants and increase community access to activities, programs and services from Council Property.
- to provide guiding principles that will assist in the responsible management, occupation and use of Council Property by Tenants.
- to ensure consistency with Council's principles under the Council Plan and related strategies including promoting diversity, appropriate levels of service, multiple use, accessibility, sustainability and inclusion.
- to foster a partnership approach between Council and tenants to facilitate management and maintenance in which Tenants contribute towards the responsibility and cost of occupying Council Property alongside Council.

LEASING AND LICENSING POLICY (CONT.)

The policy identifies several regulatory and compliance requirements common to leasing and licensing of property. These prescribed compliance areas are highlighted in the Policy to make clear the obligations on Council and Tenants entering into a property agreement.

Some of these requirements are non-negotiable, defined by Acts or Regulations; others will be negotiable, within reason, established through the process of forming a new lease or license agreement, taking account of the property, services delivered, user groups and their capacity to contribute.

These requirements include;

- Tenants use of the premises to comply with ethical behavior and sound principles of inclusiveness
- Restrictions on maximum terms for leases and licenses
- Defining rental payments based on Tenants capacity to pay and their ability to generate their own income
- Responsibility for property utility services
- Tenants requirements to be, and remain, insured.
- Process for acquiring liquor permits
- Rules relating to sub-letting or changing the original terms of agreement
- Rules relating to third party hire of premises
- Hours of use of premises
- Reporting to Council against key performance indicators
- Roles and responsibilities of Council and Tenant to provide Emergency, Risk and Occupational Health and Safety
- Roles and responsibilities for maintenance and capital works
- When and how an occupancy agreement will be terminated
- Processes for dispute resolution

Setting out landlord and tenant requirements through this policy in the first instance, followed by negotiated formal agreements, will establish the consistency of practice required to manage a large number of tenancies across a diverse property portfolio.

Established occupancy agreements give Council and Tenant the necessary assurance to maximise the use of buildings and to plan and develop better facilities for local community services for the future.

CONSULTATION

Once this draft policy has been endorsed by Council, it will go through an extensive community consultation process. Council will seek feedback from the public and will

LEASING AND LICENSING POLICY (CONT.)

also undertake more targeted consultation with Committees of Management, sporting groups, and community service providers.

The consultation process will aim to ensure that tenants understand this policy and that responsibilities are appropriately assigned to Council and the Tenant in the ongoing management and maintenance of the property.

Consultation has occurred between Council internal stakeholders, particularly the Assets and Property and the Recreation and Open Space Departments. Consultation will continue regarding appropriate resourcing and roles and responsibilities to deliver on the Policy, defined through a supporting procedures document.

FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

All use of Council properties must be covered by an occupancy agreement.

Council will enter into commercial occupancy agreements with the full intention of generating a market based rental income. These properties will be let through third party agents of Council to ensure the best commercial rent can be realised.

Income generation is not the driver for community use facilities. Community groups will be provided subsidised rental terms. Council will take into consideration its obligations under the National Competition Policy when determining subsidised rental fees for community Tenants.

Committees of Management and other user groups with occupancy agreements will still receive financial support through annual FASA's, however the two processes of providing occupancy agreements and providing funding agreements are separate and will remain this way.

As part of this policy Council will conduct annual property inspections of each facility to ensure compliance with occupancy agreements. Property inspections will observe the condition of facilities, note the 'fit for purpose' of the building for the services being provided, determine that adequate maintenance is being carried out, sight current insurance documentation, and ensure that Essential Safety Measures (ESM) and other Occupational Health and Safety (OHS) matters are being appropriately managed.

POLICY AND LEGISLATIVE IMPLICATIONS

The leasing and licensing of property is strictly regulated through several Government Acts including the following;

- *Retail Leases Act 2003 (Vic)*
- *Local Government Act 1989 Vic.*
- *Crown Land (Reserves) Act 1978*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Planning and Environment Act 1987*
- *Heritage Act 1995*
- *Occupational Health and Safety Act 2004*
- *Building Act 1993*
- *Health Act 1958*
- *Aboriginal Heritage Act 2006*
- *Liquor Control Reform Act 1998*

LEASING AND LICENSING POLICY (CONT.)

- *A New Tax System Act 1999*
- *Child Wellbeing and Safety Act 2005*
- *Gambling Legislation Amendment Act 2018*
- *Transfer of Land Act 1958*
- *Property Law Act 1958*
- *Residential Tenancies Act 1997*
- *Australian Consumer Law and Fair Trading Act 2012*

Council will adhere to the relevant Acts at all times in its dealings with property Tenants and in the process of issuing leasing and licensing agreements.

RISK IMPLICATIONS

Risk Ranking is determined using [ROHS201-G1- Corporate Risk Matrix](#). Risk is identified as Low, Medium, High or Very High.

| Risk | Risk Ranking | Proposed Treatments | Within Existing Resources? |
|--|--------------|--|----------------------------|
| Council properties being used by community groups without formal lease or license arrangements, placing liability on Council in the event of injury or accident. | High | <p>Formalise all occupancy agreements with users of Council property.</p> <p>Maintain an up to date property register</p> <p>Undertake checks of properties on an annual basis.</p> <p>Check Tenant insurance for professional indemnity public liability are up to date (where applicable).</p> | Existing resources |

LEASING AND LICENSING POLICY (CONT.)

| Risk | Risk Ranking | Proposed Treatments | Within Existing Resources? |
|---|--------------|---|-------------------------------|
| Conflict between user groups around access to Council properties | Medium | <p>Formal processes for issuing leases and licenses are consistent and transparent and comply with Acts</p> <p>Appropriate communication with user groups regarding processes, statutory requirements, and Council procedures.</p> <p>Issuing multi-user agreements through licensing arrangements to maximise availability of the property and the number of services.</p> | Existing resources |
| Too many occupancy agreements are experiencing overholding arrangements | High | <p>Tenants have no certainty of tenure required to plan for changes within their service.</p> <p>Council cannot strategically manage the property without a clear picture of what services will operate from the facility into the future.</p> | Existing Resources/Consultant |
| Council insufficiently resourced to manage all property agreements | Medium | <p>Documented procedures with defined roles and responsibilities and focus on Council's property register.</p> <p>Allows for planning to ensure adequate time is provided to prepare new agreements ahead of expiry dates</p> | Existing Resources |

LEASING AND LICENSING POLICY (CONT.)

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

Community Tenants occupying Council Property, that provide an approved and recognised educational, welfare, social, cultural, sporting or community service, function or program, are supported by Council to use the allocated properties to expand the service offerings within the Shire, allowing for greater participation in community activities by the wider community.

Council is also committed to reducing its ecological footprint. Tenants must use the Premises in an environmentally responsible manner and must comply with Council's directions in relation to environmental initiatives, including Land Management Planning or Environmental Management Planning.

CHARTER OF HUMAN RIGHTS IMPLICATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

CHILDREN AND YOUNG PEOPLE IMPLICATIONS

In many instances children and young people are primary beneficiaries of sporting and community services provided from Council properties. The services contribute to the social, physical and mental wellbeing of children.

OFFICER DECLARATION OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect interest in this matter.

CONCLUSION

Council properties are managed by Council to maximise a return to the community. This can be by way of increased revenue from commercial rental income or through provision of properties for community services.

The first draft Property Leasing and Licensing Policy is provided to assist Council and Tenants to define roles and responsibilities in the management and use of Council property.

This draft policy is provided for Council endorsement prior to a comprehensive community consultation process to seek Tenant and service user views. It is drafted to provide a consistent, equitable, and transparent process that fully complies with Council's responsibilities under legislation.

The policy also seeks to ensure Council properties are being suitably utilised for social benefit, and that we are fostering partnerships with the community to provide certainty around service continuity for the future.

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

18 FEBRUARY 2019

8.1

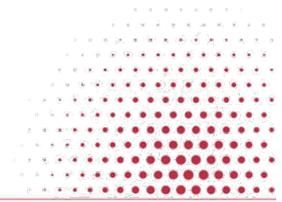
LEASING AND LICENSING POLICY

Attachment No: 1

Draft Leasing and Licensing Policy

MITCHELL SHIRE COUNCIL.

Policy



Leasing and Licensing Policy

DRAFT

| | |
|---|----------------------------|
| Policy Owner | Manager Finance and Assets |
| Creation Date | 13/7/2018 |
| Revision Date | Draft for review |
| Please check Council's Intranet to ensure this is the latest Revision | |

1. INTRODUCTION AND PURPOSE

Mitchell Shire Council manages a substantial property portfolio for the benefit of the community. Properties include both commercial and community buildings and land.

Council recognises the role that community organisations play in providing an overall social benefit to the Shire through the delivery of a range of educational, cultural, community, recreational, and sporting activities and programs.

Council provides land and/or facilities at a subsidised rental to community groups to assist them with their endeavours and Council may also assist with the maintenance and costs associated with their occupation of Council community facilities.

Council also leases land and buildings to organisations to operate government or commercial services and these leases are established through commercial contracts.

Most properties are directly owned by Council; however, some facilities are located on Crown land and managed by Council on behalf of the Crown, and some facilities are owned by tenants but are situated on Council land.

This Policy considers the way Council leases or licenses its owned and/ or managed land and buildings. It is a general policy that outlines Council's principles and it is intended as a framework that will assist Council in participating in fair, equitable and transparent processes with all types of Tenants who occupy Council owned or managed Property.

2. SCOPE

This policy applies to all Council Property where an occupancy agreement is entered into with a Tenant.

This Policy does not apply to:

- Facilities operated directly by Council
- Seasonal and occasional use of sportsgrounds managed by Committees of Management
- Casual or short-term hire of Council facilities

3. POLICY OBJECTIVES

- To ensure a consistent, equitable and transparent process in relation to leasing and licensing of Council Property.
- To optimise the use of Council Property by providing facilities that encourage higher usage rates, support multi-use and co-location of Tenants and increase community access to activities, programs and services from Council Property.
- To provide guiding principles that will assist in the responsible management, occupation and use of Council Property by Tenants.

- To ensure consistency with Council's principles under the Council Plan and related strategies including promoting diversity, appropriate levels of service, multiple use, accessibility, sustainability and inclusion.
- To facilitate a partnership approach between Council and tenants to facility management and maintenance in which Tenants contribute towards the responsibility and cost of occupying Council Property with Council.

4. DEFINITIONS

"**CLRA**" means the *Crown Land (Reserves) Act 1978 (Vic)* as amended from time to time

"**Commercial Tenant**" where Council enters into an occupancy agreement with a Tenant for commercial profit or gain. Rents are set by reference to market levels with regular reviews and in general, subsidised rentals will not be considered.

"**Community Tenant**" where Council enters into an occupancy agreement with a Tenant who is an individual or registered not-for-profit incorporated organisation at a subsidised rental to deliver an approved recreational, sporting, educational, social, cultural, or other community activity, program, service or function to the Mitchell Shire community. Community Tenants will be classified as:

- (1) Committees of Management (COM) Tenants – These incorporated associations receive funding from Council for service provision under a Funding and Service Agreement with Council. Typically, these Tenants and or their users charge a fee for service and generate additional revenue from fees for service and use of the facility e.g. liquor licence, 3rd party hire or other activities.
- (2) Local Community Tenants - These groups are locally based within the Shire. They have limited resources and capacity to generate income and rely on grants to be sustainable. They do not engage in any form of commercial activity, do not charge a fee for service, or employ staff and are governed by volunteer committees. They essentially function as volunteer agencies or self-help groups. These Tenants will receive the greatest discount or rental subsidy.
- (3) Other Not for Profit Community Tenants - Typically, these Tenants charge a fee for service or membership, employ staff and receive funding for service provision. They also may operate in several locations in a local, regional, state or national context. Although they are registered not for profit organisations, they also have capacity to generate additional revenue from funding, fees for service and use of the facility or other activities. For example: Red Cross, Salvation Army.

"**Council**" means Mitchell Shire Council

"**Council Plan**" means the Mitchell Shire Council Plan 2017-2021 which is updated on a yearly, cyclical basis.

"**Council Property**" means any land, building and improvements owned, managed or controlled by Council including Crown land where Council has been appointed as Committee of Management, Administrator and includes buildings constructed and owned by a Tenant on Council land or Crown Land.

“**Crown land**” means land owned by the Crown (Victorian State) which may be unalienated or reserved. Reserved Crown land means Crown land set aside from sale for a specific (public) purpose by an Act of Parliament.

“**DELWP**” means the Department of Environment, Land, Water and Planning and its successors and assigns.

“**Delegate**” means a member of the Council staff occupying a position to which the powers, duties and functions of the Council to enter into, vary, review and terminate leases or licences have been delegated or sub-delegated.

“**Lease**” is an agreement where the owner (landlord) grants to another person (tenant) a right to have exclusive possession of that land and/or building (or part thereof) for a fixed duration in return for rental payment.

“**Licence**” an agreement that permits a person or organisation (licensee) to occupy land and/or building (or part thereof) on particular conditions. A licence does not permit exclusive occupancy of the land and/or building.

“**LGA**” means the *Local Government Act 1989 (Vic)* as amended from time to time

“**Occupancy agreement**” means either a lease or licence of Council Property. Council will only grant an occupancy agreement to specific persons, corporations or incorporated association.

“**Premises**” means leased or licensed Council Property by a Tenant.

“**RLA**” means the *Retail Leases Act 2003 (Vic)* as amended from time to time.

“**Seasonal Licence**” means a licence agreement according to the defined terms and conditions by which a club or organisation is granted occupation by Council or a COM Tenant for either the summer or winter season. The licence does not permit exclusive occupancy of the land and does not create any interest in the land.

“**Tenant**” means an authorised person, corporation or an incorporated body (including a CoM) that has entered into or is proposing to enter into an occupancy agreement with Council for use and occupation of Council Property.

5. PROCEDURES

Comprehensive Leasing Procedures have been developed in relation to leasing and licencing Council Property and these need to be read when exercising this policy.

The Manager Finance and Assets will be responsible for the implementation, compliance, review and ongoing management of this Policy. The Leasing Procedures will be administered by the Assets and Property Team.

6. POLICY

6.1 Statutory Requirements

Council is required to abide by Acts and Regulations in the management of community facilities vested in Council and as such the statutory responsibilities are given highest order of priority when providing occupancy agreements to tenants. These Acts have been clearly highlighted in this Policy to ensure full and ongoing compliance by Council when issuing occupancy agreements for Council properties.

6.1.1 Local Government Act 1989

The *Local Government Act* (LGA) allows Council to grant leases of not more than 50 years and sets out the circumstances where Council must first give public notice of the lease proposal and consider all submissions received in response.

A public notice is required where the lease:

- is over one year and the rent for any period of the lease is \$50,000 (excluding GST) or more a year, or
- is over one year and the current market rental value of the land is \$50,000 (excluding GST) or more a year, or
- is for 10 years or more (including options), or
- is a building or improving lease (section 190)

Section 223 of the LGA provides for the public notice and submission process that must be followed by Council prior to making a decision to grant a lease. Council will place a public notice in the local newspaper and on Council's website of its intention to grant a lease of Council Property if the lease meets the requirements of section 190. Council will consider all written submissions received and hear any persons wishing to speak to his or her submission at a Hearing Committee before making a final decision at its Ordinary Meeting.

The LGA also requires Council to ensure that a lease register is available for inspection by the public.

6.1.2 Crown land

The *Crown Land (Reserves) Act* (CLRA) enables reservation of land for a range of public purposes, stipulates how reserved Crown land must be dealt with and prescribes some governance arrangements for Council, as appointed Committee of Management, to manage reserved Crown land.

Where Council acts as Committee of Management over Crown land, Council must seek the prescribed consents in accordance with the provisions of the CLRA and the proposed use of the Premises must not be detrimental to the Crown Land's reservation.

Council must ensure that it complies with DELWP's Crown Land Leasing Policy and Guidelines and occupancy agreements must be in the prescribed form as provided by DELWP.

6.1.3 Retail Leases Act

The *Retail Leases Act* (RLA) is the main governing legislation for retail leasing in Victoria. Leases of retail premises on Council Property must comply with the requirements of the RLA, unless the Premises are exempt pursuant to a Ministerial Exemption. Retail leases are generally managed by a managing agent (licensed real estate agent).

6.1.4 Child Wellbeing and Safety Act 2005

All Victorian organisations that provide services or facilities to children are required by law to comply with the Child Safe Standards.

Council Tenants providing services and facilities to children will be required to comply with Child Safe Standards by adopting and incorporating the compliances resources supplied by the Victorian State Government Dept. Health and Human Services into their organisational structures.

6.2 Multi-Use

Council will endeavour to make Council Property available for use by the wider community. This is done by encouraging multi-use and co-location of its community facilities where feasible. To ensure that Council Property is used to its greatest potential and to optimise access to, and the use of community facilities, Council will generally not lease Council Property to a single Community Tenant for exclusive use and will give preference to a licence rather than a lease. Exceptions may apply where Council considers that providing exclusive rights to a Community Tenant is in the best interests of the community, for instance where the Tenant has made a significant financial contribution and an exclusive lease arrangement can demonstrate benefit for the long-term management of the asset.

6.3 Occupancy Agreements

All Tenants of Council Property must, as a condition of that occupancy, enter into a formal, legally binding occupancy agreement with Council.

All commercial leases will be prepared and managed in accordance with the specific requirements of the RLA where that Act applies. RLA leases are prepared by the managing agent or Council's legal counsel.

Tenants must obtain Council's prior written consent before applying, or allowing a user group to apply, for a planning or building permit and all planning requirements, including liquor licence requirements, will become conditions of the occupancy agreement.

All occupancy agreements must contain an obligation on the Tenant to release and indemnify Council from all claims resulting from damage, loss, or injury in connection with the use of the Premises. Tenants must hold and maintain current insurances as required by the Lease or Licence

If a Tenant continues in occupation of the Premises after the end of the term of the occupancy agreement, without objection from Council, the Tenant will occupy the Premises as a monthly tenancy.

Unless prescribed by legislation, or otherwise decided, Council will charge Commercial Tenants its legal costs associated with the preparation and negotiation of an occupancy agreement, including lease or licence transfer, variation or sub-lease/licence. Commercial tenants will be required to pay municipal rates and other outgoings associated with the property.

6.4 Delegation

The Directors and Managers are Council's delegated Officers able to enter into, vary, review and terminate any occupancy agreement within their area of accountability and in consultation with the Manager Finance and Assets.

6.5 Commercial Leases

Council may consider offering an occupancy agreement to a Commercial Tenant of Council Property if:

- (a) the Council Property is considered suitable to lease;
- (b) the Premises is not required or used for Council or community purposes;
- (c) Council can derive a commercial return from its lease;
- (d) It is in the best interests of the community

Unless otherwise agreed by Council or the Delegate, the occupation of Council Property by a Commercial Tenant will be subject to a competitive selection process. A competitive process improves probity and addresses any conflict of interest in Council's decision making to lease the property.

For existing Commercial leases signed prior to this policy, the terms and conditions of the existing agreement will remain in place until such time the lease ends. Any new lease agreements with tenants will be made in accordance with this policy.

6.6 Community Leases and Licences

Council recognises that many existing Community Tenants have strong historical, social, emotional and financial ties to the community facilities they use and occupy. In many cases, Community Tenants have contributed cash or in-kind contributions to the maintenance or improvements of Council Property and Council will take this into account in considering tenure renewals of such Council Property. Notwithstanding this, Council is not obliged to renew or offer a new occupancy agreement to a Community Tenant.

At the end of the term of a Community Tenant's occupancy agreement, or where a community Tenant requests a further term, or where a new Community Tenant requests an occupancy agreement of Council Property, Council officers will carry out a property review to determine whether to offer a new occupancy agreement to the existing Tenant or a new Community Tenant.

Where it is determined that there may be competing interests for a community Council Property, an expression of interest process may be conducted to guide the issuance or renewal of that occupancy agreement to a Community Tenant.

6.7 Community Tenant's Use of Premises

Community Tenants must:

- encourage, support, facilitate and manage community programs, services and activities in the Premises
- encourage a diverse range of groups and individuals in the community to access to the Premises

- act ethically in the provision of the activities, services and/or programs it delivers from the Premises

During the term of a lease or license tenants must;

- use the Premises in accordance with their lease or licence agreement
- maintain all permits, registrations and accreditations required for the provision of its activities, services and/or programs and those of any user group
- meet with Council to discuss and review its use of the Premises
- comply with all relevant legislation;
- undertake maintenance and pay all fees and costs as required under the agreement; and
- maintain current public liability and other insurance as required.

Council will;

- Work with community groups to build their capacity to manage community programs, services and activities in the premises.
- Assist with promotion of community events to specific target audiences within the Shire
- Assist community groups operating from Council premises to access State and Federal funding.
- Monitor compliance with the terms and conditions of the lease
- Inspect properties on an annual basis for condition and safety
- Perform maintenance where this forms part of the lease or licence agreement
- Build sound relationships with Tenants.

6.8 Term

The LGA and CLRA place restrictions on the maximum length of leases and licences. The RLA also imposes a minimum term for retail leases.

The length of each occupancy agreement will be negotiated taking into account the particular circumstances of the Council Property, the Tenant's proposed use and how this relates to the Council Plan, proposed capital investment, co-location and multi-use, long term planning and statutory restrictions.

Council acknowledges that long term occupancy can impede the optimum use of Council Property for the betterment of the community. Generally, community occupancy agreements will be for a term of up to 3 years, however, alternative terms may be considered on a case by case basis.

6.9 Rent

Community Tenants occupying Council Property that provide an approved and recognised educational, welfare, social, cultural, sporting or community service, function or program will pay a subsidised rental.

The subsidised rental will be determined by Council or their Delegate. Council will take into consideration its obligations under the National Competition Policy when determining subsidised rental fees for community Tenants.

Rent will be payable in advance either annually, quarterly or monthly and must be within 30 days of receipt of invoice. Rent may be increased annually by either the consumer price index or fixed percentage, as determined by Council or the Delegate.

6.10 Additional Income

Often Community Tenants and their users raise funds for their service, activity or program which in turn provides benefits to them and the broader Shire community and supports the underpinning principles of the Council Plan.

Council supports income generating activities by Community Tenants and their users, and also considers it appropriate that these Tenants engage in activities which generate income to support their core service or program rather than rely on Council grants, funding or other forms of funds, grants or subsidies. Notwithstanding this, Council does not support, and community Tenants must not use, or allow to be used, Council Property for commercial means of income except without prior written permission.

Except for current arrangements in place at the time of this Policy, Council will retain the entire rental it receives from a commercial lease for use of Council Property.

Tenants must not negotiate directly with any commercial operator or telecommunication provider (or similar service provider) in relation to the use of Council Property or other Council owned or controlled land or building.

6.11 Rates, Taxes and Outgoings

Only Tenants under a lease rather than a license agreement will be required to pay all Council rates, waste service charges, water rates, levies and other statutory outgoings applicable to the Premises. Tenant must pay for their usage for electricity, gas, water, internet and telecommunications. Contributions for rates, taxes and outgoings by Tenants under a license agreement will be subject to a Tenants allocation of use of the property and its capacity to pay, and will be established prior to finalisation of any license agreement.

6.12 Insurance and Public Liability

All Tenants must take out public liability insurance for a minimum cover of \$20 million which extends to volunteers engaging in duties directly related to the Tenant's activities. Tenants must provide a copy of their certificate of currency to Council initially and upon renewal annually.

Council will not insure the contents of any Council Property leased or licenced to a tenant. Tenants, and their users, should take out contents insurance to adequately cover their possessions.

6.13 Liquor and Gaming

Council will not allow a Tenant or user group to apply for a gaming licence.

Tenants must obtain Council's prior written consent (as landlord) to allow them to apply to the Department of Justice and/or Planning authority for any form of liquor licence. Council in its capacity as landlord will consider applications for a liquor licence at its discretion and may refuse to give its consent (as landlord) or provide its consent subject to conditions in its absolute discretion.

If a liquor licence is agreed to, the tenant rental fee may be increased.

6.14 Subletting and Transfer of Occupancy Agreement

Tenants must obtain Council's prior written consent for any change or additional use of the Premises. Council reserves the right to review the rent or any other occupancy agreement provision if it provides such consent.

Tenants are not permitted to sub-lease the Premises without Council's prior written consent (which may be given conditionally) and subject to approved terms and conditions. If consent is granted, Council may review and adjust the terms of the head lease (including rental).

Community Tenants are not permitted to assign (transfer) their occupancy agreement.

6.15 Third Party Hire of Premises

Council may require Tenants to make the Premises available for casual hire to third parties where appropriate and where this does not interfere with the primary purpose of the Premises or adversely affect the amenity of other occupiers of the Council Property (if applicable) and/or nearby neighbours.

Tenants must obtain Council's consent (which may be given conditionally) prior to the Tenant hiring out the Premises for casual use or for seasonal allocations.

The hirer must also enter into a casual hire use agreement or a Seasonal Licence on terms, conditions and hire rates agreed by the Tenant prior to the hirer occupying the Premises. A breach of the hire agreement or Seasonal Licence by the Tenant or the hirer will be deemed to be a breach of the occupancy agreement by the Tenant.

Tenants must retain copies of all seasonal, regular and casual hire agreements for a period of no less than seven years.

6.16 Council Use of Premises

Community Tenants must allow the Premises to be used by Council at no cost. Such use will be subject to Council giving the Community Tenant prior written notice of its need to use the Premises, provided that such use does not unreasonably interfere with the Tenant's use of the Premises.

6.17 Hours of Use

The hours of use may be prescribed for the Premises and will generally coincide with the type of occupancy agreement that is granted to the Tenant. Tenants must comply with all legislation, guidelines, regulations, permits and directions in relation to its use of the Premises.

For Tenants who occupy Council Property under a licence, the Tenant will be permitted to occupy the Premises on agreed days and times, which allows Council to use the Premises and thereby maximises the use of the facility.

6.18 Reporting

Community Tenants must provide Council, upon request:

- a copy of its most recent annual report;
- an updated list of Tenant members and contact details of the executive members, annually or upon any change to contact details;

- copies of occupational health and safety inspections;
- details of maintenance and capital works carried out on the Premises, noting that prior approval of any capital works from Council is required;
- Current certificates of insurance;
- any further information reasonably required by Council.

6.19 Environmental Sustainability

Council is committed to protecting the environment and will require Tenants to use the Premises in an environmentally responsible manner, including appropriate management of waste, energy and water resources, and in the use, storage and disposal of chemicals. Tenants must comply with Council's directions in relation to environmental initiatives on Council Property, including any Land Management Plan or Environmental Management Plan.

6.20 Emergency, Risk and Occupational Health and Safety

Tenants must have in place compliant emergency evacuation plans and procedures associated with the Premises and must ensure that their employees and/or volunteers participate, as requested, in emergency training and drills.

Tenants must also provide and maintain a safe working environment and must ensure that the systems, procedures and practices necessary for the protection of the health and safety of all persons in or near the Premises is carried out and implemented.

Council and/or Council's authorised agents/contractors may enter the Premises to inspect essential safety measures including compliance with Child Safe Standards. The Essential Safety Measures Record Book must not be removed from the premise or interfered with.

Tenants must not change locks or install alarm systems without the prior permission of Council. Tenants must not change an alarm code without the prior permission of Council and the new code must be provided to Council within 5 working days.

Agreements may contain a clause which designates the premises for use as an Emergency Relief Centre or Emergency Recovery Centre in the case of an emergency, such as a natural disaster or otherwise, which would exclude the Tenant from the property until the premise was no longer required for emergency purposes.

Tenants must have in place a waste management plan for the premises. The plan should outline how garbage and recycling will be managed at the premises and include how waste will be managed for larger events and functions.

Where tenants receive a Council kerbside collection services, they are required to pay the associated waste service charge in accordance with Council's Kerbside Collection Policy.

6.21 Repairs, Maintenance and Works

Council will conduct an inspection of Council Property prior to the commencement date of the occupancy agreement to record the condition of the Premises.

All Tenants will be required to carry out a level of maintenance of their facility and will be required to maintain the Premises in accordance with the maintenance schedule attached to their occupancy agreement. The maintenance schedule clearly sets out maintenance responsibility of both Council and the Tenant.

The level of maintenance responsibility outlined in the maintenance schedule will be determined by the Tenant's use of the Premises, the function of the facility, the degree of community benefit, the Tenant's ability to generate revenue and statutory restrictions.

Tenants must provide Council with copies of all plans, drawings and concept plans for any proposed extensions, alterations, or improvement works (Works) to the Premises for Council's prior written approval. Tenants must obtain Council's written approval to undertake the works prior to applying for all necessary approvals, consents and permits for the Works for Council's consideration.

A detailed proposal must be presented to Council with any such request for alterations or capital works. The proposal must include, at a minimum, plans and budget, details of all permits required and estimated timeframes.

Approval for any capital works is at the absolute discretion of Council.

6.22 Relocation

Council may give three (3) to six (6) months written notice to a Community Tenant requiring the Community Tenant to surrender its occupancy agreement, if Council wants to:

- redevelop the land or carry out renovations/alterations on the land on which the Premises is situated which Council cannot adequately carry out due to the Community Tenant's occupation of the Premises; or
- co-locate the Community Tenant with another similar service provide at another Council Property.

6.23 Make Good

At the end of the occupancy agreement the Tenant must, at its own cost, unless Council or the Delegate determines otherwise:

- ensure the Premises are clean and in good repair and condition, having regard to the condition report;
- remove all its fixtures, fittings, chattels, stock, plant and equipment from the Premises; and
- ensure the Premises are clean, tidy, and safe having all utilities capped off by qualified tradespeople.

6.24 Termination

Council may terminate occupancy or an occupancy agreement:

- if a Tenant fails to enter a formal occupancy agreement of Council Property within 6 months of Council requiring the Tenant to sign the occupancy agreement;
- where there is evidence of unruly behaviour at the Premises,
- in an emergency or if there is a risk to any persons in or about the Premises;
- if a Tenant fails to perform or observe any of the Tenant covenants under the occupancy agreement after receiving written notice from Council;
- if a Tenant fails to provide and maintain current appropriate public liability cover or other form of insurance as specified in the agreement;
- if a Tenant changes its operating status without Council consent

A termination clause will be included in an occupancy agreement where Council has strategic plans to demolish, substantially repair, renovate or reconstruct the Premises.

6.25 Dispute Resolution

If any disputes or differences arise as to the interpretation of this Policy, the allocation of an occupancy agreement, or any other matter pertaining to the use of Council Property, a Tenant can appeal in writing to the Delegate. The decision made by the Delegate, after consulting with the disputing parties, will be final and conclusive.

7. RELATED DOCUMENTS

Council Policies & Plans:

- Council Plan 2017-2021
- Mitchell 2020 Community Plan
- Asset Management Policy
- Council's Annual Budget
- Child Safe Standards
- Kerbside Collection Policy 2016

Legislation:

- *Retail Leases Act 2003 (Vic)*
- *Local Government Act 1989 Vic.*
- *Crown Land (Reserves) Act 1978*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Planning and Environment Act 1987*
- *Heritage Act 1995*
- *Occupational Health and Safety Act 2004*
- *Building Act 1993*
- *Health Act 1958*
- *Aboriginal Heritage Act 2006*
- *Liquor Control Reform Act 1998*
- *A New Tax System Act 1999*
- *Child Wellbeing and Safety Act 2005*
- *Gambling Legislation Amendment Act 2018*
- *Transfer of Land Act 1958*
- *Property Law Act 1958*
- *Residential Tenancies Act 1997*
- *Australian Consumer Law and Fair-Trading Act 2012*

Other relevant documents:

- Leasing Procedures, Checklist
- Leasing Delegation Memo
- Crown Land Leasing Policy 2012
- Crown Land Leasing Guidelines 2012
- Committee of Management Responsibilities and Good Practice Guidelines (DELWP)