

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 following negotiation with prospective or existing tenants. 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 (unless otherwise negotiated with Council to pay in arrears) 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 as a fixed percentage, as determined by Council or the Delegate and agreed with the Tenant as part of the Occupancy Agreement.

## **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 without prior written permission from Council.

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**

Tenants under a lease rather than a license agreement will be required to pay 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.

[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.](#)

## **6.12 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.

Council will be responsible for insurance of the actual buildings.

## **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 increase.

## **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.

Council can provide pre-approval on a case by case basis to Tenants for third party hire where there are agreed procedures in place for adequate vetting of third party hirers, and there are processes for addressing any non-compliance of hire agreements by third parties.

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 with a license agreement must allow the Premises to be used by Council at no cost. Such use will be subject to Council giving the Community Tenant at least four weeks 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 license, the Tenant will be permitted to occupy the Premises only on agreed days and times, which allows Council to use the Premises outside of the agreed days and times 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 up to date total number of active members
- contact details of the executive members provided annually or upon any change to the executive membership. ;
- 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, 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.

### **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 will give 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.

### **6.23 Agreement End Obligations**

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 disconnected by qualified tradespeople.

## **6.24 Cancellation of Occupancy Agreement**

As a last resort Council may cancel occupancy or an occupancy agreement:

- if a Tenant declines to enter into a formal occupancy agreement of Council Property within 6 months of Council requiring the Tenant to sign the occupancy agreement (unless there are reasonable unresolved matters regarding the occupancy agreement)
- where there is evidence of unruly behaviour at the Premises by the Tenant or customers of the Tenant where it is considered reasonable the Tenant could manage the behaviour but does not.
- where an emergency may compromise the safety of a premises or if there is an ongoing 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 (in the event of a serious breach), or after receiving written notice from Council regarding a breach of covenants and does not taken reasonable steps to comply with those covenants thereafter;
- 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 in order to [co-locate a Community Tenant with another similar service provide at another Council Property.](#)

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 Delegate will work with any disputing parties to resolve the matter. The delegate is authorised to make a decision, however if disputing parties fail to reach an agreeable outcome with the delegate then a final appeal can be made for the issue to be heard and decided upon by either the CEO or at least two Directors. The delegate will present a report to the CEO/Directors outlining the dispute and options to resolve the matter. Disputing parties will be able to present their case at a meeting with the CEO/Directors. Prior to a final decision the CEO/Directors will confirm they are satisfied they have all the available evidence available to them to make a decision. The decision made by the CEO/Directors will be provided to parties in writing only and 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)