



Lease and Licence Policy

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Introduction

Council is the custodian of land on behalf, and for the benefit, of its community. This land includes property owned by Council, Crown Land where Council is the Committee of Management (CoM) and land leased or licensed by Council for identified purposes. Some Council-managed properties are leased for commercial purposes and generate market rents for Council. Most properties are leased at subsidised rates for community and not for profit purposes – to deliver a tangible community benefit. This includes properties used for community centres, child care centres, senior citizens centres, scout halls, club rooms, recreation spaces and sporting facilities. These uses deliver a range of public policy objectives, including health and wellbeing, recreation, space activation and community building.

Dependant on the land type and status, different legislation, with specific requirements and terms can apply. Therefore, each property must be dealt with in accordance with its specific legislative requirements.

Purpose

Council is responsible for the sustainable management of assets and maximising the community benefit arising from its property use.

This policy has been developed to meet the following objectives:

- **Custodianship:** Ensure Council managed properties are appropriately maintained, developed and occupied, having regard to the interests of local communities and the care of the assets.
- **Community Benefit:** Ensure Council managed properties are used to meet demonstrated community needs consistent with the Council Plan, and in kind support from Council, including subsidised rent, is recognised and transparently applied in light of the community benefit to be achieved.
- **Consistency:** Guidance to Council and the broader community with regard to the eligibility, use, length of lease and pricing structures to meet the diverse and changing needs of the community.
- **Equity:** A framework for fair, transparent and equitable leasing and licensing of Council managed properties to the organisations, businesses, agencies and community groups based in the City of Maribyrnong.
- **Financial:** Ensure sound financial management and effective administration of Council managed properties to allow for an acceptable financial return.
- **Legal:** Ensure the legal use of Council managed properties.

Scope

This policy applies to leases and licences of Council owned buildings and land across the municipality, Crown Land where Council is the designated Committee of Management and land or buildings leased or licensed by Council from another party for the purpose of Council performing its functions and meetings its objectives.

This policy does not apply to decisions relating to seasonal club agreements and casual hire agreements.

Definitions

Building and Improving Lease: A lease granted for an appropriate period to allow for the construction or modification of a property.

Commercial – Market Rent: Market rental rates relate to the value of the property and are determined by an independent valuer or competitive tender, comparing with rent levels for similar properties in similar areas. Market rent will be applied when the primary use of a property is commercial.

Community – Peppercorn Rent: Nominal rents used to satisfy requirements by Council for creation of a lease agreement. Peppercorn rents recognise the delivery of a significant community benefit and may also offer significant capital improvement.

Community – Subsidised Rent: Discounted rents from a market rate where there is some community benefit and may also offer investment back into the facility.

Crown Land: Lands reserved and/or administered under the *Crown Land (Reserves) Act 1978*.

Council Managed Property: Land which Council is responsible for. This includes land owned or leased by Council and Crown land which Council is Committee of Management.

Lease: A right granted by an owner of land (lessor) to another person / organisation (lessee) to have exclusive possession of that land for a fixed duration in return for rental payment.

Licence: A right granted by an owner of land (licensor) to another (licensee) to have shared use of that land for a fixed duration in return for rental and permits a person (licensee) to occupy land (or part thereof) on particular conditions.

Not for Profit Organisation: a not-for-profit is an organisation that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run it or their friends or relatives).

Occupancy Agreement: The agreement providing rights granted for occupancy of a property.

Property: The land and or buildings to be leased or licensed.

Service Manager: The relevant Council Officer who manages the relationship (including lease/licence negotiations) with existing or prospective tenants or landlords. The Service Manager is allocated based on the purpose of the agreement, including the type of use.

Term: the period of time from the commencement of the lease to its termination, including any further terms.

Responsibilities

Council	<p>Resolve on leases which:</p> <ul style="list-style-type: none"> • have a current market rental of \$50,000 or more (and are for a term of 1 year or more); or • have a term of 10 years or more; or • a building or improving lease.
Chief Executive Officer	<ul style="list-style-type: none"> • Execute leases which have a term between 5 years and less than 10 years. • Execute licences which have a term greater than 5 years.
Directors	<ul style="list-style-type: none"> • Execute leases and licences which have a term of 5 years or less.
Service Manager	<ul style="list-style-type: none"> • Create strategic documentation relating to current and future service needs which is to be used to guide future occupancy agreements. • Obtain information relating to organisations to assist with determining their eligibility to enter into an occupancy agreement with Council. • Negotiates terms with Lessee / Licensee in line with Council's Policy. • Consultation with relevant stakeholders to ensure policy, compliance and legal requirements are met. • Monitors compliance with performance criteria, terms and conditions at minimum on an annual basis. • Responsible for the day to day management of the occupancy agreement. • Monitors reporting requirements from the Lessee / Licensee to ensure maximum community benefit and site optimisation is achieved.
Property Management	<ul style="list-style-type: none"> • Develop policy, provide advice, guidance, template agreements and key terms. • Attend negotiation meetings to support Service Manager (as requested). • Maintain records and lease register. • Advice to Service Manager regarding compliance with agreements and legislation. • Provide relevant reporting from the lease register. • Apply for approval in principle (grant and purpose) from Department of Environment, Land, Water and Planning (DELWP) if Council is considering to enter an occupancy agreement under the <i>Crown Land (Reserves) Act 1978</i>.

Policy

1. Principles

Council will enter into occupancy agreements for one or more of the following principles:

- To meet the Maribyrnong community's service needs by making its properties available to not for profit organisations or community groups.
- Ensure the optimisation and sustainable management of assets by obtaining maximum community utilisation.
- To make its properties available for commercial or private purposes, for activation or financial community benefit.
- To gain access to property required for service delivery or community access.

2. Categories of Agreements

Council has three categories of agreements:

- Category 1 - Community – Peppercorn Rental
- Category 2 - Community – Subsidised Rental
 - Category 2A – Subsidised Percentage of Projected Costs
 - Category 2B – Cost Neutral Agreement
 - Category 2C – Discounted Market Rental
- Category 3 - Commercial – Market Rental

Category 1: Community – Peppercorn Rental

Eligibility Indicators

- **Community Benefit:** provides significant community benefit of which is in higher demand by the local community. The type of community benefit provided could not be delivered unless supported by Council.
- **Use:** aligns with a Council service and the Council Plan. Proposed use will increase social engagement and promote health and wellbeing for the City of Maribyrnong community.
- **Funding:** receives no funding from organisations other than Council.
- **Revenue:** no or limited capacity to generate revenue from use of the site (i.e. memberships or sub-leasing) or activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** Not for profit organisation or community group or club run by volunteers.
- **Compliance:** Not for profit organisation, registered legal entity, has an ABN, financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates, have a committee of management with appropriate governance arrangements.

Capital Contributions

- The organisation may be eligible for peppercorn rental or a rent free period for a period of time, if they have not satisfied all eligibility indicators identified above, however, have invested significant capital funds within the last 5 years or have committed to investing significant capital funds as part of a future site agreement.

Annual Rental

- \$104 per annum.

Preferred Term

- The base term offered by Council for a Peppercorn Lease is 5 years and a Licence is 3 years.
- Under certain circumstances shorter terms will be required or longer terms (if the arrangement involves significant capital investment).

Maintenance and Outgoings

- Council will have a standard maintenance template which provides for a partnership approach in which maintenance responsibilities will be reasonably and equitably shared.
- All other outgoings will be the responsibility of the occupants.

Category 2A: Community – Subsidised Rental (Based on Percentage of Projected Costs)

Eligibility Indicators

- **Community Benefit:** provides significant community benefit of which is in higher demand by the local community. The type of community benefit provided could not be delivered unless supported by Council.
- **Use:** aligns with a Council service and the Council Plan. Proposed use will increase social engagement and promote health and wellbeing for the City of Maribyrnong community.
- **Funding:** receives no or minimal funding from organisations other than Council.
- **Revenue:** has some capacity to generate revenue from use of the site (i.e. memberships or sub-leasing) or activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** Not for profit organisation or community group or club run by volunteers or paid workers.
- **Compliance:** Not for profit organisation, registered legal entity, has an ABN, financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates, have a committee of management with appropriate governance arrangements.

Capital Contributions

- The organisation may be eligible for subsidised rental or a rent free period for a period of time, if they have not satisfied all eligibility indicators identified above, however, have invested significant capital funds within the last 5 years or have committed to investing significant capital funds as part of a future site agreement.

Annual Rental

- Determined by calculating Council's projected costs associated with maintaining the premises, a standard formula of 2% of building replacement cost can be applied (unless there are site specific circumstances which justify a variance). The subsidised rental is then calculated by implementing a subsidy to the projected costs which may vary between 15% to 85%.

Preferred Term

- The base term offered by Council for a Subsidised Lease is 5 years and a Licence is 3 years. Under certain circumstances shorter terms will be required or longer terms (if the arrangement involves significant capital investment).

Maintenance and Outgoings

- Council will have a standard maintenance template which provides for a partnership approach in which maintenance responsibilities will be reasonably and equitably shared.
- All other outgoings will be the responsibility of the occupants.

Category 2B: Community – Subsidised Rental (Based on Cost Neutral Agreement)

Eligibility Indicators

- **Community Benefit:** provides significant community benefit of which is in higher demand by the local community. The type of community benefit provided could not be delivered unless supported by Council.
- **Use:** aligns with a Council service and the Council Plan. Proposed use will increase social engagement and promote health and wellbeing for the City of Maribyrnong community.
- **Funding:** receives significant funding from organisations other than Council.
- **Revenue:** has capacity to generate revenue from use of the site (i.e. memberships or sub-leasing) or activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** Not for profit organisation or community group or club run by paid workers.
- **Compliance:** Not for profit organisation, registered legal entity, has an ABN, financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates, have a committee of management with appropriate governance arrangements.

Capital Contributions

- The organisation may be eligible for subsidised rental or a rent free period for a period of time, if they have not satisfied all eligibility indicators identified above, however, have invested significant capital funds within the last 5 years or have committed to investing significant capital funds as part of a future site agreement.

Annual Rental

- Determined by calculating Council's projected costs associated with maintaining the premises, a standard formula of 2% of building replacement cost can be applied (unless there are site specific circumstances which justify a variance).

Preferred Term

- The base term offered by Council for a Subsidised Lease is 5 years and a Licence is 3 years. Under certain circumstances shorter terms will be required or longer terms (if the arrangement involves significant capital investment).

Maintenance and Outgoings

- Council will have a standard maintenance template which provides for a partnership approach in which maintenance responsibilities will be reasonably and equitably shared.
- All other outgoings will be the responsibility of the occupants.

Category 2C: Community – Subsidised Rental (Based on Discounted Market Rental)

Eligibility Indicators

- **Community Benefit:** there is a strong evidence base that the proposed use is in strong demand and will provide a significant community benefit and service which is in higher demand by the City of Maribyrnong community.
- **Use:** aligns with a Council service and the Council Plan. Proposed use will increase social engagement and promote health and wellbeing for the City of Maribyrnong community.
- **Funding:** receives significant funding from organisations other than Council or is a profit based organisation.
- **Revenue:** has increased capacity to generate revenue from use of the site or activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** run by paid workers.
- **Compliance:** registered legal entity, has an ABN, financially viable, complies with all relevant legislation governing its activities and holds all relevant certificates.

Capital Contributions

- The organisation may be eligible for subsidised rental or a rent free period for a period of time, if they have not satisfied all eligibility indicators identified above, however, have invested significant capital funds within the last 5 years or have committed to investing significant capital funds as part of a future site agreement.

Annual Rental

- Determined by obtaining a commercial valuation of the site and deducting the quantifiable community benefit provided.

Preferred Term

- The base term offered by Council for a Subsidised Lease is 5 years and a Licence is 3 years. Under certain circumstances shorter terms will be required or longer terms (if the arrangement involves significant capital investment).

Maintenance and Outgoings

- Council will have a standard maintenance template which provides for a partnership approach in which maintenance responsibilities will be reasonably and equitably shared.
- All other outgoings will be the responsibility of the occupants.

Category 3: Commercial – Market Rental

Eligibility Indicators

- **Community Benefit:** desirable to provide community benefit.
- **Use:** aligns with and not detrimental to Council strategic objectives.
- **Funding:** receives significant funding from organisations other than Council or is a profit based organisation.
- **Revenue:** has increased capacity to generate revenue from use of the site or activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** run by paid workers.
- **Compliance:** registered legal entity, has an ABN, financially viable, complies with all relevant legislation governing its activities and holds all relevant certificates.

Capital Contributions

- The organisation may be eligible for subsidised rental or a rent free period for a period of time, if they have not satisfied all eligibility indicators identified above, however, have invested significant capital funds within the last 5 years or have committed to investing significant capital funds as part of a future site agreement.

Annual Rental

- Determined by obtaining a commercial valuation of the site.
- Organisations may meet Peppercorn or Subsidised Eligibility Indicators but apply to occupy a site which is intended for a commercial use. Under these circumstances a commercial annual rental will apply.

Preferred Term

- The base term offered by Council for a Subsidised Lease is 5 years and a Licence is 3 years. Under certain circumstances shorter terms will be required or longer terms (if the arrangement involves significant capital investment).

Maintenance and Outgoings

- Commercial terms for maintenance and outgoings apply.

3. Community Benefit

All agreements will be required to demonstrate the community benefit arising from the use of the site, including the recognition of Council's contribution. Reporting and review requirements will be included in agreements to ensure accountability to Council and its community.

4. Vacant Properties

When leasing or licensing vacant properties, Council will undertake a public process to identify the organisation that will provide best value and highest community benefit. Applications received by a public process will be assessed by a panel at Council with evaluation criteria which will be created to meet the specific requirements of the site.

Under certain circumstances, agreements will be directly negotiated with organisations, provided there are justifiable reasons that a direct negotiation is appropriate. Such circumstances include, a new occupant which will provide significant community benefit, significant capital contributions and there is an absence of competition.

5. Agreement Renewals

When considering lease or licence renewals, Council will undertake a public process to identify the organisation that will provide best value and highest community benefit. Applications received by a public process will be assessed by a panel at Council with evaluation criteria which will be created to meet the specific requirements of the site.

Under certain circumstances, agreements will be directly negotiated with the current occupiers, provided there are justifiable reasons that a direct negotiation is appropriate. Such circumstances include, an existing occupant which provides significant community benefit, the site has been designed for their specific use and there is an absence of competition.

6. Overholding

All lease and licence agreements are to remain in a current status. Under certain circumstances, agreements may be allowed to enter into overholding. The overholding period will be at Council's discretion depending on the specific circumstances.

Legislation

- *Local Government Act 1989* – section 190 includes restrictions on the maximum length of leases and provisions requiring leases to be advertised under section 223.
- *Crown Land (Reserves Act) 1978* – governs Council’s responsibilities when appointed as Committee of Management of Crown Land, section 17B outlines requirements relating to Crown Land Licences and section 17D outlines requirements relating to Leases.
- *Retail Leases Act 2003* – outlines requirements for leases which are used wholly or predominantly for retail provision of goods or services.
- *Planning and Environment Act 1987* – provides for permitted use of land through Council’s planning scheme.

Related Documents

- Council Plan
- Council Long Term Financial Strategy
- Property Sale, Transfer and Acquisition Policy
- Community Infrastructure Plan
- Open Space Strategy
- Arts and Culture Strategy
- Maribyrnong Early Years Infrastructure Plan

Review of Policy

The Policy will be reviewed in 2022, or as legislation requires, or Council determines a need has arisen.