



Lease & Licence Policy

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1 Document Control

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RESPONSIBLE GENERAL MANAGER	General Manager City Assets and Environment
POLICY OWNER	Manager Property & Arts
ADOPTED BY	Council on 26 November 2018
REVIEW DATE	31/08/2022
CM REF AND VERSION	14/19198
VERSION HISTORY	Version 1 2004 Version 2 Adopted by Council on 26/11/2018

2 Purpose

The purpose of this policy is to provide a framework for a consistent, fair and transparent allocation of Council owned and managed facilities. This policy establishes guiding principles to maximise community access to Council facilities for existing and emerging communities.

3 Scope

This policy applies to all Council owned and controlled properties including freehold and Crown Land to which Council has been appointed as the Committee of Management. The policy does not apply to property that is occupied by Council.

4 Policy Statement

Council recognises the significant contribution community based clubs and organisations provide to the community in the achievement of the objectives set out in the Council Plan. The relationship with Council and its tenants is supported by Leases and Licences that:

- Maximise community benefit
- Protect the rights of tenants and Council
- Are fair and provide equity and inclusion
- Are simple and transparent

5 Policy Details

5.1 Lease

Leases are used to grant the exclusive use of a property for a term in excess of 1 year. The seasonal use of property by different sporting codes is accommodated by granting seasonal leases for pavilions. Council has three categories leases for the purposes of establishing the level of subsidy provided to determine the rental and maintenance regime:

- Group 1 - Fully subsidised - eg Kindergartens
- Group 2 - Majority subsidised - eg Sports Clubs
- Group 3 - No subsidy - Commercial tenants

Group 1	Example	Rent
Community not for profit groups. Have limited capacity to generate significant income. Must be an incorporated association. Subsidy Range: >99%	Kindergartens Historical Societies Life Saving Clubs Community Centres Seniors Groups	Minimum rent Set by User Fees and Charges in annual budget to cover administration costs.

Group 2	Example	Rent
<p>Community, sporting and recreational not for profit groups. Have some capacity to generate significant income (i.e. bar sales, commercial hall hire). Rent is subsidised by Council. Must be an incorporated association.</p> <p>Subsidy Range: 75%-99%</p>	<p>Tennis Clubs Pony Clubs Soccer Clubs Netball Clubs Yacht Clubs Football Clubs Cricket Clubs Hockey Clubs</p>	<p>Rent is a percentage of the depreciated replacement value of the facility. Where the Tenant has exclusive use of land then an additional rental calculation of a percentage of the value of the land is added.</p>
Group 3	Example	Rent
<p>Commercial Tenants</p> <p>Subsidy Range: 0%</p>	<p>Tour De Café APT SunnyBoy café Level Crossing Removal Authority (LXRA)</p>	<p>Rent is market value.</p> <p>Nothing in this policy shall preclude the negotiation of individual agreements that produce a superior financial and / or social return to Council and the community.</p>

5.2 Licence

Licences are used to grant a non-exclusive right to occupy a property for a term exceeding 1 year. Licences are granted for the use of a property shared with another licensee or the community generally. A license will be used to allocate a sports club with access to an oval for training and matches that at other times is available for use by the general community. Council will use licenses to maximise the use of property for the benefit of the community and recognise the seasonality of sporting uses of recreation facilities.

5.3 Occupation Agreement

Short term occupation on a perennial basis will be provided via an occupation agreement in recognition of the reoccurring use of property and associated community benefit.

5.4 Rental

Council is committed to providing access to property for the benefit of the Kingston community. Council does not seek to derive profit from leases in Group 1 or Group 2.

- Leases in Group 1 are offered at a peppercorn rental.
- Leases in Group 2 are offered at a significant subsidy and based upon the value of the building that is to be leased.
- Leases in Group 3 are purely commercial and are offered at market rates and on market terms.

The rental for leases is calculated as follows:

Group 1	Minimum rent set by the User Fees and Charges annual budget.
Group 2	0.2% of the depreciated replacement asset value
Group 3	To be based on market value.

Tenants that have a liquor licence are required to set aside, in an approved Sinking Fund, 2% of Gross Bar Sales to help fund improvements and maintenance of the Property. Funds must be directed to the renewal or replacement of improvements at the property. Funds are not be used for operational costs or tenants fixtures, fittings and chattels. The utilisation of funds is required to be reported in the annual report and accounts of the tenant.

Tenants that operate gaming from a Council property are not entitled to access any subsidy for that part of the premises that is licensed and will enter into a rental based on an annual fee per electronic gaming machine benchmarked with like facilities.

5.5 Lease Term (not applicable to Group 3)

Council recognises that organisations need to be certain about their future to enable them to support the community, plan for investment and capitalise upon volunteerism. Lease terms fall into 4 Categories and are based upon the circumstances of the tenant and the strategic direction of Council:

- **Maximum term** – 50 years – Ground leases involving significant tenant investment and non-council sourced funds. of over 85%
- **21 Years** – dedicated use facilities with established users who have historically established and built the facilities or make a significant financial contribution to the redevelopment of the property (greater than 20%), stable administration and foreseeable proper fit with Councils Strategic direction – Lifesaving clubs- Bowling Clubs, Yacht Clubs.
- **4-9 years** –leases where longer term criteria are not met but the tenant has an established history and good strategic fit with Councils objectives are offered leases of up to 9 years.
- **1-3 Years** – Leases of up to 3 years are offered generally to new tenants to allow for the establishment of the tenant.

5.6 Shared Use Incentives

Council's aim is to increase community usage of all facilities incentives as a way of encouraging clubs to share their facilities with the Community an incentive is available to Group 1 and Group 2 Tenants. **The incentive is not available to Group 3 tenants or facilities that include gaming. Liquor rental component does not attract a discount.**

5.6.1 Incentive Formula

Council will credit a tenant's account with a maximum of 10% reduction of rent for each third party Community Group usage on a regular and recurring basis.

A tenant's rental can be reduced up to a maximum of 50% through third party community group usage.

5.6.2 Eligibility & Application

In order to qualify for the incentive tenants must provide the User Coordinator with documents as evidence of the benefit to the local community together with the terms of the third parties group's use of the facility. Based on the submission and benefit to the community, the User Coordinator will either recommend approval of the 10% reduction, reduce the percentage discount or reject the reduction in its entirety. Tenants are encouraged to discuss potential shared use with their User Coordinator prior to making commitments.

An example of the operation of the incentive scheme

Mordialloc Sports Club (MSC) occupy the Ben Kavanagh Pavilion paying \$10,000/year in rent. The Mordialloc Men's Shed would like a space to meet weekly on a Tuesday afternoon and cook a BBQ for their members. MSC offers their pavilion for \$1/week and a \$20/week contribution to utilities. Council approves the arrangement and authorises a reduction of 10%, equating to \$1,000 ($\$10,000 \times 10\% = \$1,000$).

5.6.3 Eligibility and selection of a tenant

- Have User Coordinator support;
- Be an incorporated association or equivalent or be supported by the User Coordinator;
- Be a not for profit community based organisation (unless a commercial Tenant);
- Have open membership to the general public or to residents of the City of Kingston;
- Maintain appropriate insurances, including public liability; and
- Have an appropriate risk management plan; and

5.7 Standard Conditions

Council is committed to reducing unnecessary administration and has adopted standard lease, licence, occupancy agreements and maintenance schedules which form the basis of all tenancy agreements. The Standard documents have been reviewed and legally drafted to ensure the rights of tenants and Council are protected. These standard documents will not be varied.

Special Conditions can be added to agreements to address specific circumstances at the discretion of the Manager Property, Arts and Leisure. No special condition shall be included to invalidate an essential term or to hamper the intent of Council. Council reserves its right to pass on any costs incurred as a result of requests for inclusion of Special Conditions.

Selecting the most appropriate agreement will be determined by the type of tenant, use, level of access required and length of occupation.

Negotiations and execution of a new lease or licence shall be finalised within six months of the lease or licence being given to the Tenant for signing. If the date for finalisation of the lease or licence has passed (and a further extension of the negotiation deadline has not been granted) the Tenant shall be deemed an occupier on a month to month arrangement subject to determination at Council's sole option.

Each lease or licence shall include (but not limited to) the following annexures:

- Plan of the premises;
- Standard maintenance schedule; and
- Service agreement. Special conditions may be included to meet specific requirements of Council or the Tenant.

5.8 Maintenance

A maintenance schedule is included in lease and licence agreements and outlines the obligations and responsibilities for each party. The level of maintenance required is based on the capacity of the Tenant to maintain the premise, generate income, fee structure and whether the tenant has installed assets, fittings and fixtures.

Tenants must ensure they budget for regular maintenance of their leased or licensed premises in accordance with their maintenance schedule. Prior written consent from Council must be obtained before undertaking any works on the facility. Council must be consulted prior to the Tenant applying for any grants for capital improvements, fittings or fixtures. Below is a summary table of what each schedule dictates in terms of maintenance, for more detail please read the schedule within the lease or licence.

Schedule 1	Schedule 2	Schedule 3
Generally for Group 1 tenants, schedule places the onus on Council to complete a majority of maintenance.	Generally for Group 2 tenants, schedule calls for Council to complete all structural maintenance whilst the tenant will complete all other maintenance items.	Generally for Group 3 tenants, the schedule calls for all maintenance to be completed by the tenant other than what is required by law as the landlord.

5.9 Insurance and Risk Management

Council will insure at full replacement value all Council owned improvements, excluding fencing, lighting, synthetic surfaces, chattels or contents.

All Tenants are required to take out public liability insurance noting the interest of Council. The minimum cover is \$20 million.

5.10 Occupational Health and Safety obligations

The Tenant or Licensee must have in place appropriate evacuation plans and participate in emergency drills. Tenants are required to adhere to occupational health and safety requirements and essential safety measures in the building.

5.11 Hazard and incident reporting

Tenants must inform Council immediately of any:

- Hazards that are related to Kingston City Council infrastructure and have the potential to cause injury to any person.
- Incidents which resulted in or had the potential to cause injury to any person whether a part of the tenant's organisation, or a member of the public.

5.12 Casual third party hire (not applicable to Group 3)

Some Tenants may be permitted to hire the premises to third parties for one off events. The Tenant must have an appropriate hire agreement, policy and schedule of fees available to the community and must be provided to Council upon request.

It is the responsibility of the Tenant to ensure the third party has appropriate insurances and permits.

The Tenant must agree to charge a maximum of cost plus 20% of the direct expenses incurred as a result of making the facility available for community groups.

Upon demand the tenant must provide to Council a statement of direct costs. A list of all hirers must be given to Council upon request. Council may also require that the Tenant contribute a percentage of the revenue received towards maintenance of the facility or provide evidence that the revenue has been spent on the facility.

5.13 Outgoings

All Tenants are required to pay for outgoings and in a multiuse facility shall be responsible for their portion of the outgoings. The relevant department manager shall determine the apportionment of outgoings.

5.14 Subletting

Council generally does not support subletting, however in some cases may approve on application a sublet to a complimentary use. Subletting is the assignment of part of the leased area to a third party for exclusive occupation. Shared Use (clause 5.6) is not considered subletting as it is not exclusive use occupation.

5.15 Hours of Use (not applicable to Group 3)

Occupancy will be in accordance with relevant regulations, permits and EPA policy and is not to adversely impact surrounding neighbours.

5.16 Liquor Licence

All Tenants must obtain written consent from Council prior to applying for a new liquor licence or applying for an amendment to a liquor licence. Council reserves its rights to object to any expansion or intensification and withhold any permission at its sole discretion.

5.17 Gambling

The Tenant must not permit any gambling or lotteries to be conducted in a Council facility without the appropriate Council approvals and permits. Council will have regard to the scale and intensity of any gaming activity conducted by a tenant determine the rental to be charged from the property. It is the policy of Council that no subsidy should apply to that part, or parts of the premises in which gaming activity is conducted or supported. **Council does not support any additional gaming on its property and will work with tenants to reduce gaming.**

5.18 Reporting

All Tenants are required to provide various reports as a condition of their agreement, which may include but not limited to: annual report (including office bearers, financial statements), a list of hirers that used the premises in the previous financial year, business plan or strategy.

5.19 Community Benefit (not applicable to Group 3)

All Tenants must deliver direct and indirect benefits to the community in areas such as health and wellbeing, support services, social inclusion, cultural and recreational activities. These community benefits are to be reported annually to the User Coordinator.

5.20 Environmental Sustainability

Council is committed to reducing its environmental footprint. Council strongly encourages tenants and users of its facilities to employ and utilize environmentally sustainable practices to improve the environment.

5.21 Signage

The Tenant must seek Council's prior written consent and obtain the necessary planning permits before erecting any signage at the Premises. Council will only support signage that identifies the tenant(s) occupying the space. Any and all advertising signs of sponsors are to be temporary signs that are removed at the end of each day.

5.22 Child Safe Standards

Any Tenant that is engaged in activities which involve children must comply with the Child Safe Standards pursuant to the *Child Wellbeing and Safety Act 2005 (Vic)* as amended from time to time.

5.23 Working with Children

The Tenant must ensure that the Tenant's employees and volunteers where required to apply for a Working with Children Check under the *Working with Children Act 2005* have done so before working with children on Council land.

5.24 End of tenure

Prior to the expiry of the Term, Council will review the use of the premises to assess the strategic requirements of Council and to determine the suitability of entering into a new lease with the Tenant. This review is to be undertaken by the User Coordinator with the assistance of the existing tenant and Council's Community Buildings and Property Services Departments. The review will include

- The Tenant's current services, and programs, and the tenant's capacity to provide proposed services and programs.
- Whether the Tenants use of the Property is well/fully utilised;
- Whether the Tenant has adhered to the terms of the agreement including rental payments and maintenance obligations;
- Whether the Tenant's service provides community benefit to the municipality;
- Whether the Tenant's service continues to be relevant to and within the municipality.

Prior to Council commencing the review of use of the premises, the tenant will be provided with the opportunity to provide a submission addressing each of the above criteria.

5.25 Commercial Agreements

Council owns and manages several commercial properties within the municipality. Leases and Licences to occupy property for commercial purposes are set by either a competitive market mechanism such as an 'Expression of Interest' campaign (E.O.I.) or by a market valuation by a suitability qualified property valuer.

5.26 New or Refurbished Buildings

Council will not allow access to a new or refurbished building without a prior lease or licence in place.

5.27 Diversity and inclusion (not applicable to Group 3)

Council recognises that a gender inclusion gap exists in sports. Council encourages clubs to achieve gender equality and diversity by actively pursuing strategies to include female participation in recreational sport at all levels including, on field, operations and administration.

5.28 Unpaid Rent & Compliance Reporting

Tenants with unpaid rent are ineligible to access the Annual Grants Program.

The process for collection of unpaid rent is as follows:

- Stage 1** Within the first 90 days, the Property Services Department will attempt to collect the unpaid rent. This will be done through regular contact with the tenant including, but not limited to, face to face discussion, telephone conversations and emails. Council officers will keep an accurate record of all action taken.
- Stage 2** After a further 60 days a payment plan arrangement will be offered to the tenant. The tenant will be informed at this time, that if there is no agreement to discuss payment plan options, the matter of unpaid rent will escalate.
- Stage 3** After a further 150 days the tenant will be informed that interest will now accrue from this date onwards on the unpaid rent.
- Stage 4** After a further 180 days Council's debt collection agency will be instructed to send a Final Demand Letter in an attempt to prompt a response from the tenant.
- Stage 5** At this stage Officers will provide for Council consideration a recommendation on the treatment of any outstanding debt supported by documentary evidence of each step having been undertaken, responses received and consideration of demonstrated circumstances on their merits.

Council will decide on the appropriate course of action. This includes:

- restricting access
- lease termination

A report will be presented annually to Council detailing each tenant's compliance with the essential terms of their lease over the preceding 12 months. This report will include recommendations to address any non-compliance matters and the status of unpaid rent collection based on the 5 stage process above.

6 Delegation Authority and Decision Guidelines

A variation or exemption from policy will only be approved by Council. Such an exemption request must be made in writing and outline the reason and rationale behind the requested exemption.

6.1 Human Rights Charter

This policy has been reviewed against and complies with the *Charter of Human Rights and Responsibilities Act 2006*.

7 Related Documents and Resources

Legislation

Building Act 1993

Children's Services Act 1996 and Children's Services Regulations 2004

Child Wellbeing and Safety Act 2005

Crown Land Reserves Act 1978

Education and Care Services National Law 2010

Equal Opportunity Act 2010

Gambling Regulation Act 2003

Liquor Control Reform Act 1998

Local Government Act 1989

Occupational Health and Safety Act 2004

Planning and Environment Act 1987

Retail Leases Act 2003

Tobacco Act 1978

Working with Children Act 2005

Other resources

State Environment Protection Policy (Control of Music Noise from Public Premises)

8 Transition arrangements

This policy applies to all leases struck after the adoption of this policy by Council. Existing Group 1 and Group 2 tenants may request their current lease to be brought under the provisions of this Policy and upon agreement by Council a new lease will be provided and lease surrender will be executed.

9 Definitions

Committee of Management A committee appointed by the State Government to manage Crown Land.

Community Group	A recognised not-for-profit organisation or group of people who are link by social ties or share common perspectives who engage in joint action that is of altruistic motivation intended to advance the community.
Crown Land	Lands reserved and/or administered under the Crown Land (Reserves) Act 1978, Land Act 1958 and Forests Act 1958 forming the Crown Estate in Victoria.
Depreciated Asset Value	The current replacement cost of an asset less, accumulated depreciation calculated on the basis of such cost to reflect the already consumed or expired future economic benefits of the asset.
Lease	A contract under which the lessor (Council), grants exclusive possession of land to a tenant (group or organisation) for a specified purpose and term.
Licence	A contract under which the licensor (Council), grants non-exclusive use of land to a licensee (group or organisation) for a specified use and period.
Maintenance	Everyday repairs that need to be carried out as a result of fair wear and tear.
Permitted Use	The use to which Council agrees for a property to be used by a tenant.
Property	The land together with any improvements including buildings.
Outgoings	The expenses directly attributable to the operation, maintenance or repair of the Property. These include, gas, water, power, rubbish removal, grease traps, etc.
Seasonal Allocation	The short term licence granted by Council to a licensee to use an area on specific dates and times for a specific purpose.
Service Agreement	An agreement between Council and tenant whereby the tenant agrees to provide a specified service to the community in exchange for subsidised access to a property.
Sinking Fund	A bank account formed for the purpose of periodically setting aside money for the eventual refurbishment, renovation or replacement of a wasting asset.
Subsidy Range	the Council funded component of the rent represented by the difference between commercial rent based on market value and the rent charged by Council.
Tenant Commercial Operator	An organisation or business that provides goods, services or activities for financial gain.
User Coordinator	The first port of call and main Council officer that acts as a conduit between a 'User' (tenant) and all of Council's departments.