

LEASING AND LICENSING POLICY

Policy Number:	2004/24	Directorate:	Corporate Development
Approval by:	Council	Responsible Officer:	Coordinator Property Management
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1. PURPOSE

The facilities owned and leased or licensed by Council make an important contribution to the City's ability to achieve its objectives and service delivery. The facilities referred to in this policy includes both land and buildings and applies to Council facilities occupied under a lease or licence by a community or commercial organisation

This Policy provides a framework for leasing and licensing Council owned and managed properties. It establishes the requirements for all community Lessees and Licensees to demonstrate the community benefit arising from their use of a Council property and sets out reporting requirements to ensure accountability and recognition of Council's contribution. The Policy establishes the terms and conditions that will form the basis of negotiations for leases and licenses.

Through implementation of this Policy, Council aims to:

- Maximise the community benefit arising from the use of community facilities;
- Ensure responsible management of community assets; and
- Establish a methodology for categorising the type of lessors and licensees and calculating fees.

2. CONTEXT

Council owns and manages a number of facilities that are available to the community by way of a lease or licence agreement. This policy provides guiding principles to ensure that Council's land and buildings are managed responsibly in line with legislative requirements, while maximising the occupancy and benefit provided to the community through use of these facilities.

3. SCOPE

This policy applies to all Council owned land and/or buildings property occupied under a lease or licence agreement. It also applies to Crown land that is managed by Council on behalf of the Crown.

It does not include facilities that are:

- Allocated under Council's Sporting Reserve Facility Usage Policy;
- Managed by a third party on behalf of Council under a contractual agreement;
- Operated and managed by Council staff; or
- Leased or licenced to Council by an external lessor or licensor.

This policy will apply to all leases and licences developed or renewed following its adoption by Council.

4. REFERENCES

4.1 Knox Community and Council Plan 2017

- We are safe and secure
- We have strong regional economy, local employment and learning opportunities
- We are happy, healthy and well
- We are inclusive, feel a sense of belonging and value our identity
- Build, strengthen and promote good governance practices across government and community organisations

4.2 Relevant Legislation

- Local Government Act 1989
- Retail Leases Act 2003ct 2005 (Child Safe Standards)
- Telecommunications Act 1997
- Child Wellbeing and Safety A

4.3 Charter of Human Rights

- This policy has been assessed against and complies with the Charter of Human Rights.

4.4 Related Council Policies

- Sporting Reserve Facility Usage Policy
- Naming and Renaming of Council Owned Facilities Policy
- Community Signage on Council Open Space Policy
- Electronic Gaming Policy
- Sale of Land and Buildings Policy
- Support for Community Based Facility Development/Improvements – External Funding Submissions
- Interim Guidelines for Casual Hire of Community Facilities

4.5 Related Council Procedures

- Property Management Toolkit
- Naming and Renaming of Council Owned Facilities Procedure

5. DEFINITIONS

In this Policy:

Commercial Organisation	An organisation or enterprise whose purpose is to make a profit that can be distributed to employees or shareholders and/or an organisation that provides electronic gaming machines on Council premises.
Community Organisation	A not-for-profit incorporated association or equivalent that provides activities and services for the benefit of the Knox community. This includes community groups, sports and recreation clubs and service organisations but excludes incorporated associations that hold a licence for electronic gaming machines.
Community Tenant	An organisation occupying Council premises on a non-commercial basis.
Council	Knox City Council, whether constituted before or after the commencement of this Policy.
Facility	Land and/or buildings that are owned or managed by Council.
Crown Land	Land owned by the Government or a Government owned statutory authority that is managed by Council.
Department	The Victorian Department of Environment, Land, Water and Planning.
Facility Advocate	The Council Officer who acts as the liaison between Council and the organisation occupying Council land and/or buildings.
Incorporated Association	A club or community group, operating on a not-for-profit basis that is incorporated under the Association Incorporation Act 1981.
Lease Agreement	An agreement under which a lessee is granted exclusive occupancy of land and/or buildings for an agreed period.
Lessee	The occupant of Council land and/or buildings under a lease agreement.
Licence Agreement	A form of permission to enter and use land and/or buildings for an agreed purpose and/or stated period. The Licensee does not have exclusive use of the premises and Council is able to allow access by other user groups or the general public at other times.
Licensee	The occupant of Council land and/or buildings under a license agreement.
Memorandum of Understanding	A document that sets out a framework and a set of principles to guide the parties in the use of Council land and/or buildings where a facility has more than one licensee.
Premises	The area occupied under a lease or licence agreement.
Tenant	In this policy, an authorised person or incorporated body that has entered into or is proposing to enter into either a lease or a licence agreement with Council for the use of Council owned or managed premises.

6. COUNCIL POLICY

6.1 Policy Objectives

The objectives of the Policy are to:

- Ensure Council-owned facilities are used to meet demonstrated community needs consistent with the Council Plan;
- Optimise use of Council's community facilities and equitable access by the Knox community;
- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear assessment criteria;
- Ensure lessees and licensees pay fair and reasonable rentals based on clear eligibility criteria and calculation methodologies;
- Increase community access to activities and services, particularly access by disadvantaged and socially isolated groups and ensure all facilities are access for all;
- Enable Council's contribution to be reported to the community;
- Assist not-for-profit and volunteer-based organisations that offer activities and services to the Knox community;
- Ensure sound financial management and effective administration of community facility leasing and licensing; and
- Ensure reliable reporting and compliance with laws, regulations and standards and effective management of risk.

6.2 Eligibility

Council staff will assess prospective tenants before renewing an agreement or entering into negotiation with a prospective lessee or licensee. To be eligible to enter into a lease or licence agreement to occupy a Council facility, community organisations must:

- Be an incorporated association or equivalent;
- Be a not-for-profit community based organisation;
- Use the facility in a manner consistent with Council's objectives and current Community and Council Plan;
- Be open to the general public or members of the Knox community;
- Adhere to all relevant Council policies and procedures and have complied with the terms of any previous lease or licence from Council (where applicable); and
- Maintain appropriate insurances, including public liability insurance.

Commercial use will be granted to ensure utilisation of a facility where an organisation is an incorporated association, registered company or equivalent and:

- There is a demonstrated benefit to the community from the commercial activity that is being conducted; or
- The use complements other uses of the facility at a time when the facility would otherwise be vacant.

6.3 Type of Agreement

To maximise access to and use of community facilities, Council has a preference to enter into licence agreements rather than leases. A lease will only be offered where Council considers that providing exclusive rights to a single tenant is in the best interests of the community, or is necessary to recognise capital investment by the tenant and secure the desired use and long term development of the property.

6.4 Occupant Categories and Fees

Organisations wishing to enter into a lease or licence agreement with Council will be placed in one of the categories set out in the table below. These categories will determine the lease or licence fee that will apply.

Table 1

Category	Eligibility
Early Years	<ul style="list-style-type: none"> • Provides services that align with Council plans and strategies • Services accessible to Knox residents • Does not have ability to generate significant income beyond operating costs • Must be an incorporated association whose constitution does not permit the distribution of funds to members • Must be on the list of organisations for which Council has approved waiving of rental fees
Community Group A	<ul style="list-style-type: none"> • Community, service, sports and special interest/hobby groups that provide activities and services to the Knox community • May generate income from use of the facility or other activities consistent with organisation purpose, but income is not significantly higher than operating costs • May be dependent upon volunteers • Must be an incorporated association whose constitution does not permit the distribution of funds to members or • Government department and community organisations that service Knox and the surrounding area • Provide an ongoing and recognised benefit to Knox and surrounding community • Provides health, support or emergency services

Category	Eligibility
Community Group B	<ul style="list-style-type: none"> • Community, service, sports and special interest/hobby groups that provide activities and services to the Knox community • Generates income from use of the facility or other activities consistent with organisation purpose, where income is significantly higher than operating costs • May be dependent on volunteers • Must be an incorporated association whose constitution does not permit the distribution of funds to members
Commercial	<ul style="list-style-type: none"> • Profit-making groups occupying the premises on a commercial basis • Sport and recreation facilities operated by organisations for the purpose of making a commercial profit • An organisation which provides electronic gaming machines on the premises • Telecommunications and similar infrastructure

Fees and charges will be consistent, transparent and affordable to encourage and retain use of Council land and/or buildings for the benefit of the community, and to maximise the return where Council land and/or buildings are used for commercial purposes.

Council's fees and charges are determined through the annual budget process with an understanding of the important contribution made by community organisations in supporting the aims of the Council Plan. The following fees will apply to the Occupant Categories in Table 1 above:

Table 2

Category	Fee
Early Years	Nil
Community Group A	Community Rate as set out in the annual Fees and Charges Schedule.
Community Group B	<p>Fees will be assessed individually by the Facility Advocate, who will make a recommendation to Council based on the following criteria:</p> <ul style="list-style-type: none"> • Market rental value assessment • Level of maintenance responsibility • Capital contributions made by lessee or licensee for the construction of any buildings • Capital and or renewal contributions required under the agreement • Ability to generate income and extent of external funding • Service and program fees • Access by Knox residents • Use of volunteers

Category	Fee
Community Group B (cont'd)	<ul style="list-style-type: none"> • Track record as Council lessee or licensee • Fees payable by lessees or licensees using comparable facilities in similar municipalities • Consistency with Council objectives <p>The Fee will be no less than the Community Rate set out in the annual Fees and Charges Schedule.</p>
Commercial	Market driven, determined by a market rental valuation carried out by a valuer or the result of an expression of interest or similar process.

Following adoption, the new occupant categories and fee structure will apply to any new tenant entering into an agreement or when an existing agreement has expired and the current tenant seeks to enter into a new agreement.

For the 2017/18 financial year, the 'Annual Licence Fee' in the Fees and Charges Schedule will apply to all organisations in a category that is charged the Community Rate. This fee will be updated from 2018/19 to reflect the terminology in this policy.

6.5 Standard Terms and Conditions

Tenancy of Council facilities will be granted by way of a lease or licence agreement, except facilities that are allocated to sports clubs on a seasonal or annual basis under Council's Sporting Reserve Facility Usage Policy.

Standard terms for lease and licence agreements have been developed to reflect the contents of this policy and relevant legislation. These terms and conditions will form the basis of all community licences and leases.

Terms and conditions for commercial agreements will be negotiated on a case-by-case basis.

6.5.1 Term

The standard term for a licence agreement will be five years, subject to the satisfactory performance of the standards outlined in the licence agreement. A shorter term may be offered if the tenant is a new or emerging group, or if the facility is identified as required in Council's long-term plans for future use, demolition, refurbishment or a major capital works upgrade.

An extension to the standard term may be negotiated on a case by case basis only if the tenant invests or has invested in a fixed asset (such as a building or playing surface) and fully maintains the asset, or has been identified by Council as requiring long term planning certainty for funding and other organisational requirement.

The standard term for a lease agreement will be determined on a case-by-case basis, having regard to the particular circumstances of the facility and lessee, including Council planning and strategic direction, capital investment, the type of facility and proposed use, the extent of community benefit, and long term planning or other organisational need. All leases will be determined by Council.

6.5.2 Rent Review

Rent will be increased annually in line with Council's Adopted Fees and Charges Schedule.

Rental fees for all lease agreements, all agreements with commercial organisations, and licences where an extension to the standard term has been granted may be subject to a market review on the exercise of an option and/or every five years.

6.5.3 Maintenance (including improvements)

Tenants are required to maintain the facility in accordance with a maintenance schedule attached to the lease or licence agreement using the services of registered and qualified tradespeople to undertake works and provide a certificate of compliance for works that require it (e.g. plumbing and electrical). Schedules will specify the responsibilities of Council and the tenant, including responsibility for maintaining the structure of the building, fixtures and fittings, grounds and any specialised equipment or playing surfaces.

Written approval is required from Council prior to the commencement of any building, renewal or improvement work to the facility. In the first instance, tenants should contact their facility advocate for advice on the approval process and to submit plans for consideration.

Council reserves the right to inspect the premises each year or more frequently as required.

6.5.4 Insurance

All tenants are required to hold the following insurance:

- Public liability insurance to the value of \$20 million;
- Professional indemnity insurance; and
- Contents insurance for the lessee's or licensee's own property.

Public liability insurance must note Council's interest, unless otherwise agreed.

Council will insure buildings and Council installed and authorised fixtures and fittings. In instances where a tenant has a land only agreement, the tenant must maintain building insurance for their building constructed on Council land.

Tenants must provide Council with a Certificate of Currency prior to the signing of the licence agreement, and thereafter annually.

Failure to comply with providing Certificate of Currency documentation in the required times will result in the following escalation process:

- 14 days overdue – a reminder notice is provided
- 30 days overdue – a warning is provided
- 60 days overdue – a final warning is provided advising of intention to lock out
- 90 days overdue – Lessee/Licensee locked out until Certificate of Currency is provided

6.5.5 Child Safe Standards

The Victorian Government introduced the Child Safe Standards on 1 January 2016 to improve the way organisations provide services for children and prevent and respond to child abuse that may occur within the organisation.

Any organisation that provides services for children is required to comply with the Child Safe Standards. In addition to the requirement to comply under the Child Safety and Wellbeing Act 2005, the tenant is also obliged under their agreement with Council to ensure that Child Safe Standards requirements are complied with at all times.

6.5.6 Rates, Taxes and Outgoings

The tenant must pay all rates, taxes and other charges and levies separately assessed in connection with the Premises (if applicable). Where rates and taxes are not separately assessed, or the Premises are shared, the tenant must pay or refund to Council the proportion that the area of the Premises bears to the total area assessed within 14 days of receipt of a written notice from Council.

Where Council land and/or buildings are occupied under the 'commercial' occupant category, rates and charges are payable.

The tenant is responsible for utility and service charges including electricity, gas, telephone, water (excluding facilities located at recreation reserves which are not separately metered), waste, sanitary services and security.

Where the Premises are shared, the proportion to be paid by each tenant will be determined by negotiation and included in a Memorandum of Understanding signed by the relevant organisations.

6.5.7 Reporting Requirements

All community tenants are required to report against the eligibility criteria upon request and must advise Council if their organisational status changes during the term of their occupancy. Tenants are required to ensure that Council has a valid certificate of currency at all times. Certificates of currency must be provided to Council at the commencement of the agreement and as required thereafter.

Community tenants are required to submit the following information to Council within 4 weeks of the tenant's annual general meeting:

- the activities undertaken by the tenant;
- the level and degree of public access to the premises;
- details of any maintenance undertaken;
- copies of the most recent annual report and financial statement; and
- a list of office bearers including President, Secretary and Treasurer.

Council officers will assist tenants to comply with the reporting requirements by providing simple reporting formats and checklists. Council officers may also seek additional information where necessary to gain a better understanding of activities, the extent of community use and opportunities for facility and service development.

6.5.8 Signage

Prior written consent must be obtained from Council before displaying or affixing any signs, advertisements or notices to any part of the premises. Signage must comply with Council's Community Signage on Council Open Space Policy or the Knox Planning Scheme.

6.5.9 Permitted Use

The permitted use defines what the tenant can or cannot do at the premises. The permitted use should be clearly defined and avoid broad or vague statements which may be open to interpretation.

Tenants must obtain Council's prior written consent for any change in the permitted use or additional use of the premises, including any planning or building permit that may be required. Consent may be granted or withheld at Council's absolute discretion and subject to other conditions.

Council will not permit a change in use of the premises that is not compatible with the building permit for the facility, without the appropriate approvals. This includes occupancy levels, and changes to the building classification. Council is permitted to determine and end any agreement under these circumstances.

6.5.10 Terms of Use

The days and times of use will generally relate to the type of agreement that is offered.

A Lease Agreement offers exclusive use to the tenant and as such, the tenant will be permitted to operate from the Premises at any time in accordance with any applicable planning permit requirements, Council's Local Laws and having regard to legislation relating to noise pollution.

Due to the non-exclusive nature of a Licence Agreement, the tenant is permitted to occupy the facility on agreed days and times of use, which allows Council the flexibility to offer the facility to other community groups and thereby maximise the use of the facility. Where a facility is shared between two or more tenants, a Memorandum of Understanding will be negotiated and signed by all tenants and Council.

6.5.11 Sub-Letting

Sub-letting is where the facility, or part of the facility, is leased, licensed or hired out to another group by the tenant. The tenant remains responsible for all its obligations under their agreement.

Under a Licence Agreement, sub-letting of a facility to another group is generally not permitted. In some circumstances, including community-managed halls, Council may give the licensee the right to hire out the premises on a casual basis to a third party (under certain terms and conditions), which will be set out in the Additional Clauses of the Licence Agreement. Council may also give the licensee permission to enter into a sub-licence agreement with a third party in some circumstances. The licensee must obtain prior written consent from the manager under whose department the licence agreement is managed.

Under a Lease Agreement, subletting of a facility is permitted by obtaining Council's prior consent. In some circumstance, Council may give the tenant the automatic right to hire out the premises on a casual basis to a third party (under certain terms and conditions), which will be set out in the Additional Clauses of the Lease Agreement.

If Council agrees to a sub-lease of the premises, Council may review and adjust the rental fee of the head lease if the sub-lease rental fee is more than cost recovery. Any financial gain from subletting may in part be payable to Council rather than the tenant.

6.5.12 Gaming and Liquor

In line with Council's Electronic Gaming Policy, Council will not enter into a new occupancy agreement with any organisation that operates or intends to operate electronic gaming machines on the premises. In addition, Council will not support any increase in the number of electronic gaming machines at any facilities with existing gaming facilities.

Proposals for new or amended liquor licenses require prior Council consent before an application is made.

6.5.13 Keys and Access

All facilities must have Council locks on all doors and tenants are not to change any lock or install locks/padlocks to any area of a facility. If locks or padlocks are added or changed for any reason, the tenants must provide a key to Council immediately, along with justification for the change. Council may remove any locks installed by the tenant and seek reimbursement from the tenant for the cost of carrying out the removal.

Tenants will be provided with up to four sets of keys at the commencement of their tenancy. Any further keys issued will be at the tenant's own cost. It is the tenant's responsibility to ensure that a key register is maintained at all times. This should be provided to Council as part of the reporting process.

Council reserves the right to change some/all locks or padlocks of a facility or to change from manual to electronic locking system as part of the capital program of renewal/replacement. Access fobs will be provided by Council in this instance.

6.5.14 Relocation

Where Council proposes to dispose of, demolish, redevelop or otherwise carry out significant alterations or additions to a leased or licensed property during the term of the agreement, Council may terminate the agreement with due notice as detailed in the lease or licence agreement and make reasonable attempt to make available to the tenant a suitable alternative premises. The agreement for a new premises will be on no less favourable terms for the duration of the unexpired portion of the current agreement where this can be achieved.

6.5.15 Termination and Renewal

Council reserves the right to terminate lease and licence agreements by providing a minimum of six months' notice in writing.

6.6 Crown Land

Where Council acts as the Committee of Management of Crown Land, Council must seek approval from the Department of Land, Water and Planning to enter into a lease or licence agreement over the portion of Crown Land. Leases and licenses will be in the prescribed form as provided by the Department and Council's terms and conditions will form part of the special conditions of the lease or licence. The Department must approve any additional terms and conditions.

6.7 Delegation

The Chief Executive Officer has authority to execute all licence agreements that are categorised as Early Years and Community Group A, unless the initial term of the agreement is greater than five years.

All Community B agreements will be referred to a Council or Strategic Planning Committee meeting for consideration.

Council approval at a Council or Strategic Planning Committee is required for all lease agreements, including agreements that do not require a Public Notice to be issued in accordance with the Local Government Act 1989.

6.8 Implementation of Policy

This policy will apply to all new and renewed lease and licence agreements following its adoption.

7. ADMINISTRATIVE UPDATES

From time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this policy, such a change may be made administratively. Examples of minor administrative changes include change to names of Council departments or positions, change to names of Federal or State Government departments or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by Council.