

Leasing and Pricing Policy

Version: 1.0

Date Adopted: 19 December 2017

Responsible Department: Property and Procurement

1. Purpose

The purpose of this Policy is to ensure consistency in decision making and an equitable and transparent process for dealing with Council's leased and licenced assets. The leasing function relates to leasing property to either;

- Non-commercial occupiers which provide or promote community, cultural, sporting, recreational or similar activities.
- Commercial occupiers delivering services.

It also ensures that properties owned by the City of Casey are offered for lease in a financially sustainable manner.

This Policy does not apply to the seasonal and hire use of sporting grounds or other facilities.

2. Definitions

| | |
|------------------------|--|
| Act | Local Government Act 1989 |
| Council | Casey City Council, being a body corporate constituted as a municipal Council under the Local Government Act 1989. |
| Councillors | The individuals holding the office of a member of Casey City Council. |
| Council Officer | The Chief Executive Officer and staff of Council appointed by the Chief Executive Officer. |
| Council Owned | A facility owned by Casey City Council, including those built on crown land where Casey City Council is the Committee of Management. |
| Hire Agreement | Means an agreement used for casual occupancy (e.g. casual booking for short term use, up to 12 months) |
| Lease Agreement | An agreement used for exclusive occupancy (the tenant has sole use of the premises). |

Council policy documents change from time to time and it is recommended that you consult the electronic reference copy at www.casey.vic.gov.au/policiesstrategies to ensure that you have the current version. Alternatively you may contact Customer Service on 9705 5200.

| | |
|---------------------------------|--|
| Licence Agreement | An agreement used for a non-exclusive occupancy (Council may grant the use of the premises to another party for joint occupancy). |
| Property | Means any land, buildings and improvements owned, managed or controlled by Council including buildings constructed and owned by a Tenant on Council land. |
| Commercial Occupiers | An occupier who operates a business or commercial enterprise that is other than a sporting or recreational/ community group. This includes Not for Profit organisations that hire or retail goods or services. |
| Market Rental | The rental amount set by an independent valuer based on the current market. |
| Non-Commercial Occupiers | Not for profit bodies which provide or promote community, cultural, sporting, recreational or similar activities. |
| Replacement Value | The cost of replacement of a building. The assessment value excludes equipment, tools, furniture and the like (Insured Value). |

3. Strategic Direction

This Policy aligns with the following policy documents:

- Council Plan 2013 - 2017
- Casey C21 - Building A Great City
- Community Development Principles
- Community Service Organisation Guiding Principles
- Municipal Public Health and Wellbeing Plan 2013-2017
- Diversity, Access and Inclusion Policy
- Community Facilities Access Policy
- Property Strategy June 2015
- Rating Strategy January 2008
- Neighbourhood Houses and Community Learning Centres Policy

The following legislation relates to this Policy:

- Local Government Act 1989
- Local Government (General) Regulations 2004
- Retail Leases Act 2003.

4. Scope

In relation to Council as landlord, this Policy is applicable to:

- All community leases irrespective of value.
- All commercial leases where Council's primary aim is to maximize revenue.
- Leases for land only where a property asset is owned by an external party.

For the purposes of this Policy, occupants will be classified under the following categories:

CATEGORIES:

- A. **(Category 1) Community Service Organisations**
Organisations and agencies that respond to specific community issues through the delivery of services, and receive ongoing funding from Government. Some examples include counselling services, disability services, support services, welfare agencies.
- B. **(Category 2) Community Membership Organisations**
Tenants include recreational or community groups that service the community and are readily available to residents. These Tenants include member based fee-paying clubs, groups that charge for services and organisations that have the capacity to generate revenue from use of the Council Property or other activities consistent with the organisational purpose (but do not operate to make a commercial profit). Some examples include Sporting Clubs and Non-Government Organisations.
- C. **(Category 3) Commercial Organisations**
Tenants who occupy the Council Property on a commercial basis and are charged a market rental. Examples of these Tenants are commercial organisations which have a commercial (business oriented) profit objective and Government organisations.

5. Context

- A. Section 189 of the Local Government Act 1989 is Council's authority to lease property (as a Landlord).
- B. Council's Property Strategy recognises the five key property functions being acquisition, leasing, use, maintenance, and disposal. The Leasing and Pricing Policy will support Council to achieve the following objective as outlined in the Property Strategy and as it applies to leasing:

Where Council is contracting a service or leasing for a community or not for profit organisation the Policy will:

- ensure any lease is for the purpose of an identified, approved, current service to be provided by or on behalf of Council.
- ensure any proposed lease is tested to confirm the leasing solution is the best option to deliver the identified service need.
- ensure the lease can demonstrate the highest return (note: this may not necessarily be monetary but also community benefit) to Council rather than other options (i.e. disposal).
- To ensure any lease is for a bone fide community purpose or function and to a bone fide community not for profit organisation.

- To ensure the lease is to the extent possible consistent with the terms and conditions of other comparable qualifying community leases.
- To ensure that certain minimum standards are contained in the lease such as insurances, safety including fire safety, make good and maintenance and upkeep of facilities.
- ensure the lease can demonstrate value for money.
- ensure the lease can demonstrate affordability.

6. Policy

6.1 Leasing Principles

a) *Permitted Use*

Council will decide, in its absolute discretion, the appropriate and permitted use of properties that it leases, considering but not limited to dual occupancy and compatibility with adjoining uses.

b) *Lease Term*

Lease terms will generally not exceed 5 years for the following reasons:

- Council should have the flexibility to amend the use of its property in response to changing circumstances and expectations.
- An extended lease term will be considered where the occupant is making significant investment into the Council Property.

At the expiration of the Lease, the future use of the property will be considered having regard to Council's Policies referred to under Item 3. Strategic Direction.

c) *Management of Agreement*

Council reserves the right to suspend or terminate a Lease or Licence at any time if it has good cause including:

- A breach of the terms and conditions of the Lease or Licence;
- Failure to pay fees and charges and/or outgoings;
- Failure to provide information requested by Council by the designated time;
- Adherence to maintenance responsibilities outlined in each agreement; and/or
- Council determining that a Lease or Licence has a potential to pose a risk to Council Property and/or the community.

d) *Maintenance*

Tenants should be responsible for maintenance specified in the Building Services Maintenance Schedule.

e) Services

Tenants should be responsible for the consumption charges levied by utility organisations and waste charges.

f) Rates & Taxes

- Sporting Clubs will be responsible for charges under the Cultural & Recreational Lands Act 1963 which allows Councils to charge a sum in lieu of rates that is not greater than what would be charged if the property was rateable for outdoor recreational activities.
- Community and charitable use of Council property are generally non-rateable under the Local Government Act 1989 unless it falls under the Cultural & Recreational Lands Act 1963.
- Fire Services Property Levy - Is a state government levy charged in full to the property owners and is the responsibility of the Landlord (Council). Council should on-charge the Levy where it leases property as a statutory outgoing.

g) Reporting requirements

Current lease agreements require the Tenant to provide copies of their annual reports (including financial statements) and service reports where a defined community service is being provided.

h) Insurance

All occupants under a lease or licence are required to provide public liability insurance for a minimum of \$10,000,000.

Council does not insure or take any responsibility for insuring contents, this is the responsibility of the tenant.

i) Emergency Management

If the City of Casey Municipal Emergency Management Plan is enacted, Council has the right to access all Council owned facilities and to enter and remain in these buildings without prior notice and for the duration of the emergency.

j) Signage

Tenants must obtain Council's permission prior to the Tenant displaying or affixing temporary or permanent signs to any part of the Premises where such signs are visible from outside the premises.

k) Inspections

Council will conduct an entry inspection prior to commencement of a lease/licence agreement or as required to ensure a Tenant is complying with the terms and condition of their lease arrangement.

l) Assignment and Subletting

Tenants must not assign, sublet, or give up possession of the premises without obtaining the prior written consent of Council (which consent may be withheld or given conditionally in Council's absolute discretion). Such a breach will allow Council to terminate the tenancy.

If Council consent is provided to a sub-lease of the Premises, Council may review and adjust the rental level of the head lease if the rent is more than cost recovery and any financial gain from sub-letting may in part be payable to the Council rather than the Tenant.

m) Application to Lease

Prospective Tenants must submit a Lease Application Form. Applicants may be required to pay a lease application fee of \$150 to initiate the process and which contributes to valuation costs. This fee will be subject to reimbursement at the discretion of Council.

n) Priority of Access

The Priority of Access principles as outlined in the Community Facilities Access Policy should be considered upon leasing any Council facility.

o) Council Access

Non-Commercial Tenants must allow Council to use the premises for Council sponsored functions at no cost to Council. Such use will be subject to Council giving the tenant at least 30 days' notice of its intention to use the premises and provided the Council use of the premises does not unreasonably interfere with the tenant's use. Council must rectify any damage to the premises caused by Councils use of the premises.

6.2 Pricing Strategy

Council recognises that there is an overall social benefit for the community to enable the use of Council owned land and facilities by organisations which provide recreation and sporting opportunities or are key to overall community needs.

This Policy also recognises that the existence of a range of leisure and recreation facilities and services enhances the quality of life and wellbeing of our community in accordance with Council's objectives. This Policy also gives due recognition to organisations which have contributed to the capital cost of constructing the asset.

Rent for commercial tenants will be increased by a fixed percentage annually or in line with the terms and conditions of a specific lease arrangement. Rentals are also subject to a market review at the exercise of any option and/or every three to five years of the term. This will generally apply to Commercial Tenants only.

Council reserves the right to amend the rental if a tenant obtains an on-premises licence, packaged liquor licence, general licence, food premises licence or gains access to other commercial or fortuitous (but not fundraising) means of income generated during the term of the agreement. e.g. rent received from subletting, telecommunication rental, revenue received from advertising on the premises. Consent from Council is required for any such use.

6.3 Rental Fees

City of Casey will maintain two separate rental strategies for lease agreements that recognise the difference between commercial and non-commercial occupiers and extracts a commercial return from business and retail operations.

Rental Assessments from independent Valuers will determine the rental set for commercial premises. Non-commercial occupiers such as sporting clubs and recreational/community groups will attract a different rate of rental according to the specific pricing methodology.

Rental is based on the replacement value of facilities at a discounted rate in accordance with occupant categories and the service provided. This rental structure will apply to all new lease arrangements, existing leases will not be affected until expiry of the lease agreement. This Policy also gives dues recognition to organisations that have contributed to the capital costs of constructing the asset.

For the purposes of this Policy, fees and charges for occupant categories will be:

A. **Community Service Organisations**

Partial cost recovery, utility outgoings and standard maintenance responsibilities.

- *Community service organisations that receive funding from the City of Casey will be subject to the minimum rental fee of \$150 per annum.*

B. **Community Membership Organisations**

Cost recovery, utility outgoings and standard maintenance responsibilities plus rates charges under the Cultural & Recreational Lands Act 1963 (where applicable).

- **Liquor Licence or Food Premises Licence**

Tenants that hold or obtain a Renewable Limited licence, Restricted or Full Club licence, On Premises Licence or Restaurant & Café Licence may be charged a liquor licence rental at a minimum of \$1000 per annum, fixed fee (due to the ability to generate income). This will be reviewed on an individual Organisation is.

C. **Commercial Organisations**

Conducting activities for the objective of deriving a profit. Market rent, utility outgoings and standardised maintenance responsibilities plus statutory outgoings.

7. Administrative Updates

It is recognised that, 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 document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

8. Review

The next review of this document is scheduled for completion by 31 December 2021.