

POLICY LOCATION	Infrastructure & Delivery	POLICY TITLE	Leasing and Licensing of Council Facilities Policy
POLICY NUMBER	CA38	DATE ADOPTED	14 December 2022
REVISION NUMBER	1	REVISION DATE	December 2026

Purpose

The purpose of this Policy is to outline Council’s policy position on the leasing of Council Facilities within the municipal district in order to ensure that occupancy arrangements are conducted in a lawful, transparent and equitable manner and in alignment with Council’s long term strategic plans and objectives. By leasing Council Facilities, Council also aims to obtain a maximum commercial return and derive a financial benefit.

This Policy provides guidance to Council on the considerations which are to be taken into account when entering into a lease arrangement and establishes a framework for Council decision-making.

Scope

This Policy applies to all Council Facilities, whether for community or commercial use or for retail or non-retail purposes.

This Policy does not apply to:

- Crown Land including Crown Land for which Council is the appointed Committee of Management;
- Casual hire arrangements;
- Seasonal ground allocations; or
- Residential tenancy agreements.

Definitions

- **Act** means the *Local Government Act 2020*;
- **Commercial Tenant** means a Tenant who operates a commercial business or entity;
- **Community Tenant** means a Tenant who operates a not for profit organisation and/or sporting club;
- **Council Facilities** means land and/or buildings which are owned by Council;
- **Lease** means a formal right evidenced by an agreement in writing granted by the land owner (Landlord) to another person (tenant) which provides the tenant with exclusive

occupation of the land identified within the lease (or part thereof) for the period specified in return for rental payment paid for by the tenant;

- **Licence** means an entitlement evidenced by an agreement in writing between the owner and the licensee to occupy a part of a Council Facility on a non-exclusive basis;
- **Tenant** means a person who enters into a Lease with Council as the Landlord for the exclusive use of a Council Facility in accordance with the terms of the Lease; and
- **Term** means the period of the Lease from the commencement date to its end date, including the exercise of any options to extend.

Policy Statement

The primary consideration in the proposed leasing or licensing of Council Facilities is achieving the best outcomes for the local community by taking into account future generations and ensuring the sustainable management and ongoing use of Council's Facilities.

With respect to the leasing or licensing of Council Facilities to Commercial Tenants, it is Council's policy position to –

- maximise the use and financial return of Council Facilities that are not required for any other Council use; and
- use standardised commercial property agreements.

Guidelines

In order to promote good governance, Council must in the performance of its role give effect to the overarching governance principles contained within s.9 of the Act.

These principles require Council to act lawfully, to prioritise achieving best outcomes for the community and to ensure the ongoing financial viability of the Council.

Specific Legislative Considerations

The leasing of Council Facilities must be undertaken in accordance with s.115 of the Act which provides the following -

- (1) A Council's power to lease any land to any person is limited to leases for a term of 50 years or less.
- (2) Subject to any other Act, and except where section 116 applies, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.
- (3) A Council must include any proposal to lease land in a financial year in the budget, where the lease is—
 - (a) for one year or more and—
 - (i) the rent for any period of the lease is \$100 000 or more a year; or
 - (ii) the current market rental value of the land is \$100 000 or more a year; or

- (b) for 10 years or more.
- (4) If a Council proposes to lease land that is subject to subsection (3) and that was not included as a proposal in the budget, the Council must undertake a community engagement process in accordance with the Council's community engagement policy in respect of the proposal before entering into the lease.

Legislative Exemptions

Section 116 of the Act provides that Council has the power to transfer, exchange or lease any land, either with or without consideration to –

- (a) the Crown;
- (b) a Minister;
- (c) any public body;
- (d) the trustees appointed under any Act to be held on trust for public or municipal purposes; or
- (e) a public hospital within the meaning of the *Health Services Act 1988* or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society –

without having to comply with the public notification and community engagement obligations required under s.116.

Where Council transfers, exchanges or leases land to a party other than those listed above, Council is still required to comply with s.115 of the Act.

Leasing Considerations

The following principles apply to the lease of Council Facilities:

- Council's standard Lease agreement will be used as a basis for all tenancies.
- Council reserves the right to undertake a public process to seek expressions of interest from prospective Tenants. Any submissions received through this process will be carefully considered by Council's Delegate and if necessary, will be referred to an assessment panel for further consideration.
- When considering a lease renewal or extension Council will assess the Tenant's performance over the Term and assess whether a renewal or extension is in the best interests of the community.
- A Tenant of a Council Facility must not apply for a gaming licence for that Facility.
- With respect to Commercial Tenants, the Lease must be on commercial terms and achieve an appropriate commercial return for Council.

Commercial Tenants

Eligibility

- The proposed use of the Facility provides a community benefit and is aligned with Council's strategic objectives.
- The proposed Tenant is a registered legal entity of good corporate character, is financially viable, holds all lawful qualifications and meets all legislative requirements.

Term

Generally a lease term will not exceed 5 years, unless exceptional circumstances apply.

The term of the Lease with a Commercial Tenant may be negotiated where –

- (a) a demonstrated long term community benefit is evident;
- (b) The Commercial Tenant has agreed to make a substantial contribution to capital works; or
- (c) Council's commercial return is enhanced by a longer-term tenancy.

A one x 5 year option may be offered at Council's discretion.

Rental

To be determined by obtaining a commercial valuation.

Community Tenants

Eligibility

- The proposed use of the Facility provides a significant community benefit which is in high demand and is aligned with Council's strategic objectives.
- The proposed use will increase social engagement, promote health and wellbeing or facilitate the delivery of an essential service for the local community.

Term

Generally a lease term will not exceed 3 years, unless exceptional circumstances apply.

The term of the Lease with a Community Tenant may be negotiated where a demonstrated long term community benefit is evident.

Two x 3 year options may be offered at Councils discretion.

Rental

To be assessed based on a case-by-case basis and includes the option to pay:

- An annual peppercorn rental fee;
- A subsidised rental determined by calculating Council's projected costs associated with maintaining the Facility; or
- Any other amount agreed to between the parties.

Entering into a lease

A lease may be entered into by a member of Council staff holding the requisite delegation under s.115 of the Act, unless:

- Submissions are received in response to the proposed lease;
- The Lease Term exceeds 5 years;
- The annual rental payable exceeds \$50,000 per annum (including GST); or
- A Councillor requests that the matter be determined by Council resolution.

Use of proceeds from leasing of Council Facilities

The income derived from the leasing of Council Facilities will be placed into Council's consolidated revenue and allocated in accordance with Council's annual budget.

References

- Council's Community Engagement Policy
- Council Plan
- *Local Government Act 2020*
- *Retail Leases Act 2003*