

Council Leasing and Licensing Policy

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1. OBJECTIVES

- 1.1 To establish guiding principles for the leasing and/or licensing of Council Facilities.
- 1.2 To reduce risks for Council associated with the leasing and/or licensing of Council Facilities.
- 1.3 To ensure the tenure of Council's Facilities are aligned with recommendations of Council's long term strategic plans.
- 1.4 To maximise the use of Council Facilities by encouraging multi-use by Community Tenants.
- 1.5 To ensure all leases with Commercial Tenants are on commercial terms and achieve an appropriate commercial return.
- 1.6 To ensure that no financial or commercial advantage is gained by Community Tenants, over enterprises conducting similar activities in privately owned facilities.

2. DEFINITIONS & ABBREVIATIONS

Term	Meaning
Commercial Tenant	a Tenant who operates a commercial business or entity.
Community Tenant	a Tenant who operates a not for profit organisation and/or sporting club.
Council Facilities	land and/or buildings owned or managed by Council.
Council	Glen Eira City Council.
Tenant	a person who has entered into a lease and/or licence with Council for the use of Council Facilities.
Essential Safety Measures	The term 'essential safety measures' is defined in Part 15 of the Building Regulations 2018 (the Regulations) and includes items listed in Schedule 8 of the Regulations.

3. SCOPE

This policy does not apply to:

- residential tenancy agreements;
- seasonal ground allocations; and
- casual hire arrangements including pavilion hire, ground hire and hall hire.

4. GUIDING PRINCIPLES FOR ALL LEASES AND LICENSES

The following Guiding Principles will apply to all leases and/or licenses of Council Facilities:

- 4.1.1 All tenants with exclusive occupation of Council Facilities for more than 1 year must have a current lease.
- 4.1.2 Council encourages maximum use of Council Facilities and will support shared and multi-use arrangements with a preference for licence agreements for Community Tenants.
- 4.1.3 Long term tenancy requests will only be considered where there is minimal impact to the future use of the facility.
- 4.1.4 Council will monitor and carry out Essential Safety Measures on all Council Facilities.
- 4.1.5 A Tenant of a Council Facility must have in place emergency and evacuation plans and procedures.
- 4.1.6 A Tenant of a Council Facility must not apply for a gaming licence for that Council Facility.
- 4.1.7 Council does not support the establishment of infrastructure on Council Facilities that adversely impacts on the availability of open spaces within Council parks and reserves.
- 4.1.8 Council encourages environmentally friendly building practices in the use of Council Facilities.
- 4.1.9 Leases and licenses will contain appropriate risk management measures to ensure that Tenants have appropriate documentation and insurance in place.

Fees and Charges

4.1.10 The Tenant categories set out in Table 1 below have been established for the purpose of determining suitable fees and charges for Council Facilities.

Table 1: Tenant categories

Category	Type	Group	Description
1	Community Tenant	Community groups	Not for profit community organisations, such as toy libraries, historical societies, kindergartens and sporting clubs
2	Community Tenant	Community ground lease	Tenants who have constructed a building on Council Facilities and have an ongoing maintenance and capital replacement responsibility.
3	Commercial Tenant	Commercial entity	Commercial entities using Council Facilities for commercial gain.

4.1.11 Council will establish annual charges for the leasing and/or licencing of Council Facilities for Category 1 and 2 tenants.

4.1.12 Category 3 tenants will be required to pay a rental established by reference to the market or determined by a valuer appointed by Council.

4.1.13 Subject to the application of the *Retail Leases Act 2003* (Vic), all outgoings for services, and costs incurred by Council administering a lease will be passed on to the tenant.

5. GUIDING PRINCIPLES FOR COMMUNITY TENANTS

The following Guiding Principles will apply to Community Tenants:

- 5.1 Council's lease and licence terms will be established by balancing the tenure needs of Tenants with the future needs for the Facility, by Council as identified in Council's strategic plans; and ensuring equity of access for the community. The following tenure (terms) are considered to be the maximum, unless a longer term is approved by Council:
 - 5.1.1 A lease will have a term, including options, of not more than nine years. The exercise of any option will require the consent of both parties to the lease.
 - 5.1.2 A licence will have a term, including options, of not more than five years (unless a longer term is approved by Council).
- 5.2 Subject to the application of the Retail Leases Act 2003 (Vic), subletting or assignment of a lease will be prohibited without Council's prior written consent.
- 5.3 As a condition of providing consent to a sub-lease, Council may require an increase in the head lease rent if the Community Tenant obtains a financial benefit from the sub-lease arrangement.
- 5.4 Council may amend the rental under a lease if a Community Tenant gains access to a commercial income (other than through fundraising) generated during the term of the lease; e.g. rent received from subletting, telecommunication rental, revenue received from advertising or licensing arrangements on the Council Facilities.
- 5.5 If there is change of use of a Council Facility by a Community Tenant without first obtaining consent from Council for the change of use (including a retail or commercial use), Council is entitled to terminate or renegotiate the terms of the lease and/or licence.
- 5.6 Council may include in a lease and/or licence a provision which provides that if the City of Glen Eira Municipal Emergency Management Plan or the Business Continuity Plan are enacted, Council will have the right to enter Council Facilities and to remain in the Council Facilities without prior notice for the duration of the emergency.
- 5.7 Leases and/or licences will contain measures to promote engagement between Council and Community Tenants to ensure clubs are active, viable, responding to the needs of the community, meeting their lease and/or licence obligations including maintenance requirements.
- 5.8 Office bearers of a Community Tenant must have no direct pecuniary interests in relation to the activities of the Community Tenant at the Council Facility.
- 5.9 A relocation clause will be included in all leases and/or licences allowing Council to terminate the lease and/or licence upon a specified notice period if Council has a strategic requirement for a Council Facility.
- 5.10 Lease/licence negotiations will commence 6 months before the end of a lease/licence term and if negotiations have not been concluded by the expiry of the lease term the Tenant may be advised that it no longer has the right to occupy the Community Facility.

- 5.11 At the end of the term of a lease, if a new lease or renewed lease has not been agreed then following a formal resolution Council may take any or all of the following action:
- Secure the Council Facilities to prevent unauthorised access;
 - Invite the former tenant to a meeting with Council officers to discuss any matters relating to the former tenant's occupation of the Council Facilities; and
 - Investigate alternative occupation arrangements for the Council Facility.
- 5.12 Category 2 tenants who have constructed their buildings and improvements will remain responsible for all maintenance, repairs and alterations to the Council Facilities.
- 5.13 Category 2 tenants will be required to provide evidence of the establishment and regular contribution to a repair and replacement fund in accordance with their lease to ensure Council Facilities are suitably maintained and repaired to a safe standard.
- 5.14 In order for Council Facilities to be used to achieve the greatest benefit for the community, minimum quotas may be established for Community Tenants, e.g. the number of members of the organisation. If an organisation fails to meet the designated quota, Council will be entitled to terminate the lease and/or licence.
- 5.15 All sporting clubs will be required to allow members of the public to use the Council Facilities without having to first obtain club membership.
- 5.16 All sporting clubs must conduct at least one community open day each year at the Council Facilities.
- 5.17 Floodlights must not be used after 10.30 p.m. at Council Facilities, unless otherwise allowed by a planning permit. Council reserves the right to instruct Community Tenants not to use floodlights after a specified time as determined by Council.

6. GUIDING PRINCIPLES FOR COMMERCIAL TENANTS

The following Guiding Principles will apply to Commercial Tenants:

- 6.1 Leases must be on commercial terms and achieve an appropriate commercial return for Council.
- 6.2 The leasing of Council Facilities must demonstrate the highest return to Council taking account of other opportunities for the Council Facilities.

7. GUIDING PRINCIPLES WHERE COUNCIL IS THE TENANT

The following Guiding Principles will apply when Council is a tenant:

- 7.1 Council will not enter into a lease for a property on behalf of a third party unless otherwise approved by Council.
- 7.2 Council will only enter into a lease for the purpose of the provision of a direct Council service if there are no suitable alternative Council Facilities available.
- 7.3 Council will not enter into a lease for a term of more than 9 years, unless Council or the landlord, for the benefit of Council, has carried out substantial improvements to the rental property or some other form of community benefit can be demonstrated.
- 7.4 Council will only enter into a lease that requires the payment of a rental at or below market rates.

8. HUMAN RIGHTS CHARTER COMPATIBILITY

This Policy has been assessed as being compatible with the Charter of Human Rights and Responsibilities Act 2006.

9. ASSOCIATED DOCUMENTS

This Policy aligns with the following Council policy/strategies:

- Ownership of Property by Council Policy
- Risk Management Policy
- Graffiti Management Policy
- Council community sport – Management of Grounds Policy
- Open Space Strategy
- Tennis Strategy
- Pavilion Redevelopment Strategy
- Environmental Sustainability Strategy

10. REFERENCES/RESOURCES

- Local Government Act 1989
- Cultural and Recreational Lands Act 1963
- Crown Land (Reserves) Act 1978
- Associations Incorporation Act 1981
- Retail Leases Act 2003
- Building Regulations 2018