



Leasing/Licensing Policy

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1. Introduction

1.1 Purpose and objectives of this Policy

Facilities owned and leased or licenced by the City of Stonnington make an important contribution to Council's ability to achieve its objectives and deliver services to Stonnington residents. This Policy provides a framework for the use by third parties of Council's facilities including commercial, recreational and other community use.

The purpose of this Policy is to provide for the responsible, consistent and transparent management of Council's facilities and to maximise the benefits to the Stonnington community.

This Policy:

- promotes the beneficial use of Council's properties and facilities not required for Council's operational purposes;
- provides guidance on the use of Council's facilities by community organisations;
- establishes the terms that Council will generally use as the basis for negotiating leases, licences and other occupancy agreements;
- establishes an equitable methodology to assess and categorise the types of occupants of Council's facilities; and
- sets out reporting requirements for occupants to ensure accountability to Council and the community.

1.2 Context

This Policy is to be read in conjunction with Council's other applicable policies. It replaces the Community Facilities Leasing/Licensing Policy 2011.

1.3 Legislative framework

The following Victorian Acts and associated regulations are particularly relevant to this Policy:

- *Local Government Act 1989*:
 - Requires leases to be advertised in certain circumstances such as with respect to a building or improving lease, leases for 10 years or more and leases for properties with market rental value of more than \$50,000 a year.
 - Restricts the maximum length of a lease to 50 years.
 - Details a person's right to make a submission to Council regarding certain leases.
- *Retail Leases Act 2003*: controls leases of premises used wholly or predominantly for retail provision of goods or services (excluding certain

not-for-profit organisations), and overrides anything in this policy that is inconsistent with that Act.

2. Scope of this Policy

This Policy will generally apply to all new occupancy agreements of Council owned or managed facilities, including agreements developed with current occupants at the expiration of existing arrangements.

Occupancy agreements include:

- Leases
- Licences

The facilities covered by this Policy include land and buildings, but not facilities occupied by Council services or incidental facility hire.

This Policy does not apply to seasonal occupancy permits or ad hoc/casual hire of rooms within facilities. These arrangements are assessed on a case by case basis.

Please note that a proposed occupancy agreement for some facilities may be subject to a tender process. In these circumstances, the terms of the tender will take precedence over this Policy.

This Policy may be overruled by Council resolution.

This Policy may be reviewed by Council from time to time.

3. Standard terms of occupancy agreements

3.1 Standard form of agreement

Council's standard lease, licence or other form of agreement (as amended from time to time) will generally be used for all occupancy agreements. These documents will only be altered if Council considers it to be appropriate in the circumstances.

Where Council makes a facility available to multiple users, a licence or other occupancy agreement (rather than a lease) may be the preferred form of agreement.

3.2 Applicable rent, rent reviews and rent subsidies

Generally, Council will determine the market rental value and amount payable for the facility by independent valuation.

Council may agree to discount the rent that would otherwise be payable by eligible occupants. An overview of the eligibility criteria for subsidised rent is contained in Schedule 2.

Council will regularly review the occupant's performance against the rent subsidy criteria and ongoing eligibility for the subsidy.

When determining the value of the subsidy, Council may consider relevant factors including:

- whether the proposed use is consistent with Council's objectives and other policies;
- whether the proposed occupant uses volunteers or charges service and program fees;
- how the proposed use enhances social benefit for Stonnington residents;
- whether the proposed occupant has or could obtain external funding;
- whether the proposed occupant derives or will derive income from subletting;
- the total value of subsidies already received by the proposed occupant from the Council;
- the proposed occupant's organisational structure;
- any commercial activities undertaken by the proposed occupant; and
- the nature of the wider service industry.

Rents (other than peppercorn rents) will generally be reviewed annually and the amount payable will be adjusted by CPI or by a fixed percentage increase or to market value.

Peppercorn rents will be reviewed annually to ensure that the eligibility criteria under Schedule 2 still apply.

3.3 Maintenance obligations

Maintenance obligations will be set out in the occupancy agreement. Council reserves the right to negotiate maintenance responsibilities and costs.

Facility maintenance includes minor day-to-day maintenance (tasks that generally do not require a tradesperson) and more significant asset maintenance (which may require the services of a qualified tradesperson).

Cleaning will generally be the responsibility of the occupant. Where facilities are shared or if Council arranges for cleaning, a contribution towards cleaning costs will be negotiated with the occupant.

3.4 Utility costs and outgoings

Utility costs are generally the responsibility of the occupant. Council may require a contribution, to be assessed by Council according to a pre-determined formula, towards utilities in a multi-use facility where separate metering is impractical.

Occupants will generally be required to pay for rates (if charged), outgoings and any taxes applicable to the premises.

3.5 Term of the occupancy agreement

The term of each occupancy agreement will be negotiated and determined based on particular circumstances of the facility and the occupant. Relevant considerations include:

- capital investment and long-term planning;
- sustainability of the service conducted from the facility;
- the connection between the use of the facility and Council's plans and relevant strategies; and
- the extent to which the facility is used for multi-purpose activities.

The term of an occupancy agreement will generally be a maximum of five years. Council may consider offering a longer term in appropriate circumstances such as where an occupant makes a significant financial investment in a facility.

Council may require regular reporting about the nature of use of a community facility to determine the extent to which a community benefit is realised.

3.6 Use of facility, multiple use and occasional hire, subleasing

Facilities must only be used for approved purposes that are lawful.

Occupants may be required to permit multiple use of a facility by other organisations, subject to Council's approval.

To assist in maximising community use, occupants may also make facilities available for casual hire for the permitted agreed purpose in certain circumstances, subject to Council's approval.

Subject to relevant policies, occupants may only sublease or sub-licence the facility with Council's approval to appropriate organisations. Generally, Council will use the same criteria to assess the eligibility of the proposed additional occupant. Any rent subsidy level for the occupant may be reviewed, and any financial gain is generally payable to Council unless used to effect Council-approved improvements to the facility or its use.

3.7 Insurance

Generally, Council will fully insure all Council-owned improvements at the facility.

Occupants are responsible for obtaining their own contents insurance and will be required to maintain public liability insurance and other insurances on terms acceptable to Council.

3.8 Liquor and gaming licences

Liquor licence applications require Council approval in addition to any relevant statutory approval. Approval is determined on a case by case basis and is separate to any additional statutory approval.

Council prohibits gaming licences in Council facilities.

3.9 Planning and other permit requirements

Occupants must adhere to the conditions of any applicable planning permit. Occupants must obtain any permits or licences relevant to the specific use of the facility.

Occupants must not adversely affect the amenity of the neighbourhood.

3.10 Improvements

Unless otherwise agreed, occupants may remove fixtures or fittings constructed or installed by them during the term of their occupancy agreement.

3.11 Acknowledgment of Council

Occupants may be required to acknowledge Council's contribution to the occupancy agreement. This may include an acknowledgement in the occupant's annual report, brochures and on signage at the facility.

3.12 Council access

Occupants will be required to grant Council access to the facility for inspections from time to time with appropriate access and notice requirements.

4. Eligibility requirements for community and recreational use

4.1 Eligibility criteria

Prospective occupants are required to satisfy eligibility criteria to be considered by Council for an occupancy agreement for community or recreational use. The eligibility criteria include those set out in Schedule 1.

4.2 General application requirements

Prospective occupants should complete and lodge a written expression of interest in the required form with the relevant Council department. The application should outline the proposed occupant's intended use of the facility and address Council's eligibility criteria, including those set out in Schedule 1.

Council will consider each expression of interest or request for an occupancy agreement renewal on its individual merits under this Policy.

Council may provide assistance to prospective occupants to allow them to complete the application process.

Council may also seek additional information to better understand a prospective occupant's activities, the extent of facility use and opportunities for improvement of the facility and activities.

5. Responsibilities and references

5.1 Responsibilities

For all enquiries regarding this policy, please contact the Property Coordinator on 8290 1333 or council@stonnington.vic.gov.au

5.2 Relevant Legislation (including Regulations, Rules and Standards made under the following Acts):

- *Charter of Human Rights and Responsibilities Act 2006*
- *Child Wellbeing and Safety Act 2005*
- *Crown Land (Reserves) Act 1978*
- *Health Act 1958*
- *Local Government Act 1989*
- *Occupational Health and Safety Act 2004*
- *Residential Tenancies Act 1997*
- *Retail Leases Act 2003*
- *Telecommunications Act 1997*

Schedule 1 Eligibility criteria for occupancy of a Council facility for community use

Prospective occupants may be eligible to be considered by Council for an occupancy agreement for community use of a Council facility if they satisfy relevant eligibility criteria as determined by Council. The eligibility criteria include the following:

- The occupant applies any surpluses towards its purposes, prohibits any dividends or profits from being paid to its members and is exempt from paying income tax.
- The occupant is a legal entity incorporated under appropriate legislation (such as the *Associations Incorporation Reform Act 2012 (Vic)*).
- The occupant is financially viable and able to demonstrate good financial management and record-keeping practices, including audited financial statements and minutes of annual general meetings.
- The occupant complies with relevant legislation governing its activities and holds any licences or registration certificates required for it to operate.
- The occupant has a committee of management and appropriate governance arrangements, with established accountability and reporting methods to members of the organisation and / or to the community, including the capacity to maintain appropriate financial records for audit purposes.
- The occupant adheres to all relevant Council policies and has complied with the terms of any previous occupancy agreement with Council.
- Demand exists for the service or activity to be provided through the facility.
- The proposed use of the facility is consistent with Council's objectives and current strategic plan.
- Use of the facility by the occupant will increase social engagement and promote health and wellbeing of the Stonnington community.
- The proposed service or activity to be conducted from the premises is non-discriminatory.
- The occupant proactively includes people with a disability and vulnerable or marginalised groups in the occupant's programs and activities
- People with a disability and vulnerable or marginalised groups can access the service or activity and strategies are in place to review and remove barriers to participation.
- The proposed use is suitable for the nature of the site and the neighbourhood.
- The occupant is prepared to maximise the use of the facility.
- The occupant agrees to provide Council with requested information including current and projected opening hours and participant and/or membership numbers.

Schedule 2 Rent subsidy categories and eligibility

Subsidy category	Annual rent	Tenant's eligibility
A Peppercorn rent	Nominal rent (\$10 per annum) if demanded by Council	<ul style="list-style-type: none"> • Use of premises approved by Council • Meets all relevant eligibility criteria • Provides significant community benefit • Primary use of the facility is not for the retail sale of goods • Has limited revenue-raising ability (net of cost of service) e.g. play group • Receives minimal external funding assistance
B Subsidised rent	Full market rent with a reduction from this rate to be negotiated based on community benefit criteria, level of maintenance responsibility and capital contributions made by tenant, on a sliding scale basis generally providing discounts of between 30% and 70%	<ul style="list-style-type: none"> • Use of premises approved by Council • Meets most relevant eligibility criteria • Provides significant community benefit • Primary function of the building is not for the retail sale of goods • Has some revenue-raising ability or receives external funding assistance (e.g. sports club)

6. Reviewers

Reviewer	Position	Version	Date reviewed
Kate O'Connor	Corporate Counsel	0.1	August 2019
Joy Rankin	PA to General Manager Corporate Services	0.2	September 2019
Kate O'Connor	Corporate Counsel	1.0	September 2019
Geoff Cockram	General Manager Corporate Services	1.0	October 2019
Cath Harrod	General Manager Community and Culture	1.0	October 2019

7. Version History

Version	Date	Author	Details
0.1	August 2019	CIE Legal	Initial Draft.
0.1	August 2019	Kate O'Connor	Updated following consultation with officers from Property, Leisure & Wellbeing, Community Services and Diversity & Aged Services
0.2	September 2019	Joy Rankin	Re-format
0.1	September 2019	Kate O'Connor	Updated 1.2 Other applicable policies 5.2 – Relevant Legislation
1.0	September 2019	Geoff Cockram	Approved by General Manager Corporate Services
1.0	September 2019	Kate O'Connor	Adopted by Council 17 February 2020