

Leasing and Licensing of Facilities Policy

Policy – CP056

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Manager Asset Services	Executive Leadership Team	Council	24 October 2018	2018/ 0218
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1. The purpose of this policy is

To provide guiding principles that will enable the establishment and management of leases and licenses for Mildura Rural City Council's facilities.

2. Policy Statement

Mildura Rural City Council (Council) is committed to the responsible management of community facilities by being consistent, equitable and transparent with Council's lease and license agreements, in order to maximise community benefit.

This Policy does not apply to facilities under a Service Agreement.

3. Principles

This Policy recognises that there is an overall social benefit for the community to enable the use of Council owned and managed land and facilities by organisations that provide recreation and sporting opportunities, or other community services. These services enhance the quality of life and wellbeing of our municipality in support of the objectives set out in the Community & Council Plan.

4. Agreements

- All occupiers of Council land and/or facilities will, as a condition of that occupancy, enter into a formal, legally binding lease or licence agreement with Council.
- Keys or access fobs will not be issued until an agreement has been fully executed.
- Council will only grant a lease or licence to specific persons, companies or incorporated bodies.
- Council will ensure consistency in decision making associated with lease or licence terms and conditions.
- Council will provide an equitable and transparent process for dealing with Council's leased and licensed assets.

Where Council acts as the Committee of Management over Crown Land, Council must seek the prescribed consents in accordance with the provisions of the *Crown Land (Reserves) Act 1978*. Leases and Licences will be in the prescribed form as provided by the Department of Environment, Land, Water and Planning (DELWP) and Council's additional terms and conditions will form part of the special conditions of the agreement.

- Unless prescribed otherwise by legislation (including the Retail Leases Act 2003), Council may charge Commercial Tenants its legal costs associated with the preparation and negotiation of the licence or lease.

Council will not charge Community Occupiers for Council's legal and administrative costs associated with a new community lease or licence, provided the lease or licence conforms to Council's standard document. Substantial

variations to the standard lease or licence agreements may incur increased legal costs to be passed on to the tenant.

Council may also claim from the tenant its reasonable legal costs incurred in connection with an assignment of lease of the premises. Any legal costs associated with a lease or licence variation as a result of a tenant's request may also be charged to the tenant.

- If the lease provides for an option for a further term, then Council will, upon request, grant this to the tenant, provided that the agreement provisions have been satisfied throughout the term.
- Tenants must obtain Council's written consent to any subleasing arrangements. If consent is granted, the management of the sublease is the sole responsibility of the head lessee (Council's tenant).
- Council may evict any occupier who:
 - fails to enter into a formal occupancy agreement for the property within 90 days of receiving the agreement;
 - fails to pay lease/licence rental within 90 days of the invoice due date;
 - fails to perform or observe the conditions of the agreement;
 - fails to provide and keep appropriate Public Liability Insurance; or
 - fails to provide a Termite Inspection Certificate.

5. Inspections, Maintenance and Improvements

- Council will conduct an inspection of all buildings prior to commencement of a lease agreement and at the commencement of any lease renewal.
- Maintenance schedules will be included in all new lease agreements. Each tenant is required to maintain the facility in accordance with the maintenance schedule at their cost.
- Council or Council's authorised agents may enter the premises to inspect the essential safety measures at any time after giving the tenant notice.

6. Risk and Occupational Health and Safety

- Tenants must have in place emergency and evacuation plans and procedures and must ensure that their employees or visitors participate, as requested, in emergency training and drills. Tenants must also adhere to and comply with occupational health and safety requirements.

7. Lease Term and Vacancy Procedures

CROWN LAND (Crown Land (Reserves) Act 1978):

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year Initial term with 2 x 3 year renewal options (Maximum 21 year term)	Community Occupiers – Based on Pricing Methodology Matrix in Appendix 1 Commercial Occupiers – Commercial Market Rental Assessment completed by Valuer
Licence	Preferred Tenure - 3 years	Community Occupiers – Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental Commercial Occupiers – Commercial Market Rental Assessment completed by Valuer
Kindergarten and Preschool Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 21 Year term)	No Charge
Historical Society Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 21 year term)	Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental

COUNCIL LAND:

Community Groups (Local Government Act 1989):

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 50 year term)	Based on Pricing Methodology Matrix in Appendix 1
Licence	Preferred Tenure - 3 years	Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental
Kindergarten and Preschool Lease	Preferred Tenure - 3 year initial term with 2 x 3 year renewal options (Maximum 50 year term)	No Charge
Historical Society Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 50 year term)	Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental

Commercial (Local Government Act 1989 and/or Retail Leases Act 2003):

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year initial term with 1 x 3 year renewal option	Commercial Market Rental Assessment completed by Valuer
Licence	3 years	Commercial Market Rental Assessment completed by Valuer

Council may offer a lesser term where Council considers that this is in the best interests of the community.

Council will generally not grant leases longer than ten years, including options, however, terms longer than ten years may be considered where a tenant commits to substantially invest in a fixed asset (e.g. building, playing surface) and fully maintains the asset.

Council reserves the right to advertise for Expressions of Interest for a leased premises, when a premises becomes vacant or at the expiry of the lease term. Consideration will be given to the length of time a tenant has occupied a premises and how much they have contributed to the construction and ongoing maintenance of the building.

A Notice of Intention to Lease will be advertised for all new leases. This will allow a 28 day submission period in accordance with section 223 of the *Local Government Act 1989*.

8. Pricing Strategy

- Professional advice from Council's in-house registered Valuers will determine the replacement value of facilities that are leased by Community Occupiers, in order to apply the Pricing Methodology (Appendix 1). Due recognition will be given to organisations that have contributed to the capital costs of construction of the asset.
- Professional advice from Council's in-house registered Valuers will determine the market rental of facilities that are leased or licensed by Commercial Occupiers. The rental amount will be increased annually by either the Consumer Price Index or a fixed percentage. The preferred method of review is by a fixed percentage increase annually, as negotiated between the Landlord and the Tenant.
- Rentals for lease agreements are subject to a review at the exercise of an option and/or every three years of the term.
- Licenses that have been granted to Community Occupiers are generally charged based on the minimum rental calculation in the Pricing Methodology (Appendix 1).
- Council reserves the right to amend the rental if a tenant obtains an on-premises licence, packaged liquor licence, general licence or gaming licence, or gains access to other commercial or fortuitous (but not fundraising) means of income generated during the term of the agreement. For example, rent received from subletting, telecommunication rental, revenue received from advertising on the premises. Consent by Council is required for any such use.
- Council will take into consideration its obligations under the National Competition Policy (NCP) when determining rental fees for Commercial Occupiers and will ensure strict compliance with NCP requirements.

9. Use of Premises

- Community Occupiers must allow Council to use the premises for Council's sponsored functions at no cost to Council. Such use will be subject to Council giving the tenant at least 30 days written notice of its need to use the premises, provided that Council's use of the premises does not unreasonably interfere with the tenant's use of the premises. Council must also rectify any damage to the premises due to Council's use of the premises.
- Community Occupiers must allow Council to use the premises for municipal emergencies at no cost to Council.
- Tenants will make the premises available for casual hire to other community groups where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. The tenant must obtain Council's written consent prior to the tenant hiring out the premises for casual use. The hirer must also enter into an occasional use hire agreement on terms, conditions and rates agreed to by Council prior to occupying the premises. A breach of the hire agreement by the tenant or the hirer will be deemed to be a breach of the lease or licence by the tenant.

- Smoking is not permitted in any Council building. Tenants must also display 'no smoking' signs on their premises if requested by Council.

10. Who is responsible for implementing this policy?

Manager Asset Services

11. Abbreviations and Definitions

Facilities	Any asset owned, controlled or managed by Mildura Rural City Council.
DELWP	Department of Environment, Land, Water & Planning
Lease	A lease is a right granted by the owner of land (landlord) to another person (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment.
Sublease	A sublease is the renting of property by a tenant to a third party for a portion of the tenant's existing lease contract.
Licence	A licence permits a person (licensee) to occupy land (or part thereof) based on particular conditions. The main feature that distinguishes a licence from a lease is that a licence does not permit exclusive occupancy of the land. Sporting and recreation clubs that have seasonal service agreements are not included in this Policy.
Commercial Occupiers	Any occupier who operates a business or commercial enterprise, other than a sporting or recreational / community group.
Community Occupiers	Not for profit bodies that provide or promote community, cultural, sporting, recreational or similar activities and do not contravene the National Competition Policy (NCP).
Market Rental Value	The estimated amount for which property should rent, as at the relevant date, between a willing Landlord and a willing Tenant in an arm's length transaction, wherein the parties had each acted knowledgeably, prudently and without compulsion, and having regard to the usual terms and conditions for leases of similar property.
Replacement Value	The cost of replacement of a building that could conceivably be destroyed. The assessed value excludes any equipment, tools, furniture and the like. It also excludes demolition, removal of debris and GST.
NCP	National Competition Policy
Incorporated Body	An organisation that is incorporated under the <i>Associations Incorporation Reform Act 2012</i> .

12. Legislation and other references

12.1 Legislation

Related Policies, Procedures, Guidelines and Forms:

- Local Government Act 1989
- Associations Incorporation Reform Act 2012
- Local Government (General) Regulations 2004
- Retail Leases Act 2003
- Retail Leases Regulations 2003
- Crown Land (Reserves) Act 1978
- Occupational Health and Safety Act 2004
- Residential Tenancies Act 1997
- Planning and Environment Act 1987
- Building Act 1993
- Health Act 1958
- Child Safety and Wellbeing Act 2005
- Education and Care Services National Law Act 2010
- Working with Children Act 2005
- Children's Services Act 1996
- Approved Master Plans
- Mildura Rural City Council Planning Scheme
- Community and Council Plan
- Community Engagement Strategy
- Public Open Space Strategy
- Venue Hire Process
- Land Manager's Consent Policy and Process
- Municipal Emergency Management Plan

12.2 Documents

This Policy is implemented in conjunction with the following documents:

- ProMapp Process for Leasing and Licensing
- DELWP 17D Lease, DELWP 17B Licence, Standard Form S190 Lease, Council Licence Agreement and Commercial Lease documents
- Maintenance Schedules

12.3 Risk Assessment Reference

Risk Category	✓	Risk Category	✓
Asset Management	✓	Financial Sustainability	
Committees	✓	Human Resource Management	
Compliance – Legal & Regulatory	✓	Leadership & Organisational Culture	
Contract Management	✓	Occupational Health & Safety	✓
Contract Tendering & Procurement	✓	Organisational Risk Management	✓
Corporate Governance	✓	Project Management	
Environmental Sustainability		Public Image and Reputation	✓

Appendix 1
Pricing Methodology for Community Lease Agreements

The following matrix indicates the methodology to be used to calculate the appropriate fee for each Lessee by allowing for the specific circumstance of individual organisations.

A	Categories of Occupancy	Full Lease Fee
	Full lease fee = 3% of the replacement value as determined by a Valuer.	\$
B	Categories of Tenant	% Lease Fee
B1	Community Groups Category 1: Tenants who: <ul style="list-style-type: none"> • have a liquor licence held on the premises; AND • hold a Food Registration Certificate on the premises; AND • hire their facilities for functions/social events; OR • charge entry to the premises. 	17%
B2	Community Groups Category 2: Tenants who: <ul style="list-style-type: none"> • have a liquor licence held on the premises; OR • hold a Food Registration Certificate on the premises; OR • hire their facilities for functions/social events; OR • conduct sporting activities for members and guests. 	14%
B3	Community Groups Category 3: Non-sporting groups who provide a community service and are predominately volunteer based, excluding Historical Societies and Kindergarten / Preschool leases.	5%
C	Financial Circumstances (Evidence to be Provided)	% of Lease Fee
C1	Group contributed \$0 to the construction of the facility	100%
C2	Group contributed up to 50% towards the construction of the facility.	75%
C3	Group contributed in excess of 50% towards the construction of the facility.	50%
C4	Group contributed in excess of 75% towards the construction of the facility.	25%
D	Co-location	% of Lease Fee
D1	Tenant has exclusive use	100%
D2	Tenant is co-located with another group.	50%
Rental Calculation AxBxCxD (equals GST exclusive amount) Note: Minimum rental \$225 per annum plus GST		\$ Plus GST