

# Leasing of Facilities on Council Property

## Policy – CP056

| Prepared                                         | Reviewed                  | Approved | Date                       | Council Minute No. |
|--------------------------------------------------|---------------------------|----------|----------------------------|--------------------|
| Manager Corporate Administration                 | Executive Leadership Team | Council  | April 2015                 | 2015/0081          |
|                                                  |                           |          |                            |                    |
| Trim File: 18/02/01                              |                           |          | To be reviewed: April 2018 |                    |
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### 1. The purpose of this policy is

To provide guiding principles that will enable the establishment and management of Council's leased and licensed assets, to maximise the commercial return to Council of its commercial assets, to maximise the community benefit arising from facility use and to ensure responsible management of these community assets thereby minimising the risk to Council.

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

### 2. Policy Statement

Mildura Rural City Council is committed to effective, equitable and efficient management of Council's assets which ensures appropriate returns and protects Council's interest while recognising the rights of both commercial and non-commercial occupiers of these assets.

### 3. Principles

#### Agreements

- All Commercial and Non-commercial occupiers of Council land and/or facilities will, as a condition of that occupancy, enter into a formal, legally binding lease agreement with Mildura Rural City Council.
- All commercial lease agreements will be prepared and managed in accordance with the specific requirements of the *Retail Leases Act 2003* if the Act applies.
- Council will only grant a lease or licence to specific persons or incorporated bodies (that is, organisations that are incorporated under the Associations Incorporation Act 1981). This means that a lease or licence agreement cannot be made with people representing a group i.e. partnerships or committees.
- Mildura Rural City Council 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.
- Council will ensure consistency in decision making associated with lease terms and conditions.
- Council will provide an equitable and transparent process for dealing with Council's leased and licensed assets.

## Agreements cont

- Tenants must obtain Council's prior written consent before applying for a planning permit and all planning permit requirements, including liquor licence requirements, will become requirements of the lease.
- 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 parts of the special conditions of the agreement.
- Unless prescribed by legislation (including the *Retail Leases Act 2003*) Council will charge Commercial Tenants its legal costs associated with the preparation and negotiation of the licence or lease.

Council will not charge its non commercial tenants for Council's legal and administrative costs associated with a new non-retail lease or licence provided the lease or licence conforms to Council's standard document. Substantial variations to the standard lease or licence 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 or sub-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.

- General Exercise of an Option. If the lease or licence provides for a further term then Council will grant to the tenant a new lease or licence for the further term if the tenant complies with the provisions in the lease or licence and also complies with the requirements under the RLA. Council is not obliged to accept a tenant's request to renew a licence or non-retail lease if the tenant fails to exercise the option in accordance with the terms of the lease or licence or if the tenant is in default of the terms of the Lease at the time of exercise of the option.
- Mildura Rural City Council may invoke its eviction procedure and evict any lessee who:
  - fails to enter a formal lease agreement for occupancy of the property within 90 days;
  - fails to pay lease/licence rental within 90 days
  - fails to perform or observe any of the Lessee's covenants under the agreement;
  - fails to provide and keep appropriate Public Liability cover current; and
  - fails to provide White Ant Certificate of Inspection,

## Rental Fees

- Professional advice from Council's in-house Valuers will determine the rental for commercial occupiers and replacement value of facilities for non commercial occupiers.
- Non-commercial occupiers such as sporting clubs and recreational/community groups will attract a different rate of rental according to the specific pricing methodology (refer Appendix 1). This recognises the social benefits of community wellbeing by having Council owned land and facilities available for use by the community, and also acknowledges the contributions made by the community towards these facilities. Council will take into consideration its obligations under the National Competition Policy (NCP) when determining rental fees for non-commercial occupiers.
- Council will ensure strict compliance with NCP requirements.

## **Inspections, Maintenance & Improvements**

- Council will conduct a lease inspection of all buildings prior to commencement of a lease agreement.
- To provide a consistent and fair framework for the conduct of maintenance on Council premises, maintenance schedules have been developed. Each tenant is required to maintain the facility in accordance with a maintenance schedule attached to the lease or licence. The maintenance schedules will specify the responsibilities of Council and the tenant, including (among other things) responsibility for maintaining the structure, the building, fixtures and fittings and grounds.

The level of maintenance responsibility outlined in the relevant schedule will be determined by a number of factors, such as:

- function of the facility;
  - degree of community benefit;
  - the tenant's ability to maintain the premises;
  - the tenant's ability to generate revenue;
  - the level of subsidy or grants received by the tenant;
  - any special maintenance requirements by the tenant;
  - the rental level;
  - provisions of the RLA.
- All improvements, additions, structures or buildings on the premises installed or erected by the tenant during the term of the lease or licence are the property of Council, unless otherwise specified. Tenants who constructed the building may be required to remove the building, all fixtures, fittings, plant and equipment at the expiry of the term of the lease, unless otherwise specified. If Council requires the tenant to remove any assets that have been constructed or installed by them during the term of the lease, then the tenant must make good any damage caused by their removal.

## **Risk and Occupational Health and Safety**

- Tenants must have in place emergency and evacuation plans and procedures and must ensure that their employees or invitees participate, as requested, in emergency training and drills. Tenants must also adhere to and comply with occupational health and safety conditions. Council or Council's authorised agents may enter the premises to inspect the essential safety measures at any reasonable time after giving the tenant reasonable notice.

## **Lease Term and Vacancy Procedures**

- The maximum lease period for properties on Council Land is 50 years and 21 years for Crown Land. The maximum term for a licence on Crown Land is three years. Council acknowledges that long term leases can impede the optimum use of Council Assets for the betterment of the community. Generally community lease agreements will be for a term of nine years, however Council may offer a lesser term where Council considers that providing a lesser term is in the best interests of the community. Council will generally not grant leases that are longer than ten years, including options. However, terms longer than ten years may be considered where a tenant substantially invests in a fixed asset (e.g. building, playing surface) and fully maintains the asset.
- When a premises becomes vacant or at the expiry of the term, the occupation of the premises will be subject to an expression of interest process in accordance with section 190 of the *Local Governance Act 1989*, which will be carried out by way of public advertising.

## **Lease Term and Vacancy Procedures *cont***

- If a property is tendered or an expression of interest process is carried out an evaluation panel will be selected prior to interviewing prospective tenants. The Panel will be representative of the relevant Council departments involved in the management and operation of Council assets and/or the services the organisation provides to the community. External and independent persons who have the expertise relevant to the type of lease being granted may also be appointed to the Panel.
- Upon completion of an evaluation process, the Panel will prepare a report and recommendation to Council naming the preferred tenant(s) and giving reasons for its decision. If Council ratifies the Panel's recommendation, any unsuccessful applicants will be notified. For premises located on Crown Land, the lease agreement proposal will be forwarded to DELWP for 'In Principle' Approval.

## **Insurance & Public Liability**

- Insurance for buildings and contents on Council owned or controlled land will be in accordance with the Lease Agreement.
- Tenants will be responsible for repairs up to the excess set by Council's insurer. Tenants wishing to lodge a claim through Council's insurance policy will be required to complete all necessary paperwork and obtain quotes inline with Council Procurement of Goods and Services Policy. The tenant will be liable to pay the excess for any claim lodged.
- All tenants are required to take out public liability insurance for a minimum cover of \$10 million. A copy of the Certificate of Currency must be provided to Council initially and upon renewal annually.

## **Use of Premises**

- Use of the Premises. Tenants must obtain Council's prior written consent for any change or additional use of the premises. Council reserves the right to review the rent or any other lease provision if it provides consent in this regard.
- Non Commercial tenants must also 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.
- For tenants who occupy premises under a licence agreement, Council may also use the premises or allow others to use the premises outside the normal hours of the tenant business operating from the premises, provided that Council's use does not unreasonably interfere with the tenant's use of the premises.
- The hours of use may be prescribed for the premises and the tenant must comply with all guidelines and directions issued by the Environment Protection Authority, planning permit provisions (including liquor licence provisions), Liquor Licencing Commission and Council local laws.
- 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 consent (which may be given conditionally) 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 hire rates agreed to by Council prior to the hirer 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.

### **Use of Premises cont**

- Tenants must not or permit their employees, agents, contractors, invitees or customers to smoke tobacco products or other substances on the premises. Tenants must also display 'no smoking' signs on their premises if requested by Council.

### **Public Consultation**

- As required under section 190 of the *Local Government Act 1989*, Council will place a public notice in the Local Papers advising of its intention to grant a lease. Any person has a right to make a submission under section 223 of the Act in relation to the proposed lease.

### **Tenant Conditions**

- Tenants must:
  - only plant trees or other plants on the premises that are approved by Council and must maintain the trees in accordance with methods approved by Council;
  - not prune or trim any plants or trees without Council's consent and any pruning of the trees must comply with the relevant Australian Standard for tree pruning and local laws;
  - mow any grassed nature strip abutting the premises and maintain the nature strip to Council's reasonable satisfaction; and
  - comply with Council's Chemical Protocol.
- Council is committed to waste minimisation, recycling and litter reduction.

Tenants must:

- comply with Council's waste wise action plan;
- recycle all recyclable waste and reuse residual materials generated as far as practicable;
- provide receptacles for the disposal of recyclable waste by customers or invitees;
- minimise generation of waste and water and energy consumption;
- as far as is practicable use natural lighting and minimize the use of artificial lighting consistent with good occupational health and safety practice; and
- as far as is practicable minimise the use of active mechanical heating and cooling systems in the premises.

## **4. Pricing Strategy**

The underlying principle of this Policy is to recognise 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 play other community development type roles.

The 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 as indicated in the Council Plan.

The Policy also gives due recognition to organisations which have contributed to the capital costs of constructing the asset.

Rent for commercial tenants will be increased annually by either the consumer price index or a fixed percentage. The preferred method of review is by fixed percentage as negotiated between the Landlord and the Tenant. Rentals are also subject to a market review at the exercise of an option and/or every three 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 or gaming 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 by Council is required for any such use.

**5. Who is responsible for implementing this policy?**

Manager Corporate Administration

**6. Definitions**

|                          |                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DELWP                    | means the Department of Environment, Land, Water & Planning and its successors and assigns.                                                                                                                                                                                                                                                                                            |
| 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. Council will grant a lease where the premises will be occupied exclusively by the one user and Council considers that granting a lease is in the best interests of the community. |
| Licence                  | A licence permits a person (licensee) to occupy land (or part thereof) 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.<br><br>Sporting clubs that have seasonal service agreements are not included in this Policy.                                                            |
| Commercial Occupiers     | Any 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.                                                                                                                                                                         |
| Non Commercial Occupiers | Not for profit bodies which 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 which could conceivably be destroyed. The assessed value excludes any equipment, tools, furniture and the like.                                                                                                                                                                                                                                  |
| NCP                      | National Competition Policy                                                                                                                                                                                                                                                                                                                                                            |

## 7. Legislation and other references

### 7.1 Legislation

Related policies, Procedures, Guidelines and Forms:

- Local Government Act 1989
- 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
- Health Act 1958
- Children's Services Act 1996
- Approved Master Plans
- Mildura Rural City Council Planning Scheme
- Capital Works Program
- Council Plan
- Community Engagement Strategy
- Open Space Strategy
- Chemical Protocol

### 7.2 Documents

This Policy is implemented in conjunction with the following documents:

- Promapp Process
- Deployment Flowcharts
- Standard 17D, Short Form 190 and Commercial Lease documents
- Maintenance Schedules
- Occasional Use Hire Form and Checklists

### 7.3 Risk Assessment Reference

| <b>Risk Category</b>             | ✓ | <b>Risk Category</b>                | ✓ |
|----------------------------------|---|-------------------------------------|---|
| 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 Non Commercial 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.

| <b>A</b>                                                                                                                                                          | <b>Categories of Occupancy</b>                                                                                                                                                                                                                                                                                       |                          | <b>Full Lease Fee</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-----------------------|
|                                                                                                                                                                   | Full lease fee = 3% of the replacement value as determined by a Valuer.                                                                                                                                                                                                                                              |                          | \$                    |
| <b>B</b>                                                                                                                                                          | <b>Categories of Tenant</b>                                                                                                                                                                                                                                                                                          | <b>Type of Agreement</b> | <b>% Lease Fee</b>    |
| B1                                                                                                                                                                | <b>Community Groups Category 1:</b><br>Tenants who: <ul style="list-style-type: none"> <li>• hold a liquor licence; AND</li> <li>• hold a Food Registration Certificate; AND</li> <li>• hire their facilities for functions/social events; OR</li> <li>• charge entry to the premises</li> </ul>                     | Lease Agreement          | 17%                   |
| B2                                                                                                                                                                | <b>Community Groups Category 2:</b><br>Tenants who: <ul style="list-style-type: none"> <li>• hold a liquor licence; OR</li> <li>• hold a Food Registration Certificate; OR</li> <li>• hire their facilities for functions/social events; OR</li> <li>• conduct sporting activities for members and guests</li> </ul> | Lease Agreement          | 14%                   |
| B3                                                                                                                                                                | <b>Community Groups Category 3:</b><br>Non-sporting groups who provide a community service and are predominately volunteer based                                                                                                                                                                                     | Lease Agreement          | 5%                    |
| <b>C</b>                                                                                                                                                          | <b>Financial Circumstances<br/>(Evidence to be Provided)</b>                                                                                                                                                                                                                                                         |                          | <b>% of Lease Fee</b> |
| 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%                   |
| <b>D</b>                                                                                                                                                          | <b>Co-location</b>                                                                                                                                                                                                                                                                                                   |                          |                       |
| D1                                                                                                                                                                | Tenant has exclusive use                                                                                                                                                                                                                                                                                             |                          | 100%                  |
| D2                                                                                                                                                                | Tenant is co-located with another group.                                                                                                                                                                                                                                                                             |                          | 50%                   |
| <b>Rental Calculation <math>A \times B \times C \times D</math></b><br><br><b>Note: Minimum rental \$200 per annum, to be increased annually in-line with CPI</b> |                                                                                                                                                                                                                                                                                                                      | \$                       |                       |