

Leasing

Objective

This Policy establishes a consistent, fair and transparent approach to the leasing of City-owned and managed land and buildings. It aims to:

- Align the leases with the Social and Economic aspirations of the City's Strategic Community Plan
- Clarify the respective responsibilities of lessee and the City
- Balance assistance with accountability

Scope

This Policy applies to all leases of land and buildings owned, managed or controlled by the City, with lawful capacity to lease.

Guiding Principles of this Policy

- **Safety** – must comply with statutory and safety requirements, with clear roles for inspection, rectification and accountability
- **Stewardship** – lessee shared responsibilities for maintaining, protecting and planning for the long-term renewal of leased community assets
- **Consistency** – should be managed uniformly enabling defensible enforcement
- **Equity** – recognising the varying capacity and community benefits of different lessees
- **Simplicity** – lease and responsibilities must be clear and easily understood lessee
- **Community benefit** – prioritise participation, inclusion and volunteer value above financial return for community leases
- **Sustainability** – enable effective asset maintenance and replacement

Legitimate interests of the City

The City's leasing framework is designed to protect the City's legitimate interests, including:

- ensuring the long-term stewardship and sustainability of community assets which are owned by the City on behalf of the community
- meeting statutory obligations under the *Local Government Act 1995*, *Land Administration Act 1997*, Work Health and Safety legislation, and associated regulations
- managing financial and operational risks associated with exclusive occupation of community facilities
- ensuring that facilities remain safe, functional and fit for purpose for all users
- supporting equitable treatment across lessees and avoiding inconsistent ad hoc financial burdens on ratepayers
- ensuring efficient and transparent allocation of maintenance, renewal and operational responsibilities

Governance and Compliance

- The Chief Executive Officer is to maintain Executive Standards and Procedures to ensure the Guiding Principles are enabled
- Non-compliance will be addressed discreetly and proportionately, with Council informed of significant breaches accordingly

Clarity on Maintenance Responsibilities

The categories the City uses to distinguish maintenance expenditure from larger capital expenditure are outlined below.

- Statutory maintenance
- Planned (preventative) maintenance
- Reactive maintenance
- Operational maintenance
- Asset renewal
- Upgrades
- Expansion

Insurance Responsibilities

The City shall maintain building insurance on its assets, with costs recoverable from the lessees.

Lessees must hold and provide evidence of insurances appropriate to their activities including contents, public liability and, where applicable, workers compensation, volunteer insurance and other insurances (e.g. event, cyber, glass, money).

Support for Lessees

The City and the lessee will have mutual understanding of their obligations. To achieve this, the following will be a prerequisite to support and guide tenancy:

- Orientation sessions at lease commencement
- Plain-language guides explaining lease obligations
- Education and check-ins with lessees
- Differentiated approach balancing assistance with accountability versus persistent non-compliers
- Permitting lessees to make their leased spaces available for casual or occasional hire at appropriate fees set by the lessees
- Grants to meet maintenance requirements under the lease through the City Properties Maintenance Grants (subject to eligibility)
- Grants to meet capital upgrade and expansion of leased premises through the Community Grants Program (subject to eligibility)
- Grants to lessee assist in operational costs of non-sporting, charitable lessees (subject to eligibility)

Negotiation

While the City uses standard lease templates to ensure consistency and equity, the City will consider reasonable requests from prospective lessees to amend terms of the lease, provided any amendments are consistent with the City's statutory obligations and legitimate interests.

Minor or administrative variations that do not alter the risk profile of the lease may be approved under delegation

Policy Approach

Leases are classified into three different categories:

- Commercial leases
- Community leases
- Telecommunications leases

Commercial Leases

Definition

A “commercial lease” is a lease between the City and an entity that is not an incorporated not for profit association. This includes leases where the lessee is an individual, a company, statutory authority or government body.

Commercial leases must be consistent with the permitted purpose of the land and comply with relevant planning, building and statutory requirements.

Unless exempt by law, commercial leases must be advertised to the public for comment for a minimum of 14 days pursuant to Section 3.58 of the *Local Government Act 1995*. Any submissions received in opposition to the lease must be considered by the Chief Executive Officer before a lease is executed.

Rent

The rent on commencement is to be the market rent as determined by an independent licenced valuer, public tender or auction process. An annual fixed percentage increase of 3% will be applied. The rent is to be reviewed to market at the commencement of every third year.

Term

A maximum of 5 years

Responsibilities of Lessee

The lessee is responsible for:

- Payment of all variable outgoings and costs associated with lease documentation preparation, including a bond
- Mechanical services
- Statutory maintenance
- Planned (preventative) maintenance
- Reactive maintenance
- Operational maintenance
- Capital renewal, upgrades and expansion of all assets on the leased land, subject to prior written City approval

Responsibilities of City

Nil

Commercial Leases for Telecommunication

The City may consider granting commercial leases to telecommunication carriers.

Definition

A “telecommunication lease” is a commercial lease between the City and a licenced telecommunications carrier that permits the leased property to be used to house and operate telecommunications infrastructure and equipment.

Telecommunications leases must be consistent with the permitted purpose of the land and comply with relevant planning, building and statutory requirements.

Rent

The rent on commencement is to be the market rent as determined by an independent licenced valuer, public tender or auction process. The market rent will take into account various factors including:

- the size of the leased area
- demand for telecommunications infrastructure and equipment
- the lease term
- any rights for the carrier to grant sub-leases to other telecommunications carriers to co-locate telecommunications infrastructure and equipment
- potential impact of the lessee’s use of the leased space on other land owned or managed by the City

Rent is payable yearly in advance for the term of the lease. An annual fixed percentage increase of 3% will be applied. The rent is to be reviewed to market at the commencement of every third year.

Term

A maximum of 20 years

Responsibilities of Lessee

The lessee is responsible for:

- Payment of all variable outgoings and costs associated with lease documentation preparation, including a bond
- Mechanical services
- Statutory maintenance
- Planned (preventative) maintenance specific to lessee’s operations
- Reactive maintenance
- Operational maintenance
- Capital renewal, upgrades and expansion of all assets on the leased area, subject to prior written City approval.

Responsibilities of City

Nil

Community Leases

Definition

A “community lease” is a lease between the City and an incorporated not for profit association or a company limited by guarantee.

An “incorporated not for profit association” is an incorporated association that:

- a) Cannot operate for the profit or gain of its individual members
- b) Contributes to the community in a social service, sporting, cultural, artistic, environmental or charitable context
- c) Demonstrates local volunteer involvement.

Rent

A nominal rental payment of \$1 is to be payable for the term of the lease.

Classification of Community Leases

Community leases are classified according to the two types set out below.

Community Type One

A Community Type One (CT1) lease applies to incorporated associations with a single primary focus (e.g. sporting clubs), that require exclusive use rights and lease coverage of all buildings and playing areas. These lessees have the capacity to generate revenue from its use of the property membership fees, licenced food and beverage operations, grants and sponsorships. Lessees are required to make significant investment to establish and maintain the leased facilities. Long-term leases are provided by this type of lease to encourage lessees to take ownership and accountability over the leased premises as if it is their own and to facilitate reasonable return on their significant capital investment. In return, lessees only pay peppercorn rent recognising their investment, contributions and broader community benefit.

Rationale for Capital Responsibilities

CT1 lessees receive long-term exclusive use of substantial City assets and have the capacity to generate revenue through membership, functions, canteen/bar operations, and sponsorship.

In recognition of these benefits, and to ensure that community facilities remain financially sustainable without imposing additional cost on ratepayers, CT1 lessees are required to plan for and fund capital renewal, upgrades and expansion of the leased facilities.

Proportionality

The allocation of responsibilities between the City and lessees is based on the level of benefit, exclusivity, operational capacity and revenue potential of the lessee.

CT1 lessees receive long-term exclusive occupation and have substantial capacity to maintain and renew facilities, and therefore bear corresponding responsibilities for operational maintenance, planned maintenance and capital renewal.

Term

A maximum of 20 years

Responsibilities of Lessee

The lessee is responsible for:

- Payment of all variable outgoings and costs associated with the lease
- Mechanical services
- Statutory maintenance
- Planned (preventative) maintenance
- Reactive maintenance
- Operational maintenance
- Capital renewals, upgrade and expansion of all assets on the leased land, subject to prior written City approval
- Lessees must provide a clear plan of long term renewal
- Establish and provide the City with details of a sinking fund

Responsibilities of City

- Fire and termite inspections and servicing (Statutory maintenance)

Community Type Two

A Community Type Two (CT2) lease applies to incorporated associations requiring exclusive use of City premises to deliver a broad range of services. Lessees in this type of lease are further sub-categorised as follows:

- Arts and culture
- Education and welfare
- Environmental
- Special-interest activities
- Sporting and recreation

For sporting and recreation lessees, the lease coverage will extend to clubhouse facilities only. Any adjacent playing areas used by the lessees must be made available for broader community use outside the lessee's usage times.

Member-based lessees of this lease type must demonstrate:

- Accessible and affordable membership regime
- Good governance and sound financial management
- Commitment to programs and activities that add value to the community
- Wide community interest and appeal
- Significant volunteer involvement from a wide range of local residents.

Term

A maximum of 5 years

Responsibilities of Lessee

The lessee is responsible for:

- Payment of all variable outgoings and costs associated with the lease
- Reactive maintenance
- Operational maintenance
- Capital upgrade and expansion of all assets on the leased land, subject to prior written City approval

Responsibilities of City

- Mechanical services
- Statutory maintenance
- Planned (preventative) maintenance
- Capital renewal of City-installed assets

Community Leases in Commercial Property

Associations that qualify as community lessees may be considered for commercial premises on the following basis:

- The City is unable to attract a commercial lessee after a prolonged advertising and marketing campaign
- The rent is to be 70% of the market valuation with annual 3% rent increase annually
- The term is limited to 3 years with no option to renew

At the end of the term the premises will be offered to market at commercial valuation with the incumbent lessee having first option to lease

Definitions

Capital Expansion/New – entirely new assets not previously existing or services not previously delivered

Capital Item – capitalised expenditure pursuant to the City's Significant Accounting Policies relating to buildings and fixed equipment (current capitalisation threshold \$5,000)

Capital Renewal – like-for-like replacement of assets, often at the end of their useful life that restores or rehabilitates existing asset to its original capacity without enhancing its original utility.

Capital Upgrade – are improvements that enhance existing assets' function or capacity to provide a higher level of service

Mechanical Services – all services at the premises that involve motors, machines, and flow of heated or cooled fluids, usually in conjunction with electrical or electromechanical controls

Operational Maintenance – regular, ongoing day to day upkeep and minor repairs necessary to keep leased premises and surrounding area clean and functional

Planned/preventative maintenance – are routine and scheduled works that preserve asset condition, prevent breakdowns and extend its life lessee

Reactive maintenance – are unplanned and urgent works that are needed immediately when a failure occurs

Statutory Requirements – required by law or regulation

Statutory maintenance – maintenance or inspections required by law

Sinking Fund – a dedicated savings fund where money is set aside over time to pay for specific anticipated future renewal and/or upgrade

Legislation

Local Government Act 1995 – Section 3.58

Land Administration Act 1997

Commercial Tenancies (Retail Shops Agreements) Act 1985

Other Relevant Procedures / Key Documents

Council Policy – Community Grants Program

Council Policy – Sports and Community Facility Provision

City Properties Maintenance Responsibility Matrix

Responsible Division

Corporate Services

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