
POLICY TITLE: LAND - LEASE/LICENCE BY COUNCIL

FOLDER NUMBER: F2007/00307

POLICY OWNER / DIVISION: Corporate Support Division

POLICY OWNER / BRANCH: Land and Property Services

FUNCTION: Council Property & Land

RELEVANT LEGISLATION:

POLICY ADOPTION/AMENDMENT DATE: 11 May 2022 **REPORT NUMBER:** CS4/22

REVIEW YEAR: 2024

AMENDMENT HISTORY: 9 May 2007 (Report CC36/07)
8 April 2009 (Report CC12/09)
20 April 2011 (Report CC10/11)
18 April 2012 (Report WK4/12)
17 April 2013 (Report GM2/13)
8 April 2015 (Report CS6/15)
9 March 2016 (Report EH1/16)
8 August 2018 (Report CS33/18)

RELATED POLICIES:

POLICY PURPOSE / OBJECTIVES:

1. To acknowledge that Council is the custodian and trustee of public assets and is required to effectively account for and manage the assets for which it is responsible.
2. To set out the principles, framework, responsibilities and processes for Council officers to account for and manage the leasing and licensing of Council land and building assets.
3. To identify, manage and mitigate the risks associated with the leasing and licensing of land and buildings.
4. To ensure impartiality, transparency, accountability and the delivery of best value in the leasing and licensing of land (“fundamental principles”).
5. To provide appropriate levels of discretion and flexibility in achieving desired outcomes recognising the highly complex nature of property leasing, the wide variety of circumstances and methods of lease or licence available.

Fundamental Principles

All decisions and actions in relation to the leasing or licensing of land and buildings will have due regard to the following fundamental principles:

1. **Best Value for Money** – Achieving “best value” may include financial, social and environmental benefits.
2. **Transparency** – processes are open to scrutiny, provide full information and the reasons behind decisions.
3. **Accountability** – demonstrate the best use of public resources and the highest level of performance through appropriate record keeping and audit trails.
4. **Impartiality** – address perceived or actual conflicts of interests, ensuring fairness and equity.

POLICY STATEMENT:

1. All users leasing or licensing Council land will pay a rental negotiated with due regard to Council’s opinion of market rental, ultimately seeking to achieve best value for Council.
2. Council’s opinion of market rent will be based upon valuation advice undertaken by a suitably qualified Valuer, experienced in the type of valuation required. The rent review mechanisms may include, but not be limited to CPI, Fixed increases and market reviews on various periodic bases, depending on the particular circumstances negotiated and the applicable legislative provisions and restrictions imposed by various forms of legislation including the Residential Tenancies Act 2010, Retail Leases Act 1994, Local Government Act 1993 and the Roads Act 1993. In situations where the circumstances suggest that the expense of a formal market valuation report is not considered necessary or the cost does not deliver an appropriate benefit, a suitably based market appraisal by a real estate agent or Council’s Property Asset Manager may be approved by the Director, Corporate Support as the basis for new lease or rent review negotiations.
3. Rent free periods for early occupation, fitout or as an industry accepted lease incentive may be applied in appropriate circumstances.
4. The maximum length of the lease/licence of Council land, including option periods, will generally be five (5) years. Consideration may be given to granting an additional period of tenure where special circumstances warrant this occurring, or as provided under relevant legislation.
5. Rentals may be negotiated on a gross market basis where outgoings such as Council Rates, Water Rates (excluding usage), Land Tax, Insurance, repairs and maintenance are included in the rent (eg residential rentals), or on a net basis where outgoings are paid by the tenant in addition to the rent (eg industrial rentals), or on a semi net basis where depending on individual circumstances increases in outgoings above a base year are paid by the tenant.
6. Leases should generally be structured in accordance with accepted prevailing industry practice, however, may include special provisions such as “ratchet” clauses (where a rent review can not lead

to a rent reduction), demolition/redevelopment clauses and other types of clauses appropriate to the specific circumstances.

7. All elements of lease negotiations should be conducted in a manner that protects all parties to the negotiations from risk associated with actual or perceived corruption with complete and accurate documentation recorded, including clear reasoning behind decisions made.

DELEGATION OF AUTHORITY:

1. The General Manager is delegated authority to grant leases/licences of Council owned properties as follows:-

- 1.1. Residential cottages where:-

- (a) the rent to be charged is no less than 80% of the estimated market rental having regard to the accommodation, condition of the premises and obligations of both the lessor and lessee;
- (b) the term of the agreement is not more than twelve (12) months;
- (c) the proposed tenants are interviewed and references checked by a Council Officer or a Real Estate agent representing Council;
- (d) appropriate Branches of Council are consulted before entering into negotiations for a new tenant;
- (e) the agreement is in accordance with Council's policies regarding the leasing of Council properties.

- 1.2. Commercial, Retail and other Use properties where:-

- (a) the term of the agreement is no more than five (5) years, including any option periods;
- (b) the permitted use of the premises has development approval and operational approval, if required;
- (c) appropriate Council Branches are consulted before entering into negotiations for any new agreement;
- (d) all appropriate reference checks have been carried out to ensure that the proposed lessee/licensee will be able to comply with the terms of the agreement;
- (e) the agreement is in accordance with Council's policies regarding the leasing of Council properties and relevant legislation;
- (f) the rental cashflow over the term of the lease has been adequately demonstrated to provide best value for Council.

2. Lease/licence proposals that do not fall into the above categories are to be the subject of a report to Council.