

HOBSONS
BAY CITY
COUNCIL



Hobsons Bay

Draft Leasing and Licensing Policy
2022-30

Acknowledgment of Country

Council acknowledges the Bunurong People of the Kulin Nation as the Traditional Owners of these municipal lands and waterways, and pay our respects to Elders past, present and emerging.

Contents

1. Introduction.....	5
2. Policy Objectives	5
3. Policy Statement.....	5
4. Definitions	6
5. Scope of Policy	9
6. Leases and Licenses.....	9
Advantages of a Lease	10
Disadvantages of a Lease	10
What is a License	11
Compliance with the Local Government Act 2020	11
Signing a Lease or License Under Delegation.....	12
Compliance with the Department of Environment Land Water and Planning	12
7. Guiding Principles and Pillars for all Leases and Licenses.....	13
Management Pillars and Principles.....	13
PILLAR 1 - Portfolio Management:	13
PILLAR 2 – Community Occupancy Management:	14
PILLAR 3 – Commercial Management:	15
8. Tenant Categories	16
9. Fees and Charges.....	18
10.General Requirements	18
11.Community Tenants	20
12.Commercial tenants	22
13.Council support and acquittal of Council property	23
14.Appendices	24
15.Related documents.....	24
16.Related legislation	24

17. Review date	24
18. Further information	25
19. Document control	26
20. Version history	26

1. Introduction

Hobsons Bay City Council is the custodian of land, buildings, public roads, and manages Crown Land as a trustee on behalf of the Hobsons Bay community. Council manages the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue it derives from its land holdings.

The Leases and Licenses Policy 2022-30 has been developed to ensure there are clear guidelines and processes regarding the occupancy of Council owned or managed property and that current and prospective tenants are aware of Council's requirements and expectations for occupancy.

The policy will offer guidance to ensure our tenanted property agreements are approached in a consistent, inclusive, fair and impartial manner. It will also provide Council with a proactive and adaptable decision-making process that is flexible and well informed by best practice and evidence.

2. Policy Objectives

The main objective of this policy is to guide both Council staff and current and prospective tenants to ensure legislative process and procedural compliance, whilst ensuring a consistent, fair and impartial approach to the allocation and occupation of Council owned or managed properties.

The Policy will also ensure:

- tenure of Council facilities is aligned with recommendations of Council long term strategic plans
- all commercial tenures are on commercial terms and achieve an appropriated commercial return
- no financial or commercial advantage is gained by community tenants over enterprises conducting similar activities in privately owned facilities
- consideration of changes occurring within Council's portfolio and to offer guidance on the acquisition, disposal, and development of Council property

3. Policy Statement

Approval to grant leases and/or licenses of Council owned, or controlled land and buildings will be made by either a resolution of Council or by a duly authorised and delegated Council officer.

Management of Council property occupation will be undertaken in accordance with this policy.

Direct negotiations of occupation agreements over Council owned and managed lands, and buildings will be undertaken by Council's Property Department in accordance with this policy.

Council owned and managed roads are not considered by this policy. Application to occupy part or all a road, road reserve or reserve will be assessed on a case by case basis. A license will be granted if public value is generated and not for the benefit to private individuals.

The application of this Policy must be read in conjunction with the Property Strategy and the documents identified in the strategy

4. Definitions

Agreement	For the purposes of this policy, the term “agreement” refers to any lease or license arrangement between Council and a Tenant for the use of Council property
Community organisation	<p>An organisation that leases or licenses Council property and that has, as its primary objective, the promotion of social, recreational, environmental, cultural, or economic opportunities for the Hobsons Bay community</p> <p>The organisation is not for profit and is usually unable to generate profit</p> <p>Tenants such as sporting clubs (including seasonal ground allocations) are membership based, however they are limited in their ability to generate enough operating revenue for profit</p>
Community (ground)	A not for profit organisation operating out of a building that has been constructed on Council owned/managed land and have the ongoing responsibility of maintenance and capital replacement
Commercial organisation	<p>Commercial tenants can be a business, retail, office professional or industrial operations; multi residential complexes can also be commercial</p> <p>Commercial tenants may have a lease on a commercial basis, where the <i>Retail Leases Act 2003</i> (Vic) (the RLA) or the <i>Telecommunications Act 1998</i> (Cth) may apply</p>
Council	Hobsons Bay City Council
Council property	All real property owned or managed by Council such as buildings and reserves, including Crown Land for which Council is the grantee or Committee of Management, Council owned land, as well as property for which Council is the tenant (educational land)
CPI	Consumer Price Index as measured by the Australian Bureau of Statistics
Crown Land	Land controlled by the State Government for the benefit of the Victorian community with Council operating as the Committee of Management (CoM) under the <i>Crown Land (Reserves) Act 1978</i> (Vic) for the leasing and licensing of Crown Land
CSIP	Community Services Infrastructure Plan provides for a comprehensive gap analysis of Council property assets and the identified service and property needs
DELWP	Refers to the Department of Environment, Land, Water and Planning who are responsible for Crown Land reserved and/or administered under the <i>Crown Land (Reserves) Act 1978</i> , <i>Land Act 1958</i> , and <i>Forests Act 1958</i>

Expression of Interest (EOI)	Refers to an open and competitive process to enable Council to determine the best use and benefit of a property for the community
Disclosure Statement	A landlord document given to the tenant outlining the commercial terms of the lease. The disclosure statement provides for possible operating costs in addition to rent such as rent review, outgoings, and key provisions relating to the likelihood of relocation or demolition of the premises.
Landlord	Refers to Hobsons Bay City Council as the (head) landlord, represented by the Property Department which has the ability to grant occupancy of Council property through a lease or license arrangement between Council and a Tenant
Lease	An agreement that grants a tenant exclusive possession of Council property for a specified period of time, subject to certain terms and conditions and creates an interest in land that is binding on third parties which is capable of being assigned
Lessee	A person who is granted a lease; in this policy, the term 'tenant' includes lessees
License	An agreement that grants non-exclusive use of Council land/property for a specific period and subject to certain terms and conditions It does not create any estate or interest in or over the licensed premises
Licensee	A person who is granted a license; in this policy, the term 'tenant' includes licensees
Maintenance and renewal	Standard maintenance, often referred to as 'reactive maintenance', that relates to day-to-day upkeep of a property to ensure it is maintained in good operating condition It includes asset renewal maintenance to ensure the long-term upkeep of the building, such as improving its structural integrity.
Market rental	The rental rate for a property as determined by the market, either based on the highest conforming bid of a competitive process, or as determined by a Certified Practising Valuer status designated by the Australian Property Institute
Outgoings (some are consumables)	The costs associated with the operation of the service, which may include: <ul style="list-style-type: none"> a) Utilities (water, telephone, gas, electricity, internet) b) Rates, if charged, including any charges or sums payable in lieu of rates

	<ul style="list-style-type: none"> c) Commercial waste, sanitary, sewage and cleaning charges d) Land tax e) Applicable insurance premiums f) Any other statutory charges
Peppercorn rental	<p>A nominal rental rate set for Council properties that are used by community groups delivering:</p> <ul style="list-style-type: none"> a) Community services aligned with Council's goals and priorities b) Significant public value to the Hobsons Bay community; and c) Have no capacity to generate income for the purpose of entering into the contractual arrangement at a materially minimal cost
Property Development Fund (PDF)	Independent investment vehicle in the form of a fund to consider opportunities to maximise Council's return on investment through property development activities
Seasonal license	Is an agreement where Council grants the tenant non-exclusive rights to occupy a defined area as set out in the seasonal license (Winter/Summer) which may include the whole or part of a building and/or land for use
Sinking fund	Tenants are required to set up a fund to periodically set aside money for the replacement or renewal of capital assets/plant equipment, such as heating and air-conditioning plant, and lifts etc.
Sub-lease	<p>An arrangement in which the tenant assigns or transfers the lease to a third party for a defined period of time; the sub-lessor and new tenant (sub-tenant) have various responsibilities under this arrangement</p> <p>Sub lease arrangements require Council approval to be established</p>
Tenant	An authorised person or incorporated body that has entered or is proposing to enter a lease or license for the use of Council property

5. Scope of Policy

The Policy will apply to all Council owned facilities and land, including where Council is the Committee of Management (CoM) and is enabled under the *Crown Land (Reserves) Act 1978* to issue a lease or license.

The policy addresses the three key property management functions being Portfolio Management, Community Occupancy Management, and Commercial Management. These areas will provide guidance for the management of leasing and licensing, maintenance, renewal, upgrade, development, and disposal and acquisition of Council property.

This Policy does not apply to:

- the sale of right of ways and road discontinuance
- residential tenancy arrangements
- casual hire arrangements including pavilion hire, ground hire and hall hire

6. Leases and Licenses

There are two types of tenure that Council can issue:

1. Lease granting exclusive use and possession of a parcel of land or a building for a defined term
2. License which grants permission for non-exclusive use of a parcel of land or a building for a specified period and/or purpose.

A key difference of a license to a lease is that the rights of a licensee are not assignable to a third party (unless the agreement specifically permits this). Additionally, a license interest cannot be registered on title.

When proposing to commence negotiations for either a lease or license, an assessment is required of the intended purpose for the premises to be utilized to determine whether or not a lease or license should be entered into.

The decision logic in this determination may include:

- who wants to occupy the land and for what purpose?
- does Council want to make the land available to achieve a particular strategic objective?
- does achieving that purpose require exclusive possession or is a lesser form of tenure sufficient?
- does the future tenant need to put up the tenure as security for raising capital so they can finance the project?
- will the Department of Environment, Land, Water and Planning, agency or third parties need to access the land while it is occupied?

A lease will be governed by the *Retail Leases Act 2003* (Vic) if the lease permits the tenant to conduct the retail sale of goods or services.

Advantages of a Lease

The main advantage of a lease for Council is that the market rent under a lease will often be greater than the market license fee for the same premises. This is solely due to the fact that the tenant has exclusive rights to that premises on commercial terms and conditions.

Disadvantages of a Lease

The main disadvantage of a lease for a Council is that Council has less flexibility under a lease to determine the terms upon which the premises are occupied, as a lease may be subject to a number of statutory obligations, including:

- the *Retail Leases Act* 2003 (Vic) requires Council to make details of all leases entered into by Council available for public inspection, including the name of the other party to the lease and the terms and the value of the lease
- sections 136 to 154 of the *Property Law Act* 1958 (Vic) (PLA)
- sections 10 and 28 of the *Land and Tenant Act* 1958 (Vic) (L & T Act)
- sections 66 to 71 of the *Transfer of Land Act* 1958 (Vic) (TLA).

While there is flexibility in modifying requirements for some of the Acts, the Retail Leases Act cannot be amended and is prescriptive to the provisions and must be adhered to by Council which includes:

- Council's obligation to provide the tenant with a full disclosure statement before it enters into a lease
- a tenant's entitlement to a minimum 5-year term, unless the tenant waives this entitlement by obtaining a certificate from the Office of the Small Business Commissioner (section 21)
- Council's obligation to notify the tenant of its right to renew the lease, if the tenant was granted an option to renew, at least 6 months and no more than 12 months before the last date by when the tenant may exercise the option (section 28)
- even where there is no option for a further term, Council's obligation to give notice to the tenant, at least 6 months and no more than 12 months prior to the expiry of the term, either offering the tenant a renewal of the lease, or informing the tenant that the Council does not propose to offer the tenant a renewal of the lease (section 64)
- the manner in which rent reviews may be conducted (sections 35 to 38)
- limitations on the outgoings Council may recover, and obligations on Council to undertake repairs to the structure of the premises, and the plant and equipment and fixtures and fittings at the premises (sections 39 to 52)

Issues where a lease is entered into can arise far more often over tenant's rights as distinct from a license and Council has less flexibility in evicting problematic tenants.

What is a License

A license grants permission for non-exclusive use of a parcel of land or building for a defined period.

A license may be for part or all of the reserve, or of a building and, where there is a shared occupancy situation (i.e. where there will not be any detrimental interference with existing license rights) more than one license at a time can be granted over the same parcel of land or within areas within a building.

A license will only permit the tenant to utilise the premises for a specified purpose.

A license is likely to be suitable where an occupant needs specific rights to an area of land, water or airspace, but it is not necessary or appropriate for the occupant to have the right to exclude others from the premises.

Compliance with the Local Government Act 2020

There is no statutory restriction on licensing, however when proposing to enter into a lease, Council must observe the conditions set out in section 115 of the *Local Government Act 2020* (Vic), such as the need to give public notice of an intention to lease certain kinds of land.

s. 115 of the Local Government Act states that:

1. A Council's power to lease any land to any person is limited to leases for a term of 50 years or less.

Section 115 (subsection (3)) requires Council to include any proposal to lease land in a financial year in the budget, where the lease is:

- (a) for one year or more and—
 - (i) the rent for any period of the lease is \$100 000 or more a year; or
 - (ii) the current market rental value of the land is \$100 000 or more a year; or
- (b) for 10 years or more.

If Council proposes to lease land that is subject to subsection (3) and that was not included as a proposal in the budget, the Council must undertake a community engagement process in accordance with the Council Community Engagement Policy in respect of the proposal before entering into the lease.

Council must give public notice of its intention to enter into such leases and consider any submissions received in accordance with Council's Community Engagement Policy.

Where a lease is for a term of less than ten years and the annual rental is less than the prescribed \$100,000 during any proposed year of the lease, there is no requirement for Council to publicly advertise its intention to lease unless specifically directed by Council to do so.

Signing a Lease or License Under Delegation

In accordance with the Instrument of Delegation from Council to the Chief Executive Officer, where there is no requirement to give public notice, the Chief Executive Officer holds delegated authority to sign a lease and license.

The Director Corporate Services pursuant to the sub-delegation from the CEO is assigned the power to sign a Lease or License on behalf of Council.

Compliance with the Department of Environment Land Water and Planning

About one third of Victoria is Crown land allocated for a range of public uses which, for Hobsons Bay City Council includes foreshore areas, recreation areas, sporting facilities and also commercial businesses specifically the Williamstown Dressing Pavilion at 26 Esplanade Williamstown and also the Rotunda Restaurant at 26a Esplanade Williamstown being the two most prominent.

The Minister for Environment, Land, Water and Planning (DELWP) is responsible for administration of the Acts which govern the management of Crown Land including the granting of leases and licenses.

Most leasing of Crown Land in Victoria is on land reserved under the *Crown Land (Reserves) Act 1978* (CLRA). Land managers, including Hobsons Bay City Council, are appointed as a committee of management or trustees under the CLRA. Council as the appointed Committee of Management (CoM) may grant a lease or license with the prior written approval of the Minister or the Minister's delegate.

Council acting as the CoM must have clear and objective grounds to base leasing or licensing decisions on to ensure that there is a demonstrated benefit to the community.

Before Council grants a lease or license on Crown land, Council must first obtain 'grant and purpose approval' from DELWP. This is to ensure that the permitted use of the lease or license is not contrary to the 'reserved purpose' of the Crown land. All leases or licenses entered into on Crown land must use the form and wording of the Crown agreement template. All such agreements have Special Conditions tailored to the individual tenant

7. Guiding Principles and Pillars for all Leases and Licenses

To be operationally suitable to meet the current and future needs of the Hobsons Bay community, the Policy is underpinned by a set of management Pillars and Principles.

Management Pillars and Principles

PILLAR 1 - Portfolio Management:

Principle .1. Maximising public value generated using the asset portfolio

maximise public value: all future Council asset development will consider the incorporation of multi-modal benefits such as improved amenity, community activation, enhanced open space and financial return

property utilisation: property occupancy preference multi-organisational tenancies and access to support maximum numbers of community members using the property

function and service level: assets are designed and maintained to ensure they are fit for purpose, functionally meeting agreed levels of service

innovation and improvement: alternative methods of providing services and assets with “best value” options will be applied including lease, purchase, and private public partnerships

monitoring and evaluation: Council will continuously monitor and review its property management performance to ensure Council has the necessary current and relevant information on which to base its decisions

decision making: Council will consider short, medium, and long-term implications on structure plans, precinct plans and plans of management when undertaking property projects, acquisition, disposal, upgrades & renewal and proposals for alternative use of Council property.

Principle .2. Property use is aligned with Council priorities, policies, plans and objectives

community need: property occupation is aligned to Council’s priorities, policy, plans, social obligations and objectives

strategic property consistency: property decisions and utilisation support the Community Services Infrastructure Plan (CSIP) need and best use for the property

quadruple bottom line sustainability: decisions relating to Council’s Property Portfolio are taken with consideration of Quadruple Bottom line where consideration is given to financial, social, environmental, and economic impacts on Council and the community

intergenerational equity: all property asset use, occupation, lease arrangements and development will consider the needs and implications for current and future generations

best practice governance: Council will adopt property management practices that are based on good governance and ethical behaviour that can be transacted in an open and accountable manner.

PILLAR 2 – Community Occupancy Management:

Principle .3. Leases and licenses are consistent encouraging inclusion, and fair and impartial community access

tenant occupancies: will be awarded based on an assessment of Council's Property Strategy principles that will assess community contribution, reasonable market rent values, and financial capacity to ensure equal access & evidence-based allocation and awarding of leasing arrangements

leases and licenses: consistent lease and licensing terms and conditions will be established according to tenant entitlement assessment. This will be included in an annual report to Council with recommendations of lease arrangements, tenancy expiries, renewals, and vacancies

building standards: building condition, maintenance, property function and building age will be considered in leasing & license fees, terms, conditions, and tenant contributions

dispute resolution: formal internal review panel will consider community group appeals relating to tenancy disputes, lease/license arrangement and changes to circumstance.

Principle .4. Property allocation and support consider evidence of tenant service delivery, performance, community participation and multi- community group utilisation

financial capacity and accountability: all tenants receiving support from Council will be required to evidence and acquit their organisational performance, participation rates, public value, and financial position before determining future Council support by a simple reporting process

Council support: variation in fees and charges, in-kind and financial support, terms & conditions between properties & leases will be fair and impartial and consider membership numbers, multi-tenancy agreements and general community access availability

grant funding/co-contribution: tenant applications for external funding and requests for co-contribution from Council will require a formal consideration and approval from Council to ensure long term alignment to Council's property priorities.

Principle .5. Long term partnership arrangements will preference shared responsibility for costs, maintenance, and facility management

length of tenure: when confirming lease durations, terms and conditions, tenant's willingness, and capacity to support the ongoing upkeep of the facility and to contribute to capital improvement and facility enhancement will be considered

capacity to generated additional income: when confirming lease durations, terms and conditions tenant willingness and capacity to generate additional income through sub-letting, hiring, or undertaking facility events to reduce the financial and in-kind support requirements of Council will be considered

seasonal management and variation: when confirming lease durations, terms, and conditions tenant willingness to accommodate seasonal use requirements and broader access rights for the general community will be considered.

PILLAR 3 – Commercial Management:

Principle .6. Council property will be used to leverage strategic multi-modal community outcomes as well as commercial return where possible & appropriate

maximise commercial opportunities: consideration for Commercial asset terms, conditions, fees, uses and development will be predominately for income generation purposes targeting maximising Council's financial return on investment

consider profitable alternatives: acquisition, disposal, development or repurposing of Commercial assets will be considered on a financial return on investment basis.

Principle .7. Differentiation will occur as to how we manage our commercial and community property portfolio outcomes

Property Development Fund (PDF): Commercial property assets will be progressively managed by a PDF established by Council










defined community and commercial assets: Council property assets will be identified as "Community" or "Commercial" assets; Each category deliberately treated differently in its management, administration, and governance














private public partnerships: opportunities outlined in the Local Government Act 2020 encouraging partnership with Private and Public entities will be positively considered when looking to develop Commercial assets.

8. Tenant Categories

Tenants have been broken into five main categories to assist in the assessment of tenures.

The management pillars and guiding principles listed in Section 7 will form the framework for rental application, together with the criteria developed to provide appropriate support, subsidy, and acquittal.

Category	Description
Full Support	 Lease/License for up to a 3-year term
	 Peppercorn rental, with annual returns showing how annual acquittals are met
	 Maintenance and Outgoings (Consumables- utilities): Repairs and maintenance as per Council's maintenance schedule All consumables will be the responsibility of the occupants
	 Support from Council to promote tenant providing expertise in areas such as business support, website design and promotional support
Category	Description
Medium Support	 Lease/License for up to a 3-year term
	 33% of market rent applied
	 Maintenance and Outgoings (Consumables – utilities): Shared repairs & maintenance with tenant pursuant to maintenance schedule. Tenant will be responsible in the undertaking of evidence-based maintenance that is reported quarterly, and reimbursed by Council at 66% of the cost All consumables will be the responsibility of the occupants
	 Sub-leasing requires Council consent and Council may choose to share income or increase the head lease rent if the community tenant is deemed to obtain a financial benefit
	 Annual returns provided by tenant to Council for review of tenant performance against tenant objectives to ensure acquittals are met

Category Description	
Low Level Support	 Lease/License term is negotiable
	 66% of market rent applied
	 Maintenance and Outgoings are the responsibility of the tenant All outgoings will be the responsibility of the occupants.
	 Sub-leasing requires Council consent and Council may choose to share income or increase the head lease rent if the community tenant is deemed to obtain a financial benefit
	 Annual returns to be provided by tenant to Council. Council staff to review to ensure acquittals are met
Category Description	
Semi-Commercial (has some public value)	 Lease period to be negotiated; Council may also consider preferential allocation of property to a community group on a commercial basis
	 Full market rent applied
	 Maintenance and Outgoings: Evidence based repairs and maintenance reported quarterly is the responsibility of the tenant pursuant to the maintenance schedule, a ground lease occupation, or the Retail Leases Act 2003. All outgoings will be the responsibility of the occupants
	 Entity has the ability to sub-let and generate income, of which is shared income between tenant and Council; sub-leasing will require Council consent
	 Annual returns provided by tenant to Council and staff to review to ensure acquittals are met
Category Description	
Commercial Leases	 Lease terms and conditions based on negotiations for best returns to Council
	 Repairs and maintenance to be responsibility of the tenant or in accordance with the <i>Retail Leases Act 2003</i>
	 Leases to be managed on a Commercial basis

9. Fees and Charges

An active fee structure for clubs and community tenancies under a license agreement will be established and reviewed annually as part of the Annual Budget process for Council.

Council will endeavour to negotiate a shared contribution to maintenance and upkeep of the property by way of a maintenance agreement.

Subject to the application of the *Retail Leases Act* 2003, all outgoings for services, and costs incurred by Council administering a lease will be passed on to the tenant.

10. General Requirements

1. **Fees and costs:** applicants/tenants shall be responsible unless exempt by legislation for the payment of all application fees (when applicable) and Council's legal costs in preparation of leases and licenses as set down in Council's Annual Fees and Charges.
2. **Insurance:** all tenants shall indemnify Council and hold Public and Product Liability Insurance noting the interest of Council to the minimum value of \$20 million (or other amount as advised by Council) for the duration of the tenure
 - lessees and licensees occupying Council premises must provide evidence of such insurance on each anniversary of the commencement date of the lease or license or upon the insurance expiry date of each year for the term agreement
 - in the case of a license issued to seasonal hirers//users of Council sporting facilities, evidence of such insurance coverage must be provided to Council prior to the event or commencement of each sporting season each year
 - Council maintains the right to examine and reject a policy if it reasonably considers that the policy wording and exclusions do not adequately protect the interest of Council and/or the tenant
 - the tenant must provide Council with a copy of each insurance policy before taking possession of the property and thereafter annually or on request by Council
3. **Insurance (building):** tenants in general are required by Council to hold Building insurance to the full replacement value of the building.
 - Council will be responsible for effecting building insurance for properties occupied by non-commercial tenants
 - the tenant shall reimburse Council the cost of the building insurance and any excess in respect of any claim made.
4. **Environmental sustainability:** all lessees/licensors will be encouraged by conditions included in agreements to manage their impact on the environment through the reduction of waste and the use of energy.
5. **Maintenance:** generally, Council will be responsible for the structure of the building such as, rooves, and external walls, if the structure was installed by Council (the landlord)
 - prior to entering into any agreement for the use of Council property, Council will ensure that a condition assessment, maintenance and renewal and building

lifecycle costs are mapped and factored into decision making regarding the allocation of leases and licenses

- the tenant will be responsible for internal maintenance and repairs as outlined in the maintenance schedule (Appendix A) generally this includes:
 - a) keeping Council property clean and tidy
 - b) keeping Council property in good operating condition
 - c) maintaining and renewing all tenant property and improvements
- where the tenant constructs a building at their own cost, the tenant will be fully responsible for maintenance of that facility
- where the tenant and Council constructs a building/facility jointly the responsibility for maintenance shall be subject to negotiations between the parties
- where a tenant has contributed to the build of a facility, be it minor or major, Council will document any considerations for a rent-free period in a biannual report to Council, however all maintenance will be the tenant's responsibility

6. **Outgoings:** all outgoings will be the responsibility of the tenant to pay all water usage, electricity, gas, telephone, power costs, and rates

- these costs are to be paid directly to relevant service provider by the tenant, or to Council as reimbursement for incurring the costs
- shared facilities under a license agreement will apportion costs based on a proportional rate of their occupancy.

7. **Rent:** rent and license fees payable by Community and Sporting groups shall be in set by Council's Property Department

- annual rent and fee increases for community and sporting groups will be in line with either:
 - a) CPI
 - b) Inflation at the time of entering into the lease or license; or
 - c) A higher fixed rate specified in the agreement
- Council reserves the right to amend the rental if a tenant gains access to commercial or non-fundraising income generated during the term of the agreement such rent received from sub-letting; consent by Council is required for any such use
- rent and license fees for commercial operations shall be based on independent valuation advice unless:
 - a) determined through a public expression of interest process (quotation or invitations for proposal); or
 - b) provided for in Council's Annual Fees and Charges.

8. **Profit sharing:** Council may enter into a profit-sharing arrangement with the appropriate tenant based on fully audited accounts provided by the tenant's authorised agent.

9. **Variation:** a request by the tenant for a variation of a license arrangement/agreement will be assessed and be at Councils absolute discretion.

10. **Crown Land:** Council as a trustee will usually grant an agreement, the maximum is 20 years. Other terms can be made available where significant capital works are contributed to the community by the construction of a facility on Council property.
11. **Loans or guarantor:** Council will not provide loan funds or act as a guarantor to tenants in the future. Any requirement for increased funding must be the subject of an approved grant application awarded by Council or other sources, or by a loan from a reputable third party.
12. **Make good:** all improvements at the cessation of a lease will revert to Council and if required by the Council, the tenant must remove any improvements made to the Premises by or for the tenant and make good any damage caused by their removal. This process will be carried out by mutual agreement.
13. **Reporting:** tenants must provide Council with annual reports including business plans and a summary of audited annual financial statements, which can be submitted online*. Extra reporting requirements may be included in lease or license agreements for Council's information, to work with tenants to further develop and better utilise facilities, such may include marketing plans, community usage levels.
14. **Acquittals:** tenants that receive Council support in the form of grants, funds or in-kind support will be required to report (online*) on the project/purpose in terms of success, outcomes and lessons learnt .
15. No tenant is permitted to seek or obtain grant funding for capital improvements or property development on properties located on Council owned or controlled land without Council's written approval or Council's endorsement of the grant application.

11. Community Tenants

Community tenants will be subject to the following guidelines when applying for the use of a Council building or facility:

- 11.1. Council is committed to maximising access to and use of Council facilities for the benefit of the, and the terms and conditions of the lease and license will balance the needs of the tenant and those identified by the CSIP for the premises.
 - the preference for Council is the multi-use of its facilities and those community organisations that currently have exclusive use of facilities will be reviewed annually
 - community organisations have the onus of justifying any request for exclusive use, and when assessing applications (as per section 13 of this policy) will be considered in determining Council support and acquittal of Council property
 - Council will consider factors such as:
 - a) the tenant's service needs; space, privacy requirements or if it is a commercial premise
 - b) the public value to be achieved from occupying the premises exclusively
 - c) the type of facility; fit for purpose

- d) service occupancy (time spent) and maintenance requirements of the property
 - e) the level of capital investment contributed or planned
- 11.2. The length of tenure for a lease and license will be based on the identified need(s) and will be negotiated accordingly to ensure fair and impartial access for the community.
- 11.3. All agreements will include as part of the terms and conditions a relocation clause, allowing Council to terminate the agreement upon a specified notice period if Council determines there is an underutilization or has a strategic requirement for the building or facility.
- 11.4. Tenants that have constructed their buildings and improvements on Council owned and managed land will remain responsible for all maintenance, repairs, and alterations to the Council building/facility.
- 11.5. Tenants will also provide evidence of the establishment and regular contribution to a repair and a replacement fund (sinking fund) in accordance with their lease to ensure the premises are suitably maintained and repaired to an appropriate standard.
- 11.6. Where multiple licensed groups occupy a premise, the outgoings will be apportioned between the groups according to the days and hours of use.
- 11.7. Where the tenant proposes to undertake capital works and approved by Council will form part of Council assets, a discounted rental may apply if the capital improvements will afford a higher value to Council (in net present value terms) at the end of the lease than would have been achieved otherwise; this process is to be documented and reported on biannually.
- 11.8. In the event the capital works are not considered necessary or are of no value to Council, no subsidisation shall be applied.
- 11.9. Where Council or the tenant has contributed to the construction of buildings/facilities will necessitate a shared percentage approach depending on the contribution amount of each party with respect rent and maintenance responsibilities. Outgoings will remain the responsibility of the tenant
- 11.10. Council shared repairs & maintenance with the tenant is pursuant to the maintenance schedule and will require the tenant to undertake the required maintenance which will be evidence based and reported quarterly. Council will reimburse the tenant the shared (agreed) portion.
- 11.11. Council buildings and facilities must provide public value and tenants will be required to provide evidence and quotas established in terms of membership numbers.
- 11.12. Sporting clubs should allow members of the public to access grounds and facilities without the need for membership where applicable; capping should be avoided or agreed with Council where required.
- 11.13. Consent from Council is required for a change of use, including a retail or commercial use, Council may consider termination or new lease terms and conditions for the lease and license if consent is not sought.

- 11.14. Assignment or subletting of a lease must have Council's written consent, unless subject to the application of the Retail Leases Act 2003.
- 11.15. Council may increase the head lease rent as a condition of providing consent for a sub-lease if it is deemed that the community tenant obtains a financial benefit from the proposed arrangement.
- 11.16. Rental may be reviewed if a community tenant lease gains access to a commercial income (other than fund raising) generated during the term of the lease such as:
- a) subletting
 - b) advertising revenue
 - c) acquiring a liquor / gaming license
 - d) licensing arrangements of the premises
 - e) telecommunication rental
- 11.17. Leases and licenses will have engagement measures (Service Agreement) between Council and community tenants to ensure services such as early childhood education, care services, sport and recreation, scouts, are active, viable and responding to the needs of the community and also meet their lease and/or license obligations including where appropriate maintenance requirements.
- 11.18. All leases and license for all associated negotiations will have a lead time of 6 months before they expire
- Council will aim to conclude all negotiations within this time frame and will reserve the right to revoke the agreement if it considers negotiations are not proceeding in a sincere and/or fair manner.
- 11.19. A formal resolution by Council may be required if a new lease or renewed lease has not been agreed on by the respective parties. Action taken may involve the following actions:
- Council building/facility will be secured to prevent unauthorized access
 - Council to attempt to reach out and meet with the former tenant to resolve matters relating to the tenant's occupation
 - Council will explore alternative occupation arrangements for the premises if no resolution is reached
 - tenant eviction

12. Commercial tenants

Commercial tenants will be subject to the following guidelines when applying for the use of a Council building or facility:

- 12.1. Commercial occupied premises will be negotiated on market conditions suitable to the property type at the time.
- 12.2. Where a commercial tenant occupies part of a building, a pro-rata contribution toward the insurance cost for the building and/or a capped contribution toward the cost of repairs will be charged against it.

- 12.3. The tenant must at its own cost maintain insurance policies for the duration of the agreement period for:
- replacement and reinstatement of the leased/licensed building arising from damage from any cause
 - public and products liability (if applicable) covering the tenant for \$20 million for every claim
 - Council maintains the right to examine and reject a policy if it reasonably considers the policy wording and exclusions do not adequately protect the interest of Council
 - the tenant must provide Council with a copy of each insurance policy before taking possession of the property and thereafter annually or on request by Council.
- 12.4. Commercial tenants are to be fully referenced checked to assure the premises are suitably maintained and rental are paid on time.
- 12.5. Council will act as a commercial agent and will ensure the operation and enforcement of the agreement on commercial terms for the purpose of returning a commercial return to support service delivery across the portfolio.

13. Council support and acquittal of Council property

Council is committed to providing transparent and relevant support through a range of funding mechanisms to community type organisations that align with Council Plan priorities.

Council will assess the level of subsidy and support required by community organisations against eligibility criterion listed against each of the guiding principles. This criterion will include, at a minimum:

- a) alignment with Council's vision, objectives, and Council Plan
- b) delivery of core services on behalf of Council
- c) extent of internal and external funding
- d) service and program fees
- e) level of capital and financial contribution to the asset infrastructure; and
- f) extent of sustainability initiatives

As part of its financial reporting, Council will report all in-kind support, including subsidized rent, for each service area in line with best practice accounting standards and evaluate new and existing tenures.

Council will report on an annual basis of prospective leases and licenses to be entered by Council in the forthcoming twelve-month period. If applicable and at Council's discretion following evaluation of applications will advertise where arrangements are required on a more competitive and transparent manner.

Reporting requirements for all tenants, including timelines for reporting, will be agreed at the commencement of the lease or license, and documented in the agreement with Council.

An online application will allow for all reporting requirements for Council evaluation.

At a minimum all tenants are required to provide, prior to the lease or license commencing and thereafter annually:

- a) a copy of the Certificate of Currency for insurance required under the lease or license
- b) annual reports, financial statements and/or turnover figures
- c) details of membership/users, fee schedules (if charged)
- d) details of their current services, public value provided and what they are wanting to achieve over the period
- e) details of all financial contributions and sponsorships
- f) business plan (if applicable)

14. Appendices

Appendix A –Master Maintenance Schedule

15. Related documents

Community Services Infrastructure Plan 2020-30

Hobsons Bay Open Space Strategy 2018-28

Sports Needs Analysis Final Report 2018

Hobsons Bay Aquatic Strategy 2019-30

Asset Management Policy and Asset Management Strategy 2017

Hobsons Bay Asset Management Policy

Ten Year Capital Works Program

Affordable Housing Policy Statement 2016

16. Related legislation

Local Government Act 2020

Crown Land (Reserves) Act 1978

Leasing policy for Victorian Crown land 2018

Retail Leases Act 2003

Sections 136 to 154 of the *Property Law Act* 1958 (Vic) (PLA)

Sections 10 and 28 of the *Land and Tenant Act* 1958 (Vic) (L & T Act)

Sections 66 to 71 of the *Transfer of Land Act* 1958 (Vic) (TLA).

Community Engagement Policy

Telecommunications Act 1997

17. Review date

This policy will be reviewed five years from the date of endorsement by Council, unless it is required to be updated sooner.

18. Further information

For further information concerning this policy please contact Manager Corporate Integrity on 1300 179 944 and/or customerservice@hobsonsabay.vic.gov.au.

19. Document control

Policy Name	Hobsons Bay Draft Leasing and Licensing Policy 2022-30
Object ID	A
Agility Document Number	
Responsible Directorate	Corporate Services
Policy Owner	Manager Corporate Integrity (Legal Counsel)
Policy Type	Council
Date Adopted by Council	
Review Date	

20. Version history

Version Number	Date	Authorised by