

DRAFT "Leasing and Licencing" policy

PURPOSE:

To provide a consistent and equitable framework for leasing and licensing for the City of Launceston ("Council") controlled land and/or facilities, which achieves an appropriate balance between community needs and commercial requirements.

SCOPE:

This policy applies to:

- All Council officers involved in the negotiation and preparation of leases and licences regarding Council owned land and/or facilities.
- Any community groups, sporting clubs, social clubs, residential or commercial users who intend to lease or licence Council-owned land and/or facilities on more than an informal occasional basis; and

This policy does not apply to:

- Hire of Council land and/or facilities that are routinely booked or hired for occasional uses with a standard City of Launceston venue hire agreement or booking arrangement;
- Occasional general community uses (for example, informal uses of open spaces, or non-exclusive gatherings). These uses will generally not require a lease, licence, booking, or hire agreement; or
- Encroachments onto Council land (refer to "Private Use of Council Land Policy" 23-PI-003).

The information contained in this policy is not advice, and should not replace seeking legal advice on proposed Council agreements. It is recommended Council Officers seek legal advice from a legal practitioner before proceeding with any agreements on behalf of Council.

POLICY:

Key Principles

- Commercial users of council land and facilities must provide a fair return to ratepayers for the investment in Council land and facilities;
- All users of Council land and or facilities are entitled to be dealt with consistently and equitably;
- Council has an important role to play in supporting and encouraging community participation in local clubs and associations open to the broader community. Council facilities are also used for the public benefit by appropriately supporting not-for-profit or charitable or benevolent organisations and educational organisations like those set out in Table 1;

- To maximise the community benefit to be gained from Council's limited resources, strategies such as multi-share arrangements, and appropriate recovery of costs of outgoings should be encouraged to optimise the use of Council land and facilities

Policy Objectives

- To maximise the benefits to be obtained from Council's capital put into built infrastructure and facilities. e.g. Commercial users should pay a full market rate of rent;
- To encourage the provision of an appropriate range of sporting, community, recreational and support services addressing community needs in a manner that is consistent with Council's strategic plans;
- To establish a structured and systematic criteria for which Council's properties can be utilised;
- To provide fair and equitable access to community, sporting and recreational facilities for user groups;
- To achieve greater transparency. E.g. by clearly setting out the value of properties and how any payments have been calculated, including the amount of any concessions granted by Council;

Optimising the benefits to be obtained from Council land & facilities

Through appropriate lease and licence agreements, the Council will ensure suitable usage arrangements are in place for its land and facilities that will optimise the use of Council's facilities.

The Council must manage commercial use of land and facilities so that they provide a financial return to ratepayers at a market rate.

Use of facilities for sporting, community, recreational and support services must address community needs in a manner that is consistent with Council's strategic plans.

For community uses, the Council must strike an appropriate balance between meeting growing needs for community assistance and endeavouring to manage limited resources. Resources can be optimised by strategies that may include,

- encouraging investment by lessees and licensees in those facilities. Council may be prepared to offer longer lease terms to reflect approved capital contributions (refer to "Capital Contributions" part below);
- encouraging contributions by lessees and licensees towards costs. User groups renting or licensing facilities are generally expected to pay for the expenses arising from their use of the facilities including power, water, maintenance and other services (apportioned where the service is shared). See "Transitional Arrangements for Existing Users" for details about how this is to be implemented for existing users;

- multi-use arrangements where groups share facilities areas only for meetings rather than occupying an entire facility;
- by offering use of an alternative facility, especially where a group has difficulty meeting the full costs of a large new facility;
- by disposing of facilities that no longer meet modern standards for public facilities, and investing the proceeds in those that do.

Fair and equitable access

Council officers need to be alert to commercial opportunities to develop vacant Council land and properties that are not currently being used for another purpose. Commercial interest is likely to be focussed on areas with a natural commercial advantage, e.g. close to the CBD or tourist attractions. These opportunities are to be approached with an expectation that a full commercial rate will be paid for the use of the property.

Existing lessees and licensees seeking to continue their occupation and use of non-commercial premises, shall be offered the first right of refusal, provided that there have been no substantive breaches of the current agreement, including that the user group has been a good neighbour in its conduct towards the Council, the public and other co-located user groups.

Council will provide fair and equitable access to land and facilities for all user groups. To ensure this, an "Expression of Interest" process will be used to select a suitable lessee or licensee for public land or facilities.

Expressions of Interest will be required:

- Where a facility is proposed or suited for commercial purposes (except where EMC have approved the expediting of a time sensitive proposal);
- When a current lessee fails to provide notice to renew or to exercise their options within the given terms of their agreement;
- If the user group has repeatedly or seriously breached the agreement, or has not been a "good neighbour" as determined by the Council's asset manager.
- Where a facility is vacant or is a newly constructed facility (and the construction has not occurred as part of an existing lease).

As part of this process, Council will publicly advertise the property, including any desired uses or particular requirements. This will allow the community opportunity to make comments regarding the proposed use of Council land and/or facilities.

Interested parties will be invited to provide submissions regarding the intended use of Council land and/or facilities, as well as provide details as to why that party should be granted rights to use or occupy particular parcel of land and/or facility.

The following steps are required under this policy:

- Preparation of an EOI document which includes relevant details, selection criteria, and required forms;
- A Public Notice in the local newspaper in accordance with this Policy;

- Appointment of a panel of not less than 3 Council employees to assess the submissions and select the most suitable applicant (in keeping with probity requirements); and
- Recommendation put to a Council meeting in support of the preferred user group (where appropriate).

Commercial uses should be primarily determined by market forces, particularly in relation to rental price.

Relevant factors to consider when recommending the use of a facility or land by a group for a community or benevolent use include,

- If, the demonstrated need for the service in Launceston, is supported by evidence;
- The financial capacity of the user group, relevant to the services or programs proposed to be offered. This includes the capacity of a lessee or licensee to generate income to meet their commitments;
- Assessment of the suitability of the land or the facility (including size, location, maintenance requirements);
- Any existing and surrounding users;
- Any relevant environmental impact considerations;
- Where a significant capital contribution has been made or proposed to be made by the user group;
- If it may be more appropriate to co-locate the group with another user, in this or some other facility; and
- Previous history as a Council lessee or licensee.

Greater transparency

Council should use, and be seen to be using, the objective criteria and equitable processes set out in this policy.

It is also important that ratepayers can see that their investment in land and property is being well utilised and that users are making a fair contribution, or paying a fair rent, for the use of the land or facilities.

Community users should also clearly know the full value of any support or concessions granted by Council, as this is in effect a contribution by the ratepayers to the community objects that the user groups are fostering.

Determining Fair Payment for the Use

Valuation

Rent for commercial premises will be based upon valuation of the relevant land or facility. For community users this figure will be used to properly record the value of the ratepayer's contribution.

It is also a requirement of the *Local Government Act 1993*, and Council policy, that a valuation must be obtained from the Valuer-General, or another person qualified under the *Land Valuers Act 2001*, prior to the sale, lease, donation, exchange or other disposal of Council land and facilities. This is to ensure that the Council is fully informed when making a decision regarding a lease or licence.

For a sale of land, or a commercial lease or licence, an independent valuation completed not less than 6 months previously is required.

For other types of leases or licenses sought for benevolent or community purposes may use government rate valuation to calculate the full value of the use of the property. The "AAV" figure (adjusted for CPI and proportioned where only part of the site is used), will provide a proxy for a rental valuation. These reports can be used where such State Government (rate) valuations are not more than 6 years old and written approval has been obtained from the relevant Director.

The cost of any valuation will be met by Council in the first instance, but where the tenant or purchaser has initiated the transaction to meet their own requirements, the cost will be recovered from the person requesting the land or use of the facility.

Determining a fair community group contribution

The usual commercial rental may be rebated for community and benevolent groups who do not have the capacity to pay, which will commonly be the case with not for profit entities. A rebate is a subsidy from Council and is granted when a user group demonstrates the requisite need for assistance.

The rebate may be granted if the group meets the eligibility criteria in the Contribution Assessment Schedule in this policy (refer Table 1).

In accordance with this policy, Council can fully rebate rentals for community groups who are of a sporting, recreational, charitable or benevolent nature. Groups will remain responsible for the outgoings associated with the running of the property.

User groups renting or licensing facilities are still expected to fully meet the expenses arising from their use of the facilities (apportioned where the service is shared) so that the Council is not liable to make further regular payments for the management of the community group's needs at the site once the property is occupied.

Where a group is unable to pay the full costs of a facility, they can apply to a Council for a further concession, but they would ordinarily be required to adjust their practices to meet any new costs. Transitional arrangements can be offered in accordance with this policy (see *Transitional Arrangements for Existing Users* below).

Any rebate is assessed based on information provided by the user group when commencing and/or renewing an existing agreement regarding the following:

- Why the user group requires a reduction in the rent or fee set by Council valuation method;

- If the rent or fee reduction is required for a short or long term period;
- What strategies the group has in place to meet future rental or fee increases;
- What the current revenue raising activities of the user group are;
- Whether financial assistance from other government sources has been provided, and for what purposes;
- The justifiable need for the proposed service/activity and their ability to meet this need (such as their membership numbers and activity level); and
- The user group's financial capacity to pay based on past audited financial reports.

The Council reserves the right to vary the rebate structure during the term of the agreement if Annual Report information supplied by the user group demonstrates a change in the user group's financial capacity. A condition to this effect is to be inserted into the agreement with the relevant community group.

Contribution tables and explanatory notes

Table 1 sets out the four levels of rebate offered:

Table 1: Contribution Assessment Schedule

Category	Summary of Financial Contributions	Eligibility criteria
<p>1. Benevolent Service</p> <p>Examples:</p> <ul style="list-style-type: none"> • Outreach Service • Meals on Wheels • Youth at Risk Program 	<p><u>Annual Rental Rebate</u> of up to 100% of valuation. Users must provide full payment of costs including;</p> <ul style="list-style-type: none"> • Utilities - consumption, metering and fixed charges (e.g. power, water, gas, telephone) • Waste management fees (in accordance with the regular kerbside collection charge, plus any additional commercial services used) • Maintenance and other building services • Grounds maintenance contributions • Other costs as they arise (e.g. vermin control) • Costs of any special requirements unique to the 	<ul style="list-style-type: none"> • Must provide benevolent or charitable activity/service. Provides a high level of community benefit. • This status must be proved by the user group providing an Australian Tax Office certificate that they hold benevolent status. • Has limited revenue-raising ability (net of cost of service) and may require Council's assistance to become established. • Provides optimal multiple use opportunities.

	<p>user.</p> <p>Where possible services are to be directly contracted by the user, or separately metered. Otherwise they will be apportioned between site users by an objective criteria, such as relative size of premises.</p>	
<p>2. Community Association</p> <p>Examples:</p> <ul style="list-style-type: none"> • Sporting Club • Community Club (e.g. Scouts, community garden) 	<p><u>Annual Rental Rebate</u> of up to 100% of valuation</p> <p>Responsibility for maintenance and outgoings associated with the facility. (As detailed above).</p> <p>Council will manage and maintain sporting grounds in accordance with this policy, namely where they are non-exclusive and are open for public occupation other than when they are hired by a user group on event days.</p>	<ul style="list-style-type: none"> • Must be a non-government group/club. • Members have elected to join group/club. • Has limited revenue-raising ability (net of cost of service). • Provides high benefits for the community. • Willing to consider reasonable multiple use opportunities. • Must have a formal structure, ie, be an incorporated association
<p>3. Commercial User Group or Government or self-funded</p>	<p>No rebate, full market rent payable</p> <p>Responsible for costs associated with facility.</p>	<p>Service is commercial, or is fully-funded from income or grants (e.g. State grants or private bequest)</p>
<p>4. Mixed/Partially Assisted User Group or Group with limited public benefit (semi-private museums, office for partly funded program)</p>	<p>Payments determined in accordance with the mix of activities (percentage that they are commercial, community, benevolent, or self-funded) Responsible for all costs associated with facility.</p>	<p>Has a mixed range of activities that do not fit entirely into another category.</p>

NB: Clubs and associations with significant incomes from commercial or other activities should generally be classed as commercial enterprises, see definitions.

Capital Contributions

Sporting and Community Groups are increasingly willing to make capital contributions to a Council facility to assist in the provision of services. For example, capital can be contributed towards improving clubhouses and pavilions, sportsgrounds, and other facility assets such as lighting.

The Council acknowledges that grants, fundraising and other sources of funding obtained by user groups allow those user groups to initiate capital works which are important to the user group, but may not be currently prioritised in the Council's current Capital Works program. The Council wishes to encourage such initiatives.

User groups may therefore request that capital contributions be considered and assessed as part of the negotiation of a new lease or licence. However, user groups must not rely on a Council rebate to develop capital and then also seek further discounts for an ongoing capital contribution which has been developed with Council support. Details of any proposed capital contributions to be submitted by a user group include:

- Contributions made or proposed during the agreement term;
- Sources of funds for contribution and how they are applied;
- Relevant development approvals for such works; and
- Support for the works by other facility user groups.

Capital contributions will be relevant to length of term, but not relevant to the amount of rent or outgoings paid by a user group. Importantly, no rent or further rebates will be offered to the user group as a result of any capital contribution made.

Terms are usually not to exceed 5 years. Where a user group has made a significant capital contribution (not including Council, State or Federal Government funding), Council officers will recommend a longer term agreement, to allow full capital depreciation benefits (subject to Council approval). For example:

- Where a club or sporting group intends to contribute more than \$50,000 in capital, Council will consider granting an additional term of 5 years (i.e. term of 5 years + option of further 5 years). The original lease is to be re-negotiated at the time of approving capital contribution but before works associated with the contribution have commenced; and
- Where a club and sporting group contributes or intends to contribute more than \$100,000, Council will consider granting an additional term of 10 years (i.e. term of 5 years + option of further 10 years).

The original lease is to be re-negotiated at the time of approving capital contribution but before works associated with the contribution have commenced.

For community facilities, the capital contribution must be applied to the leased or licensed facility.

For sporting groups who contribute towards ground, lighting or facility improvements, the contribution can be transferred to any relevant lease or licence of clubhouses at the improved facility (e.g. when they move to a different clubhouse closer to the grounds).

All other improvements funded by user groups are regarded as philanthropic and Council cannot and does not guarantee or warrant any financial offset or extension of term.

However, where a user group makes a significant contribution other than a capital contribution (for example, the purchase of a significant sporting item which Council would otherwise have to

purchase for the facility), Council may at its discretion allow a financial offset as part of any lease or licence agreement.

All proposed capital contributions or improvements of any kind must be negotiated by Council officers and approved by Council prior to being undertaken, to ensure future maintenance requirements are considered and that such works or projects are consistent with Council's long term vision for the particular facility.

Community and sporting groups may only undertake capital improvements with the permission of Council as the asset owner. Council's permission as asset owner does not in any way warrant or imply that any permit approvals required by the Planning Authority or any other regulatory body have been or will be granted, and user groups will be responsible for obtaining all necessary approvals at their own cost.

Council retains ownership of fixed improvements on its land. In certain circumstances it may be appropriate for a user group to be permitted to remove certain fixed works, and such arrangements will need to be specified in the lease or licence.

Transitional Arrangements for Existing Users

Existing user groups who have had their payments assessed under former policy arrangements will be notified in writing that this policy has changed, and that for any new or renewed lease or licence, new responsibilities will apply.

Any renewed or extended leases or licenses are to be offered either, their existing financial contributions, or the revised financial contributions determined under this policy, whichever is greater.

If it becomes apparent that the user group is unable to pay the revised financial contributions they may apply to have the arrangement phased in, so that within up to 5 years of the date when the user group was sent notice of the new arrangements ("the notice period"), the fee structure will conform to this policy.

Clear years of notice	Capped max annual increase (as a % of additional contributions)
0	25% per year until full payment achieved. Full payment to otherwise apply from year 6 or 1 st year of new lease.
1	33.33% per year until full payment achieved. Full payment to otherwise apply from year 6 or 1 st year of new lease.
2	50% per year until full payment achieved. Full payment to otherwise apply from year 6 or 1 st year of new lease.
3	75% per year until full payment achieved. Full payment to otherwise apply from year 6 or 1 st year of new lease.
4	100% per year until full payment achieved. Full payment to otherwise apply from year 6 or 1 st year of new lease.

Where special circumstances exist, (such as where the outgoings are especially high and will exceed the capacity to pay) an alternative approach may be approved by the relevant Director in

consultation with the Director Corporate Services. If approved, an alternative schedule of payments can be prepared for the life of the agreement to manage the increases until the payments conform to this policy.

Where longer-term financial difficulties are apparent, consideration should be given to the full range of potential alternatives, including amalgamating users into more affordable shared premises.

Finalising New Agreements

Council Officers will assess this information holistically and determine the most suitable terms and conditions for a formal written agreement. Approved Council agreement templates should be used where available and suitable.

The Council's Senior Corporate Legal Counsel is to be contacted at an early stage for assistance with the form of the proposed lease or license agreement, particularly if changes are proposed to an approved template.

The user group will then be invited to discuss the agreement in more detail. The user group will be provided a minimum of 14 days to consider the proposed agreement and will be given an opportunity to negotiate before a final decision on the terms of the agreement are settled and any recommendation is made to Council for consideration at an ordinary meeting.

Some key terms are;

Term

The Term of an agreement is general not to exceed 5 years (see "Capital Contributions" for some potential exceptions").

Insurance

The Council insures the whole of its portfolio of buildings (with some exceptions) against property damage. Its premiums are set with a high level of exclusions. These vary but are presently \$50 000. Tenants are not able to have their own building insurance. To cover the risks under \$50 000 for property damage, we are levying an insurance contribution to cover these risks. Finance are to be contacted to calculate the tenant's share of the insurance responsibilities, which is based on factors such as the value of the property they use.

Some tenants who own their own building (especially if they raised their own funds for it without Council assistance) may be able to apply to have their own building insurance cover and be excluded from later Council insurance policies.

Any tenant may take out other specialised policies for their business or sporting activities, such as professional indemnity, contents insurance, player injury cover, additional plate glass and business interruption insurance.

The tenant **MUST** insure themselves against personal injury claims at a level suited to their likely risk exposure. Most insurers will offer \$5 million or \$10 million in minimum cover.

Rates and Land Tax

A decision has been taken not to separately recover these outlays from tenants.

Tenants will still benefit from common municipal services such as rubbish removal, environmental health inspections, dog control and other Council administrative functions. Tenants will not be charged rates, but will be charged a waste removal charge for properties that take advantage of the regular kerbside collection services. They may also be charged for, or may separately contract for, other commercial waste collection services.

Building Maintenance, Grounds and Specialised Playing Surfaces

If a facility is occupied exclusively by the tenant, the tenant is to be entirely responsible for the interior of the facility including its periodic refit. Tenants will also be responsible for exterior painting, cleaning and maintenance. Plumbing and electrical fittings and consumables, such as replacement tap washers and light bulbs, toilet and shower fitting maintenance and repair are the Tenant's responsibility. Any tenant installed items such as kitchen extractor fans, three phase electricity connections, gas lines, waste processing plant and traps, data cabling, TV aerials and connections are the Tenant's responsibility unless agreed otherwise. The plumbing and services wiring network, is otherwise the Council's responsibility.

Maintenance of grounds, or parts of grounds, that are occupied exclusively by the tenant are to be maintained by the tenant at their cost.

Specialised sporting equipment is to be managed by the tenant at their cost. Where a specialised playing surface has been installed for a tenant its replacement is to be at the cost of the tenant. Where the replacement cost is likely to be prohibitive for a community group as a lump sum outlay, the tenant may be charged an annual capital contribution towards the replacement of this surface at the end of its anticipated service life.

Special circumstances

Where any responsibility for carrying out a task under this policy falls on a tenant, and they are unable to perform the task for any reason, the Council may carry out the tasks but on a full cost recovery basis. Generally, this is to be limited to circumstances where the incomplete work creates a potential health and safety issue.

Where it is not practicable to split a cost or responsibility in the manner set out in this policy, an officer may seek approval from their Director for a differing arrangement.

Legislative Compliance

Council will comply with all relevant statutory obligations relating to disposal of land. These obligations are mainly set out in Part 12 of the *Local Government Act* 1993. They apply to dealings with land such as selling, leasing, donating and exchanging land. It does not apply to licensing of land. Licensing is appropriate for "non-exclusive" uses, where the council will be able to continue to use the licensed land at the same time as the licensed person.

The Council must also comply with the provisions of the *Local Government (Building & Miscellaneous Provisions)* Act 1993 relating to subdivisions when considering offers of lease terms

of more than 10 years. Generally subsidised community and benevolent tenants are not to be granted lease options.

Any property being used as a residential home must comply with the *Residential Tenancies Act 1997*.

Any property being used as retail shop premises (such as cafes) must be dealt with in a manner that complies with the *Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998*.

Dealing with Public Land

Council as custodian of public land is accountable to the public and must deal with its land in accordance with the provisions of *Local Government Act 1993*, (particularly sections 177A, 178 and 179). "Public land" is defined in S.177A and includes land such as parks, gardens, sports facilities, recreational land, public open space and other land on Council's public land register. Before dealing with public land the council must,

- Obtaining a valuation;
- Publicly advertising and considering representations if public land is to be disposed of for more than 5 years; and
- Obtaining a resolution of Council to dispose of the land on agreed terms.

Dealing with land that is not "public land"

If the Land is not public land a valuation and council resolution is still required, but a public advertisement is not required.

Seeking Assistance

This leasing and licensing process should be progressed as promptly as practicable in the circumstances, in particular, commercial enterprises are likely to lose interest if there are lengthy delays in finalisation. The Council's Senior Corporate Legal Counsel should be contacted at an early stage for assistance with the form of the proposed lease or license agreement.

PRINCIPLES:

The principles underpinning this policy are transparency, equity and public access.

Also, all of Council's Organisational Values apply to this policy.

RELATED POLICIES & PROCEDURES:

19-PI-001 Legal Services Policy

24-PI-003 Council Property Management Policy

24-PI-002 Disposal or Alienation of Council Assets Policy

17-Rf-007 Legals Index Document Information Sheet

DRAFT 14-HLPr-007 How to Write an Agenda Item for Council Procedure

RELATED LEGISLATION:

Competition and Consumer Act 2010 (Cth)
Land Use Planning and Approvals Act (Tas) 1993
Local Government Act 1993 (Tasmania)
Local Government (Building & Miscellaneous Provisions) Act 1993

REFERENCES:

N/A

DEFINITIONS:

"Act" - means *Local Government Act 1993*

"Commercial" means a purpose that involves the supply of goods and services on the open market, or shares characteristics with a provider of goods and services for profit.

Example 1. the members meeting room and memorial grounds at an RSL branch are community uses, but the bar, restaurant and gaming rooms are commercial where they are open to use by the public on reasonably open invitation and on terms broadly similar to those of a commercial provider.

Example 2. The members only rooms and subsidised members only facilities at a marine activities club are community uses, but any bar, restaurant, reception centre, slipways, storage and parking areas are commercial where they are open to use by the public on reasonably open invitation and on terms broadly similar to those of a commercial provider.

"Hire" - means obtaining the temporary use of something based upon an agreed price and period of time, including casual or seasonal hire.

"Lease" - an agreement where the Lessor (owner of the property) grants to another person (the Lessee) exclusive possession of the property for an agreed period_usually (but not necessarily) for rent .

"Lessee" - means the tenant, or the person to whom the lease is granted.

"Lessor" - means the owner of the property; the person who grants a lease (i.e. Council).

"Licence" - is a formal authority or permission to enter and occupy a person's land for an agreed purpose. A licence does not usually confer a right of exclusive possession of the property, or any estate or interest in it. A bare licence (i.e. simple permission to enter and occupy Council's land) can be revoked at any time. A contractual licence is revoked according to the terms of the agreement (if it deals differently with that issue).

"Licensee" - a person who has been granted the benefit of a licence; a person who enters land with the express or implied permission of the property owner occupier.

"Licensor" - the property owner occupier who grants the licence (i.e. the Council)

"Planning Authority" means the City of Launceston, when it sits as a planning authority for the purposes of approving planning items under the *Land Use Planning and Approvals Act (Tas) 1993*.

"Premises" - means the facility, building and or land to be leased or licensed by the Council to the Lessee or Licensee.

"Public Land" - as defined in section 177A of the *Local Government Act 1993 (Tas)*.

"TasWater" - means the Tasmania Water Corporation established by the Water and Sewerage Corporation Act 2012, registered as Tasmania Water and Sewerage Corporations Pty Ltd and trading as TasWater.

REVIEW:

This policy will be reviewed no more than 2 years after the date of approval (version) or more frequently, if dictated by operational demands and with Council's approval.