



## **Appendix 4b**

### **16.5 Review of Council Policies**


*CP029 Use of Council Facilities*

# **Ordinary Meeting of Council**

Wednesday 26 October 2021 at 7:00pm

Queenscliff Town Hall

## COUNCIL POLICY

|                            |                                      |                              |   |
|----------------------------|--------------------------------------|------------------------------|---|
| Use of Council Facilities  | <b>Adopted By Council:</b>           | 30/04/2014                   |  |
|                            | <b>Date/s Revised:</b>               | 23/08/2018                   |   |
|                            |                                      | 19/05/2021                   |   |
|                            | <b>Next Review Date:</b>             | 05/2024                      |   |
|                            | <b>Document No:</b>                  | CP029                        |   |
|                            | <b>Directorate:</b>                  | Finance & Corporate Services |   |
| <b>Responsible Officer</b> | Manager Finance & Corporate Services |                              |   |

### CONTEXT

The Borough of Queenscliffe provides use of a number of facilities to clubs, incorporated organisations and businesses for varied purposes, including sporting and recreation and education purposes.

### PURPOSE

The purpose of this policy is to provide a consistent framework for the use of Council owned and managed land and facilities by setting out principles applying to such use. It is a framework that assists council in participating in fair and equitable discussions with all types of users.

### SCOPE

This policy covers the following aspects of Council property use by other parties:

- Types of Agreements
- Standard Terms
- Categories of occupiers
- Usage charges; and
- Usage principles

### APPLICATION

This policy applies to individuals, groups or businesses that have been determined by Council to be a preferred user of Council property. Nothing in this policy creates an obligation on Council to enter into an agreement or be obligated in any agreement.

### DEFINITIONS

For the purposes of this policy, the following definitions will apply:

|                            |   |
|----------------------------|---|
| <b>Commercial</b>          | Of, or pertaining to commerce: ie. the buying and selling of goods and services   |
| <b>Commercial Activity</b> | Any activity engaged in which involves any of the following: <ul style="list-style-type: none"> <li>• the principal purpose of the activity is to make a financial profit, either in the short or long term;</li> <li>• the activity involves commercial partners;</li> <li>• the activity involves user-charges for goods and services consistent with current market values;</li> <li>• the activity has direct competition with the same or similar services in the local area of interest.</li> </ul> |
| <b>Community Benefit</b>   | The service or activity provides a clear benefit to a high proportion of  |

|  |   |
|--|---|
|  | residents, ratepayers, groups or organisations in the Borough of Queenscliffe and/or helps Council achieve its strategic objectives outlined in its Council Plan. |
|--|---|

**POLICY**

Council aims to provide a workable framework for property use agreements that are consistent in their application, protect public land and assets; align with State and Federal government obligations, meet community expectations and Support the users’ objectives.

**CONSULTATION AND NOTIFICATION**

Council will undertake consultation or notification in the following circumstances:

- Where council has identified desired use for a property and is seeking to identify potential users to deliver this use, eg. A Commercial Occupier or Tour Operator, the consultation process will generally be an Expression of Interest (EOI) process. Once the EOI process is completed all submissions will be assessed in accordance with the eligibility criteria advertised to determine the preferred user.
- Where Council is approached by a potential interested individual, group or business that wishes to use a Council property and council wishes to inform key stakeholders, competitors of the broader community, Council will advertise a notice stating we are considering entering into an agreement in the local newspaper and/or on Councils website seeking public feedback. This may also occur when existing agreements are nearing expiry.
- Where Council needs to comply with legislation or regulatory requirements.

**AGREEMENTS**

**Types of Agreements**

There are four types of agreement for the use of Council facilities:

|              |   |
|--------------|---|
| Casual user  | <3 months and irregular pattern of use –charges set in user fees with the annual budget |
| Regular user | 3-11months and regular pattern of use charges set in user fees with the annual budget   |
| Licence      | 12 months or greater with regular pattern of use  |
| Lease        | Greater than 12 months and exclusive operation  |

In general Council would enter a licence agreement rather than a lease agreement where there is likely to be low use of a facility by an organisation and a lease would restrict the potential availability of the facility to the community.

**TERMS**

The term of the agreement will depend upon many factors including the following:

- the tenant;
- the ongoing need for the premises or provided use;
- substantial contributions to capital works;
- the stability of the tenant;
- suitability of the tenant;
- suitability of premises to the tenant; and

- the requirements of any applicable retail leasing legislation.

For leases where the rental levels are less than the commercial market rental or the property is not classified as a rental premises the preferred term of the lease will be for period of 5 years. Council sees the optimum term of the agreement as 5 years to best align usage with current council objectives. This allows for regular opportunities to meet and discuss occupancy requirements and to review.

### CATEGORIES OF OCCUPIERS

Council has defined five categories of parties to which it may lease Council property, as follows: Council will not lease property primarily for private use.

| Category   | Description   |
|--|---|
| Fully Commercial   | Tenants who operate as a fully commercial profit making entity  |
| Fully Government funded                                    | Tenants who are fully funded by the state or federal government   |
| Community Organisation (significant commercial operations) | Not-for-profit tenants who: <ul style="list-style-type: none"> <li>- hold a liquor licence; and</li> <li>- hold a Food Registration Certificate; and</li> <li>- hire the facilities for functions/ social events</li> </ul> OR <ul style="list-style-type: none"> <li>- charge entry to the premises</li> </ul> OR <ul style="list-style-type: none"> <li>- receive significant external funding</li> </ul> |
| Community Volunteer Organisation                           | Community group with no commercial operations that is predominantly volunteer based and receive no or minor regular external funding  |
| Community Service Organisation                             | Community group that as a service organisation provides a function for the benefit of the community and contributes to the 4 year Council Plan outcomes.  |

### USAGE CHARGES

Council will charge three rates of fee:

1. Full commercial. Commercial rates will be set by independent valuation.
2. Discounted. The rate of discount will be based on the benefit to the community and any discount needs to be approved by Council based on a proposal submitted by the relevant organisation.
3. Peppercorn. The peppercorn rate will be set by Council annually as part of the budget process, giving consideration to the minimum recommended rate set by the Department of Environment, Land, Water and Planning (DELWP).

| Category   | Charges  |
|--|--|
| Fully Commercial   | Full commercial  |
| Fully Government funded                                    | Full commercial  |
| Community Organisation (significant commercial operations) | Commercial operations - Full commercial<br>Community Operations - Discounted based on benefit to the community |
| Community Volunteer Organisation                           | Discounted based on benefit to the community   |
| Community Service Organisation                             | Peppercorn   |

## USAGE PRINCIPLES

Council deeply takes responsibility for the Health and Wellbeing of the community. Accordingly, it will not undertake leasing or licencing of its facilities where it believes there is unreasonable public risk or community detriment associated with the usage of the facility.

In particular, Council will not lease or licence its facilities where they will be used for gambling purposes, other than fundraising appeals (as defined in the Fundraising Act 1988) conducted by entities registered as community and charitable organizations with the Victorian Commission for Gambling and Liquor Regulation as part of their fundraising activities in accordance with the Gambling Regulation Act 2003. Where historical lease arrangements have allowed gambling, leases will not be renewed on expiration if gambling is to continue.

Equally, Council requires potential tenants to adhere to the principles of human rights and of gender equality in their operations.

### Rates, Taxes, Rubbish, Charges and Outgoings

The following table displays the rates, taxes, charges and outgoings applicable.

| Category   | Rates including public waste charges  | Council Rubbish Collection | Charges & Outgoings |
|--|---|----------------------------|---------------------|
| Fully Commercial   | Full  | No                         | Full                |
| Fully Government funded                                    | Full  | No                         | Full                |
| Community Organisation (significant commercial operations) | Commercial operations - Full<br>Community Operations – Discounted to Culture and Recreation Rate (full public waste charge) | No                         | Full                |
| Community Volunteer Organisation                           | Discounted  | No                         | Discounted          |
| Community Service Organisation                             | Nil   | Yes (free)                 | Discounted          |

### Maintenance

A detailed maintenance schedule will be an appendix to any lease or licence agreement. Tenant is responsible for all preventive & reactive maintenance and repair & replacement work. Council will perform in broad terms asset renewal work.

The Tenant is required to maintain the demised premises in accordance with a maintenance schedule attached to the Lease or Licence, using the services of registered and qualified tradespeople to undertake works that require a 'Certificate of Compliance'. Tenancy Agreement schedules will specify responsibilities of Council and tenant including responsibility for maintaining the structure including the building shell; fit out including fixtures and fittings; and grounds including ground surface. All Tenants signing Leases or Licences following commencement of this policy will be required to contribute towards maintenance of their facility in accordance with the Schedule.

The level of maintenance responsibility outlined in the relevant Schedule will be determined by the function of the facility, the degree of community benefit, and the Tenant's ability to generate revenue. Specific responsibilities may be negotiated with each tenant taking into account the nature, age and condition of the facility and included in a Schedule to that tenant's Lease.

### **Inspection of Premises**

Council officers will undertake formal facility inspections of community facilities on Council owned or managed land biannually to ensure the terms and conditions of the agreement are being adhered to and that the facilities are being maintained at the required standard.

### **Insurance**

Fully Commercial must effect and maintain \$20m public liability insurance, noting the interest of Council, in accordance with the terms and conditions of the Lease or Licence. Tenants other than fully Commercial must effect and maintain \$10m public liability insurance, noting the interest of Council, in accordance with the terms and conditions of the Lease or Licence. Tenants must provide a current Certificate of Currency for Public Liability to the Council on the anniversary of the commencement of the Lease or Licence. A copy of the certificate of Currency is to be provided to Council on an annual basis.

Council will insure the building and permanent fixtures of any leased premises as per the agreed insurance schedule as part of the lease.

Tenants that fall into the categories of either Community Volunteer Organisation or Community Service Organisation ( ) may request Council to ensure contents as Council may be able to achieve a cheaper rate. The full cost will be on charged to the tenant. Insurance will be negotiated on a case-by-case basis depending on the benefit to the community.

In the event of damage to the demised premises, the Tenant shall contact the Council and cooperate with the preparation of an assessment report and/or insurance claim. Council shall consult with the Tenant and shall make arrangements for the damage to be assessed and organise for the damage to be made good. The Tenant shall fully cooperate with all Council Officers, Agents and Contractors engaged by Council to undertake the repairs and/or Council's insurer.

The Tenant shall be responsible for payment of the excess on Council's insurance policy in respect of any claim where the loss is a result of the Tenant's occupation of the building caused by acts or omissions by the Tenant, its servants, agents, invitees, visitors or contractors. Any other events, such as vandalism, bushfire, flood, storm, impact damage, where the tenancy of the building is irrelevant, would not incur the policy excess.

### **Termination of agreement**

Council may suspend or terminate an occupancy agreement if it has good cause, including but not limited to:

- a. breaching the terms and conditions of the occupancy agreement.
- b. failure to pay their fees or utility bills.
- c. refusal or ignored a reasonable request to share the facility.
- d. failure to provide information requested by Council within the designated timeframe.

### **Documentation in support of any agreement**

In recognition of the discounted Lease or Licence charges, non-Commercial/s are required to provide to the Council, prior to the Lease or Licence commencement and thereafter annually:

- Annual reports, financial statements and/or turnover figures
- Details of membership/users, fee schedules (if charged)
- Details of their current services, community benefits provided and what they are wanting to achieve over the period
- Summary of financial contributions and sponsorships
- Current committee members and contact details
- Key register if applicable
- documented risk identification and treatment programs (ie pest)
- reasonable requests for other documentation required for council reporting for example copies of utility invoices for climate reporting.

### **Multi-use of facilities (licences)**

Council is committed to maximising access to, and use of, Council facilities for the benefit of the community. Accordingly, for all agreements with Community Organisations, the need for exclusive use of facilities will be assessed at the commencement of the Agreement, with the preference being shared use licence agreements.

Community organisations have the onus of justifying any request for exclusive use. When assessing this application, Council will consider factors such as:

- a. the tenant's service needs (sensitive work, space requirements, commercial premises)
- b. the level of capital investment (made or planned)
- c. the defined benefit to be achieved from tenancy
- d. the type of facilities (e.g. purpose built etc)
- e. the maintenance requirements of the property.

### **Sinking funds**

Tenants with exclusive occupancy of playing surfaces on Council owned or controlled land will be required to create a sinking fund in anticipation of the capital cost to renew or undertake significant maintenance of the playing surfaces.

### **Rental Increases**

Occupancy fees will be increased annually by CPI, with the exception of peppercorn rents. These will be set as part of the budget process each year. Annual fees may also be subject to a market review on the exercise of an option and/or every five years of the term.

### **Telecommunications installations**

Council will retain the entire rental payable under a lease by a telecommunication provider (or similar service provider) for use of Council owned or controlled land or building and will use that rent for the benefit of the whole community. This rental will not be shared with any individual clubs or organisations that use part of the land upon which the telecommunication lease is situated. Individual clubs, organisations and tenants must not negotiate directly with any telecommunication provider (or similar service provider) in relation to the use of Council owned or controlled land or building.

### **Contributions for New Capital Works**

Community/ User groups that are sporting, recreation or community sites are required to make a contribution towards any agreed development or improvement works initiated in response to a group's needs, in accordance with the following guidelines. This table is to be used as a guide only, the actual council contribution will be determined based on the business case of each project.

| <b>Project Cost Range</b> | <b>Community/ User groups Contribution (in minimum)</b> |
|---------------------------|---|
| up to \$20,000            | Up to 50% of cost                                       |
| \$20,001 to \$100,000     | up to 75% of total project                              |
| over \$100,000            | Up to 50% of total project cost                         |

Community / User groups are required to demonstrate that the local contribution has either been raised or is satisfactorily secured before any works are commenced.

In-kind expenses, such as voluntary labour and donated materials, can be allowed as part of the local contribution

Funds sourced by Community/User groups from community grants, sponsors and philanthropic trusts or the like can be recognised as part or all of any required local contribution.

### **Public Notice and Submissions**

If any of the following conditions are present:

- a. the term of the Lease or Licence is for 1 year or more and the rent or fee for any period of the Lease is \$50,000 or more per year, or, the current market rental value of the land is \$50,000 or more per year; or
- b. the Term of the Agreement is 10 years or more; or
- c. the use of the demised premises necessitates significant alterations or access changes to a site or building thereon

then, Council shall publish a public notice of the proposed Lease or Licence in local media and/or its website, and invite any person to make a submission to Council. The process of hearing submitters and considering submissions shall be in accordance with the Local Government Act.

### **Expressions of Interest**

All new and renewal (when no further term options are present) of licence's and/or lease's will require an expression of interest process with the exception of telecommunications tower sites.

### **Safety Requirements**

Tenants must have in place appropriate emergency and evacuation plans and procedures, and are required to adhere to all relevant legislation governing their activities, including occupational health and safety legislation and essential safety measures legislation. Council reserves the right to review appropriate plans, and to inspect the premises to ensure compliance with laws.

### **Child Safe Standards**

Council is committed to creating a child safe environment where children and young people are respected, valued and encouraged to reach their full potential and Council's policies and procedures support the implementation of requirements under the Child Wellbeing and Safety Act 2005.

If the use of Council's property involves working with children, the Tenant, its servants, agents, invitees, visitors or contractors must comply with the Child Safe Standards made under section 17(1) of the Child Wellbeing and Safety Act 2005.



## **Gender Equality**

Council is committed to promoting gender equality in developing policies and programs and in delivering services to the public, and the gender equality principles outlined in the Gender Equality Act 2020. The use of Council's property should always be compatible with the equality of rights, opportunities, responsibilities and outcomes between persons of different genders.

## **General**

Standard lease and licence agreements developed by Council will be used as the basis of all tenancies. Where required the DELWP standard documents will be used and amended to include Council related clauses for agreements on Crown Land.

## **TRANSITION**

From the date of adoption, any new usage agreement (including renewals) must comply with this policy.

## **CONTINUOUS IMPROVEMENT**

This policy will be reviewed on a continuous basis, but as a minimum every three years from the date of adoption.

## **OTHER REFERENCES**

Local Government Act 2020

Retail Leases Act 2003

Crown Land (Reserves) Act 1978

Leasing Policy for Crown Land in Victoria 2010, Department of Sustainability and Environment

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