Lease and Licence Policy 2018

Community Engagement Summary Report



5 June 2018

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# Overview

The purpose of the consultation was to engage with the community and tenants regarding the proposed revisions to Council's Lease and Licence Policy 2008. This Policy applies to commercial, not-for-profit and club/other community organisation leases and licences on Council owned or managed properties.

The consultation was open from 30 April to 31 May 2018 and conducted via an online survey on Have Your Say Bayside. The consultation was open to the general community. A total of 73 online survey responses and 15 submissions were received, mostly from current tenants.

Key themes within the feedback include:

* Some support and conditional support for sections within the draft Policy
* Recognition of the value and good-will created by current tenants
* Suggestions for Council to work closely with current tenants, particularly commercial tenants, in the lead up to establishing new leases and licences
* Concerns about the term of the lease being insufficient for current tenants, particularly commercial and long terms tenants that have invested in the properties
* Queries around calculating rental charges, level of support/subsidies, Council’s Schedule of Fees and Charges and sinking funds as well as concerns about the size and impact of proposed rental increases
* Need for more clarity around community benefit and what constitutes evidence of community value
* Queries around the Council expectations for tenants to maintain and develop facilities; valuation of assets and impact of current asset value on future rental.

Key considerations for Council:

1. **Working with current tenants in the lead up to establishing new leases and licences:** Commercial tenants in particular **are** seeking amendments to the policy to provide opportunities to maintain an ongoing relationship with a Council property without a need to go to market testing at end of lease.Feedback suggests improvements to lease negotiation with earlier commencement is supported. A number of the key themes relate to tenants concerns in areas which have not changed from the current policy. It is unlikely there will be any significant change to these groups to existing lease conditions under a new policy. A number of community groups have also expressed uniqueness and these may require specific strategies related to service needs and facility upgrades through asset management plans and capital improvement strategies linked to an occupancy agreement.
2. **Community expectations/requirements for maintaining and improving facilities and asset value:** Maintaining and improving facilities came through as a key theme. The Lease and Licence Policy provides some direction in terms of the maintenance and upkeep of existing properties, the Property Strategy and Service Driven Asset Management Plans more directly drive the approach to upgrade and renewal of facilities. The Policy provides avenues to set the terms and conditions associated with lease and licences where tenants have provided capital investment towards renewing a facility. There is a concern with aging infrastructure and lower memberships some groups will not be able to afford minimum rentals or have any capacity to continue to maintain or support renewal. The tension between supporting all groups with status quo, emerging groups and funding the cost associated with this will require ongoing review. The feedback suggests a tension with groups desiring sole occupancy and the need to share and maximise use of facilities where possible along with the challenge of funding future investment required to meet broader community needs. Feedback also raised some concern at the current 5% escalation in fees and charges. The current minimum rental is set at $535p.a. and is set in line with the adopted Long Term Financial Plan. Currently this fee applies generally to community groups with an exclusive lease over a Council property.
3. **Recognising the benefit of long term community tenants and challenges with declining numbers and emerging needs:** A number of long term community tenants expressed concern in relation to how community benefit would be calculated. There is some concern that Council may change its approach to tenancy arrangements where a group with declining membership and long term occupancy may be disadvantaged by the revised policy. Where a group is occupying a facility in accordance with its lease/licence and providing an ongoing service it is unlikely significant change will occur. Where community leases are in place, the turnover of groups is low, with many groups occupying facilities over many decades. The feedback suggests Council needs to find ways to ensure that the ongoing relationships lead to obligations being understood and met over the duration of agreements. As agreements near the end of term Council will need to build on these relationships to ensure the community benefit outcomes continue to be delivered. As no prospective tenants responded, much of the concern from existing tenants is similar to the 2008 concerns when Council introduced its first Leasing Policy. At that time formalised maintenance agreements were included in all lease documents and these have been generally accepted by tenants. A key tension and consideration for Council will be how to manage the current occupancy arrangements with the ongoing need from emerging groups and how its service driven asset management plans can best meet this need.

## Next steps

The feedback will be incorporated into the Lease and Licence Policy which will be presented to Council for adoption. This will provide the basis for future lease and licence negotiations. For many groups this will not significantly change the requirements as the proposed changes from the Leasing Policy 2008 are minimal. Where leases are currently in over holding Council will seek to renegotiate new agreements with tenants within 6 months of adoption of the policy to ensure that all Council properties with tenants have current agreements in place.

# Background

This document provides a summary of stakeholder and community feedback on the Lease and Licence Policy. The draft policy seeks to update the Leasing Policy 2008.

The Council Plan includes an action to review Council’s Leasing Policy 2008.Many aspects of the current policy remain appropriate and do not require further amendment. Key areas of focus include the approach to effectively implementing the policy, ensuring greater utilisation of assets through joint use and licence arrangements, maximising community benefit as opposed to private benefit, transparent reporting of subsidy and ensuring tenant obligations are met.

Council currently has over 250 lease/licence agreements in place. The community assets occupied have a combined property value in excess of $100 Million.

Council receives an annual income of $3.8 Million from its leased/licenced assets. The majority of this comes from commercially leased assets (Golf, Café, Leisure Centre and School use) with only minimal financial return from community leased assets of $242K. The subsidy in place for community groups is significant, however has little or no visibility.

Given the dual financial impact of rate capping and asset renewal, Council will need to deal with the increasing expectations of the community for the assets they use, private benefit versus community benefit for users, level of subsidy or equitable sharing of costs for provision of assets and the need to rationalise both facilities and level of support provided.

The update of the policy proposes the following amendments

1.1 Removal of procedural content

The current Leasing Policy 2008 includes a large volume of procedural information which is not required to be retained in the Policy. This was historically included at the time of adopting the 2008 policy as there were no standard agreements in place and a number of items were highly contentious. There is now 10 years of precedent where application of maintenance schedules, insurance renewal and lease renewal procedures are now generally accepted.

There is minimal change in content with the key changes being the inclusion of community benefit factors, including a clause to allow waiving of the insurance reimbursement for some not for profit groups with no capacity to pay and commencing annual reporting of the subsidy and contribution to occupy Council property.

1.2 Approach to determining community benefit

The current approach to assessing the community benefit provided by a group occupying a Council facility and therefore how much they should pay in rental is inadequate. A number of factors to support this assessment have been included in the revised policy. These will be used to consider the application of minimum rental as set annually as part of Council fees and charges. It should be noted that capacity to contribute a greater amount to the ongoing management of occupied facilities will be taken into account when setting the rental.

1.3 Transparency of subsidy

There is currently no transparency of the level of subsidy currently provided to community groups. It is proposed to report the cost to Council of managing a property and the rental received.

Maintenance

The current Leasing Policy requires tenants to undertake maintenance obligations. The proposed Lease and Licence policy maintains the current approach to allocation of maintenance obligations.

Where a facility is built by a tenant, consideration of land only leases can be made on a case by case basis where all obligations outside those Council has as landowner are taken by the tenant.

Commercial Properties

Council has numerous requests from commercial tenants for rent relief, extension of lease agreements and capital/maintenance works which would not normally be available in a private lease agreement. Many commercial tenants are seeking assurances at end of lease to incorporate first right of refusal clauses so they maintain equity in their business. The proposed Lease and Licence Policy maintained the status quo and did not provide for any direct negotiation with commercial tenants and proposed an expression of interest process.

# Definitions and scope

All Council tenants were provided a direct mail out notification of the proposed Lease and Licence Policy and key issues for consideration. Further a Have Your Say page was promoted in local papers, online and social media channels to encourage broad community input.

Within this document, reference is made to stakeholders. These stakeholders are:

* Commercial Tenants (Group 1 Tenants)
* Community Tenants (Group 2 and Group 3 Tenants);
* Peak agencies such as Life Saving Victoria and Tennis.

## Glossary

|  |  |
| --- | --- |
| Item | Definition |
| DEWLP | Department of Environment, Land, Water and Planning of the Victorian State Government |
| Lease | A lease is a right granted by the owner of the land (landlord) to another person (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment. A lease creates an interest in land that is binding on third parties and is capable of being assigned, unless the lease specifies to the contrary. |
| Licence | A licence permits a person (licensee) to occupy land (or part thereof) on particular conditions. The main feature that distinguishes a licence from a lease is that a licence does not permit exclusive occupancy of the land. Unlike a lease, a licence does not create any interest in the land and the rights created by a licence are personal and do not run with the land.  |
| LGA | Means the Local Government Act 1989 (Vic) as amended from time to time. |
| RLA | Means the Retail Leases Act 2003 (Vic) as amended from time to time. |
| Tenant | Means an authorised person or incorporated body that has entered into or is proposing to enter into either a lease or licence with Council for the use of Council owned or managed premises. |
| Group One Tenants: Commercial  | Group One Tenants occupy the premises on a commercial basis. Some examples of premises that are leased to Group One Tenants include the following:* Commercial sport and recreation e.g. Royal Avenue Tennis Centre, Golf Clubs
* Infrastructure e.g. telecommunications towers
* General commercial e.g. Ricketts Point Tea House, North Road Pavilion Café
 |
| Group Two Tenants: Not-for-Profit Community Groups | Group Two Tenants includes community groups that serve the community or an underprivileged or disadvantaged group and these Tenants do not have the capacity to generate a significant amount of income and operate on a not-for-profit basis. Some examples of Group Two Tenants include the following: * Kindergartens
* Playhouses
* Community youth groups
* Senior citizens
* Scouts and Guides
* Neighbourhood Houses and Learning Centres
 |
| Group Three Tenants: Other Clubs and Organisations | Group Three Tenants includes recreational or community groups that service the community and are readily available to Bayside residents. These tenants include member based fee-paying clubs and organisations that have the capacity to generate revenue from use of the facility or other activities consistent with the organisational purpose (but do not operate to make a commercial profit). Some examples of Group Three Tenants include the following:* Tennis clubs.
* Bowling clubs.
* Lifesaving clubs
 |

## Related Council documents and consultations

* Leasing Policy 2008
* Council Plan 2017-2021
* Property Strategy 2014

# Consultation process

## Consultation purpose

The consultation was designed to provide stakeholders and the broader community with the opportunity to provide feedback in relation to the amendments proposed to the Leasing Policy 2008. A direct mail approach was used to encourage current tenants to provide feedback on the policy.

## Consultation methodology

### Consultation phase

In order to determine any concerns with the proposed policy the following activities were undertaken:

|  |  |
| --- | --- |
| Details | Activity |
| Have Your Say feedback30 April to 31 MayHave Your Say73 Site Visits | Council invited feedback through Have Your Say Website through public advertising in local papers, online and social media channels. A wide range of community and commercial tenants participated in the feedback. The feedback came from existing tenants. No feedback was received from prospective tenants or general community members.  |
| Direct Mail6 Written Responses | Direct mail was undertaken to advise all existing tenants of the update of the Policy, the key issues and opportunities to provide feedback. The majority of feedback from these groups came via Have Your Say, however a small number of written submissions were also received.A petition with 10 signatures supporting changes to new leases for commercial tenants was also received. |

# Participant profile

This consultation did not gather respondents’ personal demographics but rather asked respondents about their interest in the draft Policy (consultation topic).

As shown below, the majority of respondents (73 of 88) completed the online survey. Most respondents are Bayside residents or business owners, Current community group/club tenants or Current commercial tenants.

Many of the respondents referred to a club, organisation or commercial tenant and/or a Council building or facility, as shown below:

|  |
| --- |
| **Group One Tenants: Commercial** |
| Brighton Baths health club and sea baths |
| North Point Cafe |
| Office & Workshop at 144 Talinga Road Depot |
| Sandringham Leisure Centre *incorporating Sandringham Sports Physio, 150 Tulip Street Sandringham; Sports Physio clinic and Swim Right (16 mentions in total), as well as petition signed by 10 individuals* |
| Trevor Barker Beach Oval |
| **Group Two Tenants: Not-for-Profit Community Groups** |
| Nil |
| **Group Three Tenants: Other Clubs and Organisations** |
| Individual member of Bayside U3A |
| Black Rock Yacht Club |
| Brighton Bowling & Sporting Clubs Inc. |
| Brighton Life Saving Club *(3 mentions)* |
| Glamis Avenue Athletics Track *(2 mentions)* |
| Half Moon Bay SLSC *(2 mentions)* |
| Hampton Bowls Club |
| Highett Bowls Club  |
| Highett Recreation Centre |
| Hurlingham Park Tennis Club |
| Sandringham and District Historical Society Building, Sandringham |
| Sandringham Anglers' Club at the foreshore at Sandringham Harbour |
| Sandringham Croquet Club *(2 mentions)* |
| Sandringham Youth Club 219 Thomas Street Hampton *(2 mentions)* |
| **Other** |
| Life Saving Victoria |

Direct mail out was conducted to all current tenants. No responses were received from individuals within Group Two Tenants: Not-for-Profit Community Groups or those seeking future tenancy in a Council building.

# Consultation findings

The following section summarises the key themes which arose in the community feedback on the Draft Lease and Licence Policy 2018. In the interest of stakeholder and community privacy, individual quotes have not been included within this public document. Where there was more than one mention of a topic or item, the number of mentions has been specified in brackets and italics.

## Support for actions

Respondents indicated **some support** and **conditional support** for the following sections of the draft Policy:

* Section 5.1 Standard terms and conditions
* Section 6 New lease
* Section 6.1 Assessment of rental
* Section 6.3 Rental

## Scope and methodology

This policy applies to Council owned and managed assets for: Commercial leases and licences; and Community leases and Community licences. It does not apply to seasonal sports ground allocation, ad-hoc or casual hire of halls.

## Draft Lease and Licence Policy 2018

Council is the custodian of land and building assets that support a wide range of community uses. Council will effectively and transparently manage the occupancy of its leased and licensed assets to optimise the public value it provides to the Bayside community.

The policy supports decision making in relation to occupancy arrangements on Council land in accordance with obligations under the Local Government Act 1989. It provides clarity on approach to leasing and licencing for the community and commercial use of Council land.

It supports consistency and transparency in occupancy arrangements and provides direction on maximising occupancy and utilisation of Council managed assets including co-location, clustering and multi-use that reflects the community expectations and prioritises use for the service delivery needs that benefit the local community. The policy supports the sustainability of Council’s property and building assets through appropriate and equitable contribution towards maintenance and other costs. The Policy has considered, and is compatible with, Council’s obligations under the Charter of Human Rights.

Through the consultation process, Council has become aware of a number of challenges that respondents have raised regarding the draft Policy.

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| --- | --- |
| Challenge | Detail |
| Acknowledging the varying contributions and operations of current tenants and variation in Council properties  | Suggestions for Council to work closely with current tenants, particularly commercial tenants, in the lead up to establishing new leases and licences |
| Term of lease being insufficient | Concerns about the term of the lease being insufficient for current tenants, particularly commercial and long terms tenants that have invested in the properties |
| Determining a fair level of support for all tenant groups | Queries around calculating rental charges, level of support/subsidies, Council’s Schedule of Fees and Charges and sinking funds as well as concerns about the size and impact of proposed rental increases |
| Providing a sufficient level of detail in the draft Policy without it becoming overly prescriptive and inflexible | Need for more clarity around community benefit and what constitutes evidence of community value |
| Cost, expectations and impact in relation to maintaining and developing facilities | Queries around the Council expectations for tenants to maintain and develop facilities; valuation of assets and impact of current asset value on future rental |

## Item-specific feedback

### Section 5: Policy Statement

Section 5 of the draft Policy lists the outcomes Council is hoping to achieve by updating the Policy and proposes the following Policy Statement.

The policy provides the guiding principles that will assist in the effective management and use of Council’s buildings and land so as to maximise the return to Council and benefit to the community. Council seeks to maximise the community benefits from the use of land or buildings and ensure responsible management and accountability for the direct and indirect subsidies on leases and licences. This policy will:

* Ensure Council owned land and buildings are used to meet community needs and objectives consistent with Council’s vision policies and Council Plan.
* Ensure clear, consistent and transparent approach to establishing leases and licences on Council owned and managed land and buildings.
* Ensure the appropriate assessments of community groups are undertaken and provide guidance on the most appropriate agreement to maximise utilisation and benefit to be provided from an agreement.
* Provide guidance on the appropriate contribution by community groups that consider the community benefit provided by the tenant, the capacity of the tenant to raise funds, maintain a community asset and allows for equitable access to Council land and buildings. Rental for commercial organisations will be set according to a market rental determined by market testing or sworn valuation.
* Ensure that Council owned land and buildings are maintained, developed and occupied responsibly taking into consideration the community benefit provided and the ongoing costs maintain and renew the assets.
* Provide an equitable and transparent process for dealing with Council’s leased and licensed assets.
* Provide accountability for Council expenditure related to occupancy agreements and lease subsidies as they constitute an indirect grant.

A range of comments were made during the consultation regarding this item, specifically in relation to the *approach to establishing leases and licences* and *maintaining, developing and occupying land and buildings responsibly.* Respondent category is presented alongside the feedback in brackets and where a topic is mentioned more than once, the number is specified in brackets and italics.

|  |  |
| --- | --- |
| Topic | Community feedback |
| Policy statement overall  | Supported (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Support for policy referencing Council matters and Vision beyond the current Council Plan which expires every four years (Other)Conditional support (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Conditional support, no particular objections to draft Policy but concerns about the poor state of the track and facilities (Group 3 Tenant: Other Clubs & Organisations)Not supported (Other)Not supported, policy lacks strategic justification and does not encourage long term partnerships to achieve outcomes for the community (Other)Not supported, SLSC is concerned about several aspects of the proposed policy and will work with Life Saving Victoria and Council (Group 3 Tenant: Other Clubs & Organisations)Outline from where community expectations regarding multiple use have been collated or derived (Other)Clarify the context under which the Charter of Human Rights has been applied (Other)Consider deleting reference to the Retail Leases Act as it is not referenced in the draft Policy (Other)Queries whether the policy statement could also reference the needs of the tenant when the tenant is representative of a portion of that community (Other)Policy Intent does not refer to commercial uses (Group 3 Tenant: Other Clubs & Organisations)Scope does not make clear the rationale for licences versus ad-hoc allocation for Council properties (Group 3 Tenant: Other Clubs & Organisations) |
| Approach to establishing leases and licences | Recognise business good-will built up over the term of the lease and have an option to negotiate a new lease directly with existing tenant (Group 1 Tenant: Commercial) *(16 mentions)* |
| Maintaining, developing and occupying land and buildings responsibly | Include mechanism for monitoring and removing tenants who are not performing or maintaining the premises (Group 1 Tenant: Commercial)Outline Council’s strategy to maintain and improve ageing assets (50+ years) which will be a considerable expense in the near future (Group 3 Tenant: Other Clubs & Organisations) *(3 mentions)*Despite contributing for decades, we still have a leaking roof (Group 3 Tenant: Other Clubs & Organisations)Would like the ability to provide continued community access to our leased buildings without having to be financially responsible for maintenance in addition to the rental (Group 1 Tenant: Commercial)The club should not be fully responsible for the maintenance requirements of a 50 year old building (Group 3 Tenant: Other Clubs & Organisations)Queries whether Council will contribute towards major future maintenance issues for old buildings (Group 3 Tenant: Other Clubs & Organisations)We fully built the facilities and amenities and as this is becoming increasingly difficult to maintain, some funding to assist with building maintenance would be great (Group 3 Tenant: Other Clubs & Organisations)Queries Council’s view on appropriate and equitable contribution towards maintenance costs to support lifesaving clubs (Other)Queries lease definition referring to exclusive possession or part thereof and suggests use that supports the objectives of the tenant and their purposes (Other) |
| Assessments of community groups to maximise utilisation and benefit | Acknowledge the important role of community organisations (volunteer base) in delivering community services (Group 3 Tenant: Other Clubs & Organisations)Recognise the community benefit and local employment opportunities provided by commercial tenants who occupy Council facilities (Other)Queries how the appropriate assessments of community groups will be undertaken (Other) |
| Contributions by community groups | Youth sporting participation will be reduced if club fees increase to cover rent (Other)Queries how guidance will be provided regarding community contributions by community groups (Other) |
| Accountability for Council expenditure | Queries how the lease subsidies will be measured and the expenditure that is referenced (Other) |
| Market rental for commercial organisations | Need definition for Asset Value and suggest using "depreciated cost of the asset" (Other) *(2 mentions)* |

### Section 5.1: Standard Terms and Conditions

Section 5.1 of the draft Policy refers to the standard terms for leases/licences and the circumstances considered for longer terms and proposes the following Standard Terms and Conditions.

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.

Generally the lease or licence term will be set at a maximum of nine years. However, a longer term may be considered under one or more of the following circumstances:

* substantial contributions to capital / structural works are to be made by the tenant;
* commercial return is enhanced;
* conditions required by other funding bodies on the tenant regarding the length of term;
* demonstrated long-term community benefit is evident.

The term of commercial leases will be assessed on an individual basis as a result of market testing. Council will only grant a lease or licence to specific persons, incorporated bodies (that is, organisations that are incorporated under the Associations Incorporation Act 1981) or bodies corporate (as defined under the Corporations Act 2001 (Cth)).

A range of comments were made during the consultation regarding this item, specifically in relation to the *term of lease* and *negotiations.*

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| --- | --- |
| Topic | Community feedback |
| Standard terms and conditions overall | Supported (Group 3 Tenant: Other Clubs & Organisations) Support for consideration for longer terms (Group 1 Tenant: Commercial)Support for nine year leases (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Conditional support, for nine year leases with an option for a further 9 years/renewal (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Conditional support, on the presumption our organisations would meet the exceptional circumstances for a longer maximum lease term (Group 3 Tenant: Other Clubs & Organisations) |
| Term of lease  | Nine year timeframe is insufficient to invest in or build a long term reputation (Group 1 Tenant: Commercial)The lease term is not sufficient particularly for purpose built or located facilities (Group 3 Tenant: Other Clubs & Organisations) *(3 mentions)*There needs to be flexibility for longer leases for the right tenant (Group 1 Tenant: Commercial) *(2 mentions)*Are there any differences in lease terms for Group 3 tenants? (Group 3 Tenant: Other Clubs & Organisations)Want to make a substantial capital investment (up to one million dollars) into the Council facility but am unable to without surety of tenure (Other)LSV supports lease terms of 21 years to support long term tenure and sustainability of lifesaving (Other) |
| Negotiations | Commercial leases need to be assessed on an individual case by case basis having regard to relevant commercial/market and statutory considerations (Group 1 Tenant: Commercial - *2 mentions* and Other *– 1 mention)* Council to negotiate a new lease with existing tenants subject to a market rental valuation being carried out by an independent valuer (Group 1 Tenant: Commercial) |
| Behaviour of lessees  | Lessees should not be permitted to sub-lease premises (Other) *(3 mentions)*An additional condition that clubs using facilities are accountable for keeping it clean or a penalty applies (Other) |
| Enhancing commercial return  | Need for stronger clauses to remove underperforming tenants (Group 1 Tenant: Commercial) |
| Commercial leases and market testing | The reference to market testing needs elaborating (Other) |
| Demonstrated long term community benefit | When a club has successfully occupied a site for more than 100 years, this surely demonstrates the benefit to the community (Group 3 Tenant: Other Clubs & Organisations) |

### Section 6: New Lease

Section 6 of the draft Policy refers to what will occur if premises become vacant or when the lease expires and proposes the following regarding New Leases.

When **commercial premises** become vacant or at the expiry of the term, the occupation of Council’s commercial premises will be tendered or made subject to an expression of interest process, which will be carried out by way of a public marketing campaign.

When **community premises** become vacant or at the expiry of the term the ongoing future use of the premises will be assessed to ensure any future lease or licence delivers value to the community. Existing tenants and prospective tenants will be required to provide evidence of the community value they will deliver and the sustainability of the organisation. A new tenant may be sought through a tender or expression of interest process. The terms and conditions of any new lease will be negotiated with the tenant and shall be consistent with the principles of this policy.

A range of comments were made during the consultation regarding this item, specifically in relation to the *approach to establishing new leases with current commercial tenants* and *providing evidence of community value.*

|  |  |
| --- | --- |
| Topic | Community feedback |
| New lease overall | Support use of this approach for persistent nuisance tenants (Group 1 Tenant: Commercial)Supported (Group 3 Tenant: Other Clubs & Organisations)Support use of this approach for community premises (Group 3 Tenant: Other Clubs & Organisations) Conditional support, for an expression of interest to verify market rents, then offer good tenants/business operators that rate (Group 1 Tenant: Commercial)Conditional support assuming our organisation is considered community under new policy (Group 1 Tenant: Commercial) |
| Approach to establishing new leases with current commercial tenants | Direct negotiations with a current tenant meets the key purpose of the draft Policy and is not an uncommon policy principle for government bodies (Group 1 Tenant: Commercial – *12 mentions*; Other – *1 mention*)When a Council premises becomes vacant or at the expiry of a commercial lease, there is the option for direct negotiations with the incumbent tenant provided process is fair, open and impartial (Other) (*Petition – 10 mentions)* Council to be able to consider proposals to grant new leases to incumbent tenants (Group 1 Tenant: Commercial – *2 mentions*; Other – *2 mentions)*Council to be open to considering new leases for incumbent tenants once past the mid-point of current lease (Group 1 Tenant: Commercial – *2 mentions*; Other – *1 mention*)Recognise business good-will built up over the term of the lease and negotiate a new lease with a reputable current (or long-term) commercial tenant rather than via a competitive process (Group 1 Tenant: Commercial - *16 mentions*; Other – *1 mention)*Council should not unreasonably withhold a new lease/further term for commercial tenants (Other) Clarify the principles of the policy which underpin the negotiation of a new lease (Other) Competent current tenants have earned the right to continuing carrying on their business for the long term (Group 1 Tenant: Commercial)Market valuation process will determine a fair and equitable rent to be paid so there is no logical reason to change a tenant under these circumstances (Group 1 Tenant: Commercial)Proposes specific criteria to be applied for granting a new lease to an incumbent tenant and if the tenant declines, then implement a public marketing campaign (Group 1 Tenant: Commercial) *(2 mentions)* |
| Providing evidence of community value | Need to clarify expectations surrounding evidence of the community value they will deliver and the sustainability of the organisation (Group 3 Tenant: Other Clubs & Organisations)Should not need to substantiate value to the community and renewal for certain clubs should be as of right (Group 3 Tenant: Other Clubs & Organisations)Expect that our status and community value delivered throughout occupancy would be considered in new lease negotiations (Group 3 Tenant: Other Clubs & Organisations)Depending on evidence of community value requirements, providing evidence may be a burden for a volunteer club (Group 3 Tenant: Other Clubs & Organisations)Expect consideration of length of occupancy tenure for long-term existing tenants (Group 3 Tenant: Other Clubs & Organisations)Provide current tenant with an opportunity to demonstrate community value and only go to tender if requirements are not met (Group 3 Tenant: Other Clubs & Organisations) |
| Term of lease  | Clubs providing a community service should be provided with options for longer leases particularly if contributing capital (Group 3 Tenant: Other Clubs & Organisations) |
| Behaviour of lessees | Leasers should not be permitted to sub-lease premises (Other) |

### Section 6.1: Assessment of Rental

Section 6.1 of the draft Policy refers to how "community benefit" will be assessed for community group/club tenants and proposes the following regarding Assessment of Rental.

Criteria to assess the level of support will be used for community tenants. These criteria will include:

Use aligns to Council’s vision, goals and strategies outlined in the current Council Plan

* Activities complement Council services
* Meets an identified community need

Community access provides broad public benefit as opposed to private benefit

* Provides equitable access to services for the Bayside Community
* Accessible to a broad resident base
* Offers programs otherwise unavailable to residents
* Encourages broad participation in the community
* Supports an under represented or vulnerable group
* Demonstrate that a significant percentage of users that benefit are Bayside residents
* Prepared to maximise utilisation of facility as requested by Council

Capital and financial contribution

* A group that improves or provides a new Council asset or infrastructure
* Level of maintenance capability
* Capability and capacity to raise funds to contribute to the cost associated with the facility
* Not funded by State or Commonwealth Government
* Not part of larger organisation

A range of comments were made during the consultation regarding this item, specifically in relation to the *criteria to assess level of support* and *description of community benefit.*

|  |  |
| --- | --- |
| Topic | Community feedback |
| Assessment of rental overall | Supported (Group 1 Tenant: Commercial) *(2 mentions)*Supported (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)* Support acknowledgement of community benefit (Group 3 Tenant: Other Clubs & Organisations)Conditional support, understand assessment and hope there are no further changes (Group 3 Tenant: Other Clubs & Organisations)Conditional support, can see how it could benefit community groups but this subjective and should not apply to all clubs (Group 3 Tenant: Other Clubs & Organisations) |
| Criteria to assess level of support | What happens in the situation where a community tenant's use does not with Council's vision, goals and strategies (Other)Incorporate weighting for the criteria and a range for the proposed community rental charges (Other)Where a tenant meets these criteria, Council should contribute to the renewal of the asset (Other)What happens in the situation where a facility, due to deterioration, has no capacity for revenue growth (Group 3 Tenant: Other Clubs & Organisations)Queries how funding support and relationships with other government levels will impact a community tenant’s assessment for support (Other) |
| Description of community benefit | Meeting an identified community need may be too specific, suggest using "contributes to or enriches the breadth of community activities" (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Consider partnerships with other community organisations to deliver programs and services for the community (Group 3 Tenant: Other Clubs & Organisations) |
| Description of broad public benefit | Acknowledge that broad public benefit does not necessarily equate to large numbers for organisations servicing minorities and people with disabilities (Group 3 Tenant: Other Clubs & Organisations)Consider a tenant’s contribution to environmental sustainability such as practices to minimise carbon pollution (Other) |

### Section 6.3: Rental

Section 6.3 of the draft Policy outlines how rental will be calculated for the three groups of tenants, commencement of policy rental, rental increases, telecommunication rental, additional income, rates, taxes and outgoings and insurance and proposes the following:

6.3.1 Group 1 – Commercial Tenants

Commercial tenants will pay a rental that is market driven and may be determined by a market rental assessment carried out by a valuer, or as the result of an expression of interest process or similar program.

6.3.2 Group 2 – Not for Profit Community Groups

Rental will be determined based on 6.1 Assessment of Rental. The minimum rental that can be set will be in accordance with Council’s Schedule of Fees and Charges.

6.3.3 Group 3 – Other Clubs and Organisations

Rental will be determined based on 6.1 Assessment of Rental. The minimum ground rental which can be set will be in accordance with Council’s Schedule of Fees and Charges; and / or a building rental.

6.3.4 Commencement of Policy Rental

A rental discount will be given to all new lease or licence agreements that are negotiated with Group Two and Three Tenants within two years of the adoption of this Policy where the rental increases more than 5%. The purpose of this discount is to provide a period of time for clubs and organisations to budget for significant increases in rental. The new rental will be phased in over three years with a rental increase of not more than 20% of the previous rent in the first year and not more than 40% of the previous rent in the second year. In the third year the full new rental will apply. All tenants must pay Goods and Services Tax (GST) at a level determined by the federal government on rent. GST is payable in addition to the rent calculated using the above formulas, unless otherwise stated.

6.3.5 Rental Increases

Rent will be increased annually by either the consumer price index or 5%, whichever is the higher at the time of review. Annual rentals may also be subject to a market review on the exercise of an option and/or every five years of the term. This will generally apply to Group One Tenants only.

6.3.6 Telecommunication Rental

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 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.

6.3.7 Additional Income

Council reserves the right to amend the rental if a tenant obtains an on-premises licence, packaged liquor licence, general licence or gaming license, or gains access to other commercial or fortuitous (but not fundraising) means of income generated during the term of the agreement e.g. rent received from sub-letting, revenue received from advertising on the premises. Consent by Council is required for any such use.

6.3.8 Rates, Taxes and Outgoings

Generally, tenants must reimburse Council or pay the relevant authority directly for all outgoings including rates, charges and taxes levied against the premises. User charges including water, sewerage, telephone, gas, electricity are generally to be paid directly to the relevant service provider by the tenant.

6.3.9 Insurance

Council will take out and maintain building insurance for buildings on Council owned or controlled land for the full replacement value. The tenant shall reimburse Council the cost of the building insurance and any excess in respect of any claim made. For Group 2 community groups occupying historic buildings with limited financial means, an application to waive the insurance reimbursement can be made and will be considered by the Manager Commercial Services. All tenants are required to take out public liability insurance, noting the interest of Council and the Policy must contain a cross liability clause. A minimum cover of $20 million must be provided, or such other sum as stipulated by Council. Tenants must give a copy of their certificate of currency to Council on or before the commencement date of the lease and annually thereafter.

A range of comments were made during the consultation regarding this item, specifically in relation to *rental increases; current asset value; calculating rent for Group 3 Tenants; ground and building rental charges* and *sinking funds.*

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| Topic | Community feedback |
| Rental overall | Supported (Group 1 Tenant: Commercial)Conditional support - providing the calculation on value of assets is not greater than what we currently pay (Group 1 Tenant: Commercial)Supported (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Provide access to Council’s Schedule of Fees and Charges (Group 3 Tenant: Other Clubs & Organisations – *2 mentions;* Other *– 1 mention)*Queries how Council’s Schedule of Fees and Charges is determined and requests a clearly stated methodology (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Section is unclear and has a range of considerations based on criteria that appear to be assessed separately (Other)Difficult to assess fairness without knowledge of actual charges in Council’s Schedule of Fees and Charges (Group 3 Tenant: Other Clubs & Organisations) |
| Rental increases | Proposed annual rental increases of CPI or 5% whichever is the higher at the time of review is unreasonable and suggest “whichever is the lower at the time of review" (Group 1 Tenant: Commercial) *(2 mentions)*Would prefer CPI increase compared to flat 5% (Group 3 Tenant: Other Clubs & Organisations – *1 mention;* Other – *1 mention*)Minimum of 5% pa for Group 1 Tenants seems unfair and suggest using a CPI figure from a set industry source (Group 3 Tenant: Other Clubs & Organisations – *2 mentions*)Increases should be made with consideration of the community benefit of the organisation (Other)Would prefer 2.5% or CPI, whichever is the lesser (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*5% is too high (Group 3 Tenant: Other Clubs & Organisations) |
| Current asset value | Rent is based on a percentage of current asset value which needs to be clearly defined (Group 3 Tenant: Other Clubs & Organisations)As rental is based on asset value, where improvements are made to assets will there be a period for adjustments (Group 3 Tenant: Other Clubs & Organisations)Provide access to current asset value and advise if it will change from the existing lease (Group 3 Tenant: Other Clubs & Organisations)Outline how the current asset value is assessed and whether there is any right of objection (Group 3 Tenant: Other Clubs & Organisations) The 0.1% basis is fair subject to how current asset value is assessed (Group 3 Tenant: Other Clubs & Organisations)Requests an estimate of the current asset value of lifesaving clubs’ buildings (Other)  |
| Calculating rent for Group 3 Tenants | When calculating rent, consider clubs with small memberships that are trying to contain membership fees down and encourage participation (Group 3 Tenant: Other Clubs & Organisations)Where a club is on Crown Land and pays rates and rental to Council consider allocating some funds towards building maintenance (Group 3 Tenant: Other Clubs & Organisations)Where a site has limited capacity for revenue growth, changes to assessed rental or sinking fund under a new lease may impact club’s financial viability (Group 3 Tenant: Other Clubs & Organisations)Where tennis clubs can demonstrate community access then they should be eligible for greater Council support (Group 3 Tenant: Other Clubs & Organisations)Emergency and lifesaving services are provided to the community at no cost, including land management (Other)Queries whether lifesaving clubs which provide a unique community service could be set apart and defined separately (Other) |
| Ground and building rental charges | Queries the basis for a minimum charge of $1.00 per square metre (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)*Would like an option for tennis clubs to negotiate more of a license agreement for the pavilion if they are open to shared access (Group 3 Tenant: Other Clubs & Organisations)Queries why a club that has invested and maintained their facility pays higher rent than clubs that do not (Other)Queries why a club that has invested and maintained their facility should have to pay higher rent because the facility is located in a suburb with higher values (Other)Queries having separate changes for building and ground rental when rental assessment is based on the service provided not the building/land occupied (Other) |
| Sinking funds | Ground surface and buildings are already of poor quality and improvements have not rectified this (Group 3 Tenant: Other Clubs & Organisations)Support sinking fund accountability and keen to work with Council on how amounts are set (Group 3 Tenant: Other Clubs & Organisations)Concerned about sinking fund and refurbishment of buildings impacting the viability of a club where membership is small and members are elderly (Group 3 Tenant: Other Clubs & Organisations) Concerned about the ability of some clubs to meet sinking fund requirements (Group 3 Tenant: Other Clubs & Organisations)Conditional support, should reflect that the duration of the fund and amount needed will be addressed during lease negotiations (Group 3 Tenant: Other Clubs & Organisations) *(2 mentions)* |
| Community group discount for capital investment | It is difficult for not-for-profit groups to raise capital unless they are a commercial operator or community sports club (Group 3 Tenant: Other Clubs & Organisations)Sandringham Youth Club has invested heavily in the site and would welcome any discount on rental and building insurance (Group 3 Tenant: Other Clubs & Organisations)Queries if it is possible to apply retrospectively for a community discount for extensive capital investment (Group 3 Tenant: Other Clubs & Organisations)The rental discount point seems unfair in light of the club’s substantial contribution (Group 3 Tenant: Other Clubs & Organisations) |
| Insurance | Previously Council provided assistance with Public Liability insurance but now this appears to be extra expense for the Club (Group 3 Tenant: Other Clubs & Organisations)Rental should incorporate insurance especially for those groups who fully rely on funding to deliver programs/ services and are unable to pay (Other)Consider offering a weighted reimbursement of insurance costs for tenants occupying historic buildings (Other)We have access to the LSV state-wide policy which includes building replacement and do not wish to reimburse Council (Group 3 Tenant: Other Clubs & Organisations)Unfair to expect U3A to pay full insurance of Council building and queries basis of allocating insurance costs for multi-tenant buildings (Group 3 Tenant: Other Clubs & Organisations) |
| Additional income | Queries how an existing on-premises licence will impact rental (Group 3 Tenant: Other Clubs & Organisations)Council should not have absolute discretion to reject a liquor licence as some lifesaving clubs require a liquor licence for functions or fund raising activities (Group 3 Tenant: Other Clubs & Organisations) |
| Commencement of policy rental | While acknowledging a staged increase in rental, the amounts are still very steep (Group 3 Tenant: Other Clubs & Organisations)Queries the intent of this section and is concerned about the possibility to significantly increase rents (Other)  |
| Rates, taxes and outgoings | Encourage tenants to buy electricity in line with Council's aims to limit carbon pollution or add a surcharge (Other)Assumes Council rates will not be calculated based on commercial values and subsidised rates will continue for community groups (Group 3 Tenant: Other Clubs & Organisations) |
| Calculating rent – Group 1 Tenants | On this basis, offer commercial terms and security of occupancy (Other) |

### Comments on other matters within the draft Policy

A small number of comments provided during the consultation referred to other matters within the draft Policy.

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| Topic | Community feedback |
| Use of premises for Council sponsored functions | Could be difficult to provide Council access at some times of the year (Group 3 Tenant: Other Clubs & Organisations)  |
| Removal of assets | Clarify Council’s intent to assume ownership of fixtures and improvements that are specific to lifesaving (Other)  |
| Other matters | SAC has completed this survey on the basis future leases will through Council (Group 3 Tenant: Other Clubs & Organisations)Request the option for Group 3 Tenants to have some or similar support for capital costs as sports clubs (football, soccer, cricket and netball) subject to good accessibility, community benefit, sustainability and accountability for facility (Group 3 Tenant: Other Clubs & Organisations) Suggest making it compulsory for sporting clubs with a Council lease or license to be affiliated to their state sporting body (Group 3 Tenant: Other Clubs & Organisations)Environmental sustainability is missing. It could be added to dot point 5 on building maintenance etc |

## Error corrections

Community and stakeholder feedback identified a number of potential errors in the Policy document which will be corrected.

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| Page | Correction |
| 3 | I think Point 5 of Section 6 has a typo and the end should say "the ongoing cost "to" maintain and renew the asset *(2 mentions)* |
| 3 | Between the 3rd and 4th bullet points, there is an "and". Should this be removed to ensure the understanding that a minimum of one of these is required?*(2mentions)* |
| 5 | There is an apparent error in numbering. "6.3.2 Group 2 Not for Profit Community Groups Rental will be determined based on 6.2 Assessment of Rental." Should be ...."based on 6.1 Assessment of Rental*". (3 mentions)* |