

Tenancy Policy

<i>Policy Owner:</i>	Contracts & Property Unit
<i>Distribution:</i>	All Employees
<i>Implementation:</i>	April 2004
<i>Reviewed:</i>	5 May 2009 (CS06-05/09)
<i>Scheduled Review:</i>	May 2011

OBJECTIVES

The purpose of this policy is to implement a framework and provide basic principles for Tenancy Arrangements at City owned facilities (including land) that:

- are consistent with the outcome objectives outlined in the City's Strategic Plan (2006 – 2021);
- provide a consistent, equitable and simple approach to arrangements for all tenants of City facilities; and
- provide for the effective use and management of those facilities.

STATEMENTS

- A Tenancy Arrangement is a formal arrangement between the City and a user group, club or organisation, for the use of a City facility other than for use in accordance with the City's Facility Hire and Use Policy.
- In order to achieve the stated objective that users of City facilities shall be treated in a consistent and equitable manner, each user shall fall into a specified category. The type of category will determine the method of dealing when negotiating a tenancy arrangement.
- This policy is intended to provide direction and guidance to City officers to assess and negotiate tenancy applications and renewals in a consistent and equitable manner and should be read in conjunction with the accompanying Tenancy Policy - Management Procedure.

PRINCIPLES (GUIDELINES)

1. Exclusivity Test

Where the user of a City facility (including land) enjoys exclusive use of either part or all of that facility then that arrangement shall be the subject of an appropriately negotiated lease, subject to Council approval.

2. At No Cost to the City

In recognition of the benefit to the community provided by Not for Profit groups or organisations the lease fee applicable will be \$1.00 per annum (peppercorn). As a result the remainder of the lease terms and conditions are to be on a 'No Cost to the City' basis. The Lessee will be responsible for cleaning, repairs, maintenance, rates and taxes and all outgoings associated with the facility.

3. No Recognition of Prior Investment

On the basis that the annual lease fee for Not for Profit user groups under this Tenancy Policy is \$1.00, no recognition of Prior Investment by the Lessee to the capital cost of constructing the leased premises shall be given.

4. Lease Term

Due to the uncertainties surrounding future land use, economic factors, and other longer-term considerations that may impact on the management of City's leased facilities, lease tenure, other than for the Commercial category, should not generally be negotiated for a total term, including options, longer than five (5) years.

5. Lease Categories

Subject to any overriding land and legislative compliance issues, if the use of City facilities is exclusive, then, for the purpose of tenancy negotiations, the user group or organisation shall fall into one of the following categories:

Category	Method of Dealing
Government	By Negotiation.
Commercial	By Negotiation (at Market Value)
Residential	By Negotiation (at Market Value) subject to the <i>Residential Tenancies Act 1987</i> and the <i>Residential Park (Long-stay Tenants) Act 2006 & Regulations</i> .
Not for Profit (i.e. sporting, recreational and community)	At a rental of \$1.00 per annum – other terms and conditions on a 'No Cost to the City' basis.

In instances other than Not for Profit, the relevant lease will be negotiated based on the particular circumstances involved in each application and will also be subject to Council approval.

6. Council Rates

Section 6.26(1) of the *Local Government Act (1995)* states that “*Except as provided in this section all land within a district is rateable land.*” Section 6.26(2) of the Act provides for circumstances where land is not rateable and more specifically section 6.26(2)(b) provides that land “*...owned by the local government and is used for the purposes of that local government ...*” would be exempt.

Therefore the use of a City facility by a Lessee is not considered exempt and as a result all Lessees will be responsible for Council rates.

Variations

- Existence of Head Lease

In circumstances where the leased area is also the subject of a Head Lease the sublease rental shall be at least equal to the rental payable under the Head Lease.

- Commercial Activity

Commercial activity by a Not for Profit Lessee will require City approval and in the event that the Lessee does undertake such activity at a leased facility, then a Lease Fee may be negotiable.

Where commercial activity is undertaken by a sublessee/sublicensee then a negotiated lease fee will be payable by the Lessee to the City regardless of whether or not the activity is related to the activity being carried out by the Lessee.

- Small Tenancies within a Community Facility

Where exclusive use is provided to a Not for Profit user over a small portion of a building a standard lease may not be practical. A simplified lease in these instances is considered a more appropriate tenancy arrangement.

- Land Leases

Where a lease arrangement is negotiated over City land and the improvements to the land are to be (or have been) constructed either in their entirety or predominantly by the Lessee, and the City has no requirement for such improvements to remain on the land at the expiration or sooner determination of the lease, then the lease shall be a Land Lease.

- Licence Agreements

In certain situations, an arrangement for the non-exclusive use of land, or buildings, will arise. Given the nature of such arrangements it is appropriate for the City, subject to Council approval, to enter into a licence agreement.

SCOPE (APPLICATION)

This policy is relevant to all Council facilities including sporting, recreational, community, commercial, residential and caravan park where the use of the facility, or land, is not provided for under the Facility Hire and Use Policy.

PROCEDURES and FORMS

This Policy is supported by the Tenancy Policy – Management Procedure.

RESPONSIBILITY FOR IMPLEMENTATION

Manager Contracts and Property