



Appendix 6e

16.4 Review of Council Policies


CP029 Use of Council Facilities

Ordinary Meeting of Council

Wednesday 23 June 2021 at 7:00pm

Via videoconference (Zoom)

DRAFT COUNCIL POLICY

Use of Council Facilities	Adopted By Council:	30/04/2014	
	Date/s Revised:	23/08/2018	
		19/05/2021	
	Next Review Date:	05/2024	
	Document No:	CP029	
	Directorate:	Executive	
Responsible Officer	General Manager Organisation Performance & Community Services		

CONTEXT

The Borough of Queenscliffe leases 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 not intended to be a rigid set of rules, but rather 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 developing Agreements for the use of Council property:

- Types of Agreements
- 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:

Commercial	Of, or pertaining to commerce: ie. the buying and selling of goods and services
Commercial Activity	Any activity engaged in which involves any of the following: <ul style="list-style-type: none"> • the principal purpose of the activity is to make a financial profit, either in the short or long term; • the activity involves commercial partners; • the activity involves user-charges for goods and services consistent with current market values;

	<ul style="list-style-type: none"> the activity has direct competition with the same or similar services in the local area of interest.
Community Benefit	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; and Support the users’ objectives.

CONSULTATION AND NOTIFICATION

Council will undertake consultation or notification in 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
Regular user	3-12 months and regular pattern of use
Licence	Greater than 12 months with regular pattern of use and no exclusive occupation
Lease	Greater than 12 months and exclusive or shared 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.

TERM

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 9 years. Council sees the optimum term of the agreement as 9 years to best represent the council and tenants. 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 follow:

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: - Hold a liquor licence; and - hold a Food Registration Certificate; and - hire the facilities for functions/ social events OR - charge entry to the premises OR - receive significant external funding
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 between 30% and 70% of the full commercial rate
- 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 DELWP.

Category	Charges
Fully Commercial	Full commercial
Fully Government funded	Full commercial
Community Organisation (significant commercial operations)	Discounted (30-50%)
Community Volunteer Organisation	Discounted (51-70%)
Community Service Organisation	Peppercorn

USAGE PRINCIPLES

Usage

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 activities such as 'Bingo nights' where the amounts of funding are notional and where loss would not lead to distress. Where historical lease arrangements have allowed gambling, leases will not be renewed on expiration if gambling is to continue.

Equally, Council would expect 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	Taxes	Council Rubbish Collection	Charges & Outgoings
Fully Commercial	Full	Full	No	Full
Fully Government funded	Full	Full	No	Full
Community Organisation (significant commercial operations)	Full	Full	No	Full
Community Volunteer Organisation	Discounted	Full	No	Discounted
Community Service Organisation	Nil	Full	Yes (free)	Discounted

Maintenance

A Maintenance Schedule will be an appendix to any agreement. In broad terms Council will perform the generally accepted maintenance responsibilities of a landlord

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

All tenants are required to take out public liability insurance noting Council as an interested party or in joint names of the tenant and Council. A minimum cover of \$10m is to be provided unless otherwise stipulated by Council.

Council will not insure the contents of any leased premises. Tenants 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.

Termination of agreement

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

- a. The community group has breached the terms and conditions of the occupancy agreement
- b. The community group has failed to pay their fees or utility bills.
- c. The community group has refused or ignored a reasonable request to share the facility.
- d. The Community Group fails to provide information requested by Council by the designated timeframe.

Documentation in support of any agreement

Agreements may require users to provide documentation such as Annual Reports, evidence of financial status, business plans, insurance details, details of office holders, copies of licences etc.

Sinking funds

Tenants with exclusive occupancy of court 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. 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 Capital Works

Community/ User Groups at 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:

Project Cost Range	Council Contribution (not exceed)
up to \$20,000	Up to 50% of cost
\$20,001 to \$50,000	up to 25% of total project and not to exceed community's cash and in kind contribution (i.e. money other than government grants)
\$50,001 to \$100,000	Up to 25% of total project and not to exceed community's cash and in kind contribution (money other than government grants)
over \$100,000	Up to 50% of total project cost

- Community / User groups will be required to demonstrate that the local contribution has either been raised or is satisfactorily secured and an agreement executed with Council 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.

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

Council currently has a significant number of usage agreements in place. Any new arrangements 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 1989

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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