

LEASE AND LICENCE POLICY

Policy Reference No.
File No.
Strategic Objective

POL/177
HCC13/226
5.3 Provide responsible and transparent governance,
services and infrastructure which responds to and
supports community needs.

Adopted by Council
Re-Adopted
Date for Review
Responsible Officer
Department

25 August 2014
31 May 2018
28 February 2023
Manager Finance
Finance

LEASE AND LICENCE POLICY

1. POLICY STATEMENT

- 1.1 Council will lease and licence Council Property and this Policy establishes the terms and conditions which will form the basis for negotiations. The Policy also seeks to maximise the community benefit arising from the use of Council Property and will ensure responsible management whilst minimising the risk to Council.
- 1.2 This Policy will categorise Tenants into three groups which will determine the amount of rent and outgoings payable, maintenance obligations, lease term and legal fees. It also provides assessment criteria to determine the suitability of the Tenant. This will enable the establishment and management of Council Property ensuring an equitable agreement is reached. These principles are shown in Attachment 1.
- 1.3 This Policy will apply to all new applications including any existing agreements that require renewal from 1 July 2018.

2 PURPOSE

- 2.1 This Policy will ensure that when considering the leasing or licensing of Council Property, Council explores all possible lease options for the use of the Council Property through its internal procedures, applies processes that are demonstrably equitable, consistent and transparent, complies with appropriate legislative requirements and approved Delegations of Authority and obtains the best outcome for the Hume Community.
- 2.2 Through implementation of this Policy, Council will ensure sound financial management and effective administration of Council Property.

3 SCOPE

- 3.1 This policy specifically deals with all of Council's buildings and land including, roads, road reserves and unmade roads, owned by or under Council's management and which are available to be leased or licensed to third parties due to having been identified as surplus to Council's operational requirements, however for strategic or other reasons Council has decided to maintain ownership.
- 3.2 The principles of this policy will be applied to:
 - New leases and licences; and
 - To those leases and licences which have expired and where renewal is pending.
 - The policy should be read in conjunction with the:
 - *Local Government Act 1989* (the Act).
 - Hume City Council policies (various).
 - Committee of Management responsibilities under the *Crown Land (Reserves) Act 1978*.
 - Council will only grant a lease or licence to a person or entity which meets the definition of a Tenant as defined in Section 5 of this Policy.
 - A Lease or Licence can only be made with a legal entity. This Policy does not apply to leases for telecommunication facilities on Council Property, occasional hire arrangements and seasonal tenancies on Council's reserves and community halls.

4 OBJECTIVE

The objectives of this Policy are to:

- 4.1 Ensure a transparent and consistent process is undertaken when negotiating and entering into leases or licences.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

LEASE AND LICENCE POLICY

- 4.2 Establish clear assessment criteria to determine the suitability of the Tenant.
- 4.3 Ensure compliance with the Local Government Act 1989.
- 4.4 Ensure sound financial management and adequacy of records management processes to ensure the completeness of the Council Lease and Licence register.
- 4.5 Ensure all Tenants pay fair and reasonable rentals based on clear eligibility criteria and calculation methodologies.
- 4.6 Establish an effective reporting mechanism for periodic leasing and licensing requirements and obligations including but not limited to insurance, financial statements, renewals or extensions, utility use, inspection processes such as Essential Service Maintenance (ESM) and building management.
- 4.7 Ensure that Council Property is maintained, upgraded and occupied responsibly, having regard to Environmentally Sustainable Design and Development principles and the best outcome and interests of the Hume Community.
- 4.8 Ensure that Council's Properties are leased or licensed in a way that is consistent with the objectives of the Council Plan and maximises the use of community assets in a responsible way.
- 4.9 Augment and lessen the burden on rate revenue.
- 4.10 Protect Council's Property and manage risk exposure.
- 4.11 Enhance Council's long-term sustainability.

5 POLICY IMPLEMENTATION

- 5.1 This Policy will be the responsibility of Council's Manager Finance and Property Development and will be administered by the Property and Development team in conjunction with the various relevant internal departments.
- 5.2 Each lease or licence may be subject to three separate review processes; internal referral, Council approval including relevant statutory permits where applicable and the statutory obligations under the Act (Refer to flowchart - Attachment 2).
 - a. The internal referral investigations process will provide relevant departments within Council an opportunity to comment and provide any additional information relating to the proposed lease or licence.
 - b. Where a proposed lease receives support from internal departments through the internal referral process, a report may be required to seek Council approval.
 - c. Where required, the proposal will also be subject to the statutory obligations under Sections 190 and 223 of the Act. Section 223 will allow for persons to make a submission in relation to the proposed lease or licence.
 - d. Where the proposed licence receives support from internal departments through the internal referral process, a report may be required to seek Council approval or alternatively a delegate of Council may commence negotiations and approve the licence.

6 DEFINITIONS AND ABBREVIATIONS

In this Policy, the following definitions apply:

The Act

Means the *Local Government Act 1989 (Vic)*.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

Common Areas

Common Areas are the parts of the Council Property provided by Council for common use, including access and egress roads, driveways and car parks within the property, entrances, exits and corridors and shared areas within the building/s

Council Property

Council owned or managed land and buildings including roads.

Lease

A Lease grants a tenant exclusive possession of a Council Property and gives the tenant a proprietary interest in the Council Property which is binding on third parties.

Under a Lease a tenant is able to assign or transfer its interest to a third party as the lease runs with the land.

Licence

A Licence gives a licensee a non-exclusive contractual right to occupy the licensed area and does not give a licensee an interest in the licensed area but a right enforceable in contract only.

Under a Licence the licensee cannot assign or transfer to a third party. A licence is applicable and specific to the Licensee named on the Licence Agreement only.

Market Rent

Is the rental income that a property would command in the open market. The figure is derived by recent lease transactions for a comparable space by Council's Valuer.

Outgoings

Means water usage charges, electricity, gas and telecommunications assessed in connection with the Council Property.

Rates and Taxes

Means any government rates and charges, taxes and levies including the Fire Services Levy.

RLA

Means the *Retail Leases Act 2003 (Vic)*.

This Act controls leases of premises that are used wholly or predominantly for retail provision of goods or services. This applies to most of Council's commercial leases. The Act requires Council to provide a disclosure statement and an annual statement of costs to the tenant.

Tenant

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 Property.

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)*) and successor legislation. This means a lease or licence agreement cannot be made with people representing a group e.g. committees or partnerships.

Group One Tenant – Commercial

Group One Tenants occupy the Council Property on a commercial basis.

Examples of these Tenants are commercial organisations which have a commercial (business oriented) profit objective and Government organisations.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

Group Two Tenant – Community, Clubs and Organisations

Group Two Tenants include recreational or community groups that service the community and are readily available to Hume residents. These Tenants include member based fee-paying clubs, groups that charge for services and organisations that have the capacity to generate revenue from use of the Council Property or other activities consistent with the organisational purpose (but do not operate to make a commercial profit). Some examples include Sporting Clubs, Non- Government Organisations and Service Providers.

Group Three Tenant – Not-for-Profit Community Groups (peppercorn)

Group Three Tenants include incorporated community groups that service the community and are not categorised as a Group One or Group Two Tenant. These Tenants do not have the capacity to generate a significant amount of income and operate on a not for profit basis. Some examples include Toy Libraries, Scout Groups and Historical Societies.

7 PROCEDURAL / OTHER

7.1 Expression of Interest (EOI)

Council may decide to conduct an EOI process to determine a suitable tenant. The decision to conduct an EOI process for a Council Property will be based on factors including the following:

- The size of the Council Property
- The location of the Council Property
- The value of the Council Property
- The expected rental return
- The likelihood of multiple interested applicants and users
- To ensure the Tenant delivers specific services
- To allow for innovative or flexible solutions for the Council Property

7.2 Rent payable

Rent will be required to be paid in advance either annually, quarterly or monthly. Payment must be paid within 14 days of receipt of invoice or as requested by Council.

7.3 Gross Rental

Council may determine that a gross rent will be applied based on the type of facility, proposed use and the category of Tenant. The gross rent will comprise a rental amount that may include, but is not limited to a contribution towards Outgoings and Rates and Taxes, consumables and the shared use of the Common Areas within the Council Property.

7.4 Security deposit

The Tenant must pay to Council a security deposit in a form acceptable to Council. The amount required will at a minimum be equivalent to two month’s rent exclusive of GST.

Council may call on the security deposit if the Tenant or Licensee does not comply with any of its obligations under the Lease or Licence.

7.5 GST

All Tenants must pay GST and is payable in addition to the rent or licence fee calculated. (A New Tax system Act 1999).

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

7.6 Market Rent Review

All rental reviews will be determined by Council's Valuer and will take into consideration the category assessment of the Tenant.

7.7 Annual Reporting

All Tenants must provide Council with the following upon request:

7.7.1 Annual reports or financial statements

7.7.2 Details of membership.

7.7.3 Business Plan

7.7.4 Details of all contributions/sponsorships

7.7.5 A copy of a certificate of currency with respect to the insurance required under the lease or licence each year. Multiple insurance policies may be required to be maintained under the lease or licence.

7.8 Sub-letting

Tenants may sub-lease/licence the Council Property to approved organisations for approved purposes with Council's prior written consent (which may be given conditionally) and subject to approved terms and conditions.

Any sub-letting proposal may be agreed to or varied at Council's absolute discretion and, should Council agree to a sub-lease/licence of the Council Property, Council may review and adjust the rental amount payable under the head lease/licence to reflect the new tenancy arrangement.

7.9 Casual Hire

In certain circumstances, Tenants may make the Council Property available for casual hire where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours.

Casual hire may be agreed to or varied at Council's absolute discretion and, should Council agree to allow casual hire, the Tenant must obtain Council's written consent (which may be given conditionally) prior to the Tenant commencing any casual hire process.

The hirer must also enter into a hire agreement on terms and conditions agreed by Council prior to the hirer occupying the Council Property. A breach of these terms and conditions by the hirer will be deemed to be a breach of the lease or licence by the Tenant and will require rectification in accordance with the lease or licence.

7.10 Determining Not-For-Profit Status

In order to determine an organisation's not for profit status, Tenants must provide Council with the following information upon request:

7.10.1 A copy of the organisation's constitution or governing documents which include suitable not for profit clauses and clearly demonstrates the not for profit status

7.10.2 Evidence that the organisation consistently follow these clauses

7.10.3 Confirmation that the organisation is registered on the Australian Charities and Not-for-profits Commission (ACNC) register.

7.11 Credit Assessment

A credit assessment may be required to determine the creditworthiness of a Tenant.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

7.12 Standard Lease and Licence

Council has developed standard lease and licence agreements and these will be used as the basis of all tenancies. The agreements may vary over time and will be prepared and tailored to each proposed Tenant. Additional clauses will be included in the agreements when necessary to meet specific requirements of Council or the proposed Tenant.

7.13 Term of Lease or Licence

The length of each lease or licence will be negotiated taking into account the particular circumstances of the Council Property and Tenant, including capital investment and long-term planning, the connection between facility use, the Council Plan objectives, relevant strategies and the extent to which the facility is used for multi-purpose activities.

A Licence Term will not be granted for more than five years. This is based on Council's future requirements of the Council Property and the Tenant being in occupation on a temporary basis allowing flexibility for both Council and the Tenant.

A Lease Term including options cannot exceed 50 years according to the Act.

These items will be assessed in conjunction with Council's statutory obligations under the Act.

7.14 Statutory Obligations

Where applicable, the grant of a Lease or Licence is subject to Council complying with its statutory obligations as follows:

Pursuant to Section 190 of the Act, Council is required to advertise its intention to lease land to another party and to consider submissions under section 223:

- If the lease is to be:
 - for 1 year or more and
 - the rent for any period of the lease is \$50,000 or more a year; or
 - the current market rental value of the land is \$50,000 or more a year; or
 - for 10 years or more; or
 - a building or improving lease –

the Council must at least 4 weeks before the lease is made publish a public notice of the proposed lease.

7.15 Communication Equipment on Council Property Policy

A proposal to establish communication equipment on Council Property must be in accordance with the six Principles outlined in the Communication Equipment on Council Property Policy which will determine the suitability of the Council Property for this purpose.

7.16 Committee of Management Standard Procedure (Crown Land)

Council must seek ministerial approval to lease or licence Crown Land irrespective of Council being the appointed Committee of Management. Where required, leases and licences must first be approved by the relevant Minister and will take a standard form as recommended by the Department of Environment, Land Water and Planning (DELWP).

Where Council acts as the Committee of Management over Crown Land, agreements will be prepared in accordance with DELWP guidelines. Each proposal will be assessed individually and in each case, there may be restrictions on the term that can be offered to the Tenant or Licensee depending on the status of the Crown Land and the Reserve Purpose.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

7.17 Delegation

Council is given the power to delegate any of its powers, duties and functions, other than for stipulated exceptions, under the Act.

In accordance with the *'Instrument of sub delegation by the Chief Executive Officer to members of Council staff'* all Directors and the Manager Finance and Property Development have the power to enter and execute a lease and licence under Section 190 of the Act.

The Manager Finance and Property Development and any other approved officers in accordance with the *'Instrument of sub delegation by the Chief Executive Officer to members of Council staff'* has the power to:

- Negotiate and undertake administrative procedures related to leases and licences; and
- Administer procedures necessary to enable Council to carry out its functions under section 223 of the Act.

7.18 Risk Management Obligations

Council will ensure that all leases and licences contain appropriate risk management measures including an obligation on the Tenant to:

- release and indemnify Council from all claims resulting from any damage, loss, death or injury in connection with the Council Property, unless such claims arise out of Council's negligence;
- effect and maintain adequate 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 under the Public Liability Policy;
- ensure any users of the Council Property have appropriate insurance, this will include public liability insurance as a standard, and may include other insurance policies that relate specifically to the proposed use or category of Tenant;
- ensure that appropriate documentation and insurance is in place for the occasional or hired use of the Council Property by third parties; and
- be responsible for complying with emergency and evacuation procedures and risk management practices implemented by Council;

Council will be responsible for ensuring:

- any users of the Council Property have appropriate insurance policies in place to support the proposed use and category of Tenant;
- it will take out and maintain building insurance for buildings on Council Property for a full replacement value; and
- it does not insure the contents of any leased Council Property.

7.19 Emergency Evacuation Procedures

Council may determine that a Tenant is required to adhere to the emergency procedures already established for the Council Property or, alternatively may require the Tenant to establish and maintain their own emergency procedures for the term of the lease or licence.

The responsibility for establishing Emergency Evacuation Procedures for the Council Property will be determined at Council's absolute discretion and, the lease/licence will be drafted to clearly reflect the responsible party.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		
Page 7 of 12			

7.20 Maintenance Obligations

Maintenance schedules are developed to provide a consistent and fair framework for the conduct of maintenance on Council Property. Each Tenant is required to maintain the facility in accordance with a maintenance schedule attached to the lease or licence. The maintenance schedule will specify the clear responsibilities of Council and the Tenant (among other things) for maintaining the structure, the building, fixtures, fittings and the surrounds. The level of maintenance responsibility will be outlined in a maintenance schedule. Council may undertake maintenance works on behalf of the Tenant and seek reimbursement.

7.21 Condition Assessment

A condition report of the Council Property may be undertaken prior to the leasing or licensing of the Council Property.

At the end of the lease or licence Council may require the Tenant to reinstate the Council Property to its original form prior to the Tenant’s occupation.

7.22 Asset List

The Tenant and Council must record all assets in the Council Property identifying the ownership and ongoing maintenance responsibilities and to be included as an attachment to the Lease or Licence Agreement.

7.23 Interference

The Tenant shall not use the Council Property in any way that materially interferes with the use of the Council Property by Council, including installations of any telecommunications infrastructure. With respect to Tenants whose operations commence after the installation of Council’s telecommunications infrastructure, the Tenant shall not make any change in its operations that causes or is intended to cause material interference with Council operations.

7.24 Alterations to Lease or Licence Area

The Tenant may request alterations/improvements or extensions to the lease area, however the Tenant must obtain the prior written consent of the Council before carrying out any alterations or works on the Council Property.

Alterations to the Council Property must be strictly in accordance with plans and specifications approved by Council and in accordance with requirements of any authorities having jurisdiction over the Council Property.

In the event that an alteration is approved, Council may review and adjust the lease/licence terms in accordance with this Policy.

7.25 Condition Audits

Tenants maybe required to complete regular condition reports of the Council Property as determined by Council. Council’s Property Services department conduct annual audits of the buildings as a requirement of the Essential Services Maintenance and any upgrade works as described in Council’s capital works program. Council may request access to the property for purposes of an ESD assessment on an adhoc basis.

7.26 Legal fees

A cost agreement must be signed by the Tenant in advance of negotiations commencing and any legal or other associated fees incurred by Council as a result of lease and licence negotiations including the preparation of the agreement will be payable by the Tenant. Fees will be determined in accordance with Attachment 1.

*Should the Retail Leases Act apply Council must pay for the preparation of the Lease.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

8 RELATED DOCUMENTS

- 8.1 Council Investment Policy (Confidential)
- 8.2 Communication Equipment on Council Property Policy
- 8.3 Council Lease/Licence Procedures and standard documents
- 8.4 Hume Horizons 2040
- 8.5 Council Plan
- 8.6 Fees and Charges Policy
- 8.7 Responsible Gaming Policy
- 8.8 Liquor Licensing Policy
- 8.9 Food Safety Policy
- 8.10 Asset Management Policy
- 8.11 Fraud Control Policy
- 8.12 Risk Management Policy

A number of laws and regulations affect Council leases and licences. Of particular relevance are the following Victorian Acts and Regulations:

- 8.13 Local Government Act 1989;
- 8.14 Retail Leases Act 2003;
- 8.15 Crown Land (Reserves) Act 1978;
- 8.16 Personal Property Securities Act 2009;
- 8.17 Competition and Consumer Act 2010;
- 8.18 Equal Opportunity Act 2010;
- 8.19 Planning & Environment Act 1987;
- 8.20 Local Government (General) Regulations 2004;
- 8.21 Children’s Services Act 1996 and Children’s Services Regulations 1998;
- 8.22 Working with Children Act 2005 (Vic);
- 8.23 National Competition Policy (NCP);
- 8.24 Information Privacy Act 2000;
- 8.25 Occupational Health & Safety 2004;
- 8.26 Building Act 1993 (Vic)
- 8.27 Building Regulations 2006 (Vic)
- 8.28 Catchment and Land Protection Act 1994

Date Adopted	25 August 2014
Date Re-Adopted	31 May 2018
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Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

Attachment 1

Assessment Criteria

An assessment will be conducted to determine the suitability of a Tenant by considering the objectives of this Policy. The following criteria will be assessed in no particular order:

- Community benefit
- Financial return to Council
- Tenant's capacity to pay
- Future use of the Council Property
- Impact on the Council Property; and
- Suitability of the Council Property for the proposed use:
 - Planning requirements
 - Building requirements
 - Other statutory requirements

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		
Page 10 of 12			

LEASE AND LICENCE POLICY

Category Assessments

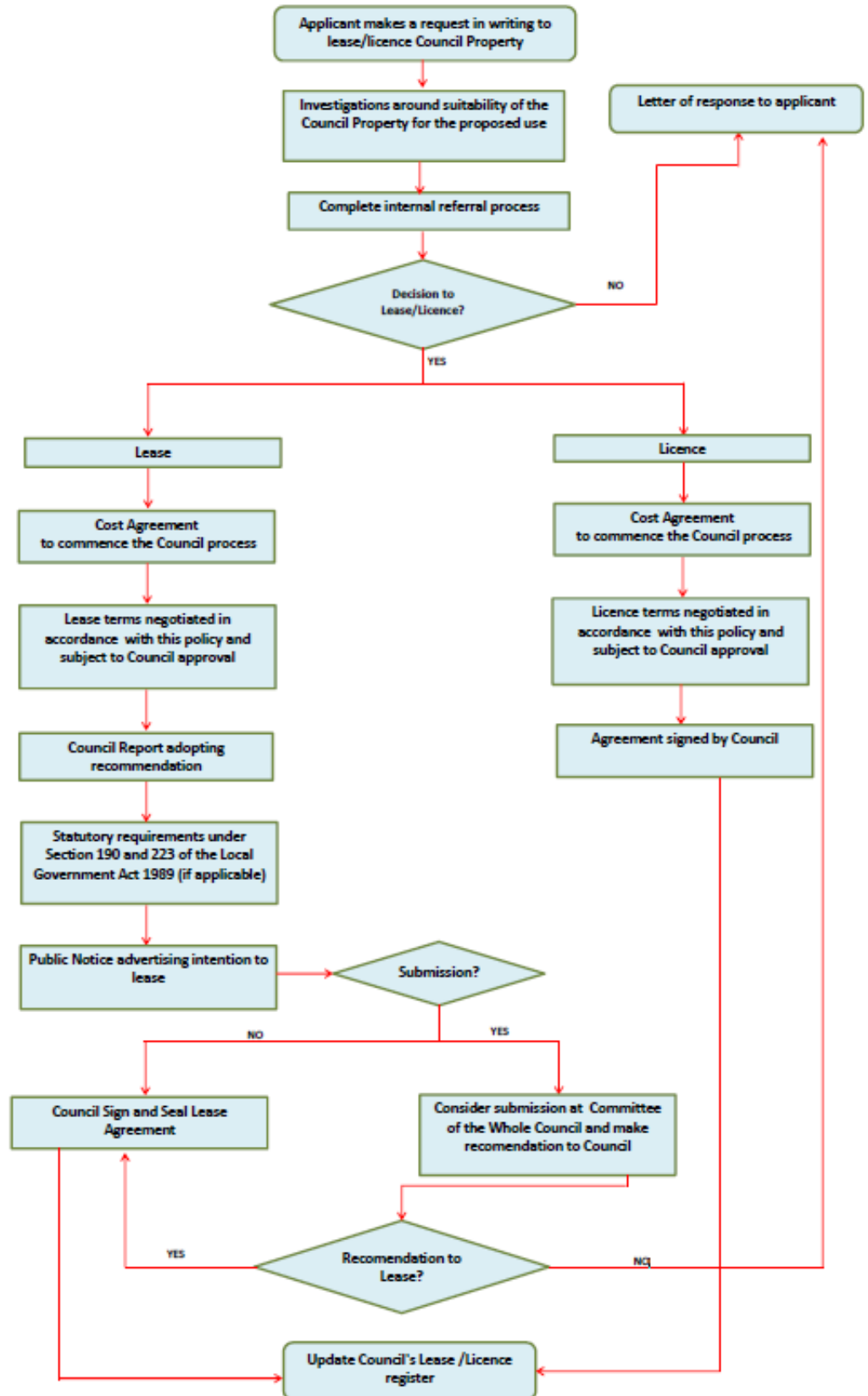
Categories	Rent	Outgoings/Utilities	Maintenance	Rent Reviews	Legal Fees (including amendments requested by the Tenant)	Term
Group One	Commercial Rate determined by Council's Valuer + GST	All paid by the Tenant, including Rates, taxes and levies	All maintenance requirements paid by the Tenant	Market Rent Review at end of each Term or 5 years, whichever ever is shorter plus annual fixed 3-5% increases	100% Tenant	No longer than 20 years and subject to the Tenant and Council's requirements. The lease Term may include several options.
Group Two	Up to 80% discount of Commercial Rate determined by Council's Valuer +GST	All paid by the Tenant, including Rates, taxes and levies	All maintenance requirements paid by the Tenant	Market Rent Review at end of each Term or 5 years, whichever is shorter plus annual fixed 3-5% increases	100% Tenant	No longer than 20 years and subject to the Tenant and Council's requirements. The lease Term may include several options.
Group Three	\$500 - \$1000 per annum + GST	All paid by the Tenant, including Rates, taxes and levies	All maintenance requirements paid by Tenant and/or shared with Council	No increase	50% but not more than \$1,000 Tenant (amendments requested by Tenant, the Tenant will pay 100%)	No longer than 20 years and subject to the Tenant and Council's requirements. The lease Term may include several options.

- * Shared space rent and outgoings will be assessed based on a percentage of space occupied and hours/type of use.
- * Term of Licences will not be granted for more than five years.

Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		

LEASE AND LICENCE POLICY

Lease and Licence of Council Property Flowchart



Policy Reference No:	POL/177	Responsible Officer:	Manager Finance
Date of Re/Adoption:	31 May 2018	Department:	Finance
Review Date:	28 February 2023		