

**POLICY NO. CP 2.1.12****TENANCY AGREEMENTS (LEASES AND LICENCES) FOR CITY PROPERTY****PURPOSE**

This Policy establishes the principles the City will adopt in negotiations with prospective tenants of its property.

**POLICY STATEMENT****1. Commercial organisations**

The City has an expectation that it will receive a rental or licence fee of no less than licensed market valuation for any commercial lease or licence, with local government rates paid by the tenant.

**2. Government and Government Agencies**

The City has an expectation that it will receive no less than licensed market valuation for any lease or licence of City property to a Government Department or Government Agency, as determined by a licensed valuer.

The City also recognises that partnership arrangements can be entered into with Government and Government agencies that can be beneficial to the local community and therefore acknowledges that a lesser than market rental or license fee may be appropriate in certain circumstances.

Without limiting the reasons as to why Council may consider a lesser than market return the following may be taken into account:

- Contribution towards land or building costs
- Memorandums of Understanding with local government
- Agreement where another unrelated benefit may accrue to the City independent of the tenancy
- Level of benefit to the local community.

**3. Incorporated not for profit organisations**

Organisations in this category are generally considered to be sporting, educational or altruistic in nature and would not in normal circumstances be expected nor able to afford the cost of providing their own facilities.

- a. Organisations incorporated under the *Associations Incorporations Act 2015* or equivalent legislation in any other State or Territory in Australia, that tenant City property are to pay a peppercorn rental and in accordance with the provisions of the *Local Government Act 1995*, pay local government rates and the Emergency Service Levy as assessed by Council on an annual basis.
- b. Organisations that are rate exempt under section 6.26 of the *Local Government Act 1995* will be required to pay an amount equivalent to rates including the Emergency Services Levy and administrative charge, as a rent or fee.



- c. Organisations that are successful in securing a rates waiver under section 6.47 of the *Local Government Act 1995* will be required to pay an amount in lieu of rates including the Emergency Services Levy and administrative charge as determined by Council's annual budget.
- d. The City may waive the obligation for an organisation to pay local government rates (without being liable to pay an equivalent amount in rent pursuant to Sub Clause 3(b)) by accepting the value of any capital improvements by the organisation to City premises in lieu of rates. The value of the rates exemption must be directly proportional to the benefit received by the City in capital improvements to the premises. All outgoings remain payable by the organisation.
- e. The City may negotiate a rent for the use of a tenanted facility in addition to requiring the payment of local government rates and the Emergency Services Levy. In applying a rent, Council may take into consideration if the organisation has a clear capacity to pay, which will be assessed by taking into consideration its principal income components. It can be assumed if a tenant derives its principal income from government grants or other external agency funding, or from business activities not part of its core business, this sub clause may apply.
- f. Subclause 3(d) does not apply to locally based sports clubs that hire pavilions or other similar facilities on City reserves.
- g. Where the City determines pursuant to Sub Clause 3(e) that an organisation incorporated under the *Associations Incorporations Act 2015* has a clear capacity to pay rent, the City may accept the value of any capital improvements by the organisation to City premises in lieu of rent. The value of the rent discount must be directly proportional to the benefit received by the City in capital improvements to the premises. All outgoings remain payable by the organisation.

#### **4. Rent Review**

Any lease in which rent is payable at market value as determined by a licensed valuation must include a clause in which the rent is to be reviewed by a licensed valuer to ensure the rent is in accordance with the prevailing market rate at either:

- a. The commencement of the first option term (and any subsequent option term);  
  
Or
- b. The fifth anniversary of the commencement of the lease (and thereafter every five years).

The market rate valuation is in addition to any other methods of rent adjustment utilised during intervening years.

**GOVERNANCE REFERENCES**

<b>Statutory Compliance</b>	Local Government Act 1995 Section 3.58 and 6.26 Commercial Tenancy (Retail Shops) Agreements Act 1995
<b>Industry Compliance</b>	Nil.
<b>Organisational Compliance</b>	Policy - Waiver Of Local Government Rates For City Properties Tenanted By Organisations Incorporated Under The Associations Incorporation Act 1987
<b>Process Links</b>	Nil.

**POLICY ADMINISTRATION**

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
Infrastructure		Strategic Land Advisor		9397 3000	
<b>Risk Rating</b>	Low	<b>Review Cycle</b>	Triennial	<b>Next Due:</b>	2023
<b>Version</b>	<b>Decision Reference</b>	<b>Synopsis</b>			
1.	OCM 224 26/05/2009	Policy 2.1.7 revoked and this policy was adopted to assist City officers manage leases and licences for City property.			
2.	OCM 375/23/08/2011	Reviewed and amended			
3.	OCM 455/25/09/2012	Amended to accommodate the flexibility of charging a rent in addition to the payment of LG rates and the ESL to incorporated not for profit organisations in certain circumstances.			
4.	1 September 2014	Reviewed with administrative changes only.			
5.	OCM 320/26/09/2017	Reviewed with no amendments.			
6.	OCM 251/08/09/2020	Reviewed and amended.			