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## **1. PREAMBLE**

This policy provides a framework in relation to the commercial leasing and licensing of Council owned or managed property within the City of Holdfast Bay.

### **1.1 Purpose**

The purpose of this policy is to provide guiding principles and a framework that will enable the establishment and management of Council's commercial leases and licenses to maximise the return to Council of its 'commercial' assets.

### **1.2 Objectives**

- Ensure all leases and licenses are consistent with Council's Strategic Plans;
- Provide a consistent, transparent and equitable approach to arrangements for all leases or licenses;
- Establish consistency in decision-making associated with lease terms and conditions, including relevant consultation where necessary.
- maximise the financial return and improve the value of the facility;
- Ensure that Council owned and managed properties are appropriately maintained, developed and occupied, having regard to the intentions of Council and the community.

### **1.3 Scope**

This policy deals with;

- Leases or licenses of Council property, excluding residential tenancies and rights of occupation under the Residential Tenancies Act, 1995 and section 221 of the Local Government, Act 1999.
- Leases and licenses of Land that give certain rights of occupation for a period of time to Commercial Organisations.

# COMMERCIAL LEASING AND LICENSING POLICY

This policy does not cover licences granted by Council over airspace, footpaths, road reserve nor those granted by Council short term or occasional use, such as outdoor dining permits.

## **1.4 Definitions**

In this policy, unless the contrary intention appears, these words have the following meaning:

**Commercial Organisation** means any company, entity or person carrying on a business for the purpose of making a profit.

**Community Land** is land, excluding roads, owned or managed by Council that is classified in accordance with section 193 of the Local Government Act, 1999.

**Lease** refers to a contract by which Council (as landlord), grants exclusive rights to occupy Land (usually a parcel of land or portion of a building) to a tenant for a specified time and under certain terms and conditions.

**Licence** refers to a contract by which Council, (as licensor), grants non-exclusive contractual rights to occupy Land to a licensee, for a specified time and under certain terms and conditions.

**Premises** include the whole of, or a portion of Land, buildings, facilities, structures and infrastructure owned or managed by Council.

**Property** includes Community land, vacant land, closed road reserves, buildings and facilities, or any other land related asset owned or managed by Council.

## **1.5 Legislative Framework**

Associations Incorporations Act 1985 (SA).

Crown Land Management Act 2009 (SA).

Development Act 1993 (SA).

Landlord and Tenant Act, 1936 (SA).

Law of Property Act 1936 (SA).

Local Government Act 1999 (SA).

Real Property Act 1886 (SA).

Retail and Commercial Leases Act 1995 (SA).

Competition and Consumer Act 2010 (Cth).

# COMMERCIAL LEASING AND LICENSING POLICY

## 1.6 Strategic Reference

Our Place Community Plan

- Building a Strong Community
- Creating a Sustainable Environment
- Delivering Economic Prosperity
- Enhancing City Design and Function

## 2. POLICY STATEMENT

Council will consider the granting of a lease or licence for any suitable land, venue or facility to commercial organisations ensuring appropriate use and tenant selection for Council owned and managed property in accordance with the following principles:

- Ensuring suitable selection and use of Council's commercial properties.
- Ensuring maximum return and improved asset value.
- Equitable needs based on equal distribution of services.
- Ensuring high occupancy rates for properties.
- Ensuring consistent conditions of occupancy.
- Defining responsibilities and costs associated with the construction, maintenance and operation of the properties.

Commercial organisations must be able to sufficiently demonstrate to Council (among other things) that it has;

- the necessary business skills, experience and financial means to operate its proposed business and meet its obligations under the lease or licence;
- sufficient understanding of the laws, by-laws and standards relevant to its intended use and occupation.
- a suitable business plan.

## 3. PRINCIPLES

The following principles will be read in conjunction with the requirements of applicable legislation including the Retail Commercial Leases Act 1995.

<b>Purpose:</b>	Commercial tenancies relate to a lease or licence of Land and/or structures/buildings for the purpose of operating a business which generates a profit for the business owner.
<b>Land:</b>	A tenant may occupy Land pursuant to a lease or licence and such use will be consistent with all relevant Council policies including any policy in respect of commercial asset management.

## COMMERCIAL LEASING AND LICENSING POLICY

<b>Form:</b>	<p>Council may grant a lease or licence in accordance with standard commercial terms, modified to reflect the nature of the premises, permitted use and agreement reached.</p> <p>The relevant lease or licence will be prepared and finalised by Council's lawyers.</p>
<b>Term:</b>	<p>Generally, the term of lease or licence agreements granted by Council will be 5 years or less with one right of renewal for a term not exceeding 5 years. Whilst the term is subject to negotiation, it must not exceed the maximum term permitted by the Local Government Act, 1999.</p>
<b>Renewal/extension:</b>	<p>Any grant for a right of renewal must:</p> <ul style="list-style-type: none"> <li>(a) be consistent with Council's strategic direction, future use and condition of the premises;</li> <li>(b) be in accordance with the Local Government Act 1999.</li> </ul>
<b>Rent:</b>	<p>Rent must reflect a rent that could reasonably be obtained for the leased or licensed premises in the open market by a willing but not anxious landlord, and having regard to other factors Council considers to be relevant. Each rental will be determined by an independent valuation prior to commencing negotiations. On selection of the Lessee, any other factors will be considered by the Council in determining the final rental.</p> <p>Rental will deemed to be in default if not paid within 7 days of the due date and Council will take immediate action in the event of default for non-payment of rental or any other essential condition of the lease or licence.</p>
<b>Rent Review:</b>	<p>Rent may be adjusted or increased annually by negotiation including by a method of fixed percentage increase, CPI, CPI (plus a fixed percentage increase) and/or market rent review.</p>
<b>Outgoings:</b>	<p>A tenant must pay or reimburse Council or pay the relevant provider for all outgoings including rates, charges, taxes, levies, assessments, duties, impositions and fees of any relevant authority in respect of the premises. User charges including water, sewerage, telephone, gas and electricity are generally to be paid directly to the relevant supplier.</p>

## COMMERCIAL LEASING AND LICENSING POLICY

<b>Council responsibilities:</b>	<p>Council will undertake those responsibilities outlined in the lease or licence agreement which may include:</p> <ul style="list-style-type: none"> <li>• Structural repairs (to provide weatherproofing as a minimum) unless the need for such repair was caused by the act, omission, negligence or default of the tenant</li> </ul>
<b>Lessee/licensee responsibilities:</b>	<p>The tenant must comply with its obligations outlined in the lease or licence agreement (and reasonably inferred by it) which include:</p> <ul style="list-style-type: none"> <li>• Reimbursement of outgoings to the Council (as landlord) and payment of all other charges procured by the tenant in respect of the premises;</li> <li>• To effect and maintain an insurance policies for public liability, fixtures fittings plant and equipment and glass situated in the premises. Copies of the certificates of renewal to be provided to Council within 7 days of the renewal date;</li> <li>• Responsibility to maintain, repair, clean and keep the premises in the same condition as at the commencement of the lease or licence, fair wear and tear accepted (but which are not the responsibility of the landlord under the lease or licence, or at law).</li> <li>• Compliance with all relevant legislation, regulations and standards in respect of the facilities contained under their lease or licence agreement (such as hazardous substances and building codes).</li> </ul>
	<p>The tenant is responsible for:</p> <ul style="list-style-type: none"> <li>• The entirety of all Council's costs (as landlord) of the preparation, negotiation and execution of the lease or licence;</li> <li>• All stamp duty and (if applicable) LTO registration fees and one half of (or if the Act does not apply, the entirety of) mortgagee consent and production fees;</li> <li>• All costs of the Council consenting to any proposed variation or addition to the premises, assignment, subletting or mortgage of the lease or licence.</li> </ul>
<b>Subletting Arrangements</b>	<p>The Lessee or licensee must obtain the written consent of Council prior to entering into any agreement with any other organisation for the use of the facility. Any subletting arrangement will not extend beyond the term of the current lease.</p>

## COMMERCIAL LEASING AND LICENSING POLICY

	Council retains the right to withhold consent at its absolute discretion.
<b>Selection of Lessees/Licensee</b>	Any new Lessee/Licensee will be selected by way of an Expression of Interest process unless there are exceptional circumstances, (in which case a Council resolution will be required prior to commencing negotiations).
<b>Bank Guarantee</b>	A Bank Guarantee to the value of 2 months rental will be required from the Lessee/Licensee.
<b>Miscellaneous</b>	The terms of the lease or licence and any special conditions will be tailored to the nature of the premises and the commercial agreement.

#### 4. GENERAL

A quarterly report will be provided to Council providing details on the performance of all commercial Leases and licences.

#### 5. IMPLEMENTATION

This policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

#### 6. REFERENCES

Annual Business Plan.  
Buildings and Facilities Asset Management Plan.  
City of Holdfast Bay Open Space and Public Realm Strategy.  
Community Consultation and Engagement Policy.  
Community Land Management Plans  
Liquor Licence Policy.  
National Sport and Active Recreation Policy Framework.  
Office for Recreation and Sport Vision.  
Our Place Community Plan.  
Procurement (Contracts and Tendering) Policy  
Property Policy.  
Recreation South Australia 2015-2018 Strategy.