

# Leasing and Licensing Policy

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## 1. Purpose

Knox City Council is the owner or manager of land, buildings and other property assets on behalf of the Knox community.

The purpose of this leasing and licensing policy is to ensure that Knox has a consistent, equitable and transparent approach before entering into formal agreements with prospective tenants, including community groups and commercial operators, allowing them to occupy Council facilities.

Some Council facilities are leased for commercial purposes and generate market rents. Many are leased at subsidised rates for the community and not for profit purposes to deliver tangible community benefits.

This policy provides guiding principles to assist in the effective management and use of Council land and building facilities to maximise community benefits and returns to Council.

The following objectives provide a framework for a consistent, equitable and transparent approach:

- Ensure Council managed properties are used to meet demonstrated community needs consistent with the Knox Community and Council Plan, and any current or future needs analysis;
- Optimisation of Council managed properties to ensure fair, inclusive and diverse use that reflects a variety of community needs and Council's commitment to equity;
- Ensure Council managed properties are responsibly managed and maintained;
- Reduce risk to Council associated with the leasing and/or licensing of facilities and ensure reliable reporting and compliance with laws, regulations and standards;
- Ensure strong processes with clear and consistent agreements in place to protect all interested parties;
- Apply a consistent and equitable approach for determining Tenant fees and charges including any Council subsidies identified;
- Ensure all Commercial and Telecommunication and Utility Service Provider Occupancy Agreements are on commercial terms and aligned with comparable market rates;
- Ensure that no financial or commercial advantage is gained by Community Groups or Community Service Organisation Tenants over other organisations conducting similar activities; and
- Aim for equitable access to shared facilities and spaces where there are multiple occupancy agreements in place with different Tenants.

## 2. Context

The Council owns and manages many facilities that are available to the Knox community and governed by Occupancy

Agreements. This includes land and buildings used for various purposes, including but not limited to community centers, sporting facilities, community halls, seniors' facilities, kindergartens, car parks, road reserves, Scout facilities, Guide facilities and utility service provider infrastructure. These various uses deliver a range of activities and services to support the Knox community.

### 3. Scope

This Policy applies to Council facilities, that is land and/or buildings that are owned or managed by Council, including community owned buildings on Council land, occupied under a Lease or Licence, except for the below:

- Sites managed by a third party on behalf of Council under a contractual agreement;
- Leases or Licences where Council is the Tenant;
- Facilities that are occupied, operated and managed by Council staff;
- Seasonal club agreements and casual or school use agreements which are managed separately under Council's Sporting Reserve Facility Usage Policy; and
- Agreements which are typically used for an Informal Local Group or one-off event.

### 4. Relevant Council Plans, Policies, Guidelines and Related Legislation

Council is required to abide by Acts, Regulations and Policies. The key guiding requirements are listed below:

#### 4.1. Council Plans

- Alignment with current Knox Community and Council Plans, Directions and Vision Statements, noting these are updated regularly to reflect evolving future key directions for Knox and the Community.

#### 4.2. Council Policies and Guidelines

- Sporting Reserve Facility Usage Policy
- Community Engagement Policy
- Casual Hire of Community Facilities Policy
- Community Signage on Council Open Space Policy
- Electronic Gaming Machine Policy
- Visual Surveillance Devices Policy
- Procurement Policy
- Eligibility for Use of Waste Collection Services Provided by Council
- Property Management Toolkit (Guidelines)

#### 4.3. Legislation

- Local Government Act 2020
- Local Government Act 1989
- Retail Leases Act 2003
- Crown Land (Reserve) Act 1978
- Occupational Health and Safety Act 2004
- Building Act 1993
- Planning and Environment Act 1987
- Child Wellbeing and Safety Act 2005
- Telecommunications Act 1997
- Environment Protection Act 2017
- Aboriginal Heritage Act 2006
- Heritage Act 1995
- Liquor Control Reform Act 1998
- Gambling Legislation Amendment Act 2018
- Tobacco Act 1987

#### 4.4. Government Policy and Procedures

- Department of Energy, Environment and Climate Action (DEECA) Crown land Policies – Leasing Policy for Victorian Crown Land 2023
- DEECA Committee of Management Guidelines
- National Competition Policy

## 5. Definitions

The following definitions apply within the Policy.

Term	Definition
<b>Council</b>	Knox City Council
<b>Crown Land</b>	Land owned by the Crown (Victorian or Federal Government) which may be unalienated or reserved.  Unalienated Crown land is land under Crown title not yet set aside by the Crown for a public purpose, Crown Lease tenure or sold to the public.  Reserved Crown land is land set aside from sale for a specific public purpose.
<b>DEECA</b>	The Department of Energy, Environment and Climate Action (Crown land manager)
<b>Emergency Services and Volunteer Fund (ESVF)</b>	Annual State Government levy to support emergency services. Previously the "Fire Services Property Levy", the ESVF is collected by local councils and usually appears on the rate notice. The levy is collected from non-rateable properties via a separate notice.
<b>Essential Safety Measures</b>	Essential safety measures are the safety features required in a building to protect occupants in the event of an emergency, as defined in current Building Regulations 2018 (Vic) and Building Act 1993 (Vic)
<b>Facility</b>	Land and/or buildings that are owned or managed by Council.
<b>Lease</b>	An agreement where the Council grants the Tenant the right to exclusive occupancy of a defined area ("Leased Area") as set out in the Lease, which may include the whole or part of a Council Facility, usually in return for payment of rental, outgoings and agreed maintenance responsibilities by the Tenant.
<b>Legal Entity</b>	An organisation that is legally permitted to enter a contract and capable of holding assets in its own name.
<b>LGA 2020</b>	<i>Local Government Act 2020</i>
<b>Licence</b>	An agreement where the Council grants the Licensee the non-exclusive right to occupy a defined area ("Licensed Area"), which may include the whole or part of a Council Facility, usually in return for payment of a Licence fee, outgoings and agreed maintenance responsibilities. The Licensee does not have exclusive use of the Premises and Council can allow access by other user groups or the general public.
<b>Market Approach</b>	A transparent Tenant selection process where Council invites other parties to submit a proposal for tenancy and utilisation of a Facility.
<b>Occupancy Agreement</b>	Either a Lease or Licence agreement for a Facility.
<b>Property Advocate</b>	The Council Officer who acts as the liaison between Council and the Tenant occupying a Facility.
<b>Premises</b>	The area occupied under a Lease or Licence agreement.
<b>Property Management Team</b>	Knox City Council's Property Management Team

<b>Real Estate Institute of Victoria</b>	The Real Estate Institute of Victoria (REIV) is the peak body for real estate professionals.
<b>Sporting Reserve Facility</b>	Sports fields, pavilions, baseball and softball diamonds, tennis courts, athletics tracks and netball courts are some examples of facilities available to user groups for sport and recreation activities
<b>Telecommunications Carrier</b>	A mobile, fibre and wireless broadband communications Telecommunications Carrier(s) who have licences to deploy antenna installations and operate networks for mobile telephony and data services in Australia.
<b>Tenant</b>	A Legal Entity that has entered into - or is proposing to enter into - an Occupancy Agreement with Council for the use of a Facility.

## 6. Council Occupancy Agreements

### 6.1 Types of Agreements

Council aims to provide multi-use facilities that support complementary activities. The decision regarding which type of Occupancy Agreement is to be used will be made in conjunction with the Property Management Team.

#### 6.1.1 Licence

Where appropriate, Council enters into Licence agreements to enable the multi-use of facilities and achieve the greatest community benefit from facilities.

#### 6.1.2 Lease

The granting of exclusive rights to a single Tenant by way of a Lease will occur where:

- there is substantial community benefit, and
- the Tenant's purpose and activities are:
  - consistent with Council's objectives; or
  - of a commercial nature.

Where facilities have multiple Tenants, all Tenants may be required to enter into a Memorandum of Understanding that outlines Facility rules and guiding principles (that may change over time). These will ensure Tenants work together and facilities are suitably maintained, with responsibilities clearly documented for equitable use of shared spaces.

### 6.2 Tenant Categories

Tenants will be placed into one of four categories which determines the fee structure and standard obligations which will apply to the Tenant when entering into an Occupancy Agreement.

- Community Group
- Community Service Organisation
- Commercial
- Telecommunication and Utility Service Providers

The description of each category is provided in **Appendix 1 – Tenant Category Schedule**. All Tenants will be assessed against this schedule to establish the appropriate category prior to entering into any Occupancy Agreement. The Property Management Team should be consulted if there is a circumstance in which a Tenant does not clearly fall within the defined categories.

Tenants must notify Council of any changes to their organisational status, goals or use of a facility that may affect the categorisation of a Tenant during the term of their occupancy. Any such changes may alter the rental subsidy provided, if applicable.

### 6.3 Tenant Selection and Renewal

When considering potential occupants, Council will favour Tenants whose purpose and activities align with Council

plans, policies and objectives for benefiting the Knox community. Tenants can be selected by direct negotiation or a Market Approach selection process.

Council may cease negotiations with a Tenant that fails to enter into a formal Occupancy Agreement within 6 months of a draft Occupancy Agreement being issued to them, or a Council resolution existing to enter into an agreement.

#### 6.3.1 Direct Negotiation

Direct negotiation with an incumbent Tenant is often more appropriate than an open competitive process, or Market Approach. Direct negotiations will be considered in any of the following circumstances:

- the incumbent Tenant has an interest to remain in the Facility and their service, programs or activities align with the Council plans, policies and objectives for benefiting the Knox community;
- the cost to run a competitive process may be greater than the achievable return;
- an existing Tenant has offered capital investment that is of significant benefit to the community and would not be offered by another party.

A decision to proceed with a new Occupancy Agreement via direct negotiation must be made in conjunction with Council's Property Management Team. Furthermore, an Occupancy Agreement will not be offered to the incumbent Tenant until:

- a request is received in writing from the incumbent Tenant, identifying their goals and how they support the Knox community.
- an internal review is carried out by the relevant Property Advocate, in consultation with the Property Management Team, to ensure:
  - there is an ongoing demand by the community for the provision of such a service;
  - the Facility is suitably located within the community for the proposed use;
  - the incumbent Tenant has no unresolved debts with Council;
  - the incumbent Tenant provides the optimal use for the Facility;
  - the incumbent Tenant's use of the Facility does not interfere with other potential uses of the Facility;
  - the incumbent Tenant has completed any required maintenance works to ensure the Facility is safe, fit for purpose, compliant and well presented;
  - the incumbent Tenant is financially viable; and
  - the incumbent Tenant has satisfied the terms and conditions of any previous Occupancy Agreement.

#### 6.3.2 Market Approach

An open Market Approach selection process will be undertaken to determine a suitable new Tenant, and is the preferred approach, unless a direct negotiation would achieve a better outcome for the community and Council. Council may choose to engage a third-party agent to support this process.

The relevant Property Advocate, in conjunction with the Property Management Team, will establish the objectives for a Facility and evaluation criteria for prospective Tenants before embarking on the process with consideration of the Procurement Policy. A competitive process ensures probity, addresses any conflicts of interest and will assist with decision making. It provides the opportunity for interested parties to compete for the right to occupy a Facility.

### **6.4 Community Engagement**

Community engagement will be undertaken in-line with Councils responsibilities under the *LGA 2020* (Section 115) and the Knox Community Engagement Policy. Refer to these documents for detailed information on where community engagement is required.

Prior to commencement of a new lease a community engagement process will occur if:

- the length of term is 10 years or greater;
- the rental value is \$100,000 per year or greater; or
- where the proposed use may be considered to require community feedback.

## 6.5 Fees

A schedule of Tenant Categories and applicable fees is provided in **Appendix 2 – Occupancy Agreement Fees Schedule**. The *Occupancy Agreement Fees Schedule* will be used to establish the applicable fee for all Tenants.

These fees will be regularly updated in accordance with Council's Annual Budget adopted fees and charges schedule.

### 6.5.1 Rental Fee

Rental fees will be consistent and transparent to encourage use of facilities for the benefit of the community, and to maximise the return in line with market rates where facilities are used for commercial purposes.

Council is mindful of supporting Tenants whose purpose and activities are consistent with Council plans, policies and objectives, whilst also gaining contributions towards Council cost recovery for administration expenses, ongoing maintenance, operating costs of facilities and any foregone market rental potential.

### 6.5.2 Administration Fee

Commercial and Telecommunication and Utility Service Providers who approach Council seeking occupancy of a Facility will be charged an administration fee to cover activities undertaken by Council to investigate the feasibility of the request, administration process and to establish an Occupancy Agreement. The fee contributes to:

- Officer time spent on agreement enquiry, correspondence and investigation of the feasibility of the request;
- Document retrieval (where applicable such as title documents); and
- Preparation and execution of agreement documentation.

This administration fee is separate to other fees payable to Council in relation to a Tenant's proposed use of a Facility, such as permit, Lease or Licence application fees.

## 6.6 Rent and Fee Reviews

Community Group rental and other fees will be adjusted annually in line with the Council Annual Budget adopted Fees and Charges Schedule.

Occupancy Agreement rental and other fees for Community Service Organisations, Commercial and Telecommunication and Utility Service Providers will be subject to regular annual rent or fee increases and will also be subject to market reviews for an exercise of an option, agreement extension or agreement renewal.

Fixed percentage annual rental and fee increases, instead of annual CPI increases, are the preferred approach and will assist transparent forward budget planning for both Tenants and Council, whilst also reducing administration burden and complex CPI calculations.

## 6.7 Rates, Taxes and Outgoings

The Tenant is generally responsible for paying all rates, taxes and other charges and levies separately assessed in connection with the Premises (if applicable).

Where rates and taxes are not separately assessed, or the Premises are shared, the Tenant must pay or refund to Council a relevant proportion of the costs incurred based on the proportional area they occupy. This is allocated as percentage of the area that each Tenant occupies as a proportion of the total area that the cost applies to (or other calculation method as negotiated by mutual agreement). This must be paid within the required timeframe advised by Council. Refer to Appendix 2 for guidance.

The Tenant is responsible for utility and service charges including electricity, gas, telephone, water, additional waste, sanitary services and security in accordance with Appendix 2.

Tenant waste charges are to align with the Eligibility for Use of Waste Collection Services Provided by Council Policy to assist standardising the waste services available to Tenants and the relevant fees charged.

## 6.8 Emergency Services and Volunteer Fund

The Emergency Services Volunteer Fund is collected by Council on behalf of the Victorian State Government. This levy will be generally charged to occupants. Refer to Appendix 2 for guidance.

Where the Tenant is the sole occupant of the site that the ESVF is relevant to, then the full charge is applicable where no exemption has been granted. Community Group Tenants will not be charged this levy.

Where rates are not separately assessed, or the Premises are shared, the Tenant must pay or refund to Council the proportion that the area of the Premises bears to the total area assessed (or other such method of calculation as negotiated) within the required timeframe from receipt of a written notice from Council.

#### **6.9. Standard Terms and Conditions**

The Property Management Team must be consulted prior to choosing an Occupancy Agreement template and must review all agreements prior to them being sent to prospective Tenants.

Template Occupancy Agreements together with standard terms and conditions will reflect the contents of this policy and relevant legislation. These terms and conditions will form the basis of all Occupancy Agreements except for Commercial and Telecommunication and Utility Service Providers and occupancy arrangements on Crown land managed by Council which will be negotiated on a case-by-case basis.

Where required, standard documents from DEECA or REIV will be used and amended (where appropriate) to include Council-related clauses.

#### **6.10 Lease Compliance**

Council is committed to ensuring that all leased and licensed premises are maintained in a safe and compliant standard. All agreements will include provisions for Council officers to inspect facilities to verify adherence to maintenance and any other obligations. Where non-compliance is identified, Council may issue a notice to rectify and, where necessary, suspend access until the issue is resolved. Compliance with these obligations will be a condition for any lease or licence renewal.

#### **6.11. Occupancy Agreement Term**

The length of the term will be dependent on various considerations including if the Tenant is an existing occupant or a new or emerging group, lifecycle stage of the Facility, maintenance requirements, budget planning, Council planning and strategic direction, capital investment, proposed use, extent of community benefit, if the facility is identified as required in Council's long-term plans for future use, demolition, refurbishment or a major capital works.

The preference is for a minimum 5-year Licence, however shorter terms of 12 months to 5-years may be considered in some special circumstances.

The preference is for Lease agreement initial terms to be no less than 5 years; however, leases will be assessed on a case-by-case basis. Longer terms may include an extension option of a similar term to the initial agreed term.

#### **6.12. Maintenance and Essential Safety Measures**

Tenants are required to maintain the facility in accordance with any maintenance schedules that may be attached to an Occupancy Agreement using the services of registered and qualified tradespeople to undertake the works and provide a certificate of compliance for works that require it (e.g. plumbing and electrical).

Schedules (where applicable) will specify the responsibilities of Council and the Tenant, including responsibility for maintaining the structure of the building, fixtures and fittings, grounds and any specialised equipment or playing surfaces.

Written approval is required from Council prior to the commencement of any building, renewal or improvement work to a Facility. In the first instance, Tenants should contact their Property Advocate for advice on the approval process and to submit plans for consideration.

Council reserves the right to inspect and gain access to a Facility for reviewing Tenant maintenance and Essential Safety Measures (ESM) requirements and for the undertaking of any maintenance or ESM works that Council may be responsible for.

#### **6.13. Insurance**

In relation to the Occupancy Agreement and Premises occupied, Tenants should hold the following insurance unless otherwise negotiated and approved by Council's Risk team:



- Public liability insurance to a minimum value of \$20 million and should note Council interest;
- Professional indemnity insurance; and
- Contents insurance for the lessee's or licensee's own property.
- In instances where a Tenant has a land only Occupancy Agreement, the Tenant must maintain building insurance for their building constructed on Council land.

Council will insure Council owned buildings and Council installed and authorised fixtures and fittings.

#### **6.14. Child Safe Standards**

Council has zero tolerance for child abuse. Tenants are responsible for understanding their obligations under the Child Safe Standards. In addition to the requirement to comply under the *Child Wellbeing and Safety Act 2005*, the Tenant is also obliged under their Occupancy Agreement to ensure that Child Safe Standards requirements are complied with at all times. Council offers guidance to Tenants to support them in understanding their obligations.

#### **6.15 Community Reporting Requirements**

All Community Group and Community Service Organisation Tenants are required to report against community eligibility criteria upon request and must advise Council if their organisational status changes during their occupancy.

Community Group and Community Service Organisation Tenants are required to submit the following information to Council annually, as specified in the Occupancy Agreement. Council may grant a written exemption in exceptional circumstances, where the Tenant provides sufficient supporting documentation for consideration. Where applicable, annual reporting information is to include (but not limited to)

- the activities undertaken by the Tenant;
- occupancy and utilisation data for the Facility;
- the level and degree of public access to the Premises;
- details of any maintenance undertaken;
- copies of the most recent annual report and financial statement; and
- a list of office bearers including President, Secretary and Treasurer.

#### **6.16. Signage**

Prior written consent must be obtained from Council before displaying or affixing any signs, advertisements, branding or notices to any part of the Premises. Signage must comply with Council's Community Signage on Council Open Space Policy or the Knox Planning Scheme. Early engagement with Council's Property Advocate prior to finalising proposals or lodging a required application is encouraged.

#### **6.17. Permitted Use**

The permitted use defines what the Tenant can or cannot do at the Premises. The permitted use should be clearly defined and avoid broad or vague statements which may be open to interpretation. Throughout the tenancy, the tenant is responsible for any compliance with regulatory framework, including obtaining any planning or building permits, required for the permitted use.

Tenants must obtain Council's prior written consent for any change in the permitted use or additional use of the Premises, including any planning or building permits or approvals that may be required. Consent may be granted or withheld at Council's absolute discretion and subject to other conditions.

Council will not permit a change in use of the Premises that is not compatible with the building permit for the Facility, without the appropriate approvals. This includes occupancy levels, and changes to the building classification. Council is permitted to determine and end any Occupancy Agreement under these circumstances.

#### **6.18. Days and Times of Use**

The days and times of use allowed in relation to a Premises are generally associated with the type of Occupancy Agreement that is offered.

As a Licence agreement offers non-exclusive use, the Tenant is permitted to occupy the Facility on agreed days and times of use, which allows Council the flexibility to offer the Facility to other community groups and thereby



maximise the use of the Facility. Where a Facility is shared between two or more tenants, a Memorandum of Understanding (MOU) may be negotiated and signed by all Tenants and the Council. Whilst the licence agreement specifies times of occupation to support shared use of facilities, this does not prevent tenants from requesting flexibility for special events such as fundraisers. Council is open to accommodating such needs.

A Lease agreement offers exclusive use to the Tenant and as such, the Tenant will be permitted to operate from the Premises at any time in accordance with any applicable planning permit requirements, Council's Local Laws and having regard to legislation relating to noise pollution.

#### **6.19. Tenant Sub-Letting**

Sub-letting is where the whole Facility, or part of the Facility, is leased or licensed out to another group by the Tenant. The Tenant remains responsible for all its obligations under the Occupancy Agreement.

The first Tenant is called the head-tenant, and the second Tenant is called the sub-tenant. The agreement between them is called a sub-lease. Head tenants must formally request in writing approval from Council for any sublease arrangement they wish to enter into including the proposed fees and any other relevant details.

For equitability purposes, it is important that during subletting of Facilities that no financial or commercial advantage is gained by Community Groups or Community Service Organisation Tenants, over other Community Groups or Community Service Organisation Tenants. Council will need to review the details of any formal Tenant sublease request to ensure that the proposed sub-tenant and their intended use is suitable as well as taking into consideration any Council Policy and legislative impacts such as the *Retail Leases Act 2003*. Council may also claim from the Tenant reasonable legal costs incurred in connection with a sub-lease.

If Council agrees to a sub-lease of the Premises, including use of the premises for advertising purposes in addition to the Head Tenant's purposes, Council may seek to revise the terms and conditions of the head agreement. This may also include a change to the rental fee, particularly where an additional income is being derived from the premises by the Head Tenant. Under a Licence Agreement, sub-letting of a Facility by a Tenant to another occupant is generally not permitted.

However, Council may give the Tenant the automatic right to hire out the Premises on a casual basis to a third party (under certain additional terms and conditions) using a hire agreement.

Community Groups or Community Service Organisations that hire out or sublet spaces within their facilities and subsequently generate a healthy revenue stream may be required to invest a suitable portion of this revenue back into the Facility towards key maintenance or capital upgrades.

#### **6.20. Assignment of Council-managed Land and/or Buildings**

Where Council leases land and/or buildings from another party (landlord) and enters into an Occupancy Agreement for same with a Council Tenant, the Occupancy Agreement must be in accordance with the head lease and with the consent of the landlord. Landlords may include government agencies, private owners or commercial enterprises.

Generally, a landlord must not unreasonably refuse an assignment of Lease but may refuse a sublease. However, this will ultimately depend on the wording of the Lease and if any legislation applies.

There are circumstances where Council manages land and/or buildings on behalf of others, such as Crown land of which Council is Committee of Management, or privately-owned Premises leased by Council. All Occupancy Agreements for land and/or buildings Council manages on behalf of others must adhere to the conditions set out in the head agreement between Council and the landowner and comply with section 115 and 116 of the LGA 2020.

#### **6.21. Crown Land**

When issuing Occupancy Agreements over Crown Land of which Council is Committee of Management, the DEECA, or other relevant Department where applicable, policy requirements must be met.

#### **6.22. Gaming and Liquor**

Council will not enter into a new Occupancy Agreement with any organisation that operates or intends to operate gaming machines on the Premises.

Proposals for new or amended liquor licenses require prior Council consent before an application is made to ensure alignment with local amenity and community objectives for the Facility. The Tenant is responsible for ensuring that any hirer, sub tenant or other permitted user complies with this requirement.

#### **6.23. Relocation**

Where Council proposes to dispose of, demolish, redevelop or otherwise carry out significant alterations, capital works or additions to a Facility during the term of an Occupancy Agreement, Council may terminate the agreement with due notice as per the agreement and make reasonable attempts to make available to the Tenant a suitable alternative Premises. If required and available, during works the tenant will be relocated to an alternate suitable premises. Council is not obligated to provide a temporary facility. The agreement for an alternative Premises will aim to achieve no less favourable terms for the duration of the unexpired portion of the current agreement where possible and if there is a rent or fee cost difference due to an alternative Facility relocation solution then this will be discussed with the Tenant with the view to minimising relevant relocation cost impacts for the Tenant.

#### **6.24. Renewal, Overholding and Termination**

At the end of the Occupancy Agreement (which is the end of the term or the earlier termination of a Lease or Licence) the Tenant shall vacate the Premises and ensure that it is in a condition consistent with the Tenant having complied with all obligations under their Occupancy Agreement.

Council may contact Tenants prior to the end of their Occupancy Agreement to commence negotiating a new agreement. Should these negotiations extend beyond a twelve-month period of overholding, without satisfactory progress and reasonable effort being made by a Tenant to finalise the agreement, Council may terminate the agreement with one month's notice (in accordance with terms and conditions).

Subject to agreement with Council, Tenants may continue into overholding on a month-to-month basis while a new Occupancy Agreement is negotiated. During the overholding period, Tenants must continue to pay all relevant rent or fees due and abide by all the terms of the Occupancy Agreement.

## **7. Delegation**

Occupancy Agreements meeting one or more of the criteria below must be referred to a Council meeting for consideration and decision:

- The term of the tenancy exceeds 4 years;
- The market value rental value assessment exceeds \$100,000 per annum (except where the Occupancy Agreement is for a maximum period of less than 12 months and the Tenant has not occupied the Premises within the preceding 12 months); or
- The agreement does not substantially conform to the requirements of this Policy.

Occupancy Agreements, including extension options, will otherwise be negotiated, approved and executed by the Chief Executive Officer, or their delegate, in accordance with this policy and the relevant instrument of delegation.

A list of Occupancy Agreements under consideration will be periodically circulated to Councillors and an Occupancy Agreement may be "called up" for consideration at a Council meeting under the following circumstances:

1. A Councillor, in consultation with the Chief Executive Officer (CEO) or Chief Financial Officer (CFO), may request that an Occupancy Agreement be brought to a Council meeting for consideration and a decision.
2. The Chief Executive Officer may independently determine an Occupancy Agreement should be referred to a Council meeting for consideration and decision.

Delegated power to approve and execute an Occupancy Agreement must not be exercised after it has been validly "called up" for consideration at a Council meeting.

## **8. Implementation of Policy**

The conditions within this policy will apply upon the commencement of any new Occupancy Agreement.

## 9. Administrative Updates

Sometimes circumstances may change, leading to the need for minor administrative changes to this policy. Where an update does not materially alter this policy, such a change may be made administratively following approval by the CEO. Examples of minor administrative changes include changes to names of Council departments or positions, change to names of Federal or State Government departments or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by Council.

## APPENDIX 1 - Tenant Category Schedule

Category	Criteria to be met	Examples (for illustrative purposes only: please consult the criteria to accurately determine your category)
<b>Community Group</b>	<p>All criteria below are to be met:</p> <ul style="list-style-type: none"> <li>• Circa 50% or greater of people working at the Premises are volunteers; and</li> <li>• The tenant is a Community-based group; and</li> <li>• The tenant is a Legal Entity governed by a committee or board; and</li> <li>• The tenant is a not-for-profit organisation; and</li> <li>• The purpose and activities of the tenant are consistent with Council's objectives and services; and</li> <li>• Are open and accessible to the general public or members of the Knox community.</li> </ul>	<p>Scouts and Guides</p> <p>Neighbourhood / Community Houses</p> <p>Seniors' groups</p> <p>Community gardens</p> <p>Not-for-profit Welfare services</p> <p>Incorporated playgroups</p> <p>Art and cultural groups</p> <p>Small sporting groups</p>

Category	Criteria to be met	Examples (for illustrative purposes only: please consult the criteria to accurately determine your category)
<b>Community Service Organisation</b>	<p>All criteria directly below are to be met:</p> <ul style="list-style-type: none"> <li>• The tenant is a not-for-profit Legal Entity;</li> <li>• The tenant provides services, support or activities to the Knox community;</li> <li>• The purpose and activities of the tenant are consistent with Council's objectives and services; and</li> <li>• Are open and accessible to the general public or members of the Knox community.</li> </ul> <p>Additional criteria considerations:</p> <ul style="list-style-type: none"> <li>• Able to generate income higher than expenditure from use of the Facility or activities consistent with the organisation's purpose;</li> <li>• May charge a market-based fee for service;</li> <li>• May offer services which are eligible for Government subsidy widely available to providers (e.g. Medicare rebate);</li> <li>• May offer services which are Government funded (e.g. Commonwealth Home Support Program or National Disability Insurance Scheme);</li> <li>• May be a local, regional, state or national organisation; and</li> <li>• May receive Government funding or grants.</li> </ul>	<p>Community health organisations</p> <p>Large sporting associations</p> <p>Large community organisations</p> <p>Community focused Government agencies</p> <p>Early year services (if not-for-profit entity)</p>

Category	Criteria to be met	Examples (for illustrative purposes only: please consult the criteria to accurately determine your category)
<b>Commercial</b>	<p>All criteria directly below are to be met:</p> <ul style="list-style-type: none"> <li>• A Legal Entity;</li> <li>• Predominantly utilises paid staff;</li> <li>• Conducts activities for the purposes of deriving a financial return for the proprietors or shareholders; and</li> <li>• The use of the Facility does not interfere with, or complements, other uses of the Facility (if applicable).</li> </ul>	<p>Allied health providers</p> <p>Storage or car parking for commercial business</p> <p>Early years services</p> <p>Adjoining owner</p> <p>Commercial business / retailer</p> <p>Events by commercial business (circus, carnival rides etc)</p> <p>Advertising or branding</p>
<b>Telecommunication and Utility Service Providers</b>	<p>All criteria directly below are to be met:</p> <ul style="list-style-type: none"> <li>• A Legal Entity;</li> <li>• Predominantly utilises paid staff;</li> <li>• Conducts activities for the purposes of deriving a financial return for the proprietors or shareholders;</li> <li>• Is an investment company that provides utility or similar type services;</li> <li>• Is a mobile Telecommunications Carrier or telecommunications infrastructure provider; or</li> <li>• Is an energy provider; or</li> <li>• Is an EV charging provider; or</li> <li>• Is a recycling provider for reverse vending machines; or</li> <li>• Is a weather or climate station to assist with weather or climate reporting; or</li> <li>• Is another type of Utility Service Provider.</li> </ul>	<p>Mobile carriers such as Telstra, Optus and Vodaphone (TPG)</p> <p>Infrastructure Owners such as Amplitel, Axicom, Indara, Waveconn, Stilmark</p> <p>Electric vehicle charging stations</p> <p>Container deposit scheme reverse vending machines</p> <p>Electrical and water sub/stations that service non-Council owned facilities</p> <p>Neighbourhood batteries operated by Energy Retailers</p> <p>Air rights for service providers</p> <p>Weather and Climate Stations</p>

## APPENDIX 2 - Occupancy Agreement Fees Schedule

Category	Rental Fee	Rental Review	Administration Fee	Tenant Outgoings
<b>Community Group</b>	Refer to Council's Annual Budget adopted Fees and Charges Schedule, budget: <a href="https://www.knox.vic.gov.au/our-council/about-council/annual-budget">https://www.knox.vic.gov.au/our-council/about-council/annual-budget</a>	Annual fixed increase for <u>new</u> agreements E.g. 4% (except Sporting Reserve Facility)	Not applicable for Community Groups.	All operational expenses such as utilities, phone, cleaning, sanitary services, security and waste.  Tenant responsible for all maintenance if they own a building that sits on a Council ground Lease.
<b>Community Service Organisation</b>	Fees will be assessed individually by the Property Advocate, in consultation with the Property Management Team, to make a pricing recommendation.	Rent review dates and annual fixed percentage increase negotiated within market norms E.g. 4% pa. (except Sporting Reserve Facility)  Also subject to a market review on exercise of an option and / or every five years.	Not applicable for Community Service Organisations.	All operational expenses such as utilities, phone, cleaning, sanitary services, security and waste.  All applicable rates, taxes and State Government Emergency Services and Volunteer Fund.  Maintenance responsibilities may vary between Facilities depending on negotiations however exclude: <ul style="list-style-type: none"><li>• Council-owned structure (walls and roof)</li><li>• Council-owned fixtures, plant and equipment provided by the landlord under the agreement.</li></ul>
<b>Commercial</b>	Market driven, determined by a market rental valuation undertaken by an independent suitably qualified valuer or the result or an expression of interest or similar process.	Rent review dates and annual fixed percentage increase to be negotiated within market norms. E.g. 4% pa  Also subject to a market review on exercise of an option and / or every five	Yes, fees applicable when Tenants approach Council with specific property requirements.  E.g. \$1,000 per Commercial application  E.g. Adjoining Property Owner administration	All operational expenses such as utilities, phone, cleaning, sanitary services, security and waste.  All applicable rates, taxes and State Government Emergency Services and Volunteer Fund  Full maintenance responsibilities excluding: <ul style="list-style-type: none"><li>• Council-owned structure (walls and roof)</li><li>• Council-owned fixtures, plant and equipment</li></ul>



Category	Rental Fee	Rental Review	Administration Fee	Tenant Outgoings
		years.	fee \$500 per application	provided by the landlord under the agreement
<b>Telecommunication &amp; Utility Service Providers</b>	Market driven, the greater value of either a market rental valuation undertaken by an independent suitably qualified valuer or other market driven approach such as an expression of interest or similar process or market rate card or market rate tool where applicable.	<p>Rent review dates and annual fixed percentage increase to be negotiated within market norms. E.g. 4% pa.</p> <p>Subject to a market review on exercise of an option and/or every five years.</p>	<p>Yes, fees applicable.</p> <p>E.g. Roof top and Building site \$2,000</p> <p>E.g. Macro Base Station sites \$2,000 (upgrade application)</p> <p>E.g. Macro Base Station sites \$4,000 (new application)</p> <p>E.g Other Utility Service Providers minimum \$2,000</p>	<p>All operational expenses such as utilities, phone, cleaning, sanitary services, security and waste.</p> <p>All rates, taxes and State Government Emergency Services and Volunteer Fund (if applicable)</p> <p>Full maintenance responsibilities.</p>