



## LEASING AND LICENSING POLICY

Responsible Officer: <b>Governance and Corporate Planning Advisor</b>	Adoption Date:	19 February 2019
	Approved By:	Council
Authorising Officer: <b>Director Corporate Services</b>	Review Date:	February 2023
	Policy Type	Major Council Policy

### INTRODUCTION

Council is the custodian of land and property on behalf of the Wangaratta community. This Policy establishes the framework for Council to lease or license Council owned and managed properties. It is based on the powers, duties and functions conferred on Council by the *Local Government Act 1989* and other Acts.

### CONTEXT

The *Local Government Act 1989* gives Council very wide functions including providing facilities for the local community, providing and maintaining community infrastructure and raising revenue to perform these functions.

In addition, subject to any limitations or restrictions imposed by, or under, the *Local Government Act 1989* or any other Act, Council has the power to do all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions.

The foregoing is the basis of Council's power to enter into tenures.

### SCOPE

This Policy applies to the leasing or licensing of all Council land and property.

This Policy applies to all Councillors, Council Officers and agents of Council and to any other person involved in the leasing or licensing of Council land.

### PURPOSE

The purpose of the Policy is to support a consistent, equitable and transparent approach for entering into formal tenure arrangements with other parties for their occupation of Council owned land and/or managed property which will ensure the best possible outcome is achieved by Council.

The objectives of this Policy are to provide clarity of Council's role as Owner, Trustee or Committee of Management in relation to:

1. Clearly setting out the rights and obligations of tenants; and
2. Clearly setting out the principles for Council and Council Officers to consider in the management of leasing and licensing; and
3. Identifying, managing and mitigating the risks associated with the leasing and licensing of Council land and property; and
4. Providing for a fair and financially viable approach to the tenancy of Council property; and
5. Providing a framework for management and use of Council's property, including repairs, alterations, relocation and removal of the structures; and
6. Ensuring compliance with related Legislation.

## **POLICY**

Council will provide and maintain community infrastructure assets that are accessible, safe, sustainable and responsive to the needs of the community.

Council will achieve the best possible outcome for utilisation of its property and land consistent with:

1. Promoting the social, economic and environmental viability and sustainability of the municipal district; and
2. Improving the overall quality of life of people in the local community; and
3. Ensuring that land and facilities provided by Council are accessible and equitable.

### **LEASING AND LICENSING PRINCIPLES**

Tenures enable the community to use and enjoy Council controlled land and property, particularly through the provision of recreational, cultural and sporting facilities, for commercial uses and for important community infrastructure.

A tenure may be provided in the form of a license or a lease.

**Leases** are grants from a lessor (the landlord) to a lessee (the tenant) for a defined term (duration) of the right to exclusive possession of land with the intention of giving the tenant an interest in land rather than a personal privilege.

**Licenses** (including agreements and permits) generally allow non-exclusive use of land for a fixed term, for a particular purpose, by a licensee and do not convey an interest in land. They may allow for some transitory or non-site-specific activity. Generally, they cannot be assigned or transferred to a third party.

GST is applicable to all leases and licenses.

Four principles must be applied when assessing land or property tenures:

1. Provide benefits to the community; and
2. Ensure consistency and transparency - generally, a competitive selection process

will apply to granting tenures, although in special circumstances direct negotiations will be permitted; and

3. Manage Council land and property sustainably - Tenure proposals need to demonstrate the application of sustainable management principles; and
4. Council land and property are not a private resource - Private occupation of Council assets is a privilege, not a right. Tenure arrangements will be structured to avoid any Council asset becoming a form of private investment from a public resource. New private structures that provide for single occupancy/exclusive use will generally not be permitted unless Council considers the structure integral to deriving economic or community benefit.

## POWERS TO ENTER INTO A TENURE

### Land Status

The status of the land will determine whether Council has the power to enter into a tenure and to some extent the form of agreement for that tenure. Council may hold land in a variety of ways, including land that has the status of:

<b>Land Status</b>	<b>Legal Authority</b>
<b>Freehold Land</b> in fee simple	<b>Freehold Land</b> owned by Council, the <i>Local Government Act 1989</i> applies and Council is the landlord
<b>Roads Reserves</b> set aside in freehold subdivisions and which are usually vested in Council	<b>Roads set aside in freehold subdivisions</b> and vested in Council, the <i>Local Government Act 1989</i> applies and Council is the Landlord
<b>Reserves</b> set aside in freehold subdivisions and which are usually vested in Council	<b>Reserves set aside in freehold subdivisions</b> and vested in Council, the <i>Local Government Act 1989</i> applies and Council is the Landlord
<b>Easements</b> , usually for drainage purposes, created in favour of Council	<b>Easements created in favour of Council</b> , the <i>Local Government Act 1989</i> applies and Council is the Landlord
<b>Government Roads</b> that are municipal roads, which are Crown Land, are public highways and are under the care and management of Council ( <i>King v Bass Coast, Supreme Court, 1999</i> ) provided they are not State Roads	<b>Government Roads</b> that are municipal roads excluding Crown Land strata above and below the land surface, the <i>Local Government Act 1989</i> applies and Council is the Landlord
<b>Crown Land reserved for a public purpose</b> with Council as Committee of Management under the <i>Crown Land (Reserves) Act 1978</i> or previous legislation	<b>Crown Land</b> , the Landlord (Minister, Trustees, Council, and Committee of Management etc.) may grant tenures only under an Act  <b>Crown Land which is unreserved</b> including strata above and below the land

	<p>surface of Government Roads, the <i>Land Act 1958</i> applies and DELWP, as the agent of the Minister, is the Landlord</p> <p><b>Crown Land reserved for a public purpose</b>, the <i>Crown Land (Reserves) Act 1978</i> applies and the Landlord is the:</p> <ul style="list-style-type: none"> <li>a) Committee of Management, in some cases Council, with the approval of the Minister for Energy, Environment and Climate Change; or the</li> <li>b) Minister for Energy, Environment and Climate Change if there is no Committee of Management or if the term of the tenure exceeds 21 years</li> </ul>
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**APPROVING TENURES**

A two stage process will apply to granting tenures involving firstly, approval in principle to grant a tenure and secondly, approval of the terms and conditions of the tenure. In the case of retail leases, the provisions of the *Retail Leases Act 2003* will be applied.

**Tenure Approval in Principle**

Authority to approve tenures depends on the nature of the proposal. Directors of Council departments have been delegated the Chief Executive Officer’s powers to lease land under section 190 the *Local Government Act 1989* where there is no requirement to give public notice under Section 223 and to enter into agreements for voluntary or not-for-profit organisations to use Council land and facilities. Where Section 223 applies, Council retains the authority to grant the tenure.

**Tenure – Terms and Conditions**

To ensure a consistent approach to tenures, standard documentation will be used to outline the terms and conditions, unless otherwise approved by the relevant Director.

If a formal agreement cannot be entered into until certain events have occurred (for example, planning approvals are obtained, or capital works carried out), the Director, with the approval of Council, may offer a prospective tenant a Memorandum of Understanding.

The term of tenures must be in accordance with the *Crown Land (Reserves) Act 1978* or the *Local Government Act 1989*, as the case may be.

**Rental Fee**

Depending on the terms and conditions of the tenancy, a market rental assessment can be commissioned to determine the **Annual Rental Fee** and/or the Annual Rental Fee will be set with regard to the purpose and nature and of the organisation seeking to rent land or property. This will be reviewed at the completion of the individual terms, or at least every 5 years.

Council will determine changes to **Annual Rental Fees** as part of the budget process. These changes will be applied in accordance with the terms of the rental agreement.

**Rates, Taxes and Outgoings**

Generally, tenants are required to reimburse Council or pay the relevant authority directly for all outgoings which may include rates, service charges, Fire Levy, stamp duty and taxes (except land tax if the lease is a retail lease) levied against the facility or the agreement.

In the case of multiple tenancy of a facility, service charges will be apportioned between tenants by Council.

### **Ownership and Maintenance of Existing and New Improvements**

Council is responsible for the external structural integrity of Council properties, except in the case of structural damage caused by the tenant, or the tenant's guests, invitees and contractors.

Tenants are required to maintain the facility in accordance with the requirements under the Property Agreement. Specific maintenance responsibilities will be set out in the Agreement. The level of maintenance responsibility for the tenant will be drawn from the document at Appendix Two.

Council reserves the right to inspect all council assets each year, or more frequently if required.

### **Sub-letting**

Sub-letting and sub-licensing require the written consent of Council as the landlord. In addition, if the tenure is granted by Council as the Committee of Management for a crown land reserve, the consent of the Minister must be obtained before a sub-lease or sub-license is entered into.

### **Assignment and Mortgage**

All assignments or mortgages require the written consent of Council as the landlord. In addition, if the tenure is granted by Council as the Committee of Management for a crown land reserve, the consent of the Minister must be obtained before an assignment or mortgage is entered into.

### **Casual Third Party Hire**

Only tenants who have been given consent by Council to hire out the facility to third parties will be permitted to do so. The proposed use of the premises by third parties must be consistent with the permitted use of the facility by the tenant.

The tenant is responsible to ensure that third parties hold appropriate public liability insurance for each use, and to keep records of third party hirers' insurance and signed hire agreements.

### **Insurance**

#### ***Contents Insurance***

Council does not insure contents owned by a tenant which are housed in leased or licensed premises.

#### ***Building Insurance***

Council insures buildings and related assets which it owns.

Council requires Tenants who construct buildings located on Council Land, or Crown Land managed by Council, to fully insure those buildings.

#### ***Public Liability Insurance***

Tenants are required to maintain public liability insurance for a value determined by Council's Risk Officer, on the advice of Council's insurer, as detailed in the Property Agreement.

Tenants must provide Council with Certificates of Currency for all the required insurances on or before the commencement date of the agreement and annually thereafter.

### **Rebuilding a Structure**

Where an existing structure is substantially damaged (greater than 50% loss), building of a new structure may be permitted within the existing footprint of the structure at the discretion of Council, or other relevant authorities.

The building of the replacement must be completed within the timeframes specified within the permit or permission may be deemed to have lapsed.

The style, form and materials of any building should be consistent with Council requirements.

### **Removal of Structures**

Agreement must be reached with Council prior to any structure being removed. Council will take into account the following circumstances:

- The structure is dilapidated, beyond repair or is a hazard to public safety;
- The structure does not comply with the relevant construction standards;
- The tenant fails to give effect to notices issued by the Council;
- The structure is at risk or may contribute to land or water changes;
- Removal is planned through any Management Plan or Policy for the area

### **End of Tenure**

At the conclusion of any lease or license, a review of the occupancy shall be undertaken to ensure any ongoing occupation would meet the criteria set out in this Policy.

At Council's discretion, tenancies may be renewed at the end of the tenure period for a further term where:

- There have been no breaches of terms or conditions; and
- The structure is maintained to the satisfaction of Council; and
- There are no other circumstances that support the occupancy of the land or property not being renewed.

Council reserves the right to seek Expressions of Interest from the community to ensure the objectives of this Policy would be met by any future occupancy.

## **OCCUPANCY CONDITIONS**

### **General Maintenance**

To provide a consistent and fair framework for the conduct of maintenance on Council's premises, a maintenance schedule will be attached to the Property Agreement and each tenant will be required to maintain the facility in accordance with the maintenance schedule.

### **Risk and Occupational Health and Safety**

Council will require appropriate risk management measures in all Property Agreements which will include requiring tenants to:

- Release and indemnify Council for all claims resulting from any damage, loss, death, or injury, in connection with the premise unless such claims arise out of Council's negligence;
- Comply with emergency evacuation procedures and risk management practices implemented by Council;
- Implement a risk management plan that identifies the risks associated with the tenant's use of the premises and how such risks will be addressed; and
- Only use appropriately qualified tradespeople to undertake repairs.

### **Nuisance**

Council requires that tenants undertake their permitted activities without adversely impacting on the amenity of nearby neighbours. If there is a breach of this requirement, Council reserves the right to terminate the tenancy, or to restrict the use of premises by the tenant through occasional hire arrangements.

## **REGISTER**

Council will publish, when requested, a Register of all Leases and Licenses it has entered into.

## **MANAGEMENT FRAMEWORK**

Council will maintain a Leasing and Licensing Management Framework. Key elements of the management framework include the:

- Leasing and Licensing Policy
- Lease and License Register
- Standard Agreements
- Council Fees and Charges Schedule
- Leasing and Licensing Procedure

## **REFERENCES**

*Crown Land (Reserves) Act 1978*

DELWP (2010) Leasing Policy for Crown Land in Victoria 2010 DELWP

(2012) Crown Land Leasing Guidelines Leasing Legislation *Land Act 1958*

*Local Government (General) Regulations 2015*

*Local Government Act 1989*

*Native Title Act 1993*

*Planning and Environment Act 1987*

*Residential Tenancies Act 1997 Retail*

*Leases Act 2003*

*Traditional Owner Settlement Act 2010*

**APPENDIX ONE**

**Annual Rental Fee for Community Groups:**

	<b>2018-2019</b>	<b>2019-2020</b>	<b>2020-2021</b>	<b>2021 and beyond</b>
<p><b>Community Groups</b></p> <p><b>Category 1:</b> Small to medium sized, not- for-profit groups who provide a community service and are predominately volunteer- based</p>	\$50	\$75	\$104	Annual CPI increase
<p><b>Community Groups</b></p> <p><b>Category 2:</b> Larger community groups who raise funds through the sale of food and/or alcohol; and/or by hiring their facilities to third parties for functions</p>	\$50	\$125	\$260	Annual CPI increase

## APPENDIX TWO

### Maintenance Responsibilities

The following table will guide the development of the Maintenance Schedule to be incorporated in every Property Agreement, as and when they are renewed. The Schedule will be developed in consultation with the Tenant.

**Care and Report** means the Tenant will care for and, so far as is practicable, maintain the asset in its current state, and will advise Council where repair or replacement may be required

**Care, Repair, Replace** means the Tenant has full responsibility for the life cycle of the asset **Contract** means the Tenant is responsible for contracting these services, if and when required **Prepare and Update** means the Tenant has the responsibility for ensuring compliance **Remove** means the responsible party will incorporate this work into its ordinary work schedule

**Repair and Replace** means that Council will consult with the Tenant and, at its sole discretion, will determine if the asset is to be repaired, replaced, or disposed of, and the timing of any such action.

**Report** means that the Tenant will advise Council of a concern by way of Council's Customer Request Management System (CRMS)

**Respond** means that, when advised of a concern, Council will incorporate this work into its work schedule

**Update** means that Council has the responsibility for ensuring that the plan is compliant and fit for purpose, subject to an established schedule.

		Where Council Owns the Building and the Asset Described		Where Council Does Not Own the Asset	
		Council Responsibility	Tenant Responsibility	Council Responsibility	Tenant Responsibility
1.	Air-conditioning and/or heating systems	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
2.	Alarm systems	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
3.	Audio-visual equipment	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
4.	Automatic doors	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
5.	Ceilings, walls and skylights	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
6.	Cooking and refrigeration equipment – Council owned	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
7.	Curtains, drapes and blinds	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
8.	Doors (including cupboard doors) and hardware	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
9.	External shell including external walls	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
10.	Electrical wiring, switchboard, power points, switches and light fittings	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
11.	Essential services – automatic doors; fire alarms; fire blankets; fire extinguishers; lifts (passenger and goods); lighting (emergency and exit); smoke alarms and detectors; fire sprinkler systems	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
12.	Evacuation plans	Update	Nil	Nil	Prepare and Update
13.	External furniture	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
14.	External and security lighting	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
15.	Fences	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
16.	Floor surfaces and coverings	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
17.	Fly screens	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
18.	Food handling areas and storage	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
19.	Gardens including irrigation systems	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
20.	Glass (internal/external) and windows	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
21.	Graffiti removal	Remove	Report	Remove	Report
22.	Gutter cleaning	Respond	Report	Nil	Care, Repair, Replace
23.	Grounds (including landscape features)	Respond	Report	Nil, if for the exclusive use of the Tenant*	Care, Repair, Replace
24.	Hard waste collection	Nil	Remove	Nil	Remove
25.	Intercom systems	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
26.	Keys; locks; electronic access	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
27.	Painted surfaces	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
28.	Paths	Repair and Replace	Care and Report	Nil, if for the exclusive use of the Tenant*	Care, Repair, Replace
29.	Paved areas	Repair and Replace	Care and Report	Nil, if for the exclusive use of the Tenant*	Care, Repair, Replace
30.	Permanent fixtures including hot water services; inbuilt cupboards; bench tops; sinks; boiling hot water units; filtered water units; stoves; kitchen exhausts/canopies; shelving and joinery units; bench tops; tiling; ceiling fans; basins and vanity units	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
31.	Pest control	Respond	Report	Nil	Contract
32.	Playground equipment	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
33.	Plumbing such as blocked sewerage; storm water; and plumbing fixtures such as taps; toilet pans; cisterns; seats; shower heads; traps (including grease); pipes	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
34.	Retaining walls	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
35.	Roller shutters	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
36.	Roofing; roof leaks (including skylights); spouting and down pipes	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
37.	Sanitary bins	Nil	Contract	Nil	Contract
38.	Signage	Repair and Replace	Report	Nil	Care, Repair, Replace
39.	Specialist ground surface and equipment (eg. Playground equipment; synthetic playing surface)	Repair and Replace	Care and Report	Nil, if for the exclusive use of the Tenant*	Care, Repair, Replace
40.	Sports playing surfaces	Repair and Replace	Care and Report	Nil, if for the exclusive use of the Tenant*	Care, Repair, Replace
41.	Stairs (internal/external)	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
42.	Storm damage	Repair and Replace	Care and Report	Nil	Contract
43.	Tag testing and globe replacement	Respond	Report	Nil	Contract
44.	Telecommunications systems (telephones; photocopier; fax)	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
45.	Trees	Repair and Replace	Care and Report	Respond	Care and Report
46.	Water tanks	Repair and Replace	Care and Report	Nil	Care, Repair, Replace
47.	White goods including refrigerator; microwave; washing machine; clothes dryer; dishwasher; food processors	Repair and Replace	Care and Report	Nil	Care, Repair, Replace