



Council Lease and Licensing Policy

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DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

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1. POLICY STATEMENT

Intent

This policy provides the foundation for property leasing and licensing decision making and guidelines for the development of occupancy agreements that define the roles and responsibilities of both Council and tenants. It ensures the best use of Council's properties is achieved and a clear relationship is established between Council and its tenants.

Objectives

- Optimise occupancy of Council owned and managed properties.
- Ensure that Council owned and managed properties are appropriately maintained, developed and occupied having regard to the best interest of the community and Council.
- Ensure that community groups are provided with properties that reasonably meet their needs.
- To maximise sustainable use of Council assets.
- Ensure compliance with related Legislation.

Statement

This policy only applies to properties that Council owns or has delegated authority to manage. This policy applies to staff that prepare leases, licences and occupancy agreements for Council owned or controlled properties. This policy affects community groups and tenants of Council owned or controlled properties. This policy does not apply to casual users of facilities.

Council must have Department of Environment, Land, Water and Planning (DELWP) approval for any lease or licence of Crown Land. When premises become vacant or at the expiry of the term, council officers will consider the ongoing future use of the premises and determine a suitable tenant for the premises with appropriate Council departments. The occupation of Council's premises may be subject to an expression of interest or a tender process and satisfying all statutory or legislative requirements

2. OWNER

The owner of this policy is the Chief Executive Officer. All enquiries regarding this policy should be initially directed to the Chief Information Office.

3. APPLICABILITY

The Policy applies to all Council Officers of the City of Ballarat, regarding land and/or facilities that the City of Ballarat own or has delegated authority to manage.

4. DEFINITIONS

In this policy, the following definitions apply;

DELWP	Means the Department of Environment, Land, Water & Planning and its successors and assigns.
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Lease	A lease is a right granted by the owner of land (landlord) to another person or company (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment. Council will grant a lease where the premises will be occupied exclusively by the one user and Council considers that granting a lease is in the best interests of the community.
Licence	A licence permits a person or incorporated group/club (licensee) to occupy land (or part thereof) on particular conditions. The main feature that distinguishes a licence from a lease is that a licence does not permit exclusive occupancy of the land. Sporting clubs that have seasonal service agreements are not included in this Policy.
Commercial	Any occupier who operates a business or commercial enterprise that is other than a sporting or recreational/community group. This includes Not For Profit organisations that hire or retail goods or services.
Community	Not for profit bodies which provide or promote community, cultural, sporting, recreational or similar activities.
Market Rental Value	The estimated amount for which property should return, as at the relevant date, between a willing Landlord and a willing Tenant in an arm's length transaction, wherein the parties had each acted knowledgeably, prudently and without compulsion, and having regard to the usual terms and conditions for leases of similar property.

5. PROCEDURE AND GUIDANCE NOTES

Occupancy Agreements

A standard agreement has been developed by Council's solicitors for use by Council officers. The standard agreements may vary over time. Lease and licence agreements can be tailored to suit a tenants needs as long as any changes do not compromise the integrity of the document.

Additional clauses may be included in the agreements, when necessary, to meet specific requirements of Council or the proposed tenant, as long as any changes do not compromise the integrity of the document

Where the property is Crown Land and Council is the delegated Committee of Management, DELWP lease/licence template must be used. Council must also obtain approval of the draft lease/licence prior to the lease/licence being offered. Once the lease/licence has been signed by the tenant and Council it must be signed by DELWP as the Minister's delegate.

Council has a preference to enter licence agreements rather than leases. A licence ensures that Council facilities are used to their greatest potential and maximises access to and the use of community facilities by allowing multiple licences for one property.

Term and Further Terms

- a. As per Section 190 of the Local Government Act 1989 the maximum lease period of properties on Council land is 50 years. As per Section 140 of the Crown Land (Reserves) Act 1978, the maximum term of a Crown land lease is 21 years. It is DELWP policy to approve a maximum term of three years for a licence on Crown Land.
- b. The term of the lease or licence will depend on a number factors including, but not limited to:
 - The suitability of the premises;
 - The stability of the tenant;
 - The tenant's requirements;
 - Contributions to capital/ structural works by the tenant;
 - Objections to a lease or licence arising from public advertising.
- c. Generally, community agreements will be for a term of three years. Council may offer a longer term of 5 years where it considers that providing a longer term is in the best interests of the community. Terms longer than ten years may be offered where a tenant substantially invests in fixed assets and fully maintains the property. Ten year leases are subject to Sections 190 and 223 of the Local Government Act 1989.
- d. The term of commercial leases will be assessed on an individual basis, with the standard being 5 years with further option/s of 5 years.
- e. There are 2 categories which will be assessed separately, Boatshed and Airport buildings. These 2 categories are detailed on the following table.
- f. If the lease or licence provides for a further term, then Council may grant it if the tenant complies with the provisions in the lease or licence and also complies with the requirements under the Retail Leases Act 2003 (RLA) if it is a retail lease. Council is not obliged to accept a tenant request to renew a licence or non-retail lease if the tenant fails to exercise the option in accordance with the terms of the licence or lease.

Risk and Occupational Health and Safety

Council will require appropriate risk management measures in all leases and licences 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;
- Maintain adequate public liability insurance;
- Ensure that appropriate documentation and insurance is in place for occasional or hired use of the premises by third parties;
- Require tenants to comply with emergency evacuation procedures and risk management practices implemented by Council;
- Require tenants to 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.

- Only use appropriately qualified tradespeople to undertake repairs.

Tenant Categories & Rental Levels

Tenants are categorised to assist in determining the appropriate rental to be charged.

Category	Description	Characteristics	Examples	Rental and Term
Group One - Commercial	Occupy the premises on a commercial basis.	Commercially operated business.	303 Gillies Street	Market rental value. 5 years + options
Group Two - Not for Profit Volunteer & Community Service Groups	Includes community groups that service the community or are an underprivileged or disadvantaged group. As identified by Council	Volunteer Run & Community Service organisations.	Senior Citizens clubs, Men's Sheds, Kindergartens, Neighborhood & Community Houses	A Council determined fee. 3 years
Group Three - Sporting Clubs	Includes recreational groups that serve the community and whose services are readily available to residents in exchange for a participation fee or membership.	Sporting Clubs	Tennis Clubs, Bowling Clubs, Football & Netball Clubs, etc.	A Council determined fee. 3 years
Boatsheds - Community – Crown Land (Reserves) Act 1978, Section 17B Licence document	A boatshed that is open for water activities and services active participation in recreation	Schools, Sporting clubs	School Boatsheds, Rowing clubs, Canoe Club	A Council determined fee. A term of 3 years offered only

Private – Crown Land (Reserves) Act 1978, Section 17B Licence document	Occupies a boatshed on a private access basis, for owner use only	Private owners who have ‘bought’ a boatshed and use it exclusively for private use it exclusively for private use with no community or public users formally tenanting	Boatshed 1 and 2	Market rental value. A term of 3 years offered only
Commercial	A business is operated out of the premises, to which a commercial profit is gained off public land	Commercially operated business.	Pipers by the Lake, The Boatshed Restaurant	Market rental value. 5 years + options
Airport – Community - Governed by ‘Conditions of Airport’ document	Includes community/common interest groups and whose activities are readily available to residents in exchange for a participation fee or membership.	Common interest community groups	Billiards, Darts, Woodworkers Guild	A Council determined fee. 3 years
Private – Governed by ‘Conditions of Airport’ document	A business is conducted from the building or hangar, where a commercial profit is gained	Business operations	Field Air, Jeday	Market rental value. 5 years + options
Private, Significant Investment – Governed by ‘Conditions of Airport’ document	Where a hangar is built and the intention is to run a business from site and investment to the site in turn economic return	New business opportunities/ private enterprise	Prospective tenants	Market rental value. 5 years + options

Subsidy

Group Three tenants who, at their own expense, contribute to the cost of the construction/ refurbishment of the building, may receive a discount in their building rental. The discount will apply on the basis of the level of the contribution as a proportion of the current property value. A set discount period will apply; depending on the contribution made by the tenant as follows;

- A set discount period of five years will apply to contributions less than 25% of the total property value
- A set discount period of ten years will apply to contributions made between 26-99% of the total property value.
- Tenants who contribute 100% of the total property value and fully maintain the building will not be charged a building rental. They will be charged a ground rental only.

GST

All tenants must pay GST at a level determined by the federal government on rent. GST is payable, in addition to rent calculated using the above formulas unless otherwise stated.

Rental Increases

Rent will be increased annually by Consumer Price Index, based on Melbourne March quarter. The applicable percentage at the time of this policy is 2.3%.

Annual rentals may also be subject to a market review on the exercising of an option term, this will generally apply to Group One Tenants only.

Rental of Property by a Telecommunications Provider

Council will retain the entire rental payable under a lease by a telecommunications provider for use of Council owned or controlled land and building and will use that rental for the benefit of the whole community. The rental will not be shared with individual clubs or organisations that use part of the land upon which the telecommunication lease is situated.

Individual clubs, organisations and tenants must not negotiate directly with any telecommunication provider in relation to use of a Council owned or controlled land or building. All telecommunication structures will provide a community benefit aesthetically (colour, structure type, heritage style) and in function (shelter) being guided by the use of the surrounding land.

6. OCCUPANCY CONDITIONS

General Maintenance

To provide a consistent and fair framework for the conduct of maintenance on Councils premises, maintenance schedules have been developed and each tenant is required to maintain the facility in accordance with the maintenance schedule attached to the lease or licence. The maintenance schedule will specify the responsibilities of Council and the tenant including responsibility for maintaining the structure, the building fixtures and fittings and grounds. The level of maintenance responsibility outlined in the relevant schedule will be determined by the tenant category and any special maintenance requirements by the tenant.

Condition Audits

Tenants may be required to participate in a regular condition inspection and report of the premises as determined by Council. The regularity of the review will depend on the use and type of tenant. Council or Council's agent may also enter the premises at any reasonable time after giving the tenant at minimum of one weeks' notice to conduct condition audits.

7. COMPLIANCE RESPONSIBILITIES

The Executive Manager Property Services and Facility Maintenance will ensure all tenants comply with relevant terms and conditions contained within this policy.

8. CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the Charter of human Rights Act 2007.

9. REFERENCES AND RELATED POLICIES

This Policy is implemented in conjunction with the following Acts and Reference Documents:

- Risk Management Policy
- Asset Management Policy
- Local Government Act 1989
- Local Government (General) Regulations 2004
- Retail Leases Act 2003
- Retail Leases Regulations 2003
- Crown Land (Reserves) Act 1978
- Occupational Health and Safety Act 2004
- Residential Tenancies Act 1997
- Planning and Environment Act 1987
- Health Act 1958
- Children's Services Act 1998
- Approved Master Plans
- Capital Works Program
- Council Plan 2017 - 2021
- Community Engagement Strategy
- Standard Council Lease and Licence Templates
- Standard DELWP Lease and Licence Templates