

▶ LEASES & LICENCES POLICY

POLICY NUMBER: 09 (C)

NAME OF POLICY: LEASES AND LICENCES POLICY

DATE OF NEXT REVIEW: December 2027

DATE APPROVED: 19 December 2023

RESPONSIBLE OFFICER: Manager Facilities and Circular Economy

REFERENCES:

- *Local Government Act 2020*
- *Local Government Act 1989*
- *Crown Lands (Reserves) Act 1978*
- *Retail Leases Act 2003*
- *Planning and Environment Act 1987*
- *Building Act 1993*
- *Department of Energy, Environment & Climate Action (DEECA) Policies and Guidelines*
- *Victorian Government Land Transactions Policy and Guidelines 2016*
- *Council Policy No. 79 (C) – Community Engagement Policy*
- *Approved Masterplans and Strategies that are relevant to Property Management*
- *Asset Plan 2022-2032*
- *S5 – Instrument of Delegation – Council to CEO*
- *S7 – Instrument of Delegation Sub-delegation by CEO*

This Policy has been developed to complement applicable legislation relating to the lease and licence of Council owned and managed land. All lease and licence activities undertaken by Hepburn Shire Council will be in accordance with the applicable legislation and in line with relevant DEECA policies and guidelines as well as Council's policy, strategies and delegations.

INTRODUCTION

The Lease and Licence Policy supports decision making in relation to occupancy arrangements on public land, which includes land or facilities that are Council owned (freehold) or managed (Crown land where Council is the appointed Committee of Management, used or occupied by third parties).

It applies a consistent, equitable and transparent approach when considering, negotiating and finalising all occupancy agreements.

The Lease and Licence Policy provides direction to maximise occupancy and utilisation of Council owned and managed assets including multi-use occupancies to maximise public value and the delivery of services to support our community.

The power for Council to deal with property is granted under the *Local Government Act 2020* [LGA20]. Council may also be appointed as a Committee of Management of Crown land under the *Crown Land (Reserves) Act 1978* [CLRA]. The LGA20 also gives Council the power to appoint Community Asset Committees to manage community assets in the municipal district.

Council owned and managed land is a valuable public asset, and it is essential that it is managed carefully to maximise social, environmental, and economic benefits to the Hepburn Shire community.

SCOPE

This Policy applies to leases and licences for all Council property assets, including land and facilities on Crown and freehold land, occupied by community groups, not-for-profit organisations, private individuals, and commercial entities.

This Policy does not apply to:

- ad-hoc or casual hire of facilities;
- unused roads and easements;
- subdivisions;
- disposal and acquisition of property; or
- where Council is the tenant or licensee.

This Policy applies to all Council Officers, tenants, and licensees regarding land and/or facilities that the Council owns or manages.

POLICY

1. Identifying available facilities & assessment and selection of tenants and licensees

In the management of its property, Council may determine that certain land, buildings, or facilities are available for use through lease or licence occupancy agreements.

Selection of a tenant / licensee may be required if a facility/building, or part of a facility/building, becomes available. There may also be a requirement to assess an existing tenant / licensee whose Agreement is expiring, before offering a new Agreement. Council may also determine, in its absolute discretion, to identify a new purpose or direction for any of its facilities.

The assessment and selection of suitable uses and/or tenants / licensees must be in line with associated Policies and Strategies for the provision of services and other benefits to the community.

Council recognises some tenants / licensees have historical affiliations with assets they currently use. Council acknowledges that this is relevant to the decision-making process.

When facilities become vacant or at the expiry of the term of an existing Agreement, Council Officers will consider the ongoing future use of the facility and determine a suitable use / tenant / occupier(s) for the facility in consultation with appropriate Council departments.

Under certain circumstances Agreements may be allowed to go into overholding. The overholding period will be at CEO's discretion.

The occupation of Council's facilities may be subject to an expression of interest (EOI) or a tender process and/or community engagement. In addition, for Crown land, Council may require DEECA/Ministerial approval.

To support consistent and transparent assessment and selection, the following process will be used:

Step 1: Review / Identify – this may originate from a variety of sources

- a) Agreements due to expire;
- b) available facilities (including the status of the land, which determines useability);
- c) demand/interest (consider use/service, community benefit).

These matters should be referred to Council's Property Officer.

Step 2: Internal Consultation – by Property Team

- a) review with relevant Council Department (or Contract Manager, if applicable);

▶ LEASES & LICENCES POLICY

- b) consult Organisational Leadership Team / Organisational Management Team & Executive Team (may require a review committee for evaluation/recommendation (Property Assessment Committee)).

An assessment will be conducted to determine if Community Engagement and/or Public EOI process is required. Each individual property matter will be assessed against the Hepburn Shire Community Engagement Policy and/or State Legislation/Policy/Guidelines to determine the appropriate action to be taken.

Step 3: Recommendation / Approval

- a) CEO or Director Infrastructure & Delivery confirms proposed recommendation (at the Director's discretion, a briefing paper can be provided to ET for endorsement and / or for CEO approval).

Notwithstanding the process outlined above, the CEO has the right to exercise their judgement and determine if any property matter should be referred to Councillors for a briefing and/or to Council for a decision at any stage of this process.

2. Decision to grant and execute a Lease or Licence

In accordance with the *S5 Instrument of Delegation – Council to CEO* made under s.11 of LGA20, Council has delegated the power to grant a Lease to the CEO up to the value specified in the delegation. The value of the Lease is determined by the total rental income over the life of the Lease, including option periods, if any, OR the market rental value of a property being granted under a Community Use Lease.

Under *S7 Instrument of Delegation Sub-delegation by CEO*, the Director Infrastructure & Delivery has the power to grant and enter into a licence for the occupation or use of Council owned or managed property.

3. Standard Documentation

A suite of standard template documents and reference to relevant policy and strategies will form the basis of all new and renewed Agreements. Terms and conditions will be standardised as much as possible and will only be amended in circumstances where Council (at the discretion of the CEO) considers it is appropriate to do so.

Any organisation entering into an agreement with Council must be able to prove they are competent to do so. An Agreement will only be entered into with a legal entity – an individual, a company or registered partnership or an incorporated body – unincorporated groups, committees etc. will not be considered.

All use of Council owned or managed land will be formalised through binding agreements.

► LEASES & LICENCES POLICY

The status (ownership) of the land must be clearly defined and understood as that will determine what use agreements can be offered. Occupation of Council owned or managed land under this Policy will be formalised through a lease or a licence.

4. Tenure

	Type	Tenure	References
Crown Land	Lease	Up to 21 years	Refer <i>Crown Land (Reserves) Act 1978</i> and Department of Energy, Environment & Climate Action (DEECA) policies
	Licence	3 – 10 years	
Council Land	Lease	6 – 15 years	Refer <i>Local Government Act 2020</i>
	Licence	3 years	

5. Lease and Licence Categories

Each lease or licence application will be assessed against the following categories to determine under which category the lease or licence falls.

Category	Definition
Category A – Community Use	<p>1. Full Community Use The site is used by community organisations i.e. not-for-profit organisations run mostly by volunteers that provide, as a primary purpose, community, cultural, sporting, recreational, social engagement, public health and wellbeing, protection of public land values or similar facilities or activities, and provide significant public benefits.</p> <p>2. Mixed-use The site is used by community use tenants but differs from a Full Community Use lease in that they conduct commercial activities on site but have a low to medium capacity to generate profit.</p>

	<p>3. High profit The site is used by community use tenants but differs from Full Community Use and Mixed-use leases in that the tenant has a high capacity to generate profit/revenue from the use of the leased premises.</p>
Category B – Commercial	Commercial entities carrying out commercial activities for profit; The site is used predominantly for commercial or private purpose. In exchange for exclusive use of public land the tenant may provide some public benefits but there is no discount of market rent.

Community Use Lease or Licence Category

To be considered for a Community Use Lease or Licence, prospective tenants must:

1. be a not-for-profit organisation,
2. be competitively neutral,
3. be managed mostly by volunteers,
4. manage the lease primarily for the community, and
5. meet compulsory public benefit criteria such as: social engagement, service is non-discriminatory, there are no barriers to participation and a demand exists for the service.

Council also needs to know if the tenant undertakes any ancillary revenue raising activities (e.g. commercial or fund-raising) and what these might be, if any.

Council will require prospective Community Use tenants to provide information/documentation, including, but not limited to:

1. confirmation of their Not-for-Profit status,
2. a copy of their Constitution/Rules,
3. Business Plan (that establishes the purpose of the enterprise), and
4. annual profit and loss statements for at least the last 3 years.

The Community Use status of a tenant will be re-assessed periodically as required and at least at the commencement of every lease term or in accordance with Department of Energy, Environment & Climate Action (DEECA) policy.

▶ LEASES & LICENCES POLICY

6. Rent / Fees

The *Victorian Government Land Transactions Policy and Guidelines 2016* (Land Transaction Guidelines) apply to all land transactions by Victorian Government agencies (other than licensing) and stipulate strict rent requirements for government when leasing land. The Land Transaction Guidelines also state that government agencies must not grant a lease at a price which is less than the current market rental value of the land except where the leased area is for a public or community purpose.

The procedures and new rental amounts outlined in this document will be applied to all new leases (including 'renewal' of leases). Council discretion should be used to determine whether a phase in strategy is required.

Annual Rent will be set as per the category under which each lease is determined to fall. The method of determining Licence Fees will be decided by Council Officers from time to time and is subject to any relevant legislation, policies, and strategies.

All Leases and Licences will contain provision for an annual increase (fixed %, CPI and/or market).

The Goods and Services Tax (GST) will be applied to all rental or licence fees before they are invoiced to tenants.

Category	Rent / Fee
Category A – Community Use	<p>1. Full Community Use Administrative rent based on cost recovery with reference to DEECA policy and guidelines, which is currently \$421 (ex GST) per annum.</p> <p>2. Mixed-use Administrative rent plus proportional market rent for area used for a permanent commercial activity.</p> <p>3. High profit Market rent with a possible discount based on public benefits or contribution to asset improvement.</p>
Category B – Commercial	Market Value as determined by a Qualified Valuer or as determined by the market through competitive public EOI process.

The level of subsidy and/or administrative rent compared to market rental will be a key consideration in the assessment of rental or fee by Council and must be approved by the Director Infrastructure & Delivery or CEO. A Market Rent Valuation will be undertaken in order to assess

▶ LEASES & LICENCES POLICY

subsidy levels. A prospective tenant has the responsibility of justifying being granted a rental subsidy from market rent.

A Market Rental Assessment will also be undertaken at the completion of each individual term i.e. on expiry/renewal/start of a Lease or at the commencement of each further (option) term within a Lease.

7. Sub-letting and Transfer of Lease

A Tenant may only sublet or Transfer a Lease with the written consent of the CEO and, for Crown Land, DEECA or its successor. The consideration of these proposals will be subject to terms and conditions specified in the Lease. All associated expenses, including but not limited to Council legal costs, will be borne by the Tenant.

A Licensee cannot issue a sub-licence nor can their Licence be transferred. Any organisation interested in licensing a Council owned or managed facility must contact Council.

Where Council has appointed a Community Asset Committee (CAC) under s.65 of the *Local Government Act 2020* by an Instrument of Delegation, the CAC is not permitted to issue a Lease, Licence or Memorandum of Understanding (MoU) for that property. A Lease or Licence in this circumstance can only be issued by Council.

8. Insurance and Risk Management

Council insures its own assets.

All Tenants and Licensees are required to maintain Public Liability Insurance for minimum \$20M or a value determined by Council as detailed in their Agreement. A copy of the Public Liability Insurance is to be provided to Council on an annual basis as evidence of cover.

Tenants and Licensees should be aware that any possessions they use, leave or store in a Council facility is done so at their own risk and subject of their own Contents Insurance, if any.

Council will also require appropriate risk management measures in all Leases and Licences, which will include but not be limited to:

- Indemnity provisions contained in the Lease or Licence;
- Maintenance of appropriate insurance, security and limitation of access;
- Ensure that appropriate documentation and insurance is in place for occasional or hired use of the premises by third parties (Leases only);
- Implement appropriate Emergency Evacuation procedures and other Essential Services Measures (Leases only);
- Implement a Risk Management Plan that identifies the risks associated with the tenant / licensee's use of the premises and how such risks will be addressed;

- Only use appropriately qualified tradespeople to undertake repairs (Leases only).

9. Maintenance and Asset Management

Use, maintenance and development of community assets will be prioritised for Council owned or managed facilities.

Leases

To provide a consistent and fair framework for the conduct of maintenance on Council premises, maintenance schedules will be developed, and each tenant is required to maintain the facility in accordance with the maintenance schedule attached to the Lease. The maintenance schedule will specify the responsibilities of Council and the tenant including responsibility for maintaining the structure, the building fixtures, fittings and grounds.

Licences

Due to the shared use of the premises and facilities, Council will require Licensees to be respectful of use by others and for them to keep the premises/facility clean, secure and free from rubbish. Any damage or uncleanliness caused by Licensees will be rectified by Council at the Licensee's expense.

No construction works or service connections are to be carried out by a tenant or licensee without the permission of Council as landowner or manager.

Council assets will not be used for any commercial purpose without Council permission.

Tenants or Licensees may be required to participate in a regular condition inspection and report of the premises as determined by Council. Council will periodically undertake condition audits of its facilities.

DEFINITIONS

The following terms are referred to in the policy.

<i>Agreement</i>	means the contract providing rights granted for use or occupancy of a property.
<i>Committee of Management (CoM)</i>	when Council is the committee of management (CoM) as appointed to manage Crown Land under the <i>Crown Land (Reserves) Act 1978</i> .
<i>Contract Managers</i>	means the Council Officer who manages the Agreement as the single point of contact on all matters and monitors compliance.

▶ LEASES & LICENCES POLICY

<i>Crown Land</i>	Lands reserved and/or administered under the <i>Crown Land (Reserves) Act 1978, Land Act 1958 and Forests Act 1958</i>
<i>Council</i>	Hepburn Shire Council
<i>Council Officers</i>	Includes permanent and temporary full-time and part-time council employees, and contractors and consultants while engaged by Council.
<i>Lease</i>	Where exclusive use of a Council owned or managed land or building is granted to a Tenant for a fixed term in exchange for an agreed rental.
<i>Licence</i>	Where non-exclusive use of a Council owned or managed land or building is granted to a user for a fixed term in exchange for an agreed licence fee.
<i>Licensee</i>	An individual or organisation who is granted a Licence.
<i>Property Assessment Committee</i>	Council Managers and Officers representing Property, Contract Managers, Risk, Governance and Asset Management to assess evaluations and recommendations for decision making.
<i>Property Officer</i>	Council Officer responsible to oversee the issuing of leases/licences , including monitoring and managing all legal and contractual obligations and provide advice and guidance to Contract Managers.
<i>Tenant</i>	An individual or organisation who is granted a Lease.

FURTHER INFORMATION AND IMPLEMENTATION

Any enquiries about the Lease and Licence Policy should be directed to Council’s Manager Facilities and Circular Economy.

This policy will be available on the Council website and at Council Hubs in Daylesford, Trentham, Clunes and Creswick.

REVIEW

The Lease and Licence Policy will be reviewed every four years or sooner if required by legislation or organisational changes.

The Council Officer responsible for the review of this policy is the Manager Facilities and Circular Economy.