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### 8.3 LEASING AND LICENSING POLICY

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**Attachments:** 1. Leasing and Licensing Policy

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#### SUMMARY

Mitchell Shire Council owns numerous properties and manages properties on behalf of the Crown. Specific properties are made available to community groups, service providers, sporting bodies, private residents or commercial operators, by way of an occupancy agreement for the property.

Leasing and licensing of property establishes the formal agreement between Council, as the property owner or manager, and the tenants of Council properties. These agreements ensure properties are used for community benefit, that there is appropriate stewardship of the property, and to apportion legal, insurance and risk management responsibilities related to occupation of Council property.

Where Council leases a property, this provides exclusive tenure to the tenant. Leases primarily relate to commercial occupancy agreements. Licenses on the other hand do not provide exclusive tenure. They provide an agreement to utilise a property on specific days and at specific times which are agreed at the outset of the license. There can be multiple licenses to different community groups over a single property. Licenses are generally provided to community groups and sporting clubs.

The proposed Leasing and Licensing Policy provides a framework to manage both community and commercial occupancy agreements. However, it is the community use of facilities (more so than Commercial use) that warrants a greater focus of attention due to the complexity and variety of user groups Council interrelates with.

Examples of community service providers are the State Emergency Service (SES), local sporting clubs, childcare centers or Scouts among many others.

This Policy will provide for fair, equitable and transparent decisions and processes such that the community and tenants have a clear understanding of how property is to be allocated by Council and managed by tenants.

This report does not specify the cost structure for use of Council property. The Lease and License Policy focus is on establishing terms and conditions of use of Council property.

While the Leasing and Licensing policy will include coverage of some properties in receipt of a Funding and Services Agreement (FASA), the occupancy agreement process is separate to any financial support that may subsequently be provided to tenants of Council properties, and therefore funding arrangements are not discussed in this report.

A draft Leasing and Licensing Policy was presented at the February 2019 Ordinary Council meeting. Council resolved to release the draft Property Leasing and Licensing Policy for consultation purposes and to invite feedback for consideration and that officers present a draft policy to Council for adoption at a later meeting incorporating community feedback.

## LEASING AND LICENSING POLICY (CONT.)

The community consultation process included a mail out to all clubs and community groups, advertising in the Council News column in the local papers, publishing on Council's Engaging Mitchell website and providing copies of the policy at all Shire libraries.

There were seven responses provided back to Council. The attached final draft has incorporated suggestions from the public where these have strengthened or made clearer the intent of the policy. The draft Policy is provided with track changes visible so that amendments made since the initial draft that went out to the public can be easily ascertained.

**RECOMMENDATION**

**THAT** Council:

1. Adopt the Leasing and Licensing Policy,
2. Implement training to assist tenants of Council properties in understanding the new requirements of them under the Leasing and Licensing Policy.

**BACKGROUND**

Council does not have an existing Leasing and Licensing Policy to direct officers in their efforts to secure occupancy agreements with tenants of Council property and to ensure occupancy agreements are managed consistently and equitably.

The current practice of issuing and renewing community occupancy agreements is currently performing unsatisfactorily with no policy in place or a subsequent procedure document which would define Council's processes for issuing occupancy agreements.

The draft policy makes clear compliance requirements and defines roles and responsibilities of Council as landlord, and community groups as tenants, to best manage properties based on the intended use/service being delivered from the property, while seeking to maximise the utilisation of properties to accommodate more community services.

**ISSUES AND DISCUSSION**

The draft policy sets out some key objectives, which will translate to better management practices by Council and improved compliance from tenants.

The objectives include;

- to ensure a consistent, equitable and transparent process in relation to leasing and licensing of Council Property.
- to optimise the use of Council Property by providing facilities that encourage higher usage rates, support multi-use and co-location of Tenants and increase community access to activities, programs and services from Council Property.
- to provide guiding principles that will assist in the responsible management, occupation and use of Council Property by Tenants.

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LEASING AND LICENSING POLICY (CONT.)

- to ensure consistency with Council's principles under the Council Plan and related strategies including promoting diversity, appropriate levels of service, multiple use, accessibility, sustainability and inclusion.
- to foster a partnership approach between Council and tenants to facility management and maintenance in which Tenants contribute towards the responsibility and cost of occupying Council Property alongside Council.

The policy identifies several regulatory and compliance requirements common to leasing and licensing of property. These prescribed compliance areas are highlighted in the Policy to make clear the obligations on Council and tenants entering into a property agreement.

Some of these requirements are non-negotiable, defined by Acts or Regulations; others will be negotiable, within reason, established through the process of forming a new lease or license agreement, taking account of the property, services delivered, user groups and their capacity to contribute.

These requirements include;

- Tenants use of the premises to comply with ethical behavior and sound principles of inclusiveness
- Restrictions on maximum terms for leases and licenses
- Negotiation of rental payments based on Tenants capacity to pay and their ability to generate their own income
- Responsibility for property utility services
- Tenants requirements to be, and remain, insured.
- Process for acquiring liquor permits
- Rules relating to sub-letting or changes to the original terms of agreements
- Rules relating to third party hire of premises
- Hours of use of premises
- Reporting to Council against key performance indicators
- Roles and responsibilities of Council and Tenant to provide Emergency, Risk and Occupational Health and Safety
- Roles and responsibilities for property maintenance and capital works
- When and how an occupancy agreement will be terminated
- Processes for dispute resolution

Setting out landlord and tenant requirements through this policy in the first instance, followed by negotiated formal agreements, will establish the consistency of practice required to manage a large number of tenancies across a diverse property portfolio.

## LEASING AND LICENSING POLICY (CONT.)

Established occupancy agreements give Council and Tenant the necessary assurance to maximise the use of buildings and to plan and develop better facilities for local community services for the future.

**CONSULTATION**

At the February Council Meeting, Councilors endorsed a draft Leasing and Licensing Policy and approved its release for community consultation.

In the first instance, an email was sent to all community groups and sporting clubs who use Council or Crown Land property to inform them a consultation process was underway. A copy of the draft policy was also provided to all community groups in this email. Recipients were informed how they could provide feedback on the policy, and the Engaging Mitchell web page link was provided.

The draft policy was advertised in the local newspapers over the course of the consultation period directing people to visit Council's Engaging Mitchell website for a copy of the policy and to provide feedback.

The Engaging Mitchell website dedicated a page to the draft leasing and licensing policy, and it included a questionnaire for individuals or groups to complete, to voice their thoughts on the draft policy.

Lastly, a copy of the draft policy was made available in all Mitchell Shire libraries for the community to access. Questionnaire forms were provided alongside the draft policy to assist people form a response to the document.

The consultation period extended over an eight-week period, closing on 26 April 2019. At the end of this time Council received six written and one verbal response. Of these seven responses, five suggested changes or sought clarification on points of the draft policy.

Where the feedback strengthened and improved the policy, these changes have been incorporated into the tabled draft policy. The attached draft Policy includes track changes where input from the community has led to alterations in the text.

There are three changes that warrant noting in this report. Feedback provided to Council included;

1. That there be an appeal process if there is an irreconcilable problem between the Council's delegate and one or more community groups.

In the draft released to the community, Council's delegate was defined as having powers to vary, review and terminate leases or licenses (as described under Section 4. Definitions). This has now been updated to allow disputing parties to make an appeal through the delegate to be heard by either the Chief Executive Officer or Directors. A final decision made by the Chief Executive Officer or Directors will be final. A definition of "appeal process" has also been added at Section 4.

2. That community groups should not have to provide names and contact details of their members.

In section 6.18 the draft that went to public consultation included the wording that upon request Tenants must provide "An updated list of Tenant members..." The current draft has been reworded. It now requires Tenants to simply provide an "up to date total of

## LEASING AND LICENSING POLICY (CONT.)

active members". There is no requirement to provide names or contact details of members.

3. That Tenants should be able to hire a venue to third party groups without requiring approval from Council on every occasion.

At section 6.15 the initial draft required Tenants to have all third-party hires approved by Council prior to the Tenant hiring a venue. The updated draft has maintained the initial clause but added additional text. The addition to 6.15 will allow for circumstances where Council works closely with a Tenant to ensure adequate procedures are in place for vetting third party hirers before agreeing to pre-approve the Tenant to hire the facility without first seeking Council approval.

Consultation has occurred between Council internal stakeholders, particularly the Assets and Property and the Recreation and Open Space Departments. Consultation will continue regarding appropriate resourcing and roles and responsibilities to deliver on the Policy, defined through a supporting procedures document.

### **FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS**

All use of Council properties must be covered by an occupancy agreement.

Council will enter into commercial occupancy agreements with the full intention of generating a market based rental income. These properties will be let through third party agents of Council to ensure the best commercial rent can be realised.

Income generation is not the driver for community use facilities. Community groups will be provided subsidised rental terms. Council will take into consideration its obligations under the National Competition Policy when determining subsidised rental fees for community Tenants.

Committees of Management with occupancy agreements will still receive financial support through annual FASA's, however the two processes of providing occupancy agreements and providing funding agreements are separate and will remain this way.

As part of this policy Council will conduct annual property inspections of each facility to ensure compliance with occupancy agreements. Property inspections will observe the condition of facilities, note the 'fit for purpose' of the building for the services being provided, determine that adequate maintenance is being carried out, sight current insurance documentation, and ensure that Essential Safety Measures (ESM) and other Occupational Health and Safety (OHS) matters are being appropriately managed.

### **POLICY AND LEGISLATIVE IMPLICATIONS**

The leasing and licensing of property is strictly regulated through several Government Acts including the following;

- *Retail Leases Act 2003 (Vic)*
- *Local Government Act 1989 Vic.*
- *Crown Land (Reserves) Act 1978*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Planning and Environment Act 1987*
- *Heritage Act 1995*
- *Occupational Health and Safety Act 2004*

## LEASING AND LICENSING POLICY (CONT.)

- *Building Act 1993*
- *Health Act 1958*
- *Aboriginal Heritage Act 2006*
- *Liquor Control Reform Act 1998*
- *A New Tax System Act 1999*
- *Child Wellbeing and Safety Act 2005*
- *Gambling Legislation Amendment Act 2018*
- *Transfer of Land Act 1958*
- *Property Law Act 1958*
- *Residential Tenancies Act 1997*
- *Australian Consumer Law and Fair Trading Act 2012*

Council will adhere to the relevant Acts at all times in its dealings with property Tenants and in the process of issuing leasing and licensing agreements.

**RISK IMPLICATIONS**

Risk Ranking is determined using [ROHS201-G1- Corporate Risk Matrix](#). Risk is identified as Low, Medium, High or Very High.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Council properties being used by community groups without formal lease or license arrangements, placing liability on Council in the event of injury or accident.	High	Formalise all occupancy agreements with users of Council property.  Maintain an up to date property register  Undertake checks of properties on an annual basis.  Check Tenant insurance for professional indemnity public liability are up to date (where applicable).	Existing resources
Conflict between user groups around access to Council properties	Medium	Formal processes for issuing leases and licenses are consistent and transparent and comply with Acts  Appropriate communication with user groups regarding processes, statutory requirements, and Council procedures.	Existing resources

## LEASING AND LICENSING POLICY (CONT.)

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
		Issuing multi-user agreements through licensing arrangements to maximise availability of the property and the number of services.	
Too many occupancy agreements are experiencing overholding arrangements which reduces certainty of tenure for our Community Tenants	High	Finalising the policy will provide a framework to re-engage with community and sporting groups to negotiate new occupancy agreements.	Existing Resources/Consultant

## LEASING AND LICENSING POLICY (CONT.)

Council cannot strategically manage its property without a clear picture of what services will operate from the facility into the future.	High	Finalise the Policy. Where users are committed to an occupancy agreement, which usually extend over several years, Council can manage properties to ensure they are suitable for the services operating from them	Existing Resources.
Council insufficiently resourced to manage all property agreements	Medium	Documented procedures with defined roles and responsibilities and focus on Council's property register. Allows for planning to ensure adequate time is provided to prepare new agreements ahead of expiry dates	Existing Resources

**SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)**

Community Tenants occupying Council Property, that provide an approved and recognised educational, welfare, social, cultural, sporting or community service, function or program, are supported by Council to use the allocated properties to expand the service offerings within the Shire, allowing for greater participation in community activities by the wider community.

Council is also committed to reducing its ecological footprint. Tenants must use the Premises in an environmentally responsible manner and must comply with Council's directions in relation to environmental initiatives, including Land Management Planning or Environmental Management Planning.

**CHARTER OF HUMAN RIGHTS IMPLICATIONS**

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

LEASING AND LICENSING POLICY (CONT.)

### **CHILDREN AND YOUNG PEOPLE IMPLICATIONS**

In many instances children and young people are primary beneficiaries of sporting and community services provided from Council properties. The services contribute to the social, physical and mental wellbeing of children.

### **OFFICER DECLARATION OF CONFLICT OF INTEREST**

No officers involved in the preparation of this report have any direct or indirect interest in this matter.

### **CONCLUSION**

Mitchell Shire properties are managed by Council to maximise a return to the community. This can be by way of increased revenue from commercial rental income or through provision of properties for community services.

The first draft Leasing and Licensing Policy is provided to assist Council and Tenants to define roles and responsibilities in the management and use of Council property.

This draft policy is provided for Council endorsement following community consultation.

The policy has been drafted to provide a consistent, equitable, and transparent process that fully complies with Council's responsibilities under legislation.

The policy also seeks to ensure Council properties are being suitably utilised for social benefit, and that we are fostering partnerships with the community to provide certainty around service continuity for the future.

# **MITCHELL SHIRE COUNCIL**

## **Council Meeting Attachment**

### **GOVERNANCE AND CORPORATE PERFORMANCE**

**24 JUNE 2019**

**8.3**

#### **LEASING AND LICENSING POLICY**

**Attachment No: 1**

**Leasing and Licensing Policy**

# Leasing and Licensing Policy

<b>Policy Owner</b>	Manager Finance and Assets
<b>Creation Date</b>	June 2019
<b>Revision Date</b>	June 2023

## **1. INTRODUCTION AND PURPOSE**

Mitchell Shire Council manages a substantial property portfolio for the benefit of the community. Properties include both commercial and community buildings and land.

Council recognises the role that community organisations play in providing an overall social benefit to the Shire through the delivery of a range of educational, cultural, community, recreational, and sporting activities and programs.

Council provides land and/or facilities at a subsidised rental to community groups to assist them with their endeavours and Council may also assist with the maintenance and costs associated with their occupation of Council community facilities.

Council also leases land and buildings to organisations to operate government or commercial services and these leases are established through commercial contracts.

Most properties are directly owned by Council; however, some facilities are located on Crown land and managed by Council on behalf of the Crown, and some facilities are owned by tenants but are situated on Council land.

This Policy considers the way Council leases or licenses its owned and/ or managed land and buildings. It is a general policy that outlines Council's principles and it is intended as a framework that will assist Council in participating in fair, equitable and transparent processes with all types of Tenants who occupy Council owned or managed Property.

## **2. SCOPE**

This policy applies to all Council Property where an occupancy agreement is entered into with a Tenant.

This Policy does not apply to:

- Facilities operated directly by Council
- Seasonal and occasional use of sportsgrounds
- Casual or short-term hire of Council facilities

## **3. POLICY OBJECTIVES**

- To ensure a consistent, equitable and transparent process in relation to leasing and licensing of Council Property.
- To optimise the use of Council Property by providing facilities that encourage higher usage rates, support multi-use and co-location of Tenants and increase community access to activities, programs and services from Council Property.
- To provide guiding principles that will assist in the responsible management, occupation and use of Council Property by Tenants.