

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

Policy Owner	Manager Finance and Assets
Creation Date	June 2019
Revision Date	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.

- 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 facilitate 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 with Council.

Council Officers will undertake a review of this Policy before July 2021 to understand that the above-mentioned objectives are being achieved. A subsequent report to the September 2021 Council Meeting will be provided on the overall success of the Policy in achieving these objectives.

4. DEFINITIONS

"Appeal Process" where tenants can appeal a decision of the delegate with regard to issuing, variation, review or cancellation of an occupancy agreement, and the matter is escalated to a hearing by either the CEO or two Directors. Any decisions of the CEO/Directors will be final.

"CLRA" means the *Crown Land (Reserves) Act 1978 (Vic)* as amended from time to time

"Commercial Tenant" where Council enters into an occupancy agreement with a Tenant for commercial profit or gain. Rents are set by reference to market levels with regular reviews and in general, subsidised rentals will not be considered.

"Community Tenant" where Council enters into an occupancy agreement with a Tenant who is an individual or registered not-for-profit incorporated organisation at a subsidised rental to deliver an approved recreational, sporting, educational, social, cultural, or other community activity, program, service or function to the Mitchell Shire community. Community Tenants will be classified as:

- (1) Committees of Management (COM) Tenants – These incorporated associations receive funding from Council for service provision under a Funding and Service Agreement with Council. Typically, these Tenants and or their users charge a fee for service and generate additional revenue from fees for service and use of the facility e.g. liquor licence, 3rd party hire or other activities.
- (2) Local Community Tenants - These groups are locally based within the Shire. They have limited resources and capacity to generate income and may rely on grants to be sustainable. They are governed by a volunteer committee. [They essentially function as volunteer agencies or self-help groups.](#) They do not engage in any significant form of commercial activity. They may charge a fee for service. These Tenants will receive the greatest discount or rental subsidy.
- (3) Other Not for Profit Community Tenants - Typically, these Tenants charge a fee for service or membership, employ staff and receive funding for service provision. They also may operate in several locations in a local, regional, state or national context. Although they are registered not for profit organisations, they also have capacity to generate additional revenue from funding, fees for

service and use of the facility or other activities. For example: Red Cross, Salvation Army.

“Council” means Mitchell Shire Council

“Council Plan” means the Mitchell Shire Council Plan 2017-2021 which is updated on a yearly, cyclical basis.

“Council Property” means any land, building and improvements owned, managed or controlled by Council including Crown land where Council has been appointed as Committee of Management, Administrator and includes buildings constructed and owned by a Tenant on Council land or Crown Land.

“Crown land” means land owned by the Crown (Victorian State) which may be unalienated or reserved. Reserved Crown land means Crown land set aside from sale for a specific (public) purpose by an Act of Parliament.

“DELWP” means the Department of Environment, Land, Water and Planning and its successors and assigns.

“Delegate” means a member of the Council staff occupying a position to which the powers, duties and functions of the Council to enter into, vary, review and terminate leases or licences have been delegated or sub-delegated.

“Lease” is an agreement where the owner (landlord) grants to another person (tenant) a right to have exclusive possession of that land and/or building (or part thereof) for a fixed duration in return for rental payment.

“Licence” an agreement that permits a person or organisation (licensee) to occupy land and/or building (or part thereof) on particular conditions. A licence does not permit exclusive occupancy of the land and/or building.

“LGA” means the *Local Government Act 1989 (Vic)* as amended from time to time

“Occupancy agreement” means either a lease or licence of Council Property. Council will only grant an occupancy agreement to specific persons, corporations or incorporated association.

“Premises” means leased or licensed Council Property by a Tenant.

“RLA” means the *Retail Leases Act 2003 (Vic)* as amended from time to time.

“Seasonal Licence” means a licence agreement according to the defined terms and conditions by which a club or organisation is granted occupation by Council or a COM Tenant for either the summer or winter season. The licence does not permit exclusive occupancy of the land and does not create any interest in the land.

“Tenant” means an authorised person, corporation or an incorporated body (including a CoM) that has entered into or is proposing to enter into an occupancy agreement with Council for use and occupation of Council Property.

5. PROCEDURES

Comprehensive Leasing Procedures have been developed in relation to leasing and licencing Council Property and these need to be read when exercising this policy.

The Manager Finance and Assets will be responsible for the implementation, compliance, review and ongoing management of this Policy. The Leasing Procedures will be administered by the Assets and Property Team.

6. POLICY

6.1 Statutory Requirements

Council is required to abide by Acts and Regulations in the management of community facilities vested in Council and as such the statutory responsibilities are given highest order of priority when providing occupancy agreements to tenants. These Acts have been clearly highlighted in this Policy to ensure full and ongoing compliance by Council when issuing occupancy agreements for Council properties.

6.1.1 Local Government Act 1989

The *Local Government Act* (LGA) allows Council to grant leases of not more than 50 years and sets out the circumstances where Council must first give public notice of the lease proposal and consider all submissions received in response.

A public notice is required where the lease:

- is over one year and the rent for any period of the lease is \$50,000 (excluding GST) or more a year, or
- is over one year and the current market rental value of the land is \$50,000 (excluding GST) or more a year, or
- is for 10 years or more (including options), or
- is a building or improving lease (section 190)

Section 223 of the LGA provides for the public notice and submission process that must be followed by Council prior to deciding to grant a lease. Council will place a public notice in the local newspaper and on Council's website of its intention to grant a lease of Council Property if the lease meets the requirements of section 190. Council will consider all written submissions received and hear any persons wishing to speak to his or her submission at a Hearing Committee before making a final decision at its Ordinary Meeting.

The LGA also requires Council to ensure that a lease register is available for inspection by the public.

6.1.2 Crown land

The *Crown Land (Reserves) Act* (CLRA) enables reservation of land for a range of public purposes, stipulates how reserved Crown land must be dealt with and prescribes some governance arrangements for Council, as appointed Committee of Management, to manage reserved Crown land.

Where Council acts as Committee of Management over Crown land, Council must seek the prescribed consents in accordance with the provisions of the CLRA and the proposed use of the Premises must not be detrimental to the Crown Land's reservation.

Council must ensure that it complies with DELWP's Crown Land Leasing Policy and Guidelines and occupancy agreements must be in the prescribed form as provided by DELWP.

6.1.3 Retail Leases Act

The *Retail Leases Act* (RLA) is the main governing legislation for retail leasing in Victoria. Leases of retail premises on Council Property must comply with the requirements of the RLA, unless the Premises are exempt under a Ministerial Exemption. Retail leases are generally managed by a managing agent (licensed real estate agent).

6.1.4 Child Wellbeing and Safety Act 2005

All Victorian organisations that provide services or facilities to children are required by law to comply with the Child Safe Standards.

Council Tenants providing services and facilities to children will be required to comply with Child Safe Standards by adopting and incorporating the compliances resources supplied by the Victorian State Government Dept. Health and Human Services, or Vicsport, into their organisational structures.

6.2 Multi-Use

Council will endeavour to make Council Property available for use by the wider community. This is done by encouraging multi-use and co-location of its community facilities where feasible. To ensure that Council Property is used to its greatest potential and to optimise access to, and the use of community facilities, Council will generally not lease Council Property to a single Community Tenant for exclusive use and will give preference to a licence rather than a lease. Exceptions may apply where Council considers that providing exclusive rights to a Community Tenant is in the best interests of the community, for instance where the Tenant has made a significant financial contribution and an exclusive lease arrangement can demonstrate benefit for the long-term management of the asset.

6.3 Occupancy Agreements

All Tenants of Council Property must, as a condition of that occupancy, enter into a formal, legally binding occupancy agreement with Council.

All commercial leases will be prepared and managed in accordance with the specific requirements of the RLA where that Act applies. RLA leases are prepared by the managing agent or Council's legal counsel.

Tenants must obtain Council's prior written consent before applying, or allowing a user group to apply, for a planning or building permit and all planning requirements, including liquor licence requirements, will become conditions of the occupancy agreement.

All occupancy agreements must contain an obligation on the Tenant to release and indemnify Council from all claims resulting from damage, loss, or injury in connection with their use of the Premises. Tenants must hold and maintain current insurances as required by the Lease or Licence

If a Tenant continues in occupation of the Premises after the end of the term of the occupancy agreement, without objection from Council, the Tenant will occupy the Premises as a monthly tenancy.

Unless prescribed by legislation, or otherwise agreed, Council will charge Commercial Tenants all reasonable legal costs associated with the preparation and negotiation of an occupancy agreement, including lease or licence transfer, variation or sub-lease/licence. Commercial tenants will be required to pay municipal rates and other outgoings associated with the property.

6.4 Delegation

The Directors and Managers are Council's delegated Officers able to enter into, vary, review and terminate any occupancy agreement within their area of accountability in consultation with tenants and the Manager Finance and Assets.

6.5 Commercial Leases

Council may consider offering an occupancy agreement to a Commercial Tenant of Council Property if:

- (a) the Council Property is considered suitable to lease;
- (b) the Premises is not required or used for Council or community purposes;
- (c) Council can derive a commercial return from its lease;
- (d) It is in the best interests of the community

Unless otherwise agreed by Council or the Delegate, the occupation of Council Property by a Commercial Tenant will be subject to a competitive selection process. A competitive process improves probity and addresses any conflict of interest in Council's decision making to lease the property.

For existing Commercial leases signed prior to this policy, the terms and conditions of the existing agreement will remain in place until such time the lease ends. Any new lease agreements with tenants will be made in accordance with this policy.

6.6 Community Leases and Licences

Council recognises that many existing Community Tenants have strong historical, social, emotional and financial ties to the community facilities they use and occupy. In many cases, Community Tenants have contributed cash or in-kind contributions to the maintenance or improvements of Council Property and Council will take this into account in considering tenure renewals of such Council Property. Notwithstanding this, Council is not obliged to renew or offer a new occupancy agreement to a Community Tenant.

At the end of the term of a Community Tenant's occupancy agreement, or where a community Tenant requests a further term, or where a new Community Tenant requests an occupancy agreement of Council Property, Council officers will carry out a property review to assist with deciding whether to offer a new occupancy agreement to the existing Tenant or a new Community Tenant.

Where it is determined that there may be competing interests for a community Council Property, an expression of interest process may be conducted to guide the issuance or renewal of that occupancy agreement to a Community Tenant.

6.7 Community Tenant's Use of Premises

Community Tenants must:

- encourage, support, facilitate and manage community programs, services and activities provided from the Premises
- encourage a diverse range of groups and individuals in the community to access the Premises
- act ethically in the provision of the activities, services and/or programs it delivers from the Premises

During the term of a lease or license Community Tenants must;

- use the Premises in accordance with their lease or licence agreement
- maintain all permits, registrations and accreditations required for the provision of its activities, services and/or programs and those of any user group
- meet with Council to discuss and review its use of the Premises
- comply with all relevant legislation;
- undertake agreed maintenance and pay all fees and costs as required under the agreement; and
- maintain current public liability and other insurance as required.

Council will;

- work with community groups to build their capacity to manage community programs, services and activities in the premises.
- assist with promotion of community events to specific target audiences within the Shire
- assist community groups operating from Council premises to access State and Federal funding.
- monitor compliance with the terms and conditions of the occupancy agreement
- inspect properties on an annual basis for condition and safety
- perform maintenance, and pay fees and costs where this forms part of the occupancy agreement
- build sound relationships with Tenants.

6.8 Term

The LGA and CLRA place restrictions on the maximum length of leases and licences. The RLA also imposes a minimum term for retail leases.

The length of each occupancy agreement will be negotiated taking into account the particular circumstances of the Council Property, the Tenant's proposed use and how this relates to the Council Plan, proposed capital investment, co-location and multi-use, long term planning and statutory restrictions.

Council acknowledges that long term occupancy can impede the optimum use of Council Property for the betterment of the community. Generally, community occupancy agreements

will be for a term of up to 3 years, however, alternative terms may be considered on a case by case basis.

6.9 Rent

Community Tenants occupying Council Property that provide an approved and recognised educational, welfare, social, cultural, sporting or community service, function or program will pay a subsidised rental.

The subsidised rental will be determined by Council or their Delegate following negotiation with prospective or existing tenants. Council will take into consideration its obligations under the National Competition Policy when determining subsidised rental fees for community Tenants.

Rent will be payable in advance (unless otherwise negotiated with Council to pay in arrears) either annually, quarterly or monthly and must be within 30 days of receipt of invoice. Rent may be increased annually by either the consumer price index or as a fixed percentage, as determined by Council or the Delegate and agreed with the Tenant as part of the Occupancy Agreement.

6.10 Additional Income

Often Community Tenants and their users raise funds for their service, activity or program which in turn provides benefits to them and the broader Shire community and supports the underpinning principles of the Council Plan.

Council supports income generating activities by Community Tenants and their users, and also considers it appropriate that these Tenants engage in activities which generate income to support their core service or program rather than rely on Council grants, funding or other forms of funds, grants or subsidies. Notwithstanding this, Council does not support, and community Tenants must not use, or allow to be used, Council Property for commercial means of income without prior written permission from Council.

Except for current arrangements in place at the time of this Policy, Council will retain the entire rental it receives from a commercial lease for use of Council Property.

Tenants must not negotiate directly with any commercial operator or telecommunication provider (or similar service provider) in relation to the use of Council Property or other Council owned or controlled land or building.

6.11 Rates, Taxes and Outgoings

Tenants under a lease rather than a license agreement will be required to pay Council rates, waste service charges, water rates, levies and other statutory outgoings applicable to the Premises. Tenant must pay for their usage for electricity, gas, water, internet and telecommunications.

Contributions for rates, taxes and outgoings by Tenants under a license agreement will be subject to a Tenants allocation of use of the property and its capacity to pay and will be established prior to finalisation of any license agreement.

[Where tenants receive a Council kerbside collection services, they are required to pay the associated waste service charge in accordance with Council's Kerbside Collection Policy.](#)

6.12 Insurance and Public Liability

All Tenants must take out public liability insurance for a minimum cover of \$20 million which extends to volunteers engaging in duties directly related to the Tenant's activities. Tenants must provide a copy of their certificate of currency to Council initially and upon renewal annually.

Council will not insure the contents of any Council Property leased or licenced to a tenant. Tenants, and their users, should take out contents insurance to adequately cover their possessions.

Council will be responsible for insurance of the actual buildings.

6.13 Liquor and Gaming

Council will not allow a Tenant or user group to apply for a gaming licence.

Tenants must obtain Council's prior written consent (as landlord) to allow them to apply to the Department of Justice and/or Planning authority for any form of liquor licence. Council in its capacity as landlord will consider applications for a liquor licence at its discretion and may refuse to give its consent (as landlord) or provide its consent subject to conditions in its absolute discretion.

If a liquor licence is agreed to, the tenant rental fee may increase.

6.14 Subletting and Transfer of Occupancy Agreement

Tenants must obtain Council's prior written consent for any change or additional use of the Premises. Council reserves the right to review the rent or any other occupancy agreement provision if it provides such consent.

Tenants are not permitted to sub-lease the Premises without Council's prior written consent (which may be given conditionally) and subject to approved terms and conditions. If consent is granted, Council may review and adjust the terms of the head lease (including rental).

Community Tenants are not permitted to assign (transfer) their occupancy agreement.

6.15 Third Party Hire of Premises

Council may require Tenants to make the Premises available for casual hire to third parties where appropriate and where this does not interfere with the primary purpose of the Premises or adversely affect the amenity of other occupiers of the Council Property (if applicable) and/or nearby neighbours.

Tenants must obtain Council's consent (which may be given conditionally) prior to the Tenant hiring out the Premises for casual use or for seasonal allocations.

Council can provide pre-approval on a case by case basis to Tenants for third party hire where there are agreed procedures in place for adequate vetting of third party hirers, and there are processes for addressing any non-compliance of hire agreements by third parties.

The hirer must also enter into a casual hire use agreement or a Seasonal Licence on terms, conditions and hire rates agreed by the Tenant prior to the hirer occupying the Premises. A

breach of the hire agreement or Seasonal Licence by the Tenant or the hirer will be deemed to be a breach of the occupancy agreement by the Tenant.

Tenants must retain copies of all seasonal, regular and casual hire agreements for a period of no less than seven years.

6.16 Council Use of Premises

Community Tenants with a license agreement must allow the Premises to be used by Council at no cost. Such use will be subject to Council giving the Community Tenant at least four weeks prior written notice of its need to use the Premises, provided that such use does not unreasonably interfere with the Tenant's use of the Premises.

6.17 Hours of Use

The hours of use may be prescribed for the Premises and will generally coincide with the type of occupancy agreement that is granted to the Tenant. Tenants must comply with all legislation, guidelines, regulations, permits and directions in relation to its use of the Premises.

For Tenants who occupy Council Property under a license, the Tenant will be permitted to occupy the Premises only on agreed days and times, which allows Council to use the Premises outside of the agreed days and times and thereby maximises the use of the facility.

6.18 Reporting

Community Tenants must provide Council, upon request:

- a copy of its most recent annual report;
- an up to date total number of active members
- contact details of the executive members provided annually or upon any change to the executive membership. ;
- copies of occupational health and safety inspections;
- details of maintenance and capital works carried out on the Premises, noting that prior approval of any capital works from Council is required;
- current certificates of insurance;
- any further information reasonably required by Council.

6.19 Environmental Sustainability

Council is committed to protecting the environment and will require Tenants to use the Premises in an environmentally responsible manner, including appropriate management of waste, energy and water resources, and in the use, storage and disposal of chemicals. Tenants must comply with Council's directions in relation to environmental initiatives on Council Property, including any Land Management Plan or Environmental Management Plan.

6.20 Emergency, Risk and Occupational Health and Safety

Tenants must have in place compliant emergency evacuation plans and procedures associated with the Premises and must ensure that their employees and/or volunteers participate, as requested, in emergency training and drills.

Tenants must also provide and maintain a safe working environment and must ensure that the systems, procedures and practices necessary for the protection of the health and safety of all persons in or near the Premises is carried out and implemented.