



Community Leasing and Licencing Policy

Policy Owner	Manager Finance and Assets
Creation Date	10/09/2019
Revision Date	09/09/2023

Please check Council's Intranet to ensure this is the latest Revision

1. INTRODUCTION AND PURPOSE

Council recognises the role that community organisations play in providing a social benefit to the Shire through the delivery of a range of educational, cultural, community, recreational, and sporting activities and programs. Council may provide land and/or building facilities (properties) at a subsidised rental to community groups to assist them with these endeavours.

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.

Community Tenants are diverse with varying access to resources and support. Because of this Council will constructively engage with Tenants (and prospective Tenants) to agree the terms of each occupancy agreement in good faith, noting each Tenant's unique circumstances. All discussions with Tenants will occur within the framework and principles of this policy, which includes working in partnership with Tenants to provide fair, equitable and transparent outcomes.

2. SCOPE

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

This Policy does not apply to:

- Commercial Tenants
- Facilities operated directly by Council
- Casual or short-term hire of Council facilities
- Funding agreements between Council and Tenants

3. POLICY OBJECTIVES

The policy objectives are;

- 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 based on each Tenants unique circumstances and

capacity to contribute to the facility, including recognition of Tenant contributions to new and upgrading of buildings and facilities.

4. Review

This policy is to be reviewed every four years unless required earlier.

5. DEFINITIONS

“**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.

“**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 Tenants are incorporated associations existing to support activation of community facilities.
- (2) Local Community Tenants – These Tenants are governed by volunteer committees and essentially function as volunteer agencies or self-help groups to provide services to community.
- (3) Not for Profit Community Tenants – These Tenants are organisations that provide services to the community and do not operate to make a profit for its members.

“**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 by the Minister under the CLRA, and includes buildings and improvements constructed and owned by a Tenant on Council land or Crown land.

“**Council Facilities**” means a Council owned built structure that is used as part of service delivery. “Facilities” is interchangeable with “Property”, “infrastructure” and “Buildings”.

“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 cancel 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.

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

“Process of Appeal” where Tenants can appeal a decision of the Delegate with regard to the issuing, variation, review or cancellation of an occupancy agreement, and the matter is escalated to a hearing by either the CEO or two Directors or to Council as required.

“Property Review” means an inspection of the property to assess its condition and check compliance with the occupancy agreement terms.

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

“Seasonal Licence” means a licence agreement by which a club or organisation is granted occupation of a facility by Council or a COM Tenant for either the summer or winter season.

“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.

6. PROCEDURES

Comprehensive Procedures have been developed in relation to Community leasing and licencing of 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 and Licencing Procedures will be administered by the Assets and Property Team.

7. POLICY

7.1 Statutory Requirements

Council is required to abide by Acts and Regulations in the management of community facilities vested in Council and as such statutory responsibilities are given the highest order of priority when providing occupancy agreements to Tenants. Key statutory requirements are listed below.

- *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*
- *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*

7.2 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 this is feasible. 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 may be the most appropriate management model for the facility.

7.3 Delegation

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

7.4 Offer of Community Tenant Occupancy Agreement

Council will make known any vacant properties available for community use through a public notice process and provide opportunities for community groups to inspect the property and make applications to lease or licence the facility.

Where an existing Community Tenant requests a further term at the end of their current occupancy agreement, Council officers will carry out a service performance and property review to assist the decision whether or not to offer a new occupancy agreement where the LGA and CLRA maximum terms have not been reached.

Where a Tenant's occupancy agreement term is coming to an end, and there is additional interest in the property from other community groups, Council will undertake a rigorous, fair and transparent process before it does one of the following, all subject to LGA and CLRA requirements;

- reissues a lease or licence to the existing Tenant,
- determine the facility can be multi-use with more than one tenant
- conduct an Expression of Interest process to guide the issuance of an occupancy agreement

Council will take account of the suitability of a property to meet Community Tenant's needs as part of any consideration of a new occupancy agreement.

Council will constructively engage with Tenants (and prospective Tenants) to agree the terms and conditions of the occupancy agreement.

7.5 Use of Premises by Community Tenants

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 licence 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
- engage with Council prior to obtaining any building or planning permits or undertaking any changes to the structure or fit out of the premises;
- 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 that were agreed in the signing of the licence agreement;
- maintain current public liability and other insurance as required; and
- allow Council or its authorised agents/contractors to enter the premises to inspect the building, undertake works, audit its Essential Safety Measures, and compliance with applicable Child Safety Standards.

Council will;

- work in partnership with Tenants to build their capacity to manage community programs, services and activities within the premises.
- assist with promotion of community events to specific target audiences within the Shire
- assist Tenants operating from Council premises to access State and Federal funding where appropriate.
- monitor compliance with the terms and conditions of the licence
- inspect properties on a periodic 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.

7.6 Term

The LGA and CLRA place restrictions on the maximum length of leases and licences.

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.

The length of each occupancy agreement will be agreed between Council and Tenant 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 by Council or Tenant, co-location and multi-use, long term planning and statutory restrictions.

7.7 Rent

Community Tenants occupying Council Property that provide an approved and recognised educational, 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 agreement with prospective or existing Tenants and in line with this policy.

Where rent is payable it will be payable either annually, quarterly or monthly and payable 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 lease or licence engagement process.

7.8 Additional Income

Council supports income generating activities by Tenants and their users to support their services and programs. However, community Tenants must not use, or allow to be used, Council Property for commercial means of income, or negotiate commercial arrangements related to the property, without Council approval and oversight. All commercial enquiries should be directed to Council.

7.9 Rates, Taxes and Outgoings

Tenants must pay for their usage of utilities, telecommunications, waste and other outgoings with consideration given to a Tenant's allocation of use of the property as documented in the occupancy agreement.

7.10 Insurance and Public Liability

All Tenants must take out public liability insurance for a minimum cover of \$20 million and have insurance cover for 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. Tenants are responsible for contents insurance to cover their own possessions. Council will be responsible for insurance of fixed infrastructure on Council and Crown Land.

7.11 Transfer of Occupancy Agreement

Community Tenants are not permitted to assign (transfer) their occupancy agreement. Tenants must obtain Council's prior written consent for any additional use of the Premises by the Tenant or another community group. Council reserves the right to review the occupancy agreement provisions where it does provide such consent.

7.12 Third Party Hire of Premises

Council may require a Premises be 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 Tenants of the Council Property 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, where this is not already covered under the terms of the occupancy agreement with a Community Tenant.

The hirer must 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.

7.13 Council Use of Premises

Council may use a leased or licenced Council facilities at no cost where this is a condition of the occupancy agreement and subject to Council giving a Community Tenant(s) one weeks notice of its need to use the Premises, and where such use does not unreasonably interfere with the Tenant's use of the Premises.

7.14 Hours of Use

The occupancy agreement will define the permitted days and hours of use of a facility.

7.15 Reporting

Community Tenants must provide Council, upon request:

- a copy of its most recent annual report, including annual financial statements;
- an up to date register of active members or participants including name, age, and gender;
- 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, structural or fit-out works carried out on the Premises, noting that prior permission for structural and fit-out works from Council is required;
- current certificates of insurance;
- collect and provide records reasonably required by Council to enable it to assess utilisation, accessibility, and suitability of the facility for the services offered.

7.16 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 Council Land Management Plan or Environmental Management Plans over the property.

7.17 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.

Agreements may contain a clause which designates the Premises for use as an Emergency Relief Centre or Emergency Recovery Centre in the case of an emergency, such as a natural disaster. In such an event the Tenant may be unable to access the property until the premise is no longer required for emergency purposes.

7.18 Repairs, Maintenance and Works

All Community Tenants will be required to carry out a level of maintenance of their facility as agreed between Tenant and Council in the occupancy agreement. Tenants will receive a maintenance schedule which will set out maintenance responsibilities of both Council and the Tenant. Council will conduct an inspection of Council Property prior to the commencement date of the occupancy agreement to record the condition of the Premises. Inspections will be undertaken periodically to review property condition.

7.19 Relocation Notice

Council will give twelve (12) months written notice to a Community Tenant requiring the Community Tenant to surrender its occupancy agreement if Council wants to redevelop the land or carry out renovations/alterations on the land on which the Premises is situated which Council cannot adequately carry out due to the Community Tenant's occupation of the Premises. In this event Council will work with the community Tenant to reach alternate arrangements where necessary.

7.20 End of Agreement Obligations

At the end of the occupancy agreement, the Tenant must, at its own cost, unless Council or the Delegate determines otherwise:

- ensure the Premises are clean and in good repair and condition, having regard to the condition report;
- remove all its fixtures, fittings, chattels, stock, plant and equipment from the Premises;
- ensure the Premises are safe having all utilities disconnected by qualified tradespeople.

7.21 Cancellation of Occupancy Agreement

As a last resort Council may cancel occupancy or an occupancy agreement:

- if a Tenant declines to enter into a formal occupancy agreement of Council Property within 6 months of Council requiring the Tenant to sign the occupancy agreement (unless there are reasonable unresolved matters regarding the occupancy agreement);
- where there is evidence of unruly behaviour at the Premises by the Tenant or customers of the Tenant where it is considered reasonable the Tenant could manage the behaviour but does not;
- where an emergency may compromise the safety of a premises or if there is an ongoing risk to any persons in or about the Premises;
- if a Tenant fails to perform or observe any of the Tenant covenants under the occupancy agreement (in the event of a serious breach), or after receiving written notice from Council regarding a breach of covenants and does not take reasonable steps to comply with those covenants thereafter;
- if a Tenant fails to provide and maintain current appropriate public liability cover or other form of insurance as specified in the agreement;
- if a Tenant changes its operating status without Council consent.

7.22 Dispute Resolution

If any disputes or differences arise as to the interpretation of this Policy, the allocation of an occupancy agreement, or any other matter pertaining to the use of Council Property, a Tenant can appeal in writing to the Delegate. The Delegate will work with any disputing parties to resolve the matter. The Delegate is authorised to make a decision, however if disputing parties fail to reach an agreed outcome with the Delegate then an appeal can be made for the issue to be heard and decided upon by either the CEO or at least two Directors. The delegate will present a report to the CEO/Directors outlining the dispute and options to resolve the matter. Disputing parties will be able to present their case at a meeting with the CEO/Directors. Prior to a decision the CEO/Directors will confirm they are satisfied they have all the available evidence available to them to make a decision. The decision made by the CEO/Directors will be provided to parties in writing. Where a matter is particularly sensitive, or political in nature it can be heard by the Council for a decision, and will be final and conclusive.

8. RELATED DOCUMENTS

Council Policies & Plans:

- Council Plan 2017-2021
- Mitchell 2020 Community Plan
- Asset Management Policy
- Council's Annual Budget
- Child Safe Standards
- Kerbside Collection Policy 2016

Other relevant documents:

- Leasing and Licensing Procedures
- Crown Land Leasing Policy 2018
- Crown Land Leasing Guidelines 2018
- Committee of Management Responsibilities and Good Practice Guidelines (DELWP)