

Lease and Licence Policy	
Date adopted	26 August 2024
Adopted by	Council
Review due	26 August 2028
Responsible officer	Property Officer and/or Lawyer
Records reference	3347695

1. Purpose

The purpose of this Policy is to guide and support decision making by Council, its officers and contractors in relation to occupancy arrangements on Council Land in accordance with its obligations under the Act. This Policy provides the detailed approach for the leasing and licensing of Council land for community and commercial use to obtain the best outcome for the council.

Through implementation of this Policy, Council will ensure sound financial management and effective administration of Council property.

As a public authority, Council has and will continue to consider obligations under the Charter of Human Rights.

2. Application And Scope

This Policy applies to all Commercial and Community leases and licenses in relation to Council owned land and buildings, and Crown land where Council acts as the Committee of Management.

The principles of this policy will be applied to:

- New leases and licences; and
- To those leases and licences which have expired and where renewal is pending.
- The policy should be read in conjunction with the:
 - Local Government Act 2020 (the Act).
 - Melton City Council policies (various).
 - Committee of Management responsibilities under the *Crown Land (Reserves) Act 1978* (Vic).
- Council will only grant a lease or licence to a person or entity which meets the definition of a Tenant as defined in Assessment Criteria in section 6 of this Policy.
- A Lease or Licence can only be made with a legal entity. This Policy does not apply to leases for occasional hire arrangements, seasonal tenancies on Council's reserves and community buildings.

This Policy does not apply to:

- leasing of public, social or subsidised housing properties owned or managed by Council
- agreements to use property where Council is the tenant or licensee
- hire agreements
- licences for sporting facilities;
- licences for kindergartens

3. General Provisions

3.1. Group One – tenants occupy the Council premises on a commercial basis

An organisation commercial in nature or operated for the primary purpose of returning a commercial benefit, monetary gain or profit. Generally, a commercial organisation:

- levies fees/charges on participants aimed at recovering the operating costs and generating a profit.
- has no specific requirements to act on behalf of, or in the interests of the activity's participants.
- has primary objectives relating to generating a fee for service.

Examples of these Tenants are commercial organisations which have a commercial (business oriented) profit objective and Government organisations.

3.2. Group Two – community clubs and organisations

Tenants include recreational or community groups that service the community and are readily available to the City of Melton residents. These Tenants include member based fee-paying clubs, groups that charge for services and organisations that have the capacity to generate revenue from use of the Council Property or other activities consistent with the organisational purpose (but do not operate to make a commercial profit).

Examples include Sporting Clubs, Non- Government Organisations and Service Providers

3.3. Group Three – Not for Profit Community Groups

Tenants include incorporated community groups that service the community and are not categorised as a Group One or Group Two Tenant. These Tenants do not have the capacity to generate a significant amount of income and operate on a not for profit basis.

Examples may include Toy Libraries, Scout Groups and Historical Societies.

Where a proposed Tenant may be classified in more than one Group, the Property Officer and/or Senior Lawyer will determine the appropriate classification.

In considering the leasing or licensing of Council owned or managed property, the following matters must be considered:

- Ensure that a transparent and consistent process is undertaken when negotiating and entering into leases or licences.
- Establish clear assessment criteria to determine the suitability of the Tenant.
- Ensure compliance with the Local Government Act 2020.
- Ensure sound financial management and adequacy of records management processes to ensure the completeness of the Council Lease and Licence register.
- Ensure all Tenants pay fair and reasonable rentals based on clear eligibility criteria and calculation methodologies, taking into consideration the type of tenant (as per tenant definition above)
- Establish an effective reporting mechanism for periodic leasing and licensing requirements and obligations including but not limited to insurance, financial statements, renewals or extensions, utility use, inspection processes such as Annual Essential Safety Measures Report (AESMR) and building management.
- Ensure that Council property is maintained, upgraded and occupied responsibly, having regard to Environmentally Sustainable Design and Development principles and the best outcome and interests of the community.
- Ensure that Council's Properties are leased or licensed in a way that is consistent with the objectives of the Council Plan and maximises the use of community assets in a responsible way.
- Protect Council's property and manage risk exposure.

3.4. Avoiding informal arrangements

Council will allow occupancy only pursuant to a formal lease or licence agreement.

3.5. The decision to use a lease or licence

Tenant Liaison is to engage with the Lawyer and/or Property Officer within the Legal, Governance and Risk Department early, to understand and determined the suitability of a lease or license, and any specific statutory obligations.

3.6. Determining rent and other costs

Fees and rent should be determined by referencing the Category Assessment table (attachment 1) and with consultation with the Tenant Liaison, the Property Officer and/or Lawyer and relevant Director or CEO.

Rent applying to leases for commercial organisations or for commercial purposes will be set by reference to a market assessment unless otherwise agreed upon at the absolute discretion of Council. Rent may be determined with consideration to the following factors:

- Equitable access to community services facilities,
- Community service and social policy obligations of Council,
- Fees and Charges Policy,
- Accessible pricing regime,
- Cost efficient and effective use of resources,
- Consistency with the objectives of the Council Plan and other Council policies, plans and strategies.

3.7. Rates, taxes, outgoings, insurance and legal fees

Refer to Tenant Category Assessment table (attachment 1) for general guidance.

Unless other Relevant Legislation provides to the contrary:

- Rates, taxes and other outgoings will be borne by the Lessee or Licensee either wholly, in the case of a lease or proportionately, in the case of a licence.
- Where these have been charged to Council, the Property Officer and/or Lawyer will arrange to recoup the relevant amounts.
- The Lessee and Licensee will be required to maintain their own insurance in accordance with the lease or licence agreement.
- Any legal costs for the drafting of a lease or licence will usually be borne by Council in the first instance but may be recouped in relation to commercial tenants, consents, sub- leases, variations, transfers of lease and renewals and in relation to any substantial amendments to Council's first draft lease or licence.

3.8. Lease and licence standard term limits

The term of any lease or licence will be determined by the Tenant Liaison in conjunction with the Property Unit and relevant member of the Executive but must not exceed terms as set out in the Tenant Category Assessment table (attachment 1)

3.9. Additional matters relevant to leasing and licensing of Crown Land

Where property is Crown Land, the Property Officer and/or Lawyer will familiarise themselves with the Department of Energy, Environment and Climate Action policies and guidelines.

3.10. Expression of Interest (EOI)

An expression of interest process may be conducted to determine a suitable tenant. The decision to conduct an EOI process will be made by the Property Coordinator and/or Senior Lawyer and will be based on factors including the following:

- The size of the Council property
- The location of the Council property
- The value of the Council property

- The expected rental return
- The likelihood of multiple interested applicants and users
- To ensure the Tenant delivers specific services

3.11. Determining Not-For-Profit Status

In order to determine an organisation's not for profit status, Tenants must provide Council with the following information upon request:

- A copy of the organisation's constitution or governing documents which include suitable not for profit clauses and clearly demonstrates the not for profit status
- Evidence that the organisation consistently follow these clauses
- Confirmation that the organisation is registered on the Australian Charities and Not-for-profits Commission (ACNC) register.

3.12. Credit Assessment

A credit assessment may be required to determine the creditworthiness of a Tenant.

3.13. Delegation

Council is given the power to delegate any of its powers, duties and functions, other than for stipulated exceptions, under the Act. Powers to lease land are delegated pursuant to the s7 Instrument of Sub-Delegation from CEO to Council Staff.

3.14. Risk Management

Council will ensure that all leases and licences contain appropriate risk management measures including an obligation on the Tenant to:

- release and indemnify Council from all claims resulting from any damage, loss, death or injury in connection with the Council Property, unless such claims arise out of Council's negligence.
- effect and maintain adequate public liability insurance, noting the interest of Council and the Policy must contain a cross liability clause. A minimum cover of \$20 million must be provided under the Public Liability Policy.
- ensure any users of the Council property have appropriate insurance, this will include public liability insurance as a standard, and may include other insurance policies that relate specifically to the proposed use or category of Tenant.
- ensure the tenant provides an active annual certificate of currency.
- be responsible for complying with emergency and evacuation procedures and risk management practices.

Council will be responsible for ensuring:

- any users of the Council Property have appropriate insurance policies in place to support the proposed use and category of Tenant.
- it will take out and maintain building insurance for buildings on Council property for a full replacement value; and

- it does not insure the contents of any leased Council property.

3.15. Maintenance Obligations

Each Tenant is required to maintain the facility in accordance with a maintenance schedule attached to the lease or licence. The maintenance schedule will specify the clear responsibilities of Council and the Tenant (among other things) for maintaining the structure, the building, fixtures, fittings and the surrounds.

The level of maintenance responsibility will be outlined in a maintenance schedule. Council may undertake maintenance works on behalf of the Tenant and seek reimbursement.

3.16. Condition Assessment

A condition report of the Council property may be undertaken prior to the leasing or licensing of the Council Property with a copy attached to the lease / licence.

At the end of the lease or licence Council may require the Tenant to reinstate the Council Property to its original form prior to the Tenant's occupation.

3.17. Condition Audits

Tenants maybe required to complete regular condition reports of the Council property as determined by Council.

Council's Property Services department conduct annual audits of the buildings as a requirement of the AESMR and any upgrade works as described in Council's capital works program. Council may request access to the property for purposes of an AESMR.

3.18. Assessment Criteria

An assessment will be conducted to determine the suitability of a Tenant by considering the objectives of this Policy. The following criteria will be assessed in no particular order:

- Community benefit
- Financial return to Council
- Tenant's capacity to pay
- Future use of the Council property
- Impact on the Council property; and
- Suitability of the Council property for the proposed use:
 - Planning requirements
 - Building requirements
 - Other statutory requirements

4. RESPONSIBILITIES

7.1	<p>Tenant Liaison</p> <ul style="list-style-type: none"> • Liaise with the Lessee and/or Licensee • Bring to the attention of the relevant member of Executive the existence of groups or entities requiring a tenancy and/or a space or tenancy to be filled • Provide information and instructions to the Lawyer and Property Officer in respect of any lease and/or licence as required.
7.3	<p>Lawyer and/or Property Officer</p> <ul style="list-style-type: none"> • To provide assistance and/or clarification to relevant Business Units in relation to a lease or licence • To engage and consult with the Tenant Liaison. • To arrange for the development of lease and licence agreements. • To develop and review this policy. • To engage and consult with the Tenant Liaison • Manage Council's property portfolio pursuant to Council's legislative and operational requirements.

5. Definitions

Term	Definition
The Act	means the <i>Local Government Act 2020</i>
Committee of Management	An entity, which may include a Council, appointed under the provisions of the <i>Crown Land (Reserves) Act 1978</i> as responsible for managing property for the purposes for which it is reserved.
Common Areas	Common Areas are the parts of the Council Property provided by Council for common use, including access and egress roads, driveways and car parks within the property, entrances, exits and corridors and shared areas within the building/s
Council Fees and Charges	Means those fees and charges that appear in an appendix to the approved budget applying in a given financial year.
Council	Means Melton City Council. Where the policy refers to Council, this reference will be taken to mean a resolution of Councillors or pursuant to an instrument of delegation.
Council Land	Council owned or managed land and buildings including roads

Term	Definition
Crown Land	Land gazetted under the provisions of the <i>Crown Land (Reserves) Act 1978</i> as being required for public purposes.
Hire Agreement	A type of licence for short term and casual occupancy of property.
Lease	An interest in land granted by an owner (<u>Lessor</u>) to another person (<u>Lessee</u>) granting exclusive possession of property for a certain period of time.
Lessor	Owner of land granting the Lease – in this case, Council.
Lessee	Occupants of land under a lease, usually a commercial lease (may also be called a Tenant).
Licence	Permission granted by an owner (licensor) to another person (licensee) to occupy property (or part thereof) non-exclusively. For the purposes of this policy, general references to licences do not include casual hire agreements.
Licensor	Owner of land granting the licence – in this case, Melton City Council.
Licensee	Occupants of land under a licence agreement.
Market Rent	Is the rental income that a property would command in the open market. The figure is derived by recent lease transactions for a comparable space
Outgoings	Means water usage charges, electricity, gas and telecommunications assessed in connection with the Council Property
Rates & Taxes	Means any government rates and charges, taxes and levies including the Fire Services Levy
Relevant Legislation	Means all legislation (other than the <i>Local Government Act (2020)</i> that is relevant, from time to time, including but not limited to the <i>Retail Leases Act 2003</i> , <i>Residential Tenancies Act 1997</i> , <i>Crown Land (Reserves) Act 1978</i> , and <i>Charter of Human Rights and Responsibilities Act 2006</i> .
Tenant(s)	Occupants of land under a lease (may also be called a Lessee).
Tenant Liaison	Means a Council Officer/position which has a relationship with the tenant.

Term	Definition
Commercial Lease	A formal agreement to rent a building, vehicle, land or property that will be used for business' purposes.

6. Related Documents

Name	Location
<i>Local Government Act 2020 (Vic)</i>	www.legislation.vic.gov.au
<i>Charter of Human Rights and Responsibilities Act 2006</i>	www.legislation.vic.gov.au
<i>Crown Land (Reserves) Act 1978 (Vic)</i>	www.legislation.vic.gov.au
<i>Retail Leases Act 2003</i>	www.legislation.vic.gov.au
<i>Residential Tenancies Act 1997</i>	www.legislation.vic.gov.au
<i>The Leasing Policy for Victorian Crown Land (2018)</i>	www.deeca.vic.gov.au
<i>Local Government Act 2020 (Vic)</i>	www.legislation.vic.gov.au

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Attachment 1:

Categories	Rent	Outgoings	Maintenance	Rent Reviews	Legal Fees	Term
Group One	Commercial Rate + GST	All rates, taxes and levies to be paid by the tenant	All maintenance requirements paid by the Tenant	Market rent review at end of each term. Annual fixed increases at either CPI or 5% whichever is higher	100% paid by the tenant	No longer than 20 years and subject to the Tenant and Council's requirements. The lease Term may include several options.
Group Two	Up to 80% discount of Commercial Rate +GST	All rates, taxes and levies to be paid by the tenant	All maintenance requirements paid by the Tenant	Market rent review at end of each term. Annual fixed increases at either CPI or 5% whichever is higher	100% paid by the tenant	No longer than 20 years and subject to the Tenant and Council's requirements. The lease Term may include several options.
Group Three	\$1 - \$1000 per annum + GST	All rates, taxes and levies to be paid by the tenant	All maintenance requirements paid by the Tenant	No increase	50% but not more than \$1,000. Requested tenant amendments, tenant will pay 100%	No longer than 20 years and subject to the Tenant and Council's requirements. The lease Term may include several options.