

Lease and Licence Policy

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Adopted by	Council
Review due	March 2030
Responsible officer	Senior Lawyer and Property Advisor
Records reference	3347695

1. Purpose

The purpose of the Lease and Licence Policy (**this Policy**) is to guide and support decision-making by Council, its officers and contractors in relation to occupancy arrangements for Council owned or managed facilities in accordance with its obligations under the *Local Government Act 2020*.

This Policy provides a detailed approach for the leasing and licensing of all Council land and buildings, to ensure the best outcome for the Council and the broader community are balanced against transparency, and sound financial management and administration.

2. Application And Scope

This Policy applies to all new leases and licences where Council is the Lessor or Licensor.

This Policy should be read in conjunction with the:

- *Local Government Act 2020 (the Act)*.
- Melton City Council policies and procedures.
- *Crown Land (Reserves) Act 1978 (Vic)*.

This Policy does not apply to:

- *Leasing of public, social or subsidised residential housing properties owned or managed by Council.*
- *Property where Council is the Lessee or Licensee.*
- *Casual Facility Hire which are governed by the Community Facilities Access Policy*
- *Leases for the use of telecommunications facilities which are governed by the Telecommunications Policy.*
- *Where a Lease has expired but there is a valid exercise of a further term option.*

Notwithstanding anything contained in this Policy, where the Retail Leases Act or Residential Tenancies Act applies to a Lease, the provisions of that Act will prevail to the extent of any inconsistency.

3. General Provisions

Council aims to support the sustainable management and use of Council's Property whilst maximising community benefit.

This Policy has been developed to achieve the following objectives:

- *To ensure that Council's properties are centrally administered and appropriately managed.*
- *To ensure that decision-making in respect of eligibility, use, term, and fees is transparent and consistent.*
- *To ensure compliance with legislative requirements.*

3.1. Facility Type

The following table provides an overview of type of Council Property dealt with under this Policy.

Table 1 – Type of Facility

Type of Facility	Description
Community Facilities	May include community centre, youth centres, seniors' centres that have spaces including meeting rooms, consulting rooms, kindergartens, maternal and child health spaces, designated and available for community and/or commercial use.
Recreation and Sports Facilities	May include parks, gyms, sports fields, hard courts both indoor or outdoor and aquatic centres, which provide for recreational activities. These areas may have clubs that have approved access for a fixed period such as seasonally or annually, but may also be available for use for compatible activities and public non-structured use.
Libraries	Includes any municipal libraries which there are designated community spaces for use.
Commercial/ Industrial Property	Premises used primarily for business or income-generating purposes which may include office, retail space, industrial facility and multi-use buildings.

3.2. Form of Agreement

Council will enter into a formal written agreement for the use or occupancy of all Council Property and will avoid any informal arrangements.

There are five distinct forms of agreements for the use of Council-owned and managed properties.

Table 2 – Form of Agreement

Form of Agreement	Type of use	Term
Lease	An agreement by which a party has exclusive use of defined premises.	No more than twenty (20) years, including any further terms.
Licence	An agreement by which a party has nonexclusive use of defined premises, including short-term and regular use.	As prescribed in the licence agreement with no maximum term.
Sport and Recreation Licence	Non-exclusive use of a sport and recreation facility by a community sporting club, including short-term, seasonal and regular use	As prescribed in the Licence with no maximum term.
Kindergarten licence	Use by a kindergarten and early years services operator in accordance with relevant service agreement	As prescribed in the relevant service agreement with no maximum term.
Access, construction and works agreements	An agreement to grant access for the purpose of works or construction within a nominated period.	As prescribed in the Licence with no maximum term.

3.3. Use of Crown Land

Where Council is the appointed Committee of Management of Crown Land, Council must seek grant and purpose approval from the relevant Minister, before granting a lease or licence for use of the land. The form of document will be in the form prescribed by the Minister, and any additional Council requirements form part of the special conditions.

3.4. Category of Occupant

Council has four categories of occupiers which may lease or licence Council property.

Table 3 – Category of Occupants

Category	Description
Commercial Groups	Tenants who operate as a commercial profit-making entity with a primary purpose of returning a commercial benefit or monetary gain such as cafes, restaurants, professional and health services.
Sporting, recreation and community groups and clubs	Groups which are organised for the purposes of community or sporting activities, and often charge an entry or membership fee.
Community Service Organisations	Community group with no commercial operations that is predominantly volunteer based and receive no or minimal external funding, for example, Scouts Groups, Veterans Society, and Returned & Services League of Australia which may include not-for-profit organisations.
Kindergartens and Early Learning Centre's	Early childhood education and service providers, only where they are operating in accordance with a service agreement where Council is the Principal.

Where an Occupant may be considered to fall within more than one or none of the above categories, the proper determination for the purpose of this Policy will be determined by the Senior Lawyer and Property Advisor.

Where an Occupant seeks to sub-let or licence to a profit or commercial organisation, Council may reclassify the category of the Occupant.

3.5. Category of Fees

To support consistency and transparency, Council categorises all fees based on their pricing approach. Fees may be set in line with market conditions or under the Councils budget fees and Charges. The below outline how each category is charged.

Table 4 – Category of Fees

	Lease	Lease outgoings	Licence	Licence outgoings
Commercial	<p>Fee will be determined based on a valuation of market rent.</p> <p>Fixed annual increase of up to 5% and a market review at the commencement of any further term.</p>	Occupant is wholly responsible for Outgoings	Market 5% Increase market review at commencement of any further term	Occupant is wholly responsible for Outgoings
Sport and recreation	<p>Fee will be determined based on a valuation of market rent with subsidy of up to 50% as determined by Senior Lawyer and Property Advisor.</p> <p>Fixed annual increase of up to 5% and a market rent review at the commencement of any further term.</p> <p>Occupant is wholly responsible for Outgoings</p>	Occupant is wholly responsible for Outgoings	In accordance with the Fees and Charges in the financial year budget applicable at the commencement of the Term.	Outgoings are included in the Licence Fee.

	Lease	Lease outgoings	Licence	Licence outgoings
Community	Market with subsidy of up to 50% as determined by Senior Lawyer & Property Advisor Annual 5% Increase market review at commencement of any further term	Occupant is wholly responsible for Outgoings	In accordance with the Fees and Charges in the financial year budget applicable at the commencement of the Term.	Outgoings are included in the Licence Fee.
Kindergarten & Early Learning Centre	Fixed amount of \$2000 per room with a per annum CPI increase.	Occupant is wholly responsible for Outgoings	Fixed amount of \$2000 per room with a per annum CPI increase.	Occupant is wholly responsible for Outgoings
Access, construction and works agreement	Not applicable	Not applicable	As determined by the Senior Lawyer and Property Advisor.	Occupant is wholly responsible for Outgoings
Community Volunteer Groups	Fixed amount of no less than \$100 and no more than \$2,000 per annum	Occupant is wholly responsible for Outgoings	Fixed amount of no less than \$100 and no more than \$2,000 per annum	Occupant is wholly responsible for Outgoings

Where an Occupant may be considered to fall within more than one, or none of the above categories, the proper determination for the purpose of this Policy will be determined by the Senior Lawyer and Property Advisor.

3.6. Decision to lease

A public process will be conducted to determine a suitable occupant where Council Property becomes vacant or an agreement ends for any reason, including agreements which contain an overholding provision. A decision to lease or licence Council Property may consider:

- Community benefit.
- Financial return.

- Highest and best use.
- Future use, both in the immediate and long-term strategic use.
- Suitability of Council Property for the proposed use.
- Any demand for use of the Property for Council's operational purposes.

A decision may be made not to conduct a public process where there is derived community benefit which justifies unique circumstances to grant a Lease or Licence to a particular occupant.

Use of Council Property for political or electoral purposes, including uses which are ancillary to a primary use of political or electoral activities, will not be permitted.

In exceptional circumstances, Council may determine to grant use of Council Property for political or electoral purposes, where there will be minimal or no impact to the use of the Premises for its intended purpose or any other Council or community purpose, as determined by Council in its absolute discretion.

3.7. Commercial Terms

3.7.1. Legal Entity

A lease or licence can only be made with a legal entity as defined by the Associations Incorporations Reform Act 2012 or the Corporations Act 2001.

3.7.2. Term

The terms of any lease or licence will be determined by Council in its discretion, subject always to the execution of the agreement by the authorised delegate. No term will exceed twenty years, unless by resolution of Council.

3.7.3. Rent/Licence Fee

Rental and Licence Fees will be determined in accordance with Table 4. Where Table 4 indicates a range, the final amount will be determined by the Senior Lawyer and Property Advisor, subject always to the execution of the agreement by the authorised delegate.

3.7.4. Permitted Use

The Permitted Use of Council Property must be strictly defined to ensure the proposed activity is permitted and may include an ancillary or secondary uses, only where they are subordinate to the primary permitted use. The Permitted Use as prescribed in a lease or licence, may strictly prohibit certain activities.

3.7.5. Outgoing

Outgoings will be determined in accordance with Table 4. Where Table 4 indicates a range, the final amount will be determined by the Senior Lawyer and Property Advisor, subject always to the execution of the agreement by the authorised delegate.

Where a building has several occupants, which may or may not include Council, outgoings incurred by Council to manage common areas and cleaning, will be proportionally applied to each occupant based on their occupied area.

Legal costs for the drafting of agreements for access, works and construction licences will be borne by the Licensee in full.

Where Council is required to consider providing consent, approval or other administrative tasks pursuant to any agreement, the costs of considering such approval and consent is the responsibility of the Occupant.

3.7.6. Insurance

The Occupant must maintain insurance in accordance with Councils requirements, which may change from time to time, but must include at a minimum:

- Public liability insurance of no less than \$20 million per occurrence.
- Professional indemnity insurance of no less than \$10 million.
- Building insurance, where the Occupant has constructed the building (including fit outs), on Council Land.

The Occupant must provide Council with a Certificate of Currency on or before the commencement date of the agreement and annually thereafter for the duration of the agreement.

3.7.7. Security

All agreements must consider a form of surety to guarantee the obligations of the Occupant. For Commercial Groups, a minimum of three (3) months' rent will be required in the form of a bank guarantee. For all other categories of occupants, a \$500 form of security may be required.

Where the proposed use of Council Property may be particularly high risk, a higher value of security may be required.

3.7.8. Facility Contribution Charge

Agreements which contain obligations upon an Occupant to contribute to the cost of renewing all or some of the improvements/assets upon the land, will require the establishment and reporting of a Sinking Fund to provide for long term financial planning.

3.7.9. Risk Management Provisions

Council will ensure that all agreements contain appropriate risk management measures, including an obligation on the Occupant to:

- Obligation for Occupant to ensure they comply with all legislative requirements, including Council's Local Law, and to obtain any permits, approvals or consents which may be required.
- Release and indemnify Council for all claims resulting in damage, loss, death, or injury in connection with the Occupants use of Council Property.
- Be responsible for complying with all emergency, evacuation, induction and risk management procedures which may be required from time to time.

3.8. Community Engagement

In accordance with section 115 of the Act, Council must, prior to leasing land, include any proposal to lease land in a financial year in the budget, where the lease is –

- (a) For one year or more and
 - (i) The rent for any period of the lease is \$100,000 or more a year; or
 - (ii) The current market rental value of the land is \$100,000 or more a year; or
- (b) for 10 years or more

If Council proposes to lease land that is subject to the above, and that was not included as a proposal in the budget, Council must undertake a community engagement process in accordance with Council's Community Engagement Policy, prior to entering into the lease.

At a minimum, Council will publish a public notice on its website advising of Council's intention to lease. Where Council's Community Engagement Policy relates to leasing Council Property, requires Council to invite submissions in respect of the proposal, Council will undertake an engagement process which models section 223 of the *Local Government Act 1989*.

3.9. Maintenance

A condition report of Council Property will be undertaken prior to entering into any agreement for Lease or Licence.

Each Lease or Licence entered into post adoption of this Policy must include Council's standard maintenance schedule. The maintenance schedule prescribes the obligations of both parties in respect of maintenance, repairs, replacement, or renewal of structure, fittings and fixtures.

For Commercial Groups, maintenance, repair and replacement obligations will be largely the responsibility of the Occupant. For all other groups and depending on the category of group and type of facility, Council will make a larger contribution to repair, replacement and maintenance of Council Property, particularly including structural, renewal and external elements of the Council property. An Occupant, other than a Commercial Occupant, will be responsible for basic repairs, and requirements to ensure functional use of the leased/licenced area.

Basic maintenance and any repair, replacement or renewal as a result of negligence of the Occupant, will be borne by the Occupant in full.

For land only leases or licences, excluding Sport and Recreation Licences, all repair, maintenance and replacement obligations are borne in full by the Occupant.

All other agreements will continue to be managed in accordance with their terms and conditions.

3.10. Financial Assessment

In determining the Commercial Terms of an agreement, Council must ensure any Occupant has the financial capability to support the proposed arrangement. This may include:

- Credit assessment to determine financial viability.
- Evidence of financial circumstances, including business and/or financial references.

- Historical records to evidence ability to meet financial obligations.
- Verification of not for profit, or charity status.

Where an occupant has outstanding costs in relation to use of a Council owned or managed property, such as unpaid rent, outgoings, or other fees, no further agreements will be entered into until such time as all outstanding fees have been paid in full or resolved, subject to an agreement with Council.

3.11. Delegation

All Leases and Licences will be executed in accordance with Council's s7 instrument of delegation. If no delegation exists, matters will be presented to a meeting of Council.

4. Definitions

Term	Definition
The Act	means the <i>Local Government Act 2020</i>
Access, works and construction agreement	An agreement to grant access for the purpose of works or construction within a nominated period.
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.
Council	Means Melton City Council and includes any authorised delegate of Council unless expressly stated that a resolution of Council is required.
Council Property	Council owned or managed land and buildings including roads
Crown Land	Land gazetted under the provisions of the <i>Crown Land (Reserves) Act 1978</i> as being required for public purposes.
Lease	An interest in land granted by an owner (Lessor) to another person (Lessee) granting exclusive possession of property for a certain period.
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.

Term	Definition
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, derived from recent transactions of comparable properties and for the purpose of the Policy, as determined by an independent valuer with the qualifications set out in section 115(2)(c) of the Act.
Outgoings	means any expenses directly assessed or attributable to the operation and management of the Property, including but not limited to Council rates, taxes and other levies (e.g. Fire Levy) and utility services (gas, electricity, water, telephony, Wi Fi network etc) charges but excluding repairs, replacement and maintenance.
Occupant	Means Tenant, Lessee, Licensee or Hirer as the case may be dependent on the form of agreement.
Maintenance	Means any expenses directly assessed or attributable to the maintenance, repair and replacement of the structure, fittings and fixtures of the Property.
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> .
Retail Lease Act (RLA)	Means the <i>Retail Leases Act 2003</i> (Vic).
Seasonal Licence	Allocation of Council facilities to organisations for seasonal periods of the year.
Sinking Fund	A dedicated pool of money set aside regularly to cover a specific future obligation, such as major improvements and works.
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.

5. 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
The Leasing Policy for Victorian Crown Land (2018)	www.deeca.vic.gov.au
Allocation of Sport and Recreation Facilities Policy	Allocation-of-Sport-and-Recreation-Facilities-Policy-September-2024.pdf
Telecommunication Facilities Policy	Telecommunication-Facilities-Policy (1).pdf

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