Rural City of Wangaratta

Leasing and Licensing Policy

Document Type	Major Council Policy
Department	Council-wide
Date of Council Endorsement	
Date for Review	
Responsible Officer	Property Contracts Specialist
Authorising Officer	Director Corporate Services
Version Reference Number	
SIM Reference Number	

DRAFT

1. Statement and Purpose

Council owns, controls and manages land and property in the municipal district for the benefit and wellbeing of its community. Accordingly, these assets need to be managed in a sustainable way for the benefit of the whole community. This policy sets out the framework for Council leasing and licensing its' property to meet these objectives, by supporting a consistent, equitable and transparent approach for entering into and managing occupancy arrangements.

The objectives of this policy are:

1. Clearly setting out the rights and obligations of tenants;
2. Clearly setting out the principles for Council and Council Officers to consider in the management of leasing and licensing;
3. Providing a framework for management and use of Council's property;
4. Providing for a fair and financially viable approach to the use of Council property and optimising the value of occupation of Council property for the benefit of the community;

5. Identifying, managing and mitigating risks associated with the leasing and licensing of Council property;
6. Ensuring compliance with related Legislation.

2. Scope

This policy applies to the leasing or licensing of all Council land and real property, whether owned freehold by Council or delegated to Council for management (e.g. Crown land). This policy applies when entering into any agreements (whether a new agreement or a renewal for a further term, as far as applicable) for the use of Council land, and when considering any variations to existing agreements. The terms of all existing agreements remain applicable for the duration of the existing agreement.

This policy applies to all Councillors, Council employees and agents of Council and to any other person involved in the leasing or licensing of Council property.

3. Policy

Council will achieve the best possible outcome for utilisation of its property consistent with:

1. Promoting the social, economic and environmental viability and sustainability of the municipal district and community;
2. Improving the overall quality of life of people in the local community; and
3. Ensuring that land and facilities provided by Council are accessible and equitable.

Occupancy of Council property may be in the form of a lease or licence. To maximise the utilisation of property, it is preferable that licences be considered in the first instance, where appropriate, to ensure that properties remain available to as many community users as possible.
Four principles must be applied when assessing a proposal to lease or licence Council property. An occupancy must:

1. Provide benefits to the community (whether direct or indirect, for example significant financial contribution or otherwise preserving and maintaining a property at significantly reduced cost to Council);
2. Be considered in a way that ensures consistency and transparency - generally, a competitive selection process will apply to granting occupancy, although in exceptional circumstances direct negotiations will be permitted;
3. Optimise the use of Council property; and
4. Be in the interest of the community - Council land and property are not a private resource. Land leased with the intention of building new structures to provide for single occupancy/exclusive use will generally not be permitted unless Council considers the structure integral to deriving economic or community benefit. Approval of such

DRAFT

agreements will include the option for Council to either assume ownership, or require removal of, the structure at the end of the agreement.

In response to any detailed request to use Council property, Council will first issue an approval in principle. Following this, a negotiation will be undertaken, and the proposed occupancy remains subject to Council's final approval of the proposed terms and conditions.

Approval in Principle

The Business Owner of the relationship with the proposed occupant will determine whether the proposed occupancy is to be considered in the first instance. In consultation with the Property Contracts Specialist, a detailed proposal for the occupancy will be developed for approval in principle to be considered. Approval in principle is to be sought from the relevant Director (all of whom have delegated powers to enter into leases).

In accordance with the requirements of the Local Government Act 2020, where a proposal to lease is for a term of more than 10 years or of a property that is either valued at, or the rental amount payable is more than $100,000.00, Council's community engagement policy must be followed prior to settling terms and entering into the lease.

TERMS AND CONDITIONS

The following conditions are designed to give an indication of Council's default position for new agreements. Negotiation is possible and deviation from the policy may occur to ensure optimal outcomes for Council, considered holistically. Terms and conditions for all agreements remain subject to any applicable legislation (e.g. *Retail Leases Act 2003*, *Residential Tenancies Act 1997*) at all times.

In the event of a formal agreement not being entered into until certain events have occurred (for example, planning approvals are obtained, or capital works carried out), the lease documentation will be prepared and these events will be outlined as conditions precedent. An Agreement to Lease will be entered into in the event of significant works needing to be undertaken (such as a purpose-built facility with a specific occupancy in mind).

Financial conditions

Council's default position is that of "user pays". GST is applicable to all leases and licenses. For community groups and other not-for-profit entities, certain costs may be waived at the discretion of CMT.

Lease preparation costs

Lease preparation and registration costs (if applicable) are payable by the occupant, along with the cost of any legal advice required as a result of the proposed agreement (both the occupant's own, as well as Council's).

DRAFT

Rental amounts and rent reviews

Where the total rental to be received for the life of an agreement is to be more than $2,500.00, a valuation may be obtained to ascertain the starting rental amount. Depending on the terms and conditions of the tenancy, a market rental assessment can be commissioned to determine the annual rental amount, otherwise the rental amount will be set having regard to the extenuating circumstances of the situation, which may include any reliable evidence of the value of the rental, and the purpose and nature and of the organisation seeking to rent Council's property.

A nominal starting rental amount (as set out in Council's Fees and Charges) will be charged to community groups who meet the following criteria:

- are a not-for-profit organisation;
- do not have significant means to supplement income;
- are competitively neutral;
- are managed mostly by volunteers
- manage the occupancy primarily for the benefit of the community at large;
- meet public benefit criteria such as social engagement, the service being non-discriminatory, there being no barriers to participation and a demand exists for the service; and
- as part of the application and annual compliance process, submit their financial statement and minutes of the last AGM in consideration of meeting these requirements.

Every agreement will be subject to a rent review being conducted on each anniversary date. The amount of rent must be capable of being calculable from the commencement of the lease, either by reference to amounts or to the formula that will determine the applicable rent on the future review date.

Rent can be reviewed using one of the following methods:

- fixed amount (whether dollar amount or percentage);
- by reference to a specified formula;
- CPI; or
- market review.

The default position of Council is for rental to increase 3% each anniversary date. Additionally, for commercial occupancies with a starting rent over $2,000.00, rent will be reviewed to market every five years.

DRAFT

Outgoings

It is expected that all occupants will pay for all utilities consumed and outgoings incurred in relation to the administration, management and operation of the occupied area, whether through an account invoiced directly from the utility provider or costs being recovered by Council (where Council is the account holder). Where an occupant is the sole occupant of a space, they will be responsible for holding accounts directly with service providers, where possible. Where there are multiple users of a space, utilities may be apportioned between the occupants. All rates, levies and charges are applicable to all agreements, though there may be instances where occupants may qualify for a concession or exemption for those costs. In such situations, it remains the responsibility of the occupant to make arrangements directly with the body or authority raising those rates, levies or charges for any discounts or exemptions for which the occupant may be eligible.

This applies to all outgoings including (but not limited to):

- Rates
- Levies and charges that Council is required to raise on properties within the municipality (for example, Fire Services Levy/Emergency Services Levy)
- Land tax
- Stamp duty
- Utilities
- Cleaning
- Security
- Insurances
- Gardening and landscaping
- Maintenance and servicing of fixtures
- Pest control
- Sports ground maintenance

Administration and management fee

An administration and management fee will be applicable to all occupancies, to assist with meeting the costs of administration and management of the occupancy and complying with requirements. This fee will be an amount equivalent to five percent of the annual rental amount, as increased from time to time.

DRAFT

Essential safety measures

As it is Council's responsibility to ensure essential safety measures are complied with, essential safety measures will be implemented by Council and the costs recovered from occupants.

Bank guarantees/security deposits

A bank guarantee/security deposit will be required for every occupancy. The amount required will be equivalent to an amount not less than six months' rental determined by reference to the agreement, and a higher amount may be appropriate, having regard and the possible costs incurred should the tenant not meet their requirements to pay costs under the agreement or to rectify the property at the end of the agreement. For community groups and not-for-profit organisations, a **lower amount or a** security deposit may be considered in lieu of a bank guarantee, at the discretion of the Director.

Maintenance

Maintenance obligations remain subject to any applicable legislation. Occupants with lease agreements are responsible for all maintenance of their leased property. Occupants with licence agreements will be responsible for maintenance in accordance with the Schedule. Generally, Council will remain responsible for the structure of the property and licensees will be responsible for their fittings, property and any service from which they benefit. Occupants with licences will remain responsible for any damage to the property as a result of their activities or to areas that are used exclusively by them. Costs for maintenance will be shared between users of licensed property and Council retains the right to recover maintenance costs at its discretion.

Council reserves the right to inspect all council assets each year, or more frequently if required.

Insurance, Risk and Occupational Health and Safety

Appropriate risk management measures will be required of all occupancies, which will include requiring occupants to:

- Obtain appropriate insurances;
- Release and indemnify Council for all claims resulting from any damage, loss, death, or injury, in connection with the premise unless such claims arise out of Council's negligence;
- Comply with emergency evacuation procedures and risk management practices implemented by Council;
- Implement a risk management plan that identifies the risks associated with the tenant's use of the premises and how such risks will be addressed; and
- Only use appropriately qualified tradespeople to undertake repairs.

DRAFT

Council insures buildings and assets which it owns. Occupants who construct buildings and structures on Council land to are required to fully insure those buildings at the occupant's sole expense.

Contents owned by occupants and stored in Council properties are not covered by Council's insurance and it is recommended, but not required, that all occupants insure their own contents.

All occupants are required to maintain public liability insurance for a value determined by Council from time to time. It is a requirement of all occupancies that occupants provide Council with valid Certificates of Currency for all insurances required under the agreement:

- on or before the commencement date of the occupancy
- on renewal of the policy, and
- at least annually.

Sub-Letting and Casual Third-Party Hire

- Sub-letting requires the written consent of Council in its sole discretion. If the tenure is granted by Council as the Committee of Management for a crown land reserve, the consent of the Minister must also be obtained before a sub-lease is entered into.
- Only leaseholders who have been given consent by Council to hire out the facility to third parties will be permitted to do so. The proposed use of the premises by third parties must not be contrary to the permitted use of the facility by the tenant.
- The tenant is responsible for ensuring that all sub-tenants and casual hirers hold appropriate public liability insurance and risk management plans for each use, and to keep records of insurance and signed hire agreements. Council reserves the right to inspect these records and non-compliance may result in limitations to the tenant's ability to hire to third parties.

Further occupancy at the end of existing agreement

At the conclusion of any occupancy, a review of the occupancy will be undertaken to ensure that all obligations have been met. In the event of ongoing occupation being sought by the occupant, at Council's discretion, the occupancy may be renewed for a further term where:

- there have been no breaches of terms or conditions;
- the property is maintained to the satisfaction of Council;
- there are no other circumstances that support the occupancy of the land or property not being renewed; and
- ongoing occupation would meet the criteria set out in this Policy.

Council reserves the right to seek Expressions of Interest from the community to ensure the objectives of this Policy would be met by any future occupancy.

DRAFT

MANAGEMENT FRAMEWORK

Council will maintain a Leasing and Licensing Management Framework. Key elements of the management framework include the:

- Leasing and Licensing Policy
- Lease and License Register
- Council Fees and Charges Schedule
- Leasing and Licensing Procedure

4. Roles and Responsibilities

Business owners

- Responsible for managing and maintaining the relationship (including all communications) directly with the occupant.

Property Contracts Specialist

- Responsible for managing the process in accordance with this policy.
- Responsible for preparing all formal communications relating to the occupancy.
- Responsible for conducting rent reviews in accordance with the terms of the occupancy agreement.
- Responsible for maintaining any Lease register.

Directors

- Responsible for approving terms and conditions (and in particular, any variance to the standard position) in accordance with this policy.

Privacy

Council is committed to protecting an individual's right to privacy. In accordance with Council's Information Privacy Policy, personal information considered or recorded during the process of a report or investigation will respect the privacy of all individuals involved. Commercial terms (information that, if released, may prejudice the business dealings of Council or another party) will remain confidential at all times.

5. Breaches

Breaches of this policy may lead to disciplinary action in accordance with Council's policies, procedures and Enterprise Agreement.

DRAFT

6. Community Consultation

This policy will be communicated to members of the community when adopted by Council to ensure that all members of the public are aware of the requirements of the policy and its implications.

7. Human Rights

This policy has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of Human Rights and Responsibilities Act 2006.

8. Gender Impact Assessment

This policy has considered and applied Council's Gender Impact Assessment Template and satisfies the provisions established in the *Gender Equality Act 2020* (Vic).

9. Monitoring and evaluation

Council may choose to publish a Register of all Leases and Licenses it has entered into. When new agreements are being entered into, company or incorporated association searches will be conducted. As part of the annual rent review, Council will ensure all insurance Certificates of Currency remain valid and may inspect the property to ensure ongoing compliance.

10.Definitions

Commercial lease	A lease under which the tenant enters to use the property with the primary intention of making a profit rather than providing a good or service for the community benefit. A commercial lease is one in which the occupant seeks at least as much benefit for itself as providing any community service/benefit. Generally, the occupant will be incorporated under the *Corporations Act 2003* (as opposed to the *Associations Incorporation Act Reform Act 2012* (Vic) and its predecessors), though may also be a sole trader or a partnership.
Council property	Land (and any buildings or structures on that land) owned, controlled or managed by Council.
Lease	a grant from a lessor (the landlord) to a lessee (the tenant) for a defined term (duration) of the right to exclusive possession of land with the intention of giving the tenant an interest in land rather than a personal privilege.

Licence	(including agreements and permits) generally allow non-exclusive use of land for a fixed term, for a particular purpose, by a licensee and conveys a contractual right, rather than an interest in land. Generally, they cannot be assigned or transferred to a third party.
Real property	Land and anything permanently attached to it, such as buildings, structures or fixtures. Real property is distinguished from Council's other property and assets.
Retail lease	A lease to which the *Retail Leases Act 2003* (Vic) applies.

11.References and Related Policies

Legislation

- *Crown Land (Reserves) Act 1978*
- *Land Act 1958*
- *Local Government Act 2020*
- *Residential Tenancies Act 1997*
- *Retail Leases Act 2003*
- *Road Management Act 2004*

Internal policies

- *Community Engagement Policy*
- *Councillor Code of Conduct*
- *Staff Code of Conduct*

12.Review

Any change or update which materially impacts and/or alters this policy must be approved by the Director Corporate Services. Otherwise, the policy will be reviewed by the Manager Governance every three years.

Version History		
Version Number	**Date of change**	**Reasons for change**

DRAFT