



Council Policy Manual

WEST WIMMERA SHIRE COUNCIL

COUNCIL POLICY	
LEASING AND LICENSING OF COUNCIL LAND AND FACILITIES	Policy No:
	Adopted by Council: 21 August 2024
	Next review date: August 2028
Senior Manager:	Director Infrastructure Development and Works
Responsible Officer:	Quality and Facilities Manager
Functional Area:	Infrastructure Development and Works
Introduction & Background	<p>Council is the custodian of land on behalf, and for the benefit of its community. This land includes property owned by Council, Crown Land where Council are the Committee of Management (COM) and land leased or licensed by Council for identified purposes. Some Council managed properties are leased for commercial purposes and generate market rents for Council. Most properties are leased at subsidised rates for community and not for profit purposes, to deliver a tangible community benefit.</p> <p>Dependant on the land types and status, different legislation, with specific requirements and terms can apply. Therefore, each property must be dealt with in accordance with its specific legislative requirements.</p>
Purpose & Objectives	<p>The purpose of this policy is to recognise that there is an overall social benefit for the community to enable the use of Council owned and managed land and facilities by organisations that provide recreation and sporting opportunities, or other community services. These services enhance the quality of life and wellbeing of our municipality in support of the objectives set out in the Council Plan.</p> <p>Council is responsible for the sustainable management of assets and maximising the community benefit arising from its property use.</p> <p>This policy has been developed to meet the following objectives:</p> <ul style="list-style-type: none"> • Custodianship: Ensure Council managed properties are appropriately maintained, developed, and occupied, having regard to the interests of local communities and the care of the assets. • Community Benefit: Ensure Council managed properties are used to meet demonstrated community needs consistent with the Council Plan, and in-kind support from Council, including subsidised rent, is recognised, and transparently applied in light of the community benefit to be achieved. • Consistency: Guidance to Council and the broader community with regard to the eligibility, use, length of lease and pricing



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	<p>structures to meet the diverse and changing needs of the community.</p> <ul style="list-style-type: none"> • Equity: A framework for fair, transparent, and equitable leasing and licensing of Council managed properties to the organisations, businesses, agencies and community groups based in the West Wimmera Shire Council. • Financial: Ensure sound financial management and effective administration of Council managed properties to allow for an acceptable financial return. • Legal: Ensure the legal use of Council managed properties
<p>Response to the Overarching Governance Principles of the Local Government Act 2020</p>	<p>Section 9 of the Local Government Act 2020 states that a Council must in the performance of its role give effect to the overarching governance principles.</p> <p>This policy is in response to the following overarching governance supporting principle/s of the Local Government Act 2020:</p> <ul style="list-style-type: none"> • community engagement principles (section 56) • public transparency principles (section 58) • financial management principles (section 101)
<p>Definitions</p>	<p>This policy is applicable to all Council owned and occupied land and buildings and where Council acts as Committee of Management on Crown land.</p> <p>This policy does not apply to premises that are exclusively occupied by Council operated services such as pre-schools, libraries, and maternal and child health services.</p> <p>Commercial – Market Rent: Market rental rates relate to the value of the property and are determined by an independent valuer or competitive tender, comparing with rent levels for similar properties in similar areas. Market rent will be applied where the primary use of a property is commercial.</p> <p>Community – Peppercorn Rent: Nominal rents used to satisfy non-commercial objectives of Council for creation of a lease agreement. Peppercorn rents may be charged to recognise the delivery of a significant capital improvement. Either a nominated fee or waiver by Council decision.</p> <p>Community – Subsidised Rent: Discounted rents from a market rate where there is some community benefit and may also offer investment back into the facility.</p> <p>Crown Land: Lands reserved and/or administered under the <i>Crown Land (Reserves) Act 1978</i>.</p>



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	<p>Council Managed Property: Land which Council is responsible for. This included land owned or leased by Council and Crown Land which Council is the Committee of Management. The management of council owned residential properties are utilised to attract senior management and rental is to be determined by the Chief Executive Officer after obtaining a real estate rental appraisal.</p> <p>Lease: A right granted by an owner of land (lessor) to another person/organisation (lessee) to have exclusive possession of that land for a fixed duration in return for rental payment.</p> <p>Licence: A right granted by an owner of land/building (licensor) to another (licensee) to have shared use of that land/building for a fixed duration in return for rental and permits a person (licensee) to occupy land/building (or part thereof) on particular conditions. The main feature that distinguishes a licence from a lease is that a licence does not permit exclusive occupancy of the land.</p> <p>User Agreement: An agreement will be granted with a committee who occupy a Council facility. Provides rights granted for occupancy of a property.</p> <p>Property: The land or buildings to be leased or licensed.</p> <p>Service Manager: The relevant Council Officer who manages the relationship (including lease/licence negotiations) with existing or prospective tenants or landlords. The Service Manager is allocated based on the purpose of the agreement, including the type of use.</p> <p>Term: The period of time from the commencement of the lease to its termination including further terms.</p>
Policy Details	
1.	<p>Scope</p> <p>This policy applies to leases and licences of Council owned buildings and land across the municipality, Crown Land where Council is the designated Committee of Management and land, or buildings leased or licensed by Council from another party for the purpose of Council performing its functions and meetings its objectives.</p> <p>The policy does not apply to decisions relating to seasonal club agreements and casual hire agreements.</p>
2.	<p>Types of Tenure</p> <p>The West Wimmera Shire Council has three main forms of tenure which are used to grant the use of Council land holdings.</p>



	<p>Lease</p> <p>A lease is a contract by which the landlord (owner) grants exclusive use and possession of land to an occupant (lessee), in consideration for payment (rent) for a specified term and purpose.</p> <p>Licence</p> <p>A licence is an agreement that generally allows non-exclusive use of land for a fixed term to an occupant.</p> <p>User Agreement</p> <p>A user agreement is generally for community groups usage of a Council building where a community program/activity space is provided for the benefit of the community. The Council maintain the building, may provide public risk/liability insurance. These community groups will have a formed committee.</p> <p>No rental is generally charged.</p>
3.	<p>Laws and Regulations</p> <p>Local Government Act 2020 (LGA)</p> <p>Council shall have regard to sections 114, 115 and 116 of the Local Government Act with respect to every lease and licence undertaken.</p> <p>Crown Land (Reserves) Act 1978</p> <p>The leasing provisions in the Crown Land (Reserves) Act 1978 (CLRA) are used to authorise a wide range of leases for commercial and non-commercial purposes on reserved Crown land.</p> <p>Where Council is the appointed committee of management under the CLRA, the main leasing and licensing powers available to Council are as follows:</p> <ul style="list-style-type: none">• under section 17D of the CLRA, Council can grant leases for up to 21 years for any purpose, subject to Ministerial approval; and• under section 17B of the CLRA, Council can grant licences for up to 10 years for any purpose, subject to Ministerial approval. <p>Agreements involving Crown land where Council is Committee of Management must be prepared in accordance with the guidelines provided by DECCA. All leases situated on Crown land will use the standard lease agreement as prescribed by DECCA. Initial consent is required by DECCA through a 'Grant and Purpose' request by Council, outlining the proposed terms and conditions of the lease.</p> <p>Once initial approval is given by DECCA, and the documents have been compiled, signing of the agreement can occur by Council, the tenant and then final approval is given by DECCA under the CLRA by the Minister or their delegate.</p> <p>Leasing Policy for Crown Land in Victoria 2023 (DEECA Policy)</p> <p>The objective of this policy is to provide a framework for the leasing of Crown land by formalising 'Crown Land Leasing Principles' at a State-wide level.</p>



Land Act 1958

The Land Act 1958 involves the sale, grant and occupation of unreserved Crown land, Crown water frontages and government roads in Victoria.

Planning and Environment Act 1987 (Vic)

The Planning and Environment Act 1987 applies to both Crown land and freehold land. This Act outlines the planning use, development, and protection of land in Victoria. Occupants need to comply with the West Wimmera Shire Council Planning Scheme and obtain any required planning permits associated with the use and development of leased premises.

Retail Leases Act 2003

Generally speaking, the *Retail Leases Act 2003 (RLA)* applies to leases under which the tenant uses the premises wholly or predominantly for the retail sale or supply of goods or services. The RLA does not apply to licences.

'Retail' in the context of the RLA means sale or supply to an end user of the relevant goods or services, as opposed to an intermediary who on-sells these. The RLA has been interpreted broadly by the courts. In the context of the type of leases typically granted by a council, it is generally accepted that the following would constitute a retail use for the purpose of the RLA:

1. the operation of a community sporting club;
2. the provision of services by a not for profit community group; and
3. the operation of a kindergarten or childcare centre.

In certain circumstances, a retail lease will be exempt from the operation of the RLA. For present purposes, these may be summarised as follows:

- where the annual occupancy costs (rent and outgoings) are greater than \$1 million;
- where the tenant is a listed public company, or a wholly-owned subsidiary of such a company;
- where the lease term (excluding options) is 15 years or more, and the lease requires the tenant to carry out or pay for substantial works; or where the annual rent is less than \$10,000, and the tenant is a not for profit body.

If the RLA applies, there are significant implications for Council as landlord. The RLA contains many provisions which operate for the benefit of the tenant, and to the landlord's detriment. The key implications include:

- first-time tenants are entitled to a minimum 5 year term (including any options for renewal);
- Council is subject to significant disclosure obligations, which apply:
 - (a) at the start of the lease;
 - (b) throughout the term; and



	<p>(c) at the end of the lease;</p> <ul style="list-style-type: none"> • Council is subject to significant repair and maintenance obligations; • Council cannot require the tenant to pay for land tax or capital costs; and • any form of underpinning or ratchet clause is void. 									
4.	<p>Lease Terms and Vacancy Procedures</p>									
	<p>4.1 Rental Rates for Leases and Licences on Crown Land (Crown Land (Reserves) Act 1978)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 35%;">Agreement Type</th> <th style="width: 30%;">Tenure</th> <th style="width: 35%;">Rental</th> </tr> </thead> <tbody> <tr> <td> <p>Lease (Exclusive use and possession of part, or all of the reserve)</p> </td> <td> <p>Preferred Tenure – 3 year Initial term with 2 x 3 year renewal options (maximum 21 year term)</p> </td> <td> <p><u>Community Occupiers</u> – Based on Pricing Methodology Matrix in Appendix 1</p> <p><u>Commercial Occupiers</u> – Commercial Market Assessment completed by valuer</p> </td> </tr> <tr> <td> <p>Licence (Non exclusive use of part, or all, of the reserve)</p> </td> <td> <p>Preferred Tenure – 3 years (maximum 10 year term) Can have option to extend further terms.</p> </td> <td> <p><u>Community Occupiers</u> – Based on Pricing Methodology Matrix in Appendix 1 – Minimum annual rental</p> <p><u>Commercial Occupiers</u> – Commercial Market Rental Assessment completed by valuer</p> </td> </tr> </tbody> </table>	Agreement Type	Tenure	Rental	<p>Lease (Exclusive use and possession of part, or all of the reserve)</p>	<p>Preferred Tenure – 3 year Initial term with 2 x 3 year renewal options (maximum 21 year term)</p>	<p><u>Community Occupiers</u> – Based on Pricing Methodology Matrix in Appendix 1</p> <p><u>Commercial Occupiers</u> – Commercial Market Assessment completed by valuer</p>	<p>Licence (Non exclusive use of part, or all, of the reserve)</p>	<p>Preferred Tenure – 3 years (maximum 10 year term) Can have option to extend further terms.</p>	<p><u>Community Occupiers</u> – Based on Pricing Methodology Matrix in Appendix 1 – Minimum annual rental</p> <p><u>Commercial Occupiers</u> – Commercial Market Rental Assessment completed by valuer</p>
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	<p>Terms and conditions</p> <p>In general, commercial use of Crown land, whether a lease or licence, attracts full market rates. These are determined by a valuation from a qualified valuer. However, there are circumstances where a subsidy from market rates may be applied, such as when a community group occupies Crown land for community activities.</p> <p>The occupiers on crown land may have different requirements and therefore all leases and licences terms and conditions may not be identical and will be dealt with on an individual basis. A Schedule 17B Licence and Schedule 17D Lease are signed off by DEECA.</p>									



**4.2 Rental Rates for Leases and Licences on Council land
Community Groups and Individuals (Local Government Act 2020)**

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options (Maximum 50 year term)	Based on Pricing Methodology Matrix in Appendix 1
Licence	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options.	Based on Pricing Methodology Matrix in Appendix 1 – Minimum Annual Rental

Terms and conditions

The occupiers on council land may have different requirements and therefore all leases and licences terms and conditions may not be identical and will be dealt with on an individual basis.

**4.3 Rental Rates for Leases and Licences on Council Land
Commercial (Local Government Act 2020 and/or Retail Leases Act 2003)**

Agreement Type	Tenure	Rental
Lease	Preferred Tenure – 3 year initial term with 1 x 3 year renewal option	Commercial Market Rental Assessment completed by valuer
Licence	Preferred Tenure – 3 year initial term with 2 x 3 year renewal options.	Commercial Market Rental Assessment completed by valuer

Terms and conditions

The occupiers on council land may have different requirements and therefore all leases and licences terms and conditions may not be identical and will be dealt with on an individual basis.



	<p>4.4 Rental Rates for User Agreements – Facilities on Council land Community Groups (e.g. Historical Societies, Neighbourhood House, Men’s Shed, Tourism facility, e.g Harrow Discovery Centre)</p>						
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User Agreement	Preferred Tenure – 10 years, reviewed every 5 years	Nil					
	<p>Terms and conditions</p> <p>The occupier will be responsible for minor maintenance and repairs. Any major defects or repairs to be negotiated with Council. Building insurance and public liability for the public will be provided by West Wimmera Shire. Volunteer Committee public liability will need to be resolved with Council. Utilities (electricity, water and waste management if applicable) will also be paid for by the West Wimmera Shire Council for Historical Societies. Neighbourhood House, Men’s Shed and tourism facilities will pay all utilities, telephone and workcover for staff. Fire Service Property Levy to be paid by Council. All user agreements will be negotiated, drafted, checked by Council and signed by the Chief Executive Officer.</p>						
	<p>4.5 Rental Rates for Leases (Aerodromes with a hangar lease option)</p>						
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Agreement Type	Tenure	Rental					
Lease	Preferred Tenure – 3 year intital term with 2 x 3 year renewal	Commercial Market Rental Assessment completed by valuer and calculated by square metre rate.					
	<p>Terms and conditions</p> <p>A supplementary valuation will take place, valuing the area with an independent CIV. All levied Council rates (e.g. general rates, municipal charge, FSPL and waste management if applicable) will be paid by the Lessee. Insurance and any utilities and telephone costs to be paid by the Lessee. The rental will be calculated by the valuer, and charged per square metre. On the anniversary of the lease the rent will be adjusted and increased by CPI.</p>						
5.	<p>Insurance</p> <p>All occupants are obligated to take out and keep current their own public liability insurance cover with Council noted as an interested party. A minimum cover amount of \$20 million is required or such other amount reasonably specified from time to time by Council. Council reserves the right to request a copy of the current certificate of currency each year for their records. Buildings owned by Council are insured by Council in the majority of cases. Council will not insure the contents of any leased</p>						



	premises, unless otherwise stated in the agreement. Except for community groups on Council land where arrangements will be negotiated.
6.	Utilities and associated costs
	<p>The costs associated with the operation of the service which may include:</p> <ol style="list-style-type: none"> a) Utilities (water, telephone, gas, electricity, internet). b) Rates, if charged, including any charges or sums payable in lieu of rates. c) Commercial waste, sanitary, sewerage and cleaning charges. d) Land Tax. e) Applicable insurance premiums. f) Any other statutory charges. <p style="padding-left: 40px;">These will depend on each licence, lease or user agreement and the special conditions as per the individual arrangement.</p> <p>Each occupier will be responsible for payment of their own costs in connection with the preparation and execution of leases and licences.</p>
7.	Inspection, Maintenance and Improvements
	Council will conduct an inspection of all building and land before signing of any agreement, licence or lease.
8.	Selection of tenants and licensees
	<p>In considering entering into proposed leases and licences, Council should also have regard to the relevant Victorian government policies which have been issued in relation to the selection of tenants and licensees.</p> <p>Although there is no statutory requirement upon councils (eg: under the LGA) to undertake a public procurement process (eg: expression of interest or public tender) in respect of a proposal to lease council-controlled land, in considering its position, Council should have regard to:</p> <ul style="list-style-type: none"> • the public procurement principle in the Local Government Best Practice Guideline for the Sale and Exchange of Land dated June 2009; and • (for Crown land) the Leasing Policy for Crown Land in Victoria 2023. <p>The effect of the above documents is that, generally speaking, Council should conduct a public procurement process before awarding any lease or licence, unless special circumstances exist which justify a private treaty negotiation.</p>
9.	Term of leases and licences
	For leases, in establishing the term, Council officers will need to have regard to any relevant constraints under the RLA, and CLRA and the LGA.



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	For Crown land, Council officers will also need to have regard to relevant principles set out in the DEECA Policy referred to above, and any other relevant policies and guidelines issued by DEECA from time to time.	
10.	Rental increase	
	A rental increase will be each financial year, unless specified. Consumer Price Index as measured by the Australian Bureau of Statistics, per Melbourne CPI %.	
11.	Review date	
	This policy will be reviewed four years from the date of endorsement by Council, unless it is required to be updated sooner.	
12	Responsibilities	
	Council	Resolve on leases which: <ul style="list-style-type: none"> • have a current market rental of \$50,000 or more (and are for a term of 1 year or more); or • have a term of more than 10 years.
	Chief Executive Officer	<ul style="list-style-type: none"> • Execute leases which have a term up to 10 years. • Executes licences which have a term up to 10 years. • Executes User Agreements with community groups/organisations residing in a Council facility.
	Directors	<ul style="list-style-type: none"> • Inform Council or the CEO associated leasing process to facilitate the decision making.
	Quality and Facilities Manager	<ul style="list-style-type: none"> • Obtain information relating to organisations to assist with determining their eligibility to enter into an occupancy agreement with Council. • Negotiates terms with Lessee/Licensee in line with Council's Policy. • Consultation with relevant stakeholders to ensure policy, compliance and legal requirements are met. • Monitors compliance with performance criteria, terms and conditions at an ongoing basis. • Responsible for the day to day management of the occupancy agreement. • Monitors reporting requirements from the Lessee/Licensee to ensure maximum community benefit and site optimisation is achieved. • Develop policy, provide advice, guidance, template agreements and key terms.



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		<ul style="list-style-type: none"> • Attend negotitaion meetings with Director. • Maintain records and lease register. • Advice to Director regarding compliance with agreements and legislation. • Provide relevant reporting from the lease register. • Apply for approval in principle (grant and purpose) from the Department of Energy, Environment and Climate Action (DEECA) if Coucnil is considering to enter an occupancy agreement under the Crown Land (Reserves) Act 1978.

Policy Adopted:	Council Meeting 21/8/2024	Minute Book	SRV Governance – Policies, Procedures, Plans Strategies
Policy Reviewed:			
Policy Reviewed:			
Policy Reviewed:			



Appendix 1

Pricing Methodology for Community Agreements

The following matrix indicates the methodology to be used to calculate the appropriate fee for each Lessee by allowing for the specific circumstances of individual organisations.

A	Categories of Occupancy	Full Lease fee
	Full lease fee = 3% of the replacement of facility or land value as determined by a valuer or value from current insurance schedule. CIV from rating data for category B4.	
B	Categories of Tenant	% Lease Fee
B1	Community Groups Category 1: Tenants who: <ul style="list-style-type: none"> have a liquor licence held on the premises; AND hold a Food Registration Certificate on the premises; AND hire their facilities for functions/social events; OR charge entry to the premises 	17%
B2	Community Groups Category 2: Tenants who: <ul style="list-style-type: none"> have a liquor licence held on the premises: OR hold a Food Registration Certificate on the premises; OR hire their facilities for functions/social events; OR conduct sporting activities for members and guests 	14%
B3	Community Groups Category 3: Non-sporting groups who provide a community service and are predominately volunteer based, excluding Historical Societies and Neighbourhood Houses.	5%
B4	Community Groups Category 4: Tenants who: <ul style="list-style-type: none"> only use land to for sporting fixtures (e.g. Hockey) occasional user of major facility on the land Calculate Part A from CIV from rating data. 	3%
C	Financial Circumstances (Evidence to be provided)	% of Lease Fee
C1	Group contributed \$0 to the construction of the facility	100%
C2	Group contributed up to 50% toward the construction of the facility	75%
C3	Group contributed in excess of 50% towards the construction of the facility	50%
C4	Group contributed in excess of 75% towards the construction of the facility	25%
D	Co-location	
D1	Tenant has exclusive use	100%
D2	Tenant is co-located with another group	50%
Rental Calculation AxBxCxD <i>(equals GST exclusive amount)</i> Note: Minimum rental \$225 per annum plus GST		\$ Plus GST