COUNCIL POLICY

TITLE:	COUNCIL PROPERTY LEASING AND LICENSING POLICY
ID NUMBER:	CPO-CORPS-CP-002 (DocSetID 1392702)
DEPARTMENT:	Corporate Services
UNIT:	Contract & Procurement
RESPONSIBLE OFFICER:	Contract and Procurement Coordinator

ADOPTED DATE AND BY WHOM:	25 November 2025 by Council
EXPIRY DATE:	25 November 2029
REVIEW DATE:	4 years following adoption *This policy will be reviewed every four years or as required by any legislative or council changes.*

AVAILABILITY:	Organisation wide	Yes ☒	No ☐
	Public	Yes ☒	No ☐
	Internet	Yes ☒	No ☐
ADVISE AVAILABILITY:	Media Release	Yes ☐	No ☒
	Sou Wester (Responsible Officer to prepare article)	Yes ☒	No ☐

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1. References

- Local Government Act 2020
- Residential Tenancies Act 1997
- Retail Leases Act 2003
- Crown Land (Reserves Act) 1978
- Occupational Health & Safety Act 2004
- Planning and Environment Act 1978
- DEECA Leasing Policy for Crown Land in Victoria 2023
- DEECA Crown Land Leasing Legislation Guidelines 2023
- Governor in Council Certification under section 17(1) of the Crown Land (Reserves) Act 1978. (ECM Doc Set Id 2457163)
- Retail Leases Regulations 2023
- Glenelg Shire Council, Procurement Policy CPO-CORPS-CP-001
- Glenelg Shire Council, Community Engagement CPO-COM-CW-002
- Glenelg Shire Council, Records Management Policy OPO-GF-ID-001

2. Purpose

Council manages land on behalf, and for the benefit, of the community. This land includes property owned by Council, Crown Land where Council is the appointed Committee of Management (CoM) and land leased or licensed by Council for specific purposes.

The purpose of this Policy is to ensure:

- Tenures for land and properties owned or controlled by council, are undertaken in accordance with applicable legislation and conform with council delegations and powers, in a manner that secures appropriate and equitable consideration of tenures and risk management for council;

- Transparency and consistency regarding occupancy arrangements;

- Benefit of Council's facilities to community groups;

- Commercial return to Council of its commercial assets as appropriate, dependant on individual circumstances; and

- The Legal use of Council managed land or buildings.

3. Objectives

The objective of this policy is to provide a framework for:

- A consistent approach when entering into agreements for Tenants and Licensees to occupy Council owned or managed land or buildings;

- Ensuring that Council assets are maintained, developed and occupied reasonably, having regard to the interests of the local community;

- Ensuring tenants and licensees pay fair and reasonable rentals and licence fees based on market determination with consideration to the community benefit where appropriate; and

- Ensuring that Council's risk is mitigated from the use of Council owned or managed premises by other parties.

4. Scope

This policy is applicable to all Council owned and occupied land and buildings and where Council acts as Committee of Management on Crown land. This policy does not apply to premises that are exclusively occupied by Council operated services such as pre-schools, libraries and maternal child health services.

This policy applies to leases and licences developed for use of Council owned or managed land or buildings, excluding user agreements for sport and recreation facilities located on public open space which are managed by the Recreation Unit.

5. Definitions

In this Policy, the following definitions apply:

Act means the *Local Government Act 2020 (Vic)* as amended from time to time.

Council owned or managed premises means land or buildings which are owned by Council or land or buildings which are on Crown Land and Council is the appointed Committee of Management.

DEECA means the Department of Energy, Environment and Climate Action (Victoria) and its successors and assigns.

Goods and Services Tax (GST) All tenants and licensees must pay GST, if applicable. GST is payable in addition to the rent or licence fee calculated.

Lease is a contract by which the landlord (owner) grants exclusive use and possession of land to an occupant (lessee), in consideration for a payment (rent) for a specified term and purpose.

Licence is an agreement that generally allows the non-exclusive use of land for a fixed term to an occupant.

Lessor/tenant means a person or incorporated body that has entered or is proposing to enter into a lease with Council for the use of Council owned or managed premises.

Licensee means a person or incorporated body that has entered or is proposing to enter into a licence with Council for the use of Council owned or managed premises.

Market rental means the rental amount set by an independent valuer based on the current market.

Outgoings refer to costs payable relating to the premises or a multi-occupancy property, examples of outgoings include water rates, electricity costs and council rates.

Peppercorn rental means the minimum rental rate set for Council properties that are used by community groups where the tenant is a registered charity, not-for-profit or public body delivering:

a) community services aligned with Council's goals and priorities;
b) significant community benefit to the Glenelg Shire; and
c) have limited capacity to generate income.

Annual rent is $1 per annum inclusive of GST, upon demand.

Premises means land within a recognisable and clearly defined area (normally the land description found on the certificate of title) AND in most cases the permanent buildings constructed upon the land.

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

6. Principles

a) All residential, commercial and community occupiers of Council owned or managed land or buildings will, as a condition of that occupancy, be required to enter into a formal and legally binding lease or licence with Council.

b) Council will maintain two separate rental or licence fee strategies for leases and licences that recognise the difference between commercial and community occupiers.

c) Council has a preference to enter into licence agreements rather than leases, as a licence ensures that Council's facilities are used to their greatest and maximises access to and use of community facilities.

d) The occupant must not transfer the lease or sublet the premises without the written consent of Council.

e) Maintenance and outgoings - A maintenance schedule is included in all Agreements to clarify the obligations and responsibilities of each party for maintenance.

f) Council may terminate a lease (or licence) when a lessee (or licensee) does not:

- Pay the specified rent (or licence fee) within the agreed time frames;
- Perform or observe any of the covenants under the lease (or licence); and
- Keep current appropriate insurance cover.

7. Legislative Framework

Several laws affect Council leases and licences. Of relevance are the following Victorian Acts and Regulations:

- *Local Government Act 2020 Section 115:* Outlines the requirements in relation to leasing land, which includes restrictions on the maximum length of leases (50 years maximum) and requires leases to be publicly advertised where specific criteria is met.

- *Residential Tenancies Act 1997*: This Act applies to residential property leases at market rates.

- *Retail Leases Act 2003*: Controls leases of premises that are used wholly or predominantly for retail provision of goods or services (including by not-for-profit organisations).

- *Crown Land (Reserves) Act 1978*: Sections 17B, 17BAA, 17C, 17CA,17D 17(2)(a) enables leases and licences of Crown land in certain circumstances.

- *Occupational Health and Safety Act 2004*

- *Planning and Environment Act 1987:* Identifies permitted use of land through Council's planning scheme.

NB. This legislation may be amended from time to time.

8. Council Policy

8.1 Category Type

Council has set the following categories for tenants and licensees:

- Group 1 – Residential Occupier

  This tenant is a person or household who has the legal right to occupy a residential premises, such as a house or apartment, under a tenancy or rental agreement with the landlord.

- Group 2 – Commercial Occupier

  Tenants include any occupier who operates a business or commercial enterprise that is other than a sporting or recreational or community group. This includes organisations that hire or retail goods or services. An organisation commercial in nature or operated for the primary purpose of returning a commercial benefit, monetary gain or profit or Government organisations.

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

- Group 3 – Community Groups

  Tenants include community groups that service the community and are readily available to 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). Some examples include Clubs and Non-Government Organisations

- Group 4 – Not-for-Profit Community Groups

  Tenants include incorporated community groups that service the community and are not categorised as a Group One, Group Two or Group Three Tenants. These Tenants include community groups that serve the community, or an underprivileged or disadvantaged group and these Tenants do not have the capacity to generate a significant amount of income and operate on a not-for-profit basis. A Peppercorn lease/licence will be determined using the criteria listed in the definition. Examples may include, Senior Citizen Groups, Community youth groups.

Where a proposed Tenant may be classified in more than one Group, Council will determine the appropriate classification.

Lease/Licence Negotiations

Council staff may negotiate the terms and conditions of the lease or licence with the successful tenant or licensee, having regard to DEECA guidelines if the lease or licence is on Crown land or to the RLA guidelines the lease is a retail lease.

These negotiations may result in reduced or staggered terms where exceptional circumstances exist. Examples include where organisations contribute to the cost of maintaining the asset or in circumstances where the asset is utilised for substantial community or social benefit supporting the objectives in the Council Plan.

8.2 Rental Fees and Charges

8.2.1 Rental Levels

- Group 1 - Residential

  Residential tenants will pay a market rent. This may be determined by a market rental or licence fee assessment conducted by a valuer, or as the result of an expression of interest or similar process.

  A reduction from the market rate may apply for a short period where it has been determined to offer new employees of Council access to temporary housing to assist their relocation.

- Group 2 – Commercial

  Commercial tenants or licensees will pay a rent or licence fee and this may be determined by a market rental or licence fee assessment conducted by a valuer, or as the result of an expression of interest process or similar process.

- Group 3 – Community Groups

  Community tenants or licensees will pay a market rent or licence fee with a reduction from this rate to be negotiated at the time of the lease or licence, with consideration to the pricing strategy in clause 8.2.3

- Group 4 – Not-for-Profit Community Groups

  Not-for-Profit Community tenants or licensees will pay a fee to market rent or licence fee with a reduction from this rate to be negotiated at the time of the lease or licence. Consideration of a peppercorn licence/lease, in accordance with the pricing strategy in clause 8.2.3.

  Some buildings have the potential to be used in multiple categories for example Community Group use and Commercial/residential use. The intended use of the premises must be advised to Council so the appropriate classification can be applied.

8.2.2 Rent Increases

Rents and licence fees for the Groups 1 and 2 – Residential/Commercial category will be subject to:

- Annual indexation using the Consumer Price Index (CPI);
- A fixed annual percentage increase;
- Market rental review undertaken on the exercise of an option and/or every three or five years of the term and /or by agreement; or
- For Crown Land, fees will be in accordance with DEECA Leasing policy for Victorian Crown land 2023 - Crown land lease rent categorisation.

Rents and licence fees for the Groups 3 and 4 – Community categories (except peppercorn rents), will be subject to:

- annual indexation using the Consumer Price Index (CPI); or
- For Crown Land, fees will be in accordance with DEECA Leasing policy for Victorian Crown land 2023 - Crown land lease rent categorisation.

8.2.3 Pricing Strategy

The underlying principle 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 buildings by organisations which provide recreation opportunities or play other community development roles.

A peppercorn licence/lease (annual rent is $1 per annum inclusive of GST, upon demand), which is the minimum rental rate set for Council properties,

will be considered for community groups that are a registered charity, not-for-profit or public body delivering:

a) community services aligned with Council's goals and priorities;
b) significant community benefit to the Glenelg Shire; and
c) have limited capacity to generate income.

The policy also recognises that the existence of a range of leisure and recreation facilities and services enhances the quality of life and wellbeing of our community in accordance with Council's objectives as indicated in the Council Plan.

The policy also gives due recognition to organisations which have contributed to the capital costs of constructing the asset.

Crown Land, fees are charged in accordance with DEECA Leasing policy for Victorian Crown land 2023 - Crown land lease rent categorisation. DEECA leases and licences currently have a minimum community rental of $104.00pa excl. GST.

8.2.4 Legal Costs

Council will pay legal costs associated with the establishment of all new lease and licence agreements. Any independent legal advice and assistance sought by the tenant is at their own cost.

9. Length of Tenure

The length of each lease or licence will be negotiated taking into account the particular circumstances of the property and tenant. As a general rule the term offered will not exceed nine (9) years however each case will be guided by principles, including but not limited to:

- The tenant or licensee
- Substantial contributions to capital/structural works by the tenant or licensee;
- The suitability of the premises.
- The ongoing need for the premises or the provided use; and
- The stability of the tenant or licensee
- Potential for Asset consolidation, public need or sale

Council will generally not grant leases that are longer than nine years, including options. However, terms longer than nine years may be offered where a tenant substantially invests in a fixed asset (e.g. building, playing surface) and fully maintains the asset, or after public community consultation process has been undertaken.

10. Human Rights and Responsibilities Charter Compatibility Statement

This policy has been reviewed against section 13 of the Charter of Human Rights and Responsibilities Act 2006. Importantly, transparency is a human right under the Charter of Human Rights and Responsibilities Act 2006, namely, "the right to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. Additionally, this policy also

provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006.

11. Gender Impact Assessment

In accordance with the *Gender Equality Act 2020* (Vic), Council is committed to ensuring a gender lens is applied to all new policies, programs and services that directly and significantly impact the public and ensure that a gender impact assessment (GIA) is conducted as needed. Records of GIA conducted must be saved in the records management system with the relevant procurement in accordance with the GIA Policy.

12. Records Management

All Council records created and managed as a result of implementing this policy will be managed in accordance with the Council's Records Management Policy.

The Records Management Policy assigns responsibilities for records management to employees, supervisors, volunteers and other specific positions.

No Council records are to be destroyed without consideration of the requirements of the Act(s) that govern the functions relevant to this policy. Prior to destruction, advice must be sought from the Information and Data Unit, with consideration to the requirements of the appropriate Retention and Disposal Authority (RDA).