

Leasing and Licensing of Community Facilities

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1. Purpose

The purpose of this Policy is to provide a consistent approach for the leasing and licensing of Council Property to maximise the community benefit and ensure responsible management of community accessible assets for various appropriate community services.

2. Background

Council owns and manages a number of facilities which are available to the community by way of a Lease or Licence agreement.

This Policy outlines the principals when granting a Lease or Licence for Council Property by establishing a framework to be used in conjunction with the Council Plan.

This includes:

- Maximising the use of Council Property;
- The implementation of agreements providing community benefit and management of Council Property;
- The standardisation of Community Property agreements; and
- The categorisation of Lease and Licence occupants.

The following legislation relates to this Policy:

- *Local Government Act 1989*;
- *Local Government (General) Regulations 2004*;
- *Crown Land (Reserves) Act 1978 (Vic)*;
- *Companies Act*; and
- *Consumer Affairs Act 1972*.

3. Scope

3.1. Inclusions

This Policy applies to all Council Property under a Lease or Licence being controlled by Council's Community Services Directorate.

3.2. Exclusions

This Policy excludes any Council Property which are:

- Managed by Council's Commercial Property department;
- Public halls or Council civic meeting rooms managed through civic attendance; and
- Being exclusively occupied by a Council operated service.

4. Human Rights and Responsibilities Charter – Compatibility Statement

The Victorian Charter of Human Rights and Responsibilities has been considered in the preparation of this Policy. This Policy is consistent with the Charter and with the recognition of Council's duty of care to all who seek to make use of Council's facilities.

5. References

- Victorian Charter of Human Rights and Responsibilities 2006.
- Multipurpose Use of Community Facilities Policy 2011.
- Sports Pavilion Management Policy 2012.
- Community Facilities Management Policy 2013.
- *Local Government Act 1989* (LGA).

6. Definitions

The following definitions apply in the implementation of this Policy:

Community Property	Council's Community Services Directorate and the responsible officer in that Directorate in charge of the leasing and licensing of Council Property under their control.
Commercial Property	Council's Governance Department and the responsible officer from that Department in charge of the leasing and licensing of Council Property under their control.
Council	The City of Greater Dandenong and includes the Council's successors and assigns and where it is consistent with the context includes the Council's employees and agents.

Council Property	Council land, improvements and/or buildings owned or managed by Council including Crown Land where Council acts as the Committee of Management.
Lease	A lease agreement grants the occupant exclusive occupation of a defined area for a specified period of time subject to certain terms and conditions. A lease agreement is only used where exclusive occupancy is being granted. A lease may be granted for either vacant land or land and buildings.
Licence	A licence agreement gives the occupant a non exclusive occupancy to a defined area for a specific purpose and a specified period of time subject to certain terms and conditions. A licence agreement does not create an interest in the land and cannot be assigned or transferred to a third party. A licence agreement will be used when an occupier is not given exclusive occupancy. A licence may be granted for either vacant land or land and buildings. This includes casual hire and seasonal occupancy agreements.
Occupant Categories	Occupant categories refer to the occupant categories listed in this policy at point 7.4.

7. Council Policy

7.1. Objective

The objective of this Policy is to:

- Establish a framework for the leasing and licensing of Council's Community Property;
- Establish Occupant Categories, rental and licence fees and access granted to Council Property in accordance with the community's needs and expectations;
- Ensure Council Property is maintained, developed and occupied in the best interest of the community and Council; and
- Ensure fair and consistent leasing and licensing terms and conditions.

7.2. Types of Agreement

Council will use two types of agreements under this Policy being a Lease or a Licence. These will be used to assign and manage the usage of Council Property. It should be noted that Leases will only be used in exceptional circumstances. The criteria that must be met to enter into a Lease or Licence with Council, are as follows:

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| Lease | <ul style="list-style-type: none"> • The use of the facility supports the Council's Plan and/or Master Plans and addresses the priority needs of the community as determined through a Council plan or strategy. |
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- The Lease is a contractual agreement which sets out contractual obligations between the lessee and lessor to potentially upgrade or improve the facility at the lessees expense, where it would have otherwise remained in the same condition.
- The lessee must be able to undertake the necessary maintenance to ensure the facility and/or associated grounds are maintained to an agreed standard.
- The lessee is to provide proof of financial viability to meet its legal obligations under the Lease arrangement.
- The lessee must be an Incorporated body under the Companies Act or a registered not for profit association.
- The lessee must submit an acceptable business plan for the management and development of the facility under consideration and its use must be relevant with Council plans, policies, as well as any legislative requirements.

Licence

- The use of the facility supports Councils Plan and other relevant plans and/or strategies and addresses the priority needs of the community.
- The licensee must be able to undertake necessary maintenance to ensure the facility and associate grounds are maintained to an agreed standard.
- The licensee is to provide proof of financial viability to meet its legal obligations under the License arrangement.
- The licensee must be an Incorporated body under the Companies Act, or a not for profit association.
- The licensee must submit an acceptable business plan for the management of the facility under consideration and its use must be relevant with Council plans, policies, as well as any legislative requirements.
- A licence agreement will be used when a facility is utilised as a shared facility creating greater use of Council Property.

7.3. Term

The term of a Lease or Licence for Council Property will be determined on an individual basis. Some of the factors that are taken into consideration when making these decisions are as follows:

- The extent of community benefit;
- The proposed use of the premises;
- The future use of the premises;
- The substantial contributions to capital works by the occupant;
- The degree of relevance with Council plans, strategies and policies; and
- Section 190 of the *Local Government Act 1989*.

Council will not provide a Lease for less than 1 year or more than 5 years (including any further term). Lease terms of more than 5 years will be considered only in certain circumstances such as where the occupant is making a significant investment into the Council Property.

7.4. Occupant Categories

All occupants entering into a Lease or Licence with Council under this policy will be categorised into one of the five Occupant Categories:

Community Group:	Not-for-profit or voluntary groups that receive minimal or no funding to run group activities or programs. Includes groups deemed to be providing services and activities to the local community, such as sporting and hobby clubs, cultural and social clubs.
Community Agency:	Not-for profit organisations that receive funding to provide services. Includes government departments, agencies, schools, not-for-profit organisations and churches as well as organisations and community groups that are based outside of the Council.
Commercial:	For profit organisations. Includes businesses, instructors, corporations, political groups and training organisations.
Council Funded:	Organisations and/or programs that Council supports through (part or whole) subsidy. This support could be in lieu of a Council grant for facility hire, must be a 'core business' of Council and/or must be consistent with a Council plan, strategy or policy.
Internal:	Council staff – use of facilities for meetings, seminars and direct Council activities that are directly related to Council service provisions.

If there is uncertainty when assigning an occupant to one of the following Occupant Categories:

1. Community Group;
2. Community Agency; or
3. Commercial,

the higher category will apply. For example, if there is uncertainty as to whether a not for profit occupant is a Community Agency or Community Group, Community Agency will apply.

7.5. Rental and Licence Fees

- Council recognises the important role that Community Property provides to the community in encouraging social and civic participation and supporting the wellbeing of residents.
- It is fair that a group that derives a benefit from using a Community Property pays a fee to use that facility.
- Council's fees and charges are determined through the annual budget process with an understanding of the importance of subsidising community groups who provide community benefit and have a limited capacity to pay.
- Fees and charges are set according to the Occupant Categories, level of service and type of facility.
- Fees and charges will be consistent, transparent and affordable to encourage and retain use for the benefit of the community.

7.6. Community Access and Benefit

Maximum utilisation of Council Property is promoted with consideration given to community demand and capacity of facilities to cater for use.

- 'Community Group' use of Council Property is given priority over other uses particularly where:
 - Local community groups do not have ready access to any other types of facilities in which to conduct their activities;
 - A Council strategic objective/s is achieved by supporting such use; or
 - There is a clear social benefit to be achieved by the use/activity, including access for multi-cultural groups, aged people, family groups and other population groups.
- 'Community Agency' use is granted to organisations and groups who can demonstrate:
 - Clear relevance with Council's strategic objectives as expressed through Council plans, strategies or policies; or
 - A clear social benefit for the community and in particular demographic groups identified as being in need.
- 'Commercial' use is granted on a lower priority basis in relation to community groups and agencies to ensure utilisation of a facility and where:
 - There is a demonstrated benefit to the community from the commercial activity that is being conducted;
 - The use complements other uses of a facility at a time when the facility would otherwise be vacant;
 - Building business sector partnerships has a benefit to the facility in potential sponsorship and increased revenue; or
 - Commercial use does not displace community group or agency use.

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- 'Council funded' use will be given priority where:
 - Community groups are supported to use facilities with financial assistance from Council as agreed by Council;
 - Funding has been secured to conduct a program that requires a facility;
 - Council's strategic objective/s are met as expressed through Council plans, strategies or policies by such use; or
 - A clear social benefit for the communities of the Council and in particular demographic groups identified as being in need.

This Policy recognises the legitimacy of charging fees for use of Council Property. Any discretion to reduce fees or provide additional subsidy due to hardship is subject to Council consideration of financial support.

7.7. GST (Goods & Services Tax)

All Lease and Licence agreements attract GST at a level determined by the Federal Government. GST is payable in addition to the rental or fee stated in the Lease or Licence unless stated otherwise.

7.8. Insurance

The occupant under a Lease or Licence is required to provide public liability insurance for a minimum of \$20,000,000. A copy of the public liability insurance must be provided on commencement of any Lease or Licence and annually thereafter.

Council will take out and maintain building insurance for Council buildings on Council owned or controlled land.

Council does not insure or take any responsibility for insuring buildings or contents not owned by Council, this is the responsibility of the occupant.

7.9. Reporting

A Lease or Licence will document all information that is required to be reported to Council. The following information as a minimum will generally be required annually unless stated otherwise in the Lease or Licence:

- Annual general meeting minutes;
- Audited annual financial statement and report;
- List of office bearers and contact details; and
- Public liability insurance.

7.10. Management of Agreement and Use of the Facilities

Council reserves the right to suspend or terminate a Lease or Licence at any time if it has good cause including:

- A breach of any of the terms and conditions of the Lease or Licence;
- Failure to pay fees and charges and/or outgoings;

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- Refusing or ignoring a reasonable request;
- Failure to provide information requested by Council by the designated time;
- Adherence to maintenance responsibilities outlined in each agreement; and/or
- Council determining that a Lease or Licence has a potential to pose a risk to Council Property and/or the community.

Council officers will meet annually with occupants, where applicable, with a view of ensuring:

- Operational requirements of the Lease or Licence are being met;
- Contact with the occupant is maintained;
- Any issues that may arise are addressed; and
- Formal inspections of the facility are undertaken.

Occupants will be provided with 2 weeks to rectify any issues which are their responsibility. If issues are not rectified after this period, occupants will be contacted and a further week provided, after which inaction on rectifying the issue will result in Council undertaking the works and charging the cost to the occupant.

Council Officers will collect information from occupants on an annual basis to ensure occupants are sustainable, maximising the use of facilities, engaging with their local communities and planning strategically for the future.

7.11.Crown Land

Where Council acts as the Committee of Management of Crown Land, Council must seek approval from the Department of Environment and Primary Industries to enter into a Lease over the portion of Crown Land. Leases will be in the prescribed form as provided by the Department and Council's additional terms and conditions will form part of the special conditions of the Lease. Any additional terms and conditions must be approved by the Department.