



Lake Wendouree Boat Shed Policy

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DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

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1. POLICY STATEMENT

Intent

The purpose of this policy is to guide the management and use of boat sheds located at Lake Wendouree on land or water managed by Council.

Objectives

The objectives of this policy are to:

- Clarify Council's role as Trustee or Committee of Management in relation to boat sheds;
- Clearly set out the rights and obligations of boat shed licensees;
- Protect the amenity, use and enjoyment of the Lake and surrounds by other users;
- Provide for a fair and financially viable approach to boat shed licensing and management arrangements;
- Provide a framework for management and use of boat sheds including repairs, alterations, relocation and removal of the structures;
- Ensure compliance with related Legislation.

Statement

This policy only applies to properties that Council has delegated authority to manage. This policy applies to staff that prepare leases, licenses and occupancy agreements for Council controlled properties. This policy affects community groups and tenants of Council controlled properties. This policy does not apply to casual users of facilities.

Council must have Department of Environment, Land, Water and Planning (DELWP) approval for any lease or Licence of Crown Land. When premises become vacant or at the expiry of the term, council officers will consider the ongoing future use of the premises and determine a suitable tenant for the premises with appropriate Council departments. The occupation of Council's premises may be subject to an expression of interest or a tender process and satisfying all statutory or legislative requirements.

In the event that the existing tenant does not wish to extend their occupancy the default position will be for a further 3 year Licence to be issued to the existing tenant, subject to that party having reasonably met all terms and conditions of the Licence in the previous terms.

2. OWNER

The owner of this policy is the Chief Executive Officer. All enquiries regarding this policy should be initially directed to the Executive Manager Property Services & Facilities Management.

3. APPLICABILITY

The Policy applies to all Council Officers of the City of Ballarat, regarding land and/or facilities that the City of Ballarat has delegated authority to manage.

4. DEFINITIONS

In this policy, the following definitions apply:

Annual Licence Fee	The annual fee payable to Council as owner or manager of the property.
Boatshed	A shed or similar structure erected on the lake foreshore managed by Council and generally used for the storage of boats, watercraft and accessories, and for the comfort and convenience of licensees.
Commercial Occupier	Any occupier who operates a business or commercial enterprise that is other than a sporting, educational, recreational or community group. This includes Not For Profit organisations that hire or retail goods or services.
Community Occupier	Not for Profit bodies which provide or promote community, cultural, educational, sporting, recreational or similar activities.
Council	The City of Ballarat and any successors in law.
DELWP	The Department of Environment, Land, Water & Planning and its predecessors, successors and assigns, the Victorian Government department representing the Crown as the landowner of Crown land.
Existing Boatshed	A boat shed that exists at the date of this policy.
Lease	A lease is a right granted by the owner of land (landlord) to another person, community group or incorporated organisation (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment. Council may grant a lease where the premises will be occupied exclusively by the one user and Council considers that granting a lease is in the best interests of the community.
Licence	A Licence permits a person, community group or incorporated organisation (licensee) to occupy land (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. Sporting clubs with seasonal service agreements are not included in this Policy.
Licensee	A person holding a current licence for any Council owned or managed property.
Municipal Land Rates	Has the same meaning as general rates referred to in the <i>Local Government Act 1989</i> .
Property	Land or building owned or managed by the City of Ballarat and any successors in law.
Site	Council freehold land or Crown land managed by the Council allocated to a tenant whether or not that site has any structure on it.
Structure/Facility	Any structural improvement on the land.
Transfer Fee	The fee determined by Council and payable to Council by a relinquishing licensee at the time of transfer of the licence from a relinquishing licensee to a prospective licensee.

5. PREAMBLE

Background

This Policy outlines the tenure, management, maintenance and use of community and privately occupied boat sheds at Lake Wendouree, Ballarat.

The Lake and surrounds are Crown land. The Lake itself is permanently reserved for Public Recreation (Government Gazette 4 July 1881) and recorded as Volume 13334 Folio 769. The surrounding land is temporarily reserved for Public Park and Gardens (Government Gazette 19 October 1955) and recorded as Crown Allotment 2018 Parish of Ballarat.

Although the reservations were made under the *Land Act 1869* they are now governed by the *Crown Land (Reserves) Act 1978* which at section 5(4) provides –

Every temporary or permanent reservation made or purported to have been made under the Land Act 1958 or any previous corresponding enactment shall be deemed to have been made under subsection (1).

The designation ‘permanent’ means that revocations, excisions or reassignment of purpose can be made only by a new, site-specific Act of Parliament. The designation ‘temporary’ means that such changes can be made by administrative action.

The purposes ‘Public Recreation’ and ‘Public Park and Gardens’ are quite independent of any zoning under the Planning Scheme. Their meaning and import is to be ascertained by reference to the *Crown Land (Reserves) Act 1978*, not the *Planning and Environment Act 1989*.

Land Owner, Manager and Occupier

By a restricted Crown Grant dated 6 October 1881 the lake was granted to trustees, being the Mayor, Councillors and Citizens of the City of Ballarat and their successors. The Crown Grant applies only to the Lake, not to the surrounding land. Thus, Council is Trustee of the Lake alone, not the surrounding land. Council has been appointed as Committee of Management of the surrounding land.

The Grant was made pursuant to two Acts of Parliament, namely the *Land Act 1869* (Act 360) and the *Waterworks Act 1880* (Act 656). It follows that the Grant must be read as a subordinate instrument rather than as a Vice-Regal decree with standalone authority.

This Crown Grant is not a grant in fee simple, that is, ordinary freehold land. The Crown Grant overlays the reserve; it does not extinguish it. If the Grant were to be revoked or surrendered, the permanent reserve would remain, meaning that the land has continued to be Crown land.

The Crown – represented by the Minister and Department – is the land owner. Council, whether as Committee of Management or Trustees, is the delegated manager of the land. A licensee of a boat shed has no ownership rights, and is simply an occupier of Crown land, for a period of time.

Scope

The Policy applies to boat sheds on Crown land at Lake Wendouree, occupied by community groups, schools or private individuals. It does not apply to boat sheds or other structures occupied by the City of Ballarat.

The Policy recognises that the City cannot exceed the powers conferred on it through Victorian government legislation. It is also guided by the advice and policies of various government agencies.

6. MANAGEMENT PRINCIPLES

Boat sheds have been part of the history and use of Lake Wendouree for over a century. Well maintained boat sheds provide a point of interest to visitors, and can contribute to the visual amenity of the lake and surrounding land.

- The boat sheds are located on Crown land managed by the City of Ballarat. The structures are fixtures on the land and belong to the land owner.
- Boat sheds should benefit the wider community as far as practicable, have multi-functional shared use, and enable optimal public use of the Lake and surrounds.
- Private occupation of a boat shed is a privilege, not a right. Tenure arrangements will recognise this, and be structured to avoid a boat shed becoming a form of private investment in a public resource.
- New private structures on Crown land that provide no public use benefit (such as privately occupied jetties or boatsheds) will not be permitted.
- Over time as opportunities arise, private occupation of existing boat sheds should be phased out in favour of community use based on clearly demonstrated benefit and demand.
- Any new boat shed proposed for community use should be based on a sound business case; benefit a wide range of community members; be located without impeding the landscape value, views or access to the Lake, and be in character and scale with existing boatsheds.

7. PROCEDURE AND GUIDANCE NOTES

Tenure

Grant of Licence

All boat shed occupations will be formalised through a licence agreement. Section 17B of the *Crown Land (Reserves) Act 1978* allows for licence agreements for *a period not exceeding 10 years*. However, the land manager is not obliged to offer the maximum term.

Occupation of boat sheds located on Crown land at Lake Wendouree will be formalised through a licence under section 17B of the *Crown Land (Reserves) Act 1978*. The term of the licences will be for a maximum of three (3) years.

Renewal of Licence

At Council's discretion, licences may be renewed at the end of the tenure period for a further term where:

- licence conditions are met;
- the structure is well maintained;
- the structure is in an appropriate location and not subject to storm surges, flooding, siltation or erosion;
- the structure is not at risk and/or contributing to the instability of the area;
- Council has not determined to remove the structure, or use the structure in another way.

Cancellation of Licence

A breach by a Licensee of the licence or this policy, including failure to pay Council fees and charges, and which is unremedied after reasonable notice of the breach is given to the Licensee, may result in cancellation of the licence.

Licences which become available as a result of cancellation may be offered for reallocation by Council.

Transfer of Licence

Licences may be transferred subject to approval from Council. A licence may not be transferred by bequest.

Transfer of licence will be subject to:

- acceptable condition of the boat shed structure as determined by Council;
- approval for any alterations;
- no increase in licensed footprint;
- maintenance repairs, including external painting, as determined by Council;
- payment of outstanding charges including rates, taxes and Licence fees;
- payment of prescribed transfer fees;
- Council having not determined to remove the structure, or use the structure in another way.

Fees and Charges

Licence Fees

The licence fees for boat sheds will be determined by Council on an annual basis. Fees and charges for boat shed licences are payable annually in advance.

The method of determining the licence fees will be determined by Council from time to time and is subject to any relevant legislation, policies and strategies.

Transfer Fees

Fees are levied by Council for transfer of boat shed licences from a current licensee to a new prospective licensee. Transfer fees are 5% of the Capital Improved Value (CIV) of the boat shed as determined in the current Council rates notice. Council may review the transfer fees from time to time. Transfer fees may be applied proportionally, such as when there is more than one Licensee but only one Licensee is transferring their share. Transfer fees must be received by Council before any transfer of licence is approved. The payment of all fees, including transfer fees, is the responsibility of the Licensee.

All Fees and Charges

Licensees are responsible for payment of all municipal land rates and taxes on the licensed site. Failure to pay municipal land rates, licence or transfer fees will enable Council to pursue recovery of such money and cancel the licence.

Rebuilding a structure

Where an existing boat shed is substantially damaged (greater than 50% loss), building of a new boatshed may be permitted within the existing footprint of the structure at the discretion of Council. The building of the replacement bathing box or boatshed must be completed within the timeframes specified within the permit or permission may be deemed to have lapsed.

The style, form and materials of any rebuilt boat shed should be consistent with DELWP's Standards for Bathing Box and Boatshed Construction Guidelines 2015 and should take into account the character of the adjoining bathing boxes and boatsheds and the surrounding foreshore environment.

Removal of structures

Boat Sheds may be removed in any of the following circumstances as determined by Council:

- The structure is dilapidated, beyond repair or is a hazard to public safety;
- The tenant fails to give effect to notices issued by the Council;
- The structure does not comply with the relevant construction standards;
- The area is subject to changes including storm surges, flooding, loss of water in the Lake, siltation or erosion;
- The structure is at risk or may contribute to land or water changes;
- The area around the structure is unsafe to access;
- Removal is planned through any Management Plan or Policy for the area;
- All heritage considerations are appropriately met.

8. OCCUPANCY CONDITIONS

General Maintenance

To provide a consistent and fair framework for the conduct of maintenance on Council's premises, maintenance schedules have been developed and each tenant is required to maintain the facility in accordance with the maintenance schedule attached to the lease or Licence. The maintenance schedule will specify the responsibilities of Council and the tenant including responsibility for maintaining the structure, the building fixtures and fittings and grounds. The level of maintenance responsibility outlined in the relevant schedule will be determined by the tenant category and any special maintenance requirements by the tenant. Generally, the Licensee must maintain the boat shed in good condition to the satisfaction of Council and ensure the boat shed does not prejudice the safety of its users, and other park users and visitors. The Licensee must ensure that:

- Any improvements are kept in good order and condition;
- Graffiti is removed from the structure within the period specified on notification by Council: general graffiti 28 days and offensive graffiti 7 days. Council reserves the right to remove offensive graffiti where it is in public view and likely to cause distress to the community;
- The site is kept free of rubbish, pest animals and weeds; and
- Every default of which notice is given by the Council to the Licensee is remedied within a reasonable time specified in the notice.

Risk and Occupational Health and Safety

Council will require appropriate risk management measures in all leases and licenses which will include requiring tenants to:

- 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;
- Maintain adequate public liability insurance;
- Ensure that appropriate documentation and insurance is in place for occasional or hired use of the premises by third parties;
- Require tenants to comply with emergency evacuation procedures and risk management practices implemented by Council;
- Require tenants to 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;
- Only use appropriately qualified tradespeople to undertake repairs.

Condition Audits

Tenants may be required to participate in a regular condition inspection and report of the premises as determined by Council. The regularity of the review will depend on the use and type of tenant. Council or Council's agent may also enter the premises at any reasonable time after giving the tenant at minimum of one week's notice to conduct condition audits.

General Occupancy Conditions

- No construction works are to be carried out by the licensee without, firstly, permission of Council as land manager under the Crown Land (Reserves) Act 1978, and secondly, any permission required of Council as Responsible Authority under the Planning and Environment Act 1987. This includes any erosion or siltation control works or jetty construction.
- The Licensee must hold public liability insurance over the licensed site to a minimum value specified in the licence and supply evidence of the current policy to Council on request.
- No services such as power, water, drainage, sewerage, gas or telecommunications are to be connected to a boat shed. This includes solar or wind power generation or other infrastructure, without the consent of Council.
- Boat sheds shall not be used for overnight stays or any other sort of residential accommodation.
- Boat sheds shall not be used for any commercial purpose without Council permission.

- No fuel or chemicals are to be stored in any privately occupied boat shed. Where the storage of fuel in other boat sheds is permitted by Council, relevant Australian Standards must be adhered to and will be included as a condition of the Licence.

9. COMPLIANCE RESPONSIBILITIES

The Executive Manager Property Services and Facilities Management will ensure all tenants comply with relevant terms and conditions contained within this policy.

10. CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the Charter of Human Rights Act 2007.

11. COMMITMENT TO CHILD SAFE STANDARDS

All Tenants and their staff are expected to ensure they understand the City of Ballarat's commitment to the child safety standards and that everyone has a role to play in protecting children from abuse. Tenants and their staff are expected to understand how to identify, assess, and minimise risks of child abuse and to detect potential signs of child abuse. They will also be expected to ensure that their behavior towards children is in accordance with the Child Safe Standards.

12. REFERENCES AND RELATED POLICIES

This Policy is implemented in conjunction with the following Acts and Reference Documents:

Relevant Legislation

Crown Land (Reserves) Act 1978

The *Crown Land (Reserves) Act 1978* sets out how Crown land is to be reserved, managed and occupied. It also provides for the appointment of Committees of Management for reserved Crown land. Crown land reserves are not the same as planning scheme zones.

Planning and Environment Act 1987

The *Planning and Environment Act 1987* provides for the preparation of planning schemes and for their administration by Responsible Authorities. Such planning schemes are to enable sound, strategic and co-ordinated planning of the use and development of land. Planning Schemes usually contain state and local policies, along with zones and overlays, which set out use and development provisions.

Local Government Act 1989

The *Local Government Act 1989* enables municipal councils to perform the functions and exercise the powers conferred by any Act *for the peace, order and good government of their municipal districts*. This includes the management of land or assets owned or managed by councils.

Council Policies and References

- Risk Management Policy
- Asset Management Policy
- Approved Master Plans
- Capital Works Program
- Council Plan 2017 - 2021
- Community Engagement Strategy
- Standard Council Lease and Licence Templates
- Standard DELWP Lease and Licence Templates
- Child Safe Standards