

# LEASING AND LICENSING POLICY

## 1.0 Purpose

The purpose of this policy is to guide the framework of the tenancy management of Council's property portfolio.

## 2.0 Scope

The Policy applies to all property assets including land and structures on Crown and freehold land, occupied by community groups, not for profit organisations, private individuals and commercial entities. It does not apply to structures occupied by the City of Ballarat, or sporting clubs or other entities with seasonal service agreements.

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

The objectives of this policy are to:

- Provide clarity of Council's role as Owner, Trustee or Committee of Management
- Clearly set out the rights and obligations of tenants;
- Provide for a fair and financially viable approach to the tenancy of Council property;
- Provide a framework for management and use of Council's property assets including repairs, alterations, relocation and removal of the structures; and
- Ensure compliance with relevant Legislation.

This policy is relevant to community groups and other tenants of Council owned or managed properties. 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 satisfying all statutory and legislative requirements.

## 3.0 Policy Statement

### 3.1 Management Principles

Council is the owner and manager of a significant number of property assets contained within its property portfolio. Well maintained and managed property assets present a significant benefit to Council.

- Council must strive to ensure its property portfolio is performing and providing the maximum return measured by varying outcomes.
- Outcomes derived from offering tenancy of the Council property portfolio must be considered in accordance with expectation of revenue and community benefit.
- Private occupation of Council assets is a privilege, not a right. Tenure arrangements will recognise this, and be structured to avoid any Council asset becoming a form of private investment from a public resource.
- New private structures on Crown land that provide for single occupancy/exclusive use will generally not be permitted unless Council considers the structure integral to deriving economic or community benefit.

### 3.2 Crown Land and Council Land

	Type	Default Tenure	Rental	State Government Direction
Crown Land	Lease	Up to 21 years	Commercial Market Terms	<ul style="list-style-type: none"> <li>Extended Terms</li> </ul> Note: Council can use discretion on rental return
	Licence	3 years	\$104 per year (set by Crown)	<ul style="list-style-type: none"> <li>Extended Terms</li> </ul>
Council Land	Lease	5 years with options of 5 years	Commercial Market Terms	<ul style="list-style-type: none"> <li>Term of Lease</li> <li>Rental</li> </ul>
	Licence	3 years	Commercial Market Terms	<ul style="list-style-type: none"> <li>Term of Lease</li> <li>Rental</li> </ul>

### 3.3 Tenure

All tenancies offered on Council owned or managed land will be formalised through a binding tenancy agreement.

Prior to any tenancy being offered, the status (ownership) of the land must be clearly defined and understood as that will determine what instrument is to be used to formalise the tenancy.

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

Consideration must be given as to whether a market rental is to be obtained to either set the rental or present options to Council, and should Council wish to discount the rental demanded to less than market rental this must be documented and supported for purposes of auditing financial responsibilities.

#### *Grant of Tenancy*

Occupation of Crown land or Council owned land will be formalised through a lease or a licence in accordance with the requirements of relevant Acts, advice and policies of various government agencies.

#### *Licence*

The default position of Council is that the term of the licences will be for a maximum of three (3) years unless significant investment in a new structure or significant maintenance of the existing structure is required to return the condition of the structure to the satisfaction of Council.

#### *Lease*

The term for leases will reflect the level of exclusivity required by the prospective tenant in combination with investment. Lease tenures will be offered in five year initial terms and five year incremental options unless a decision of Council is adopted to alter these terms on an individual basis.

#### *Renewal of Tenancy*

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

- There are no breaches of term or conditions;
- The structure is maintained to the satisfaction of Council;
- 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 or site in another way, or transfer tenure to another party.

- Other circumstances exist that support renewal of the occupancy.

#### *Cancellation of Tenancy*

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

Other instances where tenancies may be cancelled are to be contained within the tenancy document and the provision of any regulating legislation.

#### *Transfer of Tenancy*

Tenancies may be transferred subject to approval from Council. A tenancy may not be transferred by bequest. An Application to transfer tenancy form must be used and all required information provided as part of any application to Council for the transfer of a tenancy.

### **3.3.1 Rental Fees and Charges**

#### *Rental*

Depending on the terms and conditions of the tenancy a market rental assessment can be commissioned to determine the annual rental amount. Increments commensurate with annual CPI will be incurred annually with market review undertaken at the completion of individual terms (default 5 years).

#### *Fees*

The fees for tenancies will be determined by Council on an annual basis. Fees and charges for 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 licences from a current licensee to a new prospective licensee. Transfer fees are 5% of the Capital Improved Value (CIV) 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 monies and cancel the licence.

### **3.2.1 Rebuilding a structure**

Where an existing structure is substantially damaged (greater than 50% loss), building of a new structure may be permitted within the existing footprint of the structure at the discretion of Council.

The building of the replacement 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 building must be consistent with Council requirements or in the case of boatshed surrounding Lake Wendouree with DELWP's Standards for Bathing Box and Boatshed Construction Guidelines 2015 and should take into account the character of the adjoining boatsheds and the surrounding foreshore environment.

### **3.3.2 Removal of structures**

Structures 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; or
- 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

## **3.4 Occupancy Conditions**

### **3.4.1 General Maintenance**

To provide a consistent and fair framework for the conduct of maintenance on Councils premises, maintenance schedules will be 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, 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 structure in good condition to the satisfaction of Council and ensure the structure does not prejudice the safety of its users. 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.

### **3.4.2 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;
- Implement appropriate Emergency Evacuation procedures;
- 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.

### 3.4.3 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 a minimum of one weeks' notice to conduct condition audits.

### 3.4.4 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, or Council as land manager of Council owned asset 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 any Council asset without prior approval. This includes solar or wind power generation or other infrastructure.
- Council assets shall not be used for overnight stays or any other sort of residential accommodation without prior approval.
- Council assets shall not be used for any commercial purpose without Council permission.
- No fuel or chemicals are to be stored in any Council asset without Council permission. 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.

### 3.5 Compliance Responsibilities

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

### 3.6 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 and Responsibilities Act 2006*.

### 3.7 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 behaviour towards children is in accordance with the Child Safe Standards.

## 4 Supporting documents and references

### 4.1 Legislation

- *Crown Land (Reserves) Act 1978*
- *Local Government Act 1989*
- *Planning and Environment Act 1987*

## 4.2 Associated Documents

- 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

## 4.3 Definitions

<b><i>Boatshed</i></b>	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.
<b><i>Commercial Occupier</i></b>	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.
<b><i>Community Occupier</i></b>	Not for Profit bodies which provide or promote community, cultural, educational, sporting, recreational or similar activities
<b><i>Council</i></b>	The City of Ballarat and any successor in law.
<b><i>DELWP</i></b>	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.
<b><i>Existing Boatshed</i></b>	A boat shed that exists at the date of this policy.
<b><i>Lease</i></b>	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.
<b><i>Licence</i></b>	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.
<b><i>Licensee</i></b>	A person holding a current licence for any Council owned or managed property
<b><i>Municipal Land Rates</i></b>	Has the same meaning as general rates referred to in the <i>Local Government Act 1989</i> .
<b><i>Property</i></b>	Land or building owned or managed by the City of Ballarat and any successor in law.

<b>Site</b>	Council freehold land or Crown land managed by the Council allocated to a tenant whether or not that site has any structure on it
<b>Structure/Facility</b>	Any structural improvement on the land.
<b>Transfer Fee</b>	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 Policy 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 and Facilities Management.

## 6 Applicability

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

## 7 Authorisation

Adopted by Ballarat City Council, 22 November 2017. R428/17