

LEASE AND LICENCE POLICY

1.0 Purpose

The purpose of this policy is to guide decision making relating to the management of City of Ballarat's property portfolio. This policy provides a clear framework for the leasing and licensing of Council owned and managed land.

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

The objectives of this policy are to:

- Provide clarity of City of Ballarat's role as owner, trustee or Committee of Management;
- Clearly set out the rights and obligations of lessees and licensees;
- Provide for a fair and financially viable approach to the occupancy of City of Ballarat property;
- Provide a framework for the management and use of City of Ballarat's property including repairs, alterations, relocation and removal of structures; and
- Ensure compliance with related legislation.

2.0 Scope

The policy applies to land and buildings on Crown land and City of Ballarat owned freehold land. It does not apply to property operated by the City of Ballarat, sporting clubs or other entities with seasonal licence agreements.

This policy applies to property that City of Ballarat owns or has the delegated authority to manage. This policy applies to staff that prepare leases and licence agreements for City of Ballarat owned or managed properties. City of Ballarat must have the Department of Energy, Environment and Climate Action (DEECA) approval for any lease or licence of Crown land.

3.0 Policy Statement

3.1 Management Principles

City of Ballarat is the owner and manager of a significant amount of property contained within its property portfolio. Well maintained and managed property present a significant benefit to City of Ballarat and the community.

City of Ballarat will strive to ensure its property portfolio is performing and providing the maximum return measured by diverse outcomes.

- Outcomes derived from offering occupancy of City of Ballarat property must be considered in accordance with expectation of revenue or community benefit.
- Private occupation of City of Ballarat's property is a privilege, not a right. Tenure arrangements will reflect this and be structured to avoid any City of Ballarat property 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 City of Ballarat considers the structure integral to deriving economic or community benefit from the property. Landowner consent will also be required.
- City of Ballarat must strive to ensure that the leasing and licensing of City of Ballarat property is transparent, equitable and consistent.

When premises become vacant or at the expiry of the term, City of Ballarat Council staff will consider the ongoing future use of the premises and determine a suitable occupant tenant for the premises with

consultation with appropriate City of Ballarat Council departments. The occupation of City of Ballarat's premises may be subject to an expression of interest or a tender process to satisfy all statutory and legislative requirements where applicable.

3.2 Responsibilities and Approvals

The table below summarises the responsibilities and relevant areas of City of Ballarat in the management of leases and licences:

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| Council | Resolve on leases which include: <ul style="list-style-type: none"> • A total contract value which exceeds the financial value of the delegation from Council to CEO; or • Sit outside of the standard tenure terms outlined under 3.3. |
| Chief Executive Officer | A total contract value which exceeds the financial value of the delegation from Council to CEO |
| Director Infrastructure and Environment | A total contract value which exceeds the financial value of the delegation from the CEO to Director Infrastructure and Environment. |
| Executive Manager Property and Facilities | A total contract value which exceeds the financial value of the delegation from the CEO to Executive Manager Property and Facilities. |
| Property Department | <ul style="list-style-type: none"> • Develop policy and provide advice and guidance on leasing and licensing; • Monitor agreement expiry dates and renew when approaching an end/overholding; • Develop and update a suite of occupancy agreement templates and ancillary documents such as facility maintenance schedules; • Oversee the management of occupancy agreements with the support of applicable service area business units; • Ensure regular condition audits and assessments are conducted on all City of Ballarat facilities; • Maintain a Lease and Licence register which captures all City of Ballarat property; • Apply for approvals from DEECA if City of Ballarat is considering entering into any occupancy agreement under the <i>Crown Land (Reserves) Act 1978</i>; and • Provide biannual strategic advice regarding the performance of City of Ballarat's property portfolio to the Executive Leadership Team (ELT). |
| Finance Department | <ul style="list-style-type: none"> • Manage the financial compliance of a lessee or licensee including the collection of rent, fees and other charges; • Generate monthly outstanding debtor reports and circulate to the property Department for further escalation and action; and • Oversee the collection of outstanding rent in accordance with Council's Financial Hardship Policy. |

3.3 Crown Land and Council Land

The following table provides default lease and licence terms. Any deviation from these default terms requires approval of Council.

| | Type | Default Tenure | Rental |
|--------------|---------------|---|--|
| Crown land | Lease | 3 years with 2 further options of 3 years | Commercial market terms or a community subsidised rental |
| | Licence | 3 years with 2 further options of 3 years | Commercial market terms or a community subsidised rental |
| | Airport Lease | 5 years with 2 further options of 5 years | Commercial market terms |
| Council land | Lease | 3 years with 2 further options of 3 years | Commercial market terms or a community subsidised rental |
| | Licence | 3 years with 2 further options of 3 years | Community subsidised rental |
| | Airport Lease | 5 years with 2 further options of 5 years | Commercial market terms |

3.4 Tenure

All occupancies offered on City of Ballarat owned or managed land will be formalised through a binding occupancy agreement.

Prior to any occupancy 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 occupancy.

City of Ballarat 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 valuation is to be obtained to either set the rental or present options to Council. If less than the full market rental is applied, this must be documented for purposes of auditing financial responsibilities.

Occupancies for community groups that provide a community benefit will have subsidised rents that are set by the most recently endorsed Community Fees and Charges.

Grant of Occupancy

Occupation of Crown land or City of Ballarat 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 any licence will be for 3 years with two further options of 3 years at City of Ballarat's discretion, unless significant investment in a new structure or refurbishment is required to return the condition of the structure to the satisfaction of City of Ballarat, prior to licencing.

Lease

Lease tenures will be offered in three year initial terms and 2 further three year options unless a decision of City of Ballarat is adopted to alter these terms on an individual basis.

Renewal of Occupancy

At City of Ballarat's discretion, occupancies may be renewed at the end of the tenure period where:

- There are no breaches of terms or conditions of the occupancy;
- The structure is maintained to the satisfaction of City of Ballarat;
- 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;
- City of Ballarat has not determined to remove property in another way, or transfer tenure to another party;
- An expression of interest campaign is not required for a commercial occupancy; and
- Other circumstances that do not support processes to renew occupancy of an asset.

Cancellation of Occupancy

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

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

Transfer of Occupancy

Occupancies may be transferred subject to approval from City of Ballarat. An occupancy may not be transferred by bequest. An Application to Transfer Occupancy Form must be used and all required information provided as part of any application to City of Ballarat for the transfer of an occupancy.

Consent to Subletting

Where a lessee or licensee is proposing to sublet any part of the leased or licensed premises, formal written consent must be obtained by City of Ballarat.

3.2.1 Rental Fees and Charges

Rental

Depending on the terms and conditions of the occupancy, a market rental assessment may be commissioned to determine the annual rental amount. Increments commensurate with annual CPI Melbourne will be incurred annually with market review undertaken at the completion of individual terms (default 3 years).

Occupancies for community groups that provide a community benefit will have subsidised rents that are set by the most recently endorsed Community Fees and Charges.

All Fees and Charges

Occupants are responsible for payment of all municipal land rates and taxes on the occupied area (if applicable). Failure to pay municipal land rates, licence or transfer fees will enable City of Ballarat to pursue recovery of such money and cancel the occupancy.

3.2.2 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 City of Ballarat.

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 should be consistent with City of Ballarat requirements and comply with the any relevant guidelines or standards. .

3.2.3 Removal of structures

Structures may be removed in any of the following circumstances as determined by City of Ballarat:

- The structure is dilapidated, beyond repair or is a hazard to public safety;
- The tenant fails to give effect to notices issued by City of Ballarat;
- The structure does not comply with the relevant construction standards;
- The area is subject to changes including storm surges, flooding, 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; or
- Removal is planned through any management plan or policy for the area.

3.4 Occupancy Conditions

General Maintenance

Maintenance schedules cater for different building classifications in order to provide a consistent and fair framework for the conduct of maintenance on City of Ballarat's premises. Each lessee or licensee is required to maintain the facility in accordance with the maintenance schedule attached to the applicable lease or licence. The maintenance schedule will specify the responsibilities of City of Ballarat and the lessee or licensee 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 particular use of the building and any special maintenance requirements.

The lessee or licensee must maintain the structure in good condition to the satisfaction of City of Ballarat and ensure the structure does not risk the safety of its users. The lessee or 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 City of Ballarat. General graffiti will be removed within 10 working days and offensive graffiti within 2 days. City of Ballarat reserves the right to remove offensive graffiti where it is in public view and likely to cause distress to the community;
- The leased or licensed area is kept free of rubbish, pest animals and weeds; and
- Every default of which notice is given by the City of Ballarat to the lessee or licensee is remedied within a reasonable time as specified in the notice.

Risk and Occupational Health and Safety

City of Ballarat requires appropriate risk management measures in all leases and licenses. These require lessees or licensees to:

- Release and indemnify City of Ballarat for all claims resulting from any damage, loss, death or injury in connection with the premises unless such claims arise out of City of Ballarat's negligence;
- The lessee or 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 City of Ballarat on request.
- Ensure that appropriate documentation and insurance is in place for occasional or hired use of the premises by third parties;
- Require the lessee or licensee to comply with emergency evacuation procedures and risk management practices implemented by City of Ballarat;
- Require the lessee or licensee 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; and
- Only use appropriately qualified tradespeople to undertake repairs with prior written approval from City of Ballarat.

Condition Audits

Lessees or licensees will be required to participate in regular building condition inspections of the premises as determined by City of Ballarat. The regularity of the review will depend on the use and type of occupancy. City of Ballarat or City of Ballarat's agent may enter the premises at any reasonable time after giving the tenant a minimum of one weeks' notice to conduct condition audits.

General Occupancy Conditions

- No construction works are to be carried out by the lessee or licensee without first obtaining permission of City of Ballarat as land manager under the *Crown Land (Reserves) Act 1978*, or City of Ballarat as land owner, and secondly, obtaining any regulatory permission required by legislation for the relevant works (for example, planning permits).

Where a lessee or licensee has undertaken works to Council Property without seeking the formal written consent of Council, Council reserves its rights under the lease or licence to require the lessee or licensee to remove any improvements and reinstate the premises to its original condition. Council may also consider terminating the occupancy agreement.

- No services such as power, water, drainage, sewerage, gas or telecommunications may be connected to any City of Ballarat asset without prior approval. This includes solar or wind power generation or other infrastructure.
- City of Ballarat property must not be used for overnight stays or any other sort of residential accommodation without prior approval of the Executive Manager Property and Facilities.
- City of Ballarat property must not be used for any commercial purpose without City of Ballarat permission.
- No fuel or chemicals may be stored in any City of Ballarat property without City of Ballarat permission.

4 Supporting documents and references

4.1 Legislation

- *Local Government Act 2020*
- *Local Government Act 1989*
- *Crown Land (Reserves) Act 1978*
- *Planning and Environment Act 1987*
- *Gender Equality Act 2020*

4.2 Associated Documents

- Risk Management Policy
- Asset Management Policy
- Endorsed Master Plans
- Capital Works Program
- Council Plan –2021 - 2025
- Community Engagement Strategy
- Standard Council Lease and Licence Templates
- Standard DEECA Lease and Licence Templates
- Child Safe Standards

4.3 Definitions

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| <i>Council</i> | The Councillors who are democratically elected to represent the Ballarat municipality in accordance with the <i>Local Government Act 2020</i> . |
| <i>DEECA</i> | The Department of Energy, Environment and Climate Action and its predecessors, successors and assigns, the Victorian Government department representing the Crown as the landowner of Crown land. |
| <i>Lease</i> | 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. |
| <i>Licence</i> | 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. |
| <i>Municipal land rates</i> | Has the same meaning as general rates referred to in the <i>Local Government Act 1989</i> . |
| <i>Property</i> | Land or building owned or managed by the City of Ballarat and any successor in law. |

5 Administrative Updates

From time to time, circumstances may change leading to the need for minor administrative changes to this policy. Where an update does not materially alter this policy, such a change may be made administratively. Examples of minor administrative changes include changes to names of Council departments or positions, change to names of Federal or State Government departments or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by Council.

6 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 and Facilities.

7 Applicability

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

8 Authorisation

Adopted by Ballarat City Council on 30 April 2025 (R69/25).