


## Lease and Licence Policy

<b>Date of Adoption</b>	26 June 2024		
<b>Adoption Method</b>	<input checked="" type="checkbox"/> Council	<input type="checkbox"/> CEO	<input type="checkbox"/> Other ( <i>please specify</i> )
<b>Acting CEO Signature</b>			<b>Date</b> 28 June 2024
<b>Responsible Officer and Unit</b>	Manager Finance and Reporting		
<b>Nominated Review Period</b>	<input type="checkbox"/> Annually	<input checked="" type="checkbox"/> Every 4 years	<input type="checkbox"/> Other ( <i>please specify</i> )
<b>Last Endorsement Date</b>	August 2020		
<b>Next Endorsement Date</b>	June 2028		

Macedon Ranges Shire Council acknowledges the Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Peoples as the Traditional Owners and Custodians of this land and waterways. Council recognises their living cultures and ongoing connection to Country and pays respect to their Elders past, present and emerging. Council also acknowledges local Aboriginal and/or Torres Strait Islander residents of Macedon Ranges for their ongoing contribution to the diverse culture of our community.

DOCUMENT HISTORY	Version	Date	Author
Initial Draft	1	19 March 2024	H Drummond
Second Draft	2	20 March 2024	H Drummond
Final Draft	3	18 June 2024	A Drago-Stevens
Approval		26 June 2024	

# Contents

1. Introduction	3
2. Purpose	3
3. Scope	4
4. Principles	4
5. Using a Lease or Licence	5
6. Vacant Properties and Agreement Renewals	7
7. Risk, Liability and Insurance	8
8. Liquor and gaming licences	10
9. Delegations	10
10. Standard Conditions	11
11. Breach of Agreements and Termination of Agreements	11
12. Monitoring and management of Leases and Licences	11
13. Key Lease Terms	12
14. Community Engagement	19
15. Gender Impact	19
16. Policy Breaches	20
17. Discretion	20
18. Definitions	20
19. References	21
20. Related Policies	21
21. Related Legislation	22
APPENDIX 1: Tenant Categories	23

# Lease and Licence Policy

## 1. Introduction

Council is the custodian of land on behalf, and for the benefit, of its community. This land includes property owned by Council, Crown Land where Council is the Committee of Management (CoM) and land leased or licenced by Council for identified purposes. Some Council-managed properties are leased for commercial purposes and generate market rents for Council. Most properties are leased at subsidised rates for community and not for profit purposes to deliver a tangible community benefit. This includes properties used for community centres, childcare centres, senior citizens centres, scout halls, club rooms, recreation spaces and sporting facilities. These uses deliver a range of public policy objectives, including health and well-being, recreation and community building.

This Lease and Licence Policy has been developed to provide a framework for leasing and licencing of Council owned and managed land and buildings across the Shire.

It is intended as a framework that will assist Council in providing a fair, equitable and transparent process for all types of tenants who occupy Council owned or managed property.

## 2. Purpose

Council is responsible for the sustainable management of assets and maximising the community benefit arising from its property use. This policy provides a foundation for the negotiation, establishment and administration of leases and licences, with the aim of meeting the following objectives:

- **Sound custodianship:** Ensure Council managed properties are appropriately maintained, developed and occupied, having regard to the interests of local communities and the care of the assets. This requires that any Tenant who occupies Council owned or managed land or premises does so under the terms and conditions of a current lease or licence.
- **Community Benefit:** Ensure Council managed properties are used to meet demonstrated community needs consistent with the Council Plan, and in-kind support from Council, including subsidised rent, is recognised and transparently applied in light of the community benefit to be achieved.

- **Consistency:** Provide guidance to Council and the broader community regarding the eligibility, use, length of lease and rental structures to meet the diverse needs of the community and provide information to ensure consistently applied terms and conditions.
- **Equity:** A framework for fair, inclusive, transparent and equitable leasing and licencing of Council managed properties to organisations, businesses, agencies and community groups. Ensure leasing and licencing promotes and reflects Council's commitments to diversity and inclusion, social equity and wellbeing.
- **Financial sustainability:** Ensure sound financial management and effective administration of Council managed properties to allow for an appropriate financial return.
- **Legal compliance:** Ensure compliance with relevant legislation as applicable to each property type, particularly in relation to the *Local Government Act 2020* ("the Act"). Ensure tenants comply with the legal use of Council managed properties.
- **Protection:** Ensure strong processes and clear agreements are in place to protect all interested parties.

### 3. Scope

This policy applies to leases and licences of Council owned buildings and land across the Shire, and sites owned by the State Government (Crown Land) where Council is the designated Committee of Management and therefore can enter into leases or licences with tenants.

This policy does **not** apply to:

- seasonal club agreements;
- casual hire agreements;
- leases or licences where Council is tenant; or
- sponsorship or commercial hiring of advertising space on Council property.

### 4. Principles

Council will apply the following principles when considering and entering into leases and/or licences. Council will:

- Ensure that community groups and not for profit service providers are given first preference for Council's community facilities to meet the Macedon Ranges community's service needs.
- Preference licences rather than exclusive lease agreements to ensure the optimisation and sustainable management of assets by obtaining maximum community utilisation through co-habitation, agglomeration and/or sharing of facilities.
- Ensure all lease and licence agreements reflect Council's commitment to diversity, inclusion, and social equity.
- Seek to enter into agreements that balance the risks and benefits to Council across liability for capital asset maintenance, income and expenditure, service delivery, and administrative overheads.

## 5. Using a Lease or Licence

Granting of exclusive possession and other leasehold rights is not necessary for all land uses and may not deliver the greatest benefit of the community or prospective tenants. To ensure that Council property is used to its greatest potential and to optimise access for all community groups, Council will encourage the shared use of facilities, and in the first instance give preference to a licence agreement rather than a lease for prospective tenants.

If it can be demonstrated that exclusive rights to a property is in the best interests of the community, then a lease will be offered.

### 5.1. Lease Agreements

A lease may be appropriate where the tenant requires exclusive use of land and/or premises for the permitted use in the interests of the community. This may include delivery of long-term projects or groups delivering specific services, for example:

- sensitive and important community services such as the provision of child-care or health facilities and services;
- provision of education services, such as by a TAFE or VET training provider;
- commercial or other purposes where the operator will undertake a specialist fit-out and installation to meet the stated purpose and requires exclusive access (e.g. café, long-term telecommunications infrastructure installation).

## 5.2. Licence Agreements

Licences enable access for multiple groups and support the shared use of facilities between Council and each licence holder. Examples of where a licence of land may be appropriate include:

- a recreation or sporting club with a year-round requirement for access and use of Council property;
- special event licences for community, cultural or sporting events;
- licences for the installation of services utility infrastructure (e.g. electric vehicle charging stations).

To encourage the use of licence agreements and shared use of facilities, the fees for licence agreements shall be reduced in comparison with lease fees. This will depend on the facility and the hours of usage by the group and will be determined on a case-by-case basis.

## 5.3. Ground Leases

For certain types of properties, it is appropriate for Council to provide a ground lease of the site. A ground lease is a lease of the land component only, with the tenant responsible for the construction or installation of buildings and any ongoing maintenance or works related to them. The tenant must also ensure that they obtain and comply with all appropriate planning and building permits. This occurs for example at the Kyneton Airfield where Council leases the site, and the tenants construct the hangar buildings. The lease is therefore described as a ground lease and the rental is assessed based on the land value only. At the end of the lease term, and in the event a renewed lease is not offered by Council, the building may be removed by the tenant, or the ownership of the building reverts to Council.

Ground leases are generally used for long-term agreements and require the tenant to be responsible for all maintenance and management of the building during the term of the lease. This has the benefit of no ongoing maintenance obligations for Council, reducing both costs and risks.

## 5.4 Crown Land Leases

Where Council is appointed to manage Crown land either directly or as the Committee of Management, Council shall seek approval from the Department of Energy, Environment and Climate Action (DEECA) to enter into a lease or licence with a Tenant. Council must ensure that it complies with DEECA's Crown Land Leasing Policy and Guidelines and agreements must be in the prescribed forms as provided by DEECA.

## 5.4. Categories of Tenants

Council has three categories of tenants to enable differential rates and terms to be set in lease agreements. Further information on these categories is provided in Appendix 1 to this policy.

Category	Description
Category 1:	Community – Minimum Rental
Category 2:	Community – Subsidised rental
Category 3:	Commercial/General use – Market Rental

### 5.4.1. Requirements for Community-Category Tenants

To be considered for a community use lease agreement, prospective tenants must:

1. Be able to demonstrate they are a not-for-profit organisation;
2. Be a registered legal entity;
3. Be a volunteer based organisation;
4. Manage the lease primarily for the community; and
5. Meet public benefit criteria such as: social engagement, non-discriminatory services, no barriers to participation and a demonstrable demand for the service.

## 6. Vacant Properties and Agreement Renewals

When considering leasing or licensing vacant properties and renewals, Council will undertake a public process to identify the organisation that will provide best value and greatest community benefit. This may include requests for information such as business plans, membership details, and financial sustainability. Applications received through a public process will be assessed by Council officers with evaluation criteria that will be created to meet the specific requirements of the site. These criteria must consider diversity, equity and inclusion principles, and be informed by the completion of a Gender Impact Assessment at the time of development where required.

Under certain circumstances, agreements will be directly negotiated with organisations or the current tenants, provided there are justifiable reasons that a direct negotiation is appropriate. Such circumstances include those where the proposed tenant (new or existing) will provide significant

community benefit, the tenant has made or will make significant capital contributions, a specific need that cannot otherwise be met, and/or there is an absence of competition.

At the end of a lease term where the tenant remains in occupation of the property, they may continue on a month-to-month basis whilst a new lease is negotiated, in agreement with Council. This period of time outside the initially agreed lease term is known as 'overholding.' Tenants must continue to pay the rent and abide by all the terms of the lease during the overholding period.

Should lease negotiations extend beyond a twelve-month period of overholding without satisfactory progress, Council may terminate the lease with one month's notice.

## **7. Risk, Liability and Insurance**

Council will require appropriate risk management measures in all agreements that includes but are not limited to:

- Appropriate security measures.
- Ensuring that appropriate documentation and insurance are in place for occasional or hired use of the premises by third parties.
- Implementation of appropriate Emergency Evacuation procedures and other Essential Services Measures as required.
- Implementation of an appropriate Risk Management Plan that identifies the risks associated with the tenant's use of the premises and how such risks will be managed.
- Use of appropriately qualified Council approved tradespeople to undertake maintenance and repairs.

As a landowner, Council has a duty of care, which is a legal obligation to avoid doing things that could foreseeably cause harm to another person or property. Through lease agreements, Council can reduce exposure to the risks of liability and limit the amount of compensation payable by introducing more certainty in the agreement with tenants.

### **7.1 Indemnity Clause**

Indemnity clauses are commonly used to define who bears the risk. As standard practice, Council will not agree to indemnify any other party and Council will not agree to any form of limitation of liability of any third party in lease and licencing agreements. It is considered reasonable that any



party engaged with Council be liable for loss or damage caused by its own negligence, without limit.

## **7.2 Insurance requirements**

All tenants or licence holders are required to hold current Public Liability Insurance to a minimum of \$20 million to enter an agreement with Council.

## **7.3 Indemnity and insurance clauses with State Government**

An agreement exists between Victorian council members of the Liability Mutual Insurance (LMI) scheme (Macedon Ranges Shire Council) and the Victorian Managed Insurance Authority (VMIA) (which also includes VicRoads, VicTrack, Victoria Police and others) regarding indemnity and insurance clauses.

When entering agreements with State Government, Council should refer to the series of recommended indemnity and insurance clauses developed by VMIA and LMI.

## **7.4 Essential Safety Measures (ESM's)**

Essential Safety Measures are the safety features required in a building to protect occupants in the event of a fire. ESM's may include fire detection and alarm systems (smoke alarms), fire doors, emergency lighting and fire hydrants. In order to comply with these requirements, tenants are required to keep emergency exit pathways clear and emergency fire equipment such as fire extinguishers and smoke alarms operational and accessible at all times. Council shall provide tenants with emergency evacuation plans that must also be clearly displayed to facility users at all times. Council will also ensure the installation of emergency and exit lighting.

Tenants must also arrange for 'test and tagging' to occur for any portable electrical items by an authorised contractor on an annual basis. This includes all freestanding electrical appliances such as all kitchen equipment, fridges/freezers, kettles, office equipment, phone chargers etc. The authorised contractor will test each appliance and then put a 'tag' on the appliances cord to show it complies with the Australian Standard (AS 3760).

During the term of the lease Council officers shall undertake regular inspections of the facility to ensure that the ESM's are complied with and the 'test and tagging' has been completed. Tenants must comply with any inspections requested by Council officers or their contractors.

## 8. Liquor and gaming licences

Liquor licence applications require Council approval in addition to any relevant statutory approval and is determined on a case-by-case basis.

Council prohibits any new or additional gaming licences on Council owned or managed land. Management of leases with existing tenants who are current gaming licence holders on Council owned or managed land will be undertaken in line with Council policies regarding Gambling Harm.

## 9. Delegations

The approval process for lease and licence agreements will be in accordance with statutory requirements under the Act. Leases or licences must be signed by both Council and the tenant to be binding. The following delegations apply when entering into and executing leases:

<b>Council via a Council resolution</b>	Is authorised to enter into leases that: <ul style="list-style-type: none"><li>• have a current market rental of \$100,000 per annum or more (and are for a term of 1 year or more); or</li><li>• have a term of 10 years or more;</li></ul> subject to complying with Section 115 of the Act.
<b>Chief Executive Officer</b>	Is authorised to: <ul style="list-style-type: none"><li>• Execute leases which have a term of 5 years or greater and less than 10 years; and</li><li>• are less than \$100,000 rental per annum.</li></ul>
<b>Directors</b>	Are authorised to: <ul style="list-style-type: none"><li>• Execute leases which have a term of less than 5 years; and</li><li>• Are less than \$100,000 per annum.</li><li>• Execute all licences.</li></ul>

## 10. Standard Conditions

All leases and licences shall be based on Council's standard lease or licence templates, as applicable to either premises or land. This is to ensure standard conditions shall be applied consistently to all Council owned and managed premises.

Each lease or licence shall include the following:

- a) A plan indicating the leased or licenced area;
- b) A Maintenance Schedule; and
- c) A list of tenants improvements.

Special Conditions may be included in a lease or licence, if necessary, to meet specific requirements of Council or the proposed Tenant. Any variations proposed to the standard lease or licence terms must be referred to Council's Property Department and approved by one of the Manager of Finance and Reporting, the Director Corporate, or the CEO.

Key Lease terms are outlined in Section 13 of this policy.

Any requests for variations to leases during the lease term must be requested in writing and will be considered by the appropriate Manager and Council's property team.

## 11. Breach of Agreements and Termination of Agreements

All lease documents have a termination clause that provides the terms under which Council can terminate the lease. In addition to the non-payment of rental, there are essential terms of the lease that if breached are considered so serious that Council is entitled to treat the agreement as terminated. This includes undertaking improvements without appropriate approvals or utilising the property for a non-permitted use. If a serious breach occurs by a tenant, then Council will seek to terminate the lease unless the tenant is willing to undertake remediation works to the satisfaction of Council.

Additionally, there is a dispute resolution clause as outlined in Section 13.12 of this policy.

## 12. Monitoring and management of Leases and Licences

Council will undertake an inspection of all properties prior to the commencement of a new agreement. This will record the condition of the building prior to the tenant/licencee taking

occupation. Council will also inspect the property at the end of the agreement to ensure that the building is returned in a satisfactory condition to Council.

During the term of the agreement, Council officers will monitor the building and inspect when required for maintenance purposes. Maintenance shall be undertaken by Council in accordance with the maintenance schedule attached to the agreement. Minor maintenance remains the responsibility of the tenant/licencee.

During the term of the agreement, Council may request information from tenants/licencees to support the ongoing assessment of community or public benefit as proposed when entering into the agreement. This may include data on membership and demographics, services provided, facility utilisation and financial performance of the tenant/licencee organisation.

Council maintains a lease register. This includes key dates for each tenancy such as rental review dates, renewal and expiry dates, and performance data. Council shall contact tenants when leases are up for renewal and renegotiate new lease terms. Council shall also issue rental invoices for payment on an annual, quarterly, or monthly basis depending on the lease term.

New agreements shall be prepared at Council's cost. Tenants can seek their own legal advice on proposed leases, this will be at their cost.

## **13. Key Lease Terms**

### **13.1. Payment of Rental**

The rental amount shall be determined based on the three different categories of tenant outlined in Appendix 1. The categories are –

**13.1.1 Category 1** - Community Leases – Minimum rental (\$300 p.a.)

**13.1.2 Category 2** - Community Leases – Subsidised rental (\$500 - \$5000 p.a.)

**13.1.3 Category 3** - Commercial/General Use – Market value

The Minimum Rental fee for Community Leases takes into consideration the annual administration costs that Council incurs in managing leases including raising invoices, reviewing annual public liability insurance statements and annual reporting and audit requirements.

There is some discretion regarding this rental payment and Council may consider providing a rental waiver or reduction to Category One tenants only, due to financial hardship, where the tenant shall provide funds to enhance the building, or other 'in kind' benefits, as agreed. In these

situations, the tenant should apply to Council in writing stating their reasons for seeking the rental reduction or waiver for the year ahead. Council shall consider each request on a case-by-case basis and will require Directors approval in line with Council's relevant financial and debt management policies.

Category 1 and Category 2 leases shall also have an annual rental review fixed at 3% increases. This is in preference to a CPI review as it is easier for Council and tenants to implement from an administrative perspective and for budgeting purposes.

### **13.2. Length of Lease or Licence**

Generally, licence agreements will be offered for a three-year period and leases will be five years up to a maximum term of nine years. Council may, at its discretion, offer a longer term where a tenant has made or shall make a substantial contribution to building, structural and infrastructure works on the premises and fully maintains those works for the duration of the lease or licence.

The proposed term will be assessed on a case-by-case basis, and is dependent on several factors, including:

- a) the applicable legislation;
- b) the proposed tenant's contribution to building, structural and infrastructure works including new, renewal/refurbishment or upgrade works;
- c) the financial stability of the tenant;
- d) any State Government requirements/legislation (where Council is Committee of management);
- e) the suitability of the premises for the tenant's use; and
- f) Council's long-term plan(s) for the premises.

### **13.3. Outgoings**

Under lease agreements, the tenant shall be responsible for the payment of all outgoings (to the extent that they apply).

This includes:

- a) Electricity
- b) Gas
- c) Water
- d) Waste Water
- e) Contents Insurance
- f) Public Liability Insurance
- g) Telecommunications
- h) Rubbish bins
- i) Council rates (*note community groups are non-rateable*)
- j) Fire Services Property Levy (where an individual rates notice is issued).

Tenants in a shared multi-use premises shall be responsible for the payment of their proportion of these outgoings. The proportion of costs attributable to each tenant shall be included as a special condition of the agreement.

Council has a target to reach a zero net emissions status for its operations by 2030. As part of this strategy Council may assume responsibility for payment of electricity bills for Category 1 and Category 2 tenants over time (for example upon renewal of the lease or licence). The process would require Council to receive the electricity bills directly for payment and then the cost would be invoiced to the tenant. Additionally, under the strategy, Category 3 tenants may be requested to report on electricity usage and associated greenhouse gas emissions.

Tenants should also note that the use of gas will be phased out from all council owned buildings over time.

#### **13.4. Building Insurance**

Council shall insure all Council owned improvements on Council owned land or Crown Land where Council is the landlord.

##### **13.4.1. Property and Contents Insurance**

The Tenant should maintain insurance for its own property. This includes structures that are not Council owned that have been constructed by the tenant, such as sheds and hangars. The insurance of all chattels, fixtures and fittings, furniture, floor coverings, equipment and contents belonging to the Tenant are the responsibility of the tenant.

Damage or loss to the tenants property including structures such as sheds and hangars, chattels, fixtures and fittings, furniture, equipment and contents belonging to the Tenant shall be the responsibility of the Tenant.

#### **13.5. Assignment of Lease**

Assignment is the legal term for when a tenant transfers their whole interest in a rental property to another party.. For example, if a tenant signed a 12-month tenancy agreement (lease) but decided to leave after 6 months, they can arrange for another party to move in and take over their lease. The new tenant would take the place of the original tenant, paying rent directly to the landlord, and having all the rights and responsibilities of the original tenant.

Tenants shall not assign a lease unless approved by Council. Council shall assess any proposed new tenant in accordance with this policy and in line with how the original tenant was considered. Any cost associated with an assignment of lease is the responsibility of the Lessee.

### **13.6. Subletting of lease**

Sub-letting is when a tenant transfers their interest under a tenancy agreement to another party, but the original tenant remains party to the tenancy agreement with the landlord, which continues. The first tenant is called the head-tenant and the second tenant is called the sub-tenant. The agreement between them is called a sub-lease.

Head tenants must formally request in writing approval from Council for any sublease arrangement they wish to enter into.

If Council does give approval to a sub lease of the premises, the sub lease shall, to the extent that it is practical, be subject to this Policy and the terms and conditions as the head lease.

If Council agrees to a sub lease of the premises and if there is any financial gain to the Tenant, Council may review and adjust the rent of the head lease. Council may also claim from the Tenant reasonable legal costs incurred in connection with an assignment of lease or sub-lease.

### **13.7. Casual Hire**

Tenants may make the premises available for casual hire or occasional hire where it is irregular use or “one off” events that can be hired on an hourly rate. The Tenant shall ensure the activities of the hirer and the use of the premises do not contravene the Tenant's Lease or Licence.

The Tenant shall ensure that casual hire of the premises is subject to a written agreement that makes the hirer responsible for all activities and use of the premises and makes the hirer accountable for any damage whatsoever that occurs whilst the agreement is in place. Tenants may use examples or templates available from Council.

The Tenant shall ensure that all activities and use of the premises are covered by the appropriate insurance whilst the hire agreement is in place.

The Tenant shall ensure that the activities undertaken by the hirer do not interfere with the primary purpose of the premises, adversely affect the amenity of nearby neighbours, and meets all legal requirements such as liquor licencing.

### **13.8. End of Lease or Licence**

#### **13.8.1. Early termination**

It is assumed that all parties will continue with the lease for the full term of the contract. Early termination requested by the tenant must be negotiated and should be consistent with the terms of

the agreement, including minimum notice periods. Early termination requests will be considered by Council on a case-by-case basis.

#### **13.8.2. Tenant shall vacate**

At the end of the lease or licence (which is the end of the term or the earlier termination of the lease or licence) the Tenant shall vacate the premises and ensure that it is in a condition consistent with the Tenant having complied with its obligations under the lease or licence.

#### **13.8.3. Ownership of Improvements**

Unless otherwise agreed by both parties in writing, all permanent buildings, structural improvements to those permanent buildings and essential safety measures constructed or installed on the premises (by Council, the Tenant or any other person or organisation) during the term of the lease or licence shall become the property of Council.

Unless otherwise agreed by both parties in writing, all structures (including sheds) fixtures or fittings installed on the premises by the Tenant during the term of the lease or licence shall be removed by the Tenant at the end of the lease or licence. The Tenant shall make good any damage caused by the removal.

Any plant, furniture, equipment, vehicles or contents placed on the premises by the Tenant during the term of the lease or licence shall be removed by the Tenant at the end of the lease or licence at the tenant's expense.

#### **13.8.4. Agreement Renewals and Overholding**

At the end of a lease term, on agreement with Council, tenants may continue into overholding on a month-to-month basis while a new lease is negotiated. During the overholding period, tenants must continue to pay the rent and abide by all the terms of the lease during the overholding period.

Council shall contact tenants prior to the end of their lease to commence negotiating a new lease. Should these negotiations extend beyond a twelve-month period of overholding without satisfactory progress, Council may terminate the lease with one month's notice.

### **13.9. Maintenance**

Council's lease template includes a maintenance schedule that outlines the responsibilities of Council and tenants in relation to each property. Council will conduct an inspection of the property prior to the commencement date of the occupancy agreement to record the condition of the premises. The schedule specifies the responsibilities of Council and the Tenant, including



electrical, essential services (also known as essential safety measures), plumbing, grounds maintenance, internal fittings, security, pest maintenance and external infrastructure.

The Tenant will be required to clean and keep clean the premises including the grounds, building, fixtures and fittings. The Tenant shall not alter, remove, add to or replace the roof, walls, structures, fixtures, windows and external doors, without first obtaining the written consent of Council.

### **13.10. External Funding Agreements**

Tenants must seek permission from Council prior to any applications for external funding for any works applicable to the leased premises.

### **13.11. Signage on Leased and Licenced Premises**

Tenants must not write, paint, display, hang or affix any sign, advertisement, placard, name, honour board, flagpole, flag or notice on any part of the Premises or land that they lease or licence without the prior written consent of Council.

Signs that promote gambling or may be considered discriminatory against a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability, or political beliefs are prohibited.

### **13.12. Dispute Resolution**

If Council and the Tenant cannot agree to lease terms or there is a dispute in relation to an existing lease that cannot be resolved, an external mediator may be engaged to assist in settling the dispute. This could also extend to disputes that occur between tenants or licencees in a shared facility. An external mediator will only be engaged where approval is given by the Council CEO. Any costs associated with the engagement of a mediator will be shared equally between the disputing parties.

### **13.13. Environmental Sustainability**

Council is committed to protecting the environment and will require Tenants to use the Premises in an environmentally responsible manner. Tenants must comply with Council's directions in relation to environmental initiatives on Council Property, particularly the Waste and Resource Management Strategy and the Sustainable Buildings Policy. Tenants may also approach Council to support applications for external grants, to improve the energy efficiency and environmental performance of

the leased or licenced building. Any proposed works that require a building or planning permit must be approved by Council prior to works commencing.

#### **13.14. Occupational Health and Safety**

Tenants must have in place compliant emergency evacuation plans and procedures associated with the Premises and ensure that their employees and/or volunteers participate in emergency training and drills.

Tenants must provide and maintain a safe working environment and must ensure that the systems, procedures and practices necessary for the protection of the health and safety of all persons is implemented.

Council and/or Councils authorised agents/contractors may enter the property to inspect essential safety measures including compliance with Child Safe Standards.

Tenants must not change locks or install alarm systems without the prior permission of Council. Tenants must not change an alarm code without the prior permission of Council.

#### **13.15 No Smoking Policy**

Smoking and the use of e-cigarettes is prohibited in the following areas:

- All enclosed spaces and public spaces where members of the public gather and within 10 metres of all Council-owned, operated and leased buildings.
- At all times in outdoor dining/drinking areas located on Council land (enforced through Local Laws Outdoor dining permit conditions).
- Within 10 metres of the external perimeter of all sports fields and facilities (including clubrooms and pavilions). This shall be incorporated into all new leasing and licencing agreements where applicable.

#### **13.15. Emergency management measures**

Some agreements may contain a clause which designates the premises for use as an Emergency Relief Centre or an Emergency Recovery Centre in the case of an emergency, which would exclude the tenant from the property until the premises was no longer required for emergency purposes.

In addition, Council facilities within the townships of Macedon, Mount Macedon and Woodend must be closed on Catastrophic Fire Rating Days.

### **13.16. Child Wellbeing and Safety and Working with Children**

Tenants must adhere to the requirements of the *Child Wellbeing and Safety Act 2005*, and must ensure that the Tenant's employees and volunteers, where required, hold a Working with Children Check under the *Working with Children Act 2005*. before working with children on Council owned or managed land.

### **13.17 Waste Management**

Council has a Kerbside Collection and Associated Services Charge Policy that outlines the policy and charges for our four bin service. The four-bin system consists of a FOGO bin (Food Organics Garden Organics), a recycling bin, a glass only bin and a rubbish, general waste bin. Tenants must ensure they use the appropriate recycling, glass or general bins.

Tenants must also comply with Councils Single Use Plastic Policy. This policy aims to:

- eliminate single-use plastics from Council operations, activities and events;
- eliminate single-use litter and waste from Council buildings, facilities and events;
- encouraging the community to eradicate single-use plastics.

Single use plastics are banned from Council facilities effective from 1 February 2023, and tenants must comply with this requirement.

Further information about both these policies is available on Councils website.

## **14. Community Engagement**

The community engagement process for new and renewal of leases and licences will be in accordance with Council's Community Engagement Policy, the requirements of the Act, and following the completion of a Gender Impact Assessment.

## **15. Gender Impact**

Gender Impact Assessments should be carried out in accordance with this policy and the *Gender Equality Act 2020*, particularly ahead of public processes inviting interest in a property, when developing criteria for evaluation of prospective tenants, or prior to public consultation on proposed agreements. All consultation will be undertaken in accordance with Council's community engagement policy.

All prospective tenants will be provided access to this policy in printed documents for those that may not have access to computers or the internet. Additionally, Council officers are available to explain key terms and tenant responsibilities.

## 16. Policy Breaches

This policy contains several enforceable elements that tenants are required to comply with. Should there be serious breaches of this policy, Council's Chief Executive Office is authorised to terminate agreements. All new tenants or licencees will be required to abide by the conditions of this policy by signing and acknowledging that they have read and understood this policy document. Any changes to this policy will be notified to the tenant or licencee.

## 17. Discretion

This policy lays out the expectations, standard terms and clauses for Council's lease and licence agreements and how Council will manage them. However, Council reserves the right to exercise discretion in the application of this policy, and options within agreements. For example, a clause within an agreement may give Council the right, but not the obligation, to exercise that option (provided that any applicable conditions are met). In such cases, Council will consider equity, fairness, the public good and community benefit, and any limits on exercising discretion before making a decision on when to apply an option, or not.

## 18. Definitions

Term	Definition
Crown Land	Lands reserved and/or administered under the <i>Crown Land (Reserves) Act 1978</i> .
Council Managed Property	Property that Council is responsible for. This includes property owned or leased by Council and Crown Land where Council is Committee of Management or has been appointed the Land Manager.
Lease	A right granted by an owner of property (lessor) to another person / organisation (lessee) to have exclusive possession of that property for a fixed duration in return for rental payment.
Licence	A right granted by an owner of property (licensor) to another (licencee) to have shared use of that property for a fixed duration in return for rental and permits a person (licencee) to occupy property (or part thereof) on particular conditions.
Not for Profit Organisation	For the purposes of this policy, a not-for-profit is a registered and incorporated entity that does not operate for the profit, personal gain or other benefit of particular people (for example, its

Term	Definition
	members, the people who run it or their friends or relatives). Evidence that the organisation is registered on the Australian Charities and Not for Profits Commission (ACNC) will be required prior to entering into the lease or licence.
Occupancy Agreement	The agreement providing rights granted for occupancy of a property. Can comprise either a lease or a licence.
Overholding	A tenant remaining in occupancy of a leased premises with the landlord continuing to accept rent, despite the term of the lease having expired.
Property	The land and or buildings to be leased or licenced.
Ground Lease	Lease of the land only, where the building has been or will be constructed by the tenant. The rental does not include the value the building – it is a lease of the site only.
Service Manager	The relevant Council Officer who manages the relationship (including lease/licence negotiations) with existing or prospective tenants or landlords. The Service Manager is allocated based on the purpose of the agreement, including the type of use.
Term	the period of time from the commencement of the lease to its termination, including any further terms.

## 19. References

- > Department of Energy, Environment and Climate Action (DEECA) Crown land Policies – Leasing Policy for Victorian Crown Land 2023.

## 20. Related Policies

- > Asset Plan 2021 - 2031
- > Risk Management Framework
- > Sale of Land Policy and Procedure
- > Community Engagement Policy
- > Open Space Strategy
- > Procurement Policy
- > Zero Net Emissions Plan
- > Sustainable Buildings Policy
- > Single Use Plastics Policy

- > Kerbside Collection and Associated Services Charge Policy
- > Waste and Resource Recovery Management Strategy
- > Gambling Harm Prevention Policy (in draft, not yet adopted).
- > Kyneton Airfield Local Law No. 12
- > Occupational Health and Safety Policy

## 21. Related Legislation

- > *Local Government Act 2020* – section 115 provides the statutory obligations for Council when entering into a lease agreement.
- > *Crown Land (Reserves Act) 1978* – governs Council’s responsibilities when appointed as managers of Crown Land. Section 16 applies to leases where Council has been appointed under direct land management of the site. Section 17 outlines requirements relating to Crown land leases and licences.
- > *Residential Tenancies Act 1997* – outlines rights and responsibilities for landlords and tenants in relation to the leasing of residential properties.
- > *Retail Leases Act 2003* – outlines requirements for leases which are used wholly or predominantly for retail provision of goods or services.
- > *Planning and Environment Act 1987* – provides for permitted use of land through Council’s planning scheme.
- > *Telecommunications Act 1997* – provides for the rights of telecommunication companies in relation to the installation of telecommunications transmission towers and associated infrastructure.
- > *Occupational Health and Safety Act 2004* – provides a framework for improving standards of workplace health and safety to reduce work-related injury and illness.
- > *Child Wellbeing and Safety Act 2005* – provides child safe standards and requires any tenant that is engaged in activities which involve children to comply with this Act.
- > *Working with Children Act 2005*
- > *The Wrongs Act 1958* - is the principal statute in Victoria that governs claims for damages for personal injury and death. The Act covers economic and non-economic loss as a result of negligence or fault and encompasses a wide variety of wrongs.
- > *Tobacco Act 1987*

## APPENDIX 1: Tenant Categories

<b>Category 1: Community Leases – Minimum Rental</b>	
<b>Eligibility Indicators</b>	
<b>Community Benefit:</b>	provides significant community benefit that is in high demand by the local community. The type of community benefit provided could not be delivered unless supported by Council.
<b>Use:</b>	aligns with a Council service and the Council Plan. Proposed use will increase social inclusion, equity and promote health and wellbeing for the Macedon Ranges Shire Council community. Examples include: <ul style="list-style-type: none"> <li>- sporting clubs,</li> <li>- senior citizens,</li> <li>- Men’s Sheds,</li> <li>- historical societies,</li> <li>- CFA and SES,</li> <li>- Neighbourhood Houses (as described in Council’s Neighbourhood House Policy),</li> <li>- pony clubs,</li> <li>- theatre clubs.</li> </ul>
<b>Funding:</b>	receives limited funding from organisations other than Council.
<b>Revenue:</b>	Limited capacity to generate revenue from use of the site and activities associated with the organisation (i.e. no sub-leasing activities)
<b>Fit for Purpose:</b>	The proposed use of the site is appropriate, taking into account building and planning requirements.
<b>Operational:</b>	Not for profit organisation or community group or club run by volunteers.
<b>Compliance:</b>	Not for profit organisation, registered legal entity (incorporated), has an ABN, complies with all relevant legislation governing its activities, holds all relevant certificates, have a committee of management or board with appropriate governance arrangements.
<b>Annual Rental</b>	
\$300 per annum administration fee. This is the minimum rental for leases under this policy. Rental to be reviewed annually, with increases applied on the anniversary date with 3% fixed increases. Where community groups are unable to pay the minimum rental fee, they can apply for a rental waiver. Please refer to clause 13.1 for further details.	
<b>Preferred Term</b>	
<ul style="list-style-type: none"> <li>• The base term offered by Council for Category 1 is up to 5 years.</li> <li>• Under certain circumstances shorter or longer terms will be considered on a case-by-case basis.</li> </ul>	
<b>Maintenance and Outgoings</b>	
<ul style="list-style-type: none"> <li>• Council will have a Standard Maintenance Template that provides for shared maintenance responsibilities.</li> <li>• All outgoings will be the responsibility of the tenant.</li> </ul>	

<b>Category 2: Community Leases – Subsidised Rental</b>	
<b>Eligibility Indicators</b>	
<b>Community Benefit:</b>	provides significant community benefit of which is in higher demand by the local community. The type of community benefit provided could not be delivered unless supported by Council.
<b>Use:</b>	aligns with a Council service and the Council Plan. Proposed use will increase social inclusion, equity and promote health and wellbeing for the Macedon Ranges Shire Council community. Examples are: - community health centres, - business incubators.
<b>Funding:</b>	receives no or minimal funding from organisations other than Council.
<b>Revenue:</b>	has some capacity to generate revenue from use of the site (i.e. sub-leasing) or activities consistent with the organisational purpose. They may derive income such as fees for service, course fees, sponsorship and rent from sub tenancy arrangements.
<b>Fit for Purpose:</b>	the proposed use of the site is appropriate taking into account building and planning requirements.
<b>Operational:</b>	Not for profit organisation or community group or club run by volunteers or paid workers.
<b>Compliance:</b>	Not for profit organisation, registered legal entity, has an ABN, financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates, have a committee of management or board with appropriate governance arrangements.
<b>Annual Rental</b>	
A range of rentals from \$500 - \$5000 depending on the capacity of the group to pay, rental income received from sub-letting and the standard of the building. The amount will be determined on a case-by-case basis. Rental to be reviewed annually with fixed 3% increases.	
<b>Preferred Term</b>	
The base term offered by Council for a subsidised rental lease is 5 years. Under certain circumstances shorter or longer lease terms will be considered.	
<b>Maintenance and Outgoings</b>	
<ul style="list-style-type: none"> <li>• Council will have a Standard Maintenance Template which provides for a partnership approach in which maintenance responsibilities will be reasonably and equitably shared.</li> <li>• All other outgoings will be the responsibility of the occupants.</li> </ul>	



### Category 3: Commercial/General use– Market Rental

#### Eligibility Indicators

<b>Community Benefit:</b>	desirable to provide community benefit.
<b>Use:</b>	Aligns with and not detrimental to Council strategic objectives. Examples include: - telecommunication towers, - cafe, - hospitality - airfield hangars.
<b>Funding:</b>	Receives significant funding from organisations other than Council or is a profit-based organisation.
<b>Revenue:</b>	Has increased capacity to generate revenue from use of the site or activities consistent with the organisational purpose.
<b>Fit for Purpose:</b>	The proposed use of the site is appropriate taking into account building and planning requirements.
<b>Compliance:</b>	Tenants may be individuals or companies. Where they are companies, they need to be a registered legal entity, have an ABN, be financially viable, comply with all relevant legislation governing its activities and hold all relevant certificates.

#### Annual Rental

- Determined by obtaining a market rental assessment from a registered valuer.
- Rental to be reviewed annually with fixed or CPI reviews – to be determined on a case by case basis.

#### Preferred Term

The base term offered by Council is 5 years. Under certain circumstances longer terms will be considered, particularly if the arrangement involves significant capital investment. Terms longer than ten years will require a community consultation process prior to entering into the lease.

#### Maintenance and Outgoings

Commercial terms for maintenance and outgoings apply.