

Leases and Licensing Policy



Yarriambiack
SHIRE COUNCIL

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Leases and Licensing Policy

Yarriambiack Shire Council encourages a working environment which promotes gender equality and models non-violent and respectful relationships.

1 Objective

The Yarriambiack Shire Council manages assets on behalf of the community.

The purpose of this policy is to ensure a consistent and transparent approach to the process of Council entering into formal agreements with community groups and other organisations, to occupy Council managed assets.

The policy will provide guidance on what terms and conditions are offered by Council to community groups and other organisations.

Council aims to ensure a high level of use of its managed assets for the greater benefit of the community.

This policy aims to ensure:

- a) Council assets are optimised and managed appropriately to meet best practice standards, legislative requirements and expectations of the community.
- b) Leases and licenses are accounted for in accordance with the Local Government Act 2020 and Accounting Standards.
- c) A register of leases of land where Council is the lessor is maintained and available to the public to ensure transparency.

2 Responsibility

The Manager People and Culture via the Governance Officer is responsible for:

- a) Processing the request to enter a lease or licence and/or renewing the lease or licence.
- b) Ensuring Lease and Licence agreements are developed in accordance with best practice principles, seeking legal advice and guidance when required.
- c) Consulting with the Leadership Team and the Community (as required).
- d) Seeking approval from Council to enter leases and licences, unless otherwise delegated to the Chief Executive Officer for approval.
- e) Maintaining the public register for the leases and licences.
- f) Ensuring Leases comply with the governance requirements of the Local Government Act 2020.

The Manager Corporate Services is responsible for:

- a) Ensuring that the Leases and Licences are accounted for in accordance with AASB 16 Leases and other applicable Accounting Standards.

The Leadership Team (includes Chief Executive Officer) is responsible for:

- a) Assessing each Lease or Licence application and renewal and forming a recommendation to be presented to Council.
- b) Assessing all risks associated with the Lease or Licence.
- c) Ensuring the lease or licence recommendation decisions are transparent, accountable and are made in the best interest of the Community.

3 Exemptions

Senior Citizens Buildings are not available for lease or licence and are governed by the Model Rules for Senior Citizens Clubs. Users, other than Senior Citizens Clubs must book the use of Council Seniors Buildings via our Customer Service Office. The Senior Citizens Clubs have priority over the Seniors Buildings.

4 Policy Statement and Scope

4.1 Scope

This policy applies to all:

- a) Council managed assets, including Council owned buildings and land.
- b) Crown Land (where Council is the appointed Committee of Management).
- c) Any other land Council has control over (for example VicTrack owned land), where an occupancy agreement is to be offered to a community group or other organisation.

Occupancy agreements covered by this policy are referred to in section 4.7.

4.2 Policy Statement

This policy provides a framework for entering into tenancy agreements to occupy Council buildings and facilities.

The policy provides guidance to Council officers and tenants on the types of agreements that can be offered and used, the applicability of the different types of agreements and the principles upon which terms and conditions of agreements will be developed.

Council seeks to maximise the community benefits arising from the use of its land and facilities whilst ensuring responsible management of community assets, and accountability to ratepayers for the direct and indirect expenditure on lease and licence subsidies.

Council reserves the right to decline to hire, lease or licence a facility to a specific user where Council has a demonstrable and well-founded concern for the safety and wellbeing of the Yarriambiack Shire Council Community.

4.3 Policy Context

Leases and Licences are governed by the following:

- a) *Local Government Act 2020*, sections 115 and 116.
- d) Australian Accounting Standards Board 16 Leases

4.4 Governance

Where either a new lease or licence is established or renewed, the Manager People and Culture (or their delegate) will present the matter to the Leadership Team for Stakeholder consultation.

The recommendation, after consultation with the Leadership Team will be presented to the Council at a Council Meeting, by either the Manager People and Culture or the Chief Operating Officer.

4.5 Compliance with State Government Departments

Council is responsible for managing selected parcels of Crown Land on behalf of the Victorian Government as the appointed Committee of Management, in accordance with the *Crown Land (Reserves) Act 1978 (Vic)*.

Before Council can grant a lease or licence on Crown land, Council must first seek Ministerial approval in-principle and final approval to lease or licence any Crown land from the applicable State Government department. This is to ensure that the permitted use of the lease or licence is not contrary to the 'reserved purpose' of the Crown land.

All leases or licenses entered into on Crown land must adhere to the:

- a) Leasing Policy for Victorian Crown land 2023.
- b) Best Practice Management Guidelines for Committees of Management. Managing Caravan and Camping Parks on Crown Land

Both documents provide the framework and guidelines for the leasing of Crown land in Victoria.

All agreements must be prepared on State Government departments standard documentation.

4.6 Licence of Roads, Road Reserves and Reserves

Licence and lease applications will be individually assessed on a case-by-case basis, taking into account:

- a) Council's Local Law
- b) *Road Management Act 2004 (Vic)*;
- c) Any other applicable legislation; and
- d) Identified risks specific to the request.

4.7 Types of Agreements

Council offers the following types of agreements to occupy Council managed facilities and land:

- a) Lease (exclusive occupation of ground, building or both),
- b) Sub-leases (exclusive occupation),
- c) Licence (non-exclusive occupation),
- d) Seasonal licence (non-exclusive occupation during winter season or summer season (for example: football and cricket),
- e) Casual Hire (occasional use of a facility, not regular bookings),
- f) Commercial / Retail Lease (where the Tenant will generate an income)
- g) Crown Land Committee of Management 17B Lease
- h) Crown Land Committee of Management 17D Lease

4.8 Asset Committees and Delegated Committees

The Asset Committees and Delegated Committees replace Section 86 Committees in the *Local Government Act 1989*.

Asset Committees and Delegated Committees come into effect on 01 May 2020 in accordance with the *Local Government Act 2020*, section 47 and 65.

Council may establish an Asset Committee to manage Council facilities within the Shire.

Community Groups cannot enter into leases or licences directly with an Asset Committee. All agreements must be endorsed by Council.

Asset Committees are required to comply with and are governed by the *Local Government Act 2020* and the *Yarriambiack Shire Council Governance Rules*.

4.9 Expression of Interest (EOI)

Council may decide to conduct an EOI for the issue or renewal of a lease or licence that is wholly or partly commercial in nature. The decision to conduct an EOI process for a property will be based on factors including the following:

- a) The likelihood of multiple interested applicants and users.
- b) The size and location of the property.

- c) The value of the property.
- d) The expected rental return.
- e) To ensure the tenant delivers specific services.
- f) To allow for innovative or flexible solutions for the property.

4.10 Occupancy Categories and Assessment for Rent

Tenants have been grouped into categories which determine the level of financial obligations that will be placed on the tenant when entering into a lease or licence. The obligations include, but are not limited to:

- a) Rental.
- b) Utilities (electricity and water).
- c) Rates and Service Charges.
- d) Cleaning.
- e) Consumables.
- f) Maintenance responsibilities.

Categories are:

- a) A Not-for-Profit / Community Group.
- e) Commercial/Private Use.

Groups or organisations wishing to occupy Council facilities and/or Land will be assessed against the eligibility criteria contained in Schedule 1.

4.11 Annual Reporting against Criteria

To ensure tenants are sustainable and continuing to meet Council's criteria, tenants are required to:

- a) Provide a copy of their annual general meeting minutes including annual financial statements (including a statement of assets and liabilities and profit and loss statement for that financial year).
- b) To provide details of the activities conducted during the preceding year and the office bearers appointed, including their length of term of the office for each office bearer.

Reporting criteria, including timelines for reporting, will be included in the individual lease and licence agreements, consistent with the conditions of this policy.

Reporting requirements for Commercial / Retail Leases may vary and will be assessed on a case-by-case basis by the Chief Executive Officer and final endorsement from Council, via a Council resolution.

4.12 Terms and Conditions

4.12.1 Standard Documents

Council has standard documents to be used for occupancy agreements under this policy.

The standard terms and conditions are set and agreements can be tailored for individual groups through the use of specific Special Conditions which will be inserted into the standards agreement.

4.12.2 Rent Appraisal

Market rent value

The market rental value of each property or licensed area will be identified and recorded in the lease or licence documentation, if applicable.

Rent subsidy

Council will subsidise rent for eligible tenants or licensees. Tenants and licensees will be assessed against the eligibility criteria contained in Schedule 1.

Performance against these criteria and eligibility for rent subsidy will be reviewed before the commencement of any new lease or licence. The rental categories are:

- a) Peppercorn.
- c) Discounted market rent.
- d) Market rent.

Councillors may consider discounting the market rent for community groups and not for profit organisations where the group provides an overarching economic, social, environmental and health and wellbeing benefit to the community and municipal district.

4.12.3 Rent Review

Rental reviews will occur in accordance with the Agreement terms and conditions and Schedule 1.

4.12.4 Casual Hire Fees and Charges

Fees for Casual Hire of Council assets where Council is deemed the manager will be charged in accordance with the fees and charges set out in Council's Annual Budget.

Where a lease is in place, the fees and charges will be set by the Lessee.

4.12.5 Seasonal Licence Charges

Seasonal Licences of recreation reserves will be set by the lessee.

4.13 Maintenance

4.13.1 Recreation Reserve

Licensees and/or Lessees must ensure a ground inspection checklist is completed each time prior to the grounds being used.

All defects must be reported to Council in a timely manner.

Further details will be contained within the Lease / Licence agreement combined with the Maintenance and Servicing Guidelines for Council Owned Buildings.

4.13.2 Maintenance Requirements

Occupiers of Council land and/or buildings are required to maintain the subject facility in accordance with the Maintenance and Servicing Guidelines for Council Owned Buildings attached to their agreement. The agreement schedule will specify the responsibilities of Council and the occupant/s in regard to maintenance of land and/or buildings. Council reserves the right to negotiate maintenance responsibilities and costs.

The Occupants will be responsible for keeping the land and/or buildings clean, in good condition.

4.13.3 Maintenance Inspection

Council reserves the right to inspect all council assets each year or more frequently as required.

Council will conduct inspections in accordance with any applicable Council asset management requirements.

4.14 Capital Works- Improvements, Alterations and/or Additions

Occupants must not undertake construction, alteration, addition, renovation, refurbishment or demolition to any Council owned property without obtaining written consent of Council. Any significant alterations or additions required shall be undertaken by Council's contractors unless otherwise agreed between the parties in writing.

A Crown land occupant must not undertake construction, alteration, addition, renovation, refurbishment or demolition without obtaining Council and the applicable State Government departments prior written consent.

If agreed, any contractors engaged by an occupant must meet Council's policy and risk management requirements.

All improvements unless agreed otherwise between the parties will revert to Council at the end of the occupancy agreement.

4.15 Length of Tenure

The length of each lease or licence will be negotiated taking into account the particular circumstances of the property and tenant. As a general rule the term offered will not exceed five (5) years however, each case will be guided by principles, including but not limited to:

- a) Capital investment by tenant.
- b) Long term planning.
- c) Connection between the permitted use and Council Plan.
- d) The extent to which the facility is used for multi-purpose activities.

Where Council grants a lease or licence, Council is likely to renew the agreement provided the following criteria are met:

- a) Council is satisfied at the expiry of the term that there remains a strong demand for the continuation of the occupant's services within the community and that the services meet identified needs.
- b) The facility is not required by Council for other purposes.
- c) Council is satisfied that the renewal of the agreement will continue to maximise benefits to the community and/or Council.
- d) The occupant has not been consistently in breach of its obligations under the existing agreement.
- e) The grant of any proposed lease is subject to assessment against the Act.
- f) The occupant is prepared to enter into a new lease or licence on the terms required by Council.

4.16 Use of Facility and Occasional Hire from Tenants

Leases and licenses will only be available to tenants for approved purposes. Council leases and licenses will include a statement recognising Council's policy of maximising community use and a commitment by the tenant to support shared and multiple use of the facility by community-based organisations.

Certain facilities such as recreation reserves and pavilions should also be made available by the tenant for casual hire by other parties where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours.

Hiring guidelines will be set out in applicable leases; fees from casual hire are generally payable to the tenant, not to Council.

Where a tenant makes an area of a Council facility available for casual hire, the fees will be consistent with Council's fees and charges set out in Council's Annual Budget.

4.17 Hours of Use

The hours of use may be prescribed for all leased or licensed premises.

4.18 Sub-leasing or Licensing

Tenants may only sub-lease with Council permission to:

- a) Approved organisations for approved purposes; and
- b) Subject to approved terms and conditions.

Generally, Council will use the same criteria to assess the sub-lease as are applied to the head lease. The subsidy level of the head tenant will be reviewed when a sub-lease is developed and may be adjusted if the rent is more than cost-recovery.

Where a Committee of Management exists, a Lease will be entered into with that Committee of Management. Sub-Leasing the facility from the Committee of Management will be encouraged.

Where no Committee of Management exists, a Licence will be available for multiple users.

No group will be permitted to conduct activities within a Council building without having either a user agreement, lease or licence in place, which provides consent to occupy the building and/or land.

4.19 Insurance

All occupants are required to hold current Public Liability Insurance to a value determined by Council as detailed in their agreement. A copy of the Public Liability Insurance is to be provided to Council on an annual basis as evidence of cover.

All occupants must hold current insurance for contents or equipment owned or controlled by them at the Council property. Consideration will be given to specific circumstances and historical arrangements on a case-by-case scenario. Where multiple users are in occupation of a Council asset direct consultation with groups will be undertaken to determine the appropriate mechanisms for contents insurance.

Building Insurance for all Council assets will be paid for by Council. This may include assets where Council is the Committee of Management on Crown Land.

4.20 Liquor and Gaming Licence

Lease and licence agreements can include a Special Condition allowing a user group to apply for a liquor licence. The granting of consent by Council to obtain a liquor licence will be subject to specific times as determined on an individual basis.

Consent for gaming licence may be granted for specific fundraising activities only. These will be assessed on a case-by-case basis.

Council does not support applications for installation of Electronic Gaming Machines in its facilities.

4.21 Legal Fees

Council will pay legal costs associated with the establishment of a new lease agreement for community groups. Any independent legal advice and assistance sought by the tenant is at their own cost.

4.22 Keys and Locks

All keys should be compatible with the master set held by Council's Governance Officer, or otherwise be made available to enable Council access to carry out essential maintenance and emergency services.

4.23 Legislation and Regulations

All tenants must adhere to the conditions of any issued Planning Permit. Tenants will also be required to comply with all legislation and regulations and obtain any permits or licences in order for the tenant to be able to use the premises for its permitted use.

4.24 Removal of Assets

The tenant may remove any non-fixed/constructed asset that have been installed by them during the term of the lease or licence, subject to the premises being returned to Council in its original condition. Any improvement not able to be removed at the end of the lease or licence shall remain in Council ownership.

4.25 Nuisance

Council requires that tenants undertake their permitted activities without adversely impacting on the amenity of nearby neighbours. Council reserves the right to terminate the tenancy or to restrict the use of premises by the tenant and through occasional hire arrangements if this requirement is not adhered to.

4.26 Social Media

Council may request that tenants remove any material, considered by Council to be misleading, derogatory or defamatory.

4.27 Relocation

Council will manage, acquire and dispose of property in the best interests of the Yarriambiack Shire Council community. Where Council proposes to dispose of, demolish, redevelop or otherwise carry out significant alterations or additions to a property during the term of a lease or licence, Council may terminate the lease or licence with due notice and make available to the tenant a suitable alternative premises, if one is available.

The lease or licence for the alternative premises will be on no less favourable terms for the duration of the unexpired portion of the current lease or licence.

Council officers will assist in facilitating the relocation for community groups.

4.28 Waste Disposal

Tenants will be provided with garbage, recycling, and glass bins in accordance with Council's annual budget. Any additional bins required by a tenant will be charged at the annual budgeted amount.

4.29 Occupational Health and Safety

4.29.1 Leases

For the purposes of the Occupational Health and Safety Act and Regulations, tenants will be considered to have sole management and control of the facility and have sole responsibility for ensuring the facility and the means of entering and leaving the facility are safe and without risks to health.

4.29.2 Licenses

For the purposes of the Occupational Health and Safety Act and Regulations, licensees will be considered to have sole management and control of the facility and have sole responsibility for ensuring the facility and the means of entering and leaving the facility are safe and without risks to health during their permitted hours of use.

4.29.3 Casual Hire

For the purposes of the Occupational Health and Safety Act and Regulations, hirers will be considered to have control of the hired area whilst in occupation and have sole responsibility for ensuring the means of entering and leaving the hired area are safe, secure and without risks to health during the hired period.

Under any of the above arrangements, all tenants, licensees or hirers will be required to notify Council of any observed safety issues.

4.30 Lease and Licence Register

The Governance Officer will maintain the leases and licences register and ensure it is made available to the public via Council's website. The register will be updated as leases and licences are approved, renewed or expired / terminated.

The Manager Corporate Services will utilise this register to ensure leases are accounted for in accordance with AASB 16 Leases. The standard requires majority of operating leases to be accounted for on the balance sheet.

5 Risk Management

All leases and licences will undertake a Risk Assessment process in accordance with Council's Risk Management Framework prior to any agreement being entered into. The risk assessment process will be included as part of the Council report when the lease is presented as part of a Council Meeting.

6 Definitions

ABN means Australian Business Number.

ATO means Australian Taxation Office.

CPI means the Consumer Price Index – All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise or fall in the cost of living in Melbourne as the Council reasonably determines.

DEECA means Department of Energy, Environment and Climate Action.

Leadership Team Chief Executive Officer, COO and Managers of Council.

Hire Agreements is an agreement granted by the owner for casual, adhoc or a once off occupation of a room or space as defined in the Hire Agreement.

Lease is an agreement where the owner grants the Tenant exclusive occupancy of a defined area as set out in the Lease, which includes the whole or part of a building and/or land.

Licence is an agreement where the owner grants the Licensee the non-exclusive right to occupy a defined area as set out in the Licence, which includes the whole or part of a building and/or land.

Licensee means the occupier of a facility under a Licence agreement.

Market Rental Value means the rental value of the Premises or Licensed Area as determined by a valuer appointed by Council.

Seasonal Licence is an agreement where the owner grants the Licensee the non-exclusive right to occupy a defined area as set out in the Seasonal Licence, which includes the whole or part of a building and/or land, for either the summer season (October through March) or winter season (April through August).

Tenant means the occupier of a facility under a Lease agreement.

7 References

- Occupational Health and Safety Policy and Guidelines
- *Occupational Health and Safety Act (2004)*
- *Building Act 1993 (Vic)*
- *Competition and Consumer Act 2010*
- *Crown Land (reserves) Act 1978 (Vic)*
- *Equal Opportunity Act 2010*
- *Information Privacy Act 2000 (Vic)*
- *Local Government Act 1989 (Vic)*

- *Local Government Act 2020 (Vic)*
- *Planning and Environment Act 1987 (Vic)*
- *Privacy and Data Protection Act 2014 (Vic)*
- *Privacy Act 1988*
- *Retail Leases Act 2003 (Vic)*
- Building Regulations 2018
- Best Practice Management Guidelines for Committees of Management. Managing Caravan and Camping Parks on Crown Land
- Leasing Policy for Victoria Crown Land 2023
- Local Government (General) Regulations 2015
- Retail Leases Regulations 2023

Council Approved Policy

Policy Adopted:	Ordinary Meeting 24/06/2020	Minute Book Page 191
Policy Reviewed:	Ordinary Meeting [date]	Minute Book Page [number]

8 Schedule 1 - Occupant Categories and Assessment of Rent

Category of Tenant	Definition	Rent and Cost	Eligibility	Rental Category
Category A Not for Profit / community Group	Generally accessible to all residents and engage the wider community for the benefit of the inclusion, wellbeing and engagement of the Community. Provide a service that is of substantial benefit to the overall outcomes for members of the community.	The occupier is responsible for the utility charges, the fire services property levy, waste and recycling charges and water charges. A rental fee of \$1.00 (one dollar) per year will apply and be deemed as paid in the lease.	Use approved by Council. Not for Profit or voluntary groups that receive minimal or no external funding to operate with limited revenue raising ability. Provide significant community benefit.	Peppercorn Lease
Category B Not for Profit / community Group	Community groups that provide a core service to the local community and have an element of commercial or business operation.	The occupier is responsible for the utility services, water charges, the fire service levy and any waste and recycling charges. A market rent valuation determined by an independent qualified valuer. This rent maybe discounted, dependent on the social health and wellbeing outcomes for the community and municipal district.	Use approved by Council. Not for Profit or voluntary groups that receive minimal or no external funding to operate with limited revenue raising ability. Provide significant community benefit.	Discounted Market Rate; or Market Rate (dependent on the overall community benefit).
Category C Commercial and Private Use	This category includes operation of a business or commercial activity where income is obtained and/or private gains from the use of the premises.	A market rent valuation determined by an independent qualified valuer.	Use approved by Council	Market Rates