
Facility Leasing Guidelines



May 2019







Northern Grampians Shire Council
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Facility Leasing Guidelines



Prepared by position
Approved by position
Functional area
Date reported to EMAH
Review date

Risk & Lease Management Officer
Manager Governance & Civic Support
Governance
28 May 2019
28 May 2023

Intent of the procedure

To provide guiding principles to ensure the best overall value for the community is obtained from the occupancy of Council facilities and risks for Council are minimised through the responsible management of these community facilities.

This policy does not apply to the seasonal and occasional use of Council facilities.

Council must ensure legislative compliance and Crown Land management responsibilities are met when making arrangements with commercial or non-commercial occupiers of Council facilities.

Actual procedure

Northern Grampians Shire Council is committed to effective, equitable and efficient management of its facilities which ensures appropriate returns and protects Council interests while recognising the rights of both commercial and non-commercial occupiers of these facilities.

- All commercial and non-commercial occupiers of Council facilities will, as a condition of that occupancy, enter into a formal, legally binding lease/licence agreement with Northern Grampians Shire Council.
- All commercial lease agreements will be prepared and managed in accordance with the specific requirements of the *Retail Leases Act 2003* if the Act applies.
- Council will only grant a lease or licence to specific persons or incorporated bodies (that is, organisations that are incorporated under the *Associations Incorporation Reform Act 2012*). This means that a lease or licence agreement cannot be made with people representing a group i.e. partnerships or committees.
- Council will maintain two separate rental strategies for lease agreements that recognise the difference between commercial and non-commercial occupiers and extracts a commercial return from business and retail operations.
- Council will ensure consistency in decision making associated with lease terms and conditions.
- Council will provide an equitable and transparent process for dealing with Council's leased and licensed facilities.
- Tenants must obtain Council's prior written consent before applying for a planning permit and all planning permit requirements, including liquor licence requirements, will become requirements of the lease.
- Where Council acts as the Committee of Management over Crown Land, Council must seek the prescribed consent in accordance with the provisions of the *Crown Land (Reserves) Act 1978*. Leases and licences will be in the prescribed form as provided by the Department of Environment, Land, Water and Planning (DELWP) and Council's additional terms and conditions will form part of the special conditions of the agreement.
- Unless prescribed by legislation (including the *Retail Leases Act 2003*) Council will charge commercial tenants its legal costs associated with the preparation and negotiation of the licence or lease.
 - Council will not charge its non-commercial tenants for Council's legal and administrative costs associated with a new non-retail lease or licence provided the lease or licence conforms to Council's standard document. Substantial variations to the standard lease or licence may incur increased legal costs to be passed on to the tenant.
 - Council may also claim from the tenant its reasonable legal costs incurred in connection with an assignment of lease or sub-lease of the premises.
 - Any legal costs associated with a lease or licence variation as a result of a tenant's request may also be charged to the tenant.
- If the lease provides for a further term then Council will grant to the tenant a new lease or licence for the further term if the tenant complies with the provisions in the lease and also complies with the requirements under the *Retail Leases Act 2003*. Council is not obliged to accept a tenant's request to renew a non-retail lease if the tenant fails to exercise the option in accordance with the terms of the lease or licence or if the tenant is in default of the terms of the lease at the time of exercise of the option.
- Northern Grampians Shire Council may invoke the Consumer Affairs Victoria procedures as landlord giving notice to vacate any lessee who:
 - fails to enter a formal lease agreement for occupancy of the property within 90 days
 - fails to pay lease/licence rental within 90 days
 - fails to perform or observe any of the Lessee's essential terms covenants under the agreement
 - fails to provide and keep appropriate Public Liability cover current.
- In accordance with the *Local Government Act 1989*, a document containing details of all leases involving land which were entered into by the council as lessor, including the lessee and the terms and the value of the lease, will be available for inspection at all reasonable times.

Pricing strategy

- The underlying principle of this guideline is to recognise that there is an overall social benefit for the community to enable the use of Council-owned land and facilities by organisations which provide recreation and sporting opportunities, or play other community development type roles.
 - The policy also recognises that the existence of a range of leisure and recreation facilities and services enhances the quality of life and wellbeing of our community in accordance with Council's objectives as indicated in the Council Plan.
 - The policy also gives due recognition to organisations which have contributed to the capital costs of constructing the asset.
 - Non-commercial occupiers such as sporting clubs and recreational/community groups will attract a different rate of rental according to a specific pricing methodology. Council will take into consideration its obligations under the National Competition Policy (NCP) when determining rental fees for non-commercial occupiers.
 - Professional advice from Council's Valuers will determine the rental for commercial occupiers and will be reviewed as prescribed within the lease conditions by either the consumer price index or a fixed percentage. Commercial lease agreements will be subject to a market review as per lease conditions. This will generally apply to Commercial tenants only.
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- Council reserves the right to amend the rental if a tenant obtains an on-premises licence, packaged liquor licence, general licence or gaming licence, or gain access to other commercial or fortuitous (but not fundraising) means of income generated during the term of the agreement. e.g. rent received from subletting, telecommunication rental, revenue received from advertising on the premises. Consent by Council is required for any such use.

Public consultation

As required under section 190 of the *Local Government Act 1989*, Council will place a public notice in the local newspapers and on the Council website advising of its intention to grant a lease. Any person has a right to make a submission under section 223 of the Act in relation to the proposed lease.

Inspections, Maintenance and Improvements

Council will conduct a lease inspection of all buildings prior to commencement of a lease agreement.

To provide a consistent and fair framework for the conduct of maintenance on Council premises, maintenance schedules have been developed. Each tenant is required to maintain the facility in accordance with a maintenance schedule attached to the lease or licence. The maintenance schedules will specify the responsibilities of Council and the tenant, including (among other things) responsibility for maintaining the structure, the building, fixtures and fittings and grounds.

The level of maintenance responsibility outlined in the relevant schedule will be determined by a number of factors, such as:

- function of the facility
- degree of community benefit
- the tenant's ability to maintain the premises
- the tenant's ability to generate revenue
- the level of subsidy or grants received by the tenant
- any special maintenance requirements by the tenant
- the rental level

- provisions of the *Retail Leases Act 2003*.

All improvements (additions, structures or buildings) on the premises installed or erected by the tenant during the term of the lease or licence require Council consent and are the property of Council, unless otherwise specified. The tenant may be required to remove the improvement at the expiry of the term of the lease, unless otherwise specified. If Council requires the tenant to remove any improvement during the term of the lease, the tenant must make good any damage caused by the removal.

Risk and Occupational Health and Safety

The tenant must be affiliated with the representative Association, where applicable, and participate in a risk management program which addresses the risks associated with the use of the premises including implementation of risk management programs and procedures that are considered standard by their insurer such as but not limited to;

- Facility risk management checklists
- Childsafe standards
- Code of conduct
- Emergency and incident management

Evidence of risk management activities are to be kept with the tenant for a minimum of six years.

Essential Safety Measures

Council or Council's authorised agent may enter the premises to inspect the essential safety measures at any reasonable time after giving the tenant reasonable notice.

Under the *Building Act 1993* and *Building Regulations 2018*, building owners, managers and tenants have the responsibility to ensure that all essential safety measures, pieces of safety equipment, fittings or other safety measures that relate to their building are maintained in order to operate as designed. An annual Essential Safety Measures Report is required to be issued by the owner or agent of the owner and retained on site.

Lease Term and Vacancy Procedures

The maximum lease period for properties on Council land is 50 years and 21 years for Crown Land. The maximum term for a licence on Crown Land is ten years. Council acknowledges that long term leases can impede the optimum use of Council facilities for the betterment of the community. Generally community lease agreements will be for a term of 15-20 years (including options to renew) taking into consideration the tenant investment into the facility (e.g. building, playing surface) and maintenance responsibilities, however Council may offer a lesser term where it considers that providing a lesser term is in the best interests of the community.

When a premises becomes vacant or at the expiry of the term, the occupation of the premises will be subject to an expression of interest process, which will be carried out by way of public advertising. An evaluation panel will be selected prior to interviewing prospective tenants. The panel will be representative of the relevant Council departments involved in the management and operation of Council facility and/or the services the organisation provides to the community. External and independent persons who have expertise relevant to the type of lease being granted may also be appointed to the panel.

Upon completion of an evaluation process, the panel will prepare a report and recommendation to Council naming the preferred tenant(s) and giving reasons for its decision. If Council resolves the panel's recommendation, any unsuccessful applicants will be notified. For premises located on Crown Land, the lease agreement proposal will be forwarded to DELWP for 'In Principle' approval.

Insurance and Public Liability

Insurance for buildings and contents on Council owned or controlled land will be in accordance with the lease agreement.

Tenants will be responsible for repairs up to the excess set by Council’s insurer. Tenants wishing to lodge a claim through Council’s insurance policy will be required to complete all necessary paperwork and obtain quotes inline with the Procurement Policy. The tenant will be liable to pay the excess for any claim lodged.

All tenants are required to take out public liability insurance for a minimum cover of \$20 million. A copy of the Certificate of Currency must be provided to Council initially and upon renewal annually.

Use of premises

The tenant must obtain Council prior written consent for any change or additional use of the premises. Council reserves the right to review the rent or any other lease provision if it provides consent in this regard.

Non-commercial tenants must also allow Council to use the premises for Council sponsored functions at no cost to Council. Such use will be subject to Council giving the tenant at least 30 days written notice of its need to use the premises, provided that the Council use of the premises does not unreasonably interfere with the tenant use of the premises.

In the event of a declared emergency, upon request, the tenant must provide immediate access to Northern Grampians Shire Council for activities involved in managing the above mentioned situation. Council must also rectify any damage to the premises due to Council use of the premises.

For tenants who occupy premises under a licence agreement, Council may also use the premises or allow others to use the premises.

The hours of use may be prescribed for the premises and the tenant must comply with all guidelines and directions issued by the Environment Protection Authority, planning permit provisions (including liquor licence provisions), Liquor Licencing Commission and Council local laws.

Tenants will make the premises available for casual hire to other community groups where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. A formal hire arrangement must be used.

Tenants must comply with all Local Laws, the Liquor Control Act, the Health Act, the Tobacco Act, Public Building Regulations and all other regulations relating to the care, protection and management of the premises as a Council facility.

Usage of Council facilities includes the requirement to follow the Healthy Choice Framework relevant to their organisation and provide >35% green food/beverage choices.

Responsibilities

Duty to advertise certain leases	s.190 L.G.A.	Council resolution
Hearing of submissions resulting from public notice	s.223 L.G.A.	Council resolution
Making a decision regarding an issue where s.223 submissions have been made	s.223 L.G.A.	Council resolution
Power to lease land	s.190 L.G.A.	Council resolution

Duty to keep a register of all leases	s.98 L.G. Regulations 1990	Manager Governance & Civic Support
Duty to Monitor ongoing compliance with Essential Service Management and Maintenance Schedules	Building Regulations 2006 – Annual Essential Safety Measures Report	Coordinator Parks & Facility Maintenance
Leases containing an option exercisable - Notify Tenant to renew lease (retail leases only)	s.28(1) RLA 2003	Risk & Lease Management Officer
Landlord’s Disclosure Statement - Schedule 3 Retail Leases Regulations 2013 (retail leases only)	s.26(1) RLA 2003	Risk & Lease Management Officer
Statement of Outgoings (retail leases only)	s.47 RLA 2003	Risk & Lease Management Officer
Pricing Strategy - rental (commercial)	Facility Leasing Guideline	Council Valuer
Pricing Strategy - rental (non-commercial)	Pricing Methodology for Non Commercial Lease Agreements	Risk & Lease Management Officer
Rent Reviews	Terms of Lease	Risk & Lease Management Officer
Monitor insurance requirement compliance	Terms of Lease	Risk & Lease Management Officer
Monitor debtors and budgeting for income	Terms of Lease	Risk & Lease Management Officer & Revenue Department

References

- Council Plan 2017-21
- National Competition Policy (NCP)
- Crown Land Leasing Policy 2018
- NGSC Procurement Policy 2018
- [Application for Hire Template - Leased facilities](#)
- Local Government Act 1989*
- Local Government (General) Regulations 2004*
- Retail Leases Act 2003*
- Retail Leases Regulations 2003*
- Crown Land (Reserves) Act 1978*
- Residential Tenancies Act 1997*
- Associations Incorporation Reform Act 2012*
- Building Act 1993*
- Building Regulations 2018*

All Council policies must consider the *Privacy and Data Protection Act 2014* and the *Victorian Protective Data Security (VPDSS) Framework* which adopts a risk-based approach to protective data security. Policies must include, where relevant, identified security risks and governance arrangements in place to protect the security across the domains of information, personnel, ICT and physical.

Definitions

DELWP	Department of Environment, Land, Water & Planning
Lease	A lease is a right granted by the owner of land (landlord) to another person (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment. Council will grant a lease where the

	premises will be occupied exclusively by the one user and Council considers that granting a lease is in the best interests of the community.
Licence	A licence permits a person (licensee) to occupy land (or part thereof) on particular conditions. The main feature that distinguishes a licence from a lease is that a licence does not permit exclusive occupancy of the land. Sporting clubs that have seasonal service agreements and/or reserve hire arrangements are not included in this procedure.
Commercial occupiers	Any occupier who operates a business or commercial enterprise that is other than a sporting or recreational/community group. This includes Not For Profit organisations that hire or retail goods or services.
Non commercial occupiers	Not for profit bodies which provide or promote community, cultural, sporting, recreational or similar activities and do not contravene the National Competition Policy (NCP).
Market rental value	The estimated amount for which property should rent, as at the relevant date, between a willing Landlord and a willing Tenant in an arm's length transaction, wherein the parties had each acted knowledgeably, prudently and without compulsion, and having regard to the usual terms and conditions for leases of similar property.
Replacement value	The cost of replacement of a building which could conceivably be destroyed. The assessed value excludes any equipment, tools, furniture and the like.
NCP	National Competition Policy
Council facility	Council owned or managed land, building or sporting ground or combination of the aforementioned.

Review history

Date	Review details	Action
May 2019	Guidelines developed	
28 May 2019	Reported to EMAH	
Not applicable	Adopted by ELT	