



Leasing and Licensing Policy for Council-owned Land and Council- managed Land

TABLE OF CONTENTS

Purpose	3
Scope.....	3
Policy Context	3
Policy Statement	3
1. Lease or Licence.....	5
2. Expression of Interest	5
3. Public advertising	6
4. Duration of tenancy (including any options clauses).....	6
5. Assessment of rent payable.....	7
6. Commercial use	8
7. Rental obtained from Telecommunication Agreements.....	9
8. Not-for-Profit organisations – commercial rent reductions	9
9. Community Use.....	11
10. Seasonal Use of Council-owned Land/Council-managed Land	11
11. No obligation to renew	11
12. Inspections, Maintenance and Improvements	12
13. Risk and Occupational Health and Safety	12
14. Insurance and Public Liability.....	12
Roles and Responsibilities.....	13
References and Supporting Documents	13
Applicable Legislation:	13
Applicable Policy and Procedure:	13
Privacy and Human Rights Consideration	14
Definitions	14
Revision History and Review	16

Purpose

This policy establishes the principles to be applied for the leasing and licensing of non-residential Council-owned land or Council-managed land, including private jetties, to other parties to maximise the social, environmental and economic benefits to the East Gippsland Shire.

Scope

The scope of this policy is to provide a framework for:

- Optimising occupancy of Council assets where possible through shared use by multiple tenants and licensees; and
- A consistent approach when entering into agreements for tenants and licensees to occupy Council facilities.

The policy applies to:

- all leases, licences and agreements over Council-owned land and Council-managed land entered into after the policy approval date; and
- leases, licences and agreements falling due for renewal after the policy approval date.

Lease and licence commitments existing at the time of this policy being approved, including 'options' clauses, will be honoured. This policy only applies to new lease and licence agreements entered into after the date of approval.

The policy does not apply to community markets held on Council-owned land or Council-managed land, provided the markets are organised by a Not-for-Profit organisation and do not occur more than 12 times within a calendar year¹.

Policy Context

The leasing and licensing of Council-owned land and Council-managed land will be subject to a fair and transparent process. Legislative compliance, community benefit considerations and maximising the financial return on Council's assets will be the fundamental principles guiding Council's issuance or renewal of leases and licences.

Policy Statement

Five principles have been adopted to provide a consistent framework for the leasing and licensing of Council-owned land and Council-managed land. The five principles determine that leases and licences must:

1. Provide demonstrated community and/or economic benefit.

¹ Community markets that are held no more than 12 times per year are subject to an events permit issued by Council's Community Laws unit.

2. Be given 'Approval in Principle' before the Expression of Interest or public advertising process commences on any proposed lease or licence of Council-owned land or Council-managed land:

Explanatory note:

Before there can be an agreement or commitment to lease or licence Council-owned land or Council-managed Crown land, the proposal needs to be developed in the form of a detailed submission for consideration by the relevant General Manager for Council-owned land or the Minister² (or the Minister's delegate, where applicable) for Council-managed Crown land, for Approval in Principle³. Once Approval in Principle to lease or licence has been granted, an expression of interest or advertising can be undertaken which is then followed by final negotiations.

3. Be developed and approved through an accountable and transparent allocation process.
4. Be subject to appropriate terms and conditions, including (but not limited to):
 - (a) rental payable;
 - (b) a term will generally not exceed 21 years for lease agreements and nine years for licence and other agreements;
 - (c) terms of up to 50 years may be available for projects of regional significance or essential services and will only be considered in exceptional circumstances; and
 - (d) a term should reflect the nature of the occupation of the lease, licence or agreement intended (for example, future use of the land and/or buildings, level of capital investment proposed, economic benefit including employment).
5. Be subject to consistent documentation for similar uses and occupation types across the Shire.

Council is responsible for managing Crown land on behalf of the Victorian Government. This Council policy adheres to the Department of Environment, Land, Water and Planning (DELWP) Leasing Policy for Crown Land in Victoria (DELWP Leasing Policy), which provides a framework and guidelines for the leasing and licensing of Crown land in Victoria. The DELWP policy applies to all managers, tenants and prospective tenants, including municipal authorities such as Council, to ensure the leasing and licensing of Crown land:

- is undertaken through a transparent, fair and impartial process; and
- ensures that the community benefits from improved social and economic outcomes as a result of the leasing of Crown land, without detriment to public land values.

Council is equally committed to achieving these objectives in its leasing and licensing activities.

² In the case of leases issued under the *Crown Land (Reserves) Act 1978*, the Minister's written approval to grant the lease is required to fulfil legislative requirements.

³ Approval in Principle for:

- Council-owned land is granted by Council or its delegated officer, the General Manager responsible for the asset under their Directorate; and
- Crown land managed by Council is granted by Council or its delegated officer, the General Manager responsible for the asset under their Directorate, and the Minister (or the Minister's delegate, where applicable).

1. Lease or Licence

A **lease** is an agreement that is binding on Council and the tenant. The lease grants exclusive use for a period of time under specific conditions in return for a rental payment.

The term of a lease is one year or more, generally in return for a payment of rent and payment of outgoings, for example electricity, water and rates.

A lease will only be granted by Council where the building or land, or part of it, will be occupied exclusively by one user and Council considers the granting of a lease is in the best interest of the community.

A **sub-lease** is a legally binding agreement between the tenant and a third-party tenant that gives the third-party tenant the right to share or take over the leased premises from the tenant.

A **licence** does not permit the licensee exclusive occupancy of the land or building. The licensee may occupy a building or land during certain days or hours or times of the week, or use rooms within a building with common areas as set out in the licence agreement, and the facility is shared in common with other community groups who occupy the same facility at different times. A licence ensures Council-owned land and buildings are used to their greatest potential, and maximises public access to community facilities.

A **Management Agreement** is used where Council engages an incorporated committee to manage the land and users of the land on behalf of Council and undertakes the care and management of the land.

2. Expression of Interest

Commercial or Partly Commercial Tenants

Prior to the issue or renewal of a lease or licence that is wholly commercial or partly commercial, a competitive expression of interest process will be conducted broadly in accordance with the principles established under Council's Procurement Policy for the award of contracts by public submission.

In undertaking a competitive expression of interest process, all prospective tenants will receive the same information about the existing assets, capital improvement / expenditure expectations and other criteria that will be used to evaluate submissions.

There are special circumstances where it may be impractical to use a competitive process, i.e.:

- where there is evidence that conducting a competitive process may place a project of regional or state significance at risk; or
- where direct negotiation with a prospective tenant would maximise benefits to the community (e.g. where the site is proposed to be used to conduct a social enterprise) occupancy by a particular tenant will complement the activities being undertaken by other tenants in the building or location etc.);
- when a competitive process has been undertaken but did not result in a satisfactory outcome;

- when the current market rental value of a property is low relative to the cost of conducting a competitive process; or
- where the only practical access is via land owned by the adjoining property owners.

Under these circumstances, the Chief Executive Officer may authorise direct negotiation to be undertaken with a prospective tenant to achieve an outcome that serves the broader community interest. Approval to enter into a formal agreement following a direct negotiation process may be granted only by Council or the Chief Executive Officer as appropriate.

Regardless of whether a competitive or direct negotiation lease or licence allocation process is used, the process must be fair, open and impartial.

In the case of a commercial lease, licence or agreement where there are demonstrable social, environmental and/or economic benefits for the wider community, the Chief Executive Officer can exempt the proposed lease or licence from the requirement for a competitive expression of interest process.

Community Tenants

The expression of interest process is not required for community use occupations unless the Chief Executive Officer determines otherwise.

Where the Chief Executive Officer determines that there may be competing interests for a particular community rental lease or licence, a limited expression of interest process may be undertaken to guide the issuance or renewal of that lease or licence.

3. Public advertising

The issuance and renewal of all leases and licences, other than those for private jetties, management agreements and issued or renewed as a direct result of an expression of interest process, will be advertised publicly to provide the community with an opportunity to provide comment in relation to the issuance or renewal.

The Chief Executive Officer will then consider any written submissions received in response to the advertising process and having considered these submissions, will determine the appropriate course of action. Submissions may be referred to Council at the Chief Executive Officer's discretion.

In the case of a sub-lease, if consent has been granted by the Chief Executive Officer for the sub-lease, advertising is not required because the head lease agreement between Council and the tenant has already been advertised and the granting of a sub-lease does not change the head lease agreement.

4. Duration of tenancy (including any options clauses)

The duration of leases, licences and management agreements will be determined on a case-by-case basis and will consider:

- the intended and future use of the land and/or buildings;
- whether the tenant or licensee is proposing to undertake or contribute towards capital investment and/or structural works;
- benefit to the broader community, including economic / employment;

- the adequacy of the facility in relation to the tenant's requirements; and
- the tenant's previous tenancy history and/or character references (if requested).

The duration of leases issued over Council-owned land or Council-managed land will generally be for a term of not more than 21 years. While the *Local Government Act 1989* empowers Council to consider a lease of up to 50 years or less, lease terms of more than 21 years will be considered only in exceptional circumstances.

For large scale projects of regional significance or those that provide essential services to the community, a longer-term lease may be required. The term granted must be appropriate to that use and in accordance with the provisions of the *Local Government Act 1989* for projects on Council-owned land and the *Crown Land (Reserves) Act 1978* for projects on Council-managed land. Before a term longer than 21 years will be considered a business case must be prepared and presented to Council for formal resolution.

The duration of licences issued over Council-owned land and Council-managed land will be for a term not exceeding nine years.

Any lease that includes one or more of the following conditions will be undertaken in accordance with the *Local Government Act 1989*, which requires a formal public submission process to be undertaken and the lease approved by a resolution of Council:

- a term of 10 years or longer;
- payment of rent for any period of the lease of \$50,000 including GST or more per annum; or
- the land being leased has a current market rental value of \$50,000 including GST or more per annum.

5. Assessment of rent payable

Rental amounts payable for the occupation of Council-owned land and Council-managed land will be determined in accordance with the table below.

Table 1 – Commercial or Partly Commercial Tenants

Commercial Property usage type	Rental basis
Primarily commercial or private use	Current market rate as determined by independent valuation or competitive public expression of interest process (and not less than four times the annual community rental).
Telecommunication facilities	<ul style="list-style-type: none"> • Current market rate as determined by independent formal valuation to assess the initial rent for the lease period; and • Annual percentage increase based on the rate cap set by the Minister for Local Government by 31 December each year; and • Valuations every three years for the balance of the lease and all subsequent terms.

Commercial Property usage type	Rental basis
Community and Not-for-Profit organisations that generate a commercial income	Council will use the Capital Improved Value (CIV) of the site, based on an independent valuation, to determine the rental for Not-for-Profit organisations with a commercial income.
Private jetties constructed at the cost of the landowner on sites allocated to properties with water frontage, where Council is the responsible authority for the canal or waterway.	Rental is set annually through the fees and charges schedule of Council's Annual Budget.

Table 2 – Community Tenants

Community Property Usage Types	Rental Basis
Community and Not-for-Profit organisations - no commercial income	Annual community rental, equivalent to that set by DELWP.
Incorporated committee of management appointed by Council to manage occupancy by multiple community user groups	Nil. Refer to <i>Annual Allocations Policy (Committees of Management over Facilities / Recreation Reserves / Community Halls)</i> . This policy applies to eligible Committees of Management over recreation reserves and/or community halls situated on Council-owned land or Council-managed land that provide demonstrated community benefit.

Council will invoice tenants for rental moneys due every 12 months as a minimum. Non-payment of rental will result in enforcement action being undertaken in accordance with the terms of the relevant lease or licence.

6. Commercial or private use

The rent payable for commercial or private use will be determined in accordance with a valuation conducted every three years by independent valuation. For years in which a market review is not required by the lease or licence agreement, the rental amount payable will be adjusted by the same percentage as that advised by the Minister for Local Government in December each year in respect of the rate cap. The percentage increase set by the Minister in December will apply to lease and licence rental increases in the following financial year.

Where there is disagreement between the tenant and Council over the valuation for an existing lease, a tenant must obtain an independent valuation at their own expense. If disagreement continues after the two valuations have been received and considered, the matter will be settled by a conference of valuers, with the cost of the conference to be shared equally between the tenant and Council.

The Chief Executive Officer may consider an expense reimbursement of pre-approved expenditure for structural maintenance or capital improvements to be undertaken by the tenant.

In circumstances where it is reasonable to conclude a suitable tenant willing to pay the rental as determined by valuation will not be secured, a discount may be applied to the value of a rental figure determined by a valuation at the Chief Executive Officers discretion.

Where it is reasonable to do so, the Chief Executive Officer may determine that the rental payable under a particular occupation is likely to be at such a low level as to render the commissioning of a valuation financially unviable. In such circumstances, the Chief Executive Officer may determine the rental payable, after taking into account the principles of this policy, previous valuations and all other relevant information.

In no circumstances will the rental charged for a commercial/private occupation be less than four times the equivalent community rental as determined by this policy (e.g. not less than $4 \times \$114.40 = \457.60 including GST per annum, as at the time of this policy being adopted).

This requirement does not apply to community property types whose rent is assessed as per Table 2 – Community Tenants.

7. Rental obtained from Telecommunication Agreements

Council will retain all rental income from lease agreements with a telecommunications provider (or similar service provider) for use of Council-owned land or Council-managed land and will use that rent for the benefit of the whole community. The Chief Executive Officer will consider a contribution of 25% of the rental income from telecommunication leases to go directly to the relevant Committee of Management and a corresponding amount be reduced from the annual allocation made to the Committee of Management.

Only the Chief Executive Officer or a Council Officer authorised by the Chief Executive Officer, is authorised to negotiate directly with any telecommunication (or similar) provider in relation to the use of Council-owned land or Council-managed land. Under no circumstances will individual clubs, organisations and tenants be authorised or have any authority to act on behalf of Council in this regard.

8. Not-for-Profit organisations – commercial rent reductions

Where a Not-for-Profit organisation generates a commercial income as part of the operation of the facility or service being provided, Council will use CIV of the site, based on an independent valuation, to determine the rental for Not-for-Profit organisations with a commercial income.

A written application for a discount of the market rent, as determined by an independent valuation will be considered by Council provided it is supported by appropriate information as required by Council including but not limited to:

- the organisation's Constitution or terms of reference;
- details of the organisation's leadership/management structure and membership;
- if relevant, details of any employees or contractors employed either permanently or from time to time as part of its operations;
- any subletting or service provision agreements;
- any business or strategic plans; and
- its audited financial statements for at least the previous three years.

This recognizes the social benefits of community well being by having Council-owned land and Council-managed land facilities available for use by the community and acknowledges the commercial income of the facility or service being provided.

Council obligations to optimise community benefit and/or economic return

In determining rental to be applied, Council will always be cognisant that renewing a lease or licence to the same tenant for less than market rent may result over time in the effective or perceived privatisation of public land without proper benefit to the community and/or economic return.

Where a decision has been taken to grant a lease or licence to a Not-for-Profit organisation that generates a commercial income, at a rent that is less than market rental value, the full rental fee will be determined using the CIV of the premises and then a discount will be applied.

Determining community benefit

The community benefit component of the lease or licence will be determined having regard to the following factors as a minimum:

1. The proposed tenant's Constitution or terms of reference, its aims and objectives, and the services it offers to the community;
2. Whether the proposed tenant will be providing services in direct competition with other commercial providers and if so, whether the lease or licence at less than market rate provides an unfair competitive advantage to the tenant over its competitors;
3. The tenant's annual gross turnover (in the case of an existing tenant);
4. The proposed tenant's history and experience in its area of activity;
5. The length of time the proposed tenant has been based in the Shire and/or its connection with the East Gippsland community;
6. Whether the services offered by the proposed tenant, or the proposed lease or licence at less than market rent, furthers the objectives of the Council Plan or other plans and programs of the Council;
7. Whether the services or activities are being delivered mostly to residents of a single community rather or operating on a sub-regional or regional basis;
8. The costs and expenses Council would incur for maintenance and like expenses if it did not lease or licence the premises or land. This should include savings by Council if a tenant undertakes maintenance and repairs instead of Council providing the service and maintaining the premises itself;
9. The extent of capital works proposed to be undertaken or other proposed contribution towards capital investment and/or structural works on the site; and
10. If the tenant generates income from the premises, the purpose for which that income stream is used. Considerations that will impact negatively on a request for a reduced rental include the use of the tenant's employees or paid contractors to undertake the activity or deliver the service that generates the income; the tenant remitting or intending to remit income earned from the premises to its other services or businesses

outside the Shire; or to subsidise the cost of goods and services that are offered by the tenant in competition to other businesses in the area.

If it is determined that the Not-for-Profit organisation or commercial activity being assessed falls outside the parameters of these two categories, the request for reduced rental will be referred to the Chief Executive Officer.

Cessation of commercial activity

If the tenant provides documentary evidence to the Chief Executive Officer that the premises are no longer used for any commercial activity, the Chief Executive Officer will review the evidence provided and if it is determined that the tenant is no longer undertaking this activity, Council or the Chief Executive Officer (whichever is appropriate) may consider reducing the rent in line with the provisions of this Policy.

9. Community Use

Community use tenants that, under the terms of their agreement, are providing solely community or social benefit, will pay a minimum rental for occupancy as per Table 2 – Community Tenants at clause 5. This rental represents a nominal contribution by the tenant towards the ongoing costs incurred by Council to maintain the land or building in a condition that is appropriate for occupancy. Tenants and licensees will be required to pay for specific outgoings and services that apply to the property that are specified within the lease agreement.

Council reserves the right to amend the rental, if a tenant with the prior approval of Council, varies the use of the premises to include commercial activities, including but not limited to:

- all forms of liquor licence;
- rent received from sub-letting;
- revenue received from advertising on the premises; or
- any other commercial activity authorised by Council.

10. Seasonal Use of Council-owned Land/Council-managed Land

Seasonal use of Council-owned land or Council-managed land will be subject to a permit issued by an authorised officer of Council. This will be for a term of up to six months and for the period being approved by the Chief Executive Officer. This applies to activities including but not limited to the hire of recreational equipment (bicycles, kayaks, etc.) and activities such as roller blading and roller skating.

11. No obligation to renew

Under no circumstances will the end of a lease or licence term be taken to mean that a new lease or licence will be granted to the same tenant on the same or similar terms.

Council will consider the issue of community benefit to the East Gippsland region on each occasion a new lease or licence term is requested. In determining whether to grant a new lease or licence to the existing lessee or licensee, Council or the Chief Executive Officer (as appropriate) will take into consideration:

1. Whether Council requires use of the property (or part thereof) for municipal purposes either immediately or in the future;

2. The extent of compliance by the tenant with the lease or licence requirements throughout the term, including whether the lessee or licensee has paid rent on time, and has properly maintained the premises as required under the agreement and to a satisfactory level;
3. Whether demand for the service offered from the leased property has increased or decreased, based on market trends, community use of the service or on a case by case basis;
4. Whether demand by other groups for access to these or similar premises has increased or decreased and whether it is equitable for one organisation to have ongoing exclusive use;
5. Whether the membership of the tenant's organisation or clientele of the tenant has increased or decreased; and
6. Whether the tenant has the capacity to optimise the potential of the land and/or building in the best interests of Council and/or the community.

12. Inspections, Maintenance and Improvements

Council reserves the right to undertake inspections of premises as required to inspect the facilities or improvements located upon the leased or licensed land.

The tenant is required to maintain the premises in accordance with the maintenance schedule attached to the lease, licence or management agreement. The maintenance schedule specifies the maintenance obligations for which Council and the tenant are responsible.

At the end of the term, if Council requires the tenant to remove any improvements, additions, structures or buildings that have been constructed or installed by the tenant during the term of the lease or licence, the tenant must remove them and make good any damage caused by their removal within the timeframe specified in the lease or licence, or if no timeframe is specified, within three months of being notified in writing by Council.

13. Risk and Occupational Health and Safety

Tenants must have in place emergency and evacuation plans and procedures and must ensure that their members, employees and/or invitees to the site participate in emergency training and drills as required. Tenants must adhere to and comply with all occupational health and safety legislation and regulations. Council's Essential Safety Measures Officer or their delegate may enter the premises to inspect the essential safety measures at any time during business hours provided the tenant has been given reasonable notice.

14. Insurance and Public Liability

Council maintains building insurance for buildings owned by Council on Council-owned land or Council-managed land. If a tenant or licensee has constructed their premises on Council land, they must maintain the building insurance for those buildings.

All tenants are required to take out and maintain public liability insurance for a minimum cover of \$20 million, or greater amount if required. A copy of the Certificate of Currency must be provided to Council on or before the commencement date of the agreement and annually upon renewal of the tenant's insurance policy.

Roles and Responsibilities

These management positions are responsible for the implementation, communication and compliance monitoring of the policy in their work areas:

Party / Parties	Roles and Responsibilities
Senior Property Officer Property Officer Property Administration Officer	Oversee the issuance of leases, licences and management agreements in accordance with this policy
Manager Governance	Provide strategic oversight of Council's property leasing and licencing portfolio; formulate solutions to complex occupancy issues; and provide recommendations to the General Manager, Strategic Owner and Council in accordance with this policy.
General Manager Business Excellence	Overall responsibility for policy implementation and compliance.

References and Supporting Documents

Applicable Legislation:

- *Local Government Act 1989*
- *Local Government (General) Regulations 2015*
- *Crown Land Reserves Act 1978*
- *Land Act 1958*
- *Retail Leases Act 2003*
- *Planning and Environment Act 1987*
- *Coastal Management Act 1995*
- *Retails Leases Regulations 2013*
- *Occupational Health and Safety Act 2004*
- *Telecommunications Act 1997*
- *Aboriginal Heritage Act 2006*

Applicable Policy and Procedure:

Department of Environment, Land, Water and Planning ('DELWP') policy *Leasing Policy for Crown Land in Victoria* (including any amendment or replacement document)

Council Plan 2017-2021 (or its successor)

Annual Allocations Policy 2017 (Committees of Management over Facilities / Recreation Reserves / Community Halls) available on Council's website

Well Placed for Wellbeing: Partnering for Healthier and More Connected Communities in East Gippsland 2017-2021

East Gippsland Shire Council's Annual Budget

Approved Masterplans published on Council's website

Instrument of delegation, Chief Executive Officer to staff

Privacy and Human Rights Consideration

Personal information collected by Council in connection with this Policy will be handled in accordance with all applicable privacy legislation and will be used only for related purposes.

This policy has been assessed as compliant with the obligations and objectives of the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Definitions

Term	Meaning
Approval in Principle	Required to be given before any Expression of Interest or public advertising process commences on any proposed lease of Council-owned land or Council-managed land. Refer also footnotes 1 and 2.
Capital Improved Value	The Total market value of the land plus buildings and other improvements.
Chief Executive Officer	Person appointed by East Gippsland Shire Council to act as its Chief Executive Officer
Commercial	An occupation that by its nature, could reasonably be expected to generate a profit.
Community	People who live in or are ratepayers of East Gippsland Shire Council, and people and organisations who conduct activities in East Gippsland.
Community benefit	Social, environmental and economic benefits that accrue to the wider community
Council	East Gippsland Shire Council
Council-managed Land	Land managed, but not owned, by Council; for example, Crown land over which Council is designated committee of management. This may include buildings located on this land, fixtures attached to the land and private jetties constructed by the landowner.
Council-owned Land	Land owned by Council. May include buildings located on this land, fixtures attached to the land and private jetties constructed by the landowner.
DELWP	Department of Environment, Land, Water and Planning
Expression of Interest	A competitive public process in which submitters are invited to compete for the right to hold a lease or licence over Council-owned land or Council-managed land.
General Manager	The Council General Manager with responsibility for property leases and licences

Term	Meaning
Lease	An agreement for the occupation of land and/or buildings that grants exclusive rights of occupation to the tenant.
Licence	An agreement for the occupation of land and/or buildings that does not grant exclusive rights of occupation to the tenant.
Management Agreement	Formal agreement between Council and a committee or other organisation that is managing land on Council's behalf, that documents the rights and responsibilities of all parties to the agreement.
Not-for-Profit Organisation	An organisation that provides a demonstrated community benefit, and does not operate for the profit, personal gain or other benefit of people who are members of the organisation. Any profits generated by these organisations are put back into the organisation to continue to pay for its activities and functions and to achieve its objectives. Examples include charities, sporting and recreational clubs, community service organisations, professional and business associations, and cultural and social societies.
Partly Commercial	Occupation by an organisation that provides or promotes community, cultural, sporting, recreation or similar facilities or activities and applies profits derived from commercial activities towards promoting its objectives. No dividend, bonus or profit share however described is paid to the organisation's members.
Private Use	Occupation undertaken for purposes other than commercial or community use/benefit.
Private Jetty	A jetty occupied by a tenant that owns a residence or holds a current residential building permit within a reasonable distance (generally two kilometres) of the jetty site.
Shire	The geographic area of East Gippsland Shire Council.
Social enterprise	A social enterprise is a business that is led by a social, cultural, environmental or economic mission consistent with a public or community benefit, derives a substantial portion of their income from trade and reinvests the majority of their profits/surplus in fulfilment of their mission.
Tenant	A person, company or incorporated body that occupies Council-owned land or Council-managed land under a lease, licence or management agreement.
Valuation	A valuation undertaken by a person registered to do so under the <i>Valuation of Land Act</i> 1960 or the Valuer General Victoria

Revision History and Review

Version Control	Approved Amended Rescinded	Date Effective	Approved By	ECM Document Reference	Summary of Changes
Original	Approved	07/03/2006	Council	2606092	
2	Approved	06/10/2009	Council	3720483	
3	Approved	19/11/2013	Council	5225019	
4	Approved	07/02/2017	Council	7089450	
5	Draft		Council		Comprehensive review



RENTAL LEASING AND LICENSING POLICY FOR COUNCIL-OWNED LAND AND COUNCIL-MANAGED LAND

DOCUMENT CONTROL

Managed by:	Corporate
Status:	Approved <u>Draft 2020</u> Revision
Responsible position:	Director Corporate <u>General Manager Business Excellence</u>
Contact number:	(03) 5153 9500
Date approved:	07/02/2017 <u>Draft</u>
Version:	5 4
File number:	7089450 <u>xxxxxxx</u>
Approved by:	Council
Next review date:	February 2019 <u>August</u> February 2022
Security classification:	Public

CONTENTS

Contents

1	Purpose.....	<u>333</u>
2	POLICY STATEMENT	<u>333</u>
3	Scope of Policy	<u>444</u>
4	Definitions and Abbreviations	<u>545</u>
5	IMPLEMENTATION.....	<u>767</u>
5.1	Lease or Licence	<u>767</u>
5.2	Expression of interest.....	<u>767</u>
5.3	Public advertising	<u>979</u>
5.4	Duration of tenancy (including any options clauses)	<u>989</u>
5.5	Assessment of rent payable.....	<u>10940</u>
5.6	Commercial or private use	<u>124012</u>
5.7	Rental obtained from Telecommunication Agreements.....	<u>134013</u>
5.8	Not-for-profit organisations – commercial rent reductions	<u>134113</u>
5.9	Community Use.....	<u>164315</u>
5.10	Seasonal Use of Council-owned <u>Land</u> /Council-managed Land.....	<u>164346</u>
5.11	No obligation to renew	<u>174346</u>
6	Inspections, Maintenance and Improvements	<u>174416</u>
7	Risk and Occupational Health and Safety	<u>181417</u>
8	Insurance and Public Liability	<u>181417</u>
9	Roles and Responsibilities	<u>181417</u>
10	REFERENCES/ASSOCIATED DOCUMENTS	<u>181518</u>
11	PRIVACY AND HUMAN RIGHTS CONSIDERATION.....	<u>191518</u>
12	Supporting Procedures / Guidelines	<u>191618</u>

REVISION HISTORY (Completed by Governance Officer)

Revision Ref. No.	Approved/ Amended/ Rescinded	Date	Council / Management	ECM Document Reference
Original	Approved	7/03/2006	Council	2606092
2	Approved	6/10/2009	Council	3720483
3	Approved	19/11/2013	Council	5225019
4	Approved	07/02/2017	Council	7089450
<u>5</u>	<u>Draft</u>		<u>Council</u>	

1 PURPOSE

This policy establishes the principles to be applied for the leasing and licencing of non-residential Council-owned land or Council-managed land, including private jetties, other than marinas, to other parties to maximise the social, environmental and economic benefits to the East Gippsland Shire.

~~2 COMMUNITY BENEFIT ARISING FROM FACILITY USE AND TO ENSURE RESPONSIBLE MANAGEMENT OF THESE COMMUNITY ASSETS THEREBY MINIMISING THE RISK TO COUNCIL.~~

~~32 POLICY STATEMENT~~POLICY STATEMENT

The leasing and licencing of Council-owned land and Council-managed land will be subject to a fair and transparent process. Legislative compliance, community benefit considerations and maximising the financial return on Council's assets will be the fundamental principles guiding Council's issuance or renewal of leases and licences.

~~Council is responsible for managing Crown land on behalf of the Victorian Government. This Council policy adheres to the Department of Environment, Land, Water and Planning (DELWP) Leasing Policy for Crown Land in Victoria (DELWP Leasing Policy), which provides a framework and guidelines for the leasing of Crown land in Victoria. This DELWP policy applies to all managers, tenants and prospective tenants, including municipal authorities such as Council, to ensure the leasing and licencing of Crown land:~~

- ~~• is a transparent, fair and impartial process; and~~
- ~~• ensures that the community benefits from improved social and economic outcomes as a result of the leasing of Crown land, without detriment to public land values.~~

~~Council is equally committed to achieving these objectives in its leasing and licencing activities.~~

Five principles have been adopted to provide a consistent framework for the leasing and licencing of Council-owned land and Council-managed land. The five principles determine that leases and licences must:

1. Provide demonstrated community and/or economic benefit.
2. Be given 'Approval in Principle' before the Expression of Interest or public advertising process commences on any proposed lease, licence or agreement of Council-owned land or Council-managed land:

Explanatory note:

Before there can be an agreement or commitment to lease or licence Council or Crown land, the proposal needs to be developed in the form of a detailed submission for consideration by Council, the relevant General Manager its delegated officer or the Minister¹ (or the Minister's delegate, where applicable) Council-managed Crown land, for Approval in Principle². Once Approval in Principle to lease or licence has been granted, an

¹ In the case of leases issued under the *Crown Land (Reserves) Act 1978*, the Minister's written approval to grant the lease is required to fulfil legislative requirements.

² Approval in Principle for:

- Council-owned land is granted by Council or its delegated officer, the Director-General Manager responsible for property leases and licenses the asset under their Directorate; ; and

expression of interest or advertising can be undertaken which is then followed by final ~~lease~~ negotiations.

3. Be developed and approved through an accountable and transparent allocation process.
4. Be subject to appropriate terms and conditions, including (but not limited to):
 - (a) rental payable,
 - ~~(b)~~ a terms ~~that~~ will generally not exceed 21 years for lease agreements and nine years for licence and other agreements;
 - ~~(b)(c)~~ terms of up to 50 years may be available for projects of regional significance or essential services and will only be considered in exceptional circumstances; and
 - ~~(c)(d)~~ a term should reflect the nature of the occupation of the lease, licence or agreement intended (for example, future use of the land and/or buildings, level of capital investment proposed, economic benefit including employment).
5. Be subject to consistent documentation for similar uses and occupation types across the Shire.

Council is responsible for managing Crown land on behalf of the Victorian Government. This Council policy adheres to the Department of Environment, Land, Water and Planning (DELWP) Leasing Policy for Crown Land in Victoria (DELWP Leasing Policy), which provides a framework and guidelines for the leasing and licensing of Crown land in Victoria. ~~This~~ The DELWP policy applies to all managers, tenants and prospective tenants, including municipal authorities such as Council, to ensure leasing and licensing of Crown land:

- is ~~undertaken through~~ a transparent, fair and impartial process; and
- ensures that the community benefits from improved social and economic outcomes as a result of the leasing of Crown land, without detriment to public land values.

Council is equally committed to achieving these objectives in its leasing and licencing activities.

43 SCOPE OF POLICY

The scope of this policy is to provide a framework for:

~~— Ensuring that there is an appropriate review of Tenants and Licensees prior to entering into any agreement allowing them to occupy a Council facility;~~

- Optimising occupancy of Council assets where possible through shared use by multiple tenants and licensees; and
- A consistent approach when entering into agreements for tenants and licensees to occupy Council facilities.

The policy applies to:

- Crown land managed by Council is granted by Council or its delegated officer, the ~~Director-General Manager~~ responsible for ~~property leases and licenses~~ the asset under their Directorate, and the Minister (or the Minister's delegate, where applicable).

- all leases, ~~and~~ licences and agreements over Council-owned land and Council-managed land entered into after the policy approval date; and

~~or~~; and

- leases, ~~and~~ licences and agreements falling due for renewal after the policy approval date.

Lease and licence commitments existing at the time of this policy being approved, including 'options' clauses, will be honoured. This policy only applies to new lease and licence agreements entered into after the date of approval.

The policy does not apply to community markets held on Council-owned land or Council-managed land, provided the markets are organised by a not-for-profit organisation and do not occur more than 12 times within a calendar year³.

54 DEFINITIONS AND ABBREVIATIONS

Term	Meaning
Approval in Principle	Required to be given before any Expression of Interest or public advertising process commences on any proposed lease of Council-owned <u>land</u> or Council-managed land. Refer also footnotes 1 and 2.
<u>Capital Improved Value</u>	<u>The total market value of the land plus buildings and other improvements.</u>
<u>Chief Executive Officer</u>	<u>Person appointed by East Gippsland Shire Council to act as its Chief Executive Officer.</u>
Commercial	An occupation which that , by its nature, could reasonably be expected to generate a profit.
<u>Community</u>	<u>People who live in or are ratepayers of East Gippsland Shire Council, and</u> People and organisations who are ratepayers in East Gippsland; <u>and</u> People and organisations who conduct activities in East Gippsland.
Community benefit	Economic, s <u>ocial, and</u> environmental <u>and economic</u> benefits that accrue to the wider community.
Council	East Gippsland Shire Council
Council-managed land	Land managed , but not owned, by Council; for example, Crown land over which Council is designated committee of management. This may include buildings located on this land, <u>fixtures attached to the land</u> and private jetties constructed by the landowner.
Council-owned land	Land owned by Council. May include buildings located on this land, <u>fixtures attached to the land</u> and private jetties constructed by the landowner.

³ Community markets that are held no more than 12 times per year are subject to an events permit issued by Council's Community Laws unit.

Term	Meaning
DELWP	Department of Environment, Land, Water and Planning
Director General Manager	The Council General Manager Director with responsibility for property leases and licences.
Executive Group	Council's senior executive management team.
Expression of Interest	A competitive public process in which submitters are invited to <u>bid-compet</u> for the right to hold a lease or licence over Council-owned <u>land</u> or Council-managed land.
Formal valuation General Manager	A valuation undertaken by a person registered to do so under the Valuation of Land Act 1960. The Council General Manager with responsibility for property leases and licences
Lease	An agreement for the occupation of land and/or buildings which <u>that</u> grants exclusive rights of occupation to the tenant.
Licence	An agreement for the occupation of land and/or buildings which <u>that</u> does not grant exclusive rights of occupation to the tenant.
Management Agreement	A management agreement formally Formal agreement between Council and a committee or other organisation that is managing land on Council's behalf, that documents identifies <u>lays out all of the tasks</u> rights and responsibilities of all parties to the agreement. an appointed management committee is accountable for, and is generally where a committee is managing the land on Council's behalf rather than Council occupying the property it themselves
Not-for-Profit organisation	An organisation that provides a demonstrated community benefit, and does not operate for the profit, personal gain or other benefit of particular people who are members of the organisation. <u>All</u> Any profits generated by these organisations the profits are put back into the organisation to continue to pay for its activities and functions and to achieve its objectives. Some <u>Examples</u> include charities, sporting and recreational clubs, community service organisations, professional and business associations, and cultural and social societies.
Partly commercial	Q <u>An occupation by an organisation that provides or promotes community, cultural, sporting, recreation or similar facilities or activities and applies their profits derived from commercial activities towards promoting their</u> its objectives. No – and prohibits payment of any dividend, bonus or profit share however described is paid – or amount to their the organisation's <u>members.</u>
Private use	Q <u>An occupation undertaken for purposes other than commercial or community use/benefit of a private nature which provides no, or minimal, wider community benefit. Includes all aircraft hangar occupations.</u>
Private jetty	J <u>A</u> jetty occupied by a tenant that owns a residence or holds a current residential building permit within a reasonable distance (generally two kilometres) of the jetty site.
Shire	<u>The geographic area of East Gippsland Shire Council.</u>

Term	Meaning
<u>Social enterprise</u>	Occupation by an organisation that applies commercial strategies to maximise improvements in financial, social and environmental wellbeing. A social enterprise is a business that is led by a social, cultural, environmental or economic mission consistent with a public or community benefit, derives a substantial portion of their income from trade and reinvests the majority of their profits/ surplus in the fulfilment of their mission.
<u>Tenant</u>	A personn individual, company, or incorporated body that occupies Council-owned <u>land</u> or Council-managed land under a lease, l or licence or management agreement.
<u>Valuation</u>	A valuation undertaken by a person registered to do so under the <u>Valuation of Land Act 1960</u> or the Valuer General Victoria.

5 IMPLEMENTATION

5.1 Lease or Licence

A **lease** is an agreement that is binding on Council and the tenant. The lease grants ~~the tenant~~ exclusive use for a ~~period of~~ specified time under specific conditions in return for a rental payment.

The term of a ~~l~~ lease is ~~for a fixed period of~~ one year or more, generally in return for a payment of rent and payment of outgoings, for example electricity, water and rates.

A lease will only be granted by Council where the building or land, or part of it, will be occupied exclusively by one user and Council considers the granting of a lease is in the best interest of the community.

A **sub-lease** is a legally binding agreement between the tenant and a third party -tenant that gives the ~~new~~ third party tenant the right to share or take over the leased ~~p~~ Premises from the original ~~T~~ tenant.

A **licence** does not permit the ~~L~~ licensee exclusive occupancy of the land or building. The ~~L~~ licensee may occupy ~~the~~ a building or land during certain days or hours or times of the week, or use rooms within ~~the~~ a building with common areas, as set out in the licence agreement and the facility is shared in common with other community groups who occupy the same facility at different times. A licence ensures Council-owned buildings and land are used to their greatest potential and maximises public access to community facilities.

A **Management Agreement** is used where Council engages an incorporated committee to manage land and users of the land on behalf of Council and undertakes the care and management of the land.

5.2 Expression of interest

Commercial or Partly Commercial Tenants

Prior to the issue or renewal of a lease or licence that is wholly or partly commercial, a competitive expression of interest process will be conducted broadly in accordance with the principles established under Council's Procurement Policy for the award of contracts by public ~~submission tender, to ensure that best practice in property management is followed.~~

In undertaking a competitive expression of interest process, all prospective ~~proponent~~tenants will receive the sameconsistent information about the existing assets, capital improvement / expenditure expectations and other ~~are are aware of the~~ criteria that will be used to evaluate submissions.

There are special circumstances where it may be impractical to ~~undertake~~a competitive process, i.e., being:

- where there is evidence that conducting a competitive process may place a project of regional or state significance at risk;
- where direct negotiation with a prospective tenant would maximise benefits to the community (e.g. where the site is proposed to be used to conduct a social enterprise; occupancy by a particular tenant will complement the activities being undertaken by other tenants in the building or location; etc.)~~the site is currently occupied by a community group that has acted as a good tenant~~;
- when a competitive process has been undertaken but did not result in a satisfactory outcome; or
- when the current market rental value of a property is low relative to the cost of conducting a competitive process; or
- ~~— when a competitive process has been undertaken but did not produce a satisfactory outcome;~~
- ~~— When it is clear beyond reasonable doubt that there is only one prospective tenant for a property;~~
- ~~— where there is evidence that conducting a competitive process may place a project of regional or state significance at risk; or~~
- where the only practical access is available from land owned by the adjoining property landowners.

Under these circumstances, the Chief Executive Officer may authorise ~~ultimately, s and direct~~direct negotiation to be undertaken with a prospective tenant ~~s are an acceptable way to achieve an outcome that serves the broader community interest. Direct negotiations may be considered by the a Director where, after an assessment it can be determined that the prospective tenant would maximise benefits to the community and/ or the overnment or a competitive process has not produced a satisfactory outcome. At the conclusion of such negotiations, approval~~Approval to enter into a formal agreement following a direct negotiation process may be granted only by ~~with the prospective tenant Council or must be granted by the Chief Executive Officer as appropriate, or their approved delegate.~~

Regardless of whether a competitive or direct negotiation lease or licence allocation process is used, the process ~~it~~ must be fair, open and impartial.

In the case of a partly commercial lease, licence or agreement where ~~the Director~~ Chief Executive Officer has determined there are demonstrable economic, social and/or environmental ~~benefits and/or economic benefits~~ for the wider community, ~~through a formal resolution, Council~~ the Chief Executive Officer can exempt the proposed lease or licence from the requirement ~~offer~~ a competitive expression of interest process ~~to be undertaken.~~

Community Tenants

The expression of interest process is not required for community use occupations unless the ~~relevant Director~~ Chief Executive Officer determines otherwise.

Where the ~~Director~~ Chief Executive Officer determines ~~that~~ there may be competing interests for a ~~particular specific~~ community rental lease or licence, a limited expression of interest process may be ~~conducted undertaken~~ to guide the issuance or renewal of that lease or licence.

4.2—Lease or Licence

~~A lease is an agreement that is binding on Council and the Tenant and grants the Tenant exclusive use for a period of time under specific conditions in return for a rental payment.~~

~~The term of a Lease is for a fixed period of one year or more, generally in return for a payment of rent and payment of outgoings, for example electricity, water and rates.~~

~~A lease will only be granted by Council where the building or land, or part of it, will be occupied exclusively by one user and Council considers the granting of a lease is in the best interest of the community.~~

~~A sub-lease is a legal binding agreement between the Tenant of a lease and new tenant which gives the new tenant the right to share or take over the leased Premises from the original Tenant.~~

~~A licence does not permit the Licensee exclusive occupancy of the land or building. The Licensee may occupy the building or land during certain days or hours or times of the week, or use rooms within the building with common areas, as set out in the licence agreement and the facility is shared in common with other community groups who occupy the same facility at different times. A licence ensure Council owned buildings are used to their greatest potential and maximizes public access to community facilities.~~

5.3 Public advertising

The issuance and renewal of all leases and licences, other than those ~~which are for~~ private jetties and management agreements, or to be issued or renewed as a direct result of an expression of interest process, will be advertised publicly to provide the community with an opportunity to provide comment in relation to the issuance or renewal.

The ~~Director~~ Chief Executive Officer will then consider any written submissions received in response to the advertising process and having considered ~~these submissions benefits offered by any competing submitters,~~ se submissions, will determine the appropriate course of action. Submissions may be referred to Council at the ~~Director's~~ Chief Executive Officer's discretion.

In the case of a sub-lease, if consent has been granted by the Chief Executive Officer for the sub-lease, then the requirement for advertising is not required because as the head lease agreement held between Council and the tenant has already been advertised and the granting of a sub-lease does not change the head lease agreement.

5.4 Duration of tenancy (including any options clauses)

The duration of leases ~~and~~ and licences and management agreements will be determined on a case-by-case basis and will ~~take consider into account~~.

- ~~the intended and future use of the land and/or buildings;~~
- ~~whether the tenant or licensee will offer proposals for any contributions to undertake or contribute towards capital investment and/or structural works;~~
- ~~and economic benefit to the broader community, including economic / employment;~~
- ~~the adequacy of the facility in relation to type of facility and the tenant's requirements; and;~~
- ~~the moral standing and character of tenant's previous tenancy history and/or character references (if requested).~~

~~5.4~~

The duration of leases issued over Council-owned land or Council-managed ~~Crown~~ land will generally be for a term of not more than 21 years. While the *Local Government Act 1989* empowers Council to consider a lease of 50 years or less, lease terms of more than 21 years will be considered only in exceptional circumstances.

For large scale projects of regional significance or ~~those that provide provision of essential services to the community, where associated costs are inevitably higher,~~ a longer-term lease may be required. The term granted must be appropriate to that use and in accordance with the provisions of the *Local Government Act 1989* for projects on Council-owned land, and ~~the the Crown Land (Reserves) Act 1978~~ for projects on Council-managed land. ~~To enable~~ Before a term longer than 21 years ~~to~~ will be considered, a business case must be prepared ~~and to be presented~~ to Council for a formal resolution.

The duration of licences issued over Council-owned land and Council-managed ~~Crown~~ land ~~and buildings~~ will be for a term not exceeding nine years.

Any lease that includes one or more of the following conditions will be ~~subject to section 190 undertaken in accordance with~~ of the *Local Government Act 1989*, which requires a formal public submissions process to be undertaken and the lease approved by a resolution of Council:

- a term of 10 years or longer;
- ~~is subject to the~~ payment of rent for any period of the lease of \$50,000 including GST or more per annum; or ~~the~~
- ~~Section 190 will also apply to any~~ the land being leased ~~of land that~~ has a current market rental value of \$50,000 including GST or more per annum;

5.5

5.65.5 Assessment of rent payable

Rental amounts payable for the occupation of Council-owned land and Council-managed land will be determined in accordance with the table below.

Table 1 - Commercial or Partly Commercial Tenants

Commercial Property usage type	Rental basis
Primarily commercial or private use (Includes government agencies, as well as not-for-profit occupations carrying out commercial operations in direct competition with the private sector.)	Current market rate as determined by independent formal valuation or competitive public expression of interest process (and not less than four times the annual community rental).
Telecommunication Facilities	<ul style="list-style-type: none"> • Current market rate as determined by independent formal valuation to assess the initial rent for the lease period; <u>and</u> • A, with an annual CPI increases <u>a percentage increases based on the rate cap set by the Minister for Local Government on the 31 December each year; and</u> • V-and valuations every three years for the balance of the lease and all subsequent terms, in accordance with DELWP Leasing Policy.
Community and not-for-profit organisations with no commercial income	Annual community rental, equivalent to that assessed by DELWP.
Community and not-for-profit organisations that generate a commercial income	<p>Council will use the Capital Improved Value (CIV) of the site, based on an independent valuation, to determine the rental for Not-for-Profit organisations with a commercial income.</p> <p><u>Category 1</u> <u>25% of full rental applicable payable</u></p> <p><u>Category 2</u> <u>15% of full rental applicable payable</u></p> <p><u>NOTE:</u></p> <p><u>1. See clause 5.5.8 for category criteria.</u> <u>2. Full lease fee rental payable = 15% of the Capital Improved Value of the property as determined by an independent valuator engaged or contracted by Council or the Valuer-General Victoria.</u></p> <p><u>Current market rate as determined by independent formal valuation or competitive public expression of interest process, and considering any application for discount of market rental, as per section 5.8 of the Policy.</u></p>
Private jetties constructed at the cost of the landowner on sites allocated to properties with water frontage, where	Rental is set each year through the fees and charges schedule of Council's Annual Budget.

<u>Council is the responsible authority for the canal or waterway.</u>	
--	--

Table 2 - Community Tenants

<u>Community Property Usage Types</u>	<u>Rental Basis</u>
<u>Community and not-for-profit organisations - no commercial income</u>	<u>Annual community rental, equivalent to that set by DELWP.</u>
Incorporated committee of management <u>appointed by Council to manage occupancy by multiple community user groups</u>	Nil. Refer to Council's Annual Allocations Policy (Committees of Management over Facilities / Recreation Reserves / Community Halls Annual Allocations Policy (Committees of Management over Facilities/Recreation Reserves / Community Halls)). This policy is applies to for <u>eligible Committees of Management over recreation reserves and/or community halls situated on Council-owned land or Council-managed land that provides demonstrated community benefit.</u>
<u>Private Jetties constructed at the cost of the landowner on sites allocated to properties with water frontages, where Council is the responsible authority for the canal or waterway.</u>	<u>Rental is set each year through the fees and charges schedule of Council's Annual Budget.</u>

Council will invoice tenants ~~in respect of~~ rental ~~monies~~ ~~moneys~~ due every 12 months as a minimum. Non-payment of rental will result in enforcement action being undertaken in accordance with the terms of the relevant lease or licence.

5.75.6 Commercial or private use

~~The rent payable for commercial use will be determined in accordance with a formal valuation conducted every three years by a registered valuer engaged by Council officers. The amount payable will be adjusted annually in accordance with the Consumer Price Index (All Groups) Melbourne (CPI).~~

The rent payable for commercial or private use will be determined in accordance with a formal valuation conducted every three years by independent valuation registered valuer engaged by Council officers or the Valuer General Victoria. For years in which a market review is not required by the lease or licence agreement, the rental amount payable will be adjusted by the same percentage as that advised by the Minister for Local Government in December each year in respect of the rates cap. The percentage increase set by the Minister in December will apply to lease and licence rental increases in the following financial year.

Where there is disagreement between the tenant and Council over the ~~formal~~ valuation for an existing lease, a tenant ~~must~~ stay obtain an independent valuation at their own expense. If disagreement continues after the two valuations have been received and considered, the matter will be settled by a conference of values, with the cost of the conference to be shared equally between the tenant and Council.

~~The Chief Executive Officer may consider an expense reimbursement of pre-approved expenditure. Rent payable may be adjusted on a cash equivalent basis in recognition of a requirement for structural maintenance or capital improvements to be undertaken by the tenant.~~

In circumstances where it is reasonable to conclude a suitable tenant willing to pay the rental as determined by valuation will not be secured, a discount may be applied to the value of a rental figure determined by a ~~formal~~ valuation at the ~~Director's~~ Chief Executive Officer's discretion.

Where it is reasonable to do so, the ~~Director~~ Chief Executive Officer may, ~~where it is reasonable to do so,~~ determine that the rental payable under a particular occupation is likely to be at such a low level as to render the commissioning of a ~~formal~~ valuation financially unviable. In ~~such these~~ circumstances the ~~Director~~ Chief Executive Officer may determine the rental payable, after taking into account the principles of this policy, previous valuations and all other relevant information.

In no circumstances will the rental charged for a commercial/private occupation be less than four times the equivalent community rental as determined by this policy (e.g. not less than $4 \times \$114.40 = \457.60 including GST per annum, as at the time of this policy being adopted).

This requirement does not apply to community property types whose rent is assessed as per Table 2 - Community Tenants.

5.95.7 Rental obtained from Telecommunication Agreements

Council will retain all rental income from lease agreements with a telecommunications provider (or similar service provider) for use of Council-owned land or ~~controlled~~ Council-managed ~~land and/or buildings~~, and will use that rent for the benefit of the whole community. ~~The Chief Executive Officer may consider a contribution of 25% of the rental income from telecommunications leases to go directly to the relevant Committee of Management and a corresponding amount be reduced from the annual allocation made to the Committee of Management. No part of the rental will be payable to other tenants that use part of the land upon which the telecommunication lease is situated.~~

Only the Chief Executive Officer or a Council officer ~~authorised by the Chief Executive Officer, is authorised to~~ ~~to do so can~~ negotiate directly with any telecommunication (or similar) provider in relation to the use of Council-owned land or Council-controlled-managed ~~land and/or buildings~~. Under no circumstances will individual clubs, organisations and tenants be authorised or have any authority to act on behalf of Council in this regard.

5.95.8 Not-for-profit organisations – commercial rent reductions

Where a not-for-profit organisation generates a commercial income as part of the operation of the facility or service being provided, Council ~~may grant a reduction in the rental determined by the valuation process, will use the CIV of the site, based on an independent valuation, to determine the rental for Not-for-Profit organisations with a commercial income.~~

~~, whether a rental reduction will result in an unfair advantage to the tenant when similar businesses provide the same services locally, the the organisation provides to the community~~

A ~~written~~ application for a discount of the market rent, as determined by an independent valuation, will be considered by Council provided it is ~~made in writing within 30 days of the~~

~~notice of the market valuation and must be~~ supported by appropriate information as required by Council, including but not limited to:

- the organisation's Constitution or terms of reference;
- details of the organisation's leadership / management structure and membership;
- if relevant, details of any employees or contractors employed either permanently or from time to time as part of its operations;
- any subletting or service provision agreements;
- any business or strategic plans; and
- its audited financial statements for at least the previous three years.

This recognises the social benefits of the community well being by having Council-owned land and Council-managed land facilities available for use by the community and acknowledges the commercial income of the facility or service being provided.

Council obligation to optimise ~~economic return~~community benefit and/or economic return community benefit

In determining rental to be applied, Council will always be cognisant that renewing a lease or licence to the same tenant for less than market rent may result over time in the effective or perceived privatisation of public land without proper ~~economic benefit to the community~~ return and/or benefit to the communityeconomic return.

Where a decision has been taken to ~~taken to~~ granted a lease or licence to a not-for-profit organisation that generates a commercial income, at a rent that is less than market rental value, (as assessed by the market sworn valuation), ~~the a full leaserental fee will be determined using the CIV of the premises, and then a discount will be applied and applying a discount.~~

Determining community benefit

The community benefit component of the lease or licence will be determined having regard to the following factors as a minimum:

1. The proposed tenant's Constitution or terms of reference, its aims and objectives, and the services it offers to the community_{:-}
2. Whether the proposed tenant ~~is~~ will be providing services in direct competition with other commercial providers and if so, whether the lease or licence at less than market rate provides an unfair competitive advantage to the tenant over its competitors_{:-}
- 2.3. The tenant's annual gross turnover (in the case of an existing tenant)_{:-}
- 3.4. The proposed tenant's history and experience in its area of activity_{:-}
- 4.5. The length of time the proposed tenant has been based in the Shire and/or its connection with the East Gippsland community_{:-}

5.6. Whether the services offered by the proposed tenant, or the proposed lease or licence at less than market rent, furthers the objectives of the Council Plan or other plans and programs of the Council;

6.7. Whether the services or activities are being delivered mostly to residents of a single community or operating on a sub-regional or regional basis;

7.8. The costs and expenses Council would incur for maintenance and like expenses if it did not lease or licence the premises or land. This should include savings by Council if a tenant undertakes maintenance and repairs instead of Council providing the service and maintaining the premises itself;

8.9. The extent of capital works proposed to be undertaken or other proposed contribution towards capital investment and/or structural works on the site;

9.10. ~~Whether~~ If the tenant generates income from the premises, ~~and if so,~~ the purpose for which that income stream is used. Considerations that will impact negatively on a request for a reduced rental include the use of the tenant's employees or paid contractors to undertake the activity or deliver the service that generates the income; the tenant remitting or intending to remit income earned from the premises to its other services or businesses outside the Shire; or to subsidise the cost of goods and services that are offered by the tenant in competition to other businesses in the area.

~~In determining rental to be applied, Council will always be cognisant that renewing a lease or licence to the same tenant for less than market rent may result over time in the effective or perceived privatisation of public land without proper economic return and/or benefit to the community.~~

If it is determined that the not-for-profit organisation or commercial activity being assessed falls outside the parameters of these two categories, the request for reduced rental will be referred to the Chief Executive Officer.

Determining rental discount

~~To determine the rental discount to be applied, tenants will be assessed against the following criteria to determine whether they are eligible for a Category 1 or Category 2 discount on the full rental payableapplicable for the property as per the Table 1 – Commercial or Partly Commercial Tenants at clause 5.5. The categories are:~~

Category 1 – 25% of full rental payablepayable

The lessee / proposed lessee:

- ~~_____ Holds a liquor licence or holds events where a temporary liquor licence is required;~~
- ~~_____ Provides catering in any form for functions or events;~~
- ~~_____ Hires all or part of the facility to other users (including other community groups) for functions or events, for which a fee is charged;~~
- ~~_____ Conducts sporting activities for members and guests for which a fee is charged for spectators; and~~
- ~~_____ Charges entry to premises.~~

Category 2 – 15% of full rental payableapplicable

The lessee / proposed lessee:

~~Holds a liquor licence or holds events where a temporary liquor licence is required;~~
~~Provides catering in any form for functions or events;~~
~~Hires all or part of the facility to other users (including other community groups) for functions or events, which may charge a fee; free of charge; and~~
~~Conducts sporting activities for members and guests for which no fee is charged for spectators.~~

~~If the Chief Executive Officer determines that the not-for-profit organisation or commercial activity being assessed falls outside the parameters of these two categories, the request for reduced rental will be referred to Council for formal resolution.~~

Cessation of Commercial Activity

~~If a tenant provides documentary evidence to the Chief Executive Officer that the premises are no longer being used for any commercial activity, the Chief Executive Officer may will review the evidence provided and if it is determined that the tenant is no longer undertaking this activity, Council or the Chief Executive Officer (whichever is appropriate) may consider reducing the rent in line with this the provisions of this Policy.~~

55.9 Community Use

~~Community use tenants that, under the terms of their agreement, are providing solely community or social benefit, will pay a minimum rental for occupancy as per Table 2 – Community Tenants at clause 5.5. – This rental represents a nominal contribution by the tenant towards the ongoing costs incurred by Council to maintain the land or building– in a condition that is appropriate for occupancythe–. Tenants and licensee's will be required to pay for specific outgoings and services that apply to the property that are specified within the lease or licence agreement.~~

~~Council reserves the right to amend the rental, if with prior approval of Council, with the prior approval of Council varies the use of the premises to include additional commercial activities, including but not limited to:~~

- ~~• all forms of liquor licence;~~
- ~~• son-premises licence, package liquor licence, general licence or gaming licences, rental received from sub-letting;~~
- ~~• –revenue received from advertising on the premises; or~~
- ~~• any other commercial activity authorised by Council.~~

55.10 Seasonal Use of Council-owned Land/Council-managed Land

~~A sSeasonal use of Council–owned land or Council-managed land will be subject to a n events-permit being issued by an authorised officer of Council. Council's Community Laws unit. agreement will be a Licence agreementThis will be –for a term of up to six months and for thea date-period approved by the authorised officerChief Executive Officer. and is only valid between Melbourne Cup Weekend and the last Friday following the Easter weekend. This applies to activities including but not limited to the hire of recreational equipment (bicycles, kayaks etc) and activities such as roller blading and roller skating. Rent adjustments for additional income~~

~~Council reserves the right to amend the rental, if a tenant with the prior approval of Council varies the use of the premises to include additional commercial activities, including but not limited to: on premises licence, package liquor licence, general licence or gaming licence, or rent received from sub-letting, revenue received from advertising on the premises or any other commercial activity authorised by Council.~~

5.11 ~~No obligation to renew~~**No obligation to renew**

Under no circumstances will the end of a lease or licence term be taken to mean that a new lease or licence will be granted to the same ~~organisation~~tenant on the same or similar terms.

-Council will consider the issue of community benefit to the East Gippsland region on each occasion a new lease or licence term is requested. In determining whether to grant a new lease or licence to the existing lessee or licensee, Council or the Chief Executive Officer (as appropriate) will take into consideration:

1. Whether Council requires use of the building property (or part thereof) for municipal purposes ~~in either immediately or in the future;~~
2. The extent of compliance by the tenant with the lease or licence requirements throughout the term, including whether the lessee or licensee has paid the rent on time, and has properly maintained the premises as required and/or completed any work required in under the agreement and to a satisfactory manner; level;
3. Whether demand for the service offered from the leased property has increased or decreased, based on market trends, community use of the service ~~and~~ on a case by case basis;
4. Whether demand by other groups for access to these or similar premises has increased or decreased and whether it is equitable for one organisation to have ongoing exclusive use;
5. Whether the membership of the ~~tenant's organisation~~organisation or clientele of the ~~organisation-tenant~~ has increased or decreased; and
6. Whether the ~~organisation-tenant~~ has the capacity to optimise the potential of the land and/or building in the best interests of Council and/or the community.

66. Inspections, Maintenance and Improvements

Council reserves the right to undertake an inspection of premises as required ~~to inspect the facilities or improvements located upon the leased or /licenced land.;~~

The tenant is required to maintain the premises ~~satisfy its maintenance~~ ~~maintain the premises~~ ~~obligations~~ in accordance with the maintenance schedule attached to the lease, licence or management agreement. The maintenance schedule specifies the maintenance obligations for which both Council and the t ~~Tenant are responsible. for responsibilities of Council and the tenant, including but not limited to maintaining the structure, fixtures and fittings and the grounds.~~

At the end of the term, if Council requires the tenant to remove any improvements, additions, structures or buildings that have been constructed or installed by the tenant during the term of

the lease or licence, the tenant must remove them and make good any damage caused by their removal within the timeframe specified in the lease or licence, or if no timeframe is specified, within three months of being notified in writing formally notified by Council or unless specifically stated otherwise in the lease or licence, whichever date is earlier.

77. Risk and Occupational Health and Safety

Tenants must have in place emergency and evacuation plans and procedures and must ensure that their members, employees and/or invitees to the site participate in emergency training and drills as required. Tenants must adhere to and comply with all occupational health and safety legislation and regulations. Council or Council's Essential Safety Measures officer or their delegate may enter the premises to inspect the essential safety measures at any time during business hours provided the tenant has been given reasonable notice.

88. Insurance and Public Liability

Council maintains building insurance for buildings owned by Council on Council-owned land or Council-managed land. If a tenant or licensee has constructed their premises on Council land, they must maintain the building insurance for those buildings.

All tenants are required to take out and maintain public liability insurance for a minimum cover of \$420 million, or greater amount if required. A copy of the Certificate of Currency must be provided to Council on or before the commencement date of the agreement and annually upon renewal of the tenant's insurance policy.

9. RESPONSIBILITY FOR IMPLEMENTATION AND COMPLIANCE Roles and Responsibilities

Responsibility for Implementation and Compliance

These management positions are responsible for the implementation, communication and compliance monitoring of the policy in their work areas: The following Council officers are responsible for the implementation and compliance monitoring of this policy:

Council Officer(s)	Roles and responsibilities
Senior Property Officer Property Officer Property Administration Officer	Oversee the issuance of leases and licences and management agreements in accordance with this policy.
Governance Coordinator Manager Governance Administration Services	Provide strategic oversight of Council's property leasing and licencing portfolio; formulate solutions to complex occupancy issues; and provide recommendations to the appropriate Director General Manager, Strategic Owner and Council in accordance with this policy.
Director General Manager Business Excellence Corporate	Overall responsibility for policy implementation and compliance.

10. REFERENCES / ASSOCIATED DOCUMENTS REFERENCES/ASSOCIATED DOCUMENTS

Department of Environment, Land, Water and Planning ('DELWP') policy *Leasing Policy for Crown Land in Victoria* (including any amendment or replacement document)

Council Plan 2017-2021 (or its successor)

~~Committee of Management agreements between Council and the respective Committees~~

Annual Allocations Policy 2017 (Committees of Management over Facilities / Recreation Reserves / Community Halls) available on Council's website

Well Placed for Wellbeing: Partnering for Healthier and More Connected Communities in East Gippsland 2017-2021

East Gippsland Shire Council's Annual Budget

Approved Masterplans that have been published on Council's website

Instrument of delegations, Chief Executive Officer to staff

Relevant Legislation:

- Local Government Act 1989
- Local Government (General) Regulations 2015
- Crown Land Reserves Act 1978
- Land Act 1958
- Retail Leases Act 2003
- Planning and Environment Act 1987
- Coastal Management Act 1995
- Retail Leases Regulations 2013
- Occupational Health and Safety Act 2004
- ~~Community Laws — East Gippsland Shire Council~~
- Telecommunications Act 1997
- Aboriginal Heritage Act 2006

11 ~~PRIVACY AND HUMAN RIGHTS CONSIDERATION~~ PRIVACY AND HUMAN RIGHTS CONSIDERATION

Personal information collected by Council in connection with this Policy will be handled in accordance with all applicable privacy legislation and will be used only for related purposes.

This policy has been assessed as compliant with the obligations and objectives of the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

612 SUPPORTING PROCEDURES / GUIDELINES

Nil