

RENTAL AND LEASING OF COUNCIL OWNED PROPERTIES POLICY

Policy Number:	3.3.4
Approved by:	Council
Date Approved:	December 2021
Date of Next Review:	December 2022
Applicable to Unit(s):	Economic Development Communities, Facilities and Emergencies
Responsible Officer:	Manager Economic Development Manager Communities, Facilities and Emergencies
Related Policies:	Nil
Related Documents:	Current West Sale Airport Lease Management Framework Register of Property Agreements New Agreement Development Procedure Agreement Renewal Procedure Licence Fees Procedure
Statutory Reference:	<i>Crown Land (Reserves) Act 1978</i> <i>Land Act 1958</i> <i>Local Government Act 2020</i> <i>Retail Leases Act 2003</i>

OVERVIEW

To establish policy for the:

- rental and leasing of Council owned and /or controlled property.
- to establish policy for the management of property agreements, leases, licences and user agreements for Council owned and/or controlled property.

THE POLICY

It is desirable that Council has a consistent approach to how it manages its property asset responsibilities. Processes will be developed or reviewed so that this can be achieved.

This policy will:

- Apply principles of transparency, equity and impartiality;
- Ensure that all agreements comply with legislative provisions and other obligations;
- Facilitate appropriate utilisation and development consistent with Council policies, strategies and plans;
- Outline the elements for operational guidelines, procedures and any property agreement management framework.
- Provide further details regarding recent initiatives or significant changes as adopted in operational guidelines or procedures.

The duration and form of tenancy (lease/licence agreement) will be determined with due consideration to the following:

- intended and future use of the site as identified within any strategic documents;

- other interested parties;
- capital investment;
- economic and employment benefits; and
- a supporting business case.

The following definitions will be used to distinguish between properties leased to local organisations for community/non-commercial purposes and those of a commercial nature.

Community Agreements

The Community Facilities Framework (2016) recognises that community facilities make a fundamental contribution to our communities, enabling a wide range of social connection opportunities. They provide suitable spaces to deliver services, programs and activities to meet the social needs of the community and build community capacity.

For this reason, Council will provide support to community facilities whereby:

- Council owns or controls the land;
- Council owns or controls other assets on the land;
- Council has specific legal agreements;
- Facilities are under control of a Committee of Management appointed pursuant to the provisions of the *Crown Land Reserves Act 1978*.

Where Council leases vacant land or land and improvements to non-profit organisations for predominantly community, educational or sporting purposes, rental shall be based on cost recovery only and terms shall be generally of a length to justify investment in facilities required for the purpose. Nominal rental may also be set at rates other than to recover costs, in line with past practice for non-commercial activities.

It is acknowledged that some community agreements may permit commercial activities. Any commercial use will:

- be limited and not identified as the primary activity on the site;
- not conflict or diminish any community service undertaken on the site;
- enhance and contribute to the economically sustainable community use of the site through reinvestment of all income;
- manage the site in an ecologically sustainable manner.

Commercial Agreements

The objectives of this policy specific to commercial property agreements include:

- Delivering market referenced returns;
- Effectively administering of property agreements in line with industry standards;
- Reviewing procedures and the management frameworks to ensure they fulfil identified Council objectives.

Where Council leases land or land and improvements for commercial purposes, it shall be at a fair market price and may be determined by Council or based on the opinion of an independent valuer. Terms should include regular rental reviews and may vary for periods of length of up to 50 years in accordance with the *Local Government Act 2020*. Leases should be in the best interests of the community and provide the best result (both financial and non-financial) for Council and the community.

Other Considerations

This policy does not affect the necessity to obtain planning, development, environmental or any other consents as required by relevant legislation. Where such requirements need to be satisfied or other condition precedents met, an agreement conditional on these requirements being satisfied should be established between Council and the other party. This would be typically in the form of:

- an Agreement for Lease for leases requiring compliance with Council's Community Engagement Policy; or
- a Heads of Agreement for other leases, licences or agreements.

Council is not considered to be obliged to establish an agreement with any party. Any final agreement would be on such terms and conditions as Council considers appropriate.

Council is bound by legislation including section 115 of the *Local Government Act 2020* – specifying Council's power to lease land is subject to s115 except where s116 applies.

Property agreements due to expire shall be identified by reference to the Property Agreement Register and be actioned by the relevant Council Officer. Incumbents who have a consistent history of compliance with their agreement, licence or lease obligations can request a renewal.

Assessment of this request will be made in accordance with this policy, any applicable Lease Management Framework and will also consider an arrangement where Council receives the highest and best use.

New agreements or agreements not renewed will generally be subject to a public advertisement, expression of interest or tender process.

Other terms will be outlined in standardised documentation which has been approved by a solicitor engaged by Council.

Council direction in relation to leases at West Sale Airport (WSA) has been incorporated into this policy and detailed within the WSA Lease Management Framework (LMF) which allows:

- lease terms of five years for lots fronting the eastern apron.
- lease terms of up to 50 years can be established within the Eastern (Recreational Aviation) Precinct (ERAP); and
- new or renewed leases within the Western (Commercial/Industrial) Aviation Precinct will be assessed on an individual basis and be presented to Council for their consideration as required.

Incorporated Committee – A Committee must be incorporated prior to any tenancy or management arrangement being implemented (e.g. lease, licence, service or funding agreement). Where there is an existing community committee, which is not incorporated, managing a Council owned or controlled community facility, Council will provide administrative assistance where required, in the preparation and lodgment of necessary documentation (e.g. Constitution, Statement of Purpose, etc) to ensure incorporation is attained under the *Associations Incorporation Reform Act 2012*.

Membership to an incorporated Committee is detailed within Committee's individual Rules, as approved by Consumer Affairs (Victoria).

HUMAN RIGHTS

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the Charter of Human Rights and Responsibilities Act 2006 (Vic) and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.