

GREATER SHEPPARTON CITY COUNCIL

# LEASE AND LICENCE POLICY

Adopted by Council: Day Month Year

Next Review: Day Month Year



**TITLE**

|                             |                            |
|-----------------------------|----------------------------|
| <b>Code:</b>                | 19.POL1                    |
| <b>Version:</b>             | 1.0                        |
| <b>Business Unit:</b>       | Strategic Assets           |
| <b>Responsible Officer:</b> | Manager – Strategic Assets |
| <b>Approved By:</b>         | Chief Executive Officer    |
| <b>Adopted By:</b>          | Council Day Month Year     |
| <b>Next Review:</b>         | Day Month Year             |

**DOCUMENT REVISIONS**

| <b>Version #</b> | <b>Summary of Changes</b>        | <b>Date Adopted</b> |
|------------------|----------------------------------|---------------------|
| 1.0              | Policy first drafted and adopted |                     |
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## PURPOSE

The purpose of policy is to ensure that where Council properties are offered for lease or licence that it is done in an appropriate manner providing community benefit in a consistent manner that complies with all legal requirements.

## OBJECTIVE

To support the sustainable management of Council assets and maximise the community benefit from the use of its property use.

This policy has been developed to achieve the following objectives for properties leased or licenced by Council:

- Custodianship: Ensure properties are appropriately maintained, developed and occupied, having regard to the interests of local communities and the care of the assets.
- Community Benefit: properties are used to meet demonstrated community needs consistent with the Council Plan.
- Consistency: transparent arrangements covering eligibility, use, length of lease and associated fees.
- Equity: Fair, transparent and equitable leasing and licensing arrangements.
- Financial: Sound financial management and effective administration of Council managed properties to allow for an acceptable financial return.
- Legal: Compliance with legal requirements and appropriately manage risk and liability.

## SCOPE

This policy applies to leases and licences of Council owned buildings and land, Crown Land where Council is the designated Committee of Management and land or buildings leased or licenced by Council from another party for the purpose of Council performing its functions and meeting its objectives.

This policy does not apply to decisions relating to seasonal club agreements and casual hire agreements.

## DEFINITIONS

| Reference term            | Definition  |
|---------------------------|---|
| Commercial Market Rent    | Market rental rates relate to the value of the property and are determined by an independent valuer or competitive tender, comparing with rent levels for similar properties in similar areas. Market rent will be applied when the primary use of a property is for commercial purposes. |
| Community Subsidised Rent | Discounted rents from a market rate where there is some community benefit and may also offer investment back into the facility.   |
| Community Peppercorn Rent | Nominal rents used to satisfy requirements by Council for creation of an agreement. Peppercorn rents recognise the delivery of a significant community benefit and may also offer significant capital improvement.  |

|                             |   |
|-----------------------------|---|
| Crown Land                  | Lands reserved and/or administered under the <i>Crown Land (Reserves) Act 1978</i> .  |
| Council Managed Property    | Land which Council is responsible for. This includes land owned or leased by Council and Crown land which Council is Committee of Management.   |
| Lease                       | A right granted by an owner of land or where Council is the Committee of Management (lessor) to another person / organisation (lessee) to have exclusive possession of that land for a fixed duration in return for rental payment.   |
| Licence                     | A right granted by an owner of land or where Council is the Committee of Management (licensor) to another (licensee) to have shared use of that land for a fixed duration in return for rental and permits a person (licensee) to occupy land (or part thereof) on particular conditions. |
| Not for Profit Organisation | A not-for-profit is an organisation that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run it or their friends or relatives).  |
| Property                    | The land and or buildings to be leased or licenced.   |
| Service Manager             | The relevant Council Officer who manages the relationship (including lease/licence negotiations) with existing or prospective tenants or landlords.   |
| Term                        | The period of time from the commencement of the agreement to its termination, including any further periods.  |

### Rent Formula

The rate formula is developed below to provide a method of determining rent that can be applied equitably to all tenant types in all locations across the municipality. There are four basic principles the following rent formula seeks to accommodate. These are:

- Two identical facilities in different parts of the municipality should pay the same rent.
- Where groups engage in similar activities, a group who occupies a larger area of land should pay more rent
- Where groups engage in similar activities, a group that uses a better facility should pay more rent
- The total area of a lease, or value of an asset should not make the lease rental prohibitively expensive

### Formula

$$\text{Rent} = ((\text{Fixed Base Land Value} \times \text{Land Area}) + (5\% \text{ Maintenance Fee} \times \text{Building Replacement Value}) \times \text{Group Subsidy \%})$$

That is, the formula for a group 1B lease holder would be:

$$\text{Rent} = ((\text{FBLV} \times \text{Land Area, m}^2) + (5\% \times \text{BRV}) \times 0.7\%)$$

### **Building Maintenance & Replacement value**

Determined by calculating Council's projected costs associated with maintaining the premises, a standard formula of 5% of building replacement cost can be applied (unless there are site specific circumstances which justify a variance). The subsidised rental is then calculated by implementing a subsidy to the projected costs.

Building replacement value is subject to change as council conducts reviews of its assets.

Where a lease extends to a portion of a building, only that portion will be charged a building maintenance and replacement fee. For example the lease of 2 offices in a larger complex will only incur a fee based on the square meters of the lease.

### **Fixed Base Land Value**

The fixed base land value is calculated on the total value of council land divided by the total area. This value is subject to change in line with property valuation reviews.

## **COMMUNITY GROUP DISCOUNT FOR CAPITAL INVESTMENT**

Group 1 & 2 tenants who at their own expense contribute to the cost of the construction/ refurbishment of the building may receive a discount on their building rental. The discount will apply on the basis of the level of the contribution as a proportion of the current asset value. A set discount period will apply depending on the contributions made by the tenant as follows:

- A set discount rental period of five years will apply to contributions less than 25% of the total asset value.
- A set discount rental period of 10 years will apply to contributions made between 26-49% of the total asset value.
- A set discount rental period of 15 years will apply to contributions made between 50-99% of the total asset value.
- Tenants who contribute 100% of the total asset value and fully maintain the building will be charged a peppercorn rental of \$1 for the building. They may be charged a ground rental for land other than the building.

## **FINANCIAL HARDSHIP**

Where a lessee has experienced unexpected or sudden loss of income, or is suffering financial distress, community lease holders may apply for financial hardship assistance. This will allow lessees who are able to demonstrate financial hardship to negotiate with council for a discount or hold on rental payments. Council is under no obligation to offer financial assistance, and may grant assistance at its absolute discretion. Lessees who are unable to demonstrate financial hardship, face continued financial hardship, or are otherwise unable to meet their rental requirements, may have their lease terminated.

### **Rent Review**

A rent increase in line with the wider council rate increase will be applied to all agreements.

Agreements may also be subject to a market review on the exercise of an option and/or every five years of the term.

### Commencement of Policy Rental

A rental discount will be given to all new lease or licence agreements that are negotiated with Group 1B and 1C Tenants within 5 years of the adoption of this Policy where the rental increases from their existing agreement. The purpose of this discount is to provide a period of time for clubs and organisations to budget for appropriate increases in rental.

The new rental will be phased in over 5 years with a rental increase of not more than 20% of the previous rent each year for 5 years, at which point the full new calculated rental will apply. See the table below for yearly details.

| Financial Year | Discount on rent |
|----------------|------------------|
| 2021 – 2022    | 80%              |
| 2022 – 2023    | 60%              |
| 2023 – 2024    | 40%              |
| 2024 – 2025    | 20%              |
| 2025 – onwards | 0%               |

### Capping community lease expenses

In order to ease lease holders into the new lease amounts, and meet community expectations, caps on the calculable variables will be put in place. This will allow community groups to occupy leases in new expensive buildings and large areas of land.

These caps will increase in 5 yearly periods to allow council to recover asset costs over time. Minimum Lease fees will also standardise council leases and minimise administrative and process costs.

Community Learning and Children's Centres are closely aligned to the services delivered by Council and as such will be subject to a maximum rent capped at \$300.

Minimum and Maximum Caps

Group 1A = maximum \$1

Group 1B & C = minimum \$300

Cap increases

| YEAR | Area m <sup>2</sup> | Building replacement value |
|------|---------------------|----------------------------|
| 2021 | 20,000              | \$3,000,000                |
| 2025 | 25,000              | \$4,000,000                |
| 2030 | 30,000              | \$5,000,000                |
| 2035 | 35,000              | \$6,000,000                |
| 2040 | No cap              | No cap                     |

**POLICY****1. Council will enter into an agreement under one of the following categories:**

## Categories of Agreements

- Category 1 - Community Lease
- Category 1A – Peppercorn
- Category 1B – High Subsidised Lease
- Category 1C – Reduced Subsidy Lease
  
- Category 2 - Commercial Lease
- Category 2A – Commercial properties
- Category 2B - Aerodrome Hanger Sites Lease
  
- Category 3 - Licence
- Category 3A – Occupancy Licence
- Category 3B – Access Licence

**Category 1: Community Lease****Eligibility Indicators**

- **Community Benefit:** provides community benefit to the local community. The type of community benefit provided could not be delivered unless supported by Council.
- **Use:** aligns with a Council service and the Council Plan. Proposed use will increase social engagement and promote health and wellbeing for Greater Shepparton City Council.
- **Funding:** receives limited funding from organisations other than Council.
- **Revenue:** no or limited capacity to generate revenue from
  - a. use of the site (i.e. memberships or sub-leasing) or
  - b. activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** Not for profit organisation or community group or club run by volunteers.
- **Compliance:** Not for profit organisation, registered legal entity, has an ABN, financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates, have a committee of management with appropriate governance arrangements.

**Capital Contributions**

A discounted rental period may be offered if the lessee invests capital funds or commits to investing capital funds over the term of the agreement.

**Annual Rental**

Category 1A: \$1 per annum.

Category 1B: The amount charged is calculated by:

$$Rent = ((FBLV \times Land\ Area, m^2) + (5\% \times BRV) \times 0.70\%)$$

Category 1C: The amount charged is calculated by:

$$Rent = ((FBLV \times Land\ Area, m^2) + (5\% \times BRV) \times 3\%)$$

The eligibility of a club or group to qualify for category 1A, 1B or 1C is at Council's discretion based on their ability to satisfy eligibility indicators.

**Category Subsidies**

Category 1A: Peppercorn leases. Fixed \$1 per annum.

Category 1B: a 99.3% subsidy will apply to the total calculated rent for the lease.

Category 1C: a 97% subsidy will apply to the total calculated rent for the lease.

**Term**

- The term offered by Council for a Community Lease is generally 15 years.
- Shorter or longer terms may be considered where specific justification is provided.

**Maintenance and Outgoings**

- A standard maintenance template which provides for a partnership approach sets out maintenance responsibilities.
- All other outgoings will be the responsibility of the occupants.

**GST**

All tenants must pay Goods and Services Tax (GST) at a level determined by the federal government on rent. GST is payable in addition to the rent calculated using the above formulas, unless otherwise stated.

**Commercial Property**

Council reserves the right to seek a commercial lease on any of its buildings and assets, and is under no obligation to offer a community lease rate.

At its absolute discretion, Council may seek to negotiate with a commercial tenant prior to end of lease term in relation to a new lease. A decision to negotiate with a tenant for a future lease will be dependent on an assessment of the need and community benefit of the property. Consideration will include the performance of the tenant in relation to the current lease, any ongoing or proposed investment, application of the Retail Lease Act, Crown Land Reserves Act and any other factors or specific requirements related to the property. In such a negotiation the minimum rental will be based on a market rent assessment undertaken by a qualified independent valuer taking all relevant conditions into account.



Where it is determined to undertake market testing when a commercial premises has become vacant, or at the expiry of the term, a tender or an expression of interest process will be carried out by way of a public marketing campaign.

Council may offer a community lease on a property where an expression of interest for a commercial term has been sought, and no suitable tenant found.

## Category 2: Commercial Lease

### Eligibility Indicators

- **Community Benefit:** desirable to provide community benefit.
- **Use:** aligns with and not detrimental to Council strategic objectives.
- **Funding:** receives significant funding from organisations other than Council or is a profit based organisation.
- **Revenue:** has increased capacity to generate revenue from use of the site or activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** run by paid workers.
- **Compliance:** registered legal entity, has an ABN, financially viable (applicants will submit BAS statements for assessment), complies with all relevant legislation governing its activities and holds all relevant certificates.

### Capital Contributions

A discounted rental period may be offered if the lessee invests capital funds or commits to investing capital funds over the term of the agreement.

### Annual Rental

Category 2A: Determined by expressions of interest or tender.

Category 2B: Determined by obtaining commercial valuation of the sites.

### Preferred Term

- The base term offered by Council for a Commercial Lease is 5 years.
- Under certain circumstances shorter or longer terms will be offered.

### Maintenance and Outgoings

- Commercial terms for maintenance and outgoing apply.

### GST

All tenants must pay Goods and Services Tax (GST) at a level determined by the federal government on rent. GST is payable in addition to the rent calculated using the above formulas, unless otherwise stated.

### Category 3: Licence

#### Eligibility Indicators

- **Community Benefit:** desirable to provide community benefit.
- **Use:** aligns with and not detrimental to Council strategic objectives.
- **Funding:** receives significant funding from organisations other than Council or is a profit based organisation.
- **Revenue:** has increased capacity to generate revenue from use of the site or activities consistent with the organisational purpose.
- **Fit for Purpose:** the proposed use of the site is appropriate taking into account building and planning requirements.
- **Utilisation:** community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements.
- **Operational:** run by paid workers.
- **Compliance:** registered legal entity, has an ABN, financially viable (applicants will submit BAS statements for assessment), complies with all relevant legislation governing its activities and holds all relevant certificates.

#### Capital Contributions

A discounted rental period may be offered if the lessee invests capital funds or commits to investing capital funds over the term of the agreement.

#### Annual Rental

Category 3A: Determined by expressions of interest or tender.

Category 3B: Determined by obtaining commercial valuation of the sites or as per Category 1B

#### Preferred Term

- The base term offered by Council for a License is 3 years.
- Under certain circumstances shorter or longer terms will be offered.

#### Maintenance and Outgoings

- Outgoings will be the responsibility of the occupants under certain circumstances.

#### GST

All tenants must pay Goods and Services Tax (GST) at a level determined by the federal government on rent. GST is payable in addition to the rent calculated using the above formulas, unless otherwise stated.

## 2. Rent Model for Subsidised Leases

### Levels of Subsidy

The following factors will be considered in conjunction with the net community benefit of a group in determining the level of rental subsidy offered.

|  |   |
|--|---|
| <b>Grants, funding and other subsidies</b> | <ul style="list-style-type: none"> <li>Does the group receive any other financial assistance or subsidy from Council?</li> </ul>  |
| <b>Revenue Potential</b>                   | <ul style="list-style-type: none"> <li>Operate on a not for profit basis</li> <li>Be a registered charity</li> <li>Rely on fundraising for the generation of income</li> <li>Liquor or gaming licence</li> <li>Financial Support already received by Council</li> </ul> |
| <b>Maintenance ability</b>                 | <ul style="list-style-type: none"> <li>Is the group equipped to maintain the premises?</li> </ul>   |
| <b>Other</b>                               | <ul style="list-style-type: none"> <li>Any special or unique needs that are incurred by Council or by the group</li> </ul>  |

The following table is not intended to be a checklist, or a prescriptive set of rules. It is a general framework of reference that should enable productive discussion between Council and the community.

| Criteria                            | Tenant Group (subsidy level)   |  |  |
|-------------------------------------|--|--|--|
|                                     | High Subsidy   |  | Low subsidy  |
|                                     | A  | B  | C  |
| <b>Capital contribution</b>         | Lessee will contribute 50%-100% of a capital improvement                                     | Lessee will contribute 5%-49% of a capital improvement   | Lessee will not contribute to capital improvement                |
| <b>Special needs group</b>          | The lessee is a special needs group identified by council as a group needing extra support   | The lessee is providing support to a special needs group identified by council needing extra support | The lessee is not a special needs group as identified by council |
| <b>Community access to facility</b> | Lessee will provide regular wider community access to the facility                           | Lessee will provide some wider community access to the facility                                      | Lessee will not provide wider community access to the facility   |
| <b>User catchment</b>               | Lessee is a club or organisation with a broad user catchment, consisting of many people from | Lessee is a club or organisation with a moderate user catchment                                      | Club or organisation has a small or limited user catchment       |

|  |  |   |   |
|--|--|---|---|
|  | diverse regional areas and demographic groups  |   |   |
| <b>Embracing of other council policies</b> | The lease of this asset to this club or organisation would substantially further council's policies related to community, sustainability, and economic benefit to the area | The lease of this asset to this club or organisation would somewhat further council's policies related to community, sustainability, and economic benefit to the area | The lease of this asset to this club or organisation would marginally further council's policies related to community, sustainability, and economic benefit to the area |
| <b>Approved use</b>                        | Aligns with a Council service and the Council Plan. Proposed use will increase social engagement and promote health and wellbeing for Greater Shepparton City Council.     | Aligns with a Council service and the Council Plan. Proposed use will increase social engagement for Greater Shepparton City Council.                                 | Aligns with and not detrimental to Council strategic objectives.  |
| <b>Grants, funding and other subsidies</b> | Lessee receives little to no grants, funding or other subsidies  | Lessee receives some grants, funding or other subsidies   | Lessee receives regular grants, funding or other subsidies  |
| <b>Revenue Potential</b>                   | Lessee has little to no revenue potential  | Lessee has a moderate revenue potential   | Lessee has significant revenue potential  |
| <b>Maintenance ability</b>                 | Lessee will fully maintain the site  | Lessee will maintain part of the site   | Lessee will maintain a small portion of the site  |

Tenant group A typically includes groups that receive Council funding such as neighbourhood houses. Tenant group B typically includes recreation groups such as bowls clubs or scout halls. They are groups with a high level of community benefit that are financially self-sufficient. Tenant group C includes groups of moderate community benefit that generate income and have a higher capacity to pay, such as football clubs and tennis clubs.

### 3. Additional Income

Council reserves the right to amend the rental if a tenant obtains an on-premises licence, packaged liquor licence, general licence or gaming license, or gains access to other commercial or fortuitous (but not fundraising) means of income generated during the term of the agreement e.g. rent received from sub-letting, revenue received from advertising on the premises. Consent by Council is required for any such use.

### 4. Delegation Of Authority

Council may delegate any of its powers or duties to the Chief Executive Officer, who may further delegate to a Council officer, in accordance with S7 – Instrument of Sub - Delegation by CEO. The following delegations are currently in place:

| Power or Duty   | Section of Act             | Delegate   |
|---|----------------------------|--|
| Duty to advertise certain leases  | s.115 L.G.A.               | Director Infrastructure,<br>Manager Strategic Assets |
| Hearing of submissions resulting from public notice                         |                            | Strategic Assets Panel                               |
| Making a decision regarding an issue where s.115 submissions have been made | s.115 L.G.A.               | Council Resolution                                   |
| Power to lease land   | s.115 L.G.A.               | Director Infrastructure,<br>Manager Strategic Assets |
| Decision to affix Common Seal   |                            | Council Resolution                                   |
| Duty to keep a register of all leases                                       | s.98 L.G. Regulations 1990 | Director Infrastructure                              |

Exceptions to the delegation of authority, where council must make a decision and instruct the CEO to sign:

- submissions are received in response to a proposal to lease, and are unable to be resolved by a panel;
- the annual rental payable is more than \$100,000 (including GST); or the current market rental value of the land is \$100 000 or more a year;
- where a Councillor requests that the matter be dealt with by Council;
- the member of Council staff holding, acting in or performing the duties of, the office or position of Director Infrastructure has a conflict of interest as specified in Council's Conflict of Interest Policy

### 5. Roles & Responsibilities

|                                |   |
|--------------------------------|---|
| <b>Council</b>                 | <ul style="list-style-type: none"> <li>Authorise CEO to sign agreement under delegation when Director Infrastructure is unable to sign, as identified in the provisions above.</li> </ul> |
| <b>Chief Executive Officer</b> | <ul style="list-style-type: none"> <li>Sign agreements under delegation from Council.</li> </ul>  |

|                                       |   |
|---------------------------------------|---|
| <b>Director Infrastructure</b>        | <ul style="list-style-type: none"> <li>• Sign all lease agreements under delegation from council.</li> <li>• Authority to direct council to administer procedures necessary to enable Council to carry out its functions under section 115 of the Act in relation to any proposal to lease.</li> <li>• Ensuring the policy is reviewed and approved by Council.</li> </ul>  |
| <b>Service Manager</b>                | <ul style="list-style-type: none"> <li>• Create strategic documentation relating to current and future service needs which is to be used to guide future occupancy agreements.</li> <li>• Obtain information relating to organisations to assist with determining their eligibility to enter into an occupancy agreement with Council.</li> <li>• Negotiates terms with Lessee / Licensee in line with Council's Policy.</li> <li>• Consultation with relevant stakeholders to ensure policy, compliance and legal requirements are met.</li> <li>• Monitors compliance with performance criteria, terms and conditions at minimum on an annual basis.</li> <li>• Responsible for the day to day management of the occupancy agreement.</li> <li>• Monitors reporting requirements from the Lessee / Licensee to ensure maximum community benefit and site optimisation is achieved.</li> </ul> |
| <b>Strategic Assets Property Team</b> | <ul style="list-style-type: none"> <li>• Develop policy, provide advice, guidance, template agreements and key terms.</li> <li>• Attend negotiation meetings to support Service Manager (as requested).</li> <li>• Maintain records and lease register.</li> <li>• Advice to Service Manager regarding compliance with agreements and legislation.</li> <li>• Provide relevant reporting from the lease register.</li> <li>• Apply for approval from Department of Environment, Land, Water and Planning (DELWP) if Council is considering to enter an occupancy agreement under the Crown Land (Reserves) Act 1978.</li> </ul>   |

## 6. Community Engagement

In accordance with Section 115 of the *Local Government Act 2020*, any lease or licence which meets the following criteria must undertake a community engagement process, in accordance with Council's Community Engagement Policy, unless it has been included in the Council's budget:

- The lease is for one year or greater, AND the rent or market value of land is \$100,000+ per year  
OR
- The lease is for a 10+ year period

Leases which do not meet the above threshold, may still warrant public consultation. This process should be conducted in accordance with Council's Community Engagement Policy.

When leasing or licensing vacant properties, or expired leases, Council will undertake a public engagement process to identify an organisation that meets council's assessment criteria outlined in this policy, in accordance with Council's Community Engagement Policy, and the Instrument of Sub-Delegation.

Available leases will be publicly advertised across council channels for 28 days, with a description of the lease, instructions on how the community can submit written feedback. Feedback received by a public process will be assessed by Council's Property Team.

If a suitable outcome between all parties cannot be reached then the matter will be referred to a decision at an Ordinary Council Meeting, to hear from any person or persons who request to be heard in support of their written submission.

A report detailing the community engagement submissions received, along with a summary of any hearings held, will be presented as part of this Council meeting.

Under certain circumstances, agreements will be directly negotiated with organisations, provided there are justifiable reasons that a direct negotiation is appropriate, and the above delegation requirements are met. Such circumstances include, a new occupant which will provide significant community benefit, significant capital contributions, renewal of existing leases, and there is an absence of competition.

Advertising will not be required if the lease has been included in the budget, as per section 115 of the Local Government Act 2020.

## **7. Use of the Premises**

Category 1 (community lease) Tenants must also allow Council to use the premises for Council's 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 Council's use of the premises does not unreasonably interfere with the tenant's use of the premises. Council must also rectify any damage to the premises due to Council's 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 outside the normal hours of the tenant business operating from the premises, provided that such use of the premises does not unreasonably interfere with the tenant's use of the premises.

## **8. Removal of Assets**

All improvements, additions, structures or buildings on the premises-installed or erected by the tenant during the term of the lease or licence are the property of Council, unless otherwise specified. Tenants who constructed the building may be required to remove the building, all fixtures, fittings, plant and equipment at the expiry of the term of the lease, unless otherwise specified.

If Council requires the tenant to remove any assets that have been constructed or installed by them during the term of the lease, then the tenant must make good any damage caused by their removal.

## **9. Vacant Possession**

Removal of a Lessee's effects, buildings or infrastructure, apparent cessation of activities, or the continued vacancy of premises, without notice, may be deemed a surrender of Lease or Licence without notice.

## 10. Liquor and Gaming Licence

Group Two Tenants may not apply for a liquor or gaming licence. Depending on the permitted use of the premises, Group One and Three Tenants may request Council's consent to allow them to apply for a liquor or gaming licence. Council in its capacity as landlord (as opposed to Responsible Authority) will consider applications for liquor and gaming licences and may refuse to give its consent (as landlord) in its absolute discretion.

## 11. Communication with Council

In order to effectively manage its assets, council must be able to communicate with tenants within a reasonable timeframe. Tenants are required to respond to council within a reasonable period of time. Tenants must also sign, accept or decline, or otherwise communicate with council regarding lease agreements, extensions, payments, and all other requests, within a reasonable period of time. Where clubs or organisations meet irregularly, a contact person/s with authority to enter into agreements on behalf of the lessee with council must be provided. Where tenants fail to respond to council communication in a timely manner, tenants may be deemed to have repudiated any rights to occupy the land. In this circumstance, a decision of Council will be sought in relation to the continued status of the lease or licence.

## 12. Environmental

A Lessee must not clear vegetation on the property without the Council's prior written consent. A Lessee must cooperate with the Council in controlling declared weeds and pests in accordance with the Council's Environmental Sustainability Strategy and Action Plan 2014, and Roadside Weed and Pest Control Plan 2015/16-2016/17.

The lessee will be responsible for any environmental damage cause by the improper use of the land and buildings in the lease. The lessee will be required to make good any damage caused during their occupancy of the lease.

A Lessee must, at its cost, comply at all times with the Council's fire management requirements as detailed in Community Living Local Law Number 1, 2018.

## 13. Recording of Leases

All lease and licence agreements will be kept current in a Lease & Licence register. This will enable reporting and automatic notifications to be generated regarding the status of agreements.

## 14. Overholding

All lease and licence agreements are to remain in a current status. Under certain circumstances, agreements may be allowed to enter into overholding.

The overholding period will be in accordance with legislation and at Council's discretion depending on the specific circumstances.

## 15. Termination of Leases

All lease & licence agreements will contain clauses which stipulate how Council will manage tenants who do not comply with the terms of their lease, including termination of the lease and removal of the tenant.

## RELATED POLICIES AND DIRECTIVES

- Lease and Licence Procedure
- Council Plan
- Community Engagement Policy
- S7 - Instrument of Sub-Delegation by CEO



- Conflict of Interest Policy
- Community Living Local Law Number 1, 2018
- Environmental Sustainability Strategy and Action Plan 2014
- Roadside Weed and Pest Control Plan 2015/16-2016/17.

#### RELATED LEGISLATION

- *Local Government Act 2020* – section 115 includes restrictions on the maximum length of leases and provisions requiring leases to be communicated in accordance with Council’s Community Engagement Policy.
- *Crown Land (Reserves Act) 1978* – governs Council’s responsibilities when appointed as Committee of Management of Crown Land, section 17B outlines requirements relating to Crown Land Licences and section 17D outlines requirements relating to Leases.
- *Retail Leases Act 2003* – outlines requirements for leases which are used wholly or predominantly for retail provision of goods or services.
- *Planning and Environment Act 1987* – provides for permitted use of land through Council’s planning scheme.

#### REVIEW

This Policy will be reviewed by Manager of Strategic Assets every four years.

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**Peter Harriott**  
Chief Executive Officer

**Date**