

Strathbogie Shire Council

Lease and Licensing Policy

August 2024



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Lease and Licensing Policy

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1. INTRODUCTION

Strathbogie Shire Council is responsible for the care and management of land and buildings on behalf, and for the benefit, of its community. This includes property owned by Council, Crown Land where Council is the DEECA Committee of Management (DCoM), and land where Council is a tenant of privately owned property.

2. PURPOSE

The purpose of this policy is to ensure that Council has a consistent, equitable and transparent approach to leasing and licensing of Council properties that provide community benefit and in a manner that complies with all legal requirements.

The policy supports decision making in relation to occupancy arrangements on Council property in accordance with obligations under the *Local Government Act 2020*. It provides clarity on Council's approach to leasing and licencing to any party. The policy supports the sustainability of Council's properties through appropriate and equitable contribution towards maintenance and any costs.

3. OBJECTIVE

To support the sustainable management and use of Council's properties and maximise the community benefit from the property use.

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

- To ensure that Council properties are appropriately maintained, developed, occupied, and having regard to the interests of the community and care of the asset
- To ensure that Council properties meet community needs consistent with the Council Plan
- To ensure that decision making in respect of eligibility, use, length of lease or licence, associated fees are transparent, and income tested. e.g. does the occupant have the ability to generate income by means of hire agreements, liquor licence, memberships etc?
- To ensure that leasing and licensing arrangements are fair, transparent, sustainable, and equitable
- To ensure sound fiscal management and effective administration of Council properties to allow for an acceptable financial return to the tenant and reinvestment back into the property
- To ensure compliance with legislative requirements, that risks are appropriately managed, and liability minimised.

This policy outlines the five core elements of leasing and licensing of Council properties:

- Types of Agreements
- Standard Terms
- Categories of occupiers
- Rent, Fees, and Outgoings
- Lease and Licensing principles.

4. DEFINITIONS

Term	Meaning
AVPCC	Australian Valuation Property Classification Code determined by the Valuer General Victoria.
Committee of Management (CoM)	Comprises of a group of community members who run and operate the day-to-day activity of a property or facility.
Committee of Management for DEECA (DCoM)	Appointed by the Minister as the committee of management (DCoM) of the Land pursuant to s14 of the <i>Crown Land (Reserves) Act 1978</i> and has the power to enter into Leases or Licences pursuant to the Applicable Leasing Power.
Commercial	Of, or pertaining to commerce i.e. The buying and selling of goods and services
Commercial Activity	Any activity engaged in which involves any of the following: <ul style="list-style-type: none"> • The principal purpose of the activity is to make a financial profit, either in the short or long term. • The activity involves commercial partners. • The activity involves user-charges for goods and services consistent with current market values. • The activity has direct competition with the same or similar services in the local area of interest.
Community Benefit	The service or activity provides a clear benefit to a high proportion of residents, ratepayers, groups, or organisations in the Shire of Strathbogie and/or helps Council achieve its strategic objectives outlined in its Council Plan.
Council	Strathbogie Shire Council
Council Property	Land and/or building which Council is responsible for. This involves land owned, leased, or licensed by Council and Crown land which Council is the Crown Land Administrator.
Crown Land	Lands reserved and/or administered under the <i>Crown Land (Reserves) Act 1978</i> , <i>Land Act 1958</i> , and <i>Forests Act 1958</i>
DEECA	Department of Energy, Environment and Climate Action
Discounted Rate	The discounted rate is between 0 – 100%. The discounted rate is determined by Council following the completion of the Rental Classification Matrix by a prospective tenant / licensee and applied to the Annual Rent Amount to determine the rent amount payable in a Lease or Licence.
Incorporated Associations	A registered legal entity that is usually established for recreational, cultural, or charitable purposes under the <i>Associations Incorporation Reform Act 2012</i> .
Lease	A lease is a right granted by the owner of the land and/or building to another person (Tenant) to have exclusive possession of that property, or part thereof, for a fixed duration in return for rental payment. A lease creates an interest in land that is binding on third parties and is capable of being assigned, unless the lease specifies to the contrary.

Licence	A licence permits a person (licensee) to occupy land and/or building (or part thereof) on conditions. The main feature that distinguishes a licence from a lease is that a licence does not generally allow exclusive occupancy of the property. Unlike a lease, a licence does not create any interest in the land and the rights created by a licence are personal and do not run with the land.
Recreation Reserve	means any land in the municipal district, excluding a road, that is: (a) owned, occupied, managed, or controlled by Council or a Committee of Management (b) is dedicated or used for cultural, recreational, entertainment or sporting purposes and includes an area or facility designated by a sign as a reserve or park (c) includes any structure, fixture, fitting, and garden located on or at the land.
Property	The land and/or buildings to be leased or licensed.
Tenant / Licensee	A person/organisation who has entered a lease or licence with the owner/manager of the property.
The Act	<i>Local Government Act 2020</i>

5. COMMUNITY ENGAGEMENT PROCESS

If Council proposes to enter into a lease or licence for property that is subject to section 115 of the *Local Government Act 2020* and the lease or licence was not included in the budget, Council will undertake a community engagement process in respect of the proposal, prior to entering into the lease or licence as per Section 115 (4).

6. COUNCIL DECISION MAKING

In accordance with the *Local Government Act 2020*, a Lease or Licence will be considered and authorised by one of two ways depending on the lease term and/or annual rental value.

Term	Annual Rental Value	Authorisation By
Less than ten (10) years	Less than \$100,000	CEO under delegation
More than ten (10) years	More than \$100,000	Council

In some instances, despite the above-mentioned thresholds, the CEO may elect not to utilise their delegation and present to Council for consideration and determination.

7. AGREEMENTS

There are three types of agreements for the use of Council properties:

Casual Hire	Less than 12 months or irregular pattern of use
Licence	Seasonal and/or shared use, with regular pattern of use

Lease	One (1) year or greater, with exclusive use
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Council is dedicated to minimising unnecessary administration and has implemented standard lease and licence documents, along with maintenance schedules, which form this basis of all agreements. The standard documents have been thoroughly reviewed and legally drafted to ensure the protection of both the occupants' and the Councils' rights. These standard lease terms will not be subject to variation.

Special Conditions can be added to agreements to address specific circumstances at the discretion of Council. Council reserves its right to pass on any specialist legal costs incurred as a result of requests for inclusion of Special Conditions.

Selecting the most appropriate agreement will be determined by the type of tenant, use, level of access required and length of occupation.

Where Council acts as the DEECA Committee of Management of Crown Land, Council must seek approval from the Minister to enter into a lease or licence agreement over the portion of Crown Land that it intends to lease or licence to a third party. Leases and licences will be in the prescribed form as provided by DEECA and Council's terms and conditions will form part of the special conditions of the lease or licence. DEECA must approve any additional terms and conditions not included in the prescribed form.

8. TERMS

The term of the agreement will depend upon many factors including the following:

- the tenant
- the ongoing need for the premises or provided use.
- contributions to capital works
- the stability and suitability of the tenant
- the suitability of the premises for the tenant and
- the requirements of any applicable retail leasing legislation.

For agreements where the rent or licence fees are less than the market rental, or the property has not previously been leased or licensed, the preferred term of the agreement will be for a period not greater than five years to best align usage with current council objectives.

9. RENT AND FEES PAYABLE TO COUNCIL

Council will charge one of four types of Rent/Licence Fees:

1. Commercial – market rate as set by independent valuation or by the Valuer General Victoria
2. Community– a discounted market rate based on the benefit to the community.
3. Administrative – a rate as set by Council annually as part of the budget process, considering the minimum recommended rate set by DEECA.
4. Peppercorn – a discounted administrative rate for the benefit of the community.

A determination of the rent or licence fee will be made by Council by taking into consideration the category of occupier, ability to generate income, planned activities/services offered at the property (e.g. sale of liquor, venue hire), the proposal submitted by the relevant organisation and the result yielded from the rental classification matrix. Refer to Attachment 1 – Rental Classification Matrix.

Council may charge a Lease or Licence Preparation Fee, as set by Council annually as part of the budget process. The Lease or Licence Preparation Fee is a once off charge payable by the proposed occupant prior to the agreement being prepared. The lease preparation fee may be waived for Category two and three Occupiers upon application and approval by Council, prior to the preparation of the agreement.

10. CATEGORY OF OCCUPIERS

Council has defined four categories of parties to which it may lease or licence Council property. Council will not lease or licence a property for private use.

Category	Description	Examples	Rental
1. Commercial	Tenants who operate as a fully commercial profit-making entity	<ul style="list-style-type: none"> • Cafes • Adventure Parks/ Activities • Caravan Parks • Telecommunication infrastructure 	Market Rent
2. Community/ Not-For-Profit Organisation (with partial revenue generating activities or operations)	Community or Not-For-Profit organisation with the ability to generate revenue and may have access to external funding.	<ul style="list-style-type: none"> • Return Services League (with liquor licence) • Neighbourhood Houses 	Community Rent
3. Community Volunteer/ Service Organisation	Community group with no commercial operations that is predominantly volunteer based and receive no or minimal external funding. OR Community group that as a service organisation provides a function for the benefit of the community and contributes to the Council Plan.	<ul style="list-style-type: none"> • Historical Societies • Seniors Groups • Return Services League (without liquor licence) • Community Centres or Halls • Mens Sheds 	Peppercorn Rent
4. Kindergartens and Early Learning Centres	Not-for-profit early childhood education and care facilities	<ul style="list-style-type: none"> • Kindergartens 	Administrative Rent

IMPORTANT: Council owned or managed Recreation Reserves and Sporting Clubs are excluded from this policy.

11. OUTGOINGS

All tenants shall be responsible for at least a portion of the outgoings, e.g. water, electricity, gas. The relevant Council department manager shall determine the apportionment of outgoings. This may be waived or subsidised by Council on a case-by-case basis dependent on the individual circumstances of each tenancy.

For properties under a commercial lease, the tenant is responsible for all outgoing costs.

The amount payable for Council rates and charges, including kerbside waste collection charges are as per the Revenue and Rating Strategy, and the Kerbside Collection Services Policy.

12. LEASE AND LICENSING PRINCIPLES

Council will not undertake leasing or licensing of its properties where it believes there is an unreasonable public risk or community detriment associated with the usage of the council property.

12.1 No smoking is permitted in Council properties

12.2 Council will not lease or license its properties where they will be used for gambling purposes (such as EGMs), other than fund raising appeals (as defined in the *Fundraising Act 1988*) or an exemption applies under the *Gambling Regulation Act 2003*. For example, Authorisation for Two-Up on Anzac Day under section 2.2.4 *Gambling Regulation Act 2003*.

12.2.1 In the event that a historical lease arrangement has allowed gambling, leases or licences will not be renewed on expiration if gambling is to continue

12.3 A tenant must not use the premises for any illegal purpose or continue any noxious or offensive activity on the premises

12.4 Council requires all tenants using Council properties in a manner where activities are likely to involve regular direct contact with children, to comply with Child Safe Standards

The tenant must ensure that the tenants employees and volunteers where required to apply for a Working with Children Check under the *Working with Children Act 2005* have done so before working with children on Council land.

Equally, Council requires tenants to adhere to the principles of human rights, gender equality, and display fair and equitable community access in their operations and user fees and charges.

12.5 Subletting: Subletting is the assignment of part of the leased area to a third party for exclusive occupation. Any such arrangements must not commence without prior consent from Council.

Council generally does not support subletting, however in some cases may approve on application a sublet to a complimentary use or for the benefit of the community E.g. Community Hall subletting to Country Fire Authority.

Shared Use and Casual Hire is not considered subletting as it is not exclusive use occupation.

12.6 Hours of Use: Occupancy will be in accordance with relevant regulations, permits and Environment Protection Authority (EPA) policy and is not to adversely impact surrounding neighbours.

12.7 Signage: The Occupant must seek Council's prior written consent and obtain the necessary planning permits before erecting any signage at the Premises. Council will only support signage that identifies the tenant(s) occupying the space. Any and all advertising signs of sponsors are to be temporary signs that are removed at the end of each day. Signage that supports gambling venues is prohibited.

12.8 New or Refurbished Buildings: Council will not allow access to a new or refurbished building without a lease or licence in place.

12.9 Any building or site modifications must be approved prior to any works on site being undertaken.

13. MAINTENANCE

A maintenance and responsibilities schedule forms part of the Lease or Licence. The schedule is used to clarify the obligations and responsibilities of each party for maintenance and asset renewal.

Schedule 1	Schedule 2	Schedule 3	Schedule 4
Generally, for Commercial Occupants: schedule calls for all maintenance to be completed by the tenant other than what is required by law as the landlord.	Generally, for Category two Occupants: schedule calls for Council to complete all structural maintenance whilst the tenant will complete all other maintenance items	Generally, for Category three Occupants: schedule places the primary onus on Council to complete a majority of maintenance	Generally, for Group four (Kindergarten) Occupants: schedule calls for Council to complete all structural maintenance whilst the tenant will complete all other maintenance items

14. INSURANCE AND PUBLIC LIABILITY

All tenants must take out public liability insurance for a minimum cover of \$20 million which extends to volunteers engaging in duties related to the tenant's activities. Tenants must provide a copy of their certificate of currency to Council initially and upon renewal annually.

Council will not insure the tenants contents of any Council Property. Tenants, and their users, should take out contents insurance to adequately cover their possessions. Council will be responsible for insurance of the buildings and associated fixtures e.g. air conditioners, floor, and window coverings, fixed or built in furniture or large appliances owned by Council.

15. LIQUOR

Tenants must obtain Council's prior written consent (as landlord) to allow them to apply to the Department of Justice and/or Planning authority for any form of liquor licence. Council in its capacity as landlord will consider applications for a liquor licence at its discretion and may refuse to give its consent (as landlord) or provide its consent subject to conditions in its absolute discretion.

If a liquor licence is agreed upon by Council, the terms, rent, or fees payable is subject to change.

16. ENVIRONMENTAL SUSTAINABILITY

Council is committed to reducing its environmental footprint. Council strongly encourages tenants and users of its facilities to employ and utilize environmentally sustainable practices to improve the environment.

17. RELATED POLICIES AND LEGISLATION

The following Council, State, regional and national plans, and policies are relevant to this policy.

Legislation

- *Local Government Act 2020*
- *Local Government (General) Regulations 2004*
- *Crown Land (Reserves) Act 1978*
- *Victorian Traditional Owners Settlement Act 2010*
- *Cultural and Recreational Lands Act 1963*
- *Community Laws (Local Laws) No. 2*
- *Retail Leases Act 2003*
- *Building Act 1993*
- *Child and Wellbeing Safety Act 2005*
- *Occupational Health and Safety Act 2004*
- *Planning and Environment Act 1987*
- *Health Act 1958*
- *Education and Care Services National Law Act 2010 and related Regulations (2014)*
- *Telecommunications Act 1997*
- *Associations Incorporation Reform Act 2012*
- *Gambling Regulation Act 2003*
- *The Liquor Control Reform Act 1998*
- *Fundraising Act 1988*
- *Tobacco Act 1978*

Council Plan, Strategies and Policies

- [2021-25 Strathbogie Shire Council Plan](#)
- [2023 Strathbogie Shire Council Plan Update](#)
- [Asset Management Plan 2021-31](#)
- Asset Management Policy
- Child Safe Policy
- Community Engagement Policy
- Privacy and Data Protection Policy
- Events Policy
- Fair Access Policy
- Kerbside Collection Services Policy
- Rates Budgeting and Notice Issuing Policy and Procedures
- Risk Management Policy

Templates and Forms

- Council Property Request for Agreement
- Rental Classification Matrix
- Financial Impact Summary
- Letter of Offer to enter into a Lease or Licence Agreement with Council
- Community Lease or Licence Agreements
- Retail or Non-Retail Lease Agreements
- DEECA Section 17D Lease
- DEECA Section 17B Licence

18. POLICY REVIEW

This policy will be reviewed within 12 months of each Council election unless Council, determines that an earlier review is required.

Council may review this policy at any time and at least two years from the date of adoption.

Minor amendments to the policy may be authorised by the CEO at any time where such changes do not alter the substance of the policy (e.g. a change to the name of a related document, or a change in legislation).

19. CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 AND THE EQUAL OPPORTUNITY ACT 2010

The Council acknowledges the legal responsibility to comply with the *Charter of Human Rights and Responsibilities Act 2006* and the *Equal Opportunity Act 2010*. The Charter of Human Rights and Responsibilities Act 2006 is designed to protect the fundamental rights and freedoms of citizens. The Charter gives legal protection to twenty fundamental human rights under four key values that include freedom, respect, equality, and dignity.

ATTACHMENT 1 – Rental Classification Matrix

Organisation:

Select one Answer for each Section

Category:

Property:

Date:

1. ORGANISATIONAL GOVERNANCE & OPERATIONS	
A	For-purpose organisation. Governed by volunteers Operational delivery capacity 100% by volunteers (no paid staff)
B	For-purpose organisation. Governed by volunteers. Operational delivery capacity 75% by volunteers vs. paid staff (Equal to or less than 1.0 FTE)
C	For-purpose organisation. May form part of a larger for-purpose. Operational delivery capacity split approx. 50/50% between volunteers and paid staff.
D	Not For Profit organisation Operational delivery capacity 75% or more by paid staff vs. volunteers. (More than 5.0FTE paid staff)
E	Commercial operator Volunteer's peripheral to operational delivery.
Comments: ANSWER	
2. REVENUE REINVESTMENT FOCUS	
A	Supports community groups within the Council and/or Actively promotes shared community use Significant proportion of the profit will be re-invested into capital improvements of the facility
B	Supports community groups within the Council and/or Limited shared community use Small proportion of the profit (< 15%) will be re-invested into the facility
C	Shared community use is minimal and not actively promoted Supports community groups in Strathbogie Shire Council and neighbouring Councils
D	Exclusive use by the Tenant (no community use) Supports community groups in the Region Profits to be re-invested into the organisation or Tenants fittings (no capital improvements)
E	Exclusive use by the Tenant (no community use) Profits to be re-invested into the organisation or Tenants fittings (no capital improvements)
Comments: ANSWER	
3. EXTENT OF COMMUNITY ACCESS TO FACILITY	
A	The facility can support shared use and there is evidence of consistent and proactive efforts to maximise community access (eg. Advertising)
B	The facility supports shared use, but not currently taking a proactive approach
C	All community use incurs a charge, greater than the expense incurred and a profit is made.
D	The facility can support shared use but there is evidence of resistance (Eg. No fees/booking details are available publicly.
E	No community use.
Comments: ANSWER	
4. ABILITY TO RAISE REVENUE OR ACCESS EXTERNAL FUNDING	
A	Limited or no ability to raise revenue and no access to external funding Lessee / Licensee is proactive in hiring out facility and seeking external funding
B	Moderate ability to raise revenue Moderate ability to charge fees and/or limited access to external funding
C	Has the ability to charge fees and raise revenue on an ongoing basis Has access to external funding
D	Has the ability to raise significantly revenue on an ongoing basis Has access to significant external funding
E	Not Applicable
Comments: ANSWER	
TOTAL SCORE	

Application of the Rental Classification Matrix

Formula: Market Rent - (Market Rent x Subsidy %) = Rent Payable
Sample uses a Market Rent of \$10,000pa for illustrative purposes only

Score	Subsidy	Rent Payable Range	Calculation
0-2	0%	\$10,000pa	$10,000 - (10,000 \times 0\%) = 10,000$ (No Subsidy)
3-5	1-14%	\$ 8,600-\$9,900pa	$10,000 - (10,000 \times 0.14) = 8,600$ $10,000 - (10,000 \times 0.01) = 9,900$
6-9	15-39%	\$ 6,100-\$8,500pa	$10,000 - (10,000 \times 0.39) = 6,100$ $10,000 - (10,000 \times 0.15) = 8,500$
10-12	40-69%	\$ 3,100-\$6,000pa	$10,000 - (10,000 \times 0.69) = 3,100$ $10,000 - (10,000 \times 0.40) = 6,000$
13-16	70>%	\$ 1-\$3,000pa	Minimum Rental $10,000 - (10,000 \times 0.70) = 3,000$