

RENTAL AND LEASING OF COUNCIL OWNED PROPERTIES POLICY

Policy Number:	3.3.4
Approved by:	Council
Date Approved:	September 2025
Date of Next Review:	December 2026
Applicable to:	Economic Development Business Unit Communities, Facilities and Emergencies Business Unit Natural Environment and Parks Business Unit
Responsible Officer:	Manager Economic Development Manager Facilities and Emergencies Manager Natural Environment and Parks
Related Policies:	EV charging Infrastructure
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> <i>Residential Tenancies Act 1997</i>

OVERVIEW

To establish policy for the:

- Rental and leasing of Council owned and /or controlled property including road related areas.
- 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 agreement 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; and
- 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.

This policy does not affect the necessity to obtain planning, development, environmental or any other consents as required by relevant legislation.

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 the *Local Government Act 2020* which specifies Council's power to lease land being subject to s115 (except where s116 applies).

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 (non-Commercial) Agreements

The Community Managed Facilities Strategy 2020-2025 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 agreements may permit some commercial activities where 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.

Agreements may also be established which align with Council priorities where non-Commercial financial terms are applied and are intended to facilitate outcomes including any priorities identified through the Council Plan such as those aligned with sustainability objectives.

In response to Electric Vehicle charging stations, Council will assess whether agreements should adopt commercial or non-commercial financial terms. Evaluation of the approach will be completed on an individual basis and reference this policy noting any alignment with the Council Plan or related sustainability outcomes and objectives.

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.

Non-Commercial agreements will be managed by the business unit initiating the agreement.

Commercial Agreements

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

- Delivering market referenced returns;
- Effectively administering property agreements in line with industry standards and commercial practices;
- Reviewing procedures and the management frameworks to ensure they fulfil identified Council objectives.
- Ensuring strategies or plans are developed and implemented for Council land used for significant commercial outcomes and purposes or those which require ongoing capital investment.

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.

Commercial Agreements will be managed within the Economic Development/Commercial Property unit with external advice and expertise procured as required to ensure delivery of this policies objectives.

All new commercial agreements must maintain a Public Liability Insurance Policy at a minimum of \$20 million. Council retains the discretion to request increased coverage, or policies covering specific risks, where the nature or risk profile of the leased activity warrants it. These insurance requirements are informed by advice from relevant specialists, which may include legal professionals, internal teams with specialist knowledge, Council's insurer or their representatives. The applicable insurance conditions will be provided to the interested party for consideration during the lease negotiations, noting that any new agreement remains subject to the acceptance of the proposed terms.

Other Considerations

To assist in progressing toward a new agreement, a non-binding agreement in the form of a Heads of Agreement (HoA) setting out key terms and any special conditions may be established between Council and the other party. Once completed and having received endorsement noting applicable delegations and after satisfying Council and legislative approvals, instruction can be provided to a solicitor to commence the drafting process based on the HoA.

Subject to satisfying statutory requirements such as providing any notice of intention in accordance with Council's Community Engagement Policy, entering into an Agreement for Lease may be appropriate where a lease will be subject to a number of conditions precedent e.g. obtaining required planning and other approvals.

Subject to below, all property agreements will be maintained as current i.e. not expiring/moving into overholding. Exceptions to this may be where both parties agree in writing and there are suitable reasons including:

- If Council has identified alternate uses for the site.
- The tenant only intends to continue for a period of less than twelve months.
- Delays on executing a new agreement.

In accordance with the agreement, Council may determine to give notice to end the agreement at its discretion.

Request for Renewal and Direct Negotiations

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. Establishing a new agreement by direct negotiation may also be acceptable.

Assessment of a Request for Renewal or proceeding by Direct Negotiation will be made:

- In accordance with this policy.
- Following legislative requirements.
- Where it can be determined that direct negotiation with a prospective tenant would maximise benefits (financial and non-financial) to Council.
- Acknowledging any Lease Management Framework.
- When a competitive process has not produced, or is unlikely to result, in a satisfactory outcome.
- When it is reasonably clear that there is only one prospective tenant with the required capability or where the only practical access is available from adjoining land owned by the prospective tenant.
- Where Council receives the highest and best use considering environmental, social and economic costs and benefits associated with the proposal.

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

Where possible standardised terms which have been approved by a solicitor engaged by Council will be included in documentation and consider any environmental, performance reporting (employment/economic output/local investment) or other special conditions noting the property attributes or its location such as on an aerodrome.

Council direction in relation to leases at West Sale Airport (WSA) is subject to review with the WSA Lease Management Framework (LMF) to be updated following input from an expressions of interest process. All new or renewed leases of terms longer than 5 years will be assessed on an individual basis and be presented to Council for their consideration.

REVISION HISTORY

VERSION	DATE	SUMMARY OF CHANGES
1.0	December 2022	No changes applicable at this review.
1.1	December 2023	Date of Next Review updated to: December 2024. Minor formatting changes. Updated policy to align with the <i>Local Government Act 2020</i> . Added further detail to body of the policy for clarification purposes.
1.2	December 2024	Date of Next Review updated to December 2026. Added further detail to body of the policy for clarification purposes.
1.3	September 2025	Date of Next Review updated to December 2026. Added insurance requirements for new commercial agreements.