

Leasing and Licencing Policy

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1. Introduction

The City of Monash (**Council**) as a Public Land Manager, owns and manages land and buildings on behalf of its community and seeks to use these important assets to deliver valuable services that will enhance the health and well-being of the Monash community.

The use of Council's Property Assets by external organisations (be it community or private) requires appropriate land occupancy agreements to protect each party's interests and provide guidance on roles and responsibilities.

This Leasing and Licencing Policy (**Policy**) will provide the guiding principles that will assist in the effective management and use of Council's Property Assets to maximise the benefit to the community.

2. Purpose

The purpose of this Policy is to ensure that Council has a consistent, equitable and transparent approach when entering into a formal agreement with an external organisation to occupy Council's Property Assets and manages the compliance requirements under the Local Government Act 2020.

This policy has been developed to meet the following principles and objectives:

- **Custodianship:** Ensure Council owned or managed land and buildings are appropriately used, maintained, developed and occupied by user groups.
- **Community Benefit:** Prioritise the use of Council owned or managed buildings and land, for the delivery of services that directly benefit the local community, maximise the utilisation of Council assets and the participation of Monash residents, enhance the health and well-being of the Monash community and reflect Council's goals, plans, strategies and policies including but not limited to Council's Public Health Approach to Gambling Harm Policy as updated from time to time.
- **Collaboration:** Optimise the use of Council owned or managed land and buildings by encouraging shared and multi-use of Council buildings and land by complementary services and discouraging the exclusive use of Council land and buildings for passive uses such as the storage of goods.
- **Consistency:** Establish guiding principles for the consistent approach to leasing and licensing of Council owned or managed Property and to assist with requests for consent from current Tenants.
- **Equity:** Ensure Council has a transparent, consistent and equitable approach when entering into occupancy agreements.
- **Financial:** Ensure sound financial management and effective administration of Council managed properties in accordance with this Policy.

3. Scope

This Policy applies to all Council owned and managed land (including Crown Land where Council is the Committee of Management) and buildings where an occupancy agreement is to be offered to an external organisation. This Policy also applies where Council is the Tenant.

This Policy does not apply to:

- premises that are exclusively occupied by Council employees to operate and deliver Council services;
- permits issued in accordance with Council's Footpath Trading and Access Policy;
- casual and regular short term hirers of Community Halls; and

- casual hirers of Sporting Facilities (although there may be restrictions under the terms of a lease or licence agreement with the occupier).

This Policy may only be overruled by Council resolution.

4. Definitions

CLRA means the Crown Land (Reserves) Act 1978.

Committee of Management means a committee appointed by the State Government in accordance with the CLRA to manage Crown Land.

Community Group means a recognized not-for-profit organisation or group of people who are linked by social ties or share common perspectives who engage in joint action that is of altruistic motivation intended to advance the community.

Council means Monash City Council or its predecessors, e. g., The former City of Oakleigh and the former City of Waverley.

DEECA means the Victorian Department of Energy, Environment and Climate Action.

Fixtures are items that are attached to the building or land and cannot easily be removed without damaging the building or land to which it is affixed.

Fittings also known as chattels, are items that are freestanding and retain their independence from the building or land and are capable of being removed. Examples include refrigerators, microwaves, furniture etc.

Incorporated Association means a club or community group, operating not-for-profit, and are registered in accordance with the Associations Incorporations Reform Act (2012).

Lease is an agreement where the asset owner grants the Tenant the right to exclusive use of the asset for a specified use and period.

Lessee means the occupier of a Property subject to a Lease.

LGA means the Local Government Act 2020.

Licence is an agreement where the asset owner grants the non-exclusive use of a property.

Licensee means the occupier of a Property subject to a Licence.

Occupancy Agreement means an Agreement between a landowner and another organisation which confers a right to use a specified property for a specified use for a set period of time subject to mutually agreeable terms and conditions.

Outgoings means any expenses directly assessed or attributable to the operation, management, maintenance, or repair of the property, including but not limited to Council rates, taxes and other levies (eg. Fire Levy) and utility services (gas, electricity, water, telephony, Wi Fi network etc.) charges.

Premises means the Council owned land/building(s)/facility as defined within the Occupancy Agreement.

Property means Council owned or managed land and buildings on the land.

RLA means the Retails Leases Act 2003 (Vic) as amended from time to time.

Service Manager is the Council Officer who is the first point of contact and main Council liaison between the Tenant and all of Council's Departments.

TCA means the Telecommunications Act 1997.

Tenant means the occupier of a facility under a Lease or Licence.

Market value means the value as determined by a qualified Valuer based on the following methodology and criteria:

- The area and dimensions of the area to be leased or licensed.
- Any encumbrances associated with the proposed lease or licence.
- The proposed use
- Any likely contamination due to history of use.

5. Responsibilities

The below table lists the responsibilities for the different areas of Council in the management of leases and licences.

Council	Resolve on leases which: <ul style="list-style-type: none"> • have a current market rental of \$100,000 or more (and are for a term of 1 year or more); or • have a term of 10 years or more;
Chief Executive Officer	<ul style="list-style-type: none"> • Execute Leases and Licences
Service Manager	<ul style="list-style-type: none"> • Create strategic documentation relating to current and future service needs which is to be used to guide future occupancy agreements. • Obtain information relating to organisations to assist with determining their eligibility to enter into an occupancy agreement with Council. • Negotiate terms with Tenants (new or existing) in line with Council's Policy under guidance and approval from the Property Department. • Consult with relevant stakeholders to ensure policy, compliance and legal requirements are met. • Monitor compliance with lease/licence obligations annually including validating that security deposits held are accurate, deal with any issues or non-compliances that may arise under guidance and approval from the Property Department. • Evaluate any breaches and issues that may arise and evaluate and recommend a course of action to be implemented with guidance and approval from the Property Department, with final sign off from the relevant Director/CEO. • Responsible for the day-to-day management of the occupancy agreement, including managing Tenants in overholding, including ensuring that they are aware of any ongoing lease obligations during the overholding period. • Monitor reporting requirements from the Tenant to ensure maximum community benefit and site optimisation is achieved. • Oversee the collection or refund of security deposits for ingoing/outgoing tenants.
Property Department	<ul style="list-style-type: none"> • Develop policy and provide advice and guidance on leasing and licencing. • Review information received relating to organisations to assist with determining their eligibility to enter into an occupancy agreement with Council and determine whether a lease or licence (including any terms) should be entered into and if the terms are acceptable with Tenants (new or existing) in line with Council's Policy. • Monitor agreement expiry dates and alert service managers that an agreement is coming to an end/approaching overholding. • Oversee the process for review or renewal of agreements. • Responsible for reviewing any final decisions regarding breaches or issues that may arise with sign off from the relevant Director/CEO. • Develop template agreements and key terms. • Maintain an updated suite of templates and a compliance checklist to assist Service Managers in the day-to-day management of occupancy agreements. • Attend negotiation meetings to support Service Managers. • Maintain records and lease register which is to be available on Council's website. • Advise Service Manager regarding compliance with agreements and legislation. • Meet annually (and as needed) with Service Managers, at the start of the calendar year. • Apply for approval from Department of Energy, Environment and Climate Change if Council is considering entering an occupancy agreement under the Crown Land (Reserves) Act 1978. • Provide 6 monthly reporting to the Executive Leadership Team.
Finance Department	<ul style="list-style-type: none"> • Manage financial compliance of Tenants, including the collection of rent, fees and other charges. • Generate monthly aged debtor reports and circulate to the Property Department and Service Managers for action

	<ul style="list-style-type: none"> Oversee the collection of outstanding rent, fees and other charges in accordance with Council's Debt Management Policy 2021. Workflow the schedule of security deposits monthly to all Service Managers for actioning and to the Property Department for review.
Digital & Technology Department	<ul style="list-style-type: none"> Provide a monthly report of expired and soon-to-expire occupancy agreements, generated by Council's Pathway lease register, to Service Managers and Property.

6. Council Expectations

Monash Council aims to ensure that everyone in the Monash community enjoys the same opportunities, rights and respect, regardless of their ability, age, cultural background, gender identity, sex or sexuality.

Tenants are expected to provide a welcoming, respectful and inclusive environment for all. Community groups participating in activities that promote disrespectful attitudes, norms, behaviours and practices of any kind including but not limited to the display of any sexually explicit, offensive materials or sexual objectification in any form, may risk having their opportunity to use Council land and buildings removed.

Tenants are expected to use their best efforts to manage behaviours whilst on Council land and also whilst representing the Monash community elsewhere.

Tenants will have an opportunity to address and change unacceptable behaviours. Repeated examples of unacceptable behaviour not aligning with the conditions of the Lease or Licence, which are not addressed by the Tenant, may result in Council either terminating or not renewing the agreement.

7. Policy

A. Tenant Classifications

The below table lists Council's Tenant Classifications, including eligibility indicators, rent, term and maintenance & outgoings details.

Tenant Classification	Eligibility Indicators	Annual Rental and Reviews	Preferred Term	Maintenance and Outgoings
<p>Group A – Not for Profit Community Groups</p> <p>Community groups in this category service the community and are available to all Monash residents. Although they are locally based they may service an area beyond the City of Monash. They are not for profit and may rely on volunteers and/or State or Council funding or grants and do not have the capacity to generate a significant amount of income.</p>	<ul style="list-style-type: none"> Provides significant community benefit which is in higher demand by the local community. The type of community benefit provided could not be delivered unless supported by Council. The use aligns with a Council service and the Council Plan and will increase social inclusion, equity and promote health and wellbeing for the Monash community. Receives minimal funding from organisations other than Council. Limited capacity to generate revenue from use of the site e. g., Memberships. 	<p>\$10.00 pa + GST</p> <p>Annual CPI</p>	1-5 years	<p><u>Programmed</u> – Council</p> <p><u>Reactive</u> – Shared</p> <p><u>Negligence</u> – Tenant</p> <p><u>Renewal</u> - Council</p>

<p>These Tenants include but are not limited to:</p> <ul style="list-style-type: none"> • Toy libraries • Community gardens • Community Offices • Performing Arts, Cultural and Art Groups • Neighbourhood Houses • Early Childhood Education Care and Care Services • Historical Societies • Men’s Shed 	<ul style="list-style-type: none"> • The site is fit for purpose. • Community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements. • Legal entity and financially viable, 			
<p>Group B - Not for Profit Community Service Organisations, Government Authorities and Agencies</p> <p>These Tenants include local, national or international service organisations and agencies, and public benevolent institutions which provide humanitarian services such as supported disability residential housing, supported employment enterprises and independent living units/hostels.</p> <p>They service the community and are available to Monash residents and have the capacity to generate revenue from the use of the facility or other activities consistent with the purpose of the organisation. The organisations may rely on funding from the Federal or State Government and do not make a commercial profit.</p> <p>These Tenants may have constructed or contributed to the construction of the building with funding from Council or the State or Federal Government and have fully or partially maintained the building (including structural and capital maintenance) throughout the term of the Lease.</p>	<ul style="list-style-type: none"> • Provides significant community benefit which is in higher demand by the local community. The type of community benefit provided could not be delivered unless supported by Council. • The use aligns with a Council service and the Council Plan and will increase social inclusion, equity and promote health and wellbeing for the Monash community. • Has some capacity to generate revenue from use of the site. • The site is fit for purpose. • Community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements. • Legal entity and financially viable 	<p>Market Value subject to Tenant’s financial contribution and financial capacity.</p> <p>Annual CPI.</p>	<p>Subject to Negotiation</p>	<p><u>Programmed</u> – By Negotiation <u>Reactive</u> – By Negotiation <u>Negligence</u> – Tenant <u>Renewal</u> – By Negotiation</p>

<p>Examples of these Tenants include:</p> <ul style="list-style-type: none"> • Independent living units, disability accommodation services, hostels etc. • Emergency accommodation • Employment organisations for people with disabilities • Health and Human services (e. g., Department of Health & Human Services/Latrobe Health and Community) • Emergency services (e. g., SES) 				
<p>Group C - Commercial Tenants</p> <p>The following Tenants occupy a Council premises, or part of a premises under a Lease on a commercial basis, where the RLA or the TCA will apply. Some of these Tenants may have constructed their building or facilities on Council land.</p> <p>Examples include the following:</p> <ul style="list-style-type: none"> • Cafes; • Mini golf and Pitch 'N' Putt; • Telecommunications towers and equipment shelters. • Commercial residential premises. 	<ul style="list-style-type: none"> • Desirable to provide community benefit. • The use aligns with and is not detrimental to Council's strategic objectives. • Receives significant funding from organisations other than Council or is a profit based organisation. • Increased capacity to generate revenue from use of the site eg. Memberships. • The site is fit for purpose or can be made so with their capital investment. • Community access and utilisation of the site may be maximised either by direct use of the site or through shared use or hire arrangements. • Legal entity and financially viable. 	<p>Market Rental.</p> <p>Annual CPI.</p>	<p>1-5 years or more than 5 years where the Tenant invests in the facility</p>	<p><u>Programmed</u> – Tenant <u>Reactive</u> – Tenant <u>Negligence</u> – Tenant <u>Renewal</u> – By Negotiation</p>
<p>Group D - Sport and Recreation Clubs – Leases</p> <p>These groups primarily function for sport and recreational purposes. They are member based fee-paying clubs and organisations that may have the capacity to generate revenue from the use of the</p>	<ul style="list-style-type: none"> • Provides significant community benefit which is in higher demand by the local community. The type of community benefit provided could not be delivered unless supported by Council. • The use aligns with a Council service and the Council Plan and will increase social inclusion, equity and promote 	<p>In accordance with Council's Annual Budget – Schedule of Fees and Charges for Sporting Reserves and Pavilions</p>	<p>1-5 years, or more than 5 years where the Tenant invests in the facility</p>	<p><u>Programmed</u> – Council <u>Reactive</u> – Shared <u>Negligence</u> – Tenant <u>Renewal</u> - Council</p>

<p>facility or other activities consistent with the purpose of the organisation, but do not make a commercial profit.</p> <p>They occupy Council owned facilities or Council land under a Licence or a Seasonal Ground Allocation.</p> <p>Examples of groups that apply to this category include but are not limited to:</p> <ul style="list-style-type: none"> • Archery • AFL • Athletics • Baseball and Softball • Basketball and Netball • Bowls • Bridge • Calisthenics and Gymnastics • Croquet • Cricket • Darts • Dog Obedience • Fencing • Golf • Girl Guide Halls • Hockey • Horse Riding • Scout Halls • Soccer • Tennis Clubs • Rugby – League and Union. 	<p>health and wellbeing for the Monash community.</p> <ul style="list-style-type: none"> • Has some capacity to generate revenue from use of the site. • The site is fit for purpose. • Community access and utilisation of the site will be maximised either by direct use of the site or through shared use or hire arrangements. • Legal entity and financially viable, 			
<p>Group E – Miscellaneous Tenants/Agreements</p> <p>When none of the above categories apply, then Council approval may be required to determine the Fee Structure, the Maintenance requirements and other terms and conditions of the agreement.</p> <p>This may require approval at a Council meeting. An example of where this category may apply is a football club who contributes a substantial amount towards capital</p>	<ul style="list-style-type: none"> • Provides community benefit to the local community. • The use aligns with a Council service and the Council Plan and will increase social inclusion, equity and promote health and wellbeing for the Monash community. • May be able to generate revenue from use of the site. • The site is fit for purpose. • Community access and utilisation of the site may be maximised either by direct use of the site or through shared use or hire arrangements. • Legal entity and financially viable, 	<p>Subject to Negotiation</p>	<p>Subject to Negotiation</p>	<p><u>Programmed</u> – By Negotiation <u>Reactive</u> – By Negotiation <u>Negligence</u> – Tenant <u>Renewal</u> – By Negotiation</p>

<p>improvements to a pavilion who would otherwise be under a short-term Licence agreement.</p> <p>A Lease may be offered with a longer tenure, with greater maintenance responsibilities required of the club than football clubs under a Licence agreement.</p> <p>Other examples may include:</p> <ul style="list-style-type: none"> • A new facility with single or many funding sources and/or tenant organisations; • A relocation of service; • A discontinued road. 				
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Should a Community Group in Groups A, B or D seek to sub-let or licence to a profit organisation, Council may re-classify the whole agreement to Group C.

B. Tenant Eligibility

To be eligible to enter into a Lease or Licence to occupy a Council facility, the organisation must at the very least:

- Have a legal entity status as defined within the Associations Incorporations Reform Act 2012 or the Corporations Act.
- Be available for the general public or the residents of the City of Monash to join, subject to meeting membership guidelines.
- Maintain appropriate insurances, including public liability.
- Have the financial capacity to meet the obligations of the Lease or Licence.

C. Tenant Selection

Council will undertake an assessment of prospective new Tenants to ensure that Tenants can comply with this Policy.

D. Agreement Expiries and Renewals

As agreements expire, Tenants remain on site in accordance with the terms and conditions of the agreement at the time of expiry, until a decision on a new agreement or otherwise is made.

At the expiry of an agreement, the Service Manager will determine if the tenant stills meets eligibility criteria. If a new agreement is considered in the best interests of the community, the terms and conditions will accord with this Policy.

E. Site Assessment

The current condition of the building, the tenant’s immediate requirements and Council’s future requirements will be considered before entering into an Occupancy Agreement.

F. Vacant Properties

When leasing or licensing vacant properties, Council may undertake a public Expression of Interest process to identify the organisation that will provide best value and highest community benefit. Applications received through the public process will be assessed by a panel at Council with evaluation criteria which will be created to meet the specific requirements of the site.

Under certain circumstances, agreements will be directly negotiated with organisations, provided there are justifiable reasons that a direct negotiation is appropriate.

8. **Lease Register**

In accordance with the Local Government Act 2020 and Council's Public Transparency Policy 2020, a Lease Register is made publicly available on Council's website.

Council may release lease or licence agreements when requested, subject to the redaction of personal or confidential information.

9. **Legislative context**

A number of Laws, Regulations, Council Policies and Council Plans as amended, guide Council leases and licences. They include but are not limited to the following:

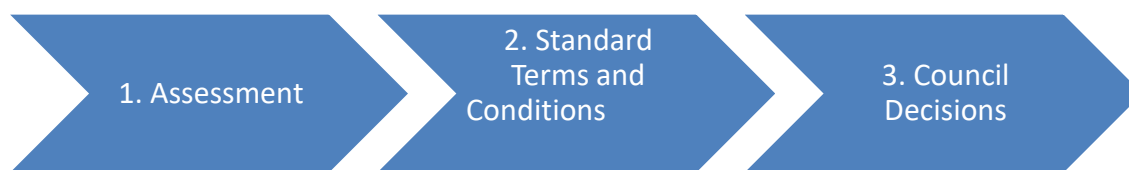
- Local Government Act 1989 and 2020
- Local Government (General) Regulations 2004
- Retail Leases Act 2003 (Amended)
- Retail Leases Regulations 2003
- Occupational Health and Safety Act 2004
- Planning and Environment Act 1987
- Health Act 1958
- Education and Care Services National Law Act 2010 and related Regulations (2014)
- Telecommunications Act 1997
- Crown Land (Reserves) Act 1978
- Associations Incorporations Reform Act 2012
- Corporations (Victorian) Act 1990
- Cultural and Recreation Lands Act 1963
- Building Act 1993 and related Regulations
- Residential Tenancies Amendment Act 2019
- Children's Services Act 1998
- Charter of Human Rights and Responsibilities Act 2006
- Child Wellbeing and Safety Act 2005
- Environment Protection Act 2017
- Liquor Control Reform Act 1998
- National Construction Code 2019
- Monash Council Community Laws (Local Laws)

Council Plan, Strategies and Policies, Fees and Charges

A full list of current Council Strategies, Plans and Policies which guide Council's Leases and Licences can be found at on Council's website.

- Monash Council Plan 2017-2021
- Monash Council Sportsground and Pavilions Fees and Charges
- A Healthy and Resilient Monash – Integrated Plan 2017-2021
- Monash Open Space Strategy – 2018
- Asset Management Policy – 2018
- Public Health Approach to Gambling Harm Policy
- Safeguarding Children and Young People Policy
- Election Period Policy (contained within the City of Monash Governance Rules Policy)

Leasing and Licensing Procedure



1. Assessment

1.1 Tenant classification

Council engages with a wide variety of external organisations. Tenants have been grouped into categories to guide the fee structure and obligations which will apply to the Tenant when entering into an agreement. These costs and obligations include the payment of Rent or a Licence Fee, the payment of outgoings and responsibility for maintenance obligations.

1.1.1 Group A – Not for Profit Community Groups

Community groups in this category service the community and are available to all Monash residents. Although they are locally based, they may service an area beyond the City of Monash. They are not for profit and may rely on volunteers and/or State or Council funding or grants and may not have the capacity to generate a significant amount of income. Community groups which are for the purposes of sport and recreations are identified in Group D. The agreements between Council and tenants within this Group are for existing land and buildings only requiring minimal if any capital investment from either Council or the Tenant.

These Tenants include but are not limited to:

- Toy libraries
- Community gardens
- Community Offices
- Performing Arts, Cultural and Art Groups
- Neighbourhood Houses
- Early Childhood Education Care and Care Services
- Historical Societies
- Men's Shed

1.1.2 Group B – Not for Profit Community Service Organisations, Government Authorities and Agencies

These Tenants include local, national or international service organisations, agencies, public benevolent institutions and Government Authorities which provide services such as supported housing, supported employment enterprises, allied health support services or emergency services. They service the community and have the capacity to generate revenue from the use of the facility or other activities consistent with the purpose of the organisation.

The organisations may rely on funding from the Federal or State Government and do not make a commercial profit. These Tenants may have constructed or contributed to the construction of the building with funding from Council or the State or Federal Government and have fully or partially maintained the building (including structural and capital maintenance) throughout the term of the Lease.

Examples of these Tenants include:

- Independent living units, disability accommodation services, hostels etc.
- Emergency accommodation
- Employment organisations for people with disabilities
- Health and Human services (e. g., Department of Health & Human Services/Latrobe Health and Community)
- Emergency services (e. g., SES)

1.1.3 Group C – Commercial Tenants

The following Tenants occupy a Council premises, or part of a premises on a commercial basis. Some of these Tenants may have constructed their building or facilities on Council land.

Examples include the following:

- Cafes;
- Mini golf and Pitch 'N' Putt;
- Telecommunications towers and equipment shelters.
- Commercial residential premises.

1.1.4 Group D – Sport and Recreation Clubs

These groups function for sport and recreational purposes. They are Not for Profit, member based fee-paying clubs, sport associations or organisations that may have the capacity to generate revenue from the use of the facility. They occupy Council owned or managed facilities or land under a Lease or Licence, which may or may not include a Seasonal Ground Allocation. The Club may previously have contributed to the construction or refurbishment of the building or other assets upon the land or they may own the building outright.

Examples of groups that apply to this category include but are not limited to:

Archery	Calisthenics and Gymnastics	Girl Guide Halls
Australian Rules Football	Croquet	Hockey
Athletics	Cricket	Horseriding
Baseball and Softball	Darts	Scout Halls
Basketball and Netball	Dog Obedience	Soccer
Bowls	Fencing	Tennis Clubs
Bridge	Golf	Rugby - League and Union

1.1.5 Group E – Miscellaneous Tenants/Agreements (when other categories do not apply)

When a request for tenancy does not easily fit into any of the above categories, the request will be considered on its merits with reference to the Lease and Licence Policy objectives.

Examples:

- A new facility with single or many funding sources and/or tenant organisations;
- A relocation of service;
- A discontinued road.

Consideration will be given to:

- Initial and ongoing financial investment;
- An appropriate term;
- Methodology for the replacement of site assets at their forecast end of life;
- Detailed repair, maintenance and asset replacement obligations to the end of the term;
- Detailed performance reporting;

- Clarity of legal entities intended to deliver services from the site;
- Historical use of the proposed area;
- Expanded risk mitigation planning.

1.2 Tenant eligibility

Tenant eligibility will be considered in accordance with Council's Leasing and Licencing Policy

1.2.1 Tenant Selection Considerations

The following items will be considered before renewing an agreement or selecting a new Tenant:

- The prioritisation of the use of Council owned or managed buildings and land, for the delivery of services that directly benefit the local community, maximise the utilisation of Council assets and the participation of Monash residents, enhance the health and well-being of the Monash community and reflect Council's goals, plans, strategies and policies including but not limited to Council's Public Health Approach to Gambling Harm Policy as updated from time to time.
- Does the new or existing Tenant require the premises exclusively or can they share or co-locate with other Users delivering aligned services;
- Does the Tenant's business plan or strategy align with the Council Strategies, Plans and Policies and with new emerging areas such as Gender Equality;
- Is the Management structure and staffing levels of the Tenant sufficient for service delivery;
- Will the use increase social engagement and promote the health and well-being of the Monash community;
- The Tenant's proven ability to provide an ongoing and recognised service or benefit to the community;
- Does demand exist for the service or activity to be provided through the Council owned premises;
- Does the Tenant proactively include people with a disability and vulnerable or marginalised groups in their program or activities;
- Is the proposed use suitable for the nature of the site and the neighbourhood;
- Does the Tenant have the financial capacity to meet its ongoing obligations;
- Does the Tenant comply with all relevant legislation governing its activities;
- Has the existing Tenant breached any of the terms and conditions of its Lease or Licence and whether or not the breach has been satisfactorily rectified;
- Has the existing Tenant satisfactorily maintained the premises in accordance with its agreement;
- Is an Expression of Interest (in accordance with Council's Procurement Policy) appropriate?

If an Expression of Interest (EOI) process is undertaken, the preferred form of agreement will be contained within the EOI documents and the Returnables Schedule will seek a response regarding agreement variations to assist with EOI evaluation.

1.3 Site Assessment

When undertaking a site assessment for an Occupancy Agreement, consideration is given to:

- Whether the building is fit for use – is the building in a reasonable condition for the proposed use.
- If not, does the Council or the tenant have the financial capacity to support any major upgrade or modifications to the asset?
- Are any repairs required to meet legislative or OH&S requirements?
- Is the building or the land required for future development or use by Council; is there an Integrated Service Plan for the site?
- Have all relevant Council Departments been consulted in relation to the proposed future use and suitability of the premises and/or land?

2. Standard Terms and Conditions

2.1 Monash Values

Council's Occupancy Agreements are prefaced with the following Council Expectations (as detailed at Item 6 of this Policy) on the front page of the agreement:

Monash City Council aims to ensure that everyone in the Monash community enjoys the same opportunities, rights and respect, regardless of their ability, age, cultural background, gender identity, sex or sexuality.

Tenants are expected to provide a welcoming, respectful and inclusive environment for all. Community groups participating in activities that promote disrespectful attitudes, norms, behaviours and practices of any kind including but not limited to the display of any sexually explicit, offensive materials or sexual objectification in any form, may risk having their opportunity to use Council land and buildings removed.

Tenants are expected to use their best efforts to manage behaviours whilst on Council land and also whilst representing the Monash community elsewhere.

Tenants will have an opportunity to address and change unacceptable behaviours. Repeated examples of unacceptable behaviour not aligning with the conditions of the Lease or Licence, which are not addressed by the Tenant, may result in Council either terminating or not renewing the agreement.

2.2 Acceptable Behaviours

To give effect to the Council expectations as shown above, occupancy agreements will include a clause(s) which details the Tenant's obligations with respect to relevant Council's policies, and reinforces the expectation that they comply with the Tenant's code of conduct and any applicable conduct requirements established by external bodies.

It is expected that a tenant enforce their own code of conduct and fully and openly cooperate with any requests for information and recommendations for action or remediation from Council, the Police or a relevant external body.

Occupancy Agreements will include provisions for Council to terminate the agreement, and/or take other enforcement action, if the Tenant engages in unacceptable behaviours in breach of the terms of the agreement.

2.3 Permitted Use of Premises

The Permitted Use defines what the Tenant can or cannot do at the Premises. The Permitted Use outlines the Primary activity which the Tenant will use the Premises for. The Primary activity is defined with reference to activities, attendance numbers, and predominant financial return to the club from the primary activity. The Permitted Use may also contain ancillary or secondary uses, which are subordinate to all primary use characteristics. Finally the Permitted Use may – for the avoidance of doubt - outline items which are specifically excluded from happening at the Premises.

It is important that the Permitted Use is clearly defined.

Tenants must obtain Council's prior written consent for any change in the permitted use or for the additional use of the premises, including any planning and building permits that may be required. Council may consent (with conditions) or withhold consent in Council's absolute discretion, and decisions will be made in accordance with Council's instrument of delegation. Refer to Attachment 3.

The Days and Hours of Use will generally coincide with the type of agreement that is granted. As a Licence offers non-exclusive, shared use of a facility, the Licensee is permitted to occupy the facility on agreed days and hours of use, which allows Council to offer the facility to other community groups and thereby maximise the use of the facility.

Permitted Hours of Use for Council owned facilities under a Lease or Licence, will align with the Environment Protections Act 2017 requirements for residential noise.

The Permitted Use or service delivered from the Premises will be managed by a nominated Council Service

Manager.

2.4 Term

The term (or length) of a Lease or Licence will be negotiated considering the following circumstances:

- the type of facility and the Tenant's requirements;
- the ability to co-locate multiple Tenants in the same facility;
- the sustainability of the service offered by the Tenant and how this relates to the Council Plan and any relevant strategies;
- the history and stability of the Tenant;
- the community need, social benefit or service offered to the Monash community;
- if the Tenant is a new or emerging group;
- whether or not the Tenant will offer any contributions to capital and/or structural works to Council's facility;
- Council's long terms plans for the facility and whether it may be required for future use, demolition, refurbishment or major capital works upgrade.

In addition, Legislative requirements must be considered when negotiating the term of a Lease or Licence.

Under the Local Government Act 2020, the Lease term is capped to 50 years, although Council only offers the maximum term in exceptional circumstances.

Where Council is Committee of Management for Crown land, a Licence term of either 3 years or up to 10 years may be granted, dependent upon the Reservation status and a Lease of up to 21 years may be granted.

The following principles will apply when offering an agreement:

<i>Short term agreements:</i>	A term of between 1-5 years is offered to most Tenants.
<i>Long term agreements:</i>	A term of more than 5 years is offered where the Tenant can invest in the facility.

Seasonal recreational agreements, however, will be a Licence agreement for the pavilion which will be for a term of between six months and up to 5 years and is only valid while Council grants the seasonal allocation of the adjoining ground (oval).

2.5 Rentals, Licence Fees

The determination of a Rental or Licence Fee (and subsequent annual review) is dependent upon the Tenant Classification.

Tenant Category		Rental or Licence Fee	Annual Review
Group A	Not for Profit Community Groups	\$10.00 per annum + GST	CPI
Group B	Not for Profit Community Service Organisations, Government Agencies	Market Value subject to Tenant's financial contribution and financial capacity	CPI
Group C	Commercial Tenants	Market Rental	CPI
Group D	Sport and Recreation Clubs	In accordance with Council's Annual Budget – Schedule of	In accordance with Council's Annual Budget – Schedule of

		Fees and Charges for Sporting Reserves and Pavilions	Fees and Charges for Sporting Reserves and Pavilions
Group E	Miscellaneous	Subject to Negotiation	Subject to Negotiation

2.6 Maintenance Responsibilities

Where the lease is for land only, repairs and maintenance are the responsibility of the Tenant.

Where the lease is for land and buildings, the responsibility for the repair and/or maintenance depends upon the type of repair and/or maintenance and upon the Tenant Classification.

In general, the Council will assume responsibility for the structural and legislative requirements, various negotiated asset renewals and the external elements of the building.

Sport and Recreation Clubs (Group D) under a lease agreement are required to have a sinking fund and contribute to the costs for the ongoing maintenance and replacement of assets.

Occupiers are expected to maintain areas/fittings dedicated to their own functional use and repairs of a minor nature.

Repairs and Maintenance are separated into the four action areas:

1) Programmed or Preventative - Maintenance/ Servicing to maintain in good working order:

Any scheduled or routine servicing which occurs regularly to ensure that the item continues to work in good order.

2) Reactive - Reactive repair if damaged in the normal course of operations in order to keep in good condition:

Unplanned damage has occurred to the item and a repair is required to ensure that the item continues to work in good order.

Repairs of a minor nature include but are not limited to globe replacements, window coverings, floor coverings, whitegoods repairs etc.

3) Negligence - To repair or replace or to incur the cost of repairing or replacing if damage is because of misuse or negligence by the Occupier:

The Occupier is liable for the cost of repair or replacement of any item because of misuse, negligence or vandalism by the Occupier or the Occupier's guests, invitees and contractors. The repair or replacement will be undertaken by Council and charged to the Occupier.

4) End of Life - To replace if asset is at the end of its useful utility:

When an asset reaches the end of its useful utility or life because of age, unrepairable fault or structural defects, it will be replaced with a like for like asset (dependent upon budget provisions and availability).

The responsibility for each action area is determined with reference to the Tenant Category:

TENANT CATEGORY		Programmed or Preventative	Reactive	Negligence	End of Life
Group A	Not for Profit Community Groups	Council	Shared (Council & Tenant/Licensee)	Tenant/Licensee	Council
Group B	Not for Profit Community Service Organisations, Government Authorities	By Negotiation	By Negotiation	Tenant/Licensee	By Negotiation
Group C	Commercial Tenants	Tenant/Licensee	Tenant/Licensee	Tenant/Licensee	By Negotiation
Group D	Sport and Recreation Clubs - Licences	Council	Shared (Council & Tenant/Licensee)	Tenant/Licensee	Council
	Sport and Recreation Clubs - Leases	By Negotiation	By Negotiation	Tenant/Licensee	By Negotiation
Group E	Miscellaneous Tenants and Licensees	By Negotiation	By Negotiation	Tenant/Licensee	By Negotiation

Cleaning is the responsibility of the Tenant or in the case of a shared premises, a contribution towards cleaning will be negotiated with the Licensee.

Council as Landlord will take responsibility for undertaking Essential Safety Measures regulatory inspections in accordance with the Building Code for all buildings upon land for which it is responsible.

Where a building has several Users, which may or may not include Council, outgoings incurred by Council to manage the building – inclusive of the common area - may be levied to each User in proportion to the area of the building they occupy.

Refer to Attachment 2 for a Sample Maintenance Schedule for Tenants.

2.7 Other Standard Terms and Conditions

Rates, Taxes, Levies - Tenants are required to reimburse Council or pay the relevant authority directly for all rates, charges, levies and taxes (except land tax if the lease is a retail lease) levied against the premises in full or proportionally if the premises is shared or in accordance with the relevant applicable legislation. If a property is rated for “Municipal Purposes” no Council rate will be levied. Municipal Purposes apply to many community uses. Council may at its discretion, apply the Cultural and Recreation Lands Act (1963) provisions to applicable Tenants.

Utility/Service Charges – Charges for telephony, Wi Fi network, water, gas and electricity are paid by the Tenant consuming the service either wholly in the case of a lease or proportionally in the case of a shared facility or in accordance with the relevant applicable legislation. Where the site is not separately metered, the parties will agree upon the methodology to determine the Tenant’s share of the charge. Dependent upon location, Tenants may be able to access electricity rates through the Local Government Power Purchase Agreement, allowing the Tenant to take advantage of Council’s purchasing rates.

Legal Costs – Each party will bear their own legal costs, except in the case of Group C and E tenants, where reasonable legal and advertising costs will be recovered.

Guarantees, Security Deposits, Bond – All agreements will allow for a form of surety to guarantee the obligations of the Tenant. For commercial tenants, a security deposit of 3 month’s rent is required and for all other Tenants or Licensees, a security deposit of up to \$500 may be required.

Insurance – All Tenants are to hold Public Liability insurance as a minimum and provide current copies of cover when requested. In the case of a land and buildings agreement, Council will insure the building and the fixtures

within. Fittings owned by Council will be insured by Council and fittings owned by the Tenant are required to be insured by the Tenant. All Tenants are required to hold insurance for their own property/assets. Insurance provided by VMIA is acceptable.

Reporting Requirements– all Community organisations are required to provide various reports to evidence their financial position, their activities undertaken at the site, their office bearers, membership numbers, etc. The Reporting Requirements for each Tenant will be determined by the Permitted Use of their Occupancy Agreement and Council’s policies and procedures.

Assignment – Council consent is required for an assignment of agreement.

Sub Letting/Licensing –Council consent is required for the permitted use and an associated or different use to be delivered by another legal entity at the Premises. The proposed use of the premises by any third parties must be consistent with the pre dominant or primary permitted use of the Tenant occupying the facility and will be subject to terms and conditions as agreed upon between the parties. The council may seek further information from the tenant to assist with determining whether the use of the leased/licensed area is appropriate and delivers the maximum benefit for the community. The council in its absolute discretion, may provide or not provide consent for sub-letting.

Additions to the Premises - The Tenant must obtain Council’s prior written consent before installing any improvements, fittings or fixtures to the Premises. Consent or otherwise will be at Council’s absolute discretion and may be subject to terms and conditions as Council may determine. Maintenance of any additions to the Premises financed wholly by the Tenant, will remain with the Tenant.

Consent for Grant Applications - The Tenant must seek Council’s prior written consent before applying for any external grant from any source for any purpose associated with Additions and/or Alterations to the Premises. Consent or otherwise will be at Council’s absolute discretion and may be subject to terms and conditions as Council may determine.

End of Term – If a new agreement is not pending, the Tenant will be required to vacate the Premises at the end of the term and return the Premises to Council in a manner which is consistent with the Tenant having fulfilled its obligations. If the lease is a land only lease, the Tenant will be required at Council’s discretion to remove all improvements (buildings) upon the land.

Sinking Fund – Agreements which contain obligations upon the Tenant to contribute to the cost of renewing all or some of the improvements/assets upon the land, will require the establishment and reporting of a Sinking Fund to provide for long term financial planning.

Working with Children Checks - The Tenant will be obliged to ensure compliance with the *Working with Children Act 2005*.

Child Safe Standards – The Tenant will be obliged under their agreement to ensure that Child Safe Standards and requirements are always complied with.

Gender Equality – The Tenant will be obliged under their agreement to ensure they are compliant or working towards compliance with the Gender Equality Act 2020.

Risk Management Plan - The Tenant will be required under their agreement to develop their own Risk Management Plan to understand the area they are occupying and mitigate any foreseeable risks.

Gambling –Tenants must adhere to Council’s policies regarding gambling. This is an essential condition of the agreement and may result in termination of the agreement if not adhered to.

Liquor –Tenants must comply with the Monash Planning Scheme and any Victorian Liquor Commission

requirements.

No Smoking – In accordance with Council’s Smoke Free Areas Local Law 2021 and the Tobacco Act 1987 Council does not permit smoking or vaping in a leased or licensed premises.

Termination – Each agreement will outline general and special conditions which failure to comply with may lead to a notice to the tenant to remedy the breach, failing which termination may ensue.

Essential Safety Measures – Council as Landlord will take responsibility for undertaking regulatory inspections in accordance with the Building Code for all buildings upon land for which it is responsible.

Hazard Identification – Where land or a building contains a known hazard, this will be disclosed within the agreement to the Tenant.

Personal Property Securities Act 2009 – Council seeks assurance that the Tenant has not granted a Security Interest for any Landlord personal property.

Dispute Resolution - Both parties are obliged to resolve any dispute in connection with the agreement in the manner specified in the agreement.

Acknowledgement of Council support – The Tenant is required to acknowledge Council’s support of their activities in their correspondence and on their website.

Monash Environmental Sustainability Guidelines – The Tenant must endeavour to observe these Guidelines which align with Council policy.

3. Community Engagement

Prior to offering a new **lease** agreement, Council is required to comply with the requirements of Section 115 of the Local Government Act 2020, and specifically subsection (3) which states that a Council must include any proposal to lease land in a financial year in the budget, where the lease is:

- (a) for 1 year or more; and
 - (i) the rent for any period of the lease is \$100,000 or more a year; or
 - (ii) the current market rental value of the land is \$100,000 or more a year; or
- (b) for 10 years or more;

If a Council proposes to lease land that is subject to subsection (3) and that was not included as a proposal in the budget, the Council must undertake a community engagement process in accordance with the Council's Community Engagement Policy in respect of the proposal before entering into the lease.

Council must, undertake a community engagement process in accordance with the Council's Community Engagement Policy in respect of the proposal before entering into the lease.

In accordance with Council’s Community Engagement Policy, on matters where the only form of community participation is an invitation to make submissions, and engagement on the matter was formerly governed by section 223 of the Local Government Act 1989, Council will continue to proceed in a manner modelled on section 223 of the Local Government Act 1989.

A person has a right to make a submission on the proposed Lease. Council will consider submissions and at the conclusion of this process decide whether to grant or not grant a lease.

Should the agreement be upon Crown land and the Council is the Committee of Management for the land, then “Grant and Purpose” approval is required from the relevant Minister or his/her Delegate on behalf of the Crown.

Whilst a Council resolution is required should a lease accord with the abovementioned criteria, Council can at any time for any type of agreement, require that the decision to proceed is subject to a Council Resolution or a Community Engagement Process.

A typical flow of reports is as follows but can change depending on any unique circumstances:

REPORT 1 – Advising Council of the proposed lease in accordance with Section 115 of the Local Government Act 2020 and seeking Council decision to undertake a Community Engagement Process in accordance with the Community Engagement Policy, and the administrative procedures to allow Council to hear any concerns from the community. This report to Council will present and discuss the proposed lease including its terms and conditions.



REPORT 2 - A report from the Committee established to consider and hear responses to the public submission process with a recommendation from the Committee on whether or not to progress with the granting of a lease.

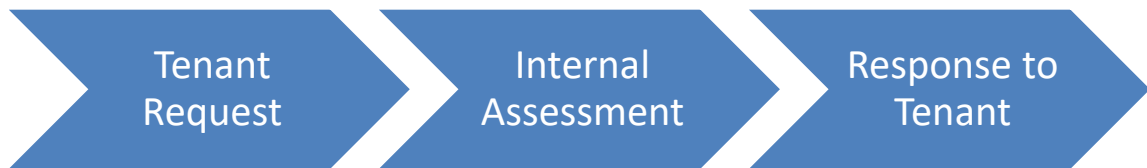


REPORT 3 - Subject to the recommendation in report 2 above, the primary purpose of this report is to seek a decision of Council to proceed or not to proceed with the proposed lease.

Sample Maintenance Schedule

LEGEND				
Council's Responsibility	Occupier's Responsibility			
	1	2	3	4
	Programmed or Preventative Maintenance/ Servicing to maintain in good working order	Reactive repair if damaged in the normal course of operations in order to keep in good condition	To repair or replace or to incur the cost of repairing or replacing if damage is as a result of misuse or negligence by the Occupier	To replace if asset is at the end of its useful utility
BUILDING				
Air conditioning and heating system				
Automatic door				
Anchor Points				
Doors (joinery, locks, screens)				
Lifts/Escalators				
Painting (internal and external)				
Solar Panels				
Skylights				
Verandas (balustrades, handrails)				
Windows (Locks, Glass, Coverings)				
Floor (Surfaces and Coverings)				
Electrical (wiring, switchboard repair and testing, GPO's, Light Switches, Globes, Fittings)				
Fire Systems (ESM, Testing/Tagging, Emergency/Exit Lights, Extinguishers, Hose Reels, Hydrants, Alarms, EWIS, Smoke Detectors, Sprinklers, Evacuation Plans)				
IT (data wiring, data projection, telephone and communication, audio, intercom, sound systems, internet provision)				
Kitchen (Hot water, joinery, tiling white goods, sinks, stoves, ovens, exhausts)				
Plumbing (Sewer, Stormwater, Bathroom fixtures, Pipes, Interceptors, Water tanks, Grease traps)				
Security (Alarms, CCTV, Keys, Intercom, Security Grilles/Screens, Lighting)				
Structure (Foundation, Floor, Walls, Ceiling, Roof)				
GROUNDS (Fences, Gates, Lighting, External Structures, Sheds, Retaining Walls, Paths, Shade Sails, Outdoor Furniture, Playground Equipment, Soft Fall, Gardens, Lawns, Trees, Roller Doors, Irrigation, Driveway, Gazebos)				
OTHER (Graffiti removal, Pest Control, Signage, Sanitation, Waste Removal, Lessee Improvements, Other Unspecified Items)				

Tenant Consent Process



1. Tenant Request

1.1 The Tenant is required to seek the consent of Council for the following items:

- Alterations and/or Works to the Premises, Land or the Buildings
- Any Licence or Permit variation or application
- Applying for a Liquor Licence
- Assignment of agreement
- Change of Use
- Applying for an External Grant for building works associated with the Land or Building
- Any other undertaking outside of the Lease or Licence conditions.
- Display of signs
- Bringing of heavy equipment or inflammable substances onto the land
- Change of shareholding
- Variation of Permitted Hours of Operation
- Use of Council Logo

Please note - this is not an exhaustive list.

1.2 Requests will only be considered if:

- A current Lease or Licence is in place;
- The Tenant has no outstanding breaches;
- The request is in writing to the Tenant's Service Manager;
- The request is given to Council with reasonable, adequate notice to allow Council to make an informed decision.

Where a Tenant has undertaken a change to the tenancy without seeking the consent of Council, the Council reserves its rights under the Lease or Licence to require the Tenant to remove any improvements and re-instate the Premises to the previous condition. Council may also consider terminating the agreement.

2. Internal Assessment

2.1 Council has many departments and impacted departments are required to:

- Consider the request;
- Provide advice;
- Seek clarification; and
- Suggest improvements
- Any approval or otherwise in accordance with Council's instrument of delegation.

2.2 Amongst other things, the Internal Assessment will consider the following items:

- Does the proposal align with the service delivered from the site?
- How will the project be funded?
- Who will own/maintain/replace the improvements?
- Will the proposed works impact upon the need for other works which Council may be responsible for?
- Who will be preparing the Plans/Drawings to obtain a building permit?
- Will a planning/building permit be required?
- Does the proposal impact upon strategic planning objectives for the precinct and/or site?
- Impact upon existing footpaths, shared user paths, carparks, drainage?
- Do the proposed works align with Council's Sustainability objectives?
- Remaining term of lease compared to the life of the proposed asset.

2.3 The level of complexity of the proposal and/or the financial value will determine whether the request is approved by the:

- Service Manager;
- Chief Executive Officer; or by
- Council Resolution.

Written consents are required from Council for various matters and will be undertaken in accordance with Council's Instrument of Delegation.

The Delegated Authority for any requests which may require a Planning Permit in the Public Park and Recreation Zone (whether it be either for consent to an application being made, or to the application being made and the proposed use and development), reside solely with the Director City Development or the CEO.

3. Response to Tenant

The Service Manager will provide advice to the Tenant outlining Council's position, inclusive of all conditions.

A response from the Tenant will be sought to ensure that they understand and agree to all conditions.