

7.1.9 REVIEW OF COUNCIL'S LEASING AND LICENCING POLICY - OUTCOME OF COMMUNITY ENGAGEMENT

Responsible Manager:	Mark Gibson, Manager Property & City Design
Responsible Director:	Peter Panagakos, Director City Development

RECOMMENDATION

That Council

1. Notes that the Community Engagement process on Council's updated Leasing and Licencing Policy 2024 (New Policy) has been completed;
2. Notes the feedback received from the community on the New Policy as provided in Attachment 1 and the recommended change to the External Grants provision;
3. Endorses the New Policy including the recommended change to the External Grants provision;
4. Notes that subject to resolution Item 3 above, the New Policy will come into effect and will be published to Council's website.

INTRODUCTION

The purpose of this report is to provide Council with an update on the outcome of the community consultation on Council's updated Leasing & Licencing Policy 2024 (**New Policy**). This report makes a recommendation that Council notes the feedback from the community and endorses the New Policy.

The report notes one change to Council's initial position on the policy, with a change to the wording of the External Grants provision, which has been raised as a concern through the community engagement process.

BACKGROUND

At its meeting on 30 April 2024, Council received a report seeking to commence the community consultation on the New Policy and resolved as follows:

"That Council:

1. *Notes that the current Leasing and Licencing Policy (2017 Policy) was adopted by Council at the August 2017 Council meeting and is due for renewal to ensure that Council has a consistent approach when entering into an occupancy agreement with an external organisation for the occupation of Council's property assets.*
2. *Resolves to commence community consultation on the New Policy in accordance with Council's Community Engagement Policy.*
3. *Notes that a further report will be presented to Council for consideration on the outcome of the community consultation on the New Policy, along with any changes and an officer recommendation"*

DISCUSSION

Community Engagement

In accordance with Item 2 of the above resolution, the New Policy was published on Shape Monash seeking feedback from the community. The community engagement on the new Policy commenced on 27 May 2024 and closed on 24 June 2024.

The Shape Monash page contained a survey with 8 questions and also provided the opportunity for submitters to provide their own submission on the New Policy.

Emails with links to the Shape Monash page were sent to the following groups:

- All current lessees, licensees, seasonal allocation groups, community hall hirers and grants recipients.
- The following Advisory Committees:
 - Disability Advisory Committee
 - Environmental Advisory Committee
 - Gender Equity Advisory Committee
 - LGBTIQA+ Advisory Committee
 - Monash Youth Committee
 - Multicultural Advisory Committee
 - Positive Ageing Network Forum
 - Positive Ageing Reference Group

A post with a link to the Shape Monash page was also posted on Council's Facebook page on 6 June 2024.

Community Response

By the engagement closing date, a total of 24 submissions were received on the New Policy, as follows:

- 17 submissions were made through the Shape Monash page
 - While Shape Monash registered 18 submissions, 1 of these was an exact duplicate from the same submitter.
- 7 email submissions were received
 - One of the 7 email submissions was sent direct to Councillors.

A detailed report on the submissions received as part of the community engagement process and the officer response to these submissions is provided in **Attachment 1**.

Submissions

Submissions are summarised as follows:

- 15 submissions were supportive of the New Policy
- 3 submissions were not supportive.
- 3 submissions were neutral.
- 3 submissions were unclear if they were supportive, neutral or not supportive.

The following table shows the responses from the 17 Shape Monash submissions received.

Shape Monash Responses

Strongly Support	Support	Neither support nor don't support	Don't support	Don't know
1	12	3	1	0

The following table shows the sentiments from the 7 email submissions received.

Email Sentiments

Supportive	Not supportive	Unclear
2	2	3

One of the email submitters noted they support the New Policy overall but didn't agree with the wording of the External Grants provision in the New Policy. This is discussed below.

Overall Sentiment

Overall, the New Policy has been supported, with only 3 out of the 24 total submissions not supportive.

Supportive submissions made comments that the New Policy:

- Provides transparency
- Is comprehensive
- Is balanced
- Helps address unacceptable behaviours
- Is consistent
- Acknowledges the value that volunteer groups provide.

A number of submissions were from existing Tenants and contained specific questions relating to their occupancy agreements. These operational questions were followed up by officers as noted in the Officer Responses in the Community Engagement Report in **Attachment 1**.

Concerns

The top three concerns raised in the submissions are as follows:

1. External Grants
2. Costs to Tenants.
3. Volunteer workload.

Concern 1: External Grants

The External Grants provision under *Section 2.7 – Standard Terms and Conditions* in the Procedure part of the New Policy currently reads as follows:

“External Grants - The Tenant must seek Council’s prior written consent before applying for any external grant from any source for any purpose.”

Submitters feel that this wording is too broad and would mean that Tenants would have to seek Council’s consent even for grants not associated with the Premises, such as for uniforms, equipment, technology upgrades etc. Submitters feel that this wording is also not consistent with the current External Grants clauses in occupancy agreements, which specifically requires consent for grants associated with alterations or changes to the Premises.

Officer Response

The requirement of Tenants to seek Council’s consent prior to applying for external grants is to ensure that no unauthorised changes are made to leased or licensed Premises. Council is less concerned with grants relating to other matters, as long as compliance with occupancy agreements is maintained.

The New Policy contains two provisions dealing with external grants, the “External Grants” provision detailed above and also the “Consent for Grant Applications” provision under Section 2.7 – Standard Terms and Conditions in the Procedure part of the New Policy, which reads as follows:

“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.”

Upon review, it is believed that the New Policy does not require both of these provisions and it will therefore be recommended to Council that the “External Grants” provision under Section 2.7 – Standard Terms and Conditions in the Procedure part of the New Policy be removed as these requirements are covered under “Consent for Grant Applications”.

Concern 2: Costs to Tenants

Some concerns were raised regarding increasing costs of outgoings such as utilities, rates, services, cleaning and maintenance costs, and how these would impact Tenants, particularly not-for-profit groups. One submitter felt that Council as landlord should pay rates and taxes for Tenants.

Officer Response

The New Policy reflects Council's standard practice, which is that Tenant is responsible for outgoings. Including utilities, rates, taxes, services and cleaning (responsibilities for maintenance obligations of each party are dealt with separately). For shared Premises, costs are apportioned between user groups as agreed upon by the parties and outlined in their occupancy agreements.

For non-commercial tenants, including not-for-profit groups, Council offers a significantly reduced rental fee in support of the community services provided, and it is not financially viable for Council to be responsible for outgoings. Service Managers are available to assist Tenants where possible if costs are proving prohibitive to the delivery of their services.

Exemptions from rates applies to some land depending on its use, under the relevant legislation. Some of these exemptions include exclusive use of the land for public, municipal or charitable purposes. Where leased or licensed Council land is non rateable, Tenants are not on-charged by Council. Other associated charges like waste costs and fire service levies may still apply as these are not exempted under the legislation. Tenants seeking clarity on their specific situation can contact Council for details.

Concern 3: Volunteer Workload

A few submissions raised concerns over the extent of work required of volunteers in the operation of their club or organization and it was felt that some of the requirements under the New Policy would increase this workload (such as the process for seeking consent for grants and Council's reporting requirements).

Officer Response

The intent of the New Policy is to provide clarity to a Tenant's responsibility to comply with their reporting requirements contained in the occupancy agreement which in turn, ensures Council is acting as a responsible public land manager on behalf of its community.

For example, the requirement for a Tenant to obtain Council's consent before applying for grants to make alterations to the Premises ensures that no unauthorised works are undertaken to the Premises.

Officers work closely with Tenants to assist with the ongoing management of facilities and terms of occupancy agreements, where appropriate, to help lift the burden from volunteer groups.

RECOMMENDED CHANGE TO THE NEW POLICY

It is recommended that the External Grants provision under *Section 2.7 – Standard Terms and Conditions* in the Procedure part of the New Policy is removed as per above.

"External Grants - The Tenant must seek Council's prior written consent before applying for any external grant from any source for any purpose associated with changes, alterations, additions or works to the Premises."

This change is in response to the submissions received and provides greater clarity as to the reason for Council's external grants consent requirement.

The New Policy with the recommended change is included as **Attachment 2** to this report.

POLICY IMPLICATIONS

Council Plan – The Council Plan requires the implementation of good governance strategies to maintain the highest standards of good governance. The proposed New Policy seeks to improve upon the 2017 Policy by embedding Council values and behaviours into occupancy agreements and to endorse Council’s goals, strategies, plans and policies.

SOCIAL IMPLICATIONS

There are no social implications to this report.

CONSULTATION

A detailed report on the engagement can be found in the Community Engagement Report (**Attachment 1**).

The engagement on the New Policy is now concluded.

The New Policy will be made available on Council’s website subject to Council’s decision to adopt it and all Tenants will be notified of this.

HUMAN RIGHTS CONSIDERATIONS

There are no human rights implications to this report.

GENDER IMPACT ASSESSMENT

The previously undertaken Gender Impact Assessment has been updated to note that no issues relating to gender were raised during the community engagement on the New Policy.

FINANCIAL IMPLICATIONS

If the New Policy is adopted, the financial requirements for each category of tenant will be implemented as new occupancy agreements are entered into.

CONCLUSION

It is recommended that Council endorses the New Policy with the recommended change to the External Grants provision.

ATTACHMENT LIST

1. Leasing and Licensing Policy Community Engagement Report [**7.1.9.1** - 21 pages]
2. Leasing and Licencing Policy 2024 [**7.1.9.2** - 25 pages]



CITY OF
MONASH

Review of Council's Leasing and Licencing Policy

COMMUNITY ENGAGEMENT REPORT

Overview

This report provides the following:

- A summary of the community engagement on the Draft Leasing and Licensing Policy 2024.
- Feedback received.
- Officers' response to the feedback received.

Community Engagement process

Background

At its meeting on 30 April 2024, Council resolved to commence community consultation on the new Leasing and Licensing Policy (**New Policy**) in accordance with Council's Community Engagement Policy.

Community Engagement

In accordance with Council's Community Engagement Policy, the New Policy was published on Shape Monash (link: <https://shape.monash.vic.gov.au/leasing-and-licencing>) seeking feedback from the Community.

The community engagement on the new Policy commenced on 27 May 2024 and closed on 24 June 2024.

Shape Monash

The Shape Monash page contained a survey with 8 questions and also provided the opportunity for submitters to provide their own submission on the New Policy. These questions are as follows:

Q1 - To what extent do you support or not support the New Policy?

Strongly Support/Support/Neither support nor don't support/Don't support/Don't know

Q2 - If you would like to, please explain why you gave this response

This question contained a text box where submitters could provide their thoughts.

Q3 - Do you have any other comments on the New Policy?

This question contained a text box where submitters could provide their thoughts.

Q4 - Your gender

Woman/Man/Non-binary/prefer not to say/Other

Q5 - Your suburb

Submitters could select their suburb.

Q6 - Would you like to provide your contact details for us to come back to you with the outcome of the New Policy?

Yes/No

Q7 - First Name

Q8 - Email

Emails

Emails with links to the Shape Monash page were sent to the following groups:

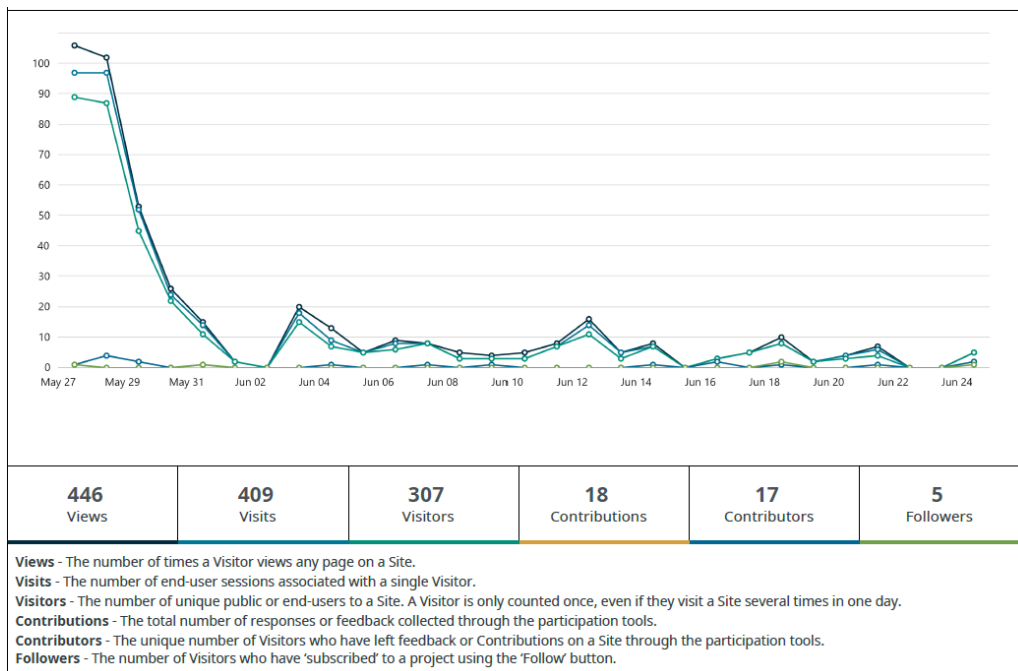
- All current lessees, licensees, seasonal allocation groups, community hall hirers and grants recipients.
- The following Advisory Committees:
 - Disability Advisory Committee
 - Environmental Advisory Committee
 - Gender Equity Advisory Committee
 - LGBTIQ+ Advisory Committee
 - Monash Youth Committee
 - Multicultural Advisory Committee
 - Positive Ageing Network Forum
 - Positive Ageing Reference Group

Social Media

A post with a link to the Shape Monash page was posted on Council's Facebook page on 6 June 2024.

Visitation

Visitation and engagement with the Shape Monash page for the New Policy during the community engagement period was as follows:



Enquiries and Phone Calls

Council’s Property Department received 3 calls/callback requests regarding the New Policy.

Feedback Received

Submissions

By the engagement closing date, a total of 24 submissions were received on the New Policy, as follows:

- 17 submissions were made through the Shape Monash page
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- 7 email submissions were received
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Submissions are provided in Tables 1 and 2 of this report. Individuals have been de-identified to protect their privacy.

Responses

Submissions are summarised as follows:

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What did people tell us?

Feedback Responses

Overall Sentiment

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A number of submissions were from existing Tenants and contained specific questions relating to their occupancy agreements. These operational questions were followed up by officers and are noted in the Officer Responses in Tables 1 and 2 below.

Concerns

The top three concerns raised in the submissions are as follows:

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Upon review, it is believed that the New Policy does not require both of these provisions and it will therefore be recommended to Council that the “External Grants” provision under *Section 2.7 – Standard Terms and Conditions* in the Procedure part of the New Policy be removed as these requirements are covered under “Consent for Grant Applications”.

Concern 2: Costs to Tenants

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For example, the requirement for a Tenant to obtain Council's consent before applying for grants to make alterations to the Premises ensures that no unauthorised works are undertaken to the Premises.

Officers work closely with Tenants to assist with the ongoing management of facilities and terms of occupancy agreements, where appropriate, to help lift the burden from volunteer groups.

Submissions

TABLE 1 – SUBMISSIONS RECEIVED THROUGH SHAPE MONASH

The following table lists submissions received through Shape Monash.

Individual submitters have been de-identified for the purposes of this report.

Submission Number	Q1 -To what extent do you support or not support the New Policy?	Responses to Shape Monash Q2 and Q3	Officer Response
SUB1	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>The Waverley Historical Society has a long history with both Waverley & now Monash Councils. This update to the draft Leasing & Licencing Policy gives further support to groups such as the Historical Society in the use of Council owned facilities. This new policy is less cumbersome & lengthy so easier to understand our group's responsibilities when using Council spaces. The policy also categorises us in a way that reflects our role as a historical society and our place in the community.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>With the Society being able to access the rooms at Mount Waverley library it has allowed us to preserve vital historical records & artifacts related to the history of the area now in Monash council boundaries. And to have use of the meeting rooms above Mount Waverley library provides a central location for our customers and helps us strengthen the heritage of our community through our own stories and those of the range of guest speakers we have hosted through our 53 years as a Historical Society.</p> <p>We would like to see some clarity about how to obtain consent to alter our days or hours of use of the Mount Waverley meeting rooms. For example, if we wanted to open 1 Saturday afternoon a month for drop in customers or if we wanted to have a working bee to clear out the rooms and storage spaces. For us the policy advises us to obtain consent but not from who or if there is an online process to do this.</p>	<p>Noted.</p> <p>Noted.</p> <p>Requests for changes to days and hours of use under existing occupancy agreements can be sent to the Council Service Manager for your occupancy agreement. These requests will then be assessed internally. An overview of the requirements and process for any requested changes to an existing occupancy agreement are detailed in the Tenant Consent Process section of the New Policy.</p>

Submission Number	Q1 -To what extent do you support or not support the New Policy?	Responses to Shape Monash Q2 and Q3	Officer Response
SUB2	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>Pleased that there is an acknowledgement, by category A, of continued value that volunteer run organisations deliver to the Monash area</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No Response Provided</p>	Noted.
SUB3	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>Hopefully this will support optimum use of facilities eg: organisations being able to make use of rooms booked by another organisation but not used.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <ul style="list-style-type: none"> - A greater focus on people living with disability may be limited by appropriate facilities -Will be interested to see to what extent maintenance and cleaning costs for Group A organisations is increased with attendant increase in costs. This may be a concern. - Requirement for a risk management plan is positive and supported - Not sure of rationale for working with children checks for volunteers not working with children. Is this intended as a general suitability check. 	<p>The New Policy will help maximise the use of Council-owned land and buildings by encouraging shared and multi-use of facilities by complementary services, as outlined in the principles and objectives of the New Policy (<i>Section 2 – Purpose</i>).</p> <p>Tenants are required to comply with all State and Federal laws, including the Disability Discrimination Act 1992, which makes it unlawful to discriminate against another person on the ground of the person’s disability in relation to access to, or use of a premises.</p> <p>Regarding your comments on costs, please see the Officer Response to Concern 2: Costs to Tenants above.</p> <p>Noted.</p> <p>Council considers the safety of children of the utmost importance and embeds this practice in everything it does. In turn, Tenants of Council facilities are obligated to comply with Child Safe Standards and ensure compliance with the Working with Children Act 2005. Where the use of a facility does not require a working with children check under the Working with Children Act 2005, it would not normally be a requirement for the Tenant (e. g., such as a lease for a telecommunications facility).</p>

Attachment 7.1.9.1 Leasing and Licensing Policy Community Engagement Report

Submission Number	Q1 -To what extent do you support or not support the New Policy?	Responses to Shape Monash Q2 and Q3	Officer Response
		- Seeking written consent form the Council before applying "for any external grant from any source and for any purpose" is overreach, not acceptable and not supported. Council should not determine if a non profit organisation has the opportunity to seek Federal funding for the purchase of computers/ AV equipment etc.	Regarding your comments on the External Grants provision, please see the Officer Response to Concern 1: External Grants above.
SUB4	Don't Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>The increase from 4% to now 10% rent is way too hard for local business owners, especially in this economy.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>Please allow for 5+5 year agreements with possibility of extension for those who truly deserve to be the tenants of Council businesses.</p>	<p>The comment regarding % rental increase relates to an existing lease to which upon clarification with the Tenant, the Tenant confirmed that there had been a misinterpretation.</p> <p>The preferred agreement terms for each Tenant Category are outlined in the New Policy (<i>Section 7 – Policy</i>). For Commercial agreements, terms of longer than 5 years can be considered where Tenants invest in a facility.</p>
SUB5	Neither support nor don't support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>No Response Provided</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No Response Provided</p>	We note that no comments have been provided as part of this submission.
SUB6	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>No Response Provided</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>Under section 2.7 Other Standard Term and Conditions, the final clause on External Grants states "The Tenant must seek Council's prior written consent before applying for any external grant from any source for any purpose". This condition is inconsistent with the clause Consent for Grant Application which restricts this requirement to "for any purpose associated with Additions and/or Alterations to the Premises." Council's consent should only be required in relation to the land and premises covered by the lease agreement. Organisations and in particular sporting clubs, are able to access a wide range of grants from the three levels of government and other philanthropic organisation in relation to their primary activities such as sporting equipment and uniforms. These organisations should not have to seek Council's consent with its attendant paperwork and delays, in seeking grants for matters unrelated to their lease with Council.</p>	Regarding your comments on the External Grants provision, please see the Officer Response to " Concern 1: External Grants " above.
SUB7	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>Seems to be a policy that covers quite a variety of use cases</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>How does the new policy support Electric Vehicle Charging stations if they're operated by charging networks. As council owns a lot of car parks it would be good to consider how this policy helps deliver more charging stations as the number of EVs grow in Monash.</p>	<p>Noted.</p> <p>The New Policy details the requirements for occupancy agreements for Council-owned land and is not a strategy or initiative which seeks to promote Electric Vehicle (EV)</p>

Submission Number	Q1 -To what extent do you support or not support the New Policy?	Responses to Shape Monash Q2 and Q3	Officer Response
			<p>Charging stations. Council does receive requests for use of its land by private entities for EV charging stations and these requests will be assessed in accordance with the New Policy.</p> <p>Council has undertaken other EV charging station initiatives, and there are now 4 Council-owned EV charging stations in Monash. Details can be found on Council's website: https://www.monash.vic.gov.au/About-Us/Achieving-net-zero-emissions-by-2025/Charge-Up-Monash-EV-charging-bays</p>
SUB8	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>Ensuring there is clear transparency for all tenants in Council owned buildings is required.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>Maintenance - as some areas of maintenance are Council's responsibility and some tenant - what are the guidelines in regard to the following</p> <ul style="list-style-type: none"> - How a maintenance request is put into council (eg email/phone) if Council responsibility - provided steps in how this is done. - Timeframe expectation of maintenance request being fulfilled - Maintenance requests timeframes - ie urgent work/non urgent - what are the definitions of urgent/non urgent work. - If maintenance request is not fulfilled within timeframe, what rights do the tenant have to complete maintenance and be reimbursed from Council (ie such as extra-ordinary weather events and Council has a significant number of requests that they can not fulfill in a timely manner). <p>Suggestion that this policy is sent with any lease renewals as it sits alongside. Was not provided this/ I was not aware of this policy with renewal of Council lease at the beginning of this year. Lease to also refer to policy.</p>	<p>Noted. This is the aim of the New Policy.</p> <p>Requests for maintenance of assets for which Council is responsible under the occupancy agreement can be submitted to Council's Customer Service Team via phone on 9518 3555 or email to mail@monash.vic.gov.au, for logging with the appropriate department.</p> <p>Timeframes for maintenance requests will depend on the nature of the request. All requests are generally completed within 10 working days.</p> <p>An urgent maintenance request would be for any maintenance issue which is likely to be a risk to the Premises or any person in the Premises, or a maintenance issue which causes the Premises to be unfit for the Permitted Use.</p> <p>In the event that Council is unable to complete a maintenance request and the Tenant wishes undertake repairs themselves, approval from Council would be required in accordance with the terms of the occupancy agreement.</p>

Submission Number	Q1 -To what extent do you support or not support the New Policy?	Responses to Shape Monash Q2 and Q3	Officer Response
SUB9	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>Please see below.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>On the whole the policy is similar to the provisions of the lease under which History Monash Inc (as a Group A organisation) currently holds a lease for use of the Monash Federation Centre. We find the current lease to be fair. On two points we would like to suggest the opportunity for more flexibility:</p> <p>2.3 Permitted use of Premises: this states that the licence offers non-exclusive, shared use of a facility. In the case of History Monash Inc, this provision is unsuitable because of our function. History Monash holds precious and irreplaceable archives and artefacts, including furniture, pictures and items which are on display in our exhibition area. Access to the toilets in the facility is through our workroom which contains the Local History Collection and many other publications on open display. It would therefore be a significant and unacceptable risk in terms of potential theft and damage to allow other community groups to use these premises. We would like to be confident that History Monash Inc can continue to have exclusive use of the premises.</p> <p>2.4 Term: this states that short term tenants will hold a lease for one to five years. Long-term tenants can hold a longer lease if they can invest in the facility. History Monash Inc would like to qualify for a long term lease, in view of its contribution to the public and to council in providing local history services for over sixty years. We do not, however, have the financial capacity to invest in the facility financially. Some flexibility around these categories – in the policy or in its implementation – would be desirable and we believe it would benefit Council in not having to manage short term lease renewals for our organisation .</p>	<p>This section of the New Policy broadly details what <i>Permitted Use</i> means within the context of an occupancy agreement. A licence agreement offers non-exclusive use of a Premises and a lease agreement offers exclusive use. History Monash Inc. currently has a lease agreement and therefore exclusive use of your Premises meaning that the concern you have raised does not apply.</p> <p>The Preferred Term outlined in the Tenant Classification table (under <i>section 7 – Policy</i>) of the New Policy helps ensure the use of Council’s facilities remains the best use, and that lengthy occupancy agreements are not executed without sufficient justification. Requests for a lease term longer than what is outlined in the New Policy would have to detail the reasons for the request and would require consideration by Council.</p>
SUB10	Strongly Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>A balanced policy that reflects the values of Monash and ensures that all residents can access facilities.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No Response Provided.</p>	Noted.
SUB11	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>It is very pleasing the Council Officers engage with tenants to address unacceptable behaviours. In the past, neighbours' complaints have been too heavily weighed against the tenants without a complete investigation of the facts.</p> <p>We Support Council: When this fails, the occupancy agreement is relied upon to rectify a situation, initiate enforcement actions, or, in some instances, terminate an agreement.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No</p>	Noted.

Submission Number	Q1 -To what extent do you support or not support the New Policy?	Responses to Shape Monash Q2 and Q3	Officer Response
SUB12	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>To have a consistent approach is important. I would be interested in seeing the new Lease as we had to go through a few amendments the last time.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No Response Provided.</p>	Noted.
SUB13	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>All sounds OK to me</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No Response Provided.</p>	Noted.
SUB14	Neither support nor don't support.	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>Clause 2.7-It is Landlord's responsibility to pay the rates & taxes for any sites and not on-charging that to the tenants</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No Response Provided.</p>	Regarding your comments on costs, please see the Officer Response to Concern 2: Costs to Tenants above.
SUB15	Neither support nor don't support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>As president of a sporting club, my experience is that everything is pushed onto volunteers and council make it harder every time for volunteer organisations and sporting clubs to operate by charging more. No doubt this will likely make it harder for sporting clubs to operate or more expensive. Even though we provide fantastic Community based activities or run by volunteers.</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>I am not a lawyer or commercial leasing expert therefore I am only five or four if it makes it easier for sporting clubs to operate and not more difficult.</p>	<p>Changes in the New Policy should not impact on costs to Tenants. Council's position has not changed regarding the responsibility of the payment of outgoings.</p> <p>Regarding your comments on volunteer responsibilities, please see the Officer Response to Concern 3: Volunteer Workload above.</p> <p>Noted.</p>

Submission Number	Q1 -To what extent do you support or not support the New Policy?	Responses to Shape Monash Q2 and Q3	Officer Response
SUB16	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>nope all good</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>appears sound and well produced</p>	Noted.
SUB17	Support	<p>Q2 - If you would like to, please explain why you gave this response</p> <p>All seems reasonable to me , although I am unsure how Council resolves an issue where not for profit entities and commercial entities have the desire to lease the same land or property</p> <p>Q3 - Do you have any other comments on the New Policy?</p> <p>No Response Provided.</p>	As outlined in the New Policy principles and objectives (<i>Section 2 – Purpose</i>), prioritisation is given to services that directly benefit the community. Where two groups are seeking occupancy agreements for the same land or building, these requests would have to be assessed in accordance with the New Policy, with input from the relevant internal departments of Council.

TABLE 2 – SUBMISSIONS RECEIVED THROUGH EMAIL

The following table lists submissions received through mail@monash.vic.gov.au

Individual submitters have been de-identified for the purposes of this report.

Submission Number	Sentiment	Submission Content	Officer Response
SUB18	Supportive	<p><u>Email #1</u></p> <p>Hi I am just reading the draft leasing and licencing policy, and would like to know if you class Wavecare Counselling as Group B – Not for Profit Community Service Organisation. Thanks</p> <p><u>Email #2</u></p> <p>Hi</p> <p>We have review this with our board and assuming that we are Category A, the draft looks fine in principal.</p> <p>The apportioning of operating costs could potentially be a bit tricky, but if there is goodwill on all sides hopefully not an issue.</p>	<p>This Tenant was advised by officers that Wavecare Counselling is classified as a <i>Group A – Not for Profit Community Groups</i> Tenant under the current Leasing and Licensing Policy.</p> <p>For shared facilities with multiple user groups, assessment of use of services and utilities is determined not only by the leased or licenced area, but also by the use of the area by Tenants to ensure fair apportionment (e. g., a high-volume community service vs lower-volume service).</p>
SUB19	Unclear	<p>Good day</p> <p>I have read your DRAFT Leasing policy and wonder re the difference between renting off the Council to hold our meetings and leasing off the Council to hold our meetings. Waverley Philatelic Society have been renting 1977 ish Alvie Rd Hall and from about 1980 the main hall or room in the Miller Crescent building from Monash Council. We are a non profit Incorporated society and the room renting cost is a severe drain on our finances. It is our major cost and our membership (anyone interested in Philately etc) annual subs is \$10 to help cover the premises hire of the order \$50 per month. As our membership diminished we moved from the main hall to a small room which currently suits our need and finances. We are registered with the Council as a Monash facility/Hobby, I think it was listed under. Could we be considered a non profit organization and lease for a peppercorn of \$10 per year and use a room once a month for 11 months of the year (not JAN) for our meetings please?</p> <p>Thank you</p>	<p>This request was assessed internally, and the submitter was advised by officers that due to the hours of use of the facility, the current booking arrangement for this group remains the most suitable option.</p> <p>The submitter was also provided with a link to grants which may be available to assist them with hire fees.</p>
SUB20	Not Supportive	<p><u>Email</u></p> <p>Good Morning</p> <p>I have attached a submission on the draft Leasing and Licencing Policy on behalf of Waverley Lions Village Inc.</p> <p>Regards</p> <p><u>Attachment</u></p>	

Attachment 7.1.9.1 Leasing and Licensing Policy Community Engagement Report

Submission Number	Sentiment	Submission Content	Officer Response
		<p>Submission - Draft Leasing and Licencing Policy - Waverley Lions Village Inc</p> <p>Waverley Lions Village Inc (Lionsville) leases Council land at 88 Winbirra Parade, Ashwood. Waverley Lions Village’s Mission Statement is “to provide safe, pleasant and affordable accommodation in a harmonious environment for eligible people whilst giving priority to those in necessitous circumstances.”</p> <p>The Committee has built 37 one-bedroom independent living units in what is now a multi-million-dollar residential development providing accommodation for aged persons in receipt of an aged pension or TPI pension.</p> <p>We currently have long term leases with Council at a nominal rental that recognises the investment by the Committee and the community service we provide.</p> <p>In the draft Leasing and Licencing Policy our committee would be classified as a Category B, Group B organisation. Although the term of any lease or licence would have regard to the development and use of the land, the committee is very concerned with the proposal to base any future fee on the market value of the land.</p> <p>The committee currently pays municipal rates on the 37 units and the community hall and any increase in fees would place a further financial burden on the committee. The units are let at an affordable rental and the committee wishes to ensure they continue to be let on this basis. Any increase in leasing and licencing fees may have an impact on the rental charged to our tenants and our ability to maintain the units and land at their present standard.</p> <p>The committee is currently investigating the construction of future units on the land and is in consultation with the Council. The estimated cost of this development is \$1.25M to \$1.5M. Any increase in leasing and licencing fees may be a financial impediment to this and future development on the land.</p> <p>The committee therefore does not support the proposed fees structure in the draft Leasing and Licencing Policy.</p>	<p>As you have existing, current lease agreements with Council, there is no intention to renegotiate the current terms or the rental amount of your agreements.</p> <p>The Tenant Classification table in the New Policy (<i>Section 7 – Policy</i>) notes that rental amounts for Tenants classified as <i>Group B - Not for Profit Community Service Organisations, Government Authorities and Agencies</i> is “Market Value subject to Tenant’s financial contribution and financial capacity”.</p> <p>For Tenants who invest significant capital into facilities, rental amounts below market value will be considered for new agreements.</p>
SUB21	Not Supportive	<p><u>Email</u> Please see my attached submission relating to your Draft Leasing & Licensing policy. Thanks for the opportunity to contribute. Regards</p> <p><u>Attachment</u></p> <p>City of Monash New Leasing & Licensing Policy</p> <p>Whilst my views do not generally impact the broad Policy principles set out in the document presented for public comment, I consider them to be significant in the detailed application of leasing arrangements to Group D Entities [Sporting Clubs] and particularly the daily working relationship between such entities and Council.</p> <p>Spanning the last 40 years there has been a need for traditional sporting clubs which were established, and thrived, in the 1970’s, 1980’s & 1990’s, to change their relationship with their immediate community and fully promote integration of new and diverse community members whether they differ by nationality, culture, heritage, country of origin or in other ways. My thinking is based on involvement as a City of Waverley/Monash resident of almost 60 years.</p>	

Submission Number	Sentiment	Submission Content	Officer Response
		<p>My early involvements included committee membership and involvement in establishment of Brandon Park Pre-School and Lum Reserve Tennis Club in the 1970's.</p> <p>Since then I have had almost 50 years executive involvement with Waverley & District Tennis Association, the largest association of its type in Australia providing a broad range of community competition, tournament tennis & junior tennis development through almost 100 affiliated clubs in Monash and surrounding suburbs – a significant contributor to community life and especially local sport.</p> <p>In acknowledging current difficulties in community clubs' strategies to attract and retain active members, I recall the position when Lum Reserve Tennis Club was established on land provided and prepared by Waverley Council. Major fundraising efforts to pay for courts and the clubhouse brought approximately 700 community members together sufficiently motivated to become club members because it was seen as an important community facility even though they were not necessarily committed tennis players or playing at all. Competition teams, social events, Sunday social play, tournaments, club championships, BBQ's, dinner dances, progressive dinners and even Annual General Meetings were all well supported components of our and other local tennis club life.</p> <p>Times have changed but the priority for community integration remains the same. In observing a common weakness in this area in many community tennis club, I also note the failure of all three levels of government – Local, State & Federal Government, to invest in society & community integration, especially with large scale immigration boosting population in recent years. Multiculturalism has superseded the priority for integration of new arrivals into the Australian community.</p> <p>At community club level we are failing to successfully involve other nationalities in our community competition teams and social activities to the extent that we should. The common pattern is that such individuals with a strong interest in tennis will seek to play socially with immediate family & friends and be reluctant to integrate further into club activities – this is partly a failing by club administration and other club members but is also a consequence of failure at three levels of government to promote Australian lifestyle & integration. Notably several Waverley clubs do have significant numbers of other nationalities as members but there is still much scope for improved integration.</p>	<p>Regarding your comments on the involvement of different groups in tennis activities, the City of Monash continually invests in tennis and tennis initiatives to increase participation in the sport. The Monash Tennis Plan (Link: https://www.monash.vic.gov.au/files/assets/public/v1/edms/things-to-do/sport-recreation/monash-tennis-plan-2021.pdf) sets out clear objectives to ensure that tennis in Monash is sustainable and available to the whole community to enjoy. There are also short, medium and long-term actions detailed in the Monash Tennis Plan to increase participation and diversity in the sport.</p> <p>Some of these actions include the following:</p> <ul style="list-style-type: none"> • All tennis clubs to participate in the Active Monash Sports Club Framework to build the capacity of clubs and improve broader community and social outcomes. • Identify opportunities to develop publicly accessible multi-purpose courts across the City, especially in the south-west of Monash where there is a relative undersupply of tennis facilities.

Submission Number	Sentiment	Submission Content	Officer Response
		<p>Club Tennis Coaches</p> <p>Professional coaching at community club level does play a key role in increasing the popularity, standard and enjoyment of tennis. In Monash, clubs achieving larger membership have benefited from coaches attracting young people to tennis and this commonly includes a growing proportion of other nationalities who are more receptive to community integration when young.</p> <p>Other clubs without coaches able to energise this introduction to community tennis have declined, and in some cases closed or merged.</p> <p>Promoting this coaching role as one avenue to improve community integration via tennis is a positive strategy. Of concern, there has been a suggestion that Council administration has the perception tennis coaches are “profiteering” in the use of community facilities. My observation as an accountant in public practice in Monash was that this is unlikely with their contribution at least matching their financial reward.</p> <p>I consider that a working group of coaches, club committee members, Council recreation officers and Council officers charged with the responsibility for progressing community integration, could lead to exceptional outcomes with increased usage of community facilities and stronger community spirit at least amongst young people being attracted to tennis. Once this new model proved successful there is no reason it would not attract the attention of older residents [parents] and have application to other community sports and groups.</p> <p>There is evidence that with the right operational model & support of all stakeholders that government funding could be available to resource the structure, provide financial inducement for targeted community members to participate and to remunerate the increased number of coaches.</p> <p>The recently opened Monash Tennis Centre at Jells Park, whilst not following the traditional club profile, does offer an exciting model to evaluate many aspects of community integration of all age levels via sport.</p> <p>Community Volunteers</p> <p>A major concern with tennis clubs [and community clubs commonly] is the ongoing need for new volunteers to administer and promote membership activity.</p>	<ul style="list-style-type: none"> • Prioritise clubs that are best able to demonstrate a welcoming and inclusive environment. Clubs are encouraged to collaborate with their Tennis Victoria Club Development Officer to develop a Diversity and Inclusion Plan • Council to install the Book a Court program as part of all major tennis facility developments, on the basis that suitable casual use is provided. • Council to expand its community activation program and partner with clubs to activate tennis venues and grow participation. <p>Lease agreements with tennis clubs include requirements to help meet the objectives of the Monash Tennis Plan, such requirements that clubs report on the diversity of their members, allow casual booking of courts and more.</p> <p>Regarding your comments on tennis coaches, we believe you are referring to the requirement in tennis club lease agreements for Council approval of third-party agreements between tennis clubs and commercial operators, such as coaches (in accordance with the Monash Tennis plan).</p> <p>As a manager of public land, Council has a responsibility to the ratepayers and the community to ensure the sustainable operation of its leased premises. Tennis coaches operate a for-profit business on public land, which is leased to tennis clubs at rental rates far below market value. Council has a responsibility to ensure that any third-party agreements entered into by tennis clubs using public land are fair and in the best interest of the community.</p>

Attachment 7.1.9.1 Leasing and Licensing Policy Community Engagement Report

Submission Number	Sentiment	Submission Content	Officer Response
		<p>In the passage of time, founding committee volunteer numbers have diminished with natural attrition but new club members have been reluctant to become involved although they desire to use the available facilities. This has been exacerbated by society and bureaucracy’s growing demands for regulation, increased legal liability and more intense lifestyles.</p> <p>Cost & Benefit of Community Tennis Tennis activity in Monash & elsewhere, has historically been provided to communities for daily use at a low cost because of Council assistance in establishing the facilities on a club basis with club committee and members also providing substantial funds to build courts and clubhouses. This era has passed and the asset value of what is currently available for their benefit is not necessarily recognised by today’s users. Better promotion to the community of these resources and their value can lead to more appreciation of the benefits available from club lifestyle. The ability of tennis to provide physical activity with its obvious health and social benefits to those as young as 5 and as old as 90 would appear to be unique. Results from a research study released by Mayo Clinic Sports Medicine in 2021 concluded that tennis leads the way amongst all sporting activities concluding that the activity with its balance of physical and social content could add 9.7 years to participants lives.</p> <p>Future Direction Monash Council has financially supported some long-established community clubs in recent years with building works and court upgrades. Such contributions do much to enhance the future of clubs. Value to the community in the future may however be more dependent on lateral thinking in administrative support and guidance confronted by growing regulation and legislative controls (See list in Point 9 of your draft Policy). The need for Child Welfare Officers, Health Risk & Safety Officers, Equality for Minority Groups and various licensing and reporting requirements are not doubted but thought needs to be given to implementation when faced by shrinking numbers of volunteer committee members. There is a risk that such regulation will directly discourage participation.</p> <p>As an example one aspect of Waverley Tennis commitment to community tennis is directed to Seniors, both women and men, with weekday competitions in the morning. To promote the social aspect of these competitions, club teams are encouraged to provide a light lunch at the conclusion of play in the early afternoon. Clubs have held liquor licenses to enable availability of wine and beer to occasionally add to the social aspect. It appears that such offering is now not acceptable with hours for consumption being restricted to later in the day/evening. Community tennis clubs generally receive no government support beyond that provided by local government. Greater government priority at all levels to promoting physical health and wellbeing to all ages in our community as well as integration of new members and minority groups, would recognise the positive role that community sport can play. Increased funding in this area, with effective promotion and wise management would lead to substantial growth in tennis and other community style sports.</p> <p>I do not consider the matters outlined above have been given any priority in setting out your policies for leasing & licensing of community facilities. It should be the ultimate objective of such policies – greater usage by a more integrated, healthy and happy community. Leasing & Licensing Procedure</p>	<p>Regarding your comments on demands placed on volunteers, please see the Officer Response to Concern 3: Volunteer Workload above.</p> <p>As discussed above, the Monash Tennis Plan details clear objectives with respect to promoting tennis in Monash.</p> <p>As above, regarding your comments on demands placed on volunteers, please see the Officer Response to Concern 3: Volunteer Workload above.</p> <p>Liquor licence hours for clubs are considered on a case-by-case basis. Council has an obligation to comply with its Liquor Licensing Policy at Council Recreation and Sporting Reserves (link: https://www.monash.vic.gov.au/Forms-Policies-Plans/Liquor-Licensing-Policy-at-Council-Recreation-and-Sporting-Reserves)</p> <p>As detailed in <i>Section 2 – Purpose</i> of the New Policy, The purpose of this policy is to ensure that Council has a</p>

Attachment 7.1.9.1 Leasing and Licensing Policy Community Engagement Report

Submission Number	Sentiment	Submission Content	Officer Response
		<p>(Page 13 of Draft Report) Paragraph 1.2.1 Tenant Selection Considerations Whilst acknowledging the importance of the assessment criteria covered by the 14 dot points for every dot point of expectation placed on volunteer committees it is critical for future community development that Council self-assess how it can support committees apply their volunteer time to achieve the best outcomes – more community participation with more health & satisfaction benefits, togetherness and community integration. If there is not a balanced approach by Council, volunteers will be discouraged with serious community consequences. In a healthy relationship between Council and community volunteer run clubs, both must acknowledge the valuable contribution each makes to community life and its advancement and work together for its achievement. Thank you for the opportunity to offer comments.</p>	<p>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. The purpose of the New Policy is not to promote any one type of use of Council facilities, such as tennis. Other strategies and initiatives such as the Monash Tennis Plan seek to promote and increase community engagement.</p> <p>As above, regarding your comments on demands placed on volunteers, please see the Officer Response to Concern 3: Volunteer Workload above.</p> <p>All other comments are noted.</p>
SUB22	Supportive	<p>Further to your email of the 28th May (below), the Ceres Calisthenic Club (Ceres) acknowledges your response to our query as to the impact of the New Policy on the operations of Ceres having regard to the terms and conditions of the Facility Licence Agreement and the Funding Deed both dated 2 October 2008. Ceres is supportive of the New Policy provided there is no conflict with the terms and conditions of the Agreement and the Deed. Please contact me if you have any queries.</p>	<p>There is no intention to renegotiate terms for existing, current agreements.</p>
SUB23	Unclear	<p>Dear Property Team of Monash City Council,</p> <p>We are the current tenants of the MAPH Café formerly known as the MGA Café since October 2019. After reviewing the rental rate I have observed an incredible increase of current 4% to 10%, this whopping increase of 6% would be unrealistic for us to pay. With the economy as it is currently, reduced foot flow and increase in costs, we simply cannot afford this rental increase and encourage you to review this. We have been serving the community around us for a very long time, pushing through the COVID-19 pandemic. We urge you to review the rental rate with consistency for the community in mind.</p> <p>We recommend terms of 3+3, 4+4 or 5+5 with possibility of extension so that reputable tenants with a consistent track record in serving the community positively can continue to serve with a sense of security and stability in mind.</p> <p>We sincerely hope that you will take our feedback into consideration, if you would like to discuss this further please do not hesitate to contact me via the details below.</p> <p>Sincerely,</p>	<p>Please see the Officer Response to your other submission, SUB4 above.</p>

Submission Number	Sentiment	Submission Content	Officer Response
SUB24	Supportive overall, not supportive of the wording of the External Grants provision.	<p>Hi Rebecca, Brian and Matt</p> <p>In response to the Council's request for comment on the proposed changes to its Leasing and Licensing Policy, the Mt Waverley Bowling Club supports the approach being taken.</p> <p>However we strongly opposed the proposed clause that Council consent be required for "any external grant from any source for any purpose" particularly given the six month delay the Club endured to simply replace its existing shade awnings with a more effective shade structure for its green.</p> <p>FYI below is a copy of our submission to the review.</p> <p>Under section 2.7 Other Standard Term and Conditions, the final clause on External Grants states "The Tenant must seek Council's prior written consent before applying for any external grant from any source for any purpose". This condition is inconsistent with the clause Consent for Grant Application which restricts this requirement to "for any purpose associated with Additions and/or Alterations to the Premises." Council's consent should only be required in relation to the land and premises covered by the lease agreement. Organisations and in particular sporting clubs, are able to access a wide range of grants from the three levels of government and other philanthropic organisations in relation to their primary activities such as sporting equipment and uniforms. These organisations should not have to seek Council's consent with its attendant paperwork and delays, in seeking grants for matters unrelated to their lease with Council.</p> <p>We are happy to elaborate further on our concerns if required.</p>	<p>Regarding your comments on the External Grants provision, please see the Officer Response to Concern 3: External Grants above.</p>



Leasing and Licencing Policy

<i>Policy Type:</i>	<i>Council</i>
<i>Adopted by Council on:</i>	
<i>Version:</i>	<i>1</i>
<i>Review Date:</i>	
<i>Responsible Department:</i>	<i>Property</i>
<i>Prepared by:</i>	<i>Mark Gibson, Manager Property & City Design</i>

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DRAFT

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 licencing 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	<p>Resolve on leases which:</p> <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. 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)

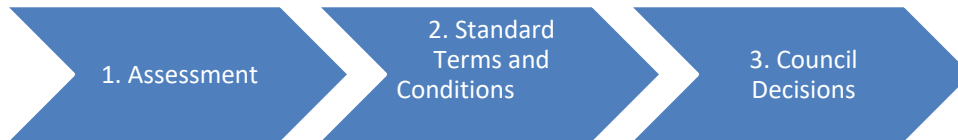
Council Plan, Strategies and Policies, Fees and Charges

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)

DRAFT

Leasing and Licencing 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/Serviceing 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.

~~*External Grants* – The Tenant must seek Council’s prior written consent before applying for any external grant from any source for any purpose.~~

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.

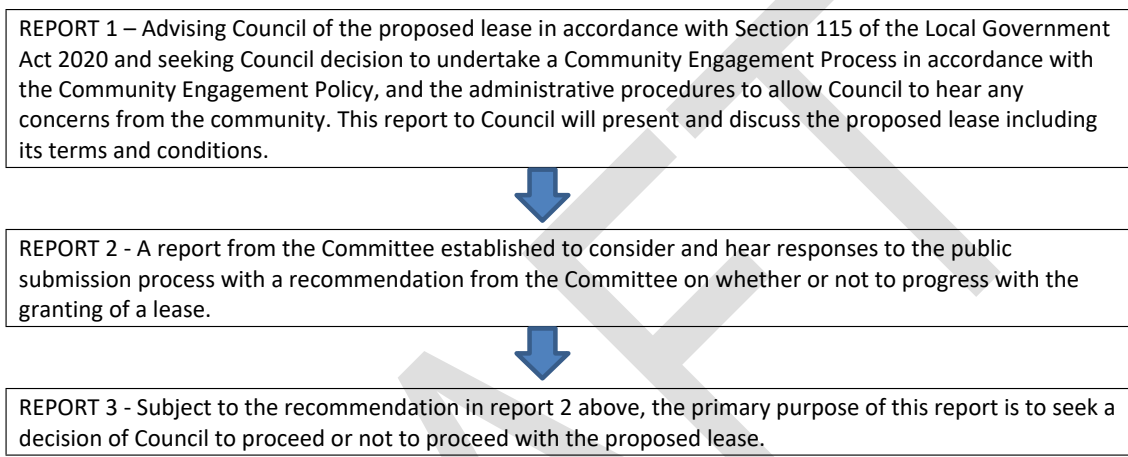
A person has a right to make a submission on the proposed Lease. Council will consider submissions and at the

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:



Sample Maintenance Schedule

LEGEND				
Council's Responsibility	Occupier's Responsibility			
	1	2	3	4
	Programmed or Preventative Maintenance/Serviceing 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.