




Property Occupancy Policy

Category: Council Policy

Adoption: Council Date: 26 November 2019

Review Period: Three years

Responsible Manager: General Manager Corporate Performance

Signed by CEO: 

Date: 20.12.2019

1. Purpose

Central Goldfields Shire Council is committed to working in partnership with the community to encourage, develop and support community based organisations and the wide range of local quality recreational, cultural, social and community support and business group initiatives which they undertake that make a positive contribution to the Central Goldfields Shire community and strengthen the development of a supported, cohesive community, living a full and healthy life.

Council recognises that there is an overall social benefit for the community to enable the use of Council owned and managed land and facilities by organisations that provide recreation and sporting opportunities, and other community services. These services enhance the quality of life and wellbeing of our municipality and support the objectives set out in the Council Plan.

This policy aims to provide a framework for determining the occupancy agreements for public land within the Shire in a fair, transparent and equitable way. Through implementation of this policy Council will ensure that:

- Occupancy agreements maximise community benefit of public land;
- Occupiers have security of tenure to develop and grow whilst ensuring longevity and sustainability;
- Occupiers of public land are treated in a fair and equitable manner;
- Occupancy agreements are issued in accordance with legislation and Council's delegations and powers;
- Occupancy agreements are simple and transparent;
- The rights of both occupiers of public land and Council are protected;
- Risks associated with public land occupancy are appropriately managed.



2. Scope

This policy applies to public land which includes land and built structures located on Council freehold land or Crown land where Council is the appointed committee of management, which is occupied by third parties.

The principles of this Policy apply to both new occupancy agreements entered into after the policy approval date, and those agreements which expire after the policy approval date and are considered for renewal. Council commitments under agreements existing at the time of this policy being approved, including 'options' clauses, will be honoured in their original form.

Council is committed to ensuring the health, safety and ongoing sustainability of community groups and organisations within the Shire.

3. Policy

3.1 Definitions and Abbreviations

Term	Meaning
The Act	Means the <i>Local Government Act 1989 (Vic)</i>
Approval in Principle	Approval that is subject to other conditions being satisfied, such as legislative advertising process, prior to the agreement going ahead.
Capital Works	Any improvements, upgrades, alterations and/or additions (internal or external) to change the use, function, or layout of an existing Council owned or managed Property.
Commercial	An occupation which, by its nature, could reasonably be expected to generate a profit. Includes businesses, instructors, corporations, political groups and training organisations. May also include government departments and not-for-profit organisations operating on a commercial basis.
Community benefit	Economic, social and environmental benefits that accrue to the wider community.
Council	Central Goldfields Shire Council
Council managed land	Crown Land managed by Council as the designated Committee of Management but not owned by Council. May also include buildings or other assets located on this land.
Council owned land	Land owned by Council in freehold. May include buildings or other assets located on this land.
CPI	The Consumer Price Index, a statistical measure that examines with weighted average of prices of groups of consumer goods and services.
DELWP	Department of Environment, Land, Water and Planning or its successor.
EOI	Expression of Interest, competitive public process in which submitters are invited to bid for the right to hold a lease or licence over Council-owned or Council-managed land.
General Manager	The Council appointed General Manager Corporate Performance with responsibility for property leases and licences.
Lease	An agreement for the occupation of land and/or buildings which grants exclusive rights of occupation to the tenant.
Licence	An agreement for the occupation of land and/or buildings which does not grant exclusive rights of occupation to the tenant.
Not-for-Profit organisation	An organisation that provides a demonstrated community benefit, and does not operate for the profit, personal gain or other benefit of particular people. Some examples include charities, sporting and recreational clubs, community service organisations, professional and business associations, and cultural and social societies.
Private use	An occupation of a private nature which provides no, or minimal, wider community benefit.
Tenant	An individual, company or incorporated body that occupies Council owned or Council managed land under an occupancy agreement.
Valuation	A valuation undertaken by a person registered to do so under the <i>Valuation of Land Act 1960 (Vic)</i> .



3.2 Statutory Requirements

Council Owned Land

The granting of a Lease for Council owned land may be subject to Council complying with its statutory obligations in accordance with Section 190 of the Act which requires Council to advertise its intention to lease land to another party and to consider submissions under Section 223 if the lease is to be -

- (a) for 1 year or more and -
 - i. the rent for any period of the lease is \$50,000 or more a year; or
 - ii. the current market rental value of the land is \$50,000 or more a year; or
- (b) for 10 years or more; or
- (c) a building or improving lease

Council Managed Land

Council is also responsible for managing Crown land on behalf of the Victorian Government (DELWP) as the appointed Committee of Management in accordance with the *Crown Land (Reserves) Act 1978 (Vic)*. Council must adhere to the:

- Leasing Policy for Victorian Crown Land May 2018; and
- Crown Land Leasing Guidelines 2012.

These two documents provide the framework and guidelines for the leasing of Crown land in Victoria. Council must seek Ministerial approval in-principle and final approval to lease or licence any Crown Land and all agreements must be prepared on DELWP's standard documentation.

Other Requirements

Council is required to maintain a publicly available register of all leases involving land where Council is the lessor, including details of the lessee, terms and value, in accordance with the *Local Government (General) Regulations 2015 (Vic)*.

3.3 Types of Agreements

When considering the appropriate occupancy agreement for a piece of public land Council has several options to choose from including:

- Lease
- Licence
- Seasonal use agreement
- DELWP appointed Committee of Management
- Section 86 committee under the Act



Further detail on each of these options follows:

3.3.1 Lease

When – There is public land which has a single use and users have exclusive use of the land and/or buildings. Some examples include land on which bowling, golf, tennis or gun clubs are situated, or buildings and/or land occupied for the sole benefit of the tenant, for example Aerodrome sites and buildings. Access to such public land is typically either:

- Physically restricted and members of the general public can only participate in the dedicated land use after paying a membership or casual hire fee.
- Not available – the tenant has sole exclusive use of the site.

Where – There is an incorporated legal entity that wishes to occupy public land for a single purpose.

3.3.2 Licence

When – There is public land which has a single or multiple uses and users that have non-exclusive use of the site. One example is a public building that is used by different community groups on different days of the week but at regular times each week.

Where – Licences enable Council to allow multiple users of public land to occupy the land and/or buildings in a shared (non-exclusive) manner, which improves the utilisation of the facility and reduces the need for stand alone, single use infrastructure.

3.3.3 Seasonal use agreement

When – The public land has multiple uses and users have non-exclusive use of the site. An example of this is a recreation reserve with football, cricket and netball facilities that is also available for members of the public to access at no cost when not in use for sporting activities.

Where – The public land is managed by Council and individual clubs only wish to occupy public land only for the duration of their sporting season. At season's end they relinquish their occupancy in order to allow another club to use the public land for their sporting season.

3.3.4 DELWP appointed committee of management

When – There are two main types of public land occupancies suited by this management structure:

- Crown land which has multiple uses and users have non-exclusive use of the site. An example of this is a recreation reserve with football, cricket and netball facilities that is also available for members of the public to access at no cost when not in use for sporting activities. Because the public land is not locked, members of the public can enter the land and undertake unsupervised activity (such as jogging on the turf, flying a kite, walking the dog, having a hit of cricket in the nets) without paying a fee to do so.



- Crown land which has a single use and users have exclusive use of the site. Some examples include land on which bowling, golf, tennis or gun clubs are situated. Access to such public land is usually physically restricted and members of the general public can only participate in the dedicated land use after paying a membership or casual hire fee.

Where – There is an existing (or potential) incorporated legal entity that is able to demonstrate that it has the capacity to manage the Crown land with due regard to the interest of all stakeholders in that public land. Such entities are often constituted with broad representation and display maturity in their governance and financial management.

Why – Rather than having a tripartite land management structure (DELWP, Council and the land manager), the land management structure is simplified to just DELWP and the land manager. This structure provides improved communication, greater autonomy for the land manager, and eliminates any conflict where Council and DELWP may have conflicting views on a particular issue.

3.3.5 Section 86 committee under the Act

Where - Council wishes to delegate the management of the public land to a committee.

Why – In order to ensure that the interests of all stakeholders are recognised and managed in a fair and equitable matter, Council can appoint a Section 86 committee and delegate the responsibility of managing the public land to that committee.

3.4 Expression of Interest (EOI)

Council may decide to conduct an EOI for the issue or renewal of a lease or licence that is wholly or partly commercial in nature. The decision to conduct an EOI process for a property will be based on factors including the following:

- The likelihood of multiple interested applicants and users
- The size and location of the property
- The value of the property
- The expected rental return
- To ensure the tenant delivers specific services
- To allow for innovative or flexible solutions for the property



3.5 Duration of Tenure

Council Owned Land

The duration of agreements on Council owned land will generally be determined in accordance with the table below and will take into account the intended and future use of the land and/or buildings, capital investment and economic benefit including employment.

<i>Type</i>	<i>General terms</i>
Lease	Three years with consideration of two further options of three years
Licence/Seasonal Use	Two years with consideration two further options of two years

Notwithstanding, this table is a guide only and other tenures may be more appropriate in certain circumstances, whereby Council may consider extended terms for groups where investment and development is proposed.

Council Managed Land

Where Council manages Crown Land, all tenures will be determined on a case by case scenario and must be approved in-principle by DELWP before Council can offer a lease or licence. The duration of a lease is restricted to a full tenure of 21 years and a licence will not exceed nine years.

<i>Type</i>	<i>General terms</i>
Lease	Up to 21 years
Licence/ Seasonal Use	Up to nine years

Any further extensions to the above tenures will be considered on a case by case scenario and will be at the discretion of Council and DELWP.



3.6 Occupant Categories and Assessment of Rent

All occupants entering into an Agreement for Council owned or managed land and/or buildings under this policy are categorised and the rent will be determined in accordance with the table below.

Category of tenant	Definition	Rent and costs	Eligibility
A - Not-for-Profit/ Community Groups	Not-for-profit and Community groups that are generally accessible to all residents and engage the wider community for the benefit of the inclusion/ wellbeing and engagement of the community	<ul style="list-style-type: none"> - The occupier is responsible for fire services property levy and water charges. Payment of utility services will be determined on a case by case scenario. - A community rental of \$104.00 (plus GST) per annum will apply. 	<ol style="list-style-type: none"> 1- Use approved by Council and; 2- Not-for-profit or voluntary groups that receive minimal or no external funding to operate with limited revenue raising ability and; 3- Provides significant community benefit.
B - Other/ Community Groups	Community groups that provide a core service to the local community and have an element of commercial/ business operations.	<ul style="list-style-type: none"> - The occupier is usually responsible for all utilities services, the fire services property levy and any waste removal charges. - A rental of \$520.00 (plus GST) and will apply. 	<ol style="list-style-type: none"> 1- Use approved by Council and; 2- Has some revenue raising ability and may receive external funding support and; 3- Groups that charge fees and has the ability to raise revenue and; 4- Provides significant community benefit.
C - Other	Organisations or Groups that have an element of commercial/ private operations that may provide a level of community service	<ul style="list-style-type: none"> - The occupier is responsible for all utilities services, fire services property levy and any waste removal charges. - The rent will be determined on a case by case scenario whereby further discounts may be applicable i.e. capital contribution to the improvement of assets. 	<ol style="list-style-type: none"> 1- Use approved by Council and; 2- Groups that charge fees and have the ability to raise revenue.
D - Sporting Groups- Seasonal Tenants	Sporting groups that may or may not have an element of commercial/ private operations	<ul style="list-style-type: none"> - The occupier is usually responsible for all utilities services, fire services property levy and any waste removal charges. - The rent will be determined on a case by case Scenario and may be negotiated/ discounts applied i.e. capital contribution to the improvement of assets. 	<ol style="list-style-type: none"> 1- Sporting group; 2- Use approved by Council and; 3- Groups that charge fees and have the ability to raise revenue.
E - Commercial/ Private use	This category includes operation of a business or commercial activity where income is obtained and/or private gains from the use of the premises.	<ul style="list-style-type: none"> - A market rent valuation determined by an independent qualified valuer or competitive public EOI process. 	<ol style="list-style-type: none"> 1- Use approved by Council.

From time to time the occupant categories under this section may not be considered suitable and the Chief Executive Officer has the power to deviate from this policy if deemed appropriate.



3.7 Rent reviews

Rental Reviews will occur in accordance with the Agreement. This will generally occur when a new term is entered into.

All Community based rent will be increased annually by CPI during the term of a Lease or Licence.

All Commercial rent will be increased annually by 3% during the term of a Lease or Licence. On the exercise of any option for renewal/ further term the rent will be determined by a certified practicing valuer at the current market rental.

3.8 Insurance

All occupants are required to hold current Public Liability Insurance to a value determined by Council as detailed in their agreement. A copy of the Public Liability Insurance is to be provided to Council on an annual basis as evidence of cover.

All occupants must hold current insurance for contents or equipment owned or controlled by them at the Council property. Consideration will be given to specific circumstances and historical arrangements on a case by case scenario. Where multiple users are in occupation of a Council asset direct consultation with groups will be undertaken to determine the appropriate mechanisms for contents insurance.

Building Insurance for all Council assets will be paid for by Council, this includes buildings located on Crown land where Council is the appointed committee of management.

3.9 Maintenance Requirements

Occupiers of Council land and/or buildings are required to maintain the subject facility in accordance with the Maintenance Schedule attached to their agreement. The agreement schedule will specify the responsibilities of Council and the occupant/s in regard to maintenance of land and/or buildings. Council reserves the right to negotiate maintenance responsibilities and costs.

The Occupants will be responsible for keeping the land and/or buildings clean, in good condition and perform incidental maintenance not requiring a skilled tradesperson.

3.10 Reporting and Inspections

Occupants may be required to provide various reports as a condition of their Agreement where committees or groups are not incorporated, which may include but is not limited to:

- annual report (including office bearers, financial statements);
- a list of hirers that used the premises in the previous financial year;
- business plan or strategy.

All occupants will be required to complete an annual building assessment/ condition report of the premises on the relevant form provided by Council. Council will undertake Essential Safety Measures (ESM) checks on all premises in accordance with the Building Regulations 2018.

Council reserves the right to inspect a premises annually or more frequently as required, in consultation with the Occupants.



3.11 Capital Works- Improvements, Alterations and/or Additions

Occupants must not undertake construction, alteration, addition, renovation, refurbishment or demolition to any Council owned property without obtaining written consent of Council. Any significant alterations or additions required shall be undertaken by Council's contractors unless otherwise agreed between the parties in writing.

A Crown land occupant must not undertake construction, alteration, addition, renovation, refurbishment or demolition without obtaining Council and the Minister's (DELWP) prior written consent.

If agreed, any contractors engaged by an occupant must be accredited, qualified tradespersons with appropriate insurances and copies of trade's qualifications and insurances must be provided to Council for information.

All improvements unless agreed otherwise between the parties will revert to Council at the end of the occupancy agreement.

3.12 Permits

Any required permits, including building and planning permits and permits relating to events, will be the responsibility of the occupant to obtain.

3.13 Keys and Locks

Council will retain a set of keys for all Council assets, access to buildings would be in consultation with the occupants. If occupants wish to change locks to a premises they are required to obtain Council consent and must provide Council with any new keys for the premises.

Occupants may install a security system at their own cost, however prior written consent from Council is required. Security codes and subsequent changes to codes must be given to Council immediately after installation.

3.14 Third Party Hire

Occupants may be permitted to hire to third parties for events or casual hire, subject to the conditions of their Agreement, approval being obtained from the Minister (DELWP) and in accordance with the requirements of Council's Casual User and Facilities Hire Policy.

3.15 Liquor Licence

All occupants must obtain written consent from Council prior to applying for a new liquor licence or applying for an amendment to a liquor licence. Council reserves its rights to object to any expansion or intensification and withhold any permission at its sole discretion.



4. Roles and Responsibilities

Person/s responsible	Accountability
General Manager Corporate Performance	Overall responsibility for Policy implementation and compliance.
Manager Governance, Property and Risk	Provide strategic oversight of Council's property leasing and licencing portfolio.
Property and Risk Officer	Oversee the issuance of leases and licences in accordance with this Policy.

5. Human Rights Statement

It is considered that this policy does not impact negatively on any rights identified in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*. Central Goldfields Shire Council is committed to consultation and cooperation between management and employees.

6. Related Council Policies and Procedures

Council Plan 2017- 2021

Asset Management Policy 2019

Casual Hire Policy 2019

7. Relevant Legislation and Guidelines

Legislation

- *Building Act 1993 (Vic)*
- *Competition and Consumer Act 2010*
- *Crown Land (Reserves) Act 1978 (Vic)*
- *Equal Opportunity Act 2010*
- *Information Privacy Act 2000 (Vic)*
- *Local Government Act 1989 (Vic)*
- *Planning and Environment Act 1987 (Vic)*
- *Privacy and Data Protection Act 2014 (Vic)*
- *Privacy Act 1988 (Cth)*
- *Retail Leases Act 2003 (Vic)*

**Regulations and Guidelines**

- Building Regulations 2018
- DELWP Crown Land Leasing Guidelines 2012
- Leasing Policy for Victorian Crown Land May 2018
- Local Government (General) Regulations 2015
- Retail Leases Regulations 2013

DOCUMENT HISTORY (TO BE REMOVED BEFORE SIGNING)

	Date	Author
Initial Draft	June 2018/ March 2019	Kristie Berry
Approved by GM for EMT		
Endorsed	28 May 2019	Council
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Signed by CEO		