

Bass Coast Shire Council Leasing and Licensing Policy 2018

Preamble

- Land and buildings (real property) are critical assets in the provision of Council services and in meeting community needs now and into the future. It is prudent to have a legally binding agreement in place in the form of a lease or licence when a Council owned or controlled property is occupied on an ongoing basis by another party.
- A leasing and Licensing policy will:
 - Protect Council's assets,
 - Provide consistency to the terms and conditions applied, and
 - Enhance the value to the community through the use of a Council facility.
- This policy applies to property owned or managed by Council including Crown land for which the Council is the appointed Committee of Management.
- This policy does not apply to property managed by a special committee of Council or to temporary uses under a hire agreement or permit.
- A lease grants a tenant exclusive use of land and any improvements and an interest in the land that can be valued.
- A licence grants a non-exclusive occupation of a defined space but no interest in property that can be valued.

Policy objectives

- The objective of this policy is to establish leases and licences that:
 - Are transparent, consistent, fair and give certainty,
 - Comply with relevant legislation, policies, plans and strategies,
 - Are appropriate and suitable to the circumstances,
 - Contain conditions that are fair and equitable while at the same time protect Council's position,
 - Make the best use of property through the permitted use, integration, co-location and general public access,
 - Anticipate future needs for development or re-purposing,
 - Maximise community benefits, and
 - Promote environmental sustainability.

The Strategic Environment and Managing Flexibility

- The key parts of this policy that promote strategic thinking and allow flexibility to adapt to changing circumstances are found in the following:
 - Leasing and Licensing Principle 2.1 Property Strategy,
 - Leasing and Licencing Principle 2.3 Community Benefit, and
 - Leasing and Licensing Principle 2.6 Length of Term.
- Embedding the strategic thinking requires whole of organisation input, negotiation, appropriate use of laws and documentation.

Policy statement

1. There are three categories of lessee/licensee:

1.1 Commercial - where the primary objective of the lessee/licensee is to trade goods and services for profit. Examples include caravan parks and restaurants. This category is supported by Council through an agreement because the use delivers benefits through rent/fees, provision of an appropriate service in the locality, enhances the tourism appeal of the region, enables the delivery of an essential service or allows for the management of property at no cost until the land is required for another purpose.

1.2 Community/Commercial (or semi-commercial) – where the primary objective of a community based organisation or public body is to provide a community, social, cultural, recreational or essential service and through this activity or part of the activity is able to generate the sale of goods and services in competition with others in an open market. Examples include childcare and art gallery. This category is supported where a lessee/licensee pays a market rent/fee or reduced market rent/fee based on a capacity to pay rent/fees and/or demonstrated through benchmarking or historical agreements. A reduced market rent/fee is justifiable through the delivery of significant community benefits – see 2.2 and 2.3 of this policy. This category also includes a community lease where a third party commercial operator has a licence or sub-lease.

1.3 Community – where a not-for profit incorporated association pays low rent/fees as its core values and objectives are to provide and promote social, cultural and/or recreational opportunities for participation by the general public. Examples include a lifesaving club and senior citizens club. This category may also include circumstances where there is a desire to support or partner with an essential or emergency service provider.

2. Leasing and Licensing Principles

2.1 Property Strategy - the initial decision to lease/licence should have regard to the following:

- 2.1.1 The preferred future use of the property,
- 2.1.2 Community expectations,
- 2.1.3 Any Council policy, plan, strategy,
- 2.1.4 The Bass Coast Planning Scheme, and
- 2.1.5 The Crown land reservation (if applicable).

2.2 Best Value - through leasing/licensing Council should seek to:

- 2.2.1 Be responsive to the needs of the community,
- 2.2.2 Where possible enable public accessibility,
- 2.2.3 Achieve value for money, and
- 2.2.4 Partner with community organisations and public bodies.

2.3 Community Benefit - Leasing and licensing can be used to maximise an array of community benefits including the following:

- 2.3.1 Rental/fee income that helps offset the cost of Council services or the administration of leases/licences,
- 2.3.2 The provision of much needed community services or community infrastructure,
- 2.3.3 Community connectedness,
- 2.3.4 Community wellbeing,
- 2.3.5 Inclusion that promotes equality, diversity and all abilities,
- 2.3.6 The efficient and effective use and management of public land/facilities, and
- 2.3.7 Environmental sustainability.

2.4 Lessee/Licensee selection

- 2.4.1 A commercial lessee/licensee will always be selected through an open and competitive process (Expression of Interest or Tender) unless the property is unique and within reason there is only one possible lessee/licensee or the agreement is for a short term anticipating a change of use or a future open competitive process.
- 2.4.2 Selection of lessees/licensees for all other categories of lease/licence will be on a case by case basis. An open competitive process may apply where a property has been vacated, a new community facility has been constructed by the Council or upon expiry of agreements at a community hub.

2.5 Rent/Fee

- 2.5.1 Commercial – to be determined through an open and competitive process. Otherwise a market rental determined by a suitably qualified valuer.
- 2.5.2 Community/Commercial - to be informed by a suitably qualified valuer.
- 2.5.3 Community - \$310 pa increasing annually to CPI.

2.6 Length of term

- 2.6.1 Determined strategically to take advantage of planned interventions.
- 2.6.2 Subject to the above, usually 5 years. This gives Council the flexibility to adapt to changes in legislation, policy, strategies and plans.
- 2.6.3 May be between 5 and 10 years where there is justification by Council or the lessee/licensee that a certain term meets a strategic need.
- 2.6.4 Between 15 and 20 years where the lessee/licensee is required to expend a substantial amount of money on capital upgrades, improvements or maintenance but does not get the benefit of the works upon lease expiry. A long term enables the lessee/licensee to

derive benefit from the expenditure and may be required to help obtain finance.

- 2.6.5 A lease of greater than 20 years may be granted where Council has determined that it is essential to support a high value strategic objective.

2.7 Assignment (Transfer)

- 2.7.1 To be restricted in the first years of the lease where possible when:
- The lease/licence is established through private treaty negotiations, and/or
 - There is a commitment by the lessee/licensee to undertake works within a pre-determined period.
- 2.7.2 To be prohibited where possible for all Community/ Commercial and Community lease categories.

2.8 Sub-letting and Licensing to a Third Party

- 2.8.1 Sub-letting and licensing will be considered on the merits of the proposal having regard to the Council objectives in granting the original agreement.
- 2.8.2 For a Community/Commercial or Community category that proposes a commercial third party agreement the commercial use will not be considered to be an associated or ancillary use and therefore:
- The proposal must be approval by Council,
 - The lessee must obtain planning approval if required, and
 - The lessee must determine the third party through an open and competitive process aligning with the principles of competitive neutrality.

2.9 Outgoings

- 2.9.1 All property related charges (rates and taxes, utility charges, insurance costs) are to be the responsibility of the lessee/licensee and where necessary allocated through separate metering or apportioned by area where there are multiple occupiers.

2.10 Asset Management

- 2.10.1 To incorporate asset management plans in agreements, where possible, with clearly defined responsibilities for implementation.

2.11 Maintenance

- 2.11.1 To incorporate clearly defined responsibilities for the respective parties to an agreement.
- 2.11.2 Where possible a lessee/licensee must provide assistance with monitoring and maintenance of Essential Safety Measures.

2.12 Insurance

- 2.12.1 All lessees/licensors are to have their own Public Liability Insurance which must be current at the time of entering into an agreement and shown to be current annually.
- 2.12.2 All lessees/licensors must have insurance for the building which may be obtained through Council.

2.12.3 All lessees/licensors must have insurance for its own personal property.

2.12.4 All lessees/licensors must have other relevant insurance as appropriate.

2.13 Environmental Sustainability

2.13.1 All lessees/licensors should be encouraged through conditions in agreements to limit their impact on the environment through the reduction of waste and the use of energy.

2.13.2 Agreements where appropriate will contain conditions that:

- Limit the potential impacts of climate change,
- Help to improve the natural environment,
- Prevent the degradation and loss of native flora and fauna, and
- Control pest plants and animals.

2.14 Consultation

2.14.1 Statutory procedures that mandate community consultation as a minimum requirement.

2.14.2 Appropriate, meaningful and genuine community consultation for leasing and licensing will be incorporated into Council's Engagement Policy.

2.15 Risk Management

2.15.1 All lessees/licenses will have a current risk management plan that identifies risks and potential impacts and articulates a response to those risks.

2.16 Reporting

2.16.1 All incorporated association lessees/licenses will be required to provide an annual report that includes:

- Financials,
- Activities,
- Repairs maintenance and upgrades,
- Environmental measures, and
- Planned activities, maintenance and upgrades.

Additional documents

- Various Acts, Regulations, policies, strategies and plans provide a framework for the consideration and implementation of leases and licences not limited to the following:

Property Law Act 1958

Local Government Act 1989

Crown Land (Reserves) Act 1978

Retail Leases Act 2003

Leasing Policy for Crown Land in Victoria 2010

The Best Practice Management **Guidelines** for Committees of Management:
Managing Caravan and **Camping** Parks on Crown Land

A Better Bass Coast -Council Plan, Municipal Public Health & Wellbeing Plan and Annual Budget 17/18

Bass Coast Towards 2030

Asset Management Policy and Strategy 2017 - 2021

- The legislative and regulatory framework related to leasing/licensing is complex. Knowledge and skill is required to develop leases/licences of the type that are appropriate to Council as a lessor/licensor.

Decision Making

- There is no statutory restriction on licensing but the Local Government Act requires the Council to make a decision on leases that:
 - Have a term of 10 years or more,
 - Have a term greater than one year but less than 10 years where the rent or market rent is \$50, 000 per annum (proposed to be \$100,000 in the new LGA bill), or
 - Is a building or improving lease
- Council may make a public decision on any other lease.
- All other leases and all licences will be approved under delegation. Delegation limits will be based on the total value of an agreement (eg 10 years lease at \$50K pa rent equals a total value of \$500K) aligned to the limits of the position under the Council's Procurement Policy and the Procurement Delegations Framework.

Review process

- This policy replaces Council's Council Owned and Managed Land Occupancy Policy (2014).
- The policy is to be reviewed by Council within five years of it coming into operation.

Accountability process

The following person(s) administering the Policy are accountable for the proper application of the Policy:

Manager of Governance and Information Technology

Coordinator of Governance and Property

Senior Property Officer

Property Officer

Approval

Version number	Authorised/adopted by	Date

Approved by Council at its meeting held on	Date/...../.....
Signed by the Mayor (Name).....	
.....	Date/...../.....