



**Mornington
Peninsula Shire**

Lease and Licence Policy

Council Policy

ECM ref #6513802

1. Authority

- Local Government Act 2020
- Council Plan 2025-209

2. Intent

The purpose of this Policy is to ensure Council Property is used to provide the greatest benefit to the community and is consistent with the Council Plan 2025-2029.

3. Definitions

Administrative Rent	means the minimum annual costs of establishing and managing a Lease or Licence and will be determined by Council each year as part of the annual budget process.
Council	means the Mornington Peninsula Shire Council.
Council property	means any land, building and improvements owned, managed or controlled by Council including Crown land where Council acts as committee of management and including buildings constructed and owned by a Tenant on Council land (under a ground lease).
Community benefit	means the criteria that a Tenant must meet to be deemed a Community Tenant, including being able to demonstrate how its services, programs or activities from the Council Property <ul style="list-style-type: none">• aligns with the Council Plan and other Council adopted strategies• aligns directly with the use of the relevant Council Property• are in demand or a demonstrated need exists for the service or activity to be provided by the Tenant from the Council Property• compliments Council's services• meets evidence based Community Needs• is non-discriminatory and provides equitable access for the community and aligns with the Access and Equity Policy• have no barriers to participation• is accessible to a broad resident base• supports groups that are under-represented or that experience disadvantage or vulnerability

	<ul style="list-style-type: none"> • offers accessible pricing (membership) structure • is funded.
Community need	typically identified in a Strategy, Plan or Framework to address a specific issue or goal
Council Plan	means the Council Plan 2025-2029.
Commercial tenancy	means a business or commercial enterprise operating from the Council Property. This includes tertiary institutions, and non-government schools
Community tenancy	<p>means a community group which must:</p> <ol style="list-style-type: none"> Be a not-for-profit entity Be managed mostly by volunteers Manage the Lease or Licence primarily for community services, cultural, recreational, social engagement, public health and wellbeing services, protection of land values, education or similar activities or services Meet the compulsory Community Benefit criteria be competitively neutral (not providing a market advantage over similar groups).
Landlord	means Council as landlord, represented by the Property Team which has the ability to grant occupancy of Council Property through a Lease or Licence arrangement between Council and a Tenant.
Lease	means an agreement where Council (as landlord) grants to a Tenant a right to have exclusive possession of that Council Property (or part thereof) for a fixed duration in return for rental payment. A lease conveys an interest in the land, may be assigned and offers security of tenure to a Tenant as it cannot be arbitrarily terminated.
Licence	means an agreement that permits a Tenant to occupy a Council Property on particular conditions, which may include limitations as to agreed days and times, period of tenure and/or for part or all of the Council Property. A licence is a contractual right and does not permit exclusive occupancy of the premises and does not convey an interest in land

Market Rental	means the rental amount set by an independent valuer based on the current market, or as determined by a market tested campaign.
Sporting Ground Rent	means the rent for exclusive use of sporting grounds and will be determined by Council each year as part of the annual budget process
Tenant	means either a tenant under a Lease, or a licensee under a Licence and is an individual corporation or an incorporated body that has entered into or is proposing to enter into an Lease or Licence with Council for use of a Council Property

4. Scope

- 4.1 This Policy applies to the leasing and licensing of all Council Property owned or managed by the Mornington Peninsula Shire Council (Council).
- 4.2 This Policy does not apply to:
- residential tenancies
 - seasonal sport licences
 - boat shed and bathing box licences
 - Council's facility hire covered by hire agreements
 - Management Service Agreements.
- 4.3 For the avoidance of doubt, this Policy supersedes all previous policies in relation to leasing and licencing of Council Property.

5. Governance Principles

Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- the municipal community is to be engaged in strategic planning and strategic decision making;

6. Policy Statement

6.1 Policy Principles

The Principles of the Policy are to:

- 6.1.1 ensure leasing and licencing of Council Property will provide demonstrated social, environmental or economic benefit to the community;
- 6.1.2 provide the community with the broadest range of opportunities by optimising occupancy of Council Property by encouraging shared use;
- 6.1.3 ensure that all Tenants are treated consistently with fair and equitable terms and conditions and transparent procedures;
- 6.1.4 ensure Council Property is open and available to the wider community; and
- 6.1.5 manage risk by documenting rights and responsibilities and ensuring those obligations are upheld for the benefit of the community.

6.2 Permitted Use

6.2.1 Council will decide, at its absolute discretion, the appropriate and permitted use of Council Property that it Leases or Licences, including but not limited to, shared occupancy of Council Property and the compatibility with adjoining uses.

6.3 Form of Agreement and Tenure

6.3.1 Council encourages sustainable and equitable use of Council Property and will support shared and multi-use arrangements.

6.3.2 Where Council Property is shared or hours are limited for Tenants, Council will enter into a Licence with the Community Tenant.

6.3.3 A Lease or a Licence will generally have a term of up to five (5) years. Council will only consider a longer term in circumstances where:

- (a) the Tenant has substantially invested in the Council Property
- (b) there is ongoing and demonstrable Community Need
- (c) there is a strong alignment between the objectives of the Tenant and those of the Council;
- (d) there is a clear alignment with Council's access and equity principles.

6.3.4 The term of a Lease or Licence with a Commercial Tenant will be assessed on an individual case by case basis, having regard to relevant commercial or market considerations, financial investment in the facility by the Tenant, statutory requirements and strategic purposes.

6.3.5 Council will apply standard Lease or Licence conditions for similar Tenants to ensure transparency, fairness and administrative ease.

6.3.6 Formal Lease or Licence agreements must be entered into between the Tenant and Council prior to occupancy.

6.4 Financials

6.4.1 Council will determine rental in accordance with this Policy, recognising the difference between a Commercial Tenant and a Community Tenant.

6.4.2 Commercial Tenant

Rent

The rental income from a Commercial Tenant generates a commercial return to Council. Rents are set by reference to a Market Rental with regular rent reviews. Subsidised rentals will generally not be considered. Rents will be increased annually by a fixed percentage or a market review as determined by the market.

6.4.3 Community Tenant

Rent

To enable a Community Tenant to gain affordable access to Council Property, they will be charged an Administrative Rent so their resources can be directed to community service delivery from the Council Property. This rent includes a rental subsidy reflective of the Community Tenant's limited capacity to raise revenue, the Community Benefit they provide to wider community and the costs for Council to maintain facilities. For Community Tenants that occupy a Council building and land, for example sports clubs, they will also be charged a Sporting Ground Rent.

The Administrative Rent and Sporting Ground Rent will be included in the Schedule of Fees and Charges adopted by Council each year as part of the annual budget process.

6.4.4 For all Tenants, outgoings for services, rates, taxes, levies and waste removal charges are the Tenants responsibility, except where it is impractical or not applicable. Where it is impractical or there are multiple Tenants in tenancies, a proportion of the costs will be passed on to the Tenant.

6.5 Public Liability Insurance

6.5.1 All Tenants are required to hold the applicable insurance and liability limits as noted in their Lease or Licence and must provide a valid Certificate of Currency to Council annually. Council does not take any responsibility for insuring a Tenant's equipment and contents; this is the responsibility of the Tenant.

6.6 Subletting and assignment

6.6.1 Subject to the Retail Leases Act 2003, Tenants will not be permitted to deal with their interest in the Council Property, including subletting or assigning, unless the Tenant has obtained Council's prior written consent, at the Council's absolute discretion.

6.6.2 Tenants who sublet or assign the Council Property during the tenure of the Lease or Licence, without written consent of Council may be subject to termination of the Lease or Licence, at Council's absolute discretion.

6.6.3 If Council agrees to a Tenant subletting or assigning the Council Property, income derived from the activity may be shared with Council as agreed, prior to the activity commencing.

6.6.4 Community Tenants must allow Council to use the Council Property for Council sponsored events or Council operated services or programs at no cost for rent or hire fee. Council will only contribute to the operational costs directly associated with its use of the Council Property.

6.7 Maintenance and improvements of Council Property

6.7.1 Tenants will be responsible for the maintenance requirements as specified in the maintenance schedule (if applicable) attached to their respective Lease and Licence.

6.7.2 Generally, Council's maintenance requirements are limited to maintenance of the physical structure of the Council Property, capital replacement of Council's Property and the provision of essential safety measures. Council is not responsible for testing and tagging of 'plug in' electrical equipment (unless supplied by Council), maintenance of the Tenant's equipment and the fixtures or fittings installed by the Tenant. Any additional maintenance requirements will be detailed in the individual Lease or Licence.

6.7.3 Tenants occupying Council Property under a ground lease are responsible for all repairs and maintenance of all improvements constructed or installed by the Tenant.

6.7.4 Where a Tenant seeks to make structural improvements to a Council Property, written approval must be obtained from Council prior to the commencement of any works or engagement of contractors.

6.8 Renewal and New Tenants

- 6.8.1 When a Council Property becomes vacant or underutilised, a competitive selection process may be undertaken to determine a suitable new Tenant unless a direct negotiation would achieve a better outcome for the community.
- 6.8.2 A competitive process may include direct marketing by a real estate agent or an expression of interest (EOI) and be suitable for either a Commercial Tenant or Community Tenant. A competitive process ensures probity, addresses any conflicts of interest and will assist with decision making. It provides the opportunity for interested parties to compete for the right to enter into a Lease or Licence of a Council Property.
- 6.8.3 When assessing an application either via a competitive process or via direct negotiation, the merits of the application will be assessed to ensure derived benefits satisfy the goals of the Council Plan, Community Engagement Policy and the Policy Principles.
- 6.8.4 Renewal of tenure to the sitting Tenant will only be considered:
- a) where the tenure is in the last term available under the Lease or Licence
 - b) if the Tenant has the capacity to optimise the potential of the Council Property in the best interests of Council and/or the community
 - c) where assessment of Community Benefit meets the Council Plan objectives
 - d) where there is no conflict with Council's future planning for the Council Property
 - e) where the Community Tenant has demonstrated sound business practice, sound financial capacity and sustainability, and compliance with the current terms and conditions of the Lease
 - f) where the Commercial Tenant is paying at or above Market Rental.

6.8.5 under no circumstances will the end of a Lease or Licence term be taken to mean that a new Lease or Licence will be automatically granted to the same Tenant on the same or similar terms.

6.9 Sinking Funds

6.9.1 Tenants with exclusive use of a Council Property may be required to create a sinking fund in anticipation of the capital cost to renew or undertake significant maintenance. If this applies, it will be expressly communicated to the Tenant and documented in the Lease.

6.10 Emergency Relief Centres and Hubs

6.10.1 In the case of declared emergencies or disasters, Council may need to set up community facilities as emergency relief centres or hubs, and reserves the right to activate a Council Property that is under Lease or Licence for this purpose at any time.

6.10.2 Council will cover all direct costs associated with this activity, however will not provide the Tenant any reasonable compensation associated with this use.

7. Human Rights Charter Compatibility

This policy has been assessed as being compatible with *the Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

8. Associated Documents

- *Child Wellbeing and Safety Act 2005*
- *Crown Land (Reserves) Act 1978*
- *Local Government Act 2020*
- *Property Law Act 1958*
- *Retail Leases Act 2003*
- Asset Management Policy
- Community Engagement Policy
- Council Plan 2025-2029
- Property Strategy

9. Policy Sponsor

The Manager - Assets, Buildings and Property is responsible for overseeing the application and review of the Lease and Licence Policy.

10. Document Control

Council will review the Lease and Licence Policy within four years or earlier as required.

10.1 Document Version Table

Summarise the key changes made to the document to provide a quick understanding of the updates.

Version	Section	Revision Description	Date Revised	Approved by
1	All	Adopted by Council	12/5/2026	Council
1.1	All	Moved to new Council Template	13/05/2026	Governance

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Shire department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.