

## LEASE AND LICENCE POLICY

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<b>Policy Type:</b>	Organisation
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<b>Responsible Officer:</b>	Manager, Property Services
<b>Owner:</b>	Property Services
<b>Responsible Director:</b>	Presentation and Assets
<b>Relevant Legislation/Authority:</b>	<i>Local Government Act 2020  Crown Land (Reserves) Act 1978  Retail Leases Act 2003  Residential Tenancies Act 1997  Planning and Environment Act 1987  Child and Wellbeing Safety Act 2005  Occupational Health and Safety Act 2004  Building Act 1993  Equal Opportunity Act 2010  Gambling Regulation Act 2003  Liquor Control Reform Act 1998  Tobacco Act 1978  Gender Equity Act 2021  Victorian Traditional Owner Settlement Act 2010</i>
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### 1. PURPOSE

The purpose of the policy is to provide a framework for consistent, fair and transparent allocation of Greater Bendigo City Council (City) owned and managed assets. This policy establishes guiding principles for maximising use of City assets and asset financial responsibility.

### 2. BACKGROUND

In accordance with the *Local Government Act 2020* and in response to the City's Strategic Audit Plan, a review was undertaken of the City's processes and procedures relating to Leases,

Licences and other forms of Agreements. It was determined that a framework for future decision making should be established.

The City provides a range of assets for use by the public, community groups and businesses. agreements are currently determined by individual City units and it is appropriate that guidance be established to ensure consistency, equity and transparency.

### 3. SCOPE

The policy applies to all City owned and managed assets including Crown Land where the City is the designated Committee of Management, and any other assets the City has control over where an occupancy or usage arrangement is to be offered.

Agreements covered by this policy include:

- Leases
- Licences
- Committee of Management Agreements

### 4. DEFINITIONS

**Agreement** means the Agreement providing rights granted for occupancy of a property.

**Casual Hire Agreement** means an Agreement established between a Committee of Management and an organisation or individual for the regular or casual use of the whole or part of a facility and land for a specified period of time.

**Casual Hirer** means the occupier of a facility under a Casual Hire Agreement.

**City** means the City of Greater Bendigo and includes the Chief Executive Officer employed by the Council and all other staff employed by the Chief Executive Officer.

**City Officer** means the officer responsible for the management of the of the Agreement for its duration.

**Committee of Management** means a committee appointed to manage a facility and/or land by State or Local Government.

**Committee of Management Agreement** means an Agreement between the City and the Committee of Management of a facility authorising them to manage the facility on the City's behalf.

**Community Benefit** means an assessment of the social, economic and environmental benefits derived from the use of a facility.

**Commercial Lease** means an Agreement where the owner grants the commercial Tenant exclusive occupancy of a defined area as set out in the Lease, which includes the whole or part of a building and/or land.

**Community Lease** means an Agreement where the owner grants the community Tenant exclusive occupancy of a defined area as set out in the Lease, which includes the whole or part of a building and/or land.

**Contract Manager** means the Officer who manages the agreement as the single point of contact on all agreement matters and monitors agreement compliance and may also be referred to as the Service Lead.

**Licence** means an Agreement where the owner grants the Licensee the non-exclusive right to occupy a defined area as set out in the Licence, which includes the whole or part of a building and/or land.

**Market Rent** means the annual rent that can be reasonably expected to be paid in the open market for a property. The market rent is determined by Valuer Generals Office, sworn valuation by a qualified valuer or by commercial real estate agent.

**Occupant** means the occupier or user of a facility under an Agreement.

**Policy** means the Lease and Licence Policy.

**Property** means the land together with any improvements including buildings.

**Term** means the period from the commencement of the Agreement to its termination, including any further terms.

## 5. PRINCIPLES

The City of Greater Bendigo Council Plan aims to promote community connection by ensuring there are facilities that enable people to come together for social and learning purposes, to have fun and to access services. The City will ensure assets are managed effectively to maximise the return to the City and the benefit to community. The City will do this by promoting:

- A consistent, equitable and transparent process
- Offering shared, flexible and multi-use assets as the preferred option to maximise community benefit and financial responsibility
- Social inclusion and active community participation
- Sound governance and effective administration.
- Risk is managed.

## 6. POLICY

### 6.1 Governance

Leases and Licenses Agreements will be managed by the Contract Manager in accordance with the Contract Management Framework. Any Agreement or proposed Agreement will be reviewed by the City's responsible City Officers.

### 6.2 Types of Agreements

The City will determine the type of Agreement that is suitable for the asset.

- Lease
- Licence
- Committee of Management Agreement

### 6.3 Assessment and selection of tenant

The assessment and selection of suitable tenants must be in line with the City's Council Plan and associated Policies and Strategies for the provision of services and other benefits to the community.

Lease and License holders of City owned and managed assets are to provide equity and accessibility, promote wellbeing, encourage partnering and encourage sustainable practices.

The City promotes inclusion or diverse representation within City facilities and extends these expectations to Lease and License holders or Committees of Management.

Selection of an Occupier may be required if a City building, or part of a building becomes vacant. There may also be a requirement to assess an existing Occupier whose Agreement has expired, before offering a new Agreement.

The City recognises some Occupiers have historical affiliations with assets they currently have Agreements with. The City will prioritise Agreements that enable shared, multi-use of assets.

### 6.4 Rental Categories

Rent or licence fees charged for particular premises will be set at the discretion of the City in line with the City's [Rental Classification Matrix](#) and associated criteria.

There are four criteria for the purposes of establishing the rental value applied to a property:

- Organisational governance and operations
- Ability to raise revenue or access external or government funding
- Revenue re-investment focus
- Extent of community access to facility

The level of subsidy is based on the number of points achieved against each criteria with subsidy based on the following equation:

Market Rental = assessed per square metre value x actual square metres of the building

$$\frac{\text{Score}}{16} \times 100\% = \% \text{ Subsidy}$$

$$\text{Assessed rental} = \text{Market Rental} \times \% \text{ Subsidy}$$

The level of subsidy and market rental will be a key consideration in the assessment of rental by the City and must be approved by the relevant Manager and/or Director.

Rent or licence fees will always be reviewed in accordance with the specific terms of Agreements

## **6.5 Period of Tenure**

The length of each Agreement will be negotiated considering the circumstances of the Property and Occupier.

A Licence will have a term, including options, of no longer than 5 years. This will allow the City to work with Occupiers to ensure the benefits of shared use are maximised.

A Community Lease will have a maximum term of 5 years; however, the City will consider a longer term including options, in circumstances where the Occupier has substantially invested in the asset or there will be community benefits derived by a longer Lease term.

A Commercial Lease will have a maximum of 21 years including options.

A Commercial Lease relating to the Airport will have a maximum of 40 years including options.

A Committee of Management Agreement will have a term of no longer than 5 years. This will allow the City to work with tenants to ensure the benefits of shared use are maximised.

## **6.6 Negotiations**

Negotiation of a new Agreement shall be finalised within six months of the Agreement expiring.

## **6.7 Standard Documentation**

The City will use a suite of standard template documents and reference to relevant policy and strategies which will form the basis of all new and renewed Agreements the City enters. Terms and conditions will be standardised as much as possible and will only be amended in circumstances where the City (in its discretion) considers it is appropriate to do so.

## **6.8 Maintenance and outgoings**

A maintenance schedule is included in all Agreements to clarify the obligations and responsibilities of each party for maintenance and asset renewal.

## **6.9 Insurance and Risk Management**

The City insures its assets fully. Occupiers are advised to insure their possessions as the City's insurance does not cover these. Occupiers are required to maintain public liability insurance for up to a value determined by the City's risk assessment officer as detailed in the Agreement.

## **6.10 Subletting**

An Occupant may only sublet to approved organisations with the written consent of the City (and for Crown Land, the Department of Environment, Land, Water and Planning or its successor).

Income received from facility hire is to be used for minor repairs and improvements to the facility. Items purchased from funds generated from facility hire belong to the asset.

#### **6.11 Policy and Legislation**

All Agreements will have regard to and consideration of other adopted Policies and Statutory requirements.

The City will have regard to the scale and intensity of any activity conducted by an Occupier to determine the rental to be charged from the property.

#### **6.12 Reporting requirements of Community Occupiers**

Agreements will establish reporting requirements for Occupiers to ensure the City is informed of the usage of the facility and financial statement of Occupiers.

#### **6.13 Overholding**

Under certain circumstances Agreements may be allowed to go into overholding. The overholding period will be at the City's discretion.

#### **6.14 Removal of assets and capital improvements**

Unless otherwise specified in the Agreement:

- The premises must be returned to the City in original condition save for wear and tear.
- Any improvement not able to be removed at the end of the Agreement shall remain in City ownership.
- The City retains ownership of capital improvements unless otherwise specified in the Agreement.

#### **6.15 Monitoring, evaluation and review**

The City will publish a register of Agreements.

Performance measures to be monitored are:

- The level of rental return against the value of the assets being occupied
- The number of Agreements in overholding
- Reporting of subsidies if applicable
- Report of rent arrears
- Agreements due to expire
- Occupancy Rates including breakdown of groups and hours of use
- Discounts/subsidies/City grants given

#### **6.16 Compliance**

Officers will ensure compliance with the policy by ongoing management of Occupants and in accordance with the Agreements.

Where an Occupier breaches its obligations under an Agreement, the City will promptly take appropriate action to remedy the breach considering the relevant circumstances and terms of the relevant Agreement.

## **7. ROLES AND RESPONSIBILITIES**

### **7.1 Property Services Manager**

Responsible to oversee the implementation of the policy and review it in a consultative and collaborative exercise at identified periodic intervals.

### **7.2 Economic Development**

Responsible to oversee the management of Bendigo Airport and Business Park Agreement in line with this policy.

### **7.3 Contract Manager/Service Lead**

Responsible to oversee the management of agreements and monitor agreement compliance in line with the [Asset Management Roles and Responsibilities Matrix](#) and this policy.

### **7.4 Lease and License Officer**

Responsible to oversee all lease conditions, including monitoring and managing all lessee legal and contractual obligations and provide advice and guidance to Service Leads, in conjunction with Governance, on the appropriate strategy for Lease compliance.

### **7.5 City Officers**

Responsible for the implementation and or adherence to this policy.

## **8. RELATED DOCUMENTS**

Employees are encouraged to access the related internal documents which are available on the intranet and/or external resources which are available as per the below.

These include:

- Council Plan 2021 - 2025
- Gender Equity Policy
- Contract Management Framework
- Revenue and Debt Collection Policy
- Asset Management Plan
- Asset Management Roles and Responsibilities Matrix
- Draft Community Buildings Policy
- Healthy Food and Catering Policy

Further information or advice on this policy should be directed to Property Services

## 9. HUMAN RIGHTS COMPATIBILITY

The implications of this policy have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

## 10. 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, such a change may be made administratively. Examples include a change to the name of a Business Unit, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be made through consultation with the staff Consultative Committee and with the approval of EMT or where required, resolution of Council.

## 11. DOCUMENT HISTORY

Date Approved	Responsible Officer	Unit	Change Type	Version	Next Review Date
8 February 2022	DM	Property Services	Develop	1.0	28 February 2024