

south gippsland
shire council

Leasing Policy
2014



*South Gippsland
Shire Council*



South Gippsland Shire Council

LEASING POLICY

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This Policy provides the guiding principles for the leasing and licensing of Council owned and managed buildings and land, (including Crown Land). It specifically excludes Council freehold assets operated by Section 86 Committees under delegation from Council and Sporting Clubs that have seasonal use licences.

POLICY OBJECTIVE

The objectives of this Policy are as follows:

- Providing transparent, consistent, and impartial processes when leasing and licensing Council owned and managed buildings and land.
- Being consistent and complimentary to Council's strategies. In particular, the Municipal Health and Wellbeing Strategy.
- Be open to public community scrutiny and at the same time maintaining appropriate levels of confidentiality.
- Ensuring compliance with legislative provisions.
- Optimising occupancy of Council owned and managed buildings and land, by encouraging co-location of services with similar synergies.
- Ensuring that Council owned and managed buildings and land are appropriately maintained and developed.
- Providing clear conditions for tenants regarding their obligations and responsibilities.
- Ensuring equitable access to Council owned and managed buildings and assets.
- Developing standard lease and licence documents in line with industry standards and legislation, including fee structures and maintenance schedules.

DEFINITIONS

In this Policy the following definitions apply:

Community	Not for profit community groups that provide a service to the community such as neighbourhood houses, learning centres, kindergartens, pre-schools, play groups and sporting clubs.
Council	South Gippsland Shire Council or its predecessors.
CPI	The Consumer Price Index.



Crown Land	Land that is controlled by the State of Victoria for the benefit of the Victorian Community.
DEPI	The Department of Environment and Primary Industry.
Freehold land	When Council is the registered proprietor.
GST	Federal Government Tax on rental.
Lease	Exclusive possession of the building or land for a fixed term, in return for rental payment.
LGA	Local Government Act, 1989 (Vic).
Licence	A person or group permitted to occupy part of the building or land on particular conditions.
Market Rent	Refers to either: <ol style="list-style-type: none"> the highest confirming bid of a competitive tender; or the highest and the best value which might be obtained given the limitations and constraints of the building or land and as determined by a certified valuer.
Minister	The Minister for Environment and Climate Change.
RLA	The Retail Leases Act 2003 (Vic) including amendments.
Tenant	An authorised person or incorporated body that has entered into or proposes to enter into a lease or licence with Council for the use of a Council owned building or land.

POLICY STATEMENT

This Policy will contribute to Council's Vision 2020 by providing appropriate guidelines for the leasing and licensing of Council owned and managed buildings and land.

Whereas Council has the ability to enter into long term leases, this Policy supports the granting of leases and licences that commence with an *initial* term of no longer than five (5) years plus option periods. This is to avoid repeating history with long term periods that did not include option periods and created difficulties with negotiating variations and/or addressing breaches of lease.

RISK ASSESSMENT

Without the appropriate policies and procedures in place, Council is exposed to risk of stakeholders not being aware of their permitted use and associated obligations and responsibilities. This has an impact to Council resulting in increased



maintenance costs, equity of access and managing noncompliance with lease obligations. This Policy will contribute to reducing risk by clearly defining all stakeholders' responsibilities and recognising legislative requirements.

LEGISLATIVE PROVISIONS

ACT	SECTION or CLAUSE
Local Government Act, Vic 1989 190(1) 191 (3)	s.223(a), (b) and (d) s.11(m) regulations
Crown Land Leasing Policy Victoria 2010	N/A
Retail Leases Act 2003 (Vic)	N/A
Retail Leases Regulations 2003	s.15 & s.17
Residential Tenancies Act 1997	N/A
Planning and Environment Act 1997	N/A
Crown Land (Reserves) Act 1978 (Vic)	s.17B, 17D, 17 (Telco)
Coastal Management Act 1995 (Vic)	N/A
Land Act 1958	N/A

INTRODUCTION

South Gippsland Shire Council has a diverse leasing portfolio. The majority of the leases and licences are to community users with a small percentage to commercial. The community users contribute a minor financial return to Council but off-set this with the benefit of the particular service being provided to the broader community of South Gippsland.

By applying the objectives of this Policy, Council has the opportunity to encourage efficiencies with its community spaces as well as negotiating improved rental returns from commercial users.

Currently our existing leases and licenses are difficult to interpret and enforce. The Leasing Policy provides Council with an opportunity to improve the structure of its leases and licenses to capture up-to-date legislation and industry trends and standardise terms and conditions for ease of negotiations and addressing requests in a timely manner. This can easily be achieved with development of standard leases, licenses and introduction of Maintenance Schedules to clearly identify the obligations of each party.

Accordingly, the actions to be addressed by this Policy are:

- Working closely with our Community Services and Economic Development Departments to encourage co-location of similar services to reduce underutilisation of Council's facilities and ultimately the disposal of surplus assets and / or opportunity to invest in new facilities.



- Developing standard leases and licenses for different categories of users (refer to **Attachment 1 - “Schedule 1 - Categories of Users”**).
- Introducing community rental fees and standard process for Market Rentals to ensure consistency across Council owned and managed buildings and land (refer to **Attachment 2 - “Schedule 2 - Fee Schedules for Council Freehold, Crown Land and Buildings”**).
- Introducing maintenance schedules to clearly identify responsibilities of both Council and user (refer to **Attachment 3 - “Schedule 3 – Draft Maintenance Schedule”**).

APPROVAL PROCESS AND APPLYING LEGISLATION

Council has the powers to negotiate the use of its buildings or land with individuals in their own right, corporations, incorporated associations or other legal entities. Council will not negotiate the use of its buildings or land with unincorporated associations or committee members on behalf of the unincorporated associations

The different ownership status of our buildings and land results in Council having to apply different legislation and processes. For example:

1. FREEHOLD LAND

Approval Process

Where Council is the freehold owner of the building or land it will follow the process outlined in its Leasing Process attached at Attachment 4.

Legislation

For freehold land, Council is required to comply with sections 190 and 223 of the LGA. A summary of each section is provided below:

– Section 190

- Term of lease must not exceed fifty (50) years.
- Council must comply with Section 190 of the (LGA) if it leases any land to any person or incorporated group..
- Council must publish a public notice of the proposed lease at least 4 weeks before the lease is made if the lease be:
 - (a) For one (1) year or more and –
 - the rent for any period of the lease is \$50,000 or more a year; or
 - the current market rental of land is \$50,000 or more a year.
 - (b) For ten (10) years or more or;
 - (c) A building or improving lease.



– **Section 223**

Section 223 calls for submissions on the lease either in support or against the lease, the submission process is open for 28 days. It provides the opportunity for submitter's to present their submissions in writing and to be heard in person.

Councillors and the Mayor are to consider the submissions and make a decision on granting the lease.

POWER OR DUTY	SECTION OF THE ACT OR REGULATIONS
POWER to lease land	s.190(1) Act
DUTY to advertise / publish a public notice of certain lease	s.190(3) & s.223(a) Act
DUTY to consider submissions resulting from public notice	s.223(b) Act
DUTY to make a decision regarding any issues where submission have been made	s.223(d) Act
DUTY to notify each separate submitter of the decision & reasons	s.223(d) Act
DUTY to make details of all leases available for public inspections	s.11(m) Regulations

2. COMMITTEE OF MANAGEMENT OF CROWN LAND

Approval Process

Where Council is the Committee of Management of Crown Land, the approval process will follow the 'Leasing Policy for Crown Land in Victoria 2010'. This is available on the Department of Sustainability and Environment website at http://www.dse.vic.gov.au/_data/assets/pdf_file/0008/140777/Crown-land-leasing-policy-Oct-2010.pdf.

Legislation

This will be in accordance with the 'Leasing Policy for Crown Land in Victoria 2010'.

STANDARDISED DOCUMENTS

The preparation of standard leases / licences for the categories identified in Schedule 1 will provide a starting point for negotiating particular terms and conditions relevant to the particular user. It will also assist with reducing the negotiation timeframe and legal costs associated with preparation.



SCHEDULES

The Schedule plays an important part to the lease/license. It lists essential terms and conditions and is a quick reference point for parties to refer to. It must at least contain information on the following:

1. Landlord (Council) name, address and contact details.
2. Tenant name, address and contact details.
3. Address and legal description for the building and / or land. Usually referred to as the Premises.
4. Attached plan with dimensions of the leased area.
5. Commencement date.
6. Expiry date.
7. Further terms.
8. Last date for exercising the option for a further term.
9. Rent.
10. Rent review dates.
11. Permitted use.
12. Reference to the Appendix regarding maintenance obligations.

MAINTENANCE RESPONSIBILITIES

Regardless of Council as Owner or Committee of Management of Crown Land, the maintenance responsibilities of the landlord and tenant must be clearly defined to avoid uncertainty of the responsibilities of each party.

A maintenance schedule for all leases and licences, specific to the use of the premises, will form part of the lease as Appendix 1 and it must outline the landlords and tenants maintenance responsibilities. This will provide a clear and comprehensive outline of each party responsibility (see attached example).

IMPLEMENTATION STATEMENT

This policy will be reviewed on a four (4) year cycle.



ATTACHMENT 1

Schedule 1 - Categories of Users

Category	Type	Description	Example
1	Commercial	<p>Commercial tenants are tenants that occupy the premises on a commercial basis, based on the rent and may or not be subject to the Retail Leases Act (Vic) 2003</p> <p>The tenant is responsible for all outgoings including municipal rates and charges, electricity, water, telephone, internet and sewerage. The lease has annual rental increments, ie CPI or renewal to market rental at the commencement of a new term of the lease.</p>	<ul style="list-style-type: none"> • Caravan Parks • Office Accommodation • Restaurants and Quarry
2	Community	<p>These tenants include community groups that service the community, usually dependent, on some form of funding by Council.</p> <p>This category has a small percentage of salaried staff, but relies heavily on community volunteers to deliver the service.</p>	<ul style="list-style-type: none"> • Pre-Schools • Senior Citizens • Neighbourhood Houses and Learning Centres.
3	Clubs & Organisations	<p>These tenants include recreational and community groups that service the community and include member fee –paying clubs and organisations that have the capacity to generate income from the facility or other activities,(but do not make a commercial profit).</p>	<ul style="list-style-type: none"> • Tennis Clubs • Pony and Equestrian Clubs • Bowling Clubs. • Motorcycle track.

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ATTACHMENT 2

Schedule 2 - Fee Schedules for Council Freehold, Crown Land and Buildings

This policy supports the rental for the Council's identified categories:

Category	Type	Rental
1	Commercial	Market Rental determined by a certified valuer).
2	Community	\$104.00 per annum, plus GST.
3	Clubs and Organisations	\$104.00 per annum, plus GST.

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ATTACHMENT 3

Schedule 3 - Building Maintenance Schedule

Building (Internal & External)

Item	*Landlord Responsibility	*Tenant Responsibility
Air conditioning / cooling systems and heating fixtures	Full responsibility for renewal / replacement	Full responsibility for cleaning, servicing and repairs
Building alterations	Full responsibility for renewal / replacement	Consent from Landlord required for any building alterations the tenant wishes to complete and all relevant permits.
Building – External	Programmed maintenance as determined by Council's Building Asset Management Plan	Cleaning, repairs and maintenance including washing down of walls
Building – Internal (includes painting of walls, ceilings and other surfaces) –	Programmed maintenance as determined by Council's Building Asset Management Plan	Cleaning and repairs
Cleaning, including purchase of cleaning materials	No responsibility.	Full responsibility
Curtains and blinds	No responsibility	Full responsibility
Doors (including cupboard doors, door locks and fittings)	Programmed maintenance as determined by Council Building Asset Management Plan	Cleaning and repairs.
Electrical wiring and fittings in building	Full responsibility for wiring renewal	Renewal of light fittings / globes Cleaning and repairs.
	Programmed maintenance as determined by Council Building Asset Management Plan	Battery operated smoke alarms.
Essential Safety items - maintenance and inspections	Full responsibility	No responsibility
Exit and emergency lighting	Full responsibility.	No responsibility.
Fire extinguishers and fire hose reels	Full responsibility, including regular servicing and maintenance	No responsibility, but payment of repairs / replacement due to misuse.
Floor surfaces and coverings	Full responsibility for renewals / replacement other than due to a result of misuse	Cleaning and repairs.
Furniture and fittings	No responsibility.	Full responsibility.

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ATTACHMENT 3

Schedule 3 - Building Maintenance Schedule

Building (Internal & External)

Item	*Landlord Responsibility	*Tenant Responsibility
Glass	No responsibility	Cleaning, repairs and renewal
Grease traps	No responsibility.	Full responsibility
Keys	Initial installation of Landlord Restricted locking system locks and keys Maintain a register of key holders.	Responsible of all keys issued. Provide the Landlord with a register of key holders. Additional keys will be charged to the tenant. Locks not to be fitted without Landlord consent
Plumbing and fixtures (drains, toilets, basins, taps and hot water service)	Programmed maintenance as determined by Council Building Asset Management Plan	Cleaning and repairs. Servicing, maintaining and pumping out septic systems.
Roof	Full responsibility except for gutter cleaning	Clean gutters.
Signage	Full responsibility for Corporate signage only	Full responsibility Consent required from Landlord for all signage and permits.
Skylights	Full responsibility for renewal / replacement	No responsibility
White goods (stoves, cooking equipment, fridges, dishwashers and urns etc)	No responsibility	Full responsibility

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ATTACHMENT 3

Schedule 3 - Building Maintenance Schedule

Grounds Maintenance

Item	*Landlord Responsibility	*Tenant Responsibility
Boundary fences	Full responsibility for renewals	Full responsibility for maintenance
External furniture	No responsibility	Full responsibility
External seating	No responsibility	Full responsibility
Gardening and landscaping	No responsibility	Full responsibility
Gas bottles (if appropriate)	No responsibility.	Full responsibility
Grading of unmade car parks and entrance roadways	All maintenance.	No responsibility
Graffiti	No responsibility	Full responsibility
Hard rubbish	As per annual residential collection (kerbside collection) or green waste collection (bin/s) provided by Council.	Removal of hard rubbish The Committee of Management must pay all costs for any hard rubbish collection services.
Paths, decks, entrances and car parks	Full responsibility for renewals (as determined by the Landlord)	Cleaning and repairs
Playground areas	Annual inspections Providing maintenance schedule to Tenants	Maintenance in accordance with schedule provided by Landlord.
Rubbish collection	Emptying of rubbish bins once per week. Provide adequate bins for property.	Picking up of rubbish around property and ensuring that bins are in the correct position for collection.
Security lighting <i>Building perimeter only</i>	Full responsibility for renewals	Cleaning and repairs.
Shade sails	Full responsibility for renewals	Cleaning and repairs.
Signage	No responsibility	Full responsibility with Council consent
Trees	Removal of trees when required	Pruning and general maintenance

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ATTACHMENT 3

Schedule 3 - Building Maintenance Schedule

Playground Area

Item	Council Responsibility	Committee of Management Responsibility
Daily playground equipment inspection	No responsibility	Check playground equipment, including playground / yard for wear and deterioration. Possibly using a dally checklist Checklist can be supplied by Council if requested
Digging patch soil	No responsibility	Committee of Management to maintain in accordance with Regulations Sweep or rake back soil into contained areas to keep paths and lawn areas clean
Existing fixed outdoor playground structures	Annual inspections Providing maintenance schedule to Tenants	Maintenance in accordance with schedule provided by Landlord
Existing sandpit and digging patch structures	No responsibility	Full responsibility
Lawn mowing	No responsibility	Full responsibility
Leaf Litter	No responsibility	Sweep and rake up leaf litter, twigs and branches within playground area
Security systems	No responsibility	Full responsibility
Watering	No responsibility	Full responsibility
Irrigation systems	No responsibility	Full responsibility
Soft fall mulch	No responsibility	To maintain in accordance with Regulations. Rake back sofffall mulch in touch down areas, i.e. under swings and at base of slides on a daily basis. Sweep or rake back sofffall mulch back into contained areas to keep paths and lawn areas clean.

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ATTACHMENT 3

Schedule 3 - Building Maintenance Schedule

Playground Area

Item	Council Responsibility	Committee of Management Responsibility
Playground fences	No responsibility	Full responsibility
Recycled rubber surfacing	Renewal/replacement	Cleaning and repairs
Sand	No responsibility	Full responsibility
Sandpit covers and fittings	No responsibility	Full responsibility
Storage sheds and water features	Council to assess and approve works before commencement	All costs, including maintenance associated with extra outdoor storage sheds and water features
Timber edging/retaining walls	No Responsibility	Full responsibility

NOTE:

Any damage to the items listed within the maintenance schedule caused by misuse by the Tenant will be repaired at the cost of the Tenant.

GLOSSARY:

Landlord Responsibility	This reflects Councils existing Level of Service provided to our Facility user groups and is subject to alterations at the time of lease negotiation.
Tenant Responsibility	This reflects the current obligations imposed on Tenants of Council facilities and will be subject to change during negotiations.
Cleaning	The action required to preserve the condition of an asset in a safe and functional state.
Maintenance	The required action for retaining an asset as near as practicable to its original state.
Programmed Maintenance	The maintenance that is required to: <ul style="list-style-type: none"> • Meet statutory regulations. • Prevent potential asset component failure. • Retain the asset in a state fit for its intended use.
Renewal	To return an asset to its original state.
Repair	Work undertaken to return a component or section of a component back to a functional condition.



ATTACHMENT 4


Leasing Procedure / Checklist

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 South Gippsland Shire Council <i>Come for the beauty, stay for the lifestyle</i>		Internal Form: Property Development 006-PROP –Leasing (out) Checklist	
<h2>Property: Leasing (out)</h2> <p>(Note: some of the items can run in parallel/cross timeframes)</p>			
<p>PROPERTY ADDRESS:</p> <p>.....</p>			
ITEM	DESCRIPTION	DATE	COMPLETED
1.	<p>Site inspection/Building condition report</p> <p>Use site inspection sheet template ##.</p> <p>Request building condition report from Building Co-ordinator.</p>		
2	<p>Title Search</p> <p>Request title search of the Property:</p> <p>(Confirm status of the land as indicated on the title (ie. Lot, Reserve, owner, restricted covenants, easements).</p>		
2A	<p>Certificate of Title</p> <p>Confirm we hold the certificate of title to the land (if Council's the owner in Council's records.</p> <p>What is the record number?</p>		
3	<p>Internal comments</p> <p>Seek comments from relevant Council departments on the proposal. Use internal memo/e.mail template ##. Record responses for Council reporting purposes.</p>		
4	<p>Report to Council</p> <p>Report to Council (if necessary - given delegation powers).</p> <p>When seeking expressions of interest to lease recommend:</p> <ul style="list-style-type: none"> • Prepare property for lease; • Advertise the property for Lease in local media; • Negotiate terms with interested tenants; • Discuss any town planning requirements. <p>When approach made to Council to Lease, recommend:</p> <ul style="list-style-type: none"> • Prepare property for lease. • Public notification of Council's intention to Lease pursuant to S190 of LGA (if required due to term and rental) • Discuss any town planning requirements; <p>Refer draft report template ##</p>		
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ATTACHMENT 4

Leasing Procedure / Checklist

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ITEM	DESCRIPTION	DATE	COMPLETED
5	<p>Legal</p> <ul style="list-style-type: none"> Instruct lawyers to prepare draft lease. Prepare plan of the leased area to attach to draft lease. Capture financials of lease in budget, BIS. Send leases for stamping and assessment of duty if required. Send copy of signed lease to tenant (with the amount of duty payable to the tenant, if required). Record final lease in TRIM. Note number on file. 		
6	<p>Valuation</p> <p>Obtain valuation for rental purposes. Use valuation instruction template ##.</p>		
7	<p>Communications</p> <p>Attend to either of the following:</p> <p>1. When an EOJ: Appointment of Real Estate Agent</p> <ul style="list-style-type: none"> Prepare Quote to Agents (3) – attach copy title; Summarise quotes received; Select and appoint preferred agent; Perusal of proposed advertising campaign and approval of that campaign and notice board; <p>Or</p> <p>2. Advertise ourselves</p> <ul style="list-style-type: none"> Arrange advertisement using template ## Forward to Communications Department for placement on Council's Noticeboard. Arrange advertising in local papers over a 4 week period. 		
8	<p>Negotiations</p> <ul style="list-style-type: none"> Negotiate with interested parties. If required, prepare report to Council on outcome of negotiations and if necessary, commence statutory procedures pursuant to S190 and 223 of the LGA). 		
9	<p>Public Notice</p> <p>Prepare S190 public notice and arrange for advertising (use template ##)</p>		
9A	<p>No objections</p> <ul style="list-style-type: none"> If no objections, prepare further report to Council seeking resolution to proceed to enter into Lease. Delegation to CEO for execution of all documentation. <p>(Use report template ##)</p>		

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ATTACHMENT 4

LEASING PROCEDURE / CHECKLIST

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ITEM	DESCRIPTION	DATE	COMPLETED
9B	<p>Objections</p> <ul style="list-style-type: none"> • If objections, further consultation with submitters via correspondence; or • If request to be heard – advise/remind submitters of the Council briefing date referred to in the public notice; • Prepare for the hearing with a summary report to the Executive Leadership Team and Councillors setting out the details of the submitters and nature of objection. • Following the hearing of submissions, prepare a further report to the full Council advising the recommendation of the hearing. Use report template ## • Advise submitters of the outcome of the recommendation. 		
10	<p>Housekeeping matters</p> <ul style="list-style-type: none"> • Give tenant a key making sure Council retains a set (add to key register) • Perform any required maintenance before tenants move in • Put signed copy of lease in records. Record TRIM number • Record lease details on lease register • Ensure all buildings involved in the lease are insured • Ensure property is on the asset register • Notify accounts of debtor creation/alteration • Value property for rating purposes if rateable 		
11	<p>During lease</p> <ul style="list-style-type: none"> • Ensure tenant is paying rent on time. • Arrange annual inspections of the premises (on the anniversary of the commencement date) (use inspection checklist #). 		