

SOUTH GIPPSLAND SHIRE COUNCIL
COUNCIL POLICY



LEASING POLICY

Policy No.	C62
Adoption Date	Proposed June 2021
Revision Date	2025/26
Department	Infrastructure Planning [SI]

1. POLICY OBJECTIVE

This Leasing Policy (the Policy) has been developed to:

- 1.1. Provide transparent, consistent, and impartial processes when leasing and licensing Council owned and managed buildings and land by adherence to the relevant provisions of Council's Public Transparency Policy (C75), Community Engagement Policy (C06), and Community Engagement Principles.
- 1.2. Contribute to the achievement of the Strategies and Objectives of the Council Plan and services intended to be provided under the Plan.
- 1.3. Ensure compliance with legislative provisions primarily the Local Government Act 2020.
- 1.4. Use standard lease and license documents in line with industry standards and legislation, including fee structures and maintenance schedules.
- 1.5. Ensure no unfair advantage is gained over other enterprises conducting similar activities by the application of community rents.
- 1.6. Establish levels of delegation to Council staff to approve and sign leases and licenses and works on leased and licensed premises.

2. POLICY STATEMENT

- 2.1. This Policy will provide appropriate guidelines for the leasing and licensing of Council owned and managed buildings and land.
- 2.2. Although Council has the ability to enter into long term leases this Policy supports the granting of community-based leases and licenses that commence with an initial term of no longer than five (5) years. Additional option periods may be negotiated on a case by case basis and prevailing needs. This is to avoid long term lease periods that do not include option periods and create difficulties in negotiating variations and/or addressing breaches of tenure. The tenure of Council owned and



managed land will be subject to s. 1115 and s.116 of the Local Government Act 2020 that will require a community engagement process.

- 2.3. Council aims to maximise access to and use of community facilities and will not generally lease a property to a single tenant for use at limited times only. Where Council wishes to make a facility available to multiple users, a license rather than a lease will be the preferred form of agreement, except where Council considers that providing exclusive rights to a single tenant is in the best interests of the community and is necessary to recognise capital investment by the tenant and secure the desired use and long-term development of the property.

3. SCOPE

3.1. Introduction

- 3.1.1. South Gippsland Shire Council has a diverse leasing portfolio. The majority of the leases and licenses are to community users with a small percentage to commercial. The community users contribute a minor financial return to Council but this is off-set by the benefit of the particular service being provided to the broader community of South Gippsland.
- 3.1.2. This Policy will ensure that access to Council facilities and assets are not unnecessarily restricted and properties are able to be deployed to contribute to the achievement of Council's strategic objectives and desired service delivery.
- 3.1.3. 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.
- 3.1.4. This Policy provides Council with an opportunity to continually improve its leases and licenses processes to capture current legislation and industry trends and standardise terms and conditions for ease of negotiations and address requests in a timely manner.

3.2. Category of Leases / Licenses

- 3.2.1. Category (A) Community Rent
The eligibility criteria for Category A is included in **Schedule 1**.
- 3.2.2. Category (B) Commercial/Retail or Residential

3.3. Rent Subsidy Categories (Annual Rent Eligibility)

- 3.3.1. Category (A) Community Rent
Rental \$104.00pa
Assessed by eligibility criteria.
- 3.3.2. Category (B) Commercial/Retail or Residential
Full market rental to be determined by a CPV as the basis for negotiation of the rent.



3.4. Standardised Documents

- 3.4.1. The preparation of standard leases / licenses including a Maintenance Schedule for the categories identified in **Schedule 2** provide a basis for negotiating particular terms and conditions relevant to the particular user.
- 3.4.2. Community based leases and licenses will usually have a term of no longer than five (5) years.
- 3.4.3. Additional option periods may be negotiated on a case by case basis and prevailing needs. 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.
- 3.4.4. The tenure of Council owned and managed land will be subject to s.115 and s.116 of the Local Government Act 2020 that will require a community engagement process.

3.5. Specified Purpose

- 3.5.1. The specified purpose of use of the land for lease or license is to be clear and unambiguous and suitable to the reservation of the land. This is to reduce the risk of changes to lease/license that can cause termination of the lease / license.

3.6. Renewal of Lease to Incumbent Tenants

- 3.6.1. A proposal to grant a new lease to an incumbent tenant may be considered by the Council subject to the same considerations as a new lease. Generally, proposals to issue a new lease to an incumbent tenant will not be considered until at least 50% of the term of the lease has expired. Any further term of a lease to an incumbent tenant will be through the grant of a new lease. A variation of lease cannot be used to extend the term of a lease to an incumbent tenant.

3.7. Approval to Lease Crown Land or Crown Land Reserve that Council is Crown Land Manager

- 3.7.1. Proposals to lease must be submitted to DELWP for Approval in Principle (AIP) by the Minister. Proposals must include the following background information:
 - 3.7.1.1. Details of the land proposed to be leased, including the current use of the land.
 - 3.7.1.2. Purpose of the lease and activities proposed under the lease.
 - 3.7.1.3. Details of any proposed capital works program.
 - 3.7.1.4. Timetable for implementation of the lease proposal.
 - 3.7.1.5. Evidence that the proponent has the experience, capacity and competence to manage the lease.



- 3.7.1.6. Evidence that the proponent has the capacity to fund any developments and meet lease commitments (rental, maintenance expenses etc).
- 3.7.1.7. Evidence that the proposal is financially viable.
- 3.7.1.8. Information addressing ministerial approval to grant and purpose of the lease if the lease proposal relates to a Crown land reserve.
- 3.7.1.9. Details of any other statutory approvals processes associated with the proposal.
- 3.7.1.10. Details of consultation processes proposed, to gauge community views on the proposal.
- 3.7.1.11. Evaluation of potential risks.
- 3.7.2. Leasing Principles
 - 3.7.2.1. Benefits of the proposal.
 - 3.7.2.2. The proposed method of allocating the lease (direct negotiation, competitive process etc.) and a justification for the selected process.
 - 3.7.2.3. How the lease proposal addresses ecologically sustainable management principles.

3.8. Lease of Council Freehold Land

- 3.8.1. Council may require a proposal with similar information to that required in seeking an AIP to lease crown land before considering entering into a commercial or community lease or license. In the case of a Community lease / license the proponent must submit a proposal that addresses all of the eligibility criteria in **Schedule 1**.

3.9. Use of Licenses Rather Than Leases

- 3.9.1. Council aims to maximise access to and use of community facilities and will not generally lease a property to a single tenant for use at limited times only. Where Council wishes to make a facility available to multiple users, a license rather than a lease will be the preferred form of agreement, except where Council considers that providing exclusive rights to a single tenant is in the best interests of the community and is necessary to recognise capital investment by the tenant and secure the desired use and long-term development of the property.

3.10. Use of Other Management Arrangements

- 3.10.1. Council will conduct an assessment to ensure that any proposed lease or license is not suited to a commercial lease arrangement, management by a Community Asset Committee or Facility Management.

3.11. Legal Fees



- 3.11.1. Council will pay legal costs associated with the establishment of a new lease/license agreement that conforms to Council's standard lease/license document, except for the cost of any independent legal advice and assistance sought by the tenant.

3.12. Maintenance Responsibilities

- 3.12.1. Regardless of Council as Owner or Committee of Management (CoM) of Crown Land, the maintenance responsibilities of the landlord and tenant must be clearly defined to avoid uncertainty of the responsibilities of each party. This includes agreed maintenance responsibilities for any improvements made to the land and/or building after the commencement date of a lease or license, before the improvements are commenced.
- 3.12.2. A Maintenance Schedule and asset management plan for all leases and licenses, specific to the use of the premises, will form part of the lease and it must outline the landlord's and tenant's maintenance responsibilities. This will provide a clear and comprehensive outline of each parties' responsibility. The Maintenance Schedule must be agreed by all parties before a lease or license is made.
- 3.12.3. Council reserves the right to inspect the premises each year or more frequently as required.

3.13. Capital Improvements

- 3.13.1. Council retains ownership of capital improvements that cannot be removed unless otherwise specified in the lease. Any capital contribution of tenants will be taken into account in assessing rent levels and length of lease / license.
- 3.13.2. Applications for funding to improve the land and/or building and improvements to the land and/or building cannot be made without the approval of Council and are subject to Council's Social Community and Economic Infrastructure Blueprint processes.

3.14. Signage

- 3.14.1. The tenant shall, in liaison with Council's Property team, erect approved signage outside the leased/licensed premises recognising the Council facility. No commercial advertisement shall be erected on Council facilities unless the tenant has a commercial lease with Council. Any sponsorship advertising requires landlord consent and is at the discretion of the landlord.

3.15. Delegations to Approve and Sign Leases or Licenses

Approval to sign Leases or Licenses where Council is Landlord in accordance with s.115 and s.116 of the Local Government Act 2020

Circumstance (\$ incl. GST)	Approver
Where the Leases / Licenses are for one year or more; and	Coordinator Property, or Manager Infrastructure Planning, or



<ul style="list-style-type: none"> (i) the rent for any period of the lease is less than \$100,000 a year; or (ii) the current market rental value of the land is less than \$100,000 a year; or (iii) the period of the lease is under 10 years; or 	Director Sustainable Infrastructure
Leases and Licenses where:	
<ul style="list-style-type: none"> (i) the rent for any period of the lease is \$100,000 or more a year; or (ii) the current market rental value of the land is \$100,000 or more a year; or (iii) the period of the lease is between 10 and 50 years; or 	Council to approve by resolution in accordance with s.115 and s.116 of the Local Government Act 2020. CEO to sign lease document.

4. RISK ASSESSMENT

- 4.1. In order to comply with its obligations under the Local Government Act 2020 and maintain the trust and confidence of the community, it is critical that Council and Councillors maintain the highest possible standards of good governance, integrity, ethical behaviour, and conduct. This Policy and the associated procedures mitigate Council's risks as described below.
- 4.2. 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 / license obligations. This Policy will contribute to reducing risk by clearly defining all stakeholders' responsibilities and recognising legislative requirements.

4.2.1. Victorian Child Safe Standards - VCSS

- 4.2.1.1. Council will conduct an assessment to determine if the prospective lessee or licensee is likely to provide services to children, before a lease or license is made.
- 4.2.1.2. All Lessees and Licensees providing services to children from leased or licensed premises shall comply with the VCSS and report annually to Council on their compliance with the VCSS.

5. IMPLEMENTATION STATEMENT

- 5.1. The Policy will only apply to new leases entered into after the date of adoption of this Policy. Existing leases will not be affected.

5.2. Human Rights Charter

- 5.2.1. This Policy is a key mechanism for providing assurance to the Council meets its obligations to < include relevant specific requirements > as



required by the *Local Government Act 2020* (or other relevant Act that is applicable) and the *Charter of Human Rights and Responsibilities Act 2006* and associated obligations.

5.3. Publication of Policy

5.3.1. This policy will be published on Council's website.

5.4. Roles and Responsibilities

5.4.1. The Policy will be rolled out via written communication with tenants followed by meetings with Lessees and Licensees to explain the Policy changes.

5.4.2. Officers will liaise with internal and external stakeholders.

6. MONITORING, EVALUATION AND REVIEW

6.1. The responsibility and implementation of the policy rests with the Infrastructure Planning Department of the Sustainable Infrastructure Directorate.

6.2. This Policy will be reviewed and adopted by Council on a 4 year cycle or when a new Council Plan is adopted, whichever occurs first.



7. REFERENCE DOCUMENTS

Legislative Provisions	Local Government Act 1989 Local Government Act 2020 (Vic) s115 and s116 Freedom of Information Act 1982 Crown Land Leasing Policy Victoria 2010 Retail Leases Act 2003 (Vic) Retail Leases Regulations 2003 (Vic) Residential Tenancies Act 1997 (Vic) Planning and Environment Act 1997 (Vic) Crown Land (Reserves) Act 1978 (Vic) Coastal Management Act 1995 (Vic) Land Act 1958 (Vic) Forests Act 1958 (Vic) Transport Integration Act 2010 (Vic) Aboriginal Heritage Act 2006 (Vic) Native Title Act 1993 (Cth) Traditional Owner Settlement Act 2010 (Vic)
Good Governance Framework	Pillar 4. Structure, Systems & Policies
Council Supporting Documents	Community Engagement Policy (C06) Principles and Procedures Public Transparency Policy (C75)
Related Documents (Optional)	N/A

8. DEFINITIONS AND ACRONYMS

Council	South Gippsland Shire Council or its predecessors
CoM	Committee of Management
CPI	Consumer Price Index
CPV	A Valuer meeting the requirements for Certified Practising Valuer as defined by the Australian Property Institute
Crown Land	Land that is controlled by the State of Victoria for the benefit of the Victorian community. Crown land reserved and/or administered under the Crown Land (Reserves) Act 1978, Land Act 1958 and Forests Act 1958
Crown Land Reserve	Crown land reserved under section 4 of the Crown Land (Reserves) Act 1978
DELWP	The Department of Environment, Land, Water and Planning
Freehold land	Land that Council is the registered proprietor of
GST	Federal Government Tax on goods and services including rental



Lease	Exclusive possession of the building or land for a fixed term, in return for rental payment. A contract by which one party (the landlord or lessor), in consideration of rent, grants exclusive use and possession of land to another party (the tenant or lessee) for a specified purpose and for a specified term
LGA	Local Government Act 2020 (Vic)
License	Permission to enter or occupy part or all of the building or land for a stipulated purpose on particular conditions
Market Rental	As defined in lease and license agreements
Minister	Minister for Environment, Climate Change and Water
Period of the lease	Initial term of a lease plus any further terms of the lease
RLA	Retail Leases Act 2003 (Vic) including amendments
Tenant	A person or organisation that rents or leases building or land from Council

9. REVISION HISTORY

Version	Approved By	Approval Date	Sections Modified	CM9 ref
1.0	Council	28 May 2014	N/A	D3312917
1.0	Draft	2016	Whole Policy – draft version not adopted due to the revision of the LG Act 1989	D7721316
1.0	Draft	April 2021	Whole Policy in accordance with new LG Act 2020	D8718916
2.0	Draft	April 2021	As above	D2404421
3.0	Draft	May 2021	New Policy Template	D3357021
4.0	Final Draft	June 2021		D4283321

10. ATTACHMENT SUMMARY

10.1. Schedule 1 – Eligibility Criteria for Community Rent – Lease / Licenses

10.2. Schedule 2 – Building Maintenance Schedule

Table 1 – Building Internal & External

Table 2 – Grounds Maintenance

Table 3 – Playground Area

Table 4 – Glossary

Schedule 1



ELIGIBILITY CRITERIA FOR COMMUNITY RENT – LEASE / LICENSES

(A) COMMUNITY RENT / DISCOUNTED MARKET RENT

“E” in the column under the tenant category indicates that this is an essential criterion for that category of tenant to meet.

Criteria	Eligible Organisation Criteria – (A)	Tenant Category
1	The organisation is a non-profit organisation Under Australian Tax Office definitions.	E
2	The organisation is a legal entity under appropriate legislation (such as the Associations Incorporation Act 1981 (Vic)).	E
3	The organisation has an Australian Business Number.	E
4	The organisation is financially viable, with annual financial statements provided to Council, audited where it is required as a prescribed association under the Associations Incorporation Act.	E
5	The organisation complies with relevant legislation governing its activities, and holds any licenses or registration certificates required for it to operate.	E
6	The organisation has a committee of management and appropriate governance arrangements, with established accountability and reporting methods to members of the organisation and / or to the community.	E
7	The organisation has limited capacity to generate revenue from use of their facility or from other activities consistent with the organisational purpose.	E
8	The organisation is not obtaining an unfair advantage over other enterprises conducting similar activities by the application of community rents.	E
9	The organisation is willing to participate in and contribute to the relevant community engagement process prior to determination of lease/license	E
10	The specified purpose of use of the land for lease or license is clear and unambiguous and suitable to the reservation of the land.	
Council Plan		
11	Contribution to the achievement of the Strategies and Objectives of the Council Plan and services intended to be provided under the Plan	E
Crown Land		
12	If the land is crown land Is it likely that DELWP will recommend Approval for the grant of a lease/license	E
Alternative forms of management		
13	Use of the premises is not suited to a commercial lease arrangement, management by a Community Asset Committee or Facility Management	E

Schedule 2



BUILDING MAINTENANCE SCHEDULE TO BE AGREED BETWEEN COUNCIL AND TENANT BEFORE ISSUE OF LEASE

TABLE 1 - BUILDING INTERNAL AND 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 in accordance with manufacturer / installer recommended maintenance schedule and providing evidence on an annual basis of this maintenance occurring
Building alterations (including non-structural upgrades) and capital works/improvements	Full responsibility for renewal / replacement	<p>Consent from Landlord required for any building alterations the tenant wishes to complete and all relevant permits.</p> <p>Capital works/improvements are not necessarily approved as of right. Consent may be refused if the works/improvements create implications for Council that it cannot fund or does not see as essential to the service provided from the premise.</p> <p>The works/improvements are subject to Council's Social, Community and Economic Infrastructure Blueprint processes.</p> <p>Non-structural upgrades require the consent of the Co-ordinator Building and Recreation Assets before any commencement of the upgrades.</p>
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



TABLE 1 - BUILDING INTERNAL AND EXTERNAL

Item	Landlord Responsibility	Tenant 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 Programmed maintenance as determined by Council Building Asset Management Plan	Renewal of light fittings / globes Cleaning and repairs Battery operated smoke alarms
Energy/Power/Electrical Upgrades		Requests for upgrades must be assessed by Coordinator Building and Recreation Assets and are subject to any Council Energy Assessment process or like process, anticipated savings, and renewal obligations.
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
Glass	No responsibility	Cleaning, repairs and renewal
Grease traps	No responsibility	Full responsibility
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 for gutter cleaning	No responsibility (because of OHS risks)
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
Solar system installations	Full responsibility for renewal / replacement	Full responsibility for cleaning, servicing and repairs in accordance with manufacturer's/installers recommended maintenance schedule and providing evidence



TABLE 1 - BUILDING INTERNAL AND EXTERNAL

Item	Landlord Responsibility	Tenant Responsibility
		on an annual basis of this maintenance occurring
White goods (stoves, cooking equipment, fridges, dishwashers and urns etc). This includes commercial type equipment e.g. refrigerators/freezers, cooktops, and wiring and connections to power sources (electricity and gas) associated therewith	No responsibility	Full responsibility



TABLE 2 – 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
Paths, decks, entrances and car parks	Full responsibility for renewals (as determined by the Landlord)	Cleaning and repairs
Playground areas – refer to Table 3 – Playground Area for additional detail	Annual inspections Providing maintenance schedule to Tenants	Maintenance in accordance with schedule provided by Landlord
Security lighting (Building perimeter only)	Full responsibility for renewals	Cleaning and repairs
Shade sails	Full responsibility for renewals	Cleaning and repairs in accordance with manufacturer's/installers' recommended maintenance schedule and providing evidence on an annual basis of this maintenance occurring
Signage	No responsibility	Full responsibility with Council consent
Trees	Removal of trees when required	Pruning and general maintenance
Waste and recycling management	No responsibility	If tenant opts to use Council service tenant pays relevant Council fees and charges



TABLE 3 – PLAYGROUND AREA

Item	Council Responsibility	CoM 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 soft fall mulch in touch down areas, i.e. under swings and at base of slides on a daily basis. Sweep or rake back soft fall mulch back into contained areas to keep paths and lawn areas clean
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

**TABLE 3 – PLAYGROUND AREA**

Item	Council Responsibility	CoM 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

TABLE 4 – GLOSSARY

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.

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 negation.
Tenant/Licensee 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: 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.