



GOLDEN PLAINS SHIRE

# **ATTACHMENTS**

**Under Separate Cover  
Ordinary Council Meeting**

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**6.00pm Tuesday 26 November 2019**



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PROPERTY USE AGREEMENTS POLICY



# Property Use Agreements Policy

**PROPERTY USE AGREEMENTS POLICY**

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**PROPERTY USE AGREEMENTS POLICY**

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**1. PURPOSE**

- 1.1 To determine the nature of usage agreements that will be entered into with incorporated Committees/Management Entities for use of Council property.
- 1.2 To determine the nature of agreements that will be entered into with incorporated entities for use of Council property for commercial operations.

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**2. SCOPE**

- 2.1 This policy applies to properties that Council owns or has the delegated authority to manage.
- 2.2 This policy applies to staff that prepare leases, licenses and occupancy (management) agreements for Council owned or managed land and facilities.
- 2.3 This policy applies to individuals, groups or businesses that have been determined by Council to be a preferred user of a Council property. The consideration of eligible preferred users will be determined through other policies and processes approved by Council.
- 2.4 This policy applies to parties who use Council owned or managed property on a regular, medium to long term basis. This Policy does not apply to users seeking access to facilities for less than 3 months or an ad-hoc basis.

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**3. POLICY STATEMENT**

- 3.1 This policy covers the following aspects of developing Agreements for the use of Council property:
  - Types of Agreements;
  - Fees;
  - Conditions of Agreements;
  - Landowner obligations; and
  - User obligations.

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**4. PROCEDURES****4.1 Pre-Agreement Requirements**

- 4.1.1 The party must have all the following before entering into an agreement:
  - Be a registered legal entity;
  - Hold current Public Liability Insurance (or be covered by Council's Public Liability Insurance Policy); and
  - Capacity for electronic business transactions primarily financial and communication.

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**4.2 Council Properties – Multi-Use Community Purpose****4.2.1 Fee:**

- Peppercorn fee where adherence to the Maintenance Schedule.
- Higher fees may be charged by negotiation where there are changes to the Maintenance Schedule.
- Council reserve the right to conduct a fees and charges review.

**4.2.2 Agreement Type:**

- Management agreement.
- For properties maintained by Committees or Incorporated Management Entities for multi-use community purposes, Council will enter into a management agreement with the Committee/Entity covering the Council's and the Committee/Entities responsibilities. These properties include multi-purpose recreation facilities and multi-purpose community meeting places, etc.

**4.3 Council Properties – Exclusive / Single Use Community Purpose****4.3.1 Fee:**

- Peppercorn fee where adherence to the Maintenance Schedule.
- Higher fees may be charged by negotiation where there are changes to the Maintenance Schedule.
- Council reserve the right to conduct a fees and charges review.

**4.3.2 Agreement Type:**

- Lease.
- Alternative arrangements are for properties to be maintained by Committees or Incorporated Management Entities for community use at a nominal fee. Council will enter into a management agreement with the Committee/Entity covering the Council's and the Committee's responsibilities. These properties may include bowling clubs, kindergartens, tennis clubs, golf courses, fire stations, etc.

**4.4 Council Properties – Operations****4.4.1 Fee:**

- Commercial rent, being:
  - rent based on a market valuation prepared by a suitably qualified independent valuer.

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**4.4.2 Agreement Type:**

- Lease.
- Where Council properties are used for commercial use, Council will enter into a lease with an incorporated entity pursuant to Section 190 of the Local Government Act 1989. These uses will include mobile telephone towers, etc.

**4.5 Crown Land (Managed on behalf of Council)****4.5.1 Fee:**

- Peppercorn fee where adherence to the Maintenance Schedule.
- Higher fees may be charged by negotiation where there are changes to the Maintenance Schedule.
- Council reserve the right to conduct a fees and charges review.

**4.5.2 Agreement Type:**

- Management agreement.
- Where Crown Land is managed by a Committee or an Incorporated Management Entity on behalf of Council for community use, Council will enter into a management agreement with the respective Committee/Entity setting out the responsibilities of Council and the Committee/Entity.
- Council reserve the right to conduct a fees and charges review.

**4.6 Crown Land – Exclusive / Single Community or Commercial Use****4.6.1 Fee:**

- Rent, being either:
  - set by Market Valuation (commercial user); or
  - set in accordance with Council's Schedule of Fees (non-commercial user).

**4.6.2 Agreement Type:**

- Lease or Licence;
- Where the use of Crown Land by an incorporated entity deemed to be for exclusive use of the entity or of a commercial nature, then Council will enter into a Lease or Licence using an agreement approved by the Department of Environment, Land, Water and Planning (DELWP).
- The Lease or Licence will be made under the Crown Land (Reserves) Act 1978 and will be co-signed by DELWP. These uses will include community houses etc. who seek exclusive use of property.



**PROPERTY USE AGREEMENTS POLICY****4.7 Maintenance Responsibilities**

- 4.7.1 Each Tenant, Licensee or User is required to maintain the facility in accordance with the Maintenance Schedule attached to their agreement.
- 4.7.2 The Tenant, Licensee or User will be responsible for keeping the facility clean, in good condition and performing incidental maintenance not requiring a skilled tradesperson.
- 4.7.3 All work is to be undertaken by an accredited qualified tradesperson registered on Council's Occupational Health and Safety (OHS) System.
- 4.7.4 Council reserves the right to negotiate maintenance responsibilities and costs. Council reserves the right to inspect the premises each year or more frequently as required.

**4.8 Capital Works – Alterations or Additions**

- 4.8.1 Tenants, Licensee, or Users will not make any alteration or additions to the Council Property without Council and / or DELWP consent. Any alterations or additions consented to shall be undertaken by Council's contractors, unless otherwise agreed between the parties in writing.

**4.9 Outgoings**

- 4.9.1 Council reserves the right to apply a subsidy for outgoings. Any subsidy will be decided through Council resolution or by an officer that has been delegated this authority by Council.

**4.10 Insurance (Building, Contents and Public Liability)**

- 4.10.1 The Tenant, Licensees, or Users must hold current insurance for contents or equipment held by them at the Council Property.
- 4.10.2 Building Insurance for all Council assets will be paid for by Council.
- 4.10.3 All Tenants, Licensees, or Users are required to hold current Public Liability Insurance to a value determined by Council as detailed in the agreement. A copy of the Public Liability Insurance is to be provided to Council on an annual basis as evidence of cover.
- 4.10.4 Council reserves the ability to extend its public liability coverage to committees or incorporated management entities who have entered into a management agreement with Council.

**4.11 Use of Council Property**

- 4.11.1 Tenants, Licensees or Users must obtain prior written consent for any change or additional use of the Council Property.
- 4.11.2 For Licensees who occupy Council property under a Licence Agreement, Council may also use or allow others to use the Council Property outside the normal operating hours of the Licensee, provided the use does not unreasonably interfere with the Licensees' use.

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- 4.11.3 Tenants, Licensees or Users must also comply with all guidelines and directions issued by the Environment Protection Authority, Planning Permit provisions (including Liquor Licence provisions), Liquor Licensing Commission and Council Local Laws.

**4.12 Permits**

- 4.12.1 All Tenants, Licensees or Users must adhere to the conditions of any Planning Permit, Food Handling Permit, or any other permit issued by Council or any other authority.

**4.13 Consultation and Notification**

- 4.13.1 Council will undertake consultation or notification in following circumstances:
- Where Council has an identified desired use for a property and is seeking to identify potential users to deliver this use, e.g. a Commercial Occupier. The consultation process will generally be an Expression of Interest (EOI) process. Once the EOI process is completed all submissions will be assessed in accordance with the eligibility criteria advertised to determine the preferred user.
  - Where Council is approached by a potential interested individual, group or business that wishes to use a
  - Council property and Council wishes to inform key stakeholders, competitors or the broader community.
  - Where required by the Local Government Act 1989, Council will advertise a notice in the local newspaper (Golden Plains Times) and or on Council's website seeking public feedback. This may also occur when existing agreements are nearing expiry.
  - Where Council needs to comply with legislation or regulatory requirements.

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**5. RESPONSIBILITIES****Compliance, monitoring and review**

- 5.1 The policy owner is responsible for ensuring the policy:
- aligns with relevant legislation, government policy and Council's requirements/strategies/values;
  - is implemented and monitored (i.e. the policy is followed, reflects the changing policy environment, and emerging issues are identified); and
  - is reviewed to evaluate its continuing effectiveness (e.g. achieving its purpose, remains relevant/current).

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**Reporting**

5.2 No additional reporting is required.

**Records Management**

5.3 Council must maintain all records relevant to administering this policy in accordance with the Public Records Act 1973.

**6. DEFINITIONS OF TERMS OR ABBREVIATIONS USED**

**Terms and definitions**

<b>Term</b>	<b>Definition</b>
<i>Agreement</i>	<i>Includes a Lease, Licence, Management Agreement and Commercial Lease for Council Property</i>
<i>Council</i>	<i>Golden Plains Shire Council</i>
<i>Council property</i>	<i>Land, buildings, property, or facilities owned or managed by Council.</i>
<i>Crown land</i>	<i>As defined in the Crown Land (Reserves) Act 1978</i>
<i>DELWP</i>	<i>The Department of Environment, Land, Water and Planning</i>
<i>Expression of Interest</i>	<i>A process whereby Council invites individuals, groups or businesses to submit a detailed expression of interest detailing how it will meet key objectives, to be assessed under evaluation criteria</i>
<i>Facility</i>	<i>A place and amenity provided for a particular purpose</i>
<i>Lease</i>	<i>A Lease is a right granted by the owner of the property (Landlord) to another person (Tenant) to have exclusive possession of that property, or part thereof, for a fixed duration in return for rental payment. Council will grant a Lease where the premises will be occupied exclusively by the one user.</i>
<i>Licence</i>	<i>A Licence permits a person (Licensee) to occupy property (or part thereof) under particular conditions. The main feature that distinguishes a Licence from a Lease is that a Licence does not permit exclusive occupancy of the property.</i>
<i>Peppercorn Fee</i>	<i>\$1.00 per annum.</i>
<i>Tenant</i>	<i>A person who occupies land or property rented from a landlord.</i>

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<i>User</i>	<i>A person who uses Council property as per an Agreement.</i>
<i>User Agreement</i>	<i>An Agreement that is no longer than twelve months in length and is for regular bookings with a high frequency</i>

**7. RELATED LEGISLATION AND DOCUMENTS**

**7.1 Strategic Documents, Policies or Procedures**

- Council Plan 2017-2021*
- Asset Management Strategy and Plans*
- Maintenance Schedule*
- Standard templates for Agreements*

**7.2 Legislation**

- The Local Government Act 1989*
- The Local Government (General) Regulations 2015*
- The Retail Leases Act 2003*
- The Retail Leases Regulations 2003*
- The Crown Land (Reserves) Act 1978 Crown Land Acts Amendment (lease and licence terms) Act 2009*
- The Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2011*
- The Occupational Health and Safety Act 2004*
- The Residential Tenancies Act 1997*
- The Residential Tenancies Regulations 2008*

**8. HUMAN RIGHTS STATEMENT OF COMPATABILITY**

8.1 It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006 (Vic).

**9. POLICY OWNER**

- 9.1 The Corporate Governance and Risk Coordinator is the policy owner.
- 9.2 The policy owner is the individual who is given the responsibility to review, edit and maintain this policy and associated procedure. The policy owner is also the point of contact for any questions regarding this policy.

**10. FEEDBACK**

10.1 You may provide feedback about this document by emailing [enquiries@gplains.vic.gov.au](mailto:enquiries@gplains.vic.gov.au).

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**11. DOCUMENT INFORMATION**

DOCUMENT TYPE:	Council Policy document
DOCUMENT STATUS:	<a href="#">Approved/Not Approved</a>
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REVIEW DATE:	26 November 2023
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NOTES:	<p>Policy documents are amended from time to time, therefore you should not rely on a printed copy being the current version. Please consult Council's Policy page on the Golden Plains Shire Council website to ensure that the version you are using is up to date. Available at:</p> <p><a href="https://www.goldenplains.vic.gov.au/residents/my-council/about-council/council-policies">https://www.goldenplains.vic.gov.au/residents/my-council/about-council/council-policies</a></p>