

Governance and Property Leasing and Licensing Policy 2024

Purpose	<p>This Policy aims to establish a consistent, transparent, equitable and fair process for the administration of leases and licenses for properties owned and managed by the Council.</p> <p>The overall goal is to responsibly maximise the use of community assets in alignment with the Council's vision, policies, and Council Plan.</p>
Scope	<p>This Policy is applicable to all Council owned land and buildings and where Council acts as Committee of Management for Crown land.</p> <p>It does not apply to premises that are managed on behalf of Council under contract management arrangements; seasonal sports arrangements; event permits; council managed or operated buildings such as community hall network, living and learning centres and maternal child health centres; and facilities under service agreements such as libraries.</p>
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Policy Owner	Governance and Property Department
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Acknowledgement of Country

Nillumbik Shire Council respectfully acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners of the Country on which Nillumbik is located, and we value the significance of the Wurundjeri people's history as essential to the unique character of the Shire. We pay tribute to all First Nations People living in Nillumbik, give respect to Elders past, present and future, and extend that respect to all First Nations People.

We respect the enduring strength of the Wurundjeri Woi-wurrung and acknowledge the ongoing impacts of past trauma and injustices from European invasion, massacres and genocide committed against First Nations People. We acknowledge that sovereignty was never ceded.

Wurundjeri Woi-wurrung people hold a deep and ongoing connection to this place. We value the distinctive place of our First Nations People in both Nillumbik and Australia's identity; from their cultural heritage and care of the land and waterways, to their ongoing contributions in many fields including academia, agriculture, art, economics, law, sport and politics.



Inclusion statement

Nillumbik Shire Council is committed to creating a fair, equitable and inclusive community where human rights are respected, participation is facilitated, barriers are addressed and diversity is celebrated. We support the rights of all people regardless of age, gender, ability or background. We value the diverse and changing nature of our community and understand that some groups and individuals experience more barriers than others.

Council can be contacted through the National Relay Service (NRS). The NRS is available as a phone solution for people who are deaf or have a hearing or speech impairment.

All calls are confidential. Users must be registered via www.relayservice.gov.au to make and receive calls:

- TTY users phone 133 677, then ask for Council on 9433 3111.
- Speak and Listen (speech-to-speech) users phone 1300 555 727, then ask for Council on 9433 3111.
- A Hearing loop is located at the Customer Service Counter, Civic Centre, Civic Drive, Greensborough
- Communication boards are available at the Civic Drive Customer Service Counter, Civic Centre, Civic Drive Greensborough.
- Interpreting services are available.

If you require the Leasing and Licensing Policy in an alternative format, please email nillumbik@nillumbik.vic.gov.au or call 9433 3111.

Please contact Council's Property Team on 9433 3111 if you need to discuss any leasing and licensing matter or require assistance understanding this policy.

1. Policy Statement

Nillumbik Shire Council recognises its role as the custodian of land and buildings on behalf of the Nillumbik Shire community.

The Council's property portfolio encompasses a diverse range of lease and license agreements,

Nillumbik's property portfolio has a wide variety of lease and licence agreements, reflecting our commitment to fostering community well-being, cultural enrichment, and sustainable development.

These agreements relate mostly to land with buildings or vacant land owned by Council, as well as Crown land where Council is the delegated Committee of Management appointed by the State Government.

This Policy reflects our commitment to responsible and community-driven property management, ensuring that our assets are utilised for the benefit of all residents of Nillumbik Shire.

2. Objectives

This Policy aims to establish a consistent, transparent, equitable and fair process for the administration of leases and licenses for properties owned and managed by the Council.

It outlines clear objectives for developing agreements, specifying the roles and responsibilities of both the Council and tenants.

The overall goal is to responsibly maximise the use of community assets in alignment with the Council's vision, policies, and Council Plan.

3. Guiding Principles

The guiding principles of this Policy encompass:

Community benefit	<ul style="list-style-type: none">• Providing efficient use of Council facilities that supports a diverse range of community groups to provide benefit for the Nillumbik community.
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Return to Council	<ul style="list-style-type: none"> Maximise the commercial return to Council of its commercial and residential properties and provide a fair and reasonable rate for community groups and not for profit entities.
Good governance and accountability	<ul style="list-style-type: none"> Delivering an equitable, transparent process for leasing and licensing of Council properties to a diverse range of organisations, businesses, agencies and community groups that is consistent with the Council Plan and other Council policies and strategies.
Sustainability	<ul style="list-style-type: none"> Promoting sustainable practices and encouraging lessees to take an active role in environmental initiatives.

4. Definitions

In this Policy, the following definitions apply:

Reference term	Definition
Property officer	the Council Officer who is responsible for negotiating the terms and conditions of the lease or licence with the community group. They are also responsible for the management of the tenant for the duration of the lease or licence.
DEECA	the Department of Energy, Environment and Climate Action.
Fittings	also known as chattels, are items that are freestanding and retain their independence from the building or land and are capable of being removed. Examples include refrigerators, microwaves, furniture etc.
Fixtures	are items that are attached to the building or land and cannot easily be removed from the Premises. Examples include central heating systems, air conditioning units affixed to the wall, kitchen units, stoves, dishwashers, solar panels and water tanks.
Incorporated Association	a club or community group, operating not-for-profit, whose members have decided to give their organisation a formal legal structure.
LGA	the <i>Local Government Act 2020</i>
Licensee	the occupier of a facility under a licence agreement.
Not for Profit (NFP)	an organisation that does not operate for the profit, personal gain or other benefit of particular people. They can vary in size, from small groups who may rely on volunteers and the receipt of grants, donations or fundraising, to larger

	organisations who are well funded by membership fees and programs as the principal source of income and may supplement this income with trading activities. Large and successful NFPs comprise paid employees and other staff including managers and executives.
Outgoings	Council rates, taxes, building and public liability insurance, utility supply and usage charges, and other levies (eg Fire Levy) assessed against the property.
Premises or Property	the land or land and building leased or licensed to the tenant.
RLA	the <i>Retail Leases Act 2003</i> .
Services	all services in connection with the property, including electricity, gas, water and telephone charges.
TCA	the <i>Telecommunications Act 1997</i> .
Tenant	is an authorised person or incorporated body that has entered into a lease or licence with Council for the use of a Council owned or Council managed property.
Lessee	the authorised person or incorporated body that has entered into a Lease with Council for the use of Council property.

5. Types of Tenure

In determining the appropriate occupancy agreement for Council owned and managed assets, including Crown land where the Council is the designated Committee of Management and any other assets the Council has control over requiring occupancy or usage arrangement, the choice of tenure for the circumstances will be at Council's sole discretion.

Nillumbik Shire Council has two main forms of tenure which are used to grant the use of Council land holdings. They are as follows:

5.1 Licence agreement

A licence agreement gives the tenant permission to enter and use a property for a specific purpose over an allocated time, but it does not grant exclusive occupancy.

A licence agreement does not create an interest in the land and cannot be assigned or transferred to a third party.

A licence may be granted for either vacant land or land and buildings.

5.2 Lease agreement

A lease is a contract which permits sole occupancy or “exclusive use” of an Asset that Council owns or controls for a specific purpose and time period (Term), usually in return for rent. A property may be leased under the provisions of:

- Section 115 of the *Local Government Act 2020*
- Section 17D of the *Crown Land (Reserve) Act 1978*, if the property is Crown land of which the Council is Committee of Management
- The *Retail Leases Act 2003*

6. Policy and Legislation

All agreements will have regard to, and consideration of, other Council adopted Policies and Statutory requirements, applicable acts and Section 115 of the *Local Government Act 2020*. Any agreement will be negotiated with the tenant and all rights and responsibilities will be included in that agreement.

A comprehensive list of Council Policies and relevant Legislation has been included at the end of this Policy for reference.

7. Categories and fee structure

Tenants have been grouped into categories which determine the fee structure and obligations which will apply to the tenant when entering into an agreement.

Rent or licence fees charge for the premises will be set at the discretion of the Council in line with one of the categorised rental categories:

- Category A - Community Service Providers
- Category B - Community Partnerships
- Category C - Other Organisations 'Not for Profit'
- Category D - Commercial and Private Use

The eligibility for a tenancy agreement with Council is determined by an assessment against eligibility requirements, tenant structure, the broader community benefit, alignment with the Council Plan, and the organisation's capacity to occupy a leased facility. Once eligibility is established the assessment criteria is used to determine tenant categories.

Refer to **Schedule A** - Tenant categories

8. Tenant selection, negotiations and over-holdings

The assessment and selection of suitable tenants underpins Council's long term Strategic Plan associated Policies and Strategies, Stakeholder expectations and DEECA guidelines, for the provision of services and other benefits for the Nillumbik community.

The Council promotes inclusion and diverse representation within Council facilities. Use of a Council facility or asset by tenants must align with Council's Access, Equity and Inclusion Policy.

If tenants are not managing or utilising the Council asset or facility in line with Council's Access, Equity and Inclusion Policy, this will be treated as a breach of the agreement. Council will give notice to the tenant to remedy the breach.

The current condition of the building and Council's future requirements will be taken into consideration before selecting a tenant to operate from a Council facility.

The Council recognises some tenants have historical affiliations with assets they currently have agreements for however do not guarantee that current or historical tenants will be offered new agreements.

Groups or organisations wishing to occupy Council facilities will be assessed against the eligibility criteria contained in Council's Leasing and Licensing Procedure.

Selection of a tenant may be required if a Council building or part of a building becomes vacant, or there is a requirement to assess an existing tenant whose lease or licence has expired before offering a renewal of the agreement.

Where the property is Crown land and only managed by Council, Council will be required to follow the guidelines as set down by DEECA. This may require Council to advertise the lease or licence or undertake an Expression of Interest (EOI) process and tenant selection will then be in line with those guidelines.

8.1 Over-holding

All lease and licence agreements are to remain in a current status. Under certain circumstances, agreements may be allowed to enter into over-holding. The over-holding period will be at Council's discretion depending on the specific circumstances.

Capital works will not occur or be approved to occur at a Property which has an agreement in over-holding or an existing tenant with no agreement in place. Capital works associated with safety or compliance are exempt and in circumstances where

short term funding for works is available, capital works may proceed provided the leasing process has commenced and there is a low risk to Council.

8.2 Expression of Interest (EOI) to use Council property

In the event that a significant Council asset becomes available for use, either on a shared or exclusive basis, then Council will consider the *Local Government Best Practice Guideline for the Sale and Exchange of Land* dated June 2009 which can extend to cover leasing. This guideline outlines a public process be conducted unless Council can justify a public treaty negotiation.

As part of the ongoing management of Council's assets, all general leasing and licensing enquiries can be submitted via the Nillumbik Shire Council's website - Enquire about leasing or licensing Council land or via email to nillumbik@nillumbik.vic.gov.au.

8.3 Council as tenant

Council may require the use of a building and/or land which is owned by another organisation, should the type of facility required be unavailable in the current asset pool, or vacant buildings or land are not deemed suitable for the intended purpose.

9. Terms and conditions

The terms and conditions of all Council tenure will be assessed on the nature of the agreement. Additional provisions will be included when necessary to meet specific requirements of Council or the other party involved.

Council has a suite of standard documents used for occupancy agreements under this Policy.

The standard terms and conditions are set and agreements can be tailored for individual groups through the use of specific Special Conditions.

10. Insurance

As a minimum, all tenants are required to hold the following insurance:

- At least \$20,000,000 public liability insurance;
- Contents insurance for the tenant's own property; and
- Building insurance, where the tenant has constructed the building or other infrastructure on Council land.

Tenants must provide Council with a Certificate of Currency on or before the commencement date of the agreement and annually thereafter if requested.

11. Reporting and Inspections

All tenants must provide to Council as requested annually a certificate of currency for their public liability insurance policy.

Community groups may be required to provide various reports as a condition of their agreement on a regular basis or upon request by Council, which may include (but is not limited to) the following information:

- a. proof of the tenant's current registration with Consumer Affairs Victoria as an Incorporated Association in accordance with the *Associations Incorporation Reform Act 2012* (Vic);
- b. a copy of the tenant's current licence or permit under the *Liquor Control Reform Act 1998* (Vic) (if held);
- c. a copy of the tenant's Annual Financial Statement or a copy of the Lessee's Annual Statement lodged with Consumer Affairs Victoria;
- d. a list of its current committee members, including names and contact details for after hours and emergency situations;
- e. the number of current registered members of the tenant (if applicable); and
- f. the tenant's current child safe policies.

11.1 Entry by Council

The authorised Council Officer or contractor may enter the facility at any reasonable time after giving the tenant reasonable notification where practical to inspect the condition of the building, undertake repairs, maintenance, works or alterations in the building which Council decides to undertake or is required to carry out by any law or authority or in accordance with the use agreement.

Council will use all reasonable endeavours to cause as little disruption as possible to the tenant's use of the facility in exercising this right. However notice will not be provided for cyclic and routine maintenance and inspections undertaken by Council's contractors that involve multiple buildings in the following situations:

- The carrying out of routine essential safety measures and building condition audits; and
- Inspections for the purpose of valuation

Contractors will be required to provide suitable identification before entering the facility.

12. Maintenance and repair obligations and costs

A maintenance schedule is included in the standard community lease and licence to ensure a consistent approach to maintaining Council's facilities, which specifies the level of maintenance responsibility for the tenant and Council. Some of the items of responsibility include structural repairs, essential safety measures, maintenance and repairs of fittings and fixtures, cleaning of the interior and exterior and damage to the building.

The level of maintenance required of the tenant is determined by the tenants ability to maintain the premises, the category of the tenant, and if the tenant has constructed all or part of the premises.

Any assets, fixtures or fittings purchased and installed by the tenant, after seeking Council's prior written consent, is to be repaired and maintained by the tenant at their cost and will become Council's property at the end of the agreement, unless agreed otherwise.

Any planning permit required will be the responsibility of the tenant including the cost of obtaining the permit. The tenant must also obtain Council's consent to use its own contractors to install any assets, fixtures or fittings. Council's preference is to use its own contractors and recover this cost from the tenant.

Should Council undertake the repair and maintenance of the asset, fixture or fitting on behalf of the tenant, then Council will seek reimbursement of this cost from the tenant.

The tenant is liable for the cost of repair or replacement of any item that is damaged as a result of misuse or vandalism by the tenant or the tenant's guests, invitees and contractors.

13. Financial hardship

In the case of demonstrable financial hardship by the tenant, Council may at its discretion waive the requirement of the tenant to pay the Rent and/or other charges required under the lease or licence for a period of the Term, to be determined by Council.

14. Gambling

A tenant is not permitted to apply for any licence under the *Gambling Regulation Act 2003* for the installation of electronic gaming machines in any of Council's

facilities. Any form of gambling activity is not permitted, including promotion or advertising in or on Council-owned facilities under the tenant's occupancy agreement. Gambling activity includes, but is not limited to, sports betting, lotto and casino games.

15. Retail leases

In Victoria, retail leases are governed by the *Retail Leases Act 2003 (Vic)*. The Act applies to all retail premises, defined as premises used wholly or predominantly for the sale or hire of goods by retail or the retail provision of services.

The Act specifies what is and what isn't a retail lease and imposes extended obligations on landlords and affords extra protections to tenants.

16. Vacant land leased to residents for leisure, agricultural and grazing purposes

Some vacant Council land is able to be leased or licensed to residents as there are no short to medium term requirements by Council to use the land or it is encumbered with, for example, a drainage easement. Council benefits from the leasing or licensing of this land as the tenant maintains the land which also becomes rateable upon being leased by an individual, corporation or public utility.

Land will only be leased to residents for grazing, agricultural purposes, private residential use and leisure, not for permanent structures.

These leases will be subject to determination of a current market rental. A reduced market rental may be determined in certain circumstances where Council benefits from leasing or licensing of the Land.

17. Residential leases

Council has a small number of residential properties that are leased under the *Residential Tenancies Act 1997*.

These residences are managed by a commercial property agent and are leased at a market rental.

These residential properties each form part of a larger parcel of land which is reserved as Public Park and Recreation (PPRZ).

Council benefits from the leasing of this land as the lessee maintains the property.

18. Related legislation, regulations, policies, procedures and/or guidelines

A number of laws, regulations, policies and plans apply to Council's implementation and management of leases and licences. The following are of relevance:

- *Crown Land (Reserves) Act 1978*
- *Child Wellbeing and Safety Act 2005 (Vic)*
- *Leasing policy for Victorian Crown land 2023*
- *Crown Land Leasing Guidelines 2012*
- *Local Government Act 2020*
- *Local Government (General) Regulations 2004*
- *Land Act 1958*
- *Planning and Environment Act 1987 (Vic)*
- *Property Law Act 1958*
- *Retail Leases Act 2003*
- *Leasing Policy for Victorian Crown Land 2023*
- *Committee of Management Guidelines dated December 2021*
- *Local Government Best Practice Guideline for the Sale and Exchange of Land dated June 2009*
- *Child Safe Standards*

Nilumbik's relevant Plans and Strategies

- *Access Equity and Inclusion Policy*
- *Climate Action Plan 2022-2032*
- *Community Vision – Nilumbik 2040*
- *Nilumbik Council Plan & Budget*
- *Nilumbik Health & Wellbeing Plan 2021-25*
- *Nilumbik Shire Council's Local Laws*
- *Nilumbik Shire Council - Leasing and Licensing Procedure 2024*

19. Review

This Policy must be reviewed within 5 years of the authorised date or as legislation requires or as determined by Council.

This Policy has been reviewed for Human Rights Charter compliance.

Schedule A - Tenant categories

Category A – Community Service Providers

Eligibility Indicators

- **Community Benefit:** Provides the maximum level of community benefit by providing children services, services to disadvantaged groups within the Nillumbik community, management of a Council hall or Historical Society.
These utilise Council owned or managed facilities and include Childcare - Long Day and Occasional Care, Preschools, Halls managed by Committees, Historical Societies, Foodshare, and Adaptive Bike Storage Facility in Diamond Creek to organisations and residents.
- **Use:** Aligns with a Council service and the Council Plan. Proposed use will increase social inclusion, equity and promote health and wellbeing of Nillumbik Shire Council residents.
- **Funding:** Receives limited funding aside from that provided for the ongoing operation of the service.
- **Fit for Purpose:** The proposed use of the Property is appropriate taking into account building and planning requirements.
- **Revenue:** Is low to medium and there are no permanent retail activities.
- **Utilisation:** Community access and utilisation of the Property will be maximised either by direct use of the Property or through shared use or hire arrangements.
- **Operational:** Not for profit organisation, or community group or club run by volunteers or paid workers.
- **Compliance:** Not for profit organisation, registered legal entity (incorporated, legitimate body or under the auspice of an incorporated body), financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates including certificate of currency of insurance (public liability or others as required), and governance capability.

Management of a Preschool or Child Care Cooperative must be compliant with the requirements of the *Educational and Care Services National Law Act 2010 (Vic)* and *Educational and Care Services National Regulations 2011* and Council's relevant Service Level Agreement.

Category B – Community Partnerships

Eligibility Indicators

- **Community Benefit:** Provides significant community benefit of which is in demand by the local community in the form of recreational, learning services for adults, sporting or club based activities. Promotes and supports volunteerism. The type of community benefit provided could not be delivered unless supported by Council.

- **Use:** Aligns with a Council service and the Council Plan. Proposed use will increase social inclusion, equity and promote health and wellbeing for the Nillumbik Shire Council community.
- **Funding:** Receives limited funding other than Council.
- **Fit for Purpose:** The proposed use of the Property is appropriate taking into account the land, building and planning requirements.
- **Revenue:** Limited capacity to generate revenue from use of the Property (i.e. memberships or hiring) or activities consistent with the organisational purpose. The tenant must not use the Premises wholly or predominantly for the sale or hire of goods by retail or the retail provision of services within the meaning of the *Retail Leases Act 2003* (Vic).
- **Utilisation:** Community access and utilisation of the Property will be maximised either by direct use of the Property or through shared use or hire arrangements.
- **Operational:** Not for profit organisation or community group or club run by volunteers or paid workers.
- **Compliance:** Not for profit organisation, registered legal entity (incorporated, legitimate body or under the auspice of an incorporated body), financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates including certificate of currency of insurance (public liability or others as required), and governance capability.

Category C – Other Organisations ‘Not for Profit’

Eligibility Indicators

- **Community Benefit:** There is evidence base that the proposed use is in strong demand and will provide a significant community benefit and service which is in high demand by the Nillumbik Shire community.
- **Use:** Aligns with a Council service and the Council Plan. Proposed use will increase social inclusion, equity and promote health and wellbeing for the Nillumbik Shire Council community.
- **Funding:** Receives significant funding other than Council.
- **Fit for Purpose:** The proposed use of the Property is appropriate taking into account the land, building and planning requirements.
- **Revenue:** Has increased capacity to generate revenue from use of the Property (i.e. memberships or hiring) or activities consistent with the organisational purpose. The tenant must not use the Premises wholly or predominantly for the sale or hire of goods by retail or the retail provision of services within the meaning of the *Retail Leases Act 2003* (Vic).
- **Utilisation:** Community access and utilisation of the Property will be maximised either by direct use of the Property or through shared use or hire arrangements.

- **Operational:** Tenancy by a State/Nation Wide organisation that is registered 'Not for Profit', however, may operate with more than one branch or service (unit) and have the option of treating their units as if they were separate entities for 'Not for Profit' purposes, that are predominately run by paid employees. For example Country Fire Authority.
- **Compliance:** Not for profit organisation, registered legal entity, financially viable, complies with all relevant legislation governing its activities, holds all relevant certificates including certificate of currency of insurance (public liability or others as required), have a management committee or board with appropriate governance arrangements.

Category D – Commercial and Private Use

Eligibility Indicators

- **Community Benefit:** Desirable to provide community benefit.
- **Use:** Aligns with and not detrimental to Council Plan strategic objectives.
- **Funding:** Receives significant funding other than Council or is a profit based organisation.
- **Fit for Purpose:** The proposed use of the Property is appropriate taking into account the land, building and planning requirements.
- **Revenue:** has increased capacity to generate revenue from use of the Property or activities consistent with the organisational purpose.
- **Utilisation:** Community access and utilisation of the Property will be maximised either by direct use of the Property or through shared use or hire arrangements.
- **Operational:** Run by paid workers or for private use. Includes retail leases, residential, commercial, telecommunication facilities (utilities) and vacant land leased to private individuals.
- **Compliance:** Registered legal entity, professional capacity and experience, financially viable, complies with all relevant legislation governing its activities, and holds all relevant certificates including certificate of currency of insurance (public liability or others as required). This excludes residential which are managed by the Real Estate Agent and generally require:
 - The Financial capacity to pay ongoing rent
 - Undertaken a 100 point check for identification
 - A proven rental history and are reference checked.