



## Council Property Policy 2020

### Purpose

This policy supports decision making in relation to occupancy acquisition and the disposal of Council land in accordance with Council's obligations under the *Local Government Act 2020*. It supports consistency and transparency in occupancy arrangements and provides direction on maximising occupancy and utilisation of Council managed assets.

The principles of this policy support the four objectives of the Council Plan 2017 – 2021, vibrant communities, thriving economy, safe and sustainable environments and organisational excellence.

### Definitions

Community Good Quotient	A rental subsidy framework that Council provides to community organisations that provide benefits to the wider community
Certified Valuation	A valuation provided by a qualified and certified professional valuer
DCP	Developer Contributions Plan
DELWP	The Department of Environment, Land, Water and Planning of the Victorian State government
LACA	Land Acquisition and Compensation Act 1986
Lease	A lease is a right granted by the owner of the land (landlord) to another person (tenant) to have exclusive possession of that land, or part thereof, for a fixed duration in return for rental payment. A lease creates an interest in land that is binding on third parties and is capable of being assigned, unless the lease specifies to the contrary
Licence	A licence permits a person (licensee) to occupy land (or part thereof) on conditions. The main feature that distinguishes a license from a lease is that a licence does not permit exclusive occupancy of the land. Unlike a lease, a license does not create any interest in the land and the rights created by a licence are personal and do not run with the land
LGA	Means the Local Government Act 2020 (Vic) as amended from time to time
PAO	Public Acquisition Overlay being a mechanism available to Council in order to purchase land

Paper Road	A paper road is a road laid out in a development or subdivision plan. Paper roads may exist only on paper, never having been developed, but they have a legal existence, whether on private or public land
Peppercorn Rent	Nominal cash payment used to satisfy the requirements for the creation of a legal contract (usually \$1)
PSP	Precinct Structure Plans Warragul and Drouin
Right of Use Asset	The right of use asset is measured at cost and includes. The initial measurement of the lease liability (present value of lease payments over the lease term, discounted using the interest rate implicit in the lease if it can be readily determined, otherwise at the Lessee's incremental borrowing rate)
RLA	Means the Retail Leases Act 2003 (Vic) as amended from time to time.
Tenant	Means an authorised person or incorporated body that has entered into or is proposing to enter into either a lease or licence with Council for the use of Council owned or managed premises
Commercial Tenants	Commercial Tenants occupy the premises on a commercial basis. Some examples of premises that are leased to Commercial Tenants include the following: <ul style="list-style-type: none"> <li>• Commercial sport and recreation clubs</li> <li>• Infrastructure e.g. telecommunication towers</li> <li>• Businesses</li> </ul>
Not For Profit Tenants	Generally, a not-for-profit organisation is an organisation that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run it or their friends or relatives). Examples include the following; <ul style="list-style-type: none"> <li>• Welfare Organisations</li> <li>• Disability Providers</li> <li>• Registered Training Organisations</li> </ul>
Community Tenants	Community organisations generally serve the community, and do not generate a significant amount of income operating on a community basis. They typically do not charge a fee for service, employ staff or receive funding for service provision. Some examples of these include the following: <ul style="list-style-type: none"> <li>• Scouts and Guides</li> <li>• Neighbourhood Houses and Learning Centres</li> <li>• Riding for the disabled</li> </ul>

<p>Sporting Clubs and other Organisations</p>	<p>These include recreational or community groups that service the community and are readily available to Baw Baw residents. These tenants include member based fee-paying clubs and organisations that have the capacity to generate revenue from use of the facility or other activities consistent with the organisational purpose (but do not operate to make a commercial profit). Some examples of these Tenants include the Following:</p> <ul style="list-style-type: none"> <li>• Tennis Clubs</li> <li>• Netball Clubs</li> <li>• Football Clubs</li> </ul>
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## Scope

This policy applies to Council owned and managed assets for:

- Acquisition of property
- Disposal of property
- Management of property (tenancies)
- Revenue and Reporting from sales and management of Council's properties

## Legislative context

Council will refer to and comply with relevant Acts of Parliament and Regulations when conducting any property transactions. These include but are not limited to;

*Local Government Act 2020*

*Local Government (General) Regulations 2015 Victoria and any new regulations published*  
*Land Acquisition and Compensation Act 1986*

*Subdivision Act 1988*

*Land Act 1958*

*Crown Land (Reserves) Act 1978*

*Retail Leases Act 2003*

*Retail Leases Regulations 2003*

*Road Management Act 2004*

*Residential Tenancies Act 1997*

*Children's Services Act 1998*

*National Competition Policy*

*Charter of Human Rights*

*Health Act 1958*

*Planning and Environment Act 1987*

## Related policies and documents

Policies	Development Contributions Policy Pricing Policy Procurement Policy
Strategies/Plans	Baw Baw Shire Planning Scheme Development Contribution Plan Open Space Strategy Pricing Strategy Recreation Strategy Settlement Strategy Warragul and Drouin Precinct Structure Plan
Other	Australian Accounting Standards Board 16Baw Baw 2050 Community Good Quotient Community Services Framework

## Policy principles

- Council owned land and buildings must be utilised to meet community needs, objectives and expectations consistent with the 2017 – 2021 Council Plan (and future Council Plans).
- Undertake a clear, consistent and transparent approach to establishing leases and licences on Council owned and managed land and buildings.
- Ensure that appropriate assessments of community groups are undertaken and provide guidance on the most appropriate agreement to maximise utilisation and benefit to be provided from such an agreement.
- Provide guidance on the appropriate level of contribution by community groups that considers the community benefit provided by the tenant, the capacity of the tenant to raise funds, maintain a community asset and also allows for equitable access to Council land and buildings.
- Rental for commercial organisations will be set according to a market rental determined by a certified valuation.
- Ensure that Council owned land and buildings are maintained, developed and occupied effectively by taking into consideration the community benefit provided and the ongoing costs to maintain and renew the asset.
- Provide accountability for Council expenditure related to occupancy agreements and lease subsidies as they constitute an indirect grant.

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## Policy detail

### Strategic

The responsibility for management of all property transactions lies with the Director responsible for the Property function within the organisation. Council will refer to, and align with, relevant Council plans and strategies when conducting any property transactions.

### Acquisition of Property

Council may acquire property through the Developer Contributions Plan (DCP), Purchase, Donation, Transfer and Compulsory Acquisition. In acquiring any land or property Council will:

- Ensure the property is of high quality, in an appropriate location, fit for purpose and provides value to the community
- When appropriate seek cash contributions from developers in lieu of any proposed land contribution that is not of high quality, in an appropriate location, not fit for purpose and provides value to the community in line with DCP and Open Space Strategy.
- Acknowledge ongoing cost implications of the acquisition of any property into its portfolio (e.g. maintenance, capital improvements) and aim to minimise them
- Fund acquisitions from general funds, DCP, Capital Works Budget or property reserves. Officers will ensure that any amounts paid achieve the best value for Council

For land required within the PSP areas or for projects Council may use the mechanism of placing a Public Acquisition Overlay onto a property. In doing so, Council is required to follow the processes set out in the Planning and Environment Act 1987. Any compensation arising from the imposition of the Public Acquisition Overlay is then determined under the LACA.

Property may be acquired via the budget process or by seeking a Council Resolution to approve the acquisition of any property either by private negotiation, donation or compulsory acquisition. This resolution will be by means of a Council Report which will provide Council with the information required to make an informed decision.

### Disposal of Property

Council may dispose of property through sales, donations or transfer. In the disposal of any Council property Council will:

- Review its portfolio of properties on a 2 yearly cycle to identify any property surplus to Council's needs.
- Pass on costs associated with the disposal of property to the purchaser where practicable.
- Ensure that decisions to dispose of property are made in the best long-term interests of the community.
- Retain public access where possible.
- Comply with relevant legislation and regulations.

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- Seek the most appropriate rate of return to maximise sale potential. For instance, Council may rezone to increase saleability of a property.
- Consult with adjacent neighbours by letter prior to compulsory advertising.
- Seek the most efficient method of sale.
- Where required, comply with the Local Government Best Practise Guideline for the Sale, Exchange and Transfer of Land published by the Former Department of Planning and Community Development, June 2009.

A Council Resolution will be required to approve the sale of any Council owned property. This Resolution will be by means of a Council Report which needs to provide Council with the information required to make an informed decision.

### **Management of Property – Council as Landlord**

Council will manage its property via formal tenancy agreements for the use of Council properties by way of lease, license or rental agreements.

In managing Council property Council will:

- Ensure that appropriate signed agreements are in place and are effectively administered to adequately protect Council's interests.
- Maximise occupancy rates of its buildings and ensure equity of access.
- Apply appropriate rental charges for the use of Council properties based on market value and Council's pricing policies.
- Identify and report on the value of revenues foregone (subsidy) through the application of any below market peppercorn agreements.
- Pass on outgoing charges to the tenant under peppercorn and land lease agreements, including but not limited to rates, levies, utilities and agreed maintenance items.
- Require all agreements to achieve clarity on the ownership of any capital improvements made by tenants on Council owned property.
- Manage all agreements on a centralised corporate agreement register which is publicly accessible.
- In line with the adopted pricing strategy, at its discretion, Council may resolve to apply a Community Good Quotient subsidy to a not-for-profit tenant or where appropriate a sporting club.
- Should Council and a prospective tenant not be able to come to terms within the adopted Council policies, consistent with the adopted pricing strategy, a resolution of Council shall be required to determine the rental and other essential terms of the tenancy agreement.

### **Management of Property – Council as Tenant**

Council may enter into agreements to occupy commercial and publicly owned property.

Where Council is a 'tenant' Council will:

- Provide the necessary funds on the basis of a business case.
- Ensure the property is in an appropriate location, fit for purpose and provides benefit to Council and the community.
- Pay relevant rental fees and associated costs on time.
- Maintain current signed agreements on a Corporate Agreement Register and ensure all conditions of the agreement are met within documented time frames.
- Require an appropriate agreement to be in place in the case of a sub-letting arrangement with a third party.

### **Reporting – Council as Tenant**

Where council is tenant Council will report all operating leases for defined areas, longer than one year as right-of-use assets on its balance sheet with corresponding non-recurrent lease liabilities.

### **Revenue from Sales and Management of Council Properties**

In managing the revenue received from property sales and property management Council will:

- Place proceeds from sale of Council properties into a defined property reserve account.
- Revenue from property management will go into consolidated revenue to used to offset costs against a property.
- Require a Resolution of Council to access any funds from the property reserve account.
- Utilise proceeds from the property reserve account to upgrade and provide new community facilities or purchase additional land.
- Comply with Section 20 of the Subdivision Act 1988 (funds from the sale of public open space).
- Ensure that any costs associated with the sale of property not covered by the purchaser are met from proceeds gained from sales.
- Pursue outstanding debts in line with Council's Financial Management policies.
- Report on the proceeds from property sales and property management as part of Council's Annual Report.

## Review

This policy is to be reviewed and adopted by Council every four years.

Approval date	23 July 2020
Approval authority	Council
Effective from	24 July 2020
Review term	Council term
Next review date	23 July 2024
Responsible position	Property Management Coordinator
Responsible Director	Director Corporate and Community Services
Version	4