



Merri-bek
City Council

Lease and Licence Policy

Date Authorised by Chief Executive Officer or Council:	6 December 2023
Commencement Date:	2023
Review Date (5 years from authorised date):	2028
Responsible Department	Property, Place and Design

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1. Introduction

Merri-bek City Council is the owner of an extensive property portfolio which provides a range of recreational, cultural, educational and social benefits to the public.

Property is vitally important to the delivery of community services, the achievement of the long-term strategic goals outlined in the Community Vision and in responding to actions in the Council Plan.

2. Context

Applying to commercial, residential, community and social enterprise tenants and licensees on Council or Crown Land property and where Council is the Lessor, this policy provides clear guidelines, terms and conditions for the preparation of leases and licences across the municipality.

This policy does not apply to facilities under contractual arrangements, occasional hire arrangements and seasonal tenancies on Council reserves or casual hire of community halls. Equally it does not cover private or public property which Council leases from government, statutory bodies or commercial landowners.

This policy will apply to all new proposals including any existing agreements that require renewal from the date of adoption.

2.1 Alignment

Merri-bek City Council's Council Plan is an overview of Council's values, commitments, and activities. The plan sets out strategic objectives against which Council and its administration measures its performance. Each strategic objective is supported by major initiatives and priorities which are further detailed in annual Council Action Plans.

This policy is a key component of the Strategic Property Framework and provides the principles that guide lease and licencing functions, decisions and procedures.

2.2 Organisational context

This policy is consistent with, and supported by, Council's legislative obligations, which primarily include:

- Competition and Consumer Act 2010
- Crown Land (Reserves) Act 1978
- Equal Opportunity Act 2010
- Local Government Act 2020
- Local Government (General) Regulations 2015
- Retail Leases Act 2003
- Residential Tenancies Act 1997
- Telecommunications Act 1997 (Cth)
- Telecommunications Code of Practice 1997 (Cth)
- Telecommunications (Low Impact Facilities) Determination 1997
- Code of Practice for Telecommunications Facilities in Victoria 2004

2.3 Research and other drivers

This policy has been developed in accordance with Council's Community Engagement Policy 2023 which outlines our commitment to genuinely involving our community in decision making so we can deliver better quality outcomes.

3. Objectives

The objectives of the Lease and Licence Policy is to:

- establish a methodology to assess and categorise the types of occupants, and prioritise uses for public interest purposes
- establish the terms that Council will generally use as the basis for negotiating agreements
- ensure that Council assets are maintained, upgraded and occupied responsibly
- support the implementation of the Strategic Property Framework
- align with the vision, purpose and values outlined in the Council Plan, and ensures that Council meets its various legislative obligations

4. Policy details

4.1 Guiding principles

Council's commitment to leasing and licencing is achieved by adhering to these guiding principles:

1. Maximise community benefit
Consider the breadth, depth, scale and longevity of benefit to the community.
2. Deliver the Council Plan
Coordinate and assimilate local community aspirations with the Council Plan and long-term planning and strategy.
3. Making assets work harder
Optimise asset service delivery potential through effective management, maintenance and renewal.
4. Act responsibly
Ensure good governance and deliver financially responsible, compliant and transparent property transactions.

4.2 Structure

Eligibility

The assessment and selection of suitable tenants and licensees fundamentally contributes to the provision and promotion of public health and wellbeing in the municipality. All new and existing tenants and licensees will undergo careful analysis before being granted an agreement, to ensure optimum benefit and use of each facility.

To be eligible for a lease or licence, an organisation or entity must meet minimum requirements.

Commercial tenant

An eligible organisation must demonstrate its:

- legal status
- capacity and experience (reference check)
- financial viability
- economic benefit to Council and the community
- financial benefit or return to Council
- current Certificate of Currency of insurances (Public Liability and others as required)

Residential renter

An eligible renter must demonstrate their:

- financial capacity to pay
- compliance with a 100-point check for identification
- proven and satisfactory rental history with references checked

Community tenant

An eligible community group must demonstrate its:

- not-for-profit status as per the Australian Tax Office definitions or an incorporated/legitimate body or under the auspice of an incorporated body
- financial viability through the provision of three years annual financial statements or a business plan to the satisfaction of Council
- community benefit
- compliance with relevant legislation and regulation governing its activities
- good governance capabilities
- current Certificate of Currency of insurances (Public Liability and others as required)
- current liquor licence permit (if applicable)

Social enterprise tenant

An eligible social enterprise tenant must demonstrate its:

- legal status
- certification with Social Traders Australia, which must remain up to date for the duration of the lease
- capacity and experience (reference check)
- social, environmental or other public benefit to Council and/or the community
- other value
- current Certificate of Currency of insurances (Public Liability and others as required)

Council will not support an application for a gaming licence at any of Council's leased or licenced facilities.

Council will not permit advertising of companies that produce or supply fossil fuels on Council land.

Standard terms of agreement

Standard lease and licence agreements developed by Council will be used as the basis of all tenancies. Where required the Department of Energy, Environment and Climate Action (DEECA) standard documents will be used and may be amended to include Council related clauses for agreements on Crown Land. Commercial and residential leases will be developed in line with current legislation and at the total discretion of Council.

A summary of the standard terms of agreement is provided below and shall be applied where appropriate:

- Key terms
- Grant of lease
- Things the tenant must do
- Things the tenant must not do
- Mutual covenants
- General clauses
- GST
- Definitions
- Interpretation
- Schedules (as appropriate)

Council will endeavour to bring groups occupying Council owned or managed premises without agreement, under lease or licence and those with existing lease agreements into the standard form of agreement by negotiation prior to lease expiry.

Establishment of agreements

New leases and renewals and licences may need to be referred to Council for endorsement.

The following process shall generally apply for negotiating and establishing new agreements:

- Establish the status of the land (title search, zoning, management)
- Determine the type of lease
- Confirmation of any statutory requirements
- Review and application of this policy
- Internal Referrals - discussion with relevant internal Service Owner on applicant suitability and inclusion of relevant reporting, performance indicators.
- Site inspections
- Review of any planning permissions, conditions or other agreements
- Relevant searches (company or association)
- Market valuation
- Determination of tenant category and applicable rent
- Meeting with proposed tenant or licensee to discuss particulars
- Send draft agreement to proposed tenant and respond to queries
- Councillor Briefing/ Council Report (if required)
- Comply with any statutory obligations
- Execution and provide tenant with copy
- Update lease register and make available for public inspection in accordance with the Local Government (General) Regulations 2015

- Notification to the internal Service Owner and other relevant internal departments

At its absolute discretion, Council may seek to negotiate with an existing tenant or licensee prior to the end of a lease or licence term in relation to a new agreement for the same premises without conducting market testing. A decision to negotiate with a tenant or licensee for a future agreement will be dependent on an assessment against the guiding principles of this policy. Consideration will include the performance of the tenant in relation to the current agreement, any relevant or proposed investment, application of the Retail Lease Act, Crown Land (Reserves) Act and any other factors or specific requirements related to the property.

Calculation of rent

Commercial tenant

Commercial tenants and licensees will pay a rent that is market driven and may be determined by a market rent review, as assessed by a certified valuer, licenced real estate agent or as the result of an Expression of Interest or similar.

Category 1 - Commercial tenant	
Rent/licence fee	Market rent Council may consider incentives including fit-out contribution, rent free periods and profit share arrangements. Subsidies may be offered in the form of grant funding, building maintenance, landscape maintenance and bin charges where there are defined community benefits.
Increases	Increased annually Reviewed at 5 years
Maintenance schedule	Maintenance Schedule 4 – Commercial Land only agreements may be negotiated and site specific

Residential renter

Residential properties will be rented based on full market rate, as assessed by a certified valuer, licenced real estate agent or as the result of an Expression of Interest or similar.

Category 2 - Residential tenant	
Rent/licence fee	Market rent
Increases	Reviewed annually
Maintenance schedule	Negotiated, site specific

Community tenant

Community tenants rent will be calculated on the following provisions:

1. two identical facilities in different parts of the municipality should pay the same rent;

2. where groups engage in similar activities, a group who occupies a larger area of land should pay more rent; and
3. where groups engage in similar activities, a group that uses a better facility should pay more rent.

Category 3 - Community tenant													
Rent/licence fee	<p>[(Fixed base land value x building area x 4%) + 0.75% of replacement cost of improvement] + fee per court/green</p> <p>Subsidies apply for tenant groups:</p> <table border="0"> <tr> <td>Group A</td> <td>Full subsidy</td> <td>= \$1</td> </tr> <tr> <td>Group B</td> <td>2%</td> <td>= minimum \$421</td> </tr> <tr> <td>Group C</td> <td>9%</td> <td>= minimum \$1,000</td> </tr> <tr> <td>Group D</td> <td>25%</td> <td></td> </tr> </table> <p>Levels of subsidy will be calculated on:</p> <ul style="list-style-type: none"> • grants, funding and other subsidies • revenue potential • maintenance capabilities • Other factors deemed appropriate <p>Council may consider incentives including fit-out contribution, rent free periods and profit share arrangements. Subsidies may be offered in the form of grant funding, building maintenance, landscape maintenance and bin charges.</p> <p>Where Council has adopted specific fees and charges for leases and licences, the adopted fees will apply.</p>	Group A	Full subsidy	= \$1	Group B	2%	= minimum \$421	Group C	9%	= minimum \$1,000	Group D	25%	
Group A	Full subsidy	= \$1											
Group B	2%	= minimum \$421											
Group C	9%	= minimum \$1,000											
Group D	25%												
Increases	Reviewed annually and increased by percentage rate or CPI												
Maintenance schedule	<p>Maintenance Schedule 1 – Neighbourhood Houses and Kindergartens</p> <p>Maintenance Schedule 2 – Community</p> <p>Maintenance Schedule 3 – Community/Commercial</p> <p>Maintenance Schedule 4 - Fully maintained by tenant</p> <p>Land only agreements to be negotiated and site specific</p>												

Social enterprise tenant

Properties will be assessed by a certified valuer, licenced real estate agent and rented via an Expression of Interest or similar.

Category 4 – Social enterprise tenant	
Rent/licence fee	Determined via an Expression of Interest or similar process and adopted via Council resolution
Increases	Reviewed annually

Maintenance schedule	Maintenance Schedule 4 – Commercial OR Negotiated, site specific
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This fee structure will apply:

- Upon new tenants and licensees entering into a new agreement.
- When an existing agreement has expired and the tenant seeks to enter into a new agreement.
- Upon the tenant exercising their option to renew under their existing agreement, where a new agreement can be prepared.

Term

Terms of agreement will not be greater than ten years unless Council resolves to grant a longer-term lease. Consideration for this will be given under one or more of the following situations:

- Substantial contributions to capital or structural works undertaken by the tenant
- Commercial return is enhanced
- Specific conditions required by other funding bodies on the tenant regarding the term length

In these circumstances Council may, at its discretion, choose to formalise a service level agreement with the organisation.

Reporting

As a condition of the lease or licence, community groups may be required to provide various reports, documents and information such as:

- A list of office bearers
- Audited financial statements
- Business plan or strategy
- Response to any key performance indicators
- Service level agreement report
- Any other information requested by Council

Subletting

Subletting refers to where the facility or part of the facility is leased, licenced or hired out to another group by the tenant.

Under a licence subletting is not permitted.

Subletting under a lease is only permitted by obtaining Council's prior written consent. Council may, in some circumstances, give the tenant automatic rights to sublet or hire to third parties which will be set out in a special clause of the agreement. Council may choose to

impose additional terms and conditions and may adjust the rent of the lease via a Deed of Variation. Under a subletting arrangement, the tenant remains responsible for all of its obligations under their agreement.

Crown Land

In instances where Council is appointed Committee of Management over land, that land shall be leased in accordance with the Leasing Policy for Victorian Crown Land. Council may also grant a licence of Crown Land as Committee of Management, subject to approval by the responsible minister or delegate of the responsible Department.

Telecommunication leases

Telecommunications facilities are becoming more prevalent throughout municipalities to meet the growing needs of modern communication. Whilst the community recognises the need for such facilities, they are often not perceived favourably particularly in residential areas and public parks.

Council will have regard to the following matters when considering applications for telecommunications facilities on public land.

- Telecommunications companies are expected to provide reasons and evidence for proposed telecommunications installations (e.g. evidence of complaints of poor reception and/or slow downloads experienced by members of the community)
- Evidence that the applicant has investigated and exhausted alternative locations and solutions
- Steps that have been taken by the applicant to improve existing telecommunications facilities in the area together with any considerations for co-location
- The need for the facility in the proposed location
- The impact of the facility on the primary use of land and any conflicts with the use of land for a public purpose
- The potential impact on the local community
- Whether the proposed installation is inconsistent with Council's:
 - Open Space Strategy
 - Master Planning strategies; and/or
 - Gazetted or future Precinct Structure Plans
- Avoiding utilisation of Council's assets and services wherever possible and instructing telecommunications companies to obtain separate points of power supply
- Minimising excavations on Council's reserves for power and cabling services wherever possible and using non-destructive digging methods for cabling
- Ensuring that the best commercial terms are obtained for the proposal
- A binding and enforceable lease or licence for the proposal with appropriate terms and conditions

The Telecommunications Act 1997 (Cth) provides a system for regulating telecommunications and the activities of carriers and service providers.

The Telecommunications (Low-impact Facilities) Determination 1997 (the Determination) and the Amendment No. 1 of 2011 detail exemptions to planning laws- which are subject to the Telecommunications Code of Practice 2021.

A telecommunication facility must also comply with the Code of Practice for Telecommunications Facilities in Victoria 2004 which is an incorporated document in all Victorian Council Planning Schemes. The Code aims to set out circumstances and requirements for telecommunications development in Victoria without the need for a planning permit. The Code also sets out principles for the design, siting, construction and operation of a telecommunications facility in Victoria.

Council has an obligation to consider all requests by telecommunication carriers for use of Council land and buildings. Such requests are dealt with in a consistent, open and transparent manner.

In addition to market rent, Council will explore opportunities for contributions towards infrastructure to maximise community benefit, such contributions may be in the form of, but not limited to:

- maintenance/upgrade of nearby Council facilities e.g., toilet facilities;
- installation of lighting (to Council specifications) on nearby lighting towers on sporting reserves; and
- undertaking landscaping of land adjacent to the proposed leased areas.

A lease or license may be subject to several separate review processes including internal referrals, Council approval as landowner and Council as Responsible Authority and any relevant statutory permissions and obligations. The review process will be undertaken on three fronts:

1. Initial investigation and internal referral

An internal referral process will provide relevant departments within Council with an opportunity to review and provide information relating to the proposed lease or license and any impact on Council land. Internal departments will review and evaluate the proposal in accordance with their requirements and these additional principles.

- co-location of equipment wherever possible
- designs that minimise visual impact
- consideration of the health, wellbeing, and benefits to the community
- limit encumbrances on Council land

2. Council approval as landowner

Any new telecommunications lease or renewal will be presented to Council for consideration.

3. Council as Responsible Authority

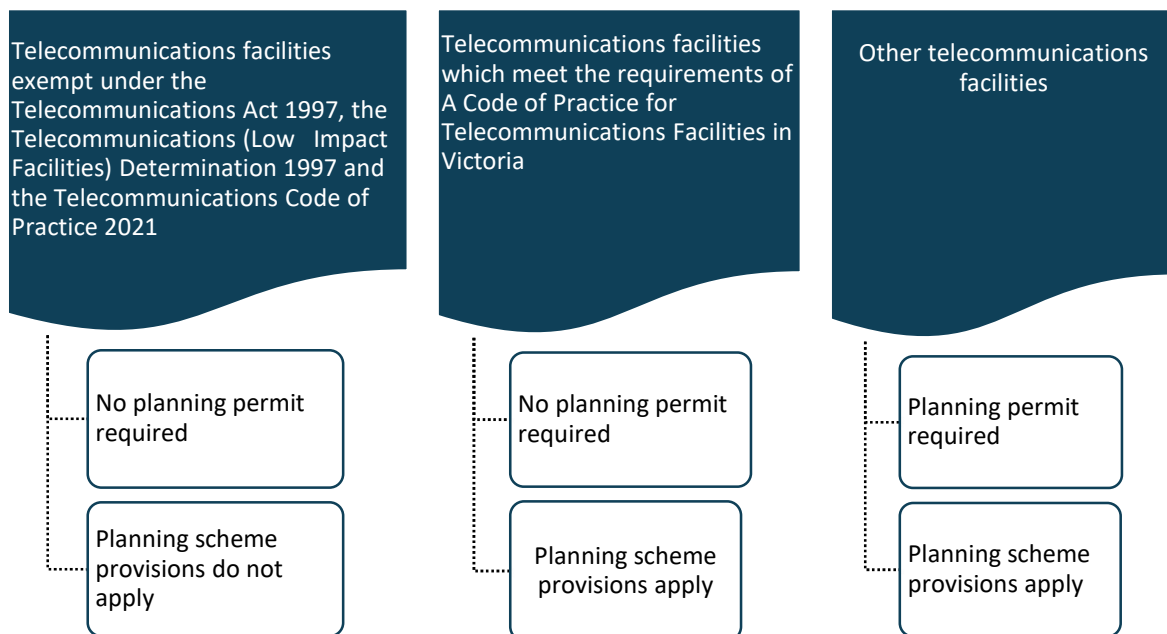
Where an application is subject to the Merri-bek Planning Scheme, the community engagement process for the proposed lease will be undertaken before commencement of any

planning permit process. This engagement will be explicit that any envisaged works to construct a telecommunications facility on Council land will be subject to the formal planning permit processes that apply under the Planning & Environment Act.

Under the Merri-bek Planning Scheme, two main considerations must be addressed:

- Clause 19.03-4S Telecommunications, to facilitate the orderly development, extension and maintenance of telecommunication infrastructure; and
- Clause 52.19 Telecommunications Facility, which contains decision guidelines for telecommunications development in addition to the general guidelines contained within Clause 65 of an individual planning scheme.

The general process for telecommunications approvals within Victoria, where a planning permit is required and when planning scheme provisions apply is detailed below.



Retail leases

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

Residential leases

Residential leases must comply with the *Residential Tenancies Act 1997* and be in the form of the standard residential tenancy agreement.

5. Roles and responsibilities

Every person involved in administrative functions of leasing and licencing has a responsibility to ensure that agreements are administered in alignment with the Lease and licence Policy.

Key roles and responsibilities of internal Council units have been outlined for the purpose of clarity and understanding as follows:

Party/parties	Roles and responsibilities	Timelines
Property	<ul style="list-style-type: none"> • Maintain and follow the Lease and Licence Policy and its processes • Liaise with internal stakeholders as required and support market testing and benefit analysis for potential new tenants • Advise Economic Development of any upcoming commercial or social enterprise leases • Provide advice to other departments on their lease and licence matters • Maintain an accurate lease and licence register with clear asset ownership • Liaise with external contractors, legal services and other government bodies to prepare comprehensive lease and licence documents • Review the Lease and licence Policy • Manage the invoicing of leases and licences 	Ongoing
Recreation, Aquatic & Leisure Services	<ul style="list-style-type: none"> • Work in partnership with Property in the assessment and establishment of new leases and licences • Manage day to day enquiries of leases and licences under direct area of responsibility, including requests for subletting • Request, collect and maintain reporting documents • Undertake annual facility inspections under direct area of responsibility • Oversee market testing (EOI) and benefit analysis for potential new tenants under direct area of responsibility with support from Property • Provide specialist advice and support where required 	Ongoing
Early Years	<ul style="list-style-type: none"> • Work in partnership with Property in the assessment and establishment of new leases and licences • Manage day to day enquiries of leases and licences under direct area of responsibility, including requests for subletting • Request, collect and maintain reporting documents • Undertake annual facility inspections under direct area of responsibility • Oversee market testing (EOI) and benefit analysis for potential new tenants under direct area of responsibility with support from Property • Provide specialist advice and support where required 	Ongoing

Arts and Culture	<ul style="list-style-type: none"> • Work in partnership with Property in the assessment and establishment of new leases and licences • Manage day to day enquiries of leases and licences under direct area of responsibility, including requests for subletting • Request, collect and maintain reporting documents • Undertake annual facility inspections under direct area of responsibility • Oversee market testing (EOI) and benefit analysis for potential new tenants under direct area of responsibility with support from Property • Provide specialist advice and support where required 	Ongoing
Building Maintenance	<ul style="list-style-type: none"> • Adherence to the specified maintenance schedules developed • Complete building maintenance tasks within the target time • Liaise with each other department regarding building maintenance items under their direct area of responsibility • Undertake annual facility inspections under direct area of responsibility 	Ongoing
Capital Works Planning and Delivery	<ul style="list-style-type: none"> • Work in partnership with Property in the recognition of aging assets within leased spaces which require renewal. 	Ongoing
Economic Development	<ul style="list-style-type: none"> • Work in partnership with Property in the assessment and establishment of new commercial or social enterprise leases and licences, where applicable • Oversee market testing (EOI) and benefit analysis for potential new tenants under direct area of responsibility with support from Property • Provide Property with notification of any upcoming special rate and charges levies 	Ongoing
Finance and Procurement	<ul style="list-style-type: none"> • Request, collect and maintain debtor accounts • Carry out invoicing under direction of Property, Early Years Services and Recreation, Aquatic and Leisure Services • Undertake debtor reconciliations as required • Identify and follow up outstanding debtors 	Ongoing
GIS	<ul style="list-style-type: none"> • Aid with provision of aerial plans as required 	Ongoing
Open Space	<ul style="list-style-type: none"> • Work in partnership with Property in the assessment and maintenance of Council assets within an open space environment. 	Ongoing
Revenue Services	<ul style="list-style-type: none"> • Assistance with property, rates and valuation matters 	Ongoing

6. Monitoring, Evaluating and Review

This policy will be reviewed after 5 years and following significant legislative changes, if they occur.

In accordance with the Local Government (General) Regulations 2015 r.12(e) Council will make available for public inspection a document containing details of all leases involving land which were entered into by the Council as lessor, including the lessee and the terms and the value of the lease.

7. Definitions

Term	Definition
Commercial activities	Commercial entities or businesses that operate for profit making or commercial activities or provide commercial services whereby profits from these activities are retained by the occupants and there is no prohibition on the distribution of profits and gains.
Council owned or managed properties	Premises which are owned by Council or premises which are on Crown Land and Council is the appointed Committee of Management.
Crown Land (Reserves) Act	Means the <i>Crown Land (Reserves) Act 1978</i>
Expression of Interest (EOI)	A process to gather offers for a property without disclosing the terms for which the landlord is willing to accept.
Fixed base land value	Dividing the total site value of the municipality by the land area of all rateable assessments, reviewed biennially.
High impact facilities	As set out in the Telecommunications Act 1997
Incorporated association	A group, operating not for profit, whose members have decided to give their organisation a formal legal structure.
Lease	A lease is an agreement in which the landowner agrees to give to a tenant the exclusive right to occupy land for a specific term, subject to agreed terms and conditions in consideration for a payment, generally known as rent.
LGA	Means the <i>Local Government Act 2020</i>
Licence	A licence gives permission to the holder to carry out a permitted activity without the right of exclusive occupation. The permission granted does not constitute an interest in the land and a licence agreement generally specifies the hours and days of access.
Market rent	The rent income that a property would command in the open market. The figure is derived by recent lease transactions for a comparable space by Council's City Valuer.
Not High Impact facilities	As set out in the Telecommunications Act 1997
Not for profit organisation	A not-for-profit organisation is an organisation that is operating for its purpose and not for the profit or gain (either direct or indirect) of its individual members.
Outgoings	Means water usage charges, electricity, gas, telecommunications, security, waste removal, gutter and down pipe cleaning, pest control and proportional

	building insurance assessed in connection with the Council Property.
Rates and taxes	Means any government rates and charges, taxes and levies including the Fire Services Levy.
RLA	Means the <i>Retail Leases Act 2003</i>
RTA	Means the <i>Residential Tenancies Act 1997</i>
Service Owner	Internal Business Unit involved in the assessment and selection of tenants as well responsible for the day-to-day management and liaison with the tenant
Social enterprise	Businesses certified with Social Traders Australia that trade to intentionally tackle social problems and improve communities and profits are used to work towards their social mission.
Tenant	An authorised organisation, person or incorporated body that has entered into or is proposing to enter into a lease or licence with Council for the use of Council property.
	<p>Category 1 tenant – Commercial Predominantly occupies Council property for commercial activities, telecommunication, government and broadcasting, excluding community radio stations.</p> <p>Examples may include telecommunication companies and local private business.</p> <p>Category 2 tenant – Residential A renter who has exclusive possession of the premises and pays rent.</p> <p>Category 3 tenant – Community Recreation or community groups that service the Merri-bek community. These tenants include member-based fee-paying clubs, groups that charge for services and organisations that have the capacity to generate revenue for use of the Council property or other activities consistent with the organisational purpose (but do not seek to operate for a commercial profit). Examples are sporting clubs, non-government organisations and service providers.</p> <p>Category 4 tenant – Social enterprise Organisation must have a defined primary social, cultural or environmental purpose consistent with a public or community benefit, derive a substantial portion of their income from trade and invest efforts and resources into their purpose such that public/community benefit outweighs private benefit (e.g. greater than 50%)</p>
TCA	Means the <i>Telecommunications Act 1997</i>

8. Associated documents

This policy is closely associated with the following Council documents, however amended or dated:

- 10-year Asset Plan 2022/23 to 2031/32
- Allocations of Sporting Grounds and Pavilions Policy (2016)
- Aquatic and Leisure Strategy 2018-38
- Arts and Culture Strategy 2023-2030
- Asset Management Policy (2019)
- Climate Risk Strategy (2022)
- Community Grants Policy (2022)
- Community Use of Council Venues Policy (2022)
- Community Infrastructure Plan and Action Plan (2022)
- Merri-bek Council Plan and Council Action Plans
- Merri-bek Integrated Transport Strategy (2019)
- Merri-bek strategic operating and capital works budgets and initiatives
- Zero Carbon Moreland (Merri-bek) – Climate Emergency Action Plan (2020/21)
- Multicultural Policy and Action Plan 2011-15
- Open Space Strategy 2012-2022 (under review)
- Park Close to Home: A Framework to Fill Open Space Gaps (2017)
- Sustainable Buildings Policy (2018)