

Leasing policy for Victorian Crown land 2023



Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



© The State of Victoria Department of Energy, Environment and Climate Action 2023



This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the

DEECA logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>

ISBN 978-1-76105-140-1 (pdf/online/MS word)

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

Accessibility

If you would like to receive this publication in an alternative format, please telephone the DEECA Customer Service Centre on 136186, email customer.service@DEECA.vic.gov.au (or insert relevant address), or via the National Relay Service on 133 677 www.relayservice.com.au. This document is also available on the internet at www.DEECA.vic.gov.au.

Contents

Definitions	3
Introduction	4
Objective	4
Principle 1 – To provide benefits to the public through leasing including Traditional Owner rights	4
Principle 2 – To ensure consistency and transparency in leasing	4
Principle 3 – To manage leased Crown land in an environmentally sustainable manner	4
Scope	4
Leasing Crown land in Victoria	4
Principle 1 - Provide benefits to the public through leasing including Traditional Owner rights	6
Principle 2 - Consistency and transparency in leasing	7
Approval to lease	7
Approval in Principle to lease	7
Approval to terms and conditions of the lease	7
Granting/entering a lease	7
Costs	7
Allocating leases in a fair and equitable manner	9
New leases	9
Reissue of lease to incumbent tenants	10
Ministerial approval	10
Ensuring leases contain appropriate terms and conditions	10
Ensuring leases contain appropriate terms	10
Options	13
Ensuring leases contain appropriate rent	13
Commercial and private uses	13
Community uses	13
Other costs	16
Ensuring leases contain appropriate conditions	16
Ownership and maintenance of existing and new improvements	16
Power to sub-let	16
Assignment and mortgage	16
Insurance	16
Financial security	17
Over holding	17
Variation of lease terms and conditions	17
Principle 3 - Environmentally sustainable lease management	18
Environmental Reporting and Management Planning	19

Legislation	20
Legislation governing Crown land leasing in Victoria.....	20
Crown Land (Reserves) Act 1978 (Vic)	20
Land Act 1958 (Vic)	20
Forests Act 1958 (Vic).....	20
Legislation that affects the grant of Crown land leases	20
Aboriginal Heritage Act 2006 (Vic)	20
Environment Protection Act 2020 (EP Act)	20
Marine and Coastal Act 2018 (MACA)(Vic)	20
Native Title Act 1993 (Cth).....	20
Personal Property Securities Act 2009 (PPSA) (Cth)	21
Planning and Environment Act 1987 (Vic).....	21
Retail Leases Act 2003 (Vic).....	21
Traditional Owner Settlement Act 2010 (Vic)	21
Transport Integration Act 2010 (Vic)	21

Definitions

Agreement to lease	An agreement under which the Minister undertakes to grant a lease to a prospective tenant upon fulfilment of pre- conditions set out in the agreement.
CoM	Appointed by the Minister as the committee of management of the Land pursuant to s 14 of the <i>Crown Land (Reserves) Act 1978</i> and has the power to enter into Leases pursuant to the Applicable Leasing Power.
Crown land	Lands reserved and/or administered under the <i>Crown Land (Reserves) Act 1978</i> , <i>Land Act 1958</i> and <i>Forests Act 1958</i> .
Crown land reserve	Crown land reserved under section 4 of the <i>Crown Land (Reserves) Act 1978</i> .
Delegate	A person or position authorised by the Minister to carry out responsibilities under the <i>Crown Land (Reserves) Act 1978</i> , <i>Forests Act 1958</i> or <i>Land Act 1958</i> .
DEECA	Department of Energy, Environment and Climate Action.
Direct negotiations	Exclusive negotiations between a Crown land manager and a prospective tenant without first undergoing a competitive process, or where a competitive process has not resulted in a satisfactory outcome.
Landlord	Minister for Environment, trustees or committees of management appointed under the <i>Crown Land (Reserves) Act 1978</i> .
Lease	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.
Minister	Refers to the Minister responsible for the <i>Crown Land (Reserves) Act 1978</i> , <i>Forests Act 1958</i> and <i>Land Act 1958</i> or the Minister's authorised delegate.
Public land values	Land values which should be preserved and maintained for the benefit of present and future generations because of their environmental, historic, recreation, tourism, natural resource, social or cultural significance, or because of some special strategic value (such as access, fire management purposes or Crown land reserve linkages.)
Reissue of lease	The grant of a new lease to an incumbent tenant.
Standard lease document	A lease document produced in a generic format that has been prepared on behalf of the Minister.

Introduction

Objective

Crown land is a valuable public asset and it is essential that it is managed wisely to maximise social, environmental and economic benefits to the State. With the increasing pressures of population growth and environmental stress, the Victorian Government recognises the importance of having a robust and relevant policy for leasing Victoria's Crown land.

The objective of this policy is to provide a framework for the leasing of Crown land by formalising these 3 'Crown land leasing principles' at a State-wide level.

Principle 1 – To provide benefits to the public through leasing including Traditional Owner rights

Principle 2 – To ensure consistency and transparency in leasing

Principle 3 – To manage leased Crown land in an environmentally sustainable manner

These principles will guide land managers, existing tenants and prospective tenants, help inform decision making around leasing and improve community awareness of government policy for the leasing of Crown land.

Scope

This policy is to be used by DEECA officers who directly administer Crown land leases and/or advise trustees or CoMs on delegated Crown land lease management under the:

- *Crown Land (Reserves) Act 1978*
- *Forests Act 1958*; and
- *Land Act 1958*.

It does not apply to leases administered under other Acts, including the *Alpine Resorts (Management) Act 1997* and the *National Parks Act 1975*. The principles established in this policy however may be applied to Crown land leased under other Acts. For trustees and CoMs it provides best practice guidance.

This policy came into effect on 13 October 2010 and was updated in May 2018 and again in 2023.

Leasing Crown land in Victoria

About one-third of Victoria (approximately 8 million hectares) is Crown land. About 7.4 million hectares comprises national parks and state forest managed under the *National Parks Act 1975* and the *Forests Act 1958*. The balance is reserved under the provisions of the *Crown Land (Reserves) Act 1978* or unreserved under the *Land Act 1958*.

The Minister for Environment is responsible for the administration of the *Crown Land (Reserves) Act 1978*, the *Forests Act 1958* and *Land Act 1958*. These Acts enable leases to be granted over Crown land.

A lease is an agreement in which the landlord agrees to give a tenant the exclusive right to occupy land for a specific term, subject to the lease terms and conditions. A lease differs from a licence in that a licence gives permission to the holder to carry out a permitted activity without the right of exclusive occupation.

Most leasing of Crown land in Victoria is on land reserved under the *Crown Land (Reserves) Act 1978*. Reserved Crown land supports a wide range of uses such as sports grounds, parks, foreshores and municipal buildings. There are approximately 7,400 Crown land reserves in Victoria, and these are managed by a diverse range of landlords including local government, statutory bodies or government agencies (such as Parks Victoria). Landlords are appointed as a CoM or trustee under the *Crown Land (Reserves) Act 1978*.

DEECA also manages a portfolio of leases granted under the *Land Act 1958* and the *Forests Act 1958* for a range of commercial, recreational and other uses.

Leasing enables the community to use, benefit from and enjoy Crown land, particularly through the provision of recreational, cultural and sporting facilities as well as for commercial uses such as restaurants, caravan parks and marinas. It is also available to government for major projects on Crown land or important public infrastructure.

Principle 1 - Provide benefits to the public through leasing including Traditional Owner rights

Crown land is administered by the State for the benefit of the Victorian community. Decisions to lease need to consider social, economic, Traditional Owner rights and environmental outcomes that may result from a lease proposal.

Granting exclusive occupation of Crown land under a lease should not occur, except where it can be justified that there are benefits to the community from the lease and that Traditional Owner rights under the *Traditional Owner Settlement Act 2010* (Vic) (TOS Act) and *Native Title Act 1993* (Cth) (NT Act) have been considered and community benefits paid where relevant.

Leasing should support the development of healthy communities and, where appropriate, promote investment and encourage innovation. Both future and present needs and opportunities should be considered. Benefits may be short or long term; direct or indirect.

Applications to lease Crown land will be assessed by landlords on their merits and an assessment will be made of potential benefits and burdens.

Guidance

Assessment considerations include, but are not limited to:

Community

- distribution of benefits to the community including Traditional Owners
- promotion of public health and wellbeing
- improvement of sporting, recreational and cultural facilities
- protection of public land values

Economic

- creation of employment
- promotion of tourism
- economic return to the State, Landlord or Traditional Owners

Continuity

- support for the implementation of government policies or government programs

Innovation

- introduction of new skills or improved technology
- provision of new services

Environment

- protection of natural assets; and
- biodiversity and environmental impacts.

Principle 2 - Consistency and transparency in leasing

To ensure consistency and transparency in leasing processes, and to adhere to legislative requirements, a two-stage process applies to the granting of leases. First, all lease proposals require the Approval in Principle (AIP) of the Minister before a landlord agrees or commits to lease Crown land. Second, all leases require the Minister's approval of the terms and conditions of the lease which must align with the permitted purpose and conform to government policy and statutory requirements.

Lease allocation processes must be fair, open and impartial. Landlords should apply a competitive selection process to commercial leases unless direct negotiations would achieve an outcome that better serves the community interest.

Approval to lease

Approval in Principle to lease

Proposals to lease must be submitted to DEECA for Approval in Principle (AIP) by the Minister. The AIP process requires the Crown landlord or prospective tenant to prepare a detailed submission for assessment by the Minister.

In the case of leases issued under the *Crown Land (Reserves) Act 1978*, the AIP process fulfils legislative requirements to obtain the Minister's written approval to the grant and purpose of the lease. In some cases, the Minister's decision to proceed may need to be presented to Parliament as set out in the *Crown Land (Reserves) Act 1978*.

The AIP process provides the Minister with the ability to:

- properly review a lease proposal before the parties commit to a lease; and
- assess if the proposal aligns with the principles of leasing Crown land including that Traditional Owner rights under the *Traditional Owner Settlement Act 2010* (Vic) (TOS Act) and *Native Title Act 1993* (Cth) (NT Act) have been considered.

The Minister may direct the Crown landlord to modify aspects of a proposal to reflect legislative or government policy requirements. This process provides more certainty in the planning and implementation of a lease proposal. The AIP does not guarantee that a lease will be granted.

Approval to terms and conditions of the lease

Subject to the requirements of the AIP being achieved and a lease agreement being prepared, all lease agreements require the Minister's approval of the lease terms and conditions, regardless of whether the lease is granted by a CoM, trustees or the Minister.

Granting/entering a lease

Only the Minister can enter a lease for a term greater than 21 years. However, leases up to 21 years under the *Crown Land (Reserves) Act 1978* can be entered or granted by the Minister or a CoMs/trustees.

Costs

Unless the Crown landlord decides otherwise or the *Retail Leases Act 2003* applies, the prospective tenant is responsible for the costs associated with the preparation of the AIP submission and the negotiation and preparation of the lease and other related documents.

The level of detail required in the AIP submission will vary depending on the scope of the lease proposal and the land involved. It must provide enough detail for the Minister to make an informed decision. The Minister may require the landlord or prospective tenant to provide additional information.

Guidance

An Approval in Principle to lease submission must include the following:

Background

- details of the land proposed to be leased, including the current use of the land
- purpose of the lease and activities proposed under the lease
- evidence that Traditional Owner rights under the *Traditional Owner Settlement Act 2010* (Vic) (TOS Act) and *Native Title Act 1993* (Cth) (NT Act) have been considered and implemented.
- details of any proposed capital works program
- timetable for implementation of the lease proposal
- evidence that the prospective tenant has the experience, capacity and competence to manage the lease
- evidence that the prospective tenant has the capacity to fund any developments and meet lease commitments (rental, maintenance expenses etc)
- evidence that the proposal is financially viable
- evidence that the proposal is not detrimental to the reserve purpose
- details of any other statutory approvals processes associated with the proposal
- details of consultation processes proposed, to gauge community views on the proposal
- evaluation of potential risks

Leasing Principles

- benefits of the proposal (Principle 1) i.e. evidence of the community benefits of the lease such as economic development, continuity of government programs, promotion of public health and wellbeing, innovation, environmental protection, traditional owner involvement or other distribution of benefits to the community
- the proposed method of allocating the lease and a justification for the selected process (Principle 2)
- the proposed terms and conditions of the lease including:
 - lease term, how this has been determined?

- rental structure; and
- how the lease proposal addresses environmentally sustainable management principles (Principle 3).

Allocating leases in a fair and equitable manner

New leases

To comply with the *National Competition Policy Agreement* of 1995 which resulted from the *Trade Practices Act 1974*, lease allocation processes must be fair, open and impartial. Landlords should apply a competitive selection process to commercial leases unless direct negotiations would achieve an outcome that better serves the community interest.

Competitive negotiation

The selection of tenants through a competitive selection process is particularly relevant to commercial leasing. A competitive process improves probity and is better able to address conflicts of interest (real or perceived) and transparency in the decision-making process.

It also provides an opportunity for interested parties to compete for a lease (the closed nature of direct negotiations creates a perception that private interests could influence or be seen to influence the outcome of a selection process).

Where a competitive selection process is followed it must be conducted in accordance with Department of Treasury and Finance (DTF) procurement policies and guidelines located at <https://buyingfor.vic.gov.au/guide-procurement>. While this material focuses on the tender process for government procurement activities it is also applicable to the tender process for government Crown land leasing. Of note is the *Guide-to-developing-an-offer-template*, *Guide-to-evaluation-negotiation-and-selection*, *Guide-to-specification-writing* and *Guide-to-Supplier-feedback*. It is important that all prospective tenderers receive consistent information about existing assets, capital improvement/expenditure expectations and rent estimates and are aware of the criteria that will be used to evaluate the tenders.

The tender specification should clearly outline a complaints management process with appropriate escalation triggers. The DTF *Guide-to-complaints management* provides a useful schedule of timelines for managing complaints. Where a complaint relating to a delegated lease cannot be resolved to the satisfaction of both parties, DEECA would act as the review facilitator rather than the Victorian Government Procurement Board.

Direct negotiation

A direct negotiation process should be used where it can be demonstrated that the public benefit of direct allocation outweighs the benefits that may be produced by using a competitive process including:

- where, after an assessment of the land, it can be determined that direct negotiation with a prospective tenant would maximise benefits to the community and/or government
- when the land is currently occupied by a community group that has acted as a good tenant, and that offers a service to the public on the land, with all profits generated on the land being applied to site maintenance or for offering services
- when the current market rental value of the land is low relative to the cost of conducting a competitive process
- when an appropriate competitive process has not produced a satisfactory outcome

- when it is reasonably clear that there is only one prospective tenant with the required capability
- when industry specific legislation prohibits a tenant from excluding competitors from the land regardless of who holds the head lease, such as Telecommunication leases
- where there is evidence that conducting a competitive process may place a project of regional or state significance at risk; or
- where the only practical access is available from adjoining land owned by the prospective tenant.

Reissue of lease to incumbent tenants

A proposal to grant a new lease to an incumbent tenant may be considered by the Minister 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 and generally where 18 months of the lease term remains.

During direct negotiations with incumbent tenants the landlord should test if a lease is the best management arrangement for the site. For unreserved Crown land this could include sale of the site if it doesn't have a high public land value or, reservation and the appointment of a suitable land manager if it does have high public land value. If the land remains unreserved consideration should be given to a shorter term so that it can be revisited in 10 years rather than 21 years.

Any further term of 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.

Ministerial approval

Regardless of the lease term, the final decision to allocate a lease through a direct negotiation process instead of a competitive allocation process rests with the Minister at the time of the AIP consideration and lease approval. The Minister may require as a condition of the AIP that the Crown landlord or the prospective tenant undertake a public notification process of the intention to negotiate directly.

Ensuring leases contain appropriate terms and conditions

Leases will contain terms and conditions which align with the purpose of the lease, conform to government policy and statutory requirements and reflect an appropriate balance between the needs of the tenant and responsibility of the landlord as manager of the Crown land.

To ensure a consistent approach to the leasing of Crown land, standard leasing documentation will be used by Crown landlords unless otherwise approved by the Minister. Landlords will ensure tenants comply with conditions by establishing suitable governance structures and monitoring processes.

If a formal lease cannot be entered into until certain events have occurred (for example, planning approvals are obtained or capital works carried out), the Minister or landlord, with the approval of the Minister, may offer a prospective tenant an Agreement to Lease.

Ensuring leases contain appropriate terms

21-year lease terms

A term of 21 years is considered enough to accommodate the purposes of most leases. The primary considerations when determining the term of any lease are the community benefit that will accrue from the lease and the nature and significance of the proposed permitted use and development under the lease. Factors that will be considered when assessing the term of a lease include:

- the ability of the prospective tenant to fund, resource and manage the lease
- the community benefit that will accrue from the lease

- the level of investment to be made by the tenant under the lease
- alignment with any existing agreements or tenure over adjacent land
- the purpose of the lease and activities proposed under the lease; and
- the minimum term permitted under the *Retail Leases Act 2003* if the lease is for retail purposes.

Lease terms greater than 21 years

It is recognised that for large-scale projects of regional or state significance, where the associated costs are inevitably higher, a longer-term lease may be required. The term granted must be appropriate to that use and not necessarily the maximum lease term permitted under the relevant Act.

Crown Land (Reserves) Act 1978 and Forests Act 1958

The Minister will only consider departures from the 21-year maximum term of lease under the *Crown Land (Reserves) Act 1978* and *Forests Act 1958* in accordance with the criteria specified in these Acts. These Acts provide that the Minister may grant leases for a term of more than 21 years, but not more than 65 years, if the Minister is satisfied that:

- the purpose of the lease is not detrimental to the reserve purpose
- the proposed use, development, improvements or works specified in the lease are of a substantial nature and of a value which justifies a longer-term lease; and
- the granting of a longer-term lease is in the public interest.

Land Act 1958

The *Land Act 1958* provides for the granting of leases on Crown land up to 99 years. Under the *Land Act 1958*, the Minister may grant a lease:

- for a term exceeding 21 years but not more than 50 years for commercial and industrial purposes;
- for a term exceeding 50 years but not more than 99 years for commercial and industrial purposes where the Minister is satisfied that the building structure or improvement made or to be made is of a substantial nature and of a value which justifies the term; or
- for a term not exceeding 99 years for any Crown improvement of a substantial nature.

Guidance

Business case requirements for lease terms greater than 21 years (any Act)

To enable the Minister to assess lease terms greater than 21 years under the *Crown Land (Reserves) Act 1978*, *Forests Act 1958* and *Land Act 1958*, a business case must be prepared which provides comprehensive details of:

- the strategic importance (state or regional significance, or provision of essential services) of the proposal;
- the environmental, social and economic costs and benefits of the lease proposal;
- the capital outlays proposed, and term proposed to amortise investment;
- any reasons why the investment cannot be amortised within a 21-year term; and

- any other matters relevant to the Minister's assessment.

The onus will be on the prospective tenant to provide the information in a business case.

Statutory exclusions from maximum lease terms

A maximum lease term of 21 years applies to land reserved under the *Crown Land (Reserves) Act 1978* to conserve rare or threatened species, significant plant communities, or valuable habitat for populations of significant fauna.

Options

Leases may provide for options for further terms. The total of the initial term plus any option term(s) cannot exceed the maximum lease term specified in legislation.

Ensuring leases contain appropriate rent

Commercial and private uses

In line with the *Victorian Government Land Transactions Policy*, all leases will be subject to a market valuation by the Valuer General Victoria or a registered valuer. This valuation will determine the market value of the land, considering all restrictions, regulations and conditions specified in the lease document. It is preferred that rental also be reviewed periodically during the term of the lease. The requirement for market rental valuation extends to tenants who, under the terms of their lease, undertake community uses.

In some limited circumstances, consideration may be given to alternative rental models which will be dealt with on a case by case basis or as policy allows. These include:

- Lifesaving club leases issued in line with the 'Occupation and use of Crown land by lifesaving clubs in Victoria 2018' policy.
- revenue sharing reflecting a proportion of the profit/turnover generated from the leased premises;
- case by case negotiation: the rental arrangement forms part of the bid for the lease as part of a competitive allocation process; and
- pricing formula: site rentals are calculated on a predetermined formula such as a rate card.

Community uses

To be considered a Community use lease, prospective tenants must:

1. be a not-for-profit organisation
2. be competitively neutral
3. be managed mostly by volunteers
4. manage the lease primarily for the community, and
5. meet compulsory public benefit criteria such as; social engagement, service is non-discriminatory, there are no barriers to participation and a demand exists for the service.

If all the above criteria are met the lease is deemed 'Community use'. To determine how much the Minister may agree to subsidise the rent (after a market valuation is obtained); the leasing proposal will be assessed against the prospective tenant's business case, including an assessment of ancillary revenue raising activities to determine if they fall under fundraising or commercial activities as described below.

The 'burden of proof'/justification in relation to a prospective tenant being granted a rental subsidy from market rent lies with the prospective tenant at the lease application and rent review stages.

Fundraising Activities

Fundraising activities are allowed on all Community use leases so long as they:

- are not the predominant use of the leased area

- don't adversely affect the carrying out of the tenant's primary purpose of the lease, and
- don't adversely impact adjoining Crown land.

Fundraising activities refers generally to the activities undertaken by the tenant to raise revenue to assist in delivering of its core functions, supporting maintenance of the facilities, and otherwise furthering its objectives. Fundraising activities that may be permitted through a Community use lease, include:

- fundraising appeals, defined in section 5 of the *Fundraising Act 1988*
- membership subscriptions
- temporary non-exclusive commercial activities such as activities that are offered through a licence like a weekly exercise class.
- service provision fees
- donations
- grants, and
- community charitable gaming, such as raffles, bingo, or fundraising events, excluding commercial gaming activities such as sports betting and poker machines (which will be considered a permanent commercial activity for the purpose of calculating community use rent)

Permanent Commercial Activities

Permanent commercial activities are those undertaken:

- under a lease by an entity or individual, legally separate to the tenant or the landlord (third-party) with the intention of generating revenue from the activity, with the revenue retained by that third party for the purposes of profit, or
- by the tenant and they permanently occupy part of the premises. For example, when the tenant runs a café or a restaurant directly it is a tenant-run permanent commercial activity.

They are an ancillary use because they support the primary use, or purpose, of leased premises by enabling the tenant to generate revenue to support sustained delivery of their core services.

Community Use categories

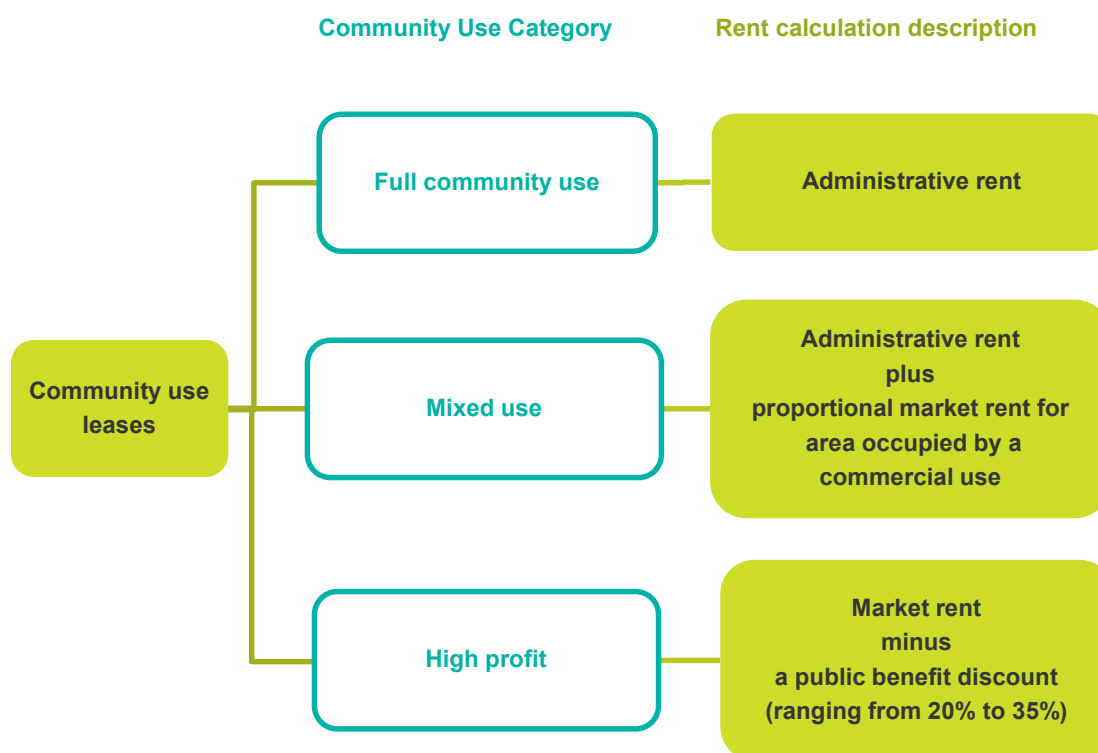
After assessing a prospective tenants business case and ancillary revenue raising activities the lease will be categorised as either a:

1. Full community use lease (Profit is low to medium and there are no permanent commercial activities)
2. Mixed use lease (Profit is low to medium and there are permanent commercial activities), or
3. High profit lease (profit is high regardless of permanent commercial activities)

Community Use category rent calculation

Diagram 1 below describes the rent calculation method for each community use category. With detail below the diagram.

Diagram 1 – Community use rent categories



Administrative rent

Full community use tenants will pay an administrative rent based on cost-recovery reflecting the preparation and administration of the lease. The administrative rent will escalate annually to ensure it reflects the costs incurred by the landlord in administering the lease.

Administrative rent plus market rent for area occupied by a commercial use

Mixed use tenants will pay rent based on the following methodology:

1. The area used by the tenant for its core community services will be valued at a community use administrative rent.
2. The area occupied by the ancillary commercial use will be valued at an unimproved market rate (based on valuation by the Valuer-General Victoria (VGV) or Certified Practicing Valuer at a rate that reflects only the value of the ground, or land, and does not consider the value of any improvements).
3. The values from steps 1 and 2 will be added together to determine the rent.

Market rent minus a public benefit discount

Mixed use high profit tenants will pay a market rent assessed by the Valuer-General Victoria (VGV) or a registered valuer with endorsement from the VGV, minus a discount ranging from 20 to 35 percent. The discount will be calculated based on public benefit criteria supplied through the lease such as; social

engagement, the openness of the service i.e. it is non-discriminatory, that there are no barriers to participation and a demand exists for the service etc.

Other costs

Rent to the landlord is not the only fee or charge payable under Crown land leases. Other expenses include but are not limited to:

- land tax
- stamp duty
- local government rates and permit application fees
- lease preparation, application and approval fees
- a *Transfer of Land Act 1958* registration of lease fee
- the landlord's reasonable legal costs in preparation of lease documentation (if required).
- a Survey Report fee followed by survey fees (if required).
- advertisement fees to advertise the intention to lease in both a locally circulating newspaper and Victorian Government Gazette
- insurance; and
- utilities and other running expenses.

Ensuring leases contain appropriate conditions

Ownership and maintenance of existing and new improvements

Unless the tenant is required under the lease to remove the improvements or structures at or before the end of the lease, all improvements and structures on the leased premises become the property of the Crown at the end of the lease term without any payment or compensation. Generally, structures and improvements are to be maintained by the tenant at the tenant's cost during the lease term unless the *Retail Leases Act 2003* applies.

Power to sub-let

All sub-leases and sub-licences made under a lease must be consistent with the purpose of the head lease and require the consent of the landlord. If the lease is granted by a CoM or trustee, the CoM or trustee must obtain the written consent to sub-let from the Minister before the tenure is entered into.

Assignment and mortgage

All assignments or mortgages of leases require the consent of the landlord. If the lease is granted by the committee of management or trustees, the committee of management or trustees must obtain the Minister's prior consent to assign or mortgage the lease.

Insurance

All leases will require that the tenant hold public liability insurance. A minimum cover for public liability insurance will be provided under the lease. The landlord or the Minister may determine that other forms of insurance may be required under a lease as appropriate.

Financial security

Generally, leases should contain provisions to ensure compliance with obligations under the lease, such as payment of rent or maintenance and repair. This may take the form of a bond, bank guarantee or similar instrument.

Over holding

If a lease expires and the tenant remains in occupation of the leased premises with the consent of the landlord, the holdover provisions in the lease will apply for, and not exceed, the period permitted by the relevant Act (if any).

Variation of lease terms and conditions

The Minister may consider a proposal for variation to the existing terms and conditions of a lease. The decision to vary a lease rests solely with the Minister. Where the lease is on reserved land and variation of the permitted use is proposed, the Minister must be satisfied that the proposed purpose is not detrimental to the purpose for which the land is reserved.

If a proposal for variation of a lease involves substantial changes to the lease, a surrender of the lease and grant of a new lease will be required. Substantial changes to the terms of the lease would include but are not restricted to:

- the term of the lease
- the area leased; or
- the parties to the lease.

Principle 3 - Environmentally sustainable lease management

Victoria's natural environment is diverse, unique and precious. Victorians treasure the environment not just for its own sake, but for its indispensable value to individuals and communities. The economic, social and cultural benefits to the community from the leasing of Crown land depend on the long-term sustainable management of this important natural resource. These benefits should be available to current generations without compromising the ability of future generations to enjoy similar benefits.

The Victorian Government's *Protecting Victoria's Environment – Biodiversity 2037* establishes directions towards achieving environmental sustainability. Where relevant proposals to lease Crown land will need to demonstrate the application of these directions including:

- responding to the challenge of climate change
- maintaining and restoring our natural assets
- providing opportunities for Victorians to connect with nature
- using resources more efficiently; and
- reducing biodiversity and environmental impacts including contamination.

Guidance

Where relevant, environmental impacts and opportunities should be addressed by prospective tenants when developing a lease proposal including measures to address or mitigate the potential impacts on land and buildings over the life of the lease. For example but not limited to:

- climate change (for example is potential sea level rise an issue?)
- biodiversity (are there sensitive species in the vicinity?)
- degradation and loss of native vegetation
- pest plants and animals

- the environmental efficiency of new and existing buildings
- the efficiency of water and energy use
- greenhouse gas emissions
- waste and use of renewable or recyclable materials
- best-practice stormwater management; and
- existing and potential contaminants

Environmental Reporting and Management Planning

Where environmental issues are significant the landlord may require prospective tenants to produce an Environmental Report and/or Environmental Management Plan as part of a lease's conditions. These mechanisms will be binding on the prospective tenant as part of the lease contract.

Environmental Report means a report prepared by an independent expert that sets out the condition of the premises with respect to contamination and/or the environment in, on, under or migrating from premises as at the commencement date of a lease.

Environmental Management Plan means a written report on the environment of the premises which includes but is not limited to:

- an overview of the contamination or environmental management methods including but not limited to management zones and activities that the tenant will employ to manage contamination or the environment of the Premises
- a schedule indicating timelines of activities to manage contamination or changes to the environment of the premises
- allocation of roles and responsibilities, including in relation to an environmental audit process to ensure that activities to manage contamination and changes to the environment of the premises are satisfactorily carried out
- a reporting regime for informing the landlord of contamination or changes to the environment of the premises; and
- an overview of the management of and/or mitigation strategies for contamination or the environment of the premises (including but not limited to details of reinstatement, rehabilitation, waste management and environmental incidents and emergency management at the premises).

Legislation

Legislation governing Crown land leasing in Victoria

Crown Land (Reserves) Act 1978 (Vic)

The *Crown Land (Reserves) Act 1978* enables reservation of land for a range of public purposes, stipulates how reserved land must be dealt with and prescribes some governance arrangements for CoMs appointed to manage reserved land.

The leasing provisions in the *Crown Land (Reserves) Act 1978* are used to authorise a wide range of leases for commercial and non-commercial purposes on reserved Crown land.

Land Act 1958 (Vic)

This Act deals with sale, grants and occupation of unreserved Crown land in Victoria. Examples of ‘occupation’ include leases for community, commercial and industrial purposes.

Forests Act 1958 (Vic)

This Act establishes the framework for the management, use and conservation of forests. It also contains provisions for leasing and licensing of reserved forest by the Minister.

Legislation that affects the grant of Crown land leases

Aboriginal Heritage Act 2006 (Vic)

This Act provides for the protection and management of Victoria’s Aboriginal heritage. It establishes a system of management plans and permits which Crown land tenants need to comply with when carrying out specified activities that may impact on Aboriginal cultural heritage.

Environment Protection Act 2020 (EP Act)

The EP Act contains a framework to protect Victoria’s environment and it also sets out a series of overarching principles that the Environment Protection Authority (EPA) (as the acts administrator) must consider. The EPA is responsible for and can advise landlords on the enforcement options available under the EP Act where a tenant has caused harm to the environment through noise, odour or contamination etc. The EPA’s Compliance and enforcement policy (publication 1388) can also provide guidance.

Marine and Coastal Act 2018 (MACA)(Vic)

Any proposed use and development of coastal Crown land (including a use and development proposed under a lease) requires the consent of the Minister for Environment (or delegate). The *Planning and Environment Act 1987* and the MACA are linked. If a planning permit application is made under the *Planning and Environment Act 1987* and is referred to DEECA as the referral authority on Crown land, the referred application is deemed to be an application for consent under the MACA.

Native Title Act 1993 (Cth)

This Act establishes a mechanism to determine claims for native title and provides a process of authorising new leases that impact on Native Title rights. The granting of leases on Crown land must comply with the requirements of the Act.

Personal Property Securities Act 2009 (PPSA) (Cth)

The *Personal Property Securities Act 2009* (Cth) is a law about security interests in personal property. The PPSA does not apply to land or any buildings or fixtures attached to land. However, the PPSA does apply to 'security interests' in 'personal property' including equipment or other chattels.

Planning and Environment Act 1987 (Vic)

This Act establishes a framework for planning the use, development and protection of land in Victoria. Crown land tenants need to comply with relevant local planning schemes and obtain any required planning permits associated with the use of leased premises.

Retail Leases Act 2003 (Vic)

This Act is the main governing legislation for retail leasing in Victoria. Leases for retail premises on Crown land granted under Crown land legislation must comply with the requirements of the *Retail Leases Act 2003*.

Telecommunications Act 1997 (Cth)

The *Telecommunications Act 1997* (Cth) applies to Crown land in Victoria. The Carriers have a wide range of statutory powers to install and maintain facilities under the *Telecommunications Act 1997* (Cth).

Traditional Owner Settlement Act 2010 (Vic)

This Act provides for the making of agreements between the State and traditional owner groups to:

- recognise traditional owner rights and confer rights on traditional owner groups for access to, ownership or management of certain public land; and
- determine decision-making rights and other rights that may be exercised in relation to the use and development of the land or natural resources on the land.

Transport Integration Act 2010 (Vic)

This Act establishes a requirement for landlords to consider the transport policy framework when performing any functions that might have a significant impact on the transport system.

