

# Wyndham City Lease and Licence Policy

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## 1 Policy objective

Council owned and managed land is an important public asset. It is critical that there is a consistent approach so that it is managed to maximise social, environmental and economic benefits to the community now and into the future. In this context, the Wyndham City Lease and Licence Policy has been developed to provide a framework for Council in making decisions, as well as guide existing and prospective tenants.

### 1.1 Principles

The policy objectives centre around the following principles:

Principle 1 – To provide benefits to the public through leasing and licencing;

Principle 2 – To ensure consistency and transparency in leasing and licencing, as well as providing certainty regarding tenant and landlord responsibilities;

Principle 3 – To manage Council owned or managed property in an ecologically sustainable manner.

These principles are consistent with the Victorian Government's framework for leasing Crown land. This policy is underpinned by an associated framework and processes.

## 2 Strategic intent

### 2.1 Why Council leases or licences property

- To allow for the provision of core services to the community that is consistent with the Wyndham 2040 Community Vision and City Plan themes of:
  - People and Community,
  - Places and Spaces,
  - Earning and Learning, and
  - Leadership and Participation.
- Leasing and licencing allow the community to use, benefit from and enjoy public assets through the provision of recreational, cultural and sporting facilities as well as for commercial uses.
- Generating economic development by providing opportunities for local employment, and volunteering.

### 2.2 Why lease or licence agreements are important

- Council has a large property portfolio and therefore a role as a landlord;
- It is prudent to have a legally binding agreement in place in the form of a lease or licence when a Council owned or managed property is occupied on an ongoing basis by another party.
- Leases and licences assist with the protection of important public assets.
- Council has statutory obligations under the Local Government Act in regard to leasing it needs to adhere to as well as Crown Land (Reserves) Act.

### 2.3 Creating public value

- This policy strives for public value through recognising the differences between diverse tenants including community, commercial and residential and applying the right type of leasing and licencing arrangement.
- Having a policy and supporting framework of processes ensures that important public assets are managed efficiently and effectively, as well as being protected for future generations.
- Being able to demonstrate the amount of subsidy provided to the community through Council's management of the Wyndham City property portfolio.

- Additionally, the policy supports Council business by the improvement of related operations from a supporting framework of internal processes.

### 3 Background

Wyndham is forecast to experience significant growth in its population from 257,028 in 2018 to 489,379 in 2041 (population forecast.id.com.au, 2018). This major growth and its impact on services and infrastructure requires careful consideration and planning.

Recognising that Council is a significant property portfolio holder and its placement within a growth corridor, means that it is required to participate more often in leasing and licencing to meet the demands of a dynamic community and environment.

### 4 Policy statement

Council is a responsible property owner and recognises it performs this function on behalf of its community. When making decisions regarding its property, Council will:

- a) Comply with relevant legislation;
- b) Undertake appropriate community engagement;
- c) Act consistently to tenants and prospective tenants;
- d) Consider economic, social and cultural aspects in leasing and licensing;
- e) Respect contractual arrangements that require matters to be treated as commercial-in-confidence;
- f) Always act in good faith; and

This policy widely supports delivering the Wyndham 2040 vision. This is as many elements within the Wyndham 2040 themes are strongly connected to land, specifically the themes of:

- People and Community;
- Places and Spaces;
- Earning and Learning; and
- Leadership and Participation.

Consistent with its Gambling Harm Minimisation Policy and Action Plan 2018-2022, Council will not enter into leases or licences of Council owned or managed land for purposes that support gambling.

### 5 Policy initiatives/actions


#### 5.1 Policy scope

This policy applies to all leases and licences with community, commercial and residential tenants on Council owned or managed land (including Crown Land where Council is appointed as Committee of Management). The policy will be implemented in accordance with a framework of supporting internal processes.

#### 5.2 Policy setting

Lease and Licence agreements usually operate in one of the following settings:

- Council owned building on Council land
- Tenant building on Council land
- Council building on Crown land where Council is Committee of Management
- Tenant building on Crown land where Council is Committee of Management
- Council owned building on Crown land where Council is not Committee of Management



The operating setting is a driving factor in determining various elements of each lease and licence agreement. Each lease and licence agreement is reflective of its unique circumstance.

### 5.3 Exclusions

This policy does not apply to:

- Casual facility hire, which is covered by specific hire agreements.
- Seasonal Licence agreements that are covered by the Sporting Facility User Guide.
- Telecommunication and Utility leases.
- Property where Council is the tenant.
- Management Service Agreements.

### 5.4 Principle 1 - Provide benefits to the public through leasing

Council owned and managed property is administered for the benefit of the community. Decisions to enter a lease or licence must consider social, economic and environmental outcomes. Granting exclusive occupation of a property must be justified and demonstrate public value.

Leasing and licencing 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 or licence Council owned, or managed property will be assessed on their merits and an assessment will be made of potential benefits and burdens.

Assessment considerations include, but are not limited to:

#### **Community**

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

#### **Economic**

- attracting investment
- creation of employment
- promotion of tourism
- economic return to Council as landlord
- Capital works and in-kind contributions by prospective tenants

#### **Continuity**

- support for the implementation of Council policies or programs

#### **Innovation**

- introduction of new skills or improved technology
- provision of new services/service organisations to Wyndham and its residents

#### **Environment**

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

## Crown land

- Where Council is Committee of Management for Crown land, further state consent is required in accordance with the requirements of relevant Acts, advice and policies of various government agencies.

### 5.5 Principle 2 - Consistency and transparency in leasing

To provide consistency and transparency, as well as to ensure statutory requirements are met, a process exists to consider leasing and licensing proposals. Refer to Appendix 2 for the current application form.

A commercial tenant will always be selected through an open and competitive process (Expression of Interest or Tender) unless the property is unique and within reason there is only one possible tenant, or the agreement is for a short term anticipating a change of use or a future open competitive process.

#### 5.5.1 Ensuring leases contain appropriate rent

##### 5.5.1.1 *Community, commercial, residential and other uses*

Leases and licences will be subject to a market valuation by a registered valuer. This valuation will determine the market value of the property, considering all restrictions, regulations and conditions specified in the lease or licence document. The requirement for market rental valuation extends to tenants who, under the terms of their lease or licence, undertake community uses.

This valuation also ensures that Council is meeting its statutory obligations under the Local Government Act.

##### 5.5.1.2 *Community uses*

To be considered for a community use lease or licence, prospective tenants must satisfy the below criteria:

- be a not-for-profit organisation (including small incorporated associations);
- be competitively neutral (not providing a market advantage over similar groups);
- be governed (or managed) by a board of volunteers;
- manage the lease primarily for the community, and
- 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 of the above criteria are met the lease or licence is deemed 'Community use'. In order to determine how much Council may agree to subsidise the rent (after a market valuation is first obtained); the leasing proposal will be assessed against the prospective tenant's application, including;

- an assessment of ancillary revenue raising activities;
- an assessment fundraising or commercial activities as described below and calculated in Appendix 1.

After assessing a prospective tenant's application and any ancillary revenue raising activities, the lease will be categorised as either a:

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

Rental calculations and subsidy are shown in Appendix 1.

- For any prospective tenant that may fall into either of the below groups, please refer to the respective Framework or User Guide to determine the rent: Early Years Partnership Framework (Cost Framework- Internal 2019)
- Sports Facility User Guide 2020-2025

#### 5.5.2 Subletting

Subletting is where the property or part of the property is leased, licenced or hired out to another party by the tenant. The tenant remains responsible for all of its obligations under their agreement.

Subletting of a property under lease to another party is only permitted through obtaining Council's written consent. The use of the property is to be consistent with the 'permitted use' as detailed in the head agreement. If Council agrees to a sublet arrangement, Council may impose additional terms and conditions and may adjust the rent of the head lease. Refer to Appendix 1 for further information.

#### 5.5.3 Maintenance

To provide a consistent and fair framework for the conduct of maintenance on Council's property, bespoke maintenance schedules will be developed for each tenancy. Each tenant is required to maintain the property in accordance with the maintenance schedule attached to the lease or licence. The maintenance schedule will specify the responsibilities of Council and the tenant including responsibility for maintaining the structure, the building fixtures, fittings and grounds.

Any works that are not articulated in the maintenance schedule require the tenant seek the written consent of Council, acting in its role as the landlord.

### 5.6 Principle 3 - Ecologically sustainable lease management

Wyndham's natural environment is unique and important. The economic, social and cultural benefits to the community from leasing or licencing Council owned or managed property, depend on the long-term sustainable management of its resources. These benefits should be available to current generations without compromising the ability of future generations to enjoy similar benefits.

Where relevant, environmental impacts and opportunities should be addressed by prospective tenants when developing an application 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.

## 6 Related legislation

Community Amenity Local Law (2015)

Food Act 1984

Local Government Act 2020

Local Government (General) Regulations 2004

Occupational Health and Safety Act 2004

Retail Leases Act 2003

Retail Leases Regulations 2003

Crown Land (Reserves) Act 1978

Planning and Environment Act 1987

Public Health and Wellbeing Act 2009

Residential Tenancies Act 1997

Tobacco Act 1987

## 7 List of key strategies

It is noted that this policy seeks to enable Council to lease and licence important public assets. The following list represents key links:

Accessibility Action Plan 2019-2022

Asset Management Strategy

Council Plan 2021-2025 (Draft)

Telecommunications Facilities Policy (Leasing/Licensing of Council Land) 2017

The Wyndham Gambling Minimisation Policy and Action Plan

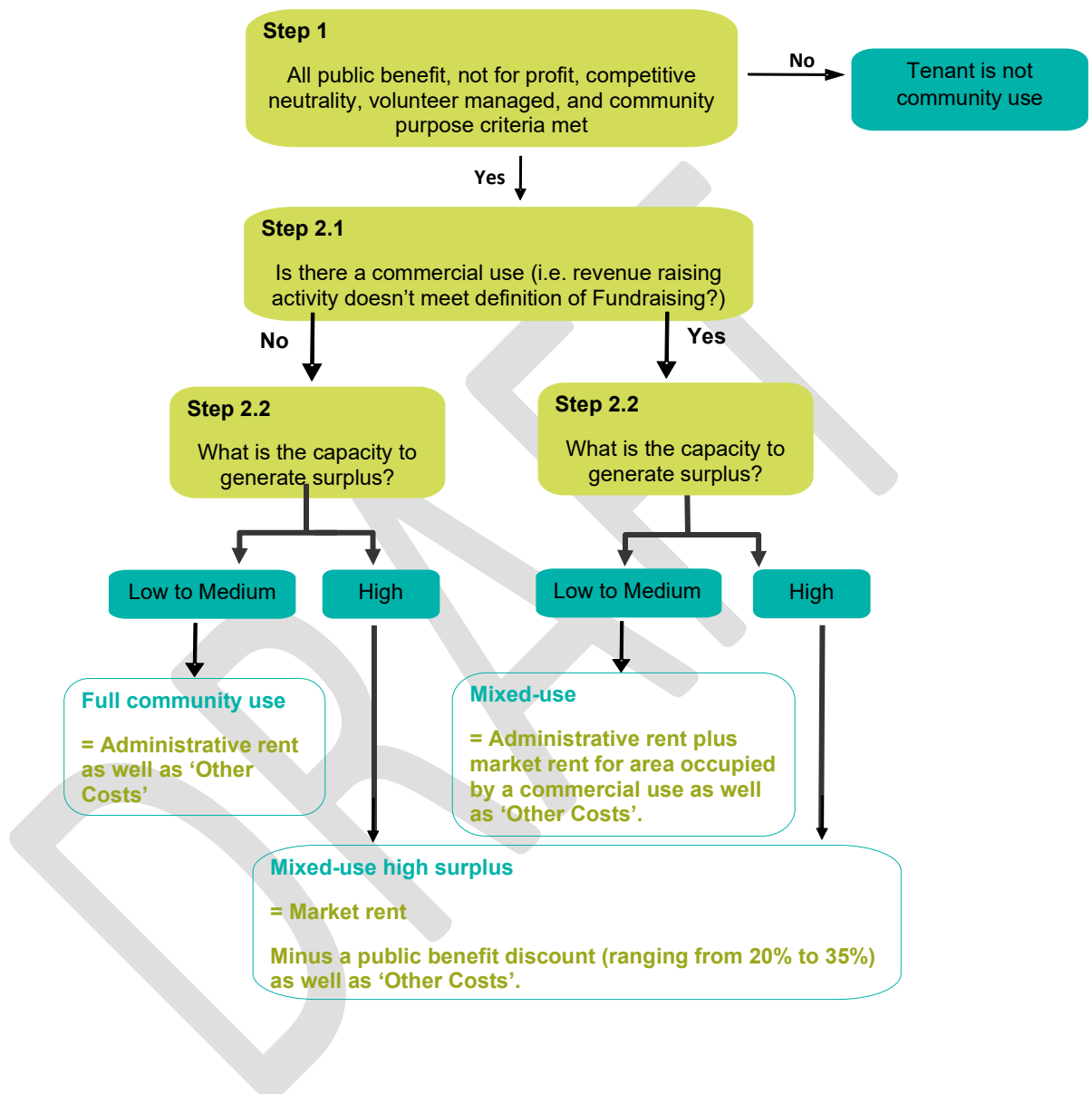
Wyndham 2040


Wyndham Open Space Strategy 2045



## 8 Appendix 1 – Community use category rent calculation

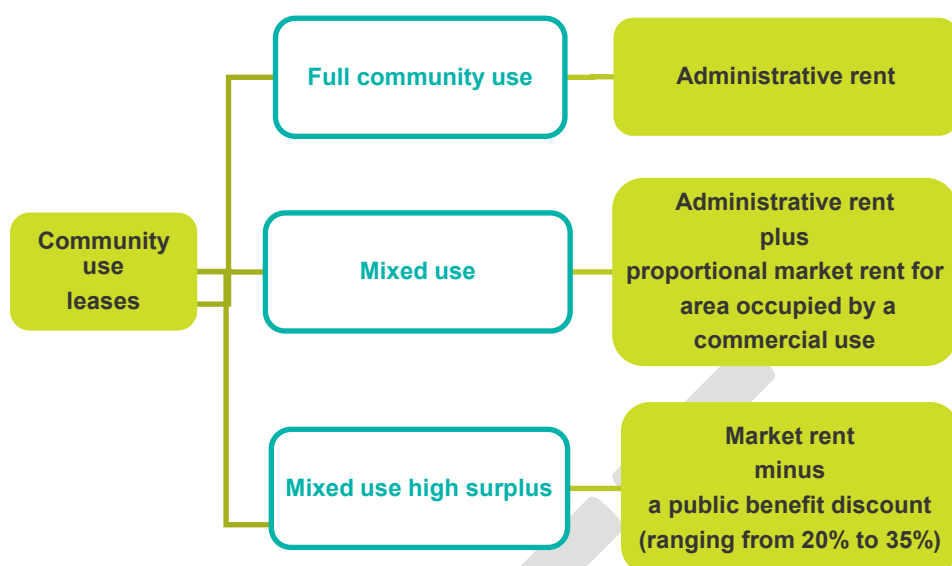
### 8.1 Community use category assessment





Rent type	Definition	Example
Full Community Use	Surplus is low to medium and there are no permanent commercial activities.	<p>For example, if the market rent is assessed as \$10,000 and the projected surplus for the term of the lease or licence (before paying rent) is close to or less than the rental amount annually, then the surplus-making capacity is low.</p> <p>Surplus analysis should include taking away the costs of maintaining the property and offering services to the community from the site.</p>
Mixed Use	Surplus is low to medium and there are permanent commercial activities.	<p>For example, if the market rent is assessed as \$10,000 and the projected surplus for the term of the lease or licence (before paying rent) is between the rental amount and double the rental amount annually i.e. between \$10,000- \$20,000 annually then the revenue-raising capacity is medium.</p> <p>Surplus analysis should include taking away the costs of maintaining the property and offering services to the community from the site.</p>
Mixed Use High Surplus	Surplus is high regardless of permanent commercial activities.	<p>For example, if market rent is assessed as \$10,000 and the projected surplus for the term of the lease or licence (before paying rent) is at least double the rental amount annually i.e. \$20,000, then the surplus-making capacity is high.</p> <p>Surplus analysis should include taking away the costs of maintaining the property and offering services to the community from the site.</p>

## 8.2 Community use category rent calculation method and definitions



### 8.3 Administrative rent

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

For ease, administrative rent will be the same amount annually applied by DELWP for Crown land Community use leases and will be published annually in Council's Fees and Charges schedule.

Community tenants may make a submission when entering a new lease or licence agreement for consideration of a rental reduction which will be formally decided by Council.

### 8.4 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.

## 8.5 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, minus a discount of up 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.

Public Benefit		Part Community use discount
A.	The tenant's use of the leased premises will increase social engagement and promote health and well-being of the community.	5%
B.	The service or activity provided through the lease is non-discriminatory: it will be open to all members of the community who meet clearly stated criteria for participation that are directly related to the nature of the service or activity.	5%
C.	The service or activity can be accessed by disadvantaged and vulnerable groups, with strategies in place to review and remove any barriers to access or participation.  Disadvantaged and vulnerable groups include but is not limited to people who are: Aboriginal and Torres Strait Islander, women, disabled, from diverse cultural or ethnic backgrounds, children, religious minorities, LGBT community, teenagers, pensioners and the unemployed.	5%
D.	There are reasonable grounds to believe a need or demand exists for the service or activity to be provided through the leased premises.	5%
E.	The use demonstrates multiple use, resource and infrastructure sharing.  The tenant is prepared to maximise utilisation of and community access to the facility (including through shared use with other community organisations, consistent with the head lease).  The leased premises provide public access to the leased area.  <i>Example: A club that provides space for special events for other community and not-for-profit organisations.</i>	5%
F.	Do the proposed uses or activities demonstrate standards over and above legislated and planning requirements? And, are these requirements supported by the landlord (part of landlord's vision for the site) and government policy or objectives?  <i>Example: Use is supported by Local Government Open Space Strategy, ISO building standards, sustainable design principles, energy ratings, habitat/vegetation protection and or enhancement, threatened species conservation, heritage conservation, etc.</i>	5%
G.	There are expenditures obligated of the tenant on the site or on public land adjoining the site that will benefit Council.  <i>Example: Conservation and upgrade of a heritage site, carpark upgrade by the tenant on adjoining land.</i>	5%
<b>Potential total discount</b>		<b>35%</b>

## 8.6 Other costs

Other fees and charges may be applicable in addition to the rent or licence fee. These expenses may include, but are not limited to:

- land tax (where applicable).
- stamp duty (where applicable).
- local government rates and permit application fees (where applicable).

- 
- lease preparation, application and approval fees.
  - 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 (if required).
  - appropriate insurance policies (outlined in the lease or licence agreement).
  - utilities and other running expenses.
  - cleaning costs.
  - building maintenance expenses and/or contribution as detailed in the lease or licence agreement.
- DRAFT

## 9 Appendix 2 – Lease application form

Insert application form here

### 10 Definitions

**Administrative rent** means the Surplus is low to medium and there are no permanent commercial activities.

**Ancillary Commercial use** means a use that is subordinate to the principle use of the premises.

**Commercial Tenant** means any occupier who operates a business or commercial enterprise that is other than a sporting, educational, recreational or community group

**Committee of Management** means Council, DELWP, Parks Victoria or trustees that are appointed as Committee of Management under the *Crown Land (Reserves) Act 1978*.

**Community Tenant** means under the terms of a lease or a licence, provide solely community or social benefits.

**Council owned** means freehold land that Council is the Registered Proprietor of.

**Council managed** means properties which are on Crown Land and Council is the appointed Committee of Management.

**DELWP** means The Department of Environment, Land, Water and Planning and its predecessors, successors and assigns, the Victorian Government department representing the Crown as the landowner of Crown land.

**Full community use** means surplus is low to medium and there are no permanent commercial activities.

**Lease** means an agreement where the owner (lessor) grants the Tenant the right to **exclusive** occupancy of a defined area ('leased area') as set out in the lease, which may include the whole or part of a Council building and/or land.


**Licence** means an agreement where the owner grants the Licensee the **non-exclusive** right to occupy a defined area ('licensed area') as set out in the licence, which may include part of a Council building and/or land.

**Market rent** means the rental income that a property would command in the open market (also known as the estimated amount for which a property should rent). The figure is derived by a licenced Valuer and is comparable with similar properties within the municipality.

**Mixed use** means the surplus is low to medium and there are permanent commercial activities.

**Mixed use high surplus** means the surplus is high regardless of permanent commercial activities.

**Not for profit organisation** are organisations that provide services to the community and do not operate for the profit, personal gain or other benefit of particular people. They can vary in size, from small groups that 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 principle source of income and may supplement this income with trading activities. Not for profit organisations will have particular statements (clauses) in their organisation's governing documents.



**Other Costs** means the charges (where applicable or if required), including but not limited to, land tax , stamp duty , local government rates, local government permit application fees , lease preparation, application and approval fees, the landlord's reasonable legal costs in preparation of lease or licence documentation , survey report fee, followed by survey fees , advertisement fees, appropriate insurance policies (outlined in the lease or licence agreement) , utilities and other running costs, cleaning costs and maintenance expenses and/or contributions as detailed in the lease or licence agreement and/or maintenance schedule.

**Permitted Use** means what the tenant can or cannot do in the property as outlined in under 'Permitted Use' in the schedule of the lease or 'Use of Licenced Area' in a Licence.

**Property** means land (including open space), buildings, office space, rooms, car parks and facilities owned or managed by Council.

**Residential Tenant** means a Tenant that enters into a Residential Tenancy Lease, pursuant to the Residential Tenancies Act and is granted the right by the owner (Council) to have exclusive possession of the property for a fixed duration, in return for a rental payment.

**Surplus** means when the income earned (profit) exceeds the expenses paid, applicable only to not for profit groups.

**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 property.