8. Leasing and licensing

The *Crown Land (Reserves) Act 1978* makes provisions for committees to lease or licence the reserve to tenants. This chapter will assist committees to make the right choices in these matters.

## 8.1 Issuing leases and licences

Difference between a lease and a licence

There are two types of tenure that a committee can issue:

* A lease which grants permission for exclusive use and possession of a parcel of land or a building for a defined term. The committee is the lessor and the entity accepting possession is the lessee. A lease includes the lessee paying rent to the lessor. A lease may be for part or all of the reserve and may include or exclude buildings.
* A licence which grants permission for non-exclusive use of a parcel of land for a defined period. The committee is the licensor and the entity accepting possession is the licensee. A licence may be for part or all of the reserve, and it may be continuous for the period of the tenure or intermittent. Where it won’t interfere with existing licence rights, more than one licence at a time may be granted over the same parcel of land.

Consultation with DELWP is required

DELWP is responsible for the development and implementation of policy relating to leasing and licensing of reserved and unreserved Crown land. Leasing and licensing must not be detrimental to the public purpose designation over the land and be in the public interest. The leasing and licensing of Crown land must also preserve the environmental, historic, recreation, tourism, natural resource, social and culturally significant values of the land.

Before entering into any lease or licence negotiations, the committee needs to discuss the arrangements with its [local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations) or contact the DELWP Call Centre (136 186).

Minister’s approval is required

While the committee negotiates the leases and licences on its reserve, the Minister must first approve them. All proposed leases or licences require the in-principle approval of the Minister before negotiations begin. The details of a proposed lease or licence should be forwarded to the [local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations)**.**

Standard written documents

DELWP has developed standard lease and licence documents for use by all committees, which are available from [the local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations) or the DELWP Call Centre on 136 186. These documents must be used unless other documents are approved by DELWP. A handshake agreement to establish a tenure is not acceptable.

The standard documents include a requirement that lessees and licensees take out public liability insurance cover which indemnifies the committee from any loss, damage or injury resulting from the tenant’s activities. Tenants are not covered by DELWP’s public liability insurance.

Checking insurance

Committees need to obtain proof of a tenant’s public liability insurance cover and retain relevant certificates on file. Committees should also audit leases and long term licences regularly for insurance conditions. See chapter 11 for further information on insurance.

## 8.2 Leases

A lease is for the exclusive use of part or all of a reserve. It is suitable where large facilities are being used entirely for a particular group, such as social clubrooms. It is usually the most appropriate form of tenure if buildings or other facilities are being built by the entity taking out the lease, for example if a golf club builds a course on a reserve.

A committee may decide to lease an area for a particular purpose and then seek expressions of interest to operate it, for example, a kiosk. A request may also have been made to the committee by an external organisation to lease an area, for example, a football club seeks to lease its clubrooms to ensure that it has exclusive use.

Crown land leasing guidelines

The *Leasing Policy for Crown Land in Victoria* 2010 aims to ensure that leased Crown land is managed sustainably and provides maximum benefits to the community. A guideline explaining the legislative requirements needed to issue a lease under the Crown Land (Reserves) Act 1978, Land Act 1958 and Forests Act 1958 accompanies the policy and is available on the DELWP website.

The policy is centred around three broad principles to guide the leasing of Crown land.

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| Principle 1 – To provide benefits to the public through leasing |
| Crown land is controlled by the state for the benefit of the Victorian community. |
| Granting exclusive occupation of Crown land under a lease should not occur except where it can be justified in terms of benefits to the community. |
| Decisions to lease need to consider social, economic and environmental outcomes that may result from a lease proposal. |
| Principle 2 – To ensure consistency and transparency in leasing |
| Leasing process must be fair, open and impartial, whether the lease is allocated through a competitive selection process or through direct negotiations. |
| All lease proposals require the in-principle approval of the Minister before a land manager agrees or commits to lease Crown land. A lease also requires the Minister’s approval to the terms and conditions of the lease. |
| Leases must contain terms and conditions which align with the permitted purpose of the reserve and which conform to government policy and statutory requirements. |
| Principle 3 – To manage leased Crown land in an ecologically sustainable manner |
| All Victorians depend on the health of the state’s natural assets: its water, biodiversity and land. The economic, social and cultural benefits the community derives from the leasing of Crown land depends on the long term sustainable management of this important natural resource. Proposals to lease Crown land need to demonstrate the application of sustainable management principles. |

Points to consider

When considering a lease for a reserve, the following points should be considered.

* Lease proposals require the in-principle approval of the Minister before negotiations begin.
* A lease may only be considered if it is in the public interest. This means that, on balance, the public’s interest in and benefit from the reserve will not be compromised by granting exclusive use to part or all of the reserve to a particular person or group.
* Leases must comply with DELWP requirements. In the first instance, discuss the details of any proposed lease with the [local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations) or call the DELWP Call Centre on 136 186.
* The committee may only issue leases with a maximum term of 21 years. Licence terms should reflect the use and nature of service provided. In other words, shorter terms may be appropriate for some uses, kiosks for example.
* The Minister may grant leases for a term in excess of 21 years and up to a maximum term of 65 years where the investment by the tenant is of a substantial nature. The committee may be authorised by the Minister to carry out the day to day management of the lease. Significant documentation may be required to justify granting this type of lease.
* Developments or improvements undertaken by a tenant may become the property of the committee or may be retained by the tenant, depending on the terms and conditions specified in the lease. Committees should advise the tenant of the specific terms and conditions of the lease in relation to this.
* The committee must use standard DELWP lease documents available from [the local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations) or the DELWP Call Centre on 136 186

Retail leases

The Retail Leases Act 2003 binds the Crown, which means leases granted by committees of management under the Crown Land (Reserves) Act *1978* must comply with the Act if the lease is for retail premises. In general, retail premises are premises from which goods are sold or there is retail provision of services, such as caravan parks, kiosks or shops. The Retail Leases Act *2003* impacts on a greater range of commercial activities than covered under previous retail legislation. It includes a wider range of businesses that committees of management authorise under leasing arrangements.

[A separate guide has been published to assist committees and their tenants in managing leases under the *Retail Leases Ac*t *2003* and is available on the DELWP website](http://www.depi.vic.gov.au/forestry-and-land-use/managing-land/crown-land-leasing,-licenses-and-permits)*.*

## 8.3 Licences

Licences are for non-exclusive use of part or all of a reserve. They are suitable where there are many users of the reserve who need regular access (for example, several sporting clubs that want to use the oval of the reserve at different times).

The three broad principles for leasing also apply to licences. The following points should be considered when negotiating for a licence.

* Licence proposals require DELWP approval and must comply with DELWP requirements. In the first instance, the details of any proposed licence should be discussed with the [local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations).
* A licence may only be considered if it is in the public interest. This means that, on balance, the public’s interest in and benefit from the reserve will not be compromised by granting use of part or all of the reserve to a particular person or group.
* A licence can be issued for up to 10 years.
* The committee must use standard DELWP licence documents available from the [local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations)**.**

## 8.4 Rental rates for leases and licences

In general terms, commercial use of Crown land attracts full market rates as determined by valuation from a qualified valuer. Community use of Crown land under lease or licence will be discounted.

Committees should contact the [local DELWP office](http://www.delwp.vic.gov.au/about-us/regions-and-locations) or the DELWP Call Centre on 136 186 for advice on the rental policy applicable to a particular lease or licence proposal.