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| Chapter 10 – Leases and licences |
| This chapter looks at when and how the committee can issue leases and licences over the reserve.  |

# 10.1 Introduction

The *Crown Land (Reserves) Act 1978* enables your committee to issue leases and licences over the reserve if all legal and policy requirements are met, including:

* The Minister’s ‘approval in principle’ must be obtained via the department before negotiations begin.
* The lease or licence is consistent with the law and the principles in[*Leasing policy for Victorian Crown land*](https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits)*.*
* DELWP’s standard lease or licence template is used without alterations.
* Market value is charged unless an exemption applies, for example, for certain community uses.
* The Minister’s approval is obtained for the final contract before the parties sign.

A handshake agreement to allow the occupation of Crown land is not acceptable.

# 10.2 Difference between a lease and a licence

Under the Crown Land (Reserves) Act, your committee can issue leases and licences over the reserve it manages.

* **Lease:** A lease grants permission for **exclusive use and possession** of part, or all, of the reserve. It may include or exclude buildings. A lease is for a set period of time. The committee is the ‘landlord’ and the organisation or person leasing the land is the ‘tenant’. The tenant pays rent to the committee as landlord.
* **Licence:** A licence grants permission for **non-exclusive use** of part, or all, of the reserve. It may include or exclude buildings. A licence is for a set period of time, either continuous or intermittent. The committee is the ‘licensor’ and the organisation or person accepting the licence is the ‘licensee’. The licensee pays a fee for the licence. Where it will not interfere with the rights of an existing licence holder, more than one licence at a time may be granted over the same parcel of land.

# 10.3 Obtain Minister’s approval in principle to negotiate

Your committee needs to obtain the Minister’s approval in principle to issue a lease or licence before beginning negotiations with a proposed tenant or licensee. Contact your local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations) to start this process.

DELWP is responsible for the development and implementation of policy for the leasing and licensing of Crown land. The department advises the Minister or their delegate whether to grant approval in principle. The department will check to ensure that the proposed lease or licence:

* will not be detrimental to the purpose for which the land is reserved
* will preserve the environmental, historic, recreation, tourism, natural resource, social and culturally significant values of the land. For example, check the likely impact on existing users and activities.

To apply for approval, forward the details of the proposed lease or licence to your local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations), including:

* the purpose of the proposed lease or licence
* a plan that clearly and precisely marks the area of the proposed lease or licence within the reserve
* an explanation of why the proposed lease or licence will not be detrimental to the purpose for which the land is reserved and will preserve the environmental and other values listed in the paragraph above.

Remember that before entering into any lease or licence negotiations, your committee needs to discuss the proposed arrangements with its local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations).

# 10.4 Use DELWP’s standard templates for leases and licences

Your committee may begin contract negotiations once approval in principle is received from the Minister. A draft copy of the contract document can be shared with the tenant. DELWP has developed **standard lease and licence** **documents** for use by all committees. These are available from your local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations). When DELWP opens its Landfolio, its electronic self-serve kiosk during 2020, documents and guidance will also be available directly from it. See 6.2 ‘Landfolio self-serve kiosk’.

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

The standard contract documents must be used unless other documents are approved by DELWP. The lease or licence document **must not be altered** except to insert site-specific conditions into the schedules to the contract.

## Check insurances

Your committee needs to:

* obtain proof of the proposed tenant’s or licensee’s public liability insurance cover
* retain the relevant certificates on file.

Leases and long-term licences should be regularly monitored for insurance conditions. Check that sufficient and appropriate insurance is held. See chapter 12 ‘Insurance’ for further information on insurance.

# 10.5 Rental rates for leases and licences

In general, commercial use of Crown land, whether a lease or licence, attracts **full market rates**. These are determined by a valuation from a qualified valuer. However, there are circumstances where a subsidy from market rates may be applied, such as when a community group occupies Crown land for community activities.

Contact the [local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations)](http://www.delwp.vic.gov.au/about-us/regions-and-locations) for advice on the rental policy applicable to a particular lease or licence proposal. Guidance will also be available from Landfolio, DELWP’s electronic self-serve kiosk when it opens during 2020. See 6.2 ‘Landfolio self-serve kiosk.

# 10.6 Obtain Ministerial approval of proposed lease or licence

Your committee must provide the final draft contract to the local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations) for review. This will enable DELWP officers to check that the contract terms and conditions are in line with the Crown Land (Reserves) Act and with DELWP policy.

Once the proposed lease or licence has been checked and endorsed by DELWP your committee then:

* arranges for all parties to execute the contract by signing and sealing the contract in triplicate
* forwards the completed documents to the local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations) for Ministerial or delegate approval.

Once approved, one copy is retained by DELWP and two copies are returned to the committee.

# 10.7 Leases – when are they suitable?

Leasing enables the community to use, benefit from and enjoy Crown land, for example, by providing:

* recreational, cultural and sporting facilities
* commercial uses, such as restaurants, caravan parks and marinas.

A lease is for the **exclusive** **use** of part or all of a reserve. It is suitable where:

* Large facilities are being used entirely by a particular group, such as social clubrooms.
* Buildings or other facilities are being built by the person or organisation taking out the lease, for example, if a golf club builds a course on a reserve.
* A direct request has been made to the committee to lease an area, for example, a football club seeks to lease part, or all, of the clubrooms for exclusive use.
* Your committee decides to lease out an area for a particular purpose and seeks expressions of interest from prospective tenants, for example, to operate a kiosk.

## Crown land leasing policy

The *Leasing policy for Victorian Crown land* aims to ensure that leased Crown land is managed sustainably and provides maximum benefits to the community. It centres around three broad principles that guide the leasing of Crown land.

**Principle 1 – To provide benefits to the public through leasing**

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. For example:

* **community** benefits, such as promotion of public health and wellbeing; improvement of sporting, recreational and cultural facilities; protection of public land values
* **economic** benefits, such as attracting investment; creation of employment; promotion of tourism
* **continuity** benefits, such as support for the implementation of government policies or government programs
* **innovation** benefits, such as the introduction of new skills or improved technology; provision of new services
* **environmental** benefits, such as protection of natural assets; improved biodiversity and environmental outcomes.

**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. To ensure this, a two-stage process applies to the granting of leases.

* First, all lease proposals require the approval in principle of the Minister before the committee, as 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.

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

Proposals to lease Crown land will need to demonstrate ecological sustainability 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.

## Points to consider

If your committee is considering granting a lease, take into account the following:

* Lease proposals require the approval in principle 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 of 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 [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations). Guidance material will be available from DELWP’s Landfolio self-serve kiosk when it opens during 2020 (see 6.2 ’Landfolio self-serve kiosk).
* The **committee** may only issue leases with a maximum term of **21 years** with the approval of the Minister. The term of the lease should reflect the use and nature of the service provided. Shorter terms may be appropriate for some uses, such as kiosks.
* The **Minister** may grant leases for a term in excess of 21 years and up to **65 years** where the tenant’s investment is of a substantial nature. The Minister may authorise the committee to carry out the day-to-day management of the lease. Significant documentation may be required to justify granting this type of lease.
* Your committee must ensure that leases are issued in line with Crown land leasing policy; manage the leases it issues; and monitor the tenant’s compliance with lease terms and conditions. Guidance material on how to assess the risk of individual leases and what monitoring is warranted will be available from DELWP’s Landfolio self-serve kiosk when it opens during 2020 (see 6.2). The kiosk will also provide guidance for committees on enforcement activity and tools, such as a tenant self-reporting template.
* The committee must use standard DELWP lease contracts available from the local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations).

**Note:** If a tenant makes improvements with the necessary approvals, these become the property of the Crown at the end of the lease *unless* the asset is removed by the tenant in accordance with the terms and conditions of the lease.

## Retail leases

The Retail Leases Act 2003 binds the Crown. This means that any leases granted by your committee under the Crown Land (Reserves) Actmust also comply with the Retail Leases 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. If you believe that the Retail Leases Act may apply:

* consult the [Retail tenants and landlords](http://www.vsbc.vic.gov.au/your-rights-and-responsibilities/retail-tenants-and-landlords/) page on the Victorian Small Business Commission’s [website](https://www.vsbc.vic.gov.au/)
* consider seeking legal advice.

# 10.8 Licences – when are they suitable?

Licences are for **non-exclusive** use of part or all of a reserve. They are suitable when many users of the reserve need regular access, for example, several sporting clubs want to use the reserve’s oval at different times.

Your committee will need the Minister’s in principle approval to negotiate a licence. See 10.3 in this chapter for details of what the department will check.

## Same principles apply

The three broad principles for leasing described at 10.7 also apply to licences. Granting a licence must be consistent with:

* the public interest
* transparent decision making
* the ecologically sustainable use of the land.

## Points to consider

The following points should be considered when negotiating a licence.

* Licence proposals require the approval of the Minister or their delegate. In the first instance, the details of any proposed licence should be discussed with your local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/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 the granting of the licence.
* Generally, a licence can be issued for **up to 10 years**. The term of the licence should reflect the nature of the proposed use of the land.

## Use DELWP’s standard template for licences

The committee must use DELWP’s standard template for licence documents. For details, see 10.4 in this chapter.

# 10.9 Other guidance and resources

Further information:

* DELWP’s Landfolio self-serve kiosk, which will become available during 2020, will offer a range of guidance and resources. See 6.2 ‘Landfolio serve-serve kiosk’ for details.
* See the [Crown land leases, licences and permits](https://www.forestsandreserves.vic.gov.au/land-management/crown-land-leases-licences-and-permits) page on the DELWP website, in particular:
	+ Leasing Policy for Victorian Crown Land
	+ DELWP Crown land leasing guidelines.
* You may also like to check whether any other resources have been recently added to the [committees of management](http://www.delwp.vic.gov.au/committees) page of the DELWP website.
* Information is also available to your committee through its local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations).

# 10.10 Electronic copy

An electronic copy of this document is available from the DELWP website ([www.delwp.vic.gov.au/committees](http://www.delwp.vic.gov.au/committees)).

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