

Policy No. GOVPOL 18

Version No:	6
Responsible Officer/s:	Governance Officer
Classification:	Administration
Issued:	3 June 2013
Next Review:	February 2026

## 1. Purpose

The District Council of Grant recognises the community social and economic value of the various sporting clubs, community groups and commercial entities operating within the district. The Council needs to provide a balanced approach towards the use of land with respect to leases and licences for community, private or commercial purposes.

### 2. Scope

This policy specifically deals with all local government land (except roads) that is owned by Council or is under Council's care, control and management and which is leased / licensed to sporting clubs, community groups or commercial entities.

The policy should be read in conjunction with the *Local Government Act 1999* (**the Act**), where relevant sections of the Act have been included to ensure consistency, noting the Act shall prevail to the extent of any inconsistency.

This policy does not aim to cover all the requirements that pertain to Community and Local Government Land, as these requirements are set out in the Act and form part of Council's legal obligations. It does, however, take into account information highlighted by the Department of Environment & Water that should be considered when dealing with dedicated lands owned by the Crown.

#### 3. Definitions

Annual Value

determined by calculating 5% of the capital value. The *Valuation* of Land Act 1971 defines annual value as:

"A value computed as three-quarters of the gross annual rental that the land might reasonably be expected to realise if leased upon condition that the landlord were liable for all rates, taxes and other imposts on the land and the insurance and other outgoings necessary to maintain the value of the land, or as five per cent of the capital value of the land ..."

Further, "where it is not reasonably practicable to determine a gross annual rental in relation to land, the annual value of the land must be computed on the basis of the capital value of the land."

Capital Value

The Valuation of Land Act 1971 defines capital value as:

"The capital amount that an unencumbered estate of fee simple in the land might reasonably be expected to realise upon sale, but if the value of the land has been enhanced by trees planted on the land (other than commercial plantations), or trees preserved on the land for the purpose of shelter or ornament, the capital value must be determined as if the value of the land had not been so enhanced."

**Community Land** 

Local Government land classified as community land under Chapter 11 of the *Local Government Act 1999*.

Crown Land

Land owned by the Crown which is under the care, control and management of Council.



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Grounds Lease an agreement in which a Lessee is permitted to develop a piece

of property during the lease period at their own cost (including construction, repairs, renovations, improvements, taxes, insurance, etc.), after which the land and all improvements are

turned over to Council (unless an exception is created).

**Lease** Specific and exclusive rights to occupy or use the land.

Licence A permit to carry out some work on the land or to occupy the

land, but not to the exclusion of other persons.

Local Government

Land

Land owned by Council or under Council's care, control and

management.

### 4. Objectives

The Council's objective is to have a consistent approach to the leasing and licensing of local government land, and in raising fees and charges based on a user pays system, taking into account the type, use, function and purpose of the facility especially with respect to capacity to pay.

### 5. Policy

The lease / licence fee payable is categorised into three main categories, taking in to account the individual organisations overall activities. As a basic principle there will be no concessions or subsidies on fees for any organisation, which is of a commercial nature or where the facility is being utilised for commercial or personal gain, or where they have substantial revenue raising capacity.

Section 202 of the Act outlines several principles with regard to use of Community Land by lease or licence. Those principles include:

- (1) Council may grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve),
- (2) Before Council grants a lease or licence relating to community land, it must follow the relevant steps set out in its public consultation policy.
- (3) However, a Council need not comply with the above requirements if:-
  - (a) the grant of the lease or licence is authorised in an approved management plan and the land and the term of the proposed lease or licence is five years or less.
  - (b) the regulations provide, in the circumstances of the case, for an exemption from the compliance with a public consultation policy.
- (4) A lease or licence may be granted or renewed for a term (not exceeding 21 years) stated in the lease or licence.
- (5) A lease or licence may provide for:-
  - (a) the erection or removal of buildings and other structure for the purpose of activities conducted under the lease or licence:



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- (b) the exclusion, removal or regulation of persons, vehicles or animals from or on the land, and the imposition of admission or other charges;
- (c) any other matter relevant to the use or maintenance of the land.
- (6) A lease or licence must be consistent with any relevant management plan.

This policy aims to achieve a set of guidelines that can be applied to all requests, where Council retains the right to reject or accept applications where such applications are not in accordance with Council's strategic and operational objectives.

Under the Act a lease or licence over Community Land may be granted or renewed for a term (not exceeding 42 years, including any right(s) of renewal) stated in the lease or licence. For strategic reasons, Council will generally not offer such lengthy terms. In order to avoid the expense and time of undertaking public consultation for Leases and Licenses over 5 years (as required by the Act), Council's preferred term for any new Lease or License will be five years including any right(s) of renewal. In the interests of consistency and fairness to all Lessees/Licensees, Council will treat Leases/Licenses over all land with the same approach as that to Community Land.

Where there are changes made to this Policy which will impact all or several ongoing leases or licences, the changes will be applied initially to those leases and licences that are in the "Holding Over" period. The remaining leases/licences will follow as and when their current agreement requires renewal, as agreed by way of Addendum with the lessee / licensee, or as new leases / licences are taken up on Council owned or managed land.

### 5.1. Principles

- 5.1.1. The following criteria will generally be applied to Leases and Licences:
  - The life of the lease is negotiable, will generally be for five (5) years or less unless otherwise agreed, and may have a right of renewal.
  - Public Liability Insurance is to be the responsibility of the lessee.
  - The lessee is responsible for full cost recovery, including rates and charges, electricity, excess water and all outgoings, including the actual amount of the stamp duty payable on the lease and the government fees for registration of the lease; and one half of the other preparatory costs, but excludes the cost to advertise under the Council's Public Consultation Policy.

Factors for inclusion in the lease or licence will include:-

- maintenance of the property in accordance with the lease/licence conditions;
- return of the land/building at the end of the term to a condition that is the same or better than at the commencement of the lease/licence:

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<sup>&</sup>lt;sup>1</sup> Section 14 - Retail and Commercial Leases Act 1995



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- minimisation of all risks including public safety, hazardous materials, waste removal;
- · vermin control in buildings, weed and pest control over the land;
- consideration of environmental issues over the land.

The terms and conditions of all leases and licences may be reviewed on a regular basis in line with best practice and current trends.

#### 5.1.2. Crown Land

When dealing with dedicated land that is owned by the Crown and under the care, control and management of the District Council of Grant, it is a requirement of the Department of Environment, Water & Natural Resources to refer the application to the Minister for Sustainability, Environment & Conservation to seek approval from the owner of the land, for the following reasons:-

- Native Title may subsist in dedicated lands, particularly where no extinguishing act (development or authorisation for exclusive possession) has been put into effect prior to the commencement of the Native Title Act 1993 (Cwlth). Consequently, any Act that contravenes the Native Title Act 1993 provisions may involve the Crown in an action for compensation in the event a successful native title claim is made in respect to the dedicated land.
- Dedicated lands should not be developed where the nature of the development contemplates some act that may be at variance to the purpose for which the land has been dedicated.
- Third party occupation should be limited where possible to five years, since the power rests with the Minister for Sustainability, Environment & Conservation to resume dedicated lands and resumption has the effect of nullifying any lease issued for a term of years by the authority of the custodian.
- Lands held under "Trust Grant" are essentially freehold grants, notwithstanding valuable consideration may not have been paid at the time title was issued, as such, native title will have been extinguished by the issue of a trust grant, nevertheless, the land must be used only for the purpose described by the trust on the face of the grant.
- Leases/Licences issued to third parties should not be a variance to the purpose for which the land has been dedicated.
- No sales or disposal of dedicated lands should be contracted on the assumption that the Crown will honour such contracts for the reasons that disposal of dedicated land necessitates its resumption which cancels the authority of the custodian to deal with the land and direct disposal of Crown land, without competition, is in conflict with the principles of prudential management and the National Competition Policy.
- Any new development occurring on dedicated lands must be referred to the regional office of the Department of Environment,



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Water and Natural Resources prior to the commencement of any works.

Fees and charges associated with obtaining such approval from the Minister for Sustainability, Environment & Conservation will be on-charged to the Lessee/Licensee by Council.

#### 5.2. Insurance

Subject to the individual terms of the Lease or License, the Lessee/Licensee will generally be responsible for all costs associated with taking out and maintaining both public liability insurance, and contents insurance over the affected land for the life of the Lease or License.

As a general principal, Council will assume the responsibility of taking out and maintaining appropriate insurance over Council-owned buildings. The costs associated with such insurance policies will be on-charged to the Lessee in the following instances:

- Where the Lessee is a community group or sporting club with gross annual turnover greater than ten thousand dollars (\$10,000\*);or
- In the case of a Commercial Leasing arrangement.

Council will not on-charge the cost of building insurance where the Lessee is a community group or sporting club with gross annual turnover less than ten thousand dollars (\$10,000\*).

Any buildings / improvements to the land made by the Lessee (i.e. not Councilowned buildings) must be taken out and maintained by the Lease / Licence holder directly for the life of the agreement. Community groups or sporting clubs with gross annual turnover greater than ten thousand (\$10,000\*) may apply to include a non-Council-owned building onto Council's insurance register if this proves to be a more competitive rate, however will be on-charged the costs associated.

Where the Lease or License is a lease or license over vacant land (e.g. for grazing or other agricultural purposes), the Lessee will be responsible for taking out and maintaining appropriate insurance to cover all fencing and other infrastructure or equipment on the land (e.g. water tanks, pumps, underground pipes, etc) and bear the costs associated with such insurance policies, unless otherwise negotiated. This does not include any fencing surrounding the perimeter of, or on the affected land, which will remain the property of Council.

\*This amount shall be reviewed periodically by Council inline with the Consumer Price Index (CPI) published by the Australian Government for Adelaide (All Groups) as at the March quarter.

#### 5.3. Rates

Subject to the individual terms of the Lease or License, the Lessee/Licensee will generally be responsible for all rates payable on the leased land, unless they have been granted a rebate as per the Act and/or Council's Rate Rebate Policy. Any Lessee's who are eligible for a discretionary rebate pursuant to Section 166 of the Act may apply, in writing, to the CEO. Such requests will be considered on a case-by-case basis.



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The way council deals with ratable property is by registering the relevant lease or licence as an 'occupier' of the relevant land. This effectively creates a system where the 'occupier' shall receive the rates and charges relating to the land directly.

At council's high-use sites, such as the Airport and Saleyards, it is not reasonably practical to implement the 'occupier' system. The way Council shall manage the Lease and Licence Agreements at these sites is by including a contribution of minimum rate as set out in Council's annual fees & charges document directly into commercial tenant agreements. Any Lease or Licence holder who would meet the eligibility criteria for a rebate under the Act shall not be charged this contribution.

#### 5.4. Service Charges

Subject to the individual terms of the Lease or License, Council will generally impose a service charge of \$50\* per quarter (as at 2023) to all Lease / Licence holders located at high-use sites, such as the Airport and Saleyards. This contribution reflects the administration and cost of facilitating and monitoring various service connections and infrastructure. \*This amount shall be reviewed periodically by Council inline with the Consumer Price Index (CPI) published by the Australian Government for Adelaide (All Groups) as at the March quarter.

### 5.5. Competing Interests

Council recognises that, from time to time, there may be competing interests in leasing a particular property. Examples of this may be:

- Where Council has been approached directly from a member of the public or group / club / business expressing interest in leasing a particular property (often where that particular property is already the subject of a Lease or Licence); or
- Where Council has undertaken an Expression of Interest or Tender process for the Leasing / Licensing of a particular property.

In these instances, the subject of who to award the Lease / Licence to and the essential terms of that Lease / Licence will be presented to a Council meeting for consideration and decision.

#### 5.6. Lease / License Types and Fee Structures

The lease/licence fee payable will be separated into four categories:-

# 5.6.1. Not-for-profit Community Groups and Sporting Clubs with a gross annual turnover of less than ten thousand dollars (\$10,000\*) per annum

Council recognises the benefit of providing financial support and non-financial support to Community Groups and Organisations including not for profit organisations. These include sporting clubs, service clubs, craft groups, progress associations, hall committees or associations and community based health or social welfare agencies, amongst others.

Council recognises the difficulty these groups might face to raise the funds required to be able to meet the fee requirements (including insurance) associated with Leasing and Licensing.

A club or group must apply to Council in writing, addressed to the CEO, outlining the reasons which they believe makes them exempt from paying



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an annual Lease / License fee as per clause 5.5.2. Evidence of the club or groups financial position and annual income is required to be annexed to any application under this clause. The issue of whether a club or group falls into this category, and therefore, whether or not annual Lease / License fees as outlined in clause 5.5.2 apply, will be determined by the CEO.

Lessees wishing to remain in this category must supply relevant supporting financial information upon request. In the event the Lessee fails to supply the information, they may be deemed to no longer meet the criteria and be recategorised in accordance with section 5.5.2 accordingly.

#### **Fee Structure**

Annual lease/licence fee \$1.00 payable on demand

Other Charges Lessee/Licensee to pay all outgoings,

including but not limited to telephone & electricity, water, CWMS rates and general rates, and emergency services levy. Wherever possible, all utilities and outgoings are required to be in the name of the Lessee/Licensee (rather than Council), with the Lessee/Licensee assuming direct responsibility for all connections and invoices related to their

outgoings.

Property Insurance All costs payable by Council

Contents Insurance All costs payable by Lessee/Licensee
Public Liability Insurance All costs payable by Lessee/Licensee

Preparation of documents All registration fees and stamping costs if required plus one half of the cost of

preparation of the lease/licence.

Rates As per clause 5.3.

# 5.6.2. Community Groups and Sporting Clubs with a gross annual turnover of ten thousand dollars (\$10,000\*) or greater per annum

Council recognises the importance and community value that sports and recreation facilities play in rural communities in facilitating social capital and community interaction within the district and those benefits are not underestimated.

Council also acknowledges the community benefits created by these groups and recognises that in many instances there is an unpaid contribution of volunteers towards the maintenance and upgrade of the

<sup>\*</sup>This amount shall be reviewed periodically by Council inline with the Consumer Price Index (CPI) published by the Australian Government for Adelaide (All Groups) as at the March quarter.



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various sporting grounds and buildings. The fee structure is based on and reflects consideration all of those factors.

#### **Fee Structure**

Annual lease/licence fee Th

This fee is based on a base rate of \$220.00 inclusive of GST (as at 1 July 2019). This amount will be increased by CPI (Consumer Price Index published by the Australian Government for Adelaide – All Groups as at the March quarter) plus GST, with each such increase to be applied as at 1 July each year, for both new and existing Lessees.

Other Charges

Lessee/Licensee to pay all outgoings, including but not limited to telephone & electricity, water, CWMS rates and general rates, and emergency services levy. Wherever possible, all utilities and outgoings are required to be in the name of the Lessee/Licensee (rather than Council), with the Lessee/Licensee assuming direct responsibility for all connections and invoices related to their outgoings.

Property Insurance All costs payable by Lessee/Licensee
Contents Insurance All costs payable by Lessee/Licensee
Public Liability Insurance All costs payable Lessee/Licensee

All registration fees and stamping costs if required plus one half of the cost of preparation of the lease/ licence payable

by Lessee/Licensee.

Rates As per clause 5.3.

#### 5.6.3. Commercial Activities

Commercial Activities will be separated into two areas, being:-

- Landowner and/or Resident Private Use
- Full Commercial Use

Preparation of documents

#### (a) Landowner and/or Resident Private Use

Requests from private individuals to lease/licence buildings or vacant land within townships is not common, however it is more common in rural areas where larger tracts of Council land exist. Land in the rural area is generally undeveloped and has no significant value to the Council's strategic direction in the short term, but should be retained by Council, for possible future use. It is



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recognised however that there is some value to the client who wishes to lease/licence such lands.

Each case will be assessed on merit in accordance with Council's strategic direction and operational requirements.

Providing that the land is used for general farming, horticulture or other similar pursuits then the following charges will apply.

#### **Fee Structure**

Annual lease/licence fee

Based on 40 percent (40%) of the "annual value" of the land. The lease/licence will be subject to annual review, which will be increased by the "annual value" of the land as valued by the Valuer General's Department or the CPI (Consumer Price Index published by the Australian Government for Adelaide - All Groups) plus GST, whichever is the greater.

Council, at their discretion, may also determine that tenders will be called to lease/licence the land, in which case the tender price will "Annual determine the Lease/Licence Fee".

Other charges

ΑII costs payable by Lessee/Licensee

Lessee/Licensee to pay all outgoings, including but not limited to telephone & electricity, water, CWMS rates and general rates, and emergency services levy. Wherever possible, all utilities and outgoings are required to be in the name of the Lessee/Licensee (rather than Council), with Lessee/Licensee assuming direct responsibility for all connections and invoices related to their outgoings.

Property Insurance

costs payable by Lessee/Licensee

Contents Insurance

ΑII costs payable by

Lessee/Licensee



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by

Public Liability Insurance

All costs payable

Lessee/Licensee

Preparation of documents

All registration fees and stamping costs if required plus one half of the cost of preparation of the lease/ licence payable by

Lessee/Licensee.

Rates As per clause 5.3.

## (b) Full Commercial Use

Proposals to establish a commercial enterprise on any council land will be subject to individual consideration by Council after Council has considered all aspects of the proposal.

Expansion of general farming activities from adjoining neighbours who apply to use vacant land will be considered under the category of landowners/residents/private use as above.

Full commercial operation includes, retail outlets, warehousing, intensive activities with profitable turnovers.

#### **Fee Structure**

Annual lease/licence fee

Each application will be assessed on the merits of its application, and the fee will be set in accordance with the private or commercial activity proposed and the facility that is to be leased/licensed. Council may determine that a valuation of the land may be required for the purpose of ascertaining what the annual lease/licence fee will be. All fees and charges associated with obtaining such a valuation will be the responsibility of Lessee/Licensee.

Council may also determine that tenders will be called to lease/licence the land, in which case the tender price will determine the "Annual Lease/Licence Fee".

The lease/licence will be subject to annual review, which shall be increased by the "annual value" of the land as valued by the Valuer General's Department or the CPI



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(Consumer Price Index published by the Australian Government for Adelaide – All Groups as at the March quarter) plus GST, whichever is the greater.

Other charges

Lessee/Licensee to pay all outgoings, including but limited to telephone & electricity, water, CWMS rates and general rates, and emergency services Wherever possible, all levy. utilities and outgoings are required to be in the name of the Lessee/Licensee (rather than Council). with the Lessee/Licensee assuming direct responsibility for all connections and invoices related to their outgoings.

outgoings.

Property Insurance All costs payable by

Lessee/Licensee

Contents Insurance All costs payable by

Lessee/Licensee

Public Liability Insurance All costs payable by

Lessee/Licensee

plus one half of the cost of preparation of the lease/ licence payable by Lessee/Licensee.

As per clause 5.3.

Rates

### 5.7. Airport Land

Council recognises that leasing of land and buildings at the Mount Gambier Airport will appeal to a niche market of interested parties and will bring with it a unique set of circumstances and requirements for Council and Lessees, and therefore will require a unique set of principles to be applied.

All leases/licences entered into which are located on Mount Gambier Airport land will include a requirement for the Lessee/Licensee to install at their own expense, a separate electricity and water meter (if one is not already installed on the site) upon request by Council's Airport Manager.

Leasing / licencing of land and/or buildings located at the Mount Gambier Airport will be dealt with on the following principles:

5.7.1. Community Based Services, Community Groups and Sporting Clubs



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Leasing or licensing of airport land / buildings to community based services will follow the same principles as outlined in clause 5.5.1 and 5.5.2.

### 5.7.2. Commercial Activities

Commercial Activities will be separated into two areas, being:-

- Office Space
- Hangar Site

## (a) Office Space

Requests from commercial enterprises to lease/licence buildings for the purpose of utilising it as office space are received infrequently, however Council recognises the importance of such requests from commercial enterprises whose business is predominantly centred around airport activities (i.e. hire car companies, flying schools, etc). Preference will be given to these such businesses.

Each case will be assessed on merit in accordance with Council's strategic direction and operational requirements, however the following charges will generally apply.

### Fee Structure

Annual lease/licence fee	Based on \$25 per square metre per annum (as at 2013). The lease/licence fee will be subject to annual review, which will be increased by the CPI (Consumer Price Index published by the Australian Government for Adelaide – All Groups as at the March quarter) plus GST.
Other charges	All costs payable by Lessee/Licensee
Property Insurance	All costs payable by Lessee/Licensee
Contents Insurance	All costs payable by Lessee/Licensee
Public Liability Insurance	All costs payable by Lessee/Licensee
Preparation of documents	All registration fees and stamping costs if required plus one half of the cost of preparation of the lease/licence payable by Lessee/Licensee.

#### (b) Hangar Site



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Proposals to build an aircraft hangar for personal or commercial purposes will be subject to individual consideration by Council after Council has considered all aspects of the proposal. A lease/licence under this clause 5.3(3)(b) is a lease/licence for the land only. Any agreement to build infrastructure on the site will remain the sole responsibility of the Lessee/Licensee.

Each case will be assessed on merit in accordance with Council's strategic direction and operational requirements, however the following charges will generally apply.

### **Fee Structure**

Annual lease/licence fee Based on \$4.21 per square metre

> per annum (as at 2013). lease/licence will be subject to annual review, which shall be increased by the "annual value" of the land as valued by the Valuer General's Department or the CPI (Consumer Price Index published by the Australian Government for Adelaide - All Groups as at the March quarter) plus GST.

whichever is the greater.

Other charges To pay all outgoings including but

> not limited to earthworks. construction and fitout of hangar infrastructure, utility connections,

etc.

All costs Property Insurance Contents Insurance All costs Public Liability Insurance All costs

Preparation of documents All registration fees and stamping

> plus one half of the cost of preparation of the lease/licence.

#### 5.7.3. Agistment of stock

Leasing or licensing of airport land / buildings for the purpose of agistment of stock will follow the same principles as outlined in clause 5.5.3.

### 5.8. Property Inspections and Audits

Council staff will undertake an inspection of a Leased or Licensed Property at the beginning of a new Lease or upon a Right of Renewal being exercised (at a minimum). Such inspections will be undertaken with a suitably qualified and/or experienced building specialist, with the intention of developing an informed property condition report and ensuring the property is fit for purpose under the



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terms of any Lease or License Agreement. In addition to this, Council may undertake additional inspections for the purposes of assessing damage, ensuring requested maintenance has been undertaken, inspecting works undertaken and/or any other purposes it deems necessary. Such inspections will be undertaken within the terms of the Lease or License Agreement currently in effect over the particular property (i.e. by giving the Lessee / Licensee notice as stipulated in the Agreement).

### 5.9. Maintenance

Lease and Licence holders are generally responsible to:

- a) keep the Property clean, tidy and free from dirt, rubbish and vermin;
- b) keep the Property in good repair (fair wear and tear and damage by fire, storm, tempest, act of god, war, riot, civil commotion and earthquake excepted);
- keep all toilet fittings, sinks, drains, pipes and other plumbing in good repair and free from blockages and ensure that no part of the Property becomes insanitary;
- d) keep any vegetation, lawns or garden on the Property maintained in an attractive state;
- e) keep all of the Lessee's property in good condition so as to prevent any hazard to any person or any deterioration in the condition of the Property;
- f) repair any damage to the Property caused by the Lessee or its visitors; notify the Council as soon as it becomes aware of any defects in the Property or anything which could present a hazard or cause harm to any person or the Property.

#### 6. Delegations

Council delegates the Chief Executive Officer the right to negotiate the renewal of existing leases and licences, authorisations and permits in accordance with the guidelines outlined within this document, noting that as land types and uses are extremely varied, applicable conditions may also vary.

#### 7. References / Other Documents

## 7.1. Legislation

Crown Land Management Act 2009 Local Government Act 1999 Retail and Commercial Leases Act 1995

#### 7.2. Council Policies / Procedures

Employee Code of Conduct
Fraud & Corruption Prevention Policy
Complaints Policy
Public Interest Disclosure Policy and Procedure
Rate Rebate Policy



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#### 8. **Review**

It is the responsibility of the Governance Officer to monitor the adequacy of this policy and recommend appropriate changes. This Policy shall be reviewed by the District Council of Grant at a minimum, once within every four (4) year Council term (or on significant change to legislation or other matters which could affect this policy).

Action	Date	Minute Reference
Adopted by Council	17 December 2012	12265.3
Amended	3 June 2013	13066.1.3
Reviewed	1 February 2016	16009.3
Amended	20 March 2017	17037.4
Reviewed	6 May 2019	19061.5
Amended	21 October 2019	19144.4.4
Minor formatting amendments	4 May 2020	Governance Officer
Amended	18 May 2020	20055.8
Amended	21 August 2023	23175