

HUME CITY COUNCIL

Communication Equipment On Council Property Policy

Policy reference No:	POL/224
File No:	HCC16/654
Strategic objective:	4.1 A high performing organisation that prioritises continuous improvement, safety and accountability
Adopted by Council:	26 June 2017
Re-Adopted:	
Date for review:	February 2023
Responsible officer:	Manager Finance
Department:	Finance

1 POLICY STATEMENT

- 1.1** Council will consider the potential Lease and/or Licence of Council Property for the purpose of communication equipment and this Policy establishes the terms and conditions and sets guidelines which will form the basis for decisions on whether the Council Property is suitable for use.
- 1.2** The Policy also seeks to minimise any risk to Council and its community, to maximise the community benefit arising from the use of the Council Property and will ensure responsible management.
- 1.3** A proposal to establish communication equipment on a Council building is not supported other than Council's operational equipment or for the purpose of a tenant's requirements.
- 1.4** Any proposals received must be in accordance with the six Principles outlined in this Policy which will determine the suitability of the Council Land. This will enable the establishment and management of Council Property ensuring consistent agreements are reached. These Principles are shown in Attachment 1.
- 1.5** This Policy will apply to all new Lease and/or Licence applications including any existing agreements that require renewal from 1 July 2016.

2 PURPOSE

- 2.1** The purpose of this Policy is to set out the conditions and requirements under which Council Property will be used for communication equipment.
- 2.2** Through implementation of this Policy, Council will be able to set out clear principles for the design, siting, construction and operation of communication equipment which Council must consider as land owner.
- 2.3** Council will ultimately make the decision whether it approves a Lease or Licence for communication equipment on its Property as the land owner and separately as Responsible Authority.

3 OBJECTIVE

The objectives of this policy are to:

- 3.1** Provide a consistent approach to the decision making process in relation to all requests for consent to make application to Council to construct a building or construct or carry out works for communication equipment under a Lease or Licence on Council Property.
- 3.2** Consider all of the relevant issues prior to determining any application for a Lease or Licence, including the effect of the proposal on the Council use of Council Property and on adjacent land, the principles for the design, siting, construction and operation of

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communication equipment set out in A Code of Practice for Telecommunications Facilities in Victoria, and in accordance with the Hume Planning Scheme.

- 3.3** Encourage the siting of communication equipment facilities in appropriate locations within the municipality.

4 SCOPE

- 4.1** This Policy specifically deals with all of Council's building and land including, roads, road reserves and unnamed roads, owned by or under the Council's management and which are available to be Leased or licensed to third parties once being identified as suitable properties for communication equipment to be located.

- 4.2** This Policy will be applied to:

- 4.2.1** New Leases
- 4.2.2** New Licenses; and
- 4.2.3** To those Leases and Licenses which have expired and where renewal is pending.

- 4.3** The policy should be read in conjunction with the:

- 4.3.1** *Local Government Act 1989* (the Act)
- 4.3.2** *Planning and Environment Act 1987* and Hume Planning Scheme
- 4.3.3** Hume City Council policies (various).
- 4.3.4** *Committee of Management responsibilities under the Crown Land (Reserve) Act 1978*.
- 4.3.5** *Telecommunications Act 1997*

5 DEFINITIONS AND ABBREVIATIONS

- 5.1** In this Policy, the following definitions apply:

5.1.1 Council Property

- Land or buildings owned by Council or under Council's care, control and management.

5.1.2 Communication equipment

- Telecommunication infrastructure
- National Broadband Network (NBN)
- Satellite dishes
- Television antennas and related equipment
- Panel antenna
- Omni-directional antenna
- Radio communication equipment

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- Microwave antennas
- Equipment and structures used to transmit or receive television and radio signals.
- Information Technology equipment
- Other facilities not described

5.1.3 High Impact Facilities

- A tower that requires a Planning Permit under the Hume Planning Scheme.
- Tower – man-made structures that are always taller than they are wide usually by a significant margin, generally built to take advantage of their height and can stand alone or as part of a larger structure. In the context of telecommunications a tower requires a planning permit to be erected and is usually either a HUB or a BTU.
- Mobile phone towers are generally 25 to 30 metres high.
- A HUB is a larger tower in excess of 50 metres.
- A BTU is a smaller tower in the range of 25 to 30 metres.
- As set out under the Telecommunications Act 1997.

5.1.4 Lease

- A Lease grants permission for exclusive use and possession of a parcel of land or a building for a defined term. It provides the tenant a proprietary interest in the Council Property which is binding on third parties.
- Under a Lease a tenant is able to assign or transfer its interest to a third party as the Lease runs with the land.

5.1.5 Licence

- A Licence grants permission for non-exclusive use of a parcel of land for a defined term.
- More than one Licence at a time may be granted over the same parcel of land/

5.1.6 Low Impact Facilities

- Low-impact facilities are generally small radio communications antennae and dishes erected on an existing tower or building that are designed to be unobtrusive. Other types of low-impact facility include underground cables, public telephones, telecommunications pits in footpaths and co-located facilities.
- The Telecommunications Code of Practice 1997 including the Telecommunications (low-impact Facilities) Determination 1997 refers to requirements and current practice for telecommunications facilities in Victoria (an incorporated document in all planning schemes in Victoria).

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5.1.7 Market Rent

- Is the rental income that a property would command in the open market. The fee is calculated by Council's Valuer or an independent Valuer (if required) using the latest market rental for a comparable space. (Refer to Schedule 2)

5.1.8 Outgoings

- Means water usage charges, electricity and gas in connection with the Council Property. (Refer to Schedule 2)

5.1.9 Rates and Taxes

- Means any government rates and charges, taxes and levies including the Fire Services Levy. (Refer to Schedule 2)

5.1.10 Sensitive uses

- Include child care centres, pre-school, leisure centres and any other buildings occupied by Council staff, contractors or the community during standard operating hours.

5.1.11 Standard operating hours

- The usual operating hours relevant to the specific Council facility.

5.1.12 Telecom carrier

- A company that is authorized by regulatory agencies to operate a telecommunications system.

5.1.13 Telecommunication System

- A telecommunication system consists of three basic elements:
- a transmitter that takes information and converts it to a signal;
- a transmission medium that carries the signal; and
- a receiver that receives the signal and converts it back into usable information.

5.1.14 Tower – one of three types of Towers

- Guyed Tower – a single column steel structure supported by several guyed wires.
- Lattice Tower – a multiple column structure that is reinforced by crossbeams. A lattice tower is less than 75 metres tall.

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- Monopole – a single-pole tower which is usually shorter than the guyed or the lattice towers. Monopoles occupy less space than the other towers and are better suited for metropolitan areas.

5.1.15 Telecommunications infrastructure

- Any part of infrastructure of a telecommunications network and includes any line, equipment, apparatus, tower, antenna, tunnel, duct, hole, pit or other structure used, or for use, in or in connection with a telecommunications network.

5.1.16 Telecommunications network

- A system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy.

5.1.17 The Act

- Means the *Local Government Act 1989* (Vic).

5.1.18 Tenant (Lessee or Licensee)

- An authorised person or incorporated body that has entered into or is proposing to enter into a Lease or Licence with Council for the use of the Council Property.
- Council will only grant a Lease or Licence to specific persons, incorporated bodies, (that is, organisations that are incorporated under the Associations Incorporation Act 1981) or bodies corporate (as defined under the Corporations Act 2001 (Cth)) and successor legislation. This means a Lease or Licence agreement cannot be made with people representing a group e.g. committees or partnerships.
- The assessment criteria and associated category assessments are shown in Schedule 2 for the below groups.
- Group One Tenant – Commercial
- Group One Tenants occupy the Council Property on a commercial basis.
- Examples of these Tenants are commercial organisations which have a commercial (business oriented) profit objective and Government organisations.
- Group Two Tenant – Community, Clubs and Organisations
- Group Two Tenants include recreational or community groups that service the community and are readily available to Hume residents. These Tenants include member based fee-paying clubs, groups that charge for services and organisations that have the capacity to generate revenue from use of the Council Property or other activities consistent with the organisational purpose (but do not operate to make a commercial profit). Some examples include Sporting Clubs, Non- Government Organisations and Service Providers.

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- Group Three Tenant – Not-for-Profit Community Groups (peppercorn)
- Group Three Tenants include incorporated community groups that service the community and are not categorised as a Group One or Group Two Tenant. These Tenants do not have the capacity to generate a significant amount of income and operate on a not for profit basis. Some examples include Toy Libraries, Scout Groups and Historical Societies.

6 POLICY IMPLEMENTATION

- 6.1** This Policy will be the responsibility of Council's Manager Finance and Property Development and will be administered by the Property and Development team in conjunction with various relevant internal departments.
- 6.2** The Lease or Licence may be subject to three separate review processes; internal investigations, Council approval as land owner and Council as Responsible Authority including relevant statutory permits where applicable and Council's statutory obligation under the Act.
- 6.3** The internal referral investigations process will provide relevant departments within Council an opportunity to review and provide information relating to the proposed Lease or Licence and any impact on the Council Property. The internal departments will evaluate the proposal in accordance with the six Principles outlined in this Policy.
- 6.4** The six Principles are outlined in Schedule 1 and include:
- Principle 1 - Location of communication equipment on Council Property
 - Principle 2 - Communication equipment should be co-located wherever practicable
 - Principle 3 - Community benefit of the proposal
 - Principle 4 - Health standards for exposure to emissions will be met
 - Principle 5 - Impact of the communication equipment on the Council Property
 - Principle 6 - Communication equipment should be sited to minimise visual impact
- 6.5** Should the applicant successfully comply with the six Principles, the proposed Lease or Licence will be assessed in accordance with the tenant category assessment shown in Schedule 2.
- 6.6** Where a proposed Lease or Licence receives support from the internal departments through the internal investigations process, a report may be required to seek Council approval to Lease or Licence the Property.
- 6.7** Where required, the proposal will also be subject to the statutory obligations under Section 190 and 223 of the Act. Section 223 will allow for persons to make submissions in relation to the proposed Lease or Licence.

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- 6.8** Alternatively under the Instrument of Sub-Delegation by the Chief Executive Officer to Members of Council Staff, as outlined in the delegation an officer may negotiate and approve the Lease or Licence.

7 OTHER

7.1 Planning Approval

7.1.1 A *Code of Practice for Telecommunication facilities in Victoria* 2004 is an incorporated document in all planning schemes in Victoria. This sets out the circumstances and requirements under which land may be developed for a telecommunication facility without the need for a Planning Permit.

7.1.2 Under the *Telecommunication Act 1997*, *Telecommunications (Low-impact facilities) Determination 1997* and shown in Attachment 2, it is recognised that low-impact facilities do not require a Town Planning Permit, but to facilitate better relations between Council and the community, it encourages applications for all telecommunication facilities to be referred to Council's Statutory Planning Department for assessment against this Policy.

7.2 Advertising Requirements

All requests or applications for the installation of communication equipment are to be advertised to users of the Council Property, affected adjoining landowners in accordance with the Statutory Planning application processing requirements and with this Policy.

7.3 Public Health and Safety

Council recognises the need for communication equipment within the municipality and equally recognises the community's concern over the potential health impacts from these facilities.

The Council adopts a precautionary approach to the installation and operation of communication equipment and considers it important to protect sensitive uses. This is based on inconclusive scientific evidence regarding the long term health impacts.

7.4 Term of Lease or Licence

The length of each Lease or Licence will be negotiated taking into account the particular circumstances of the Council Property, including capital investment and long-term planning, the connection between facility use, the Council Plan objectives, relevant strategies and the extent to which the facility is used for multi-purpose activities.

A Licence Term will not be granted for more than five years. This is based on Council's future requirements of the Council Property and the Tenant being in occupation on a

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temporary basis allowing flexibility for both Council and the Tenant and in accordance with Council's Lease and Licence Policy.

A Lease Term including options cannot exceed 50 years according to the Act. These items will be assessed in conjunction with Council's statutory obligations under the Act.

7.5 Statutory Obligations

Where applicable, the grant of a Lease or Licence is subject to Council complying with its statutory obligations as follows:

Pursuant to Section 190 of the Act, Council is required to advertise its intention to Lease land to another party and to consider submissions under section 223 if:

- The Lease exceeds one year or more and –
- the rent for any period of the Lease is \$50,000 or more a year; or
- The current market rental value of the land is \$50,000 or more a year; or
- The Lease term exceeds 10 years; or
- A building or improving Lease.

The Council must at least 4 weeks before the Lease is made publish a public notice of the proposed Lease.

A person has a right to make a submission under section 223 on the proposed Lease.

7.6 Committee of Management Standard Procedure (Crown Land)

Council must seek ministerial approval to Lease or Licence Crown Land irrespective of Council being the appointed Committee of Management. Where required, Leases and Licences must first be approved by the Minister for Environment and Climate Change and will take a standard form as recommended by the Department of Environment, Land, Water and Planning (DELWP).

Where Council acts as the Committee of Management over Crown Land, agreements will be prepared in accordance with DELWP guidelines.

7.7 Delegation

Council is given the power to delegate any of its powers, duties and functions, other than for stipulated exceptions, under the Act.

Council's 'Instrument of the Sub-Delegation by the Chief Executive Officer to Members of Council Staff' outlines the delegated powers to Lease or Licence Council Property.

The Manager Finance and Property Development has the power to:

- Negotiate and undertake administrative procedures related to Leases and Licences; and
- Administer procedures necessary to enable Council to carry out its functions under section 223 of the Act.

7.8 Risk Management Obligations

Council will ensure that all Leases and Licences contain appropriate risk management measures including an obligation on the Tenant to:

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- Re-lease and indemnify Council from all claims resulting from any damage, loss, death or injury in connection with the Council Property, unless such claims arise out of Council's negligence;
- effect and maintain adequate public liability insurance, noting the interest of Council and the Policy must contain a cross liability clause. A minimum cover of \$20 million must be provided;
- ensure any users of the Council Property have appropriate public liability insurance;
- ensure that appropriate documentation and insurance is in place for the occasional or hired use of the Council Property by third parties; and
- be responsible for complying with emergency and evacuation procedures and risk management practices implemented by Council;

Council will be responsible for ensuring:

- any users of the Council Property have appropriate public liability insurance;
- it will take out and maintain building insurance for buildings on Council Property for a full replacement value; and
- it does not insure the contents of any Leased Council Property.

7.9 Alterations to Lease or Licence Area

The Tenant may request alterations/improvements or extensions to the Lease area, however the Tenant must obtain the prior written consent of the Council before carrying out any alterations or works on the Council Property.

Alterations to the Council Property must be strictly in accordance with plans and specifications approved by Council and in accordance with requirements of any authorities having jurisdiction over the Council Property.

In the event that an alteration is approved, Council may review and adjust the Lease/Licence terms in accordance with this Policy.

7.10 Legal fees

Once the applicant has submitted their proposal a cost agreement must be signed by the proposed Tenant in advance of negotiations commencing and any legal or other associated fees incurred by Council as a result of Lease and Licence negotiations including the preparation of the agreement will be payable by the Tenant.

8 RELATED DOCUMENTS

8.1 Hume City Council Investment Policy (Confidential).

8.2 Hume City Council Lease and Licence Policy.

8.3 Hume Horizons 2040.

8.4 Hume City Council - Council Plan 2013-2017

8.5 Hume City Council Asset Management Policy.

8.6 Hume City Council Fraud Control Policy.

8.7 Hume City Council Risk Management Policy.

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A number of laws and regulations affect Telecommunication Leases. Of particular relevance are the following Commonwealth legislations, Victorian Acts and Regulations, including the:

- 8.8** *Telecommunications Act 1997* (Cth).
- 8.9** *Telecommunications Code of Practice 1997* (Cth).
- 8.10** *Telecommunications (Low-impact Facilities) Determination 1997* (Cth).
- 8.11** *Electricity Industry Act 2000* (Vic).
- 8.12** *A Code of Practice for Telecommunications in Victoria 2004*.
- 8.13** *Local Government Act 1989* (Vic).
- 8.14** *Retail Leases Act 2003* (Vic).
- 8.15** *Crown Land (Reserves) Act 1978* (Vic).
- 8.16** *Personal Property Securities Act 2009* (Cth).
- 8.17** *Competition and Consumer Act 2010* (Cth).
- 8.18** *Equal Opportunity Act 2010* (Vic).
- 8.19** *Planning & Environment Act 1987* (Vic).
- 8.20** *Local Government (General) Regulations 2004* (Vic).
- 8.21** *National Competition Policy* (NCP).
- 8.22** *Information Privacy Act 2000* (Vic).
- 8.23** *Occupational Health & Safety Act 2004* (Vic).
- 8.24** *Building Act 1993* (Vic).
- 8.25** *Building Regulations 2006* (Vic).
- 8.26** *Catchment and Land Protection Act 1994* (Vic).

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SCHEDULE 1 - PRINCIPLES

Principle 1 – Location of Communication Equipment on Council Property
Council does not support the location of any communication equipment on a Council building.
Principle 2 – Communication Equipment should be co-located wherever practicable
Where possible: <ul style="list-style-type: none">- Communication lines should be located within existing underground conduit; and/or- Overhead lines and antennae should be attached to existing communication equipment infrastructure.
Principle 3 – Community benefit of the proposal
The installation of the communication equipment must provide a community benefit such as: <ul style="list-style-type: none">- Enhancement of coverage; and/or- New infrastructure.
Principle 4 – Health standards for exposure to emissions will be met
Must be designed and installed so that maximum human exposure levels to emissions comply with the relevant Australian Standards.
Principle 5 – Impact of the Communication Equipment on the Council Property
The installation of the communication equipment must not limit Council's or the communities ability to operate and use the Council Property now and in the future.
Principle 6 – Communication Equipment should be sited to minimise visual impact
The communication equipment shall not have a negative impact on the amenity and must comply with the requirements of the <i>Planning and Environment Act 1987</i> and the Hume Planning Scheme: <ul style="list-style-type: none">- A facility that is mounted onto a building should be integrated with the design and appearance of the building;- Any equipment sheds should be screened/fenced to reduce visibility;- No trees are to be removed, pruned, or lopped without the written consent by the responsible Council officer; and- Any other design guidelines.

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SCHEDULE 2 – CATEGORY ASSESSMENTS

Categories	Market Rent	Outgoings/Utilities	Maintenance	Rent Reviews	Legal Fees (including amendments requested by the Tenant)	Term
Group One	Commercial Rate determined by Council's Valuer	All paid by the Tenant, including Rates, taxes and levies	All maintenance requirements paid by the Tenant	Market Rent Review at end of each Term or 5 years, whichever ever is shorter plus annual fixed 2-4% increases	100% Tenant	No longer than 20 years and subject to the Tenant and Council's requirements. The Lease Term may include several options.
Group Two	Up to 70% discount of Commercial Rate determined by Council's Valuer.	All paid by the Tenant, including Rates, taxes and levies	All maintenance requirements paid by the Tenant	Annual fixed 2-4%	100% Tenant	No longer than 20 years and subject to the Tenant and Council's requirements. The Lease Term may include several options.
Group Three	\$100 - \$500 per annum	All paid by the Tenant, including Rates, taxes and levies	All maintenance requirements paid by Tenant and/or Council	Annual CPI increase	50% but not more than \$1,000 Tenant (amendments requested by Tenant pay 100%)	No longer than 20 years and subject to the Tenant and Council's requirements. The Lease Term may include several options.

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SCHEDULE 3 – EXTRACT FROM ACMA

Low-impact facilities

Carriers have the power to install low-impact facilities without seeking state, territory or local government planning approval. Low impact facilities are specified in the *Telecommunications (Low-impact Facilities) Determination 1997*, and include small radiocommunications antennae and dishes that are erected on existing towers and buildings. Underground and overhead optical fibre installations undertaken by NBN Co are identified as being low-impact facilities. All low-impact facilities must be installed in accordance with the *Telecommunications Act 1997* and the *Telecommunications Code of Practice 1997*.

Facilities such as freestanding mobile phone towers are not classified as low-impact facilities and their installation requires local council approval. However, the determination identifies certain equipment as low impact when it is mounted on existing structures such as buildings, poles or towers. It also classifies an extension of up to five metres on an existing tower as low impact, provided the tower has not previously been extended.

As a carrier, NBN Co is generally able to install a low-impact facility, such as its underground fibre network, without obtaining prior approval from landowners/occupiers. However, NBN Co is required to notify a landowner of its intention to install a low-impact facility. If a landowner or occupier objects to the installation of a low-impact facility, the landowner/occupier can raise the matter first with the carrier. If unable to resolve the matter directly with the carrier, the matter may be referred to the Telecommunications Industry Ombudsman (TIO). The TIO may investigate any low-impact facility installation proposal following a complaint from a landowner and can issue a direction to the carrier about the installation. Carriers must comply with any TIO direction.

The ACMA has the power to enforce compliance and may investigate complaints and/or instances of systemic non-compliance by a carrier.

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