



Alpine Resorts
Victoria

Alpine Resorts Leasing Procedure - New Tenants

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Acknowledgement of Country

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land, waters and mountains, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose wisdom has ensured the continuation of culture and traditional practices.

We acknowledge the profound impacts of climate change on Country and recognise the power of Traditional Owner knowledge in responding to and adapting to change. We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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Introduction

Leases over Crown land within Victoria's alpine resorts are issued in accordance with the *Alpine Resorts (Management) Act 1997* and the Alpine Resorts Leasing Policy (ARLP).

Alpine Resorts Victoria (ARV) is responsible for the management of Victoria's alpine resorts, including the issuing of Crown land leases within each resort.

Purpose

This procedure supports the effective, consistent and transparent implementation of the ARLP by documenting the processes to be used by ARV for allocating leases to new Crown land tenants within alpine resorts, including leases over greenfield sites. It provides certainty to prospective tenants as to how their application for a lease will be managed.

This procedure covers standard alpine leases only and excludes special leases such as for telecommunications facilities or ski lifts. Unless otherwise stated, it applies to the allocation and management of head-leases only.

The procedure covers four key elements of leasing within alpine resorts:

Part 1 - The lease allocation process for new tenants

Part 2 - General lease administration

Part 3 - The use of a competitive process in issuing a lease

Part 4 - Community Use Leases

Review

This procedure will be reviewed and updated by ARV periodically in consultation with all Alpine Resort Stakeholder Consultative Committees, and at a minimum, every five years.



Part 1: Lease Allocation Process

The following process is to be followed in response to an enquiry or an application from a prospective tenant seeking a standard alpine lease.

Step 1 - Assess initial leasing enquiry

In response to an enquiry from a prospective tenant, ARV must determine whether the proposal warrants further consideration. In doing so, ARV must consider whether:

- > the site is available, or will be available in the reasonable future, noting that existing tenants have the first right of negotiation on all existing leases
- > a decision has already been made to use a competitive process to lease the site

Following the above assessment, ARV can:

- > request further information from the prospective tenant and/or enter into preliminary discussions with the prospective tenant to determine or clarify the scope of the lease proposal;
- > advise the prospective tenant to submit a written application;
- > advise the prospective tenant that the site has already been selected for a competitive process, and that they may apply to be considered in the process if the process has not yet commenced or closed; or
- > advise the prospective tenant that the proposal will not be considered any further and provide reasons for this decision.

Where they occur, all preliminary discussions shall be on a "without prejudice" basis, and ARV shall not commit to, make any representation about, or make any offer of lease to a prospective or proposed tenant or to any third party at this stage.

Agreements to Lease

Where a lease is being sought over a greenfield site or over a site that will involve a total redevelopment, an ATL should be used and an appropriate standard lease held in escrow. This standard lease is to be executed by the tenant at the same time as the ATL and issued to the tenant if and when the conditions of the ATL are satisfied.

The term of the ATL is generally to be between three and six years to allow sufficient time for the prospective tenant to obtain finance and complete the proposed works. The term of the lease held in escrow is not to include the term of the ATL, and the terms are to run sequentially. If the works specified in an ATL are not completed prior to the agreed date, then the lease held in escrow should not be granted. Where there are extenuating circumstances, ARV can consider a request for an extension to the ATL, with a maximum total term allowable of ten years.



Step 2 - Assess application

Direct vs Competitive lease allocation

The assessment of a lease application must commence with ARV determining whether it is acceptable to negotiate directly with the prospective tenant or whether a competitive process should be used. A competitive process is generally to be used for the release of a greenfield site.

Direct negotiation is to be used where it can be demonstrated that the public benefit of direct allocation outweighs the benefits that may be produced by using a competitive process including:

- > where, after an assessment of the land, it can be determined that direct negotiation would maximise benefits to the community and/or government.
- > when the current market rent of the land is low relative to the cost of conducting a competitive process.
- > when a competitive process has not produced a satisfactory outcome.
- > when it is reasonably clear that there is only one prospective tenant with the required capability.
- > when legislation prohibits a tenant from excluding competitors from the land regardless of who holds the head lease, such as Telecommunication leases.
- > where there is evidence that conducting a competitive process may place a project of regional or state significance at risk; or
- > where the only practical access is available from adjoining land owned or already leased by the prospective tenant.

Where a competitive process is to be used, the prospective tenant should be advised in writing of this. Part 3 of this procedure should then be followed.

Minimum lease requirements

All prospective tenants must submit a lease application to initiate the formal lease negotiation process. Lease applications must be assessed to confirm:

- > the proposed use of the site is consistent with the Alpine Resorts Strategic Plan
- > the proposed use of the site is consistent with the permitted use of the site
- > the proposed tenant intends to ensure all buildings and associated works within the lease area will satisfy the applicable requirements of the Alpine Resorts planning scheme
- > a satisfactory Landscape Management Plan has been submitted using the template or guidance provided by ARV



- > a satisfactory business case or statement of operational intent is fully completed and submitted using the template or guidance provided by ARV (if required)
- > where the site includes existing buildings, an energy efficiency assessment of all buildings has been undertaken by an assessor accredited under a relevant energy efficiency scheme - such as the National Australian Built Environment Rating System, or the Residential Efficiency Scorecard - and the resultant report provided to ARV (unless the buildings already meet the National Construction Code (NCC) Requirements-see Note 2 to Table 1 below)

Permitted use is determined by:

- > the purpose for which the site has been reserved under the *Crown Land (Reserves) Act 1978*
- > any zoning or other controls that apply to the site under the Alpine Resorts planning scheme
- > the resort masterplan or resort strategic plan (where there is one)

Community Use Leases

If a Community Use Lease is sought, Part 4 of this procedure should be followed to:

- > confirm that the proposal satisfies the criteria for a Community Use Lease
- > determine the appropriate category of Community Use Lease
- > determine the site rental

Leases for special operations

Lease terms and conditions for special operations such as ski fields will be negotiated on a case-by-case basis.

Confirming appropriate lease category

The standard alpine resort lease available to new tenants is for a minimum term of 15 years. Proposals for a lease with a longer term must demonstrate benefits that align with the Object of the Alpine Resorts (Management) Act as per Tables 1 and 2 below.

Note that applicants for a standard 15-year lease must still satisfy all minimum lease application requirements as detailed above.

Appropriate documentary evidence supporting the achievement of the requirements for each category must be provided with the lease application.

Where the prospective tenant is proposing to lease a site with existing buildings, and there is a requirement to demonstrate an improvement in energy efficiency and/or a



requirement to demonstrate a capital investment, the prospective tenant must specify the timeframe within which one or both will be achieved. Subject to ARV agreeing that this timeframe is appropriate, or a different timeframe is negotiated between the parties, ARV should determine whether an ATL is to be used for the period within which the proposed works will be completed. The ATL - or lease if no ATL is used - is to specify the lease term category requirements and the period within which they are to be completed to the satisfaction of ARV.

On completion of any works to improve building energy efficiency, the tenant is to seek an energy efficiency assessment from an accredited assessor and provide the resultant report to ARV to demonstrate that this requirement has been satisfied.

On completion of any works required under the terms of the ATL or lease, the tenant is to provide documentation to ARV demonstrating the capital investment undertaken.

All costs associated with obtaining necessary documentation, such as a building energy efficiency assessment, are the responsibility of the prospective tenant.

Leasing sites with existing buildings

Where a prospective tenant is seeking a lease over a site with existing buildings, the following categories of lease terms are available subject to satisfying the corresponding category requirements:

Lease Term Category	Category Requirements
21 Years	Satisfies minimum lease requirements At least 50% improvement in energy efficiency rating ¹ (unless buildings already meet National Construction Code (NCC) requirements) ²
31 Years	Satisfies minimum lease requirements At least 75% improvement in energy efficiency rating ¹ (unless buildings already meet NCC requirements) ² At least \$0.2 million invested in refurbishment
49 Years	Satisfies minimum lease requirements At least 100% improvement in energy efficiency rating ¹ (unless buildings already meet NCC requirements) ² At least \$0.5 million invested in refurbishment ³
50+ Years	Satisfies minimum lease requirements The purpose for which the lease is to be granted, and the proposed use, development, improvements or works, are of an exceptional nature and will make a major contribution to the resort consistent with the Object of the Alpine Resorts (Management) Act.

Table 1: Standard Lease Term Categories - Sites with existing buildings



Notes

1. Energy efficiency rating as per an accredited rating tool such as Nationwide House Energy Rating Scheme, Residential Efficiency Scorecard or National Australian Built Environment Rating System
2. NCC Requirements mean the National Construction Code (successor to the Building Code of Australia) requirements and the measures in part 13 of the Code about Energy Efficiency.
3. Capital investment figure is indexed annually to CPI from the policy commencement date.

Greenfield sites or total redevelopment

Where a prospective tenant is seeking to lease a greenfield site, or to undertake a total redevelopment of an existing site, the following categories of lease terms are available subject to satisfying the corresponding category requirements:

Lease Term Category	Category Requirements
21 Years	Satisfies minimum lease requirements At least \$2 million in capital investment ¹
31 Years	Satisfies minimum lease requirements At least \$5 million in capital investment ¹
49 Years	Satisfies minimum lease requirements At least \$20 million in capital investment ¹
50+ Years	Satisfies minimum lease requirements The purpose for which the lease is to be granted, and the proposed use, development, improvements or works, are of an exceptional nature and will make a major contribution to the resort consistent with the Object of the Alpine Resorts (Management) Act.

Table 2: Standard Lease Term Categories - Greenfield sites or total redevelopment

Note

1. The capital investment figure is indexed annually to CPI from the policy commencement date

Landscape Management Plan

All lease applications are to be accompanied by a Landscape Management Plan prepared using the template or guidance provided by ARV, detailing any potential environmental impacts over the life of the lease and measures to address or mitigate these impacts.

As a minimum, a Landscape Management Plan should be site specific and cover:

- > climate change



- > biodiversity and threatened species
- > any degradation and loss of native vegetation
- > pest plants and animals
- > waste and use of renewable or recyclable materials
- > best-practice stormwater management
- > existing and potential contaminants

Financial assessment

ARV reserves the right to reject applications or request further information where the prospective tenant does not adequately prove their financial capability. Applications should not be accepted from, or leases awarded to, prospective tenant who:

- > are bankrupt;
- > are subject to a winding up order; or
- > are corporate entities with persons involved directly or indirectly in the management of the entity who are disqualified under corporations law.

The prospective tenant is required to self-report on these issues when completing the application form. ARV can elect to confirm any financial information provided in an application form, including by undertaking checks with the Australian Securities and Investment Commission (ASIC) and/or credit reference agencies.

Prospective tenant notified

After considering the application, and if the prospective tenant has not already been advised that a competitive process is to be used to select a tenant for the site, ARV should reply to the application in writing to:

- > seek further information to address any issues or gaps identified during the assessment, or
- > accept the application and request:
 - payment of the lease application fee in accordance with the invoice attached
 - submission of a business case or statement of operational intent (if not already provided)
 - submission of a community use application form where relevant; or
- > refuse the application and provide the reason(s) for doing so.

Step 3 - Assess business case/Statement of operational intent

To justify granting a lease for the exclusive use of Crown land to a commercial tenant (one whose prime purpose in leasing the site is to generate profit), or to justify



directly negotiating a lease with a prospective commercial tenant, ARV or the Minister needs to:

- > understand how the prospective tenant will build up the business and in what time frame
- > assess the reliability of the tenant
- > assess if the lease offers the best value to ARV and the community and therefore doesn't need to go through a competitive process
- > understand the minimum term required to amortise the proposed capital works or management initiatives
- > be confident that the prospective tenant has the financial capacity to fund and implement any proposed capital works program and meet lease commitments and manage its business

This information needs to be supplied by the prospective tenant in the form of a business case using the template or guidance provided by ARV.

Business case

In the business case, the prospective tenant should summarise the proposal, including management initiatives, details of any capital works program and why they are the best candidate for the site.

The business case should include the following as a minimum:

- > profit and loss statement and trading statistics for at least the past three years (if an existing organisation)
- > projected profit and loss statement with a breakdown of operational costs, maintenance costs, service provision costs and profit for at least the first three years
- > the benefits that will accrue to the community from the prospective tenant's continuing use of the site or new use of the site
- > for commercial leases, analysis of market characteristics
- > management principles, objectives and strategies
- > for commercial leases, opportunities for improving the financial performance of the leased area
- > any proposed capital works improvement program including cost estimates
- > the term of lease being sought and how this links to the period required to amortise any capital works or management initiatives
- > any climate change adaptation measures proposed, such as building design features and/or operational processes



Business case assessment

The business case is to be assessed against the following criteria:

- > Is there sufficient evidence to determine that the grant of the lease to the prospective tenant will produce an outcome as good as or better than one which would have resulted from a public competition process?
- > Is there a risk to the site if a lease is not granted to the prospective tenant through a direct negotiation process?
- > Does the business case satisfactorily demonstrate that the prospective tenant's proposal is commercially viable?
- > Are the strategies the prospective tenant proposes to build and improve the business acceptable?
- > Does the prospective tenant have the financial capacity to fund and implement the proposed capital works program and meet lease commitments?
- > Does the prospective tenant have the experience, capacity and competence to develop, operate and manage the business?
- > Is the term requested reasonable to amortise the proposed capital works or management initiatives?

Statement of Operational Intent

Where the prospective tenant is non-commercial, such as a not-for-profit lodge, they are required to submit a Statement of Operational Intent with the lease application that outlines how they intend to operate over the life of the lease. The Statement of Operational Intent is intended to allow ARV to assess the consistency of the proposed lease with the Alpine Resorts Strategic Plan and any strategic objectives for the resort as stated in the relevant planning scheme.

The Statement of Operational Intent should include details of the following:

- > Membership
- > Facilities
- > Scope of operation
- > Legal structure
- > Management
- > Financial structure
- > Any planned refurbishment/upgrades of the premises

Regardless of whether the prospective tenant is commercial or non-commercial, all applications for a lease over a greenfield site, or over a site that is to be fully redeveloped, must be supported by a business case.



Prospective Community Use Lease tenants - other than a government agency - are not required to submit a business case or Statement of Operational Intent and should instead complete a Community Use Lease application form and provide:

- > profit and loss statements and trading statistics for at least the past 3 years (if an existing organisation); and
- > projected revenue, operational costs, maintenance costs, service provision costs and profit for at least the first 6 years of the proposed lease.

Community Use Lease assessment

Applicants that identify as a prospective Community Use Lease tenant are to be assessed in accordance with Part 4 of this procedure.

Step 4 - Request reports

Survey Report

Where changes to boundaries are proposed, a Survey Report is to be obtained from the Surveyor-General to determine status, boundaries, encroachments, services / utilities and survey requirements. Depending on the information available in the Survey Report, the Surveyor-General may require a further survey to be conducted before a lease plan can be produced.

Subject to the Survey Report identifying any special requirements, the applicant may appoint their own surveyor to prepare the lease plan in consultation with the Surveyor-General.

The applicant is responsible for all survey costs associated with the proposed lease.

Rent valuation

In line with the Victorian Government Land Transactions Policy, all leases are subject to a market /site rent valuation by the Valuer General Victoria or a registered valuer and assessed as a percentage of site value. This determination will use a market-based approach, considering all restrictions, regulations and conditions specified in the lease document.

Where a Community Use Lease is to be offered, the market-based rent is to be discounted in accordance with Part 4 of this procedure.

To assess market/site rent, the valuer must be supplied with all or relevant parts of the information supplied in the application and business case or statement of operational intent (if required).



All leases shall include a provision that site rent is to be reviewed every three years and adjusted to market rates, and for annual CPI adjustments between reviews.

The requirement for market/site rent-valuation extends to all tenants, including those that, under the terms of their lease, undertake community uses.

Tenure preparation costs

Unless ARV decides otherwise or the *Retail Leases Act 2003* applies, the tenant is responsible for the legal, survey and site rent determination costs and the ARV's published fees for the preparation and negotiation of the lease and other related documents. In cases where the standard lease document is not suitable or additional special conditions are required, any cost of legal services associated with the drafting of the lease documents is the responsibility of the prospective tenant.

Step 5 - Publish notice of intention to negotiate direct lease

Once a Plan for Lease Purposes is prepared, ARV is to publish on the ARV website, a public notice of intention to negotiate the allocation of the lease. The purpose of the notice is to allow the broader community to be aware of the lease proposal.

The notice must include the following:

- > the particulars of the land which would be subject to the lease i.e., the Crown lot description
- > the purpose and term of the proposed tenure
- > the name of the proposed tenant; and
- > the intention to grant a tenure to the proposed tenant for the specified purpose

Step 6 - Seek Approval in Principle

The Approval in Principle (AIP) process allows the Minister (or their delegate) to review a lease proposal before the parties commit to a lease and assess if the proposal aligns with the Alpine Resorts (Management) Act and the ARLP. It also provides certainty for ARV and the prospective tenant to proceed to the detailed planning stages.

Prior to seeking AIP, all lease proposals must be endorsed by the ARV Board.

The submission is to be prepared by ARV and must contain sufficient detail for the Minister (or delegate) to make an informed decision about the proposal and either approve or reject the proposal. If approved, the Minister (or delegate) may direct ARV to modify aspects of the proposal so that they align with relevant legislative or government policy requirements.



Typically, an AIP submission should include:

- > the capacity of the applicant to perform lease obligations including, but not limited to, the full payment of rent
- > the capacity of the applicant to fund any proposed/required capital improvements plus ongoing operational maintenance obligations
- > the capacity of the applicant to operate the business (reliability, management experience etc.)
- > the suitability of the site for the proposed use including compatibility with any declared reserve purpose and statutory planning controls
- > background behind how the lease negotiations were instigated i.e. if via a direct negotiation, how it complies with the ARLP
- > any matters to be addressed in developing the full proposal
- > the draft lease terms and conditions, subject to final lease negotiation

If not approved, the Minister (or delegate) will provide a statement of the reasons for non-approval. The prospective tenant may submit an amended investment proposal for consideration by the Minister at a later date.

Step 7 - Prepare draft lease

ARV has a set of lease document templates to ensure a consistent approach to tenures across all alpine resorts. These include:

- > Standard alpine resort lease
- > Alpine resort Community Use Lease
- > Alpine resort telecommunications lease

These lease templates contain all the standard conditions of a lease and are to be used in all lease dealings unless exceptional circumstances warrant otherwise. Using these documents ensures consistency and reduces the amount of time parties would otherwise have to spend in drafting lease documentation.

Bank guarantee / Security deposit

New tenants will generally be required to provide financial security to ARV, particularly where:

- > the lease requires the tenant to erect specified improvements on the premises;
- > the improvements are to remain on the land and the tenant must carry out specified maintenance;



- > the permitted use has the potential to cause damage to the premises or the land whether structural or environmental; or
- > the tenant must remove all improvements and return the land in good order and repair at the end of the lease.

The value of the necessary security is to be determined by reference to the amount that would be reasonably required to rectify such issues including a component for CPI on an annual basis. Term deposits are not an acceptable form of security. The maximum value of the security that can be required is \$50,000.

A security deposit is acceptable where the value of the security is \$15,000 (excl GST) or less. If the value of the security is greater than \$15,000 (excl GST), the security must be provided in the form of a bank guarantee.

Where a security deposit is lodged by a tenant, ARV must:

- > hold the money on behalf of the tenant in an interest-bearing account;
- > account to the tenant for interest earned on the deposit, noting that ARV is entitled to keep the interest and deal with it as money paid by the tenant to ARV to form part of the security deposit;
- > not unreasonably refuse to accept a guarantee from an Authorised Deposit-taking Institution (ADI) (within the meaning of the *Banking Act 1959* (Cth)) in satisfaction of any requirement to provide security in the form of a deposit, bond or third-party guarantee for the performance of the tenant's obligations under the lease; and
- > return the security deposit to the tenant within 30 days after the lease ends if the tenant performs all of the tenant's obligations under the lease.

If the tenant is providing a bank guarantee, it should:

- > refer to the tenant and not its trading name or a related company;
- > comply with the requirements set out in the lease document; and
- > be in respect of all the tenant's obligations under the lease and not be limited to any particular obligations, e.g. to pay the rent.

Guarantor

If the new tenant is a body corporate, e.g. a company incorporated under the *Corporations Act 2001*, it is common industry practice to require each of the directors of the corporation to guarantee the corporation's performance of its obligations under the lease. This is to ensure that the tenant has sufficient assets to perform its obligations under the lease, including for example, obligations to remediate the land or to indemnify the landlord.



If the body corporate is a publicly listed company or a subsidiary of a publicly listed company, then a parent company guarantee rather than directors' guarantees may be suitable. Legal advice should be obtained by ARV in these circumstances.

Directors' guarantees will not be required for a company limited by guarantee or a non-profit ski lodge.

Step 8 - Offer of a new lease

Subject to AIP being granted, a letter is to be sent to the prospective tenant that includes a final draft lease document. The letter should also direct the prospective tenant to seek any statutory approvals associated with the lease.

Step 9 - Finalise and execute lease

When the terms and conditions of the lease have been finalised and all parties have advised the document is ready for execution, ARV is to provide it to the tenant for execution. Lease documents may be signed electronically.

Step 10 - Seek grant of lease approval

Once ARV and the tenant have executed the documents, they are to be sent to the Department of Energy, Environment and Climate Action (DEECA) to seek the Minister's approval to grant the lease (or provided to the Minister's delegate for approval where there is one) in accordance with the requirements of the Alpine Resorts (Management) Act.

Step 11 - Register lease

Subject to the Minister's (or delegate's) approval to grant the lease, ARV is to arrange for the lease to be registered with Land Use Victoria.

Step 12 - Signed copy of leases provided to tenant

Once the signed lease has been registered, the lease is provided to the tenant along with an invoice for the first year of rent.



Step 13 - Include lease details on ARV website

Following completion of the grant of lease, ARV is to add the lease details to the list of all alpine leases issued that is maintained on the ARV website. This should include the land parcel, the name of the tenant and the date on which the lease was granted.



Part 2: Lease administration

Following the issuing of an alpine lease, there are several lease administration activities that should be managed as set out below.

Unless ARV decides otherwise or the Retail Leases Act applies, the tenant will be responsible for the costs associated with the issuing and ongoing administration of an alpine lease, including:

- Legal costs (including legal advice required during preparation of a new lease or renewal of an existing lease)
- Site valuations
- Site surveys
- Market rent reviews
- Processing of further lease applications
- Processing of requests for consent for assignment, sublease or mortgage

Standards of occupancy

The standard alpine lease includes provisions authorising ARV to perform pro-active building inspections every three years. Each inspection is to be documented by ARV in the form of a Building Standards Report, which may be used as a reference tool when assessing the performance of an existing tenant in the context of a future lease application. ARV will provide the tenant with a copy of the Building Standards Report, and the tenant must be afforded an opportunity to respond to any matters identified.

Building Standards Reports are mandated to ensure that tenants are formally notified of their obligations in relation to the ongoing maintenance, repair and upgrading of both building interiors and exteriors. These reports provide an evidence-based assessment of compliance with applicable regulatory and statutory requirements, thereby supporting the continued safety, structural integrity, operational functionality and suitability of buildings for public use.

Where a new lease application is submitted, it is a requirement that any proposed works, as well as any mandatory works identified during the tenure through proactive inspections or other compliance processes, are addressed. In this context, the Municipal Building Surveyor must carry out an inspection and issue a Certificate of Final Inspection to confirm that the required works have been completed in accordance with the relevant approvals and building legislation. The Certificate of Final Inspection will be coordinated by ARV, however all costs associated with the Certificate of Final Inspection will be borne by the tenant.



Compliance with these requirements is necessary to ensure that buildings meet the applicable standards of occupancy and that ARV's statutory and leasing obligations are satisfied.

Assignment, sub-lease and mortgage

To ensure the objects of the Alpine Resorts (Management) Act are retained and policy objectives achieved, all proposals to assign, sub-lease or mortgage leased land within an alpine resort require the consent of ARV. To inform consideration of such proposals, the following information is required by ARV:

- > In the case of proposed assignments, evidence of the financial capacity of the assignee and directors to perform the obligations and responsibilities under the terms of the lease;
- > Character references for each assignee and/or director (for head lease transfers only); and
- > Copies of all proposed documents, including guarantees where relevant.

ARV should also review information held as a result of building inspections on any site and any other relevant information.

Variation of leases

ARV can consider a variation to an existing lease in limited circumstances. Where a variation is considered warranted by ARV, approval in principle must be sought from the Minister or their delegate, with the submission to include the reasons as to why the variation is required.

All lease variations require the approval of the Minister or their delegate.

If a proposal for variation of a lease involves substantial or fundamental changes, a surrender of the lease and grant of a new lease shall be required. Such changes would include but are not restricted to a proposed modification or alteration of:

- > the term of the lease;
- > the area leased (except where ARV considers the change to be minor, such as a correction to a boundary); and/or
- > the purpose of the lease.

Notice of lease expiry

ARV is to provide tenants notice in writing of forthcoming lease expiry at five and three years prior to the lease expiry date. Tenants will be required to confirm in writing receipt of this notice.



Lease renewal/surrender

Where a tenant seeks a new lease and/or to surrender a lease, the Alpine Resorts Leasing Procedure - Existing Tenants should be followed.

End of lease

In the situation where, at the end of the lease term, a tenant neither assigns the lease nor exercises the first right to negotiate, and where the site is not required for resort purposes, the outgoing tenant may be required to remove the improvements on the land at the tenant's own cost. If the improvements are not removed by the outgoing tenant as directed by ARV, they shall become the property of the Crown, and the cost of their removal shall be a debt due by the outgoing tenant to ARV. In this situation, the outgoing tenant shall not be entitled to any compensation by ARV for the value of the tenant's interest in the premises.

Where ARV determines, with the Minister's approval, that any part of a leased site is reasonably required for resort purposes, ARV may give notice to the tenant to cancel the lease, either wholly or in part, and require the tenant to remove all or some of the tenant's improvements. In this situation, the tenant will be entitled to compensation for the value of the tenant's interest in the premises. The process for determining the amount of compensation to be paid is set out in the relevant clause in the standard alpine lease template currently in use.

Overholding

Overholding of leases is to be avoided where possible. A lease that is due for expiry should be replaced with a new lease reflecting contemporary lease conditions. Where overholding occurs, it should be for no longer than three months.

Licensing of structures on adjacent land

Where a tenant proposes to construct an asset on adjacent Crown land that is not leased by them, and it is assessed by ARV to be suitable for the site, ARV should consider issuing a licence for the structure under Section 17BAA(1) of the Crown Land (Reserves) Act. This is an appropriate tenure mechanism where the asset is for non-exclusive use, such as a walkway, and can be issued for a term of up to 21 years.



Subdivision of existing sites

Applications for subdivision of existing leasehold sites will require the approval in principle of the Minister or their delegate and will be subject to a public notification process on the ARV website.

Additional land adjacent to existing leased area

Where a tenant applies to lease additional land adjacent to the existing leased area, ARV must consider whether the land has already been identified for public purposes and does not have the capacity to be released as a stand-alone site. Where ARV determines this is not the case, ARV must also consider whether the public benefit of direct allocation outweighs the benefits that may be produced by using a competitive process to select a tenant for the site.

Where ARV determines that a competitive process is to be used to select a tenant, Part 3 of this procedure is to be followed.

Where ARV determines that increasing the leased area to include the additional, adjacent land via a direct allocation, is warranted, this must be affected through the tenant surrendering the existing lease and the granting of a new lease rather than a variation to the existing lease.



Part 3: Competitive lease allocation

To comply with the National Competition Policy Agreement of 1995 which resulted from the *Trade Practices Act 1974*, lease allocation processes must be fair, open and impartial. A competitive selection process will therefore be used to allocate leases over Crown land within alpine resorts unless direct negotiations would achieve an outcome that better serves the community interest.

A competitive process improves probity and is better able to address conflicts of interest (real or perceived) and transparency in the decision-making process. It also provides an opportunity for all interested parties to compete for a lease.

Competitive allocation process

A competitive lease allocation process will generally be in the form of an Expression of Interest (EOI) or Request for Tender (RFT).

EOI

An EOI should be considered in situations where the land could be leased for a variety of purposes or where the level of interest in the potential lease is not well known i.e., where there is not a good understanding of how many groups have the interest or capability to manage the lease. The EOI would invite proponents to propose how the land could be used and how they would satisfy the evaluation criteria without putting in extensive effort on their behalf. If required, the EOI may be followed by an RFT stage once the lease purpose and number of contenders has been more closely defined.

RFT

An RFT should be considered in situations where the purpose of the lease is known, and proposals are being sought from experienced operators for that purpose.

An RFT should also be considered following an EOI process where more detail is required before a successful proponent can be decided on.

Market valuation

A market valuation report is required to support the competitive process as it will provide an indicative view of the market rent for potential proponents. The engagement of valuation services may be delayed until after the outcome of an EOI where the land may be suitable for several different purposes, and this is to be tested via the EOI.



The invitation documents should indicate whether the valuation will be used to establish the rent for the proposed lease or whether the proponent should offer a rent amount as part of their offer.

Invitation documents

Invitation documents should outline at a minimum the:

- > relevant ARV contact and their contact details
- > communication protocols
- > timelines
- > complaint management process

Invitation documents must contain enough information about the proposed activity to be undertaken so that all interested parties can equally participate in the competitive process. For example, the invitation documents should:

- > contain specifications
- > be targeted to known market capability
- > contain the known risks impacting the proposal
- > contain the evaluation criteria to be applied
- > describe the relative importance of each evaluation criteria

All submissions to an invitation must include a completed lease application form and the associated fee. Application fees will not be refunded to unsuccessful proponents.

Issuing the lease

Following the successful selection of a tenant and completion of subsequent notification and debriefing, lease documentation should be prepared in accordance with the process detailed in Part 1 of this procedure.



Part 4: Community Use Leases

The following applies only to prospective tenants seeking a Community Use Lease in accordance with the ARLP.

Step 1 - Assess eligibility

To be eligible for a Community Use Lease, prospective tenants must either be a government agency providing services to the community, or satisfy **all** of the following criteria:

- > be a not-for-profit organisation, with the organisation's governing documents containing an appropriate not-for-profit clause; and
- > manage the lease primarily for the community; and
- > the payment of any dividend or amount to members is prohibited, and
- > not provide accommodation at the site except in circumstances agreed with ARV, such as to support the provision of essential services within a resort; and
- > meet the compulsory public benefit test such as:
 - social engagement
 - the service is non-discriminatory
 - there are no barriers to participation
 - a demand exists for the service

Organisations such as club lodges are not eligible for a Community Use Lease.

Not-for-profit status

For the purposes of a Community Use Lease, prospective tenants must be:

- > considered a not-for-profit under the Australian Charities and Not-for-Profits Commission (ACNC) standard (see <https://www.acnc.gov.au/for-charities/start-charity/not-for-profit>); or
- > registered with the ACNC; or
- > have deductible gift recipient status endorsed by the Australian Taxation Office.

Evidence

The applicant must provide one of the following as evidence of not-for-profit status:

- > a copy of the organisation's governing documents, which must include the following clauses: not-for-profit, dissolution or deductible gift recipient revocation as per the ACNC requirements for demonstrating not-for-profit character (<https://www.acnc.gov.au/for-charities/start-charity/not-for-profit>); or



- > proof of registration with the ACNC; or
- > an ABN search indicating the applicant has deductible gift recipient status.

It is acceptable for applicants to rely on the not-for-profit status of an overarching organisation so long as the applicant is genuinely governed by the overarching organisation. For example, an individual scout group may not be registered with the ACNC while The Scout Association of Australia Victorian Branch is.

Community as primary purpose

The primary purpose of a Community Use Lease must be a community purpose, such as:

- > community services
- > cultural services
- > recreational services
- > social engagement
- > public health and wellbeing services
- > protection of public land values
- > emergency services
- > education services, or
- > similar facilities, activities or services.

Tenant-run commercial activities such as a restaurant can only be permitted as an ancillary use, to support the main purpose of the lease. If a restaurant occupies more than 50% of the premises, or is the most predominant activity conducted in the premises, then the main purpose of the lease is the operation of a restaurant, which is a commercial activity and not a community activity, and therefore ineligible for a community use lease.

Public benefit test

In accordance with the ARLP, all leases must provide public benefits to the community. Prospective Community Use Lease tenants must provide evidence demonstrating how at least one of the following public benefit criteria will be met:

A. Increased social engagement

The tenant's use of the leased premises will increase social engagement that will in turn promote health and well-being of the community.



B. Service is non-discriminatory

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.

If in doubt, the *Equal Opportunity Act 2010* contains a list of the attributes on which discrimination is prohibited. The Act contains a specific section on Discrimination by clubs and club members (Division 6) and exceptions to the discrimination rule where membership can be restricted for:

- minority culture clubs (if the club is to preserve said minority culture);
- political clubs (if the club was established principally for a political purpose);
- clubs for particular age groups (if the club exists principally to provide benefits to that age group, for example, a youth organisation that allows all youth to join regardless of race or sex is non-discriminatory even though the organisation is targeted at youth. However, a youth organisation that excluded youth based on race is discriminatory); or
- single sex clubs (for example Girl Guides excludes boys).

C. No barriers to participation

The service or activity can be accessed by disadvantaged groups, with strategies in place to review and remove any barriers to participation. Disadvantaged groups include but are not limited to people who are: Aboriginal and Torres Strait Islander, women, disabled, from diverse cultural or ethnic backgrounds, children, teenagers, pensioners, low income (people who qualify for a health care card) and the unemployed. For example, the cost of membership might be considered a barrier to participation if the group/organisation does not offer scholarships and reduced fees for low-income people. The affordability of membership could be considered a subjective figure. In essence affordable membership is that which is affordable by anyone wishing to participate.

D. Demand exists for the service

There are reasonable grounds to believe a need or demand exists for the service or activity to be provided through the leased premises.

Step 2 - Assess ancillary revenue raising

Using the information provided in the lease application form, and the definitions outlined below, the following should be assessed:

- > Whether there are any ancillary activities that fall under the definition of fundraising or permanent commercial activities
- > The capacity to generate profit from the leased site



Fundraising Activities

Fundraising activities are allowed on Community Use Leases so long as they:

- > are not the predominant (i.e. taking up more than 50% of the premises for more than 50% of the time) use of the leased area
- > do not adversely affect the carrying out of the primary purpose of the lease
- > do not adversely impact adjoining Crown land

Fundraising activities refers generally to the activities undertaken by the tenant to raise revenue to assist in delivering of its core functions, supporting maintenance of the facilities, and otherwise furthering its objectives. Fundraising activities that may be permitted through a lease, include but are not limited to:

- > fundraising appeals as regulated by the *Fundraising Act 1998*
- > membership subscriptions
- > commercial activities that don't permanently occupy the premises such as activities that are offered through a licence
- > service provision fees
- > donations
- > grants
- > community charitable gaming, such as raffles, bingo, or fundraising events.

Gaming activities that do not meet the definition of community charitable gaming under the *Gambling Regulation Act 2003* are not fundraising activities.

Capacity to generate profit

Using the information provided in the lease application form, the applicant's capacity to generate profit from the leased site should be estimated and categorised as follows:

Low capacity to generate profit

For example, if market rent is assessed as \$10K and the projected profit for the term of the lease (before paying rent) **is close to or less than the rental amount annually** then the profit-making capacity is low. Profit analysis should include taking away the costs of maintaining the premises and offering services to the community at the site. Make sure applicants fully understand the need to supply projected maintenance and service provision costs with their application.



Medium capacity to generate profit

For example, if market rent is assessed as \$10K and the projected profit for the term of the lease (before paying rent) **is between the rental amount and double the rental amount annually** i.e. if the rent is between \$10 - \$20K annually then the revenue raising capacity is medium. Profit analysis should include taking away the costs of maintaining the premises and offering services to the community at the site.

High capacity to generate profit

For example, if market rent is assessed as \$10K and the projected profit for the term of the lease (before paying rent) **is at least double the rental amount annually** i.e. if the rent is \$20K annually then the profit-making capacity is high. Profit analysis should include taking away the costs of maintaining the premises and offering services to the community at the site.

Step 3 - Determine community use category

The applicable category of Community Use Lease that is to apply should be determined based on the capacity to generate profit and whether any commercial activities will be involved. The Community Use Lease categories are as follows:

Full community use

A full Community Use Lease applies where it is determined that:

- > there will be no permanent commercial activities conducted within the leased premises; and
- > the applicant has a **low or medium capacity to generate profit** from the use of the leased premises

Mixed use

A mixed-use Community Use Lease applies where it is determined that:

- > some permanent commercial activities will be conducted within the leased premises; and
- > the applicant has a **low or medium capacity to generate profit** from the use of the leased premises

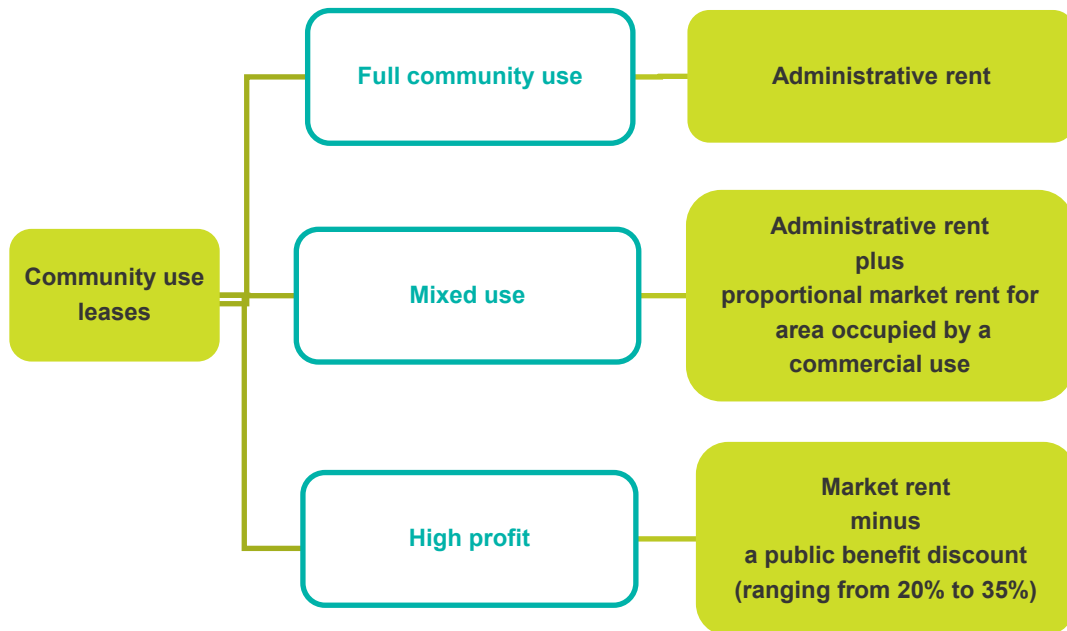
High profit

A high profit Community Use Lease applies where it is determined that, regardless of the presence or not of permanent commercial activities within the leased premises, the applicant has a **high capacity to generate profit** from the use of the leased premises.



Step 4 - Establish rent

Rental for Community Use Leases is to be determined in accordance with the category of Community Use Lease they fall under, as shown in the following diagram:



Full community use rent

Full community use tenants will pay an administrative rent only. The amount will be reviewed periodically to ensure that it is appropriate and will increase annually at a specified escalation rate.

A market valuation is to be used at lease establishment to inform the Minister (or delegate) of the rent subsidy that will be provided in applying an administrative rent.

Mixed use rent

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 as full community use i.e. administrative rent.

2: The area used for permanent commercial activities will be valued at the unimproved market rent that reflects only the value of the ground, or site, and does not consider the value of any improvements. The VGV can assess the market rent of the entire leased premises or just the market rent of the part of the lease used for



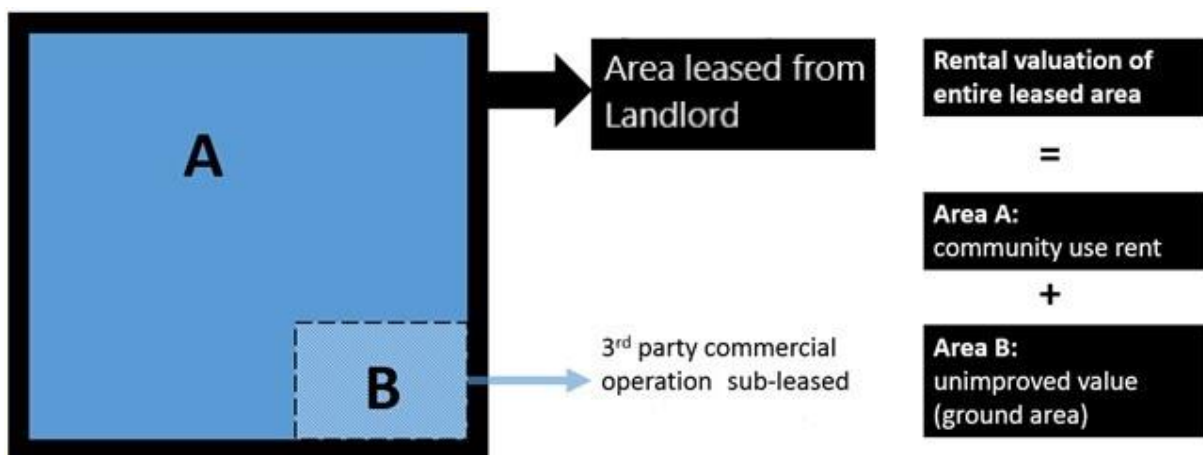
commercial purposes. If the VGV assess the whole site then the market rent for the area used for commercial purposes can be calculated by:

- Dividing the market rent for the premises by the number of square metres for the whole premises (for multi storey buildings add the area of all floors together as the area of the whole premises). Then multiplying this figure by the number of square metres occupied by the commercial use.

For example, if the area of the premises is 100 m² and the area occupied by the commercial use is 25 m² and the market rent is assessed as \$5000 annually then the market rent for the occupied area is:

$$(5000 \div 100) \times 25 = \$1250$$

3: The values from 1 and 2 are added together to determine the rent for mixed use tenants, as per the following diagram:



High profit rent

High profit tenants will pay market rent minus 20 to 35 per cent discount depending on the public benefits provided through the lease, as outlined in Table 3 below.

The commencing discount is 20 per cent (for the provision of public benefits A, B, C and D assessed at Step 1). A further 5 per cent discount may be granted for each of the three other public benefits provided, being, E, F and G as outlined below. Hence, high profit tenants will be granted a 20 to 35 per cent discount from market valuation.



Public Benefit		Part community use discount
A.	The tenant's use of the leased premises will increase social engagement and promote health and wellbeing 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 groups, with strategies in place to review and remove any barriers to participation. Disadvantaged 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.	5%
F.	The proposed uses or activities demonstrate standards over and above legislated and planning requirements, and, the requirements are supported by relevant policies or plans.	5%
G.	There are expenditures obligated of the tenant on the site or on public land adjoining the site that will benefit the State.	5%
Potential total discount		35%

Table 3: Calculating rental discount based on public benefit





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