

Document Control		
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1.0.0	24 May 2023	M19/05/23

1. Purpose and Scope

To ensure the equitable and appropriate allocation of tenure over Council owned land or Council controlled land and facilities to community organisations, for conducting activities that benefit the community, whilst recognising the importance of the role played by these organisations.

This Policy will apply to Council's Freehold and Trustee Leases (including Licenses, Permits and Agreements) granted for community use.

Council recognises and is committed to meeting the needs of community organisations to have access to Council owned or controlled land through appropriate and consistent tenure arrangements.

Community organisations require access to community land to conduct a range of activities that enhance the physical activity, social interaction and cultural development of the community. Community organisations are often volunteer-based and have objectives focused on community development and the provision of community services.

Consideration will be given to organisations that demonstrate the principles and practices of multi-purpose use, shared use, flexibility in activities and can demonstrate community benefit or fulfil a community need where there is a gap in services.

¹ The Version Number is direct from the Corporate Records Management System

2. Related Legislation/Documents

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Land Act 1994*
- *Land Regulation 2009*

3. Definitions

To assist in interpretation of this policy the following definitions apply:

- *"Agreement"* means a document (including any schedule, plans, appendices, forms and annexures) and any other document that forms a written agreement for tenure purposes by the Council to the Tenant over Council owned or controlled land for the Term.
- *"Community Organisation"* means an organisation, club, association or community group that is not-for-profit and exists for a public purpose providing programs and services to the community.
- *"Council"* means Gympie Regional Council.
- *"Council controlled land"* means State land (Reserve Land) for which Council is the Trustee.
- *"Council owned land"* means Freehold Land for which Council is the owner.
- *"Land"* means the land and improvements that form the tenure area under the Agreement.
- *"Lease"* means an agreement under which Council grants to a lessee the right to occupy Council owned land or Council controlled land for an agreed period, and includes a Trustee Lease under the *Land Act 1994*.
- *"Licence"* an agreement granted by Council over Council owned freehold land to a community organisation to use the land or infrastructure (without exclusive use).
- *"Management Agreement"* an agreement granted by Council to undertake specified activities on Council owned or controlled land.
- *"Primary Purpose"* refers to the purpose set out in the trust deed, or in the case of Council freehold and leasehold land, the intention for use when the land was set aside for the community. Examples of primary purpose include sport and recreation, environmental purposes and beach protection and coastal management.
- *"Secondary Use"* means use of community land that does not align with the land's primary purpose, or is commercial in nature.
- *"Tenant"* means the Lessee, Licensee, Permittee or Manager under the Agreement.
- *"Trustee Permit"* an agreement granted by Council on Reserve Land to a community organisation in accordance with the *Land Act 1994*.

4. Policy Statement

This Policy is intended to ensure Council validly issues its tenure arrangements using an open and transparent process whilst optimising use of the land, buildings and structures and to maximise community benefit.

All leases, licences, permits and agreements contain clearly defined rights of use and access to Council owned or controlled land for the period of the tenure arrangement, including the responsibility for the development and maintenance of the site, ensuring that Council owned or controlled facilities are appropriately maintained.

Whilst Council is committed to ensuring fair and consistent tenure conditions with organisations, it is acknowledged that some conditions and terms may be negotiated between Council and individual organisations in extenuating circumstances.

Applications for tenure will be considered in accordance with the processes and principles of this policy unless otherwise determined by Council.

5. Policy Principles

The following principles will apply for tenure requests under this policy:

5.1 Application for Tenure

Generally, for Council owned or controlled land available for tenure, an Expression of Interest (EOI) or Invitation for Tenure (IFT) process is conducted to identify and determine the most suitable occupant or user of the land.

Council will assess all applications against the eligibility and key selection criteria specified in the EOI or IFT documentation to select a suitable occupant or user. If a suitable occupant or user is not identified Council may determine not to grant tenure to any applicant.

Community organisations seeking tenure outside of the EOI or IFT process must complete the Request for Tenure of Council Owned or Controlled Land form.

Granting of tenure is not guaranteed for applications made outside of an EOI or IFT process.

5.2 Eligibility Criteria

To be eligible to apply for, or renew a form of tenure over Council owned or controlled land under this policy, the applicant must:

- (a) be a not-for-profit community organisation incorporated under the *Associations Incorporation Act* and/or has the appropriate status under other applicable legislation acceptable to Council; and
- (b) have a proposed use for the land that is for sporting, recreational, cultural or community services purposes and any use must not adversely impact the community asset, the environment or the public interest; and

- (c) be able to demonstrate the ability to meet all financial and operational obligations detailed in the tenure arrangement; and
- (d) hold Public Liability Insurance in the sum of not less than \$20,000,000.00 or such other amount that Council shall determine from time to time.

5.3 Types of Tenure

Lease - Freehold

An agreement between Council and a Lessee for Council owned land (Freehold Land) where the lease provides for exclusive use of the land or infrastructure for a specified purpose and term.

Lease – Trustee

An agreement between Council and a Lessee for Council controlled land (Reserve Land) where the lease provides for exclusive use of the land or infrastructure for a specified purpose and term in accordance with the *Land Act 1994*. This type of tenure may be subject to Ministerial Consent and approval of a Land Management Plan as per State Government Guidelines for use of Trust Land, at the cost of the applicant.

Licence

An agreement between Council and a Licensee for Council owned land (Freehold Land) where the Licence provides for non-exclusive use of the land or infrastructure for a specified purpose and term.

Management Agreement

An agreement between Council and a Manager to undertake specified activities on Council owned or controlled land or infrastructure.

Trustee Permit

An agreement between Council and a Permittee for Council controlled land (Reserve Land) where the permit provides for non-exclusive use of the land or infrastructure for a specified purpose and term.

In all cases, Council will consider the most appropriate lease area and form of tenure to be granted. Council will take into consideration future development plans of the lessee where possible.

5.4 Tenure Periods

The term of tenure is dependent on a number of factors and will be determined at Council's discretion through consultation with the community organisation.

Council normally offers the following terms:

Freehold Land

- (a) A lease of up to ten years;
- (b) A licence of up to five years; or
- (c) An agreement of up to five years.

Reserve Land

- (a) A Trustee Lease of up to ten years
- (b) A Trustee Permit of up to three years; or
- (c) An agreement of up to five years.

Council may, at its discretion and depending on requirements of the associated Agreement, offer the community organisation an Agreement with an option to renew for an additional term. Trustee Leases and Trustee Permits cannot include options to renew. All tenure arrangements will be reviewed prior to expiration and processes commenced for their renewal or termination at the conclusion of the tenure period.

Requests for lease tenure in excess of ten (10) years (inclusive of option to renew periods) may constitute a reconfiguration of lot and trigger the need for a development approval under the *Planning Act 2016*. Longer term leases may be considered at Council's discretion in exceptional circumstances e.g. where the applicant proposes to make significant contributions, capital improvements and/or development at the site.

5.5 Tenure Documentation

Council or their nominated solicitor will prepare the tenure document which reflect this policy and which meet the requirements of relevant legislation.

Once the tenure document has been issued to a community organisation for signing, the organisation must return all copies of the original signed tenure document to Council within thirty (30) days.

The tenure document will then be executed by Council's delegated officer and one copy will be returned to the community organisation for their records.

Leases for both Freehold Land and Trustee Land must be registered with Titles Queensland. Trustee Permits that exceed one (1) year are also required to be registered with Titles Queensland.

5.6 Fees and Charges

Annual Rental

Annual rental for a Lease, Licence, Management Agreement or Permit is set in accordance with the Council's adopted Fees and Charges for a Community Lease Agreement at the time the tenure document is issued and reviewed annually on the anniversary of the commencement date. Annual rental (if applicable) will be invoiced and collected at the commencement of the Lease, Licence, Management Agreement or Permit.

Rental charges applied to Council owned or controlled property for community purpose will be as follows:

- Community organisations without a liquor and/or gaming licence – one (1) unit per annum;
- Community organisations with a Community Club liquor and/or gaming licence and fewer than 500 members (all membership types) – three (3) units per annum;
- Community organisations with a Community Club liquor and/or gaming licence and more than 500 members (all membership types) – five (5) units per annum.

A unit of rent is as it appears in Council's list of Fees and Charges which are reviewed annually.

Rates and Charges

All new tenure arrangements will specify the associated responsibilities in relation to the payment of rates and charges.

Other Fees and Charges

All new tenure arrangements will specify the associated responsibilities for all other rates, taxes, assessments, duties, levies and other charges in respect of the lease, licence, agreement or permit area, but not limited to:

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| • Electricity (including field lighting) | • Pay Television |
| • Telephones/Internet/Data | • Trade Waste |
| • Solid Waste | • Association & Volunteer Insurance |
| • Public Liability Insurance | • Licencing (food, liquor, gaming etc) |
| • Contents Insurance | • Building or Planning application fees |

Council will consider on a case-by-case basis any request for assistance with any of the above fees and charges.

Survey Plan Charges

If a tenure arrangement (i.e. lease or trustee permit) is over a parcel of land that requires the arrangement to be registered with Titles Queensland, a survey plan may be required identifying the tenure site.

Council will contribute fifty percent (50%) of the cost of the survey plan. The community organisation will be responsible for the remaining cost of the survey plan and the applicable fee to register the survey plan with Titles Queensland.

Registration Fees

If a tenure arrangement (i.e. lease or trustee permit) is required to be registered or surrendered (at the request of the community organisation) with Titles Queensland, the community organisation will be responsible for the cost of the applicable registration fee.

Legal Costs

Freehold and Trustee Leases will be prepared by Council's nominated solicitor. All costs associated with the preparation of the lease will be borne by the lessee up to a maximum of \$1,500.00.

Council will attend to payment of the legal fees for the nominated solicitor and the community organisation will be invoiced after registration of the tenure document for reimbursement. If the community organisation wishes to seek legal advice, it is responsible for arrangement of such and any costs incurred.

All other forms of tenure will be prepared by Council's Property Branch. No costs are payable for the preparation of any tenure agreements prepared by Council staff.

Council's legal costs associated with any dispute resolution, legal advice or court costs arising from Council enforcing the terms of any Agreement will be borne by the Tenant.

5.7 Land and Infrastructure Maintenance

All new tenure arrangements will include a Maintenance Schedule and Statutory Maintenance Schedule as part of the formal documentation. Please refer to Appendix A and B of this policy.

The Maintenance Schedule and Statutory Maintenance Schedule specifies the responsibilities of each party to the tenure arrangement for the costs of maintaining, repairing and replacing improvements within the tenure site, unless otherwise agreed.

The schedules are not exhaustive and subject to change at Council's discretion. Some sections may not apply to every tenure arrangement. There may be exceptional circumstances where Council will take responsibility for maintenance, repairs and replacements and these will be on a case-by-case basis.

Prior to the commencement, and at the conclusion of tenure arrangements, Council will conduct a property inspection.

Council may conduct further property inspections and condition monitoring during the term of the tenure by Council's delegated officer. Council will issue a rectification notice for any items which the community organisation has not maintained to Council's expectations.

Should the rectification works not be completed within the designated timeframe, Council may complete the required works and issue an invoice to the community organisation for the cost of the works.

The community organisation must engage registered and suitably qualified tradespeople to undertake maintenance works where required, for example, when completing electrical works.

5.8 Ownership of Fixed Assets

All fixed improvements constructed or installed upon the Land will vest in Council from the time that they are constructed or installed. The removal of any fixed improvements by a Tenant at the expiry or sooner determination of the Agreement will be subject to the consent of Council being obtained prior to any removal occurring.

5.9 Improvements, Additions and Alterations

Tenants must obtain Council's approval before making any improvements, additions or alterations within the Land. A 'Landowners Consent for Improvement Works' application must be completed and forwarded to Council with the applicable supporting documentation for internal stakeholder review.

Council may approve, approve with conditions or refuse applications for approval at its discretion. Council's consent for the improvements, additions or alterations does not constitute a Development Application, Operational Works Application or Building Works Application, which may be required in addition to Council's consent.

Council may require a Tenant to remove any illegal, non-conforming or unapproved structures (permanent or temporary), equipment or property or order the immediate non-use or securing of such items at the expense of the Tenant.

5.10 Access by Council

Council officers, contractors, tradespersons are entitled to enter the Land at all reasonable times, to inspect or make repairs and alterations as Council deems necessary for the safety, preservation and improvement of the facility. Accordingly, where required, the Tenant will be required to provide Council with a service and security alarm codes and procedures to enable independent access to undertake these activities.

Council reserves the right to re-key facilities to enable independent access by Council officers, contractors and tradespersons.

Council will make every endeavor to provide appropriate notice where access to a facility is required.

In the event of a declared disaster, emergency, incident, crisis, critical or adverse event, and if requested by Council the Tenant or occupant must temporarily yield up possession and immediately make available the Land to Council for use as a designated evacuation centre.

5.11 Insurance

All new tenure arrangements will specify the tenure holder as solely responsible for acquiring and maintaining public liability insurance and other insurance coverage deemed appropriate e.g. building, contents, WorkCover etc. with all insurance policies noting Gympie Regional Council as an interested party.

The Tenant will be required to provide proof of insurance coverage on an annual basis or as requested.

5.12 Subleasing

A Tenant must obtain Council's approval prior to subleasing or otherwise sharing the use and occupation of all or any part of the Land with another party. Council may approve, approve with conditions or refuse any application for such approval.

The Tenant is solely responsible for all costs associated with a sublease including document preparation and registration.

5.13 Third Party Hire of Facilities

All Agreements will include a statement recognising Council's vision of maximising community use and a commitment by the Tenant to support shared and multiple use of the facility by community-based organisations.

Wherever possible, facilities should also be made available by the Tenant for casual hire where this does not interfere with the primary purpose of the facility or adversely affect the amenity of the local community. Hiring guidelines, including fees, will be referred to Council for approval. Fees from casual hire are payable to the Tenant and should be used to cover costs associated with maintaining the facility.

Any use by a third party must be in accordance with the Planning Scheme and Council Local Laws and where required, permits for use must be obtained.

5.14 Caretakers

Tenants may not permit a caretaker to occupy any area of the Land without the prior written consent of Council.

5.15 Liquor and Gaming Licenses

Council's approval as owner or trustee of the Land is required in order to lodge an application for a liquor licence or permit or gaming licence with the Office of Liquor and Gaming Regulation. An application for these licences or permits must be submitted to Council in writing before applying to the Office of Liquor and Gaming Regulation.

5.16 Surrender

If a Tenant wishes to surrender the Agreement, it must advise Council of its intention to do so in writing, specifying the reason for the surrender and the date on which the Tenant is seeking for the tenure to end.

Council will prepare the relevant documents for execution. If the Agreement is registered with Titles Queensland, the Tenant will be responsible for payment of any fees associated with the surrender of the Agreement.

5.17 Termination

If a Tenant is in breach of the Agreement, Council may resolve to terminate the Agreement. Council reserves the right to terminate the Agreement prior to the expiry of the term if the Land is required for Council's infrastructure planning or construction requirements.

In the event of an Agreement being terminated for this reason, Council will provide appropriate notification to the Tenant and if possible, will make all reasonable attempts to relocate the community organisation to a suitable alternative facility.

Once the Agreement has terminated, the Tenant must provide vacant possession of the Land to Council.

The Tenant must ensure that the Land is returned in good, tenantable repair and condition prior to vacating the site.

6. Roles and Responsibilities

Council's Property and Land Management Branch are responsible for administering tenure arrangements of all Council owned and controlled community land and infrastructure, including tenure preparation and management.

Council's Community Development Team is responsible for relationship management with community groups seeking to hold or having existing tenure under this policy. This includes recommendations to the Property and Facilities Branches of viable community groups suitable for tenure and general support during tenure.

7. Review

This policy will be reviewed when any of the following occur:

1. The related legislation/documents are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of Council.
3. As initiated by the CEO or Executive Team.
4. Periodic Review – within four years from date of adoption.

8. Delegations

NIL

9. Appendices

1. Maintenance Schedule
2. Statutory Maintenance Schedule