

Council Policy

Community Tenure Over Council Property

Policy Reference Number	CP00013	Choose an item Date	20/12/2023
Portfolio	Asset and Environmental Sustainability	Next Review Date	20/12/2026
Business Unit	Resources and Sustainability	Document ID	12443155

1. Purpose/Objective

The objectives of this Policy are:

- To facilitate fair and equitable community access to Council owned and controlled facilities and land;
- Ensure fair and consistent terms of agreements between tenant organisations and equitable access to Council properties;
- Provide accountability and transparency for Council expenditure on agreement costs; and
- Ensure sound financial management and effective administration of Council properties provided for community purposes

1.1. KEY PRIORITY - OPEN AND RESPONSIVE GOVERNMENT

Council will provide leadership that supports the diverse needs of our community. We value this diversity and will actively engage to deliver a range of affordable services in an efficient and fair manner. We will acknowledge the aspirations of our community when making decisions in an ethical and transparent way.

Strategy - Create a corporate environment underpinned by ethical behaviour that fosters a proactive customer service culture, processes and procedures that progress open and accountable governance and apply a risk management approach.

2. Scope

This policy will apply to all **Community Organisation** applicants for a lease, licence / permit, or management agreement of **Council owned** or **Council controlled** land, for the purpose of providing sporting, recreation and community service activities.

The policy does not relate to **Commercial occupation** of Council owned or Council controlled land or buildings thereon.

3. Responsibility

The Manager, Resources and Sustainability, and Principal Specialist (Property Management) are responsible for ensuring this policy is understood and adhered to.

4. Policy

Council is committed to maximising the community benefit and use of land and facilities that it either owns or controls. To achieve this, **tenure agreements** will be equitable and sustainable, imposing consistent lease or licence agreement conditions, embedding community access, dispute resolution and asset management principles.

The primary principles considered in development of Community Organisation tenure agreements include:

- Facilitate fair and equitable community access to Council owned and controlled facilities and land;
- Optimise community use of Council facilities;
- Ensure Council controlled land is developed and occupied responsibly having regard to the interests of local communities; and
- Assist **tenant** organisations to understand and support the achievement of Council's policies and plans;
- Ensure fair and consistent tenure agreement conditions across tenant organisations, and equitable access to Council owned or controlled facilities;
- Use of standardised lease, licence, and management agreement documents by Council throughout the region;
- Ensure tenants share the responsibility and cost of operation and maintenance of the facility they occupy;
- Ensure that Council owned and controlled facilities are maintained to an appropriate standard;
- Provide accountability and transparency for Council expenditure on tenure costs;
- Ensure sound financial management and effective administration by Council of its land occupied by community organisations.

4.1. ELIGIBILITY CRITERIA

Community organisations seeking a tenure agreement from Council should be non-profit and incorporated pursuant to the Associations Incorporation Act (1981) or any other Act of Parliament. Organisations will be assessed for suitability on the following criteria:

Eligible organisation criteria:

- the proposed use is for sporting, recreational, and/or community services purposes.
- the applicant is a not-for-profit community based organisation incorporated under the Associations Incorporations Act and/or the applicant has appropriate status under other legislation acceptable to Council
- financial viability and adequate insurance coverage;

Council officers may also seek additional information where necessary to better understand activities, the extent of community use, and opportunities for facility and service development.

All tenants are required to report against eligibility criteria annually and to advise Council of any changes to their organisational status. Tenants are required each year to advise Council of insurance coverage and compliance with any relevant licensing requirements and provide a copy of their annual report and financial statements.

Site uses that are commercial in nature and dominate the use of the land are inconsistent uses for eligibility under this policy. Commercial components will only be considered where they are consistent with the permitted use of the land and do not overpower or dominate the land. Revenue streams gained through commercial activities are to go toward the community organisations maintenance and operational obligations for the facility.

Greater than 50% of Community Organisation *management committee* members seeking or holding a community tenure agreement with Council must have their main residence or otherwise be a registered land owner within the Scenic Rim Local Authority area, unless otherwise approved by Council in writing.

A tenant who breaches tenure conditions or fails to meet the relevant criteria or other conditions may be required to relinquish their tenure agreement.

5. Definitions

Activity related infrastructure	Means assets and equipment used by the tenure holder for the specific activities comprising the permitted use, including, but not limited to field line markings, goal posts, dugouts, nets and posts, scoreboards, player and spectator seating and fencing, playing surfaces, containment areas, fencing and jumps, arts and commemorative pieces, historical artefacts and pieces, specialised communications equipment and lookouts, landing pads and launching equipment / ramps, weather equipment, theatrical infrastructures, and all other infrastructures related to the specialised activity for the permitted use
Council	Scenic Rim Regional Council
Community organisation	means a not-for-profit community based organisation incorporated under the Associations Incorporations Act and/or the applicant has appropriate status under other legislation acceptable to the Council.
Commercial occupation	Occupation of a property by an entity for the purpose of or that derives a financial return to the proprietors or shareholders
Council owned land	Means Council owned freehold land
Council controlled land	Means reserve or other land where Council is the trustee or lessee / sub lessee
General maintenance	includes but not limited to cleaning, waste disposal, general plumbing, general electrical, general carpentry; grounds i.e. mowing, pathways and gardens;
Occupant services	means: (a) electricity (including field lighting) and associated infrastructure; (b) gas; (c) internet and data, including associated infrastructure; (d) telephone including associated infrastructure; (e) pay television, including associated infrastructure; (f) trade waste; (g) sewerage and septic systems, rain water collection, bore water and similar infrastructures (h) any other utility or service used by the tenure holder in the Premises.
Outgoings	means all: (a) expenses incurred by the Council incidental to the ownership and/or operation of the Premises; and (b) charges, levies, premiums (excluding Council building insurance premium), rates, duties or taxes which: (i) are payable by the Council because the Council is the owner or controller of the Premises; and/or (ii) are otherwise imposed at any time (and regardless of whether the lawful taxpayer is the Council or the tenure holder).
Structural maintenance	includes but is not limited to building foundations, stumps, footings etc; building roof frame and trusses; building roof (tiles, sheeting); load bearing walls; stairs, ramps
Tenant	Is a person or entity who occupies land or property under an agreement with Council as landlord, and in the context of this policy includes all tenure holders, lessees, managers, licence or permit holders
Tenure	The regime under which the land is held, being a lease, licence or permit, or management agreement
Tenure holder	for a tenure that is a lease—the lessee under the lease; for a tenure that is a licence or permit—the licensee under the licence or permit; for a tenure that is a management agreement—the manager under the management agreement.
Tenure agreement	A lease, management agreement, licence, or permit.

6. Related Legislations/Documents

Land Act 1994

Land Regulation 2020

Land Title Act 1994

Local Government Act 2009

Local Government Regulation 2012

Planning Act 2016

State Policy - Secondary use of trust land under the Land Act SLM/2013/493.

Council Policy - Community Project Works on Council Land

This Policy supports the Scenic Rim Regional Council Corporate Plan 2026, in particular theme - Healthy, Engaged and Resourceful Communities

7. Version Information

Version No	Adoption Date	Key Changes	Approved by
1	20.12.2023	New Policy adoption to replace prior version CC01.02CP Community Leasing Policy. Item 11.8, Ordinary Meeting 20.12.2023	Scenic Rim Regional Council

8. Attachment A - Tenure Agreement Standards.

8.1. FORM OF AGREEMENT

Council will determine the most appropriate agreement type which may include any of the following;

- Freehold Lease Agreement;
 - the lessee has exclusive possession of the premises for a defined period, without an option for a further term.
 - for use on Council owned freehold land
- Trustee Lease Agreement;
 - the trustee lessee has exclusive possession of the premises for a defined period, without an option for a further term, also subject to the requirements of the Department of Resources for use of Trustee Land, including the provisions of the *Land Act 1996* and *Land Regulation 2020*.
 - for use on Council controlled reserve land where Council is the trustee of the site
 - Inconsistent uses may require development of a Land Management Plan (*Secondary use of trust land under the Land Act SLM/2013/493*)
- Management Agreement;
 - the manager of the site has the right to operate, control, and manage the site for a defined term. Exclusive possession is not granted.
 - for use on Council owned freehold land or Council controlled reserve land where Council is the trustee
- Licence or Permit Agreement;
 - an agreement generally of short duration
 - the occupier has the right to use particular premises for a permitted purpose. Exclusive possession of the site is not granted. The licence agreement is terminable on short notice
 - for use on Council owned freehold land or Council controlled reserve land where Council is the trustee
 - does not include "Permits to Occupy" for reserve land (gazetted roads for example) owned by the State, which is managed by the Department of Resources.

Each agreement has differing levels of responsibility for the tenure holder.

Management agreements are considered appropriate for sites / facilities where the dominant land use is a community centre or community hall, and may, for example, be offered as a designated place of refuge during a time of emergency. Other examples suitable for management agreements may include Tier 1 Council sporting facilities (such as Coronation Park, Selwyn Park, and Tamborine Mountain Sports Centre), botanic gardens, and other facilities as considered appropriate by Council.

8.2. AGREEMENTS ARE BASED ON STANDARD TERMS

Council is to ensure that agreements issued are based on standard terms for application across the region.

The length of each agreement will be negotiated taking into account the particular circumstances of the facility and occupier, however will be guided by the following principles:

<i>Freehold and Trustee Lease Agreements</i>	<ul style="list-style-type: none"> New Leases and Lease Renewals - generally offered for a 5 year term, however may be offered up to 10 years where a tenant requires certainty for planned capital works projects of value greater than \$150,000 in first 3 years, and is able to demonstrate funding or funding availability to support such project(s). Terms greater than 10 years (up to 20 years maximum) only considered by application where an occupier requires certainty for planned capital works projects greater than \$2.0m spend in first 3 years, and is able to demonstrate funding or funding availability to support such project(s), or who are identified by Council from time to time as requiring long term planning certainty. A lease with a term in excess of ten (10) years may constitute a reconfiguration of lot under the Planning Act
<i>Management Agreement</i>	<ul style="list-style-type: none"> New agreements and renewals - 5 years
<i>Licence or Permit Agreement</i>	<ul style="list-style-type: none"> New agreements - up to 1 year.

8.3. ANNUAL ADMINISTRATIVE CHARGE

Community organisations are required to pay an administrative charge in advance for each year or part thereof equivalent to the administrative charge as set out in Councils Schedule of Fees and Charges, for each year. Charges may vary depending on level of improvements at each facility (minor, moderate, and major).

Agreement Type	Category of Improvements		
	No or only minimal Improvements: Where premises contain up to 500 square metres of Class 1 - 10 habitable or uninhabitable floor area	Moderate Improvements: Premises contain between 500 and 1,000 square metres of Class 1 - 10 habitable or uninhabitable floor area	Major Improvements: Where premises contain greater than 1,000 square metres of Class 1 - 10 habitable or uninhabitable floor area
Freehold and Trustee Lease Agreements	Administrative Charge \$ Amount per annum or part thereof	Administrative Charge \$ Amount per annum or part thereof	Administrative Charge \$ Amount per annum or part thereof
Management Agreement	Refer to Councils published schedule of fees and charges for each financial year.	Refer to Councils published schedule of fees and charges for each financial year.	Refer to Councils published schedule of fees and charges for each financial year.
Licence or Permit Agreement			

Building classes as defined in the Building Code of Australia.

The annual administrative charge is calculated based on the category of improvements / gross floor area within each premises inclusive of all improvements that have been installed including any tenant installed improvements. Council may undertake an apportionment calculation of floor areas for any shared use assets.

8.4. AGREEMENT COSTS

Each party is responsible for its own costs in relation to preparation of any agreement under this policy.

All costs relating to the registration of a lease (where applicable), or survey plan preparation costs (where required), will be at the lessee's expense. Any costs associated with gaining planning or other approvals shall be the responsibility of the community organisation as tenure holder or applicant.

8.5. OWNERSHIP OF IMPROVEMENTS

All improvements once installed or fixed to the land are the property of Council from the time they are fixed or installed.

A tenant may seek to remove improvements it has installed, however the removal of any fixed improvements by a tenure holder at the expiry or sooner of the term of the tenure agreement will be subject to the consent of Council being obtained in writing prior to any removal occurring.

Council may require a tenure holder to remove any or all of the fixed improvements it has installed during, or at the end of the term of the agreement, and to make good any damage to the land.

8.6. CHANGES TO PREMISES

The tenure holder must not carry out any changes or works to the premises, including new installations, or any alterations required by law, without the prior written consent of Council.

Tenure holders are to adhere to Council's policy *Community Project Works on Council Land* in relation to project works, and obtain all regulatory approvals prior to commencing work on site.

8.7. OVERNIGHT ACCOMMODATION

The tenure holder must not use the premises for any purposes of a residential nature or for overnight accommodation and is not to permit a caretaker to occupy the premises without the prior written consent of Council. Consent will only be provided where considered appropriate by Council, including;

- the activity is of short duration and infrequent in nature;
- the activity supports the activities of the Community organisation or is of a fundraising nature;
- the Premises contains the usual facilities and amenities to support such activity; and
- the activity does not adversely impact on neighbouring properties.

8.8. MAINTENANCE RESPONSIBILITIES

Maintenance responsibilities vary depending on the type of agreement issued. All agreements require tenants to undertake routine cleaning and grounds maintenance, and maintain the facility in good condition and perform incidental maintenance not requiring a skilled tradesperson.

Licensed and qualified trades people must be engaged to undertake works other than routine maintenance.

- Tenants are required by Council to undertake 6 monthly self assessment of all improvements upon each site and report to Council, in addition to retention of and providing copies of all compliance testing reports, service reports, and copies of invoices for works completed.
- A self assessment form will be provided by Council to each tenure holder (which may be updated from time to time) for completion and return to Council in relation to the facility they occupy.

Further detail of particular maintenance and operational obligations within each of the agreement types are listed below;

8.8.1. Freehold and Trustee Lease Agreements

The lessee shall, at the lessee's cost, undertake all **general maintenance** and **structural maintenance** including to all buildings and other improvements including landscaping, gardens, all vegetation and other ground improvements within the leased area, including clean, maintain, repair, and/or replace, not withstanding if above or below ground, structural or non-structural.

All operational costs, **occupant services**, **outgoings**, and other charges relating to the use of the premises are the responsibility of the lessee, including compliance testing.

8.8.2. Management Agreements

The manager is responsible for all occupant services, outgoings and general maintenance at the facility, plus fire services and any other compliance requirements.

The Council is responsible for structural maintenance/renewal of improvements that are not specialised *activity related improvements* installed by the tenant. At its sole discretion, Council will determine whether structural work is completed.

A maintenance schedule is included within each management agreement detailing the items that Council takes responsibility for at the premises. All other items not listed within that schedule, are the responsibility of the manager.

8.8.3. Licence or Permit Agreement

These agreements are of short duration(s). Operational and maintenance provisions will vary from site to site, and may depend on the nature of improvements already constructed or if vacant land, including the permitted use / circumstances for the licence. Council may require the licence or permit agreement holder to take full maintenance and operational responsibility for the site, including payment of all occupant service charges and outgoings.

8.9. PROPERTY INSPECTIONS

In addition to tenant self assessment, Council officers may undertake inspections of the premises to ensure maintenance and safety obligations are being met by tenure holders. Tenure holders are to comply with any directions provided by Council in relation to any areas identified as requiring attention during the inspection.

8.10. INSURANCES

Tenure holders will be responsible for procuring, at their own cost, such insurances as are required by Council in respect of their occupation and use of premises and in accordance with the specific conditions of any agreement issued.

Tenants of Council facilities must maintain insurances as detailed in agreement documents such as (but not limited to);

- public liability insurance to a value and scope as detailed in agreement documents
- if the tenant has employees or volunteers, the tenant must have relevant insurance policies for workers' compensation and/or volunteers.
- Subject to the activity being performed on the land the tenant maybe required to hold additional/specialist insurance coverage for any high risk use of the land

Generally, Council will insure all non-specialised buildings and infrastructure within the defined tenure area, and occupiers are to insure their own specialised '**activity related infrastructure**', which may relate to their particular activity / use of the land.

8.11. THIRD PARTY HIRE OF FACILITIES

Council will encourage multi-purpose usage of facilities wherever appropriate. Facilities should also be made available by the agreement holder 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 agreement holder, and should be used to cover costs associated with maintaining the facility.

8.12. DISPUTE RESOLUTION PROCEDURES

In general, good communication and the relationship between the tenant and Council, and the community, will allow issues to be resolved in a timely manner. Minor complaints both by hirers to tenure holders, and between tenure holders and Council should be dealt with as soon as practicable by the receiver of the complaint.

Handling Processes for Formal Complaints

- Where a complaint is made directly to the tenure holder, the tenure holder shall formally investigate the matter and advise the complainant of the decision in writing; though the tenure holder shall refer to Council before advising the complainant.
- Where a written complaint is made to Council regarding a tenure holder's use of a facility, it may be referred to the tenure holder for a response and/or action. Council shall in all formal complaint cases make written contact with the complainant advising of the decision made; additionally a copy of responses may be made available to the tenure holder.
- Tenure holders are required to keep a complaints log, being a register of complaints received from customers or the public. The complaints log must be made available for inspection by a Council contact officer upon request.
- If the matter remains unresolved to the satisfaction of the complainant, Council's Complaints Management Policy will apply.

If the complaint or issue has arisen as a result of the tenant not complying with conditions of its tenure, Council reserves the right to take action against the tenant under the termination provisions of the relevant agreement.

8.13. TERMINATION

Where a tenant is in breach of the terms and conditions of the tenure agreement, Council may determine to terminate the agreement.

8.14. APPROVAL REQUIREMENTS

A lease agreement over Council owned or controlled land is subject to a resolution by Council. Licences and permits, or Management Agreements may not require a Council resolution.

A Land Management Plan may be required where a use is considered a Secondary Use for any trust land. *Department of Resources Operational policy Secondary use of trust land under the Land Act SLM/2013/493 (Formerly PUX/901/209).*

Planning and other regulatory approvals may also apply.

9. Renewals

Agreements (other than licences / permits) will be reviewed at least six months prior to expiration. A standard tenure agreement under this policy will be applied to all new applications and applications for renewal. The standard agreement will not be varied unless it is essential to the special requirements of the premises or the tenant, as approved by Council or its delegate.

10. Existing Agreements

Council acknowledges that there are existing historical leasing agreements and other arrangements in place which are not in line with this policy which will continue to be in place until their expiration or termination, unless otherwise agreed with the tenant.

11. Information Privacy

Council has developed an Information Privacy Plan in satisfaction of its obligation to ensure all individuals' personal information collected and stored by it is dealt with in a responsible manner, in line with the *Information Privacy Act 2009 (Qld)*. This Plan can be accessed from Council's website or can be provided upon request.