

6.9. ADOPTION OF TENURE POLICY

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RECOMMENDATION

That Council adopts the Tenure Policy.

EXECUTIVE SUMMARY

Council owns Freehold land and controls Reserve land as trustee, much of which is occupied and used by community and commercial organisations.

There are various arrangements currently in place with limited consistency in how tenure has been historically granted.

Adoption of a Tenure Policy will provide a consistent, transparent and equitable approach to administering and managing tenure fees and agreements.

BACKGROUND

A review of current and previous tenure arrangements identified inconsistent arrangements and/or fees, and informal or no tenure for some organisations utilising Council controlled land.

Currently there is no formal policy or framework in place to ensure equity across sporting and community groups requesting tenure.

A Tenure Policy will provide a consistent, transparent and equitable approach to administering and managing tenure fees and agreements.

COMMENT

A Tenure Policy was drafted for Councillor Workshop feedback and input prior to Officers consulting the wider community.

The Tenure Policy was finalised after considering Councillor and community feedback.

PROPOSAL

This proposal is for Council to adopt the Tenure Policy.

FINANCIAL/RESOURCE IMPLICATIONS

Financial and resource obligations will be detailed in formal tenure arrangements with Council as lessor and community or commercial entities as lessees.

RISK MANAGEMENT IMPLICATIONS

Tenure can provide community and commercial organisations with short or long-term stability depending on their requirements.

Lessees will be required to provide Public Liability Insurance under the tenure arrangement.

The risk of not adopting this policy will mean that inconsistencies for community groups will remain.

SUSTAINABILITY IMPLICATIONS

Economic: Security of tenure is a requirement for not-for-profit organisations applying for grants for infrastructure projects.

Environmental: Nil

Social: Community facilities are integral for not-for-profit organisations to carry out sporting, recreational, artistic, cultural, heritage and community activities, contributing to community vibrancy and wellbeing.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - We will conduct Council business in an open and transparent manner with strong oversight and open reporting.

Operational Plan 2023-2024 Actions:

New project arisen during the financial year.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Builder/Owner Council makes a significant investment every year in the infrastructure that underpins the Shire through its capital works program. Council will manage its assets with appropriate frameworks and deliver its projects through robust project management.

Custodian Council owns and manages infrastructure, facilities, reserves, resources and natural areas. In fulfilling its role as custodian, Council will be mindful of the community, the economy, the environment, and good governance.

CONSULTATION

Internal: Councillors Workshops held 20 September 2022, 6 June 2023, and 22 August 2023.
Sport and Recreation Officer
Manager Governance

External: Sport and Recreation Clubs
Council's Solicitor

COMMUNITY ENGAGEMENT

Local sport and recreation clubs were invited to review the draft policy in October 2022 and provide feedback.

While not all feedback was included in the policy itself, tenure documentation will incorporate some key points raised. For example, tenure agreements over Coronation Park (Mossman Showgrounds), will include the requirement to vacate the grounds for two weeks in July each year to enable the Mossman & District Show to be set up, run and packed down.

After updating the draft policy Councillors were briefed on the changes.

ATTACHMENTS

1. Tenure Policy [6.9.1 - 7 pages]



91. TENURE POLICY

Purpose

To establish a policy which ensures consistency, transparency and equity allocating and managing tenure arrangements for Not-For-Profit community groups and commercial organisations over Council-owned or controlled land and buildings.

Scope

This policy applies to applications from Not-For-Profit community groups and tenders/expressions of interest from commercial organisations, for tenure arrangements over Council-owned and controlled land.

This policy is not retrospective and does not apply to current tenure arrangements. Current tenure arrangements will continue under existing agreements until expiry, unless otherwise surrendered or re-negotiated by mutual agreement. Any future tenure arrangements will be in accordance with the adopted policy.

The policy does not apply to the casual hiring of Council halls and facilities, nor one off Prescribed Activities under Council's Local Law No.1 (Administration) 2020.

Policy Content

Background

Council owns freehold land and controls reserve land owned by the State, for community purposes, open spaces, and sporting and recreation reserves.

The *Land Act 1994* and the Land Regulation 2020 administer community tenure on land owned by the State of Queensland under the control of Council as Trustee (trust land).

The *Local Government Act 2009* and Local Government Regulation 2012 apply to both freehold and trust land, outlining conditions and processes for Council to dispose of valuable non-current assets (by lease). Council freehold land, while not subject to the provisions of the *Land Act 1994* nor the Land Regulation 2020, will be governed by the principles of this policy to ensure consistency with administering trust land where possible.

Objectives

The objectives are to ensure tenure allocation and management of Council-owned and Council-controlled properties:

- comply with relevant government legislation and policies;

- are consistent with anticipated future requirements;
- do not adversely impact assets nor the environment;
- maximise community benefit and facilities' use;
- provide long-term, sustainable use and management of open spaces, buildings and facilities;
- support long-term sustainability of community organisations;
- encourage shared use of facilities where practical;
- is open, transparent, and consistent in the application, approval and management processes.

Definitions

TERM	DEFINITION
Commercial Organisation	An entity performing a commercial activity to generate profit primarily for personal gain or not meeting the definition of Not-For-Profit Community Group.
Council owned or controlled land	Freehold land and Trust land held by Council, including any improvements situated on the land.
Freehold Land	Land held by Council in fee simple under the <i>Land Title Act 1994</i> . Fee simple means absolute title to the land, free of any other claims against the title, which can sell or pass to another by will or inheritance.
Lease	An agreement specifying occupation rights granted to a lessee, in return for valuable consideration. A contractual right to occupy or use Council owned or controlled land, exclusively.
Lessee	A person or organisation who has the right to use something such as land or a building according to a lease.
Not-For-Profit Community Group	<p>Community groups including, but not limited to those providing recreational, sporting and community services. Eligible Not-For-Profit community groups are incorporated clubs or associations carrying on activities for a public purpose in Douglas Shire and whose primary object is not directed at making a profit – they do not distribute profits or assets to members or a State body.</p> <p>The below sub-categories will be used to assist with determining the most appropriate tenure and rent arrangements.</p> <p><u>Voluntary organisations</u> – Organisations whose administrators and participants are solely volunteers and do not receive any type of payment or other benefit.</p> <p><u>Paid organisations</u> – Organisations who pay, or provide, or broker some type of benefit for one or more administrator or players/participants. This does not include the payment of a specialist coach or consultant brought in to assist with a specific project or program.</p>
Permit	An agreement specifying occupation rights granted to a permittee, in return for valuable consideration, the right to occupy Council owned or

TERM	DEFINITION
	controlled land for an agreed period, including a trustee permit under the <i>Land Act 1994</i> .
Shared User Agreement	A contractual right to occupy or use Council owned or controlled land without any legal right to exclude others.
Standard Tenure Documents	Standard terms and conditions for tenure arrangements approved by Council from time to time.
Tenure	A right to use and occupy land including trust land and freehold land.
Tenure Arrangement	Trustee Lease, Trustee Permit, Freehold Lease and Shared User Agreement.
Trust Land	Land set aside by the State, with Council as Trustee, under the <i>Land Act 1994</i> for a particular public or community purpose either as a Reserve or Deed of Grant in Trust.
Volunteer	A person carrying out community work on a “voluntary basis” receiving no remuneration and/or remunerated for reasonable expenses.

Tenure Arrangements and Terms

The length of tenure provided by Council under this policy will be dependent upon various factors, including but not limited to:

- The type of tenure sought;
- The ownership of the land where the tenure is sought;
- The demonstrated experience and sustainability of the organisation in delivering the intended services to the community; and
- The extent to which the organisation can demonstrate its ability to meet the obligations associated with the type of tenure sought.

The table below details the standard length of tenure that Council will provide under this policy for the various tenure types. However, in circumstances where an organisation has not previously held tenure over Council controlled land, or for other reasons as determined by Council, shorter lengths of tenure may be offered.

Where tenure is being offered by invitation to tender or similar arrangement, particular terms or specifications that will be incumbent on the successful lessee may be set out in the invitation documentation.

TENURE ARRANGEMENT	DEFINITION	TERM (MAX)
Freehold Lease	Long term tenure over Freehold land	10 years generally. Tenure terms in excess of 10 years may be offered where the lessee has

TENURE ARRANGEMENT	DEFINITION	TERM (MAX)
		invested, or will invest, significant funds towards the development of the site, buildings or facilities.
Freehold Permit	Short Term Tenure over Freehold land	3 years at 12-month intervals
Management Agreement	An understanding between Council and a user group party for management services at a facility for a particular term.	3 years or 10 years if in conjunction with a lease of the same term
Shared User Agreement	A contractual right to occupy or use Council owned or controlled land without any legal right to exclude others.	3 years or 10 years if in conjunction with a lease or permit of the same term
Trustee Lease	Long term tenure over Trust land in accordance with the State's Schedule 3 Land Regulation 2020	10 years generally. Tenure terms in excess of 10 years may be offered where the lessee has invested, or will invest, significant funds towards the development of the site, buildings or facilities.
Trustee Permit	Short term tenure over Trust Land in accordance with the State's Schedule 3 Land Regulation 2020	3 years at 12-month intervals

Tenure arrangements will define the rights and obligations of all parties for usage, activation, management and maintenance of the land and any improvements on the land.

The maximum tenure term offered for Council-owned or controlled land is generally 10 years.

Longer terms to a maximum of 30 years may be considered where the applicant will secure funding, commit significant capital development or investment into the land or infrastructure on the land, or provide other reasonable justification. Final approval will be by Council Resolution.

Deciding Appropriate Use

Before land is allocated or occupied, Council will evaluate the most appropriate tenure and use for the land to encourage highest and best use, and multi-use. If multiple organisations are interested in the same parcel of land or building Council may attempt to resolve the matter through a Shared User

Agreement. However, where an organisation has occupied a site long term or has existing rights and has met all of their obligations under their tenure arrangement, they will be given first preference to continue to occupy a space or building.

Organisations must be assessed as having a commitment to conducting activities that align with Councils Corporate and Community Values:

- Accountability
- Integrity
- Inclusive
- Ethical
- People Focussed
- Teamwork
- Honesty
- Fairness
- Respect

If an organisation is deemed to be unsuitable for tenure rights, giving regard to an assessment of the organisations primary purpose, function or activities, Council reserves the right to decline tenure.

Offering Land for Use

Council may enter into negotiations exclusively with a community organisation for the issue of tenure without first offering the land by way of public notification. Such negotiations will be subject to Council approval by way of resolution.

Under the Local Government Regulation 2012, Part 3, Section 236, exceptions may be applied allowing the issue of a tenure arrangement without a tender or expression of interest.

Commercial entities must meet the following key criteria:

- Satisfy the conditions outlined in the Public Tender/Expression of Interest documentation;
- All financial and operation obligations and key performance indicators specified in Council's standard tenure documents and/or the respective tenure agreement including relevant upfront and ongoing costs: and
- Commit to valuing, protecting and preserving community assets for the ongoing benefit of the community.

Application for Tenure

Not-For-Profit community group - To apply for a tenure arrangement with Council, applicants must complete and submit a 'Tenure Application - Council owned or controlled land'.

Commercial entities – As specified in tender/expression of interest documentation publicly advertised by Council in accordance with the Local Government Regulation 2012.

Options to renew

In accordance with the *Land Act 1994* and Schedule 3 Land Regulation 2020, tenure arrangements for Trust land cannot include options to renew or hold over at the expiry of a lease. For consistency, options to renew and holding over will not be offered in Freehold land agreements.

Fees and Rent

Initial Fees

Successful applicants of a trustee or freehold lease will be required to pay Council reasonable costs to establish new tenure arrangements. Costs may include, and are not limited to, preparation, survey and registration of agreements and plans.

Where a Shared User Agreement is to be established an initial application fee will apply.

Rental

Voluntary Not-for-profit Organisations

Fees for tenure arrangements for Voluntary Not-for-profit Organisations will be a nominal amount listed in Council's adopted Annual Fees and Charges schedule.

A higher rent may apply to Paid Organisations, as defined under Not-For-Profit Community Groups. Any tenant in this sub-group who has the ability to generate income from both a liquor licence and gaming licence, or has paid employees or access to alternative funding, will be subject to a market rental value determined by a registered valuer. Organisations who provide a community service (information, advice, practical or financial help, support programs) may be afforded, by Council resolution, the Voluntary Not-for-profit categorisation for the purpose of determining rent payable.

Notwithstanding, the final determination for the amount of rent required to be paid by any Paid Organisation that is subject to a Market Rent Review, will be determined by a Council resolution.

Organisations that have exclusive use of a property will be required to pay the relevant rates and water, where provided. However, Not-for-profit entities may apply for a rates rebate, as per the Rates Rebate – Not-For-Profit Entities Policy.

If resolved by Council, annual rent will be adjusted in line with the Consumer Price Index (Brisbane figure). Rent reviews will be undertaken in accordance with the terms and conditions of the tenure arrangement.

Commercial Organisations

Rent will be determined by tender or current market rental value determined by a registered valuer.

Related Legislation

Local Government Act 2009

Local Government Regulation 2012

Land Act 1994

Land Regulation 2020

Land Title Act 1994

Related Documents (Local Laws, Policies, Forms)

Open Spaces General Policy

Rates Rebate – Not for Profit Organisations Policy

Policy Review

This policy is to be reviewed whenever legislation changes, or every 2 years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

Policy Details

Policy Name	Tenure Policy
Policy Number	91
Policy Version	1
Document Number	
Endorsed by	Chief Executive Officer
Policy Type	Council
Approval Authority	Council
Date Adopted	Date adopted at Council
Time Period	2 Years
Review Date	Approx 3 months prior to next adoption
Policy Department	People and Community Services
Link to Corporate Plan	Robust Governance and Efficient Service Delivery
Revoked/Superseded	

This policy is to remain in force until otherwise determined by Council.