Community Leasing Policy

Head of Power

Local Government Act 2009

Related Legislation

Land Act 1994

Objective

To ensure the equitable and appropriate allocation of tenure over Council owned or 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.

Definitions

Association means an incorporated association under the Associations Incorporation Act 1981, or similar legislation and a company limited by guarantee.

Community organisation means an association whose primary object is cultural, sporting, recreational, educational or community service purposes and whose constitution or rules provide that its income, profits and assets may only be applied to the promotion of its objects and may not be applied to the payment of dividends or distributions to its members.

Council controlled land means land for which Council is the trustee.

Lease includes a trustee lease under the Land Act 1994.

Licence means a contractual right to occupy or use Council owned land without any legal right to exclude all others.

Permit to Occupy means a trustee permit to occupy under the Land Act 1994.

Specialist Facility means land on which activities conducted by lessees are considered by Council to be specialist or unique in nature, or are akin to commercial operations. Examples include, lawn bowl greens, golf courses, showgrounds, historical villages, residential or aged care accommodation and kindergartens.

Tenure means a lease, licence or permit to occupy.

Application

This policy applies to the granting of tenure over Council owned or controlled land and facilities to community organisations.

Policy Statement

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.

Organisations eligible to apply for leases, licences and permits to occupy include sporting, recreational, educational, cultural and other not for profit community service and volunteer based organisations. Consideration is 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 service provision.

The purpose of the policy is to ensure the equitable, fair and appropriate allocation of Council facilities whilst optimising use of the land, buildings and structures and to maximise community benefit.

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

It is recognised that community organisations are often comprised of volunteers acting in the individual's discretionary time, however organisations need to value, protect and preserve the community assets they enjoy for the ongoing benefit of the community.

Council is committed to ensuring fair and consistent tenure conditions between organisations, however 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 granted on the terms specified in Appendix A to this policy.

**Related Documents**

This policy complements and is to be implemented in conjunction with other Council policies and directive but not limited to:

- Form - Request for Tenure of Council land
- Form - Community Leasing Renewal Application – Community Organisations and Sporting Groups

**Review Triggers**

This Policy will be reviewed for applicability, continuing effect and consistency with related documents and the Law when any of the following occurs:

1. The related documents are amended.
2. The related documents are replaced by new documents.
3. Amendments affect the scope and effect of a Policy of this nature are made to the Law.

Otherwise, this Policy is to be reviewed at least once every two years for relevance and effectiveness.
Responsibility

This Policy is to be:

1. Implemented by the Manager Community Services, Sport & Recreation; and
2. Reviewed and amended in accordance with the "Review Triggers" by the Manager Community Services, Sport & Recreation in consultation with the Manager Asset Maintenance.

<table>
<thead>
<tr>
<th>Policy: 2150-079</th>
<th>Community Leasing Policy</th>
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<tbody>
<tr>
<td><strong>Document Control</strong></td>
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<tr>
<td><strong>Version / Reviewed</strong></td>
<td><strong>Version Adoption</strong></td>
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<tr>
<td>Version 1</td>
<td>Coordination Committee (14/525)</td>
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<tr>
<td>Version 2</td>
<td>Administrative Correction only: 'Related Documents', 'Review Triggers' - administrative wording and 'Responsibility' - position titles.</td>
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</tbody>
</table>
Appendix A – Terms and Conditions of Leases, Licences and Permits to Occupy for Community Organisations

Application for Tenure

Generally for Council owned or controlled land available for tenure, an Expression of Interest (EOI) process is conducted to identify and determine the most suitable occupant or user of the land. In some instances Council may target EOIs from particular community organisations that meet specific community needs.

Council will assess all applications against the eligibility and key selection criteria specified in the EOI 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 an EOI process must complete the Request for Tenure of Council Land application process.

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

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:

- be a community organisation;
- be able to demonstrate its ability to meet the financial obligations under the form of tenure sought; and
- be proposing to use the land for sporting, recreational, cultural, educational or other community service purposes.

Types of Tenure

Leases - Exclusive Use of Building/s or Facilities

A lease provides the lessee with exclusive use of a defined lease area for a specified purpose and term. Lease areas will generally be defined by building footprints, but will include access ramps, stair cases and gardens which bound the building/s.

Lease areas will also include dedicated non-turf activity space (e.g. tennis / netball courts, BMX tracks) where those areas are to be used exclusively by the community organisation.

The lease area for Specialist Facilities will comprise all buildings and associated land.

In all cases, Council reserves the right to determine how a lease and the appropriate lease area is characterised, but will take into consideration the future development plans of the lessee where possible.

Licences / Permits to Occupy – Shared Use of Building/s or Facilities

A licence or permit to occupy provides the occupant with non-exclusive use of a defined licence or permit area for a specified purpose and term. Licence or permit areas will generally be defined by building footprints and surrounds where Council determines that exclusive use is not required, or where a facility or space within a facility is shared between two or more organisations.

Where two or more organisations are to exclusively occupy separate parts of the same building, leases will be offered to the organisations.
In all cases the Council will determine the most appropriate form of tenure to be granted.

Permits to Occupy – Sporting Fields

A permit to occupy provides the occupant with non-exclusive use of a defined licence or permit area for a specified purpose and term. Permits to occupy will generally be granted over fields to sports clubs and will provide appropriate access for training and fixtures.

Permits to occupy will provide Council with greater flexibility and access to undertake operational responsibilities, close sports fields due to weather conditions and will provide for responsiveness to changing community demands, particularly in providing adequate access to sports fields for multiple organisations (sports clubs, schools etc).

Allocated times of use for sports fields may change from season to season and will be determined by Council.

Tenure Documentation

Council will prepare standard lease, licence and permit to occupy documents which reflect this policy and which meet the requirements of relevant legislation. Council will meet the costs associated with lease preparation, survey fees and document registration (where required).

After a lease, licence or permit to occupy has been issued to a community organisation for signing, the organisation must return all copies of the original signed tenure documents to Council within thirty (30) days.

The documents will then be executed by Council’s delegated officer and one original copy will be returned to the community organisation.

Length of Tenure

The standard term of a lease or licence will be five years. Terms of longer than five years for a lease may be offered where:

- The organisation is investing significant funds towards the development of the facility; or
- Council acknowledges the critical need of the organisation for long term planning certainty, for example repayments of a mortgage over the lease.

It will be at Council’s discretion to grant a lease for a term of more than five years and requests will be assessed on a case by case basis. Council will not grant options to extend the term of a lease.

The maximum term of a permit to occupy is governed by the Land Act 1994 (currently three years).

In all cases the Council will determine the most appropriate term, up to the maximum term indicated in this policy, for any form of tenure.

Fees and Charges

Annual Rental

Rental for a lease, licence or permit to occupy over a building is set in accordance with the Council’s adopted Schedule of Fees and Charges at the time the tenure document is issued.

Rental will not be charged for a permit to occupy sports fields.
Rates and Charges

Council will pay the following fees and charges relating to the lease, license or permit area:

- Council issued rates and charges; and
- Unitywater issued charges for water and sewerage services

Other Fees and Charges

The lessee or occupant is solely responsible for all other rates, taxes, assessments, duties, levies, impositions and other charges in respect of the lease, licence or permit area including, but not limited to:

- Electricity (including field lighting)
- Telephones
- Internet / data
- Public liability insurance
- Contents insurance
- Pay television
- Trade waste
- Solid waste
- Licencing (food, liquor, gaming etc)

Building and Structures Maintenance

The lessee or occupant is solely responsible for the costs of maintaining, repairing and replacing all improvements within the lease, licence or permit area as may be required to enable those improvements to be used in accordance with the purpose specified in the lease, license or permit.

These costs will include:

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
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<tbody>
<tr>
<td>Electrical (including field lighting and monthly testing of RCDs)</td>
<td>All maintenance, repairs and replacement</td>
</tr>
<tr>
<td>Cleaning</td>
<td>All cleaning, collection, emptying and disposal</td>
</tr>
<tr>
<td>Plumbing, sewerage, water supply and draining (including items on the exterior of the building/s)</td>
<td>All maintenance, repairs and replacement</td>
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<td>Carpentry</td>
<td>All maintenance, repairs and replacement</td>
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<tr>
<td>Fittings and fixtures (all other)</td>
<td>All maintenance, repairs and replacement</td>
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<tr>
<td>Fire services (inc. fire and evacuation plans, evacuation signs and diagrams and fire evacuation practice records)</td>
<td>All provision, updating and monitoring</td>
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<tr>
<td>Security and access</td>
<td>All maintenance, repairs and replacement</td>
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<tr>
<td>Licences / Permits (For example food, liquor, gaming etc)</td>
<td>Obtaining, maintaining and holding</td>
</tr>
<tr>
<td>Miscellaneous – all other items</td>
<td>All maintenance, repairs and replacement</td>
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It is recognised that the replacement of sports field lighting poles is a significant cost, so Council will assist in the replacement of this infrastructure. Council officers will initially work with community organisations to complete grant applications to seek funding for the replacement on a needs basis.

Council reserves the right to conduct inspections and condition audits on all Council owned or controlled facilities from time to time. Council will issue rectification orders for any items which the tenant has not maintained to Council’s expectations.
Should the lessee or occupant not undertake the maintenance, repair or replacement identified in a rectification order within the designated timeframe, Council may complete the required works and issue an invoice to the lessee or occupant for the cost of the works.

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

Apart from Specialist Facilities, Council will be responsible for the cost of maintaining, repairing and replacing what it determines to be structural elements of the improvements.

Council considers the following items to be structural elements:

- Building foundations, stumps, footings and piers
- Sub floor framing members
- Building roof frame and trusses
- Building roof (i.e. tiles, metal sheeting)
- Load bearing walls
- Stairs, ramps
- Deck / patio (only those structural elements of the building carrying live or dead loads eg. framing, posts, bearers, joists and hand rails).

Apart from Specialist Facilities, Council will also be responsible for the cost of the following specific items, as relevant:

- Six monthly testing of RCDs
- Testing of fire services (smoke detectors, emergency lights, exit lights, alarm panels, fire extinguishers)
- Replacement of fire services (unless misused by the tenant or other party / individual)
- Emptying of septic tanks
- Supply of water for facilities not on town water
- Play equipment repairs (excluding child care centres and kindergartens)
- Bollards and slip rails
- Retaining walls
- Facility naming signage
- Initial supply of keys / access cards / padlocks
- External graffiti
- Car park maintenance
- Car park lighting
- Switchboard replacement (unless an upgrade is required due to changes being made by the lessee or occupant)
- Pest treatment for termites (on a risk basis at Council’s discretion)
- Repairs and replacement of gutters and down pipes (excludes cleaning)
- RPZ valve annual inspections
- Repairs and replacement of electric pump for sewerage system
- Annual ERA licence (waste treatment system)

The lessee of a Specialist Facility is solely responsible for all costs of maintaining, repairing and replacing improvements within the lease area as may be required to enable those improvements to be used in accordance with the purpose specified in the lease. Council will assist the lessee of a Specialist Facility with minor repairs to bitumen car parks and internal roadways.
Sports Field Maintenance

Council will be responsible for and undertake maintenance of all sports fields at an agreed level of service, which will generally include the following annual program:

- 39 mowing services
- 3 fertilisations
- 1 broadleaf herbicide
- 1 selective grass herbicide (3 sprays for crows foot)
- 2 weed wipes (wire grass)
- Soil test
- Soil amendments
- 2 aerations
- Irrigation audit
- Top dressing
- Subsidence levelling as required
- Worn turf reinstallation as required

The level of service may differ from site to site depending on the maintenance requirements of each facility and will be at Council’s discretion to determine what is required. Inclement weather and other environmental impacts out of Council’s control may also impact on the provision of these services.

Lessees or occupants requiring additional mowing must obtain Council’s approval and will be solely responsible for the cost of the service.

Council will also undertake eight mowing services per year of open space within equestrian facilities.

Council will not be responsible for the maintenance of specialised surfaces. Specialised surfaces must be maintained by the lessee or occupant at their sole cost. Specialised surfaces include:

- Bowling and croquet greens
- Natural and synthetic cricket pitches
- Netball / tennis / basketball courts
- Other specialised turf surfaces
- Equestrian cross country courses
- Surfaces associated with a Specialist Facility

For clarity, where a sports field is contained within the lease area of a specialist facility the Council will undertake maintenance of the sports field as indicated in this section.

Other Maintenance

Lessees and occupants will be responsible for grounds maintenance (mowing, pathways, gardens etc) of their lease, licence or permit area.

Lessees and occupants will be responsible for repairing, maintaining and replacing all activity related infrastructure within the lease, license or permit to occupy area. Activity related infrastructure includes, but is not limited to:

- Field line marking
- Goal posts
- Dugouts
- Spectator seating
- Fencing
**Improvements, Additions and Alterations**

Lessees and occupants must obtain Council’s approval before making any improvements, additions or alterations within or to the lease, licence or permit area. Council may approve, approve with conditions or refuse applications for approval at its discretion.

Council may require the lessee or occupant 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 lessee or occupant.

**Ownership of Fixed Assets**

Fixed improvements and structures constructed or installed upon the lease, licence or permit area become the property of Council even though the lessee or occupant will have control of the fixed improvements and structures during the term of their tenure.

Council approval must be obtained before any fixed improvements or structures are removed from the land.

**Access by Council**

Council officers, contractors or tradespersons are entitled to enter any lease licence or permit area 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 key 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 or tradespersons.

Council will make every endeavour 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 premises to Council for use as a designated evacuation centre.

**Insurances**

Lessees and occupants and any community organisation applying for a lease, license or permit to occupy must hold and maintain insurance policies including, but not limited to, contents insurance to cover the organisation’s possessions, workers compensation insurance, volunteers insurance and public liability insurance to the value determined by Council. Council may require evidence that required insurance policies are current at any time.

Generally, Council will insure all buildings, unless alternative provisions are expressly indicated in the tenure agreement.
Workplace Health & Safety

Lessees and occupants are responsible for Workplace Health and Safety (WH&S) tasks in relation to the lease, licence or permit areas. Lessees and occupants must ensure that all risks are appropriately managed to ensure that its members, spectators, guests, hirers and the public are kept safe at all times.

Council as owner or controller of the land will be responsible for the electrical and fire safety tasks as detailed in the Building and Structures Maintenance section of this policy. All other electrical and fire safety tasks will be the responsibility of the lessee or occupant including monthly testing of RCDs, provision and updating of fire evacuation drawings and payment of Queensland Fire and Rescue Service’s monitoring costs.

Liquor and Gaming Licences

Council 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.

Subleasing

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

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

Use of Sports Fields

Sports fields and surrounds will not be leased but may be subject to permits to occupy which will prescribe days and hours of approved use by the permittee. Sports fields and surrounds are maintained by Council on the understanding that the fields are available for use on a casual basis by members of the public or school groups when not in use under the terms of a permit to occupy.

Council may grant exclusive use of dedicated non-turf activity space such as netball / tennis courts or bowls and croquet greens.

Third Party Hire of Facilities

In order to maximise the use, variety of activities and community benefit of facilities over which tenure has been granted, community organisations may make lease, license and permit areas available to third party hirers (subject to the provisions of the Subleasing section of this policy). Use of the facilities by a third party must be in line with the main purpose of the facility and must not adversely affect the amenity of the local community.

Third party hire will be subject to a requirement that use of the facility by the hirer does not adversely impact the facility or neighbouring properties.
Mortgaging of Lease

A lessee must obtain Council approval in writing before mortgaging the lessee’s interest in the lease area or otherwise using that interest as security for a debt. Council may approve, approve with conditions or refuse any application for approval. An approval would always be conditional on any Council loan to the lessee having first priority over any mortgage debt.

Mortgages over an occupant's interest in a licence or permit to occupy area or any other use of that interest as security for a debt are not permitted and will not be approved by the Council.

Termination

Where a lessee or occupant is in breach of a lease, licence or permit to occupy the Council may resolve to terminate the tenure arrangement.

Council reserves the right to terminate the lease, licence or permit to occupy prior to the expiry of the term if the land is required for the 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 organisation and if possible, will make all reasonable attempts to relocate the tenant to a suitable alternative facility.

Compliance with Tenure Agreements

By entering into a tenure agreement over Council owned or controlled land, community organisations accept and agree to all conditions of the lease, licence or permit to occupy.

Community organisations acknowledge that access to community land is offered to enhance the physical activity, social interaction and cultural development of the community. Accordingly, lessees and occupants must not conduct, nor permit to occur, any illegal, immoral or offensive acts on Council owned or controlled land.

Failure to comply with the conditions of the lease, licence or permit to occupy may result in Council terminating or not offering renewal of the tenure arrangement.