

COMMUNITY ORGANISATION TENURE PROCEDURE (COMMUNITY PROCEDURE)

1. Scope

The Community organisation Tenure Policy (this 'Procedure') applies to Livingstone Shire Council employees and Elected Members in relation to granting and administering tenure agreements over Council-owned or Council-controlled land and facilities to community organisations.

2. Purpose

The purpose of this Procedure is to establish consistent and equitable business processes to enable Council to grant tenure to community organisations over Council-owned and Council-controlled land and facilities.

3. References

Legislative reference

Associations Incorporation Act 1981
Associations Incorporation Regulation 1999
Land Act 1994
Land Regulation 2020
Local Government Act 2009
Local Government Regulation 2012

Related documents

Application to Improve a Community Lease Site form
Asset Management Policy
Code of Conduct
Community Organisation Tenure Policy
Community Organisation Tenure Information Kit
Community Organisation Tenure Application Form
Community Organisation Tenure Special Consideration Application Form
Community Organisation Details Update Form
Livingstone Shire Council Adopted Fees and Charges
Rates, Rebates and Remissions Policy
Rate Remission Application for Not For Profit Community Organisations Form
Recycled Water Use Agreement Application
Tenure Renewal Form

4. Definitions

To assist in interpretation, the following definitions shall apply:

Community organisation	Interchangeable with club, association, or community group, an entity that is Not-For-Profit and exists for a public purpose providing programs and services to the community.
------------------------	--

Council	Livingstone Shire Council.
Council-Controlled Land	State land (Reserve) for which Council is Trustee.
Council-Owned Land	Freehold land for which Council is Owner.
Dispose/Disposal	To lease, sell, transfer or otherwise grant another person possession to the property or part of it.
Government Agency	A local, state, or federal government department, agency, or body.
Incorporated	A community organisation incorporated under the: a) <i>Associations Incorporations Act 1981 (Qld)</i> ; b) <i>Corporations Act 2001</i> ; c) <i>Cooperatives Act 1997 (Qld)</i> ; or d) <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> .
Lease	A contractual right to occupy or use Council-Controlled or Council-Owned Land with legal right to exclude others.
Licence	A contractual right to occupy or use Council-Controlled or Council-Owned land without any legal right to exclude others.
Not-For-Profit	A community organisation registered Not-for-Profit which does not operate for the profit, personal gain or other benefit of a particular person, people, or members.
Tenure	The conditions under which land or buildings are held or occupied (lease, licence or permit).
Term	A fixed period for which a tenure agreement will be in place.
Trustee	A trustee is appointed by the relevant State Government Minister and responsible for the day to day management of trust land. Tenure agreements for this type of land may be in the form of a trustee lease or trustee permit.
Shire	An area defined by the electoral boundaries of Livingstone Shire Council.
Valuable Non-Current Asset	Noncurrent assets are an organisation's long-term investments that are not easily converted to cash or are not expected to become cash within an accounting year (e.g. buildings, land, and machinery).

5. Procedure

This Procedure is in accordance with section 236(1)(b)(ii) and 236(2) of the *Local Government Regulation 2012* (Exceptions for valuable non-current asset contracts).

A local government may dispose of a valuable non-current asset other by tender or auction if the valuable non-current asset is disposed of to a community organisation.

By exception, the local government may decide, by resolution, to dispose of a valuable non-current asset other than by tender or auction i.e. tenure agreement.

5.1 Eligibility Criteria

A community organisation must meet the following criteria (at a minimum) for an application for tenure to be considered:

The community organisation must be incorporated under the *Associations Incorporation Act 1981* and must provide evidence of its incorporation status (i.e. certificate of incorporation).

The community organisation must hold a public liability insurance policy for an amount of not less than twenty million dollars (\$20,000,000) or such higher amount as Council may reasonably require in respect of all claims arising out of a single event.

5.2 Types of Tenure Agreements

The following types of tenure are available:

a) Freehold Lease

This form of tenure provides exclusive use of Council-Owned Land and/or facilities thereon.

b) Freehold Licence

This form of tenure provides non-exclusive use of Council-Owned Land and/or facilities thereon.

c) Trustee Lease

This form of tenure provides exclusive use of Council-Controlled Land and/or facilities thereon.

Trustee leases are required to be registered with Titles Queensland.

d) Trustee Permit

This form of tenure provides non-exclusive use of Council-controlled land and/or facilities thereon.

Trustee permits can be for a maximum Term of three (3) years. If the Term exceeds one (1) year, the permit is required to be registered with Titles Queensland.

5.3 Term of Tenure Agreement

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

a) Options to Renew

Council may, at its discretion and depending on requirements of the associated tenure agreement, offer the community organisation a tenure agreement with an option to renew for an additional Term.

Trustee leases and trustee permits cannot include options to renew.

b) Maximum Term

Council will, at its discretion and depending on requirements of the associated tenure agreement, offer the community organisation a tenure agreement term no longer than ten (10) years, inclusive of any approved renewals.

5.4 Fees and Charges

Tenure agreements issued to community organisation will attract the following fees and charges payable by the community organisation:

a) Rental

Community organisations will be charged a rental fee of one dollar (\$1.00) per annum.

b) Utilities Consumption

Community organisations will be charged for their consumption of utilities at the tenured site. These include those charges attributed to electricity use, telecommunications services, waste services and water usage.

Depending on the tenure site, eligible community organisations may be able to use recycled water and enter into a *Recycled Water Use Agreement* with Council by completing the *Recycled Water Use Agreement Application Form*.

Community organisations may be eligible to apply for a remission on utilities consumption costs from Council in accordance with Council's *Rates, Rebates and Remissions Policy*.

An application can be made by completing the *Rate Remission Application for Not For Profit Community Organisations* form. This form can be accessed online or through contacting a Council officer.

c) Levys

The compulsory Queensland State Government Emergency Services levy for the tenured site will be charged to community organisations with an exclusive use tenure agreement.

The Disaster Response levy for the tenured site will be charged to community organisations with an exclusive use tenure agreement.

The Rural Fire Levy (if applicable) will be charged to community organisations with an exclusive use tenure agreement.

d) Survey Plan Charges

If a tenure agreement is over part of a parcel of land and the agreement is required to be registered with Titles Queensland, a survey plan identifying the tenure site is required.

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 for the applicable fee to register the survey plan with Titles Queensland.

e) Registration Fees

If a tenure agreement is required to be registered with Titles Queensland, the community organisation will be responsible for the cost of the applicable registration fee.

5.4 Applications for New Agreements

a) Community Organisation Tenure Application Form

A community organisation seeking a new tenure agreement must complete a *Community Organisation Tenure Application Form* and submit it, along with all supporting eligibility documentation, to Council. This form can be accessed online or through contacting a Council officer.

b) Amendment of Terms

If a community organisation is seeking an amendment to Council's standard terms and conditions, the community organisation must complete a *Community Organisation Tenure Special Consideration Application Form* and submit it to Council. Most terms and conditions are mandatory and cannot be amended.

c) Internal Stakeholder Consultation

Once a completed *Community Organisation Tenure Application Form* is received by the relevant Council officer, internal consultation is required to be undertaken with the following business units (at a minimum):

- Community Wellbeing;
- Economy and Places;
- Community Assets;
- Water and Waste Operations; and
- Engineering Services.

Feedback, comments, opportunities, and/or challenges identified through this process should inform subsequent activities and discussions.

d) Pre-Lodgement Meeting

The community organisation must attend a pre-lodgement meeting with relevant Council officers to ensure that a clear understanding of the implications associated with entering into the proposed tenure agreement.

5.5 Renewal of Existing Agreements

a) Community organisation Application for Tenure Renewal Form

A community organisation seeking to renew an existing tenure agreement must complete a *Community Organisation Application for Tenure Renewal Form* and submit it, along with all supporting eligibility documentation, to Council. This form can be accessed online or through contacting a Council officer.

b) Amendment of Terms

If a community organisation is seeking an amendment to Council's standard terms and conditions, the community organisation must complete a *Community Organisation Tenure Special Consideration Application Form* and submit it to Council. Most terms and conditions are mandatory and cannot be amended.

c) Internal Stakeholder Consultation

Once a completed *Community Organisation Application for Tenure Renewal Form* is received by the relevant Council officer, internal consultation is required to be undertaken with the following Council teams (at a minimum):

- Community Wellbeing;
- Economy and Places;
- Community Assets;
- Revenue and Rates;
- Water and Waste Operations; and
- Engineering Services.

Feedback, comments, opportunities, and / or challenges identified through this process should inform subsequent activities and discussion.

d) Pre-Lodgement Meeting

The community organisation must attend a pre-lodgement meeting with relevant Council officers to ensure an opportunity to discuss the implications associated with renewing the tenure agreement is provided.

5.6 Issue of Tenure

Council will prepare the required tenure agreements which reflect the *Community Organisations Tenure Policy*.

If legal advice is required by the community organisation, it is responsible for arrangement of such and any cost incurred.

The community organisation must return all copies of the original signed tenure agreements to Council within thirty (30) calendar days of issue.

Council's delegated officer will then execute the agreement and return one original copy to the community organisation.

The community organisation cannot take possession of the tenure site until the tenure agreement is fully executed by Council and the community organisation.

5.7 Building Improvements and Maintenance

The community organisation is solely responsible for the costs of maintaining, repairing and replacing all improvements within the tenure site required to enable use in accordance with the permitted use specified at the tenure site.

Council will take responsibility for the repair and replacement of items identified as:

- major asset failure – structural, utility services (i.e. water, sewer, power) unless the asset is owned by the community organisation;
- major replacement (requires budget approval); or
- high risk/vulnerable asset (i.e. heritage listed site/building).

5.8 Ownership of Fixed Assets

Existing structures on a tenure site are owned and insured by Council.

Fixed improvements and structures constructed or installed upon the tenure site by the community organisation remain the property of the organisation until such time as the tenure has ceased.

The community organisation is responsible for the insurance of such assets.

Council approval must be obtained for fixed improvements or structures to remain or be removed from the tenure site once the tenure has ceased.

5.9 Other Maintenance

The community organisation is responsible for grounds maintenance (mowing pathways, gardens etc.) of their tenure site and is responsible for repairing, maintaining and replacing all activity related infrastructure within the tenure site (further details are listed in the *Community Organisation Tenure Information Kit*).

5.10 Additions and Alterations

A community organisation must obtain Council's approval before making any improvements, additions or alterations within or to a tenure site.

To make an application the community organisation must complete an *Application to Improve a Community Lease Site* form and submit it to Council, along with any plans, drawings, diagrams or other supporting documentation relevant to the application.

This form can be accessed online or through contacting a Council officer.

Additional applications and approvals may be required.

5.11 Subleasing

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

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

5.12 Surrender

If a community organisation wishes to surrender a tenure 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 community organisation is seeking for the tenure to end.

If Council approves the surrender, Council will prepare the relevant documents for execution.

If the tenure agreement is registered with Titles Queensland, the community organisation will be responsible for payment of any fees associated with the surrender of a tenure agreement.

5.13 Termination

If a community organisation is in breach of a tenure agreement, Council may resolve to terminate the tenure agreement.

Council reserves the right to terminate the tenure 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 community organisation and if possible, will make all reasonable attempts to relocate the community organisation to a suitable alternative facility.

Once the tenure agreement has terminated, the community organisation must provide vacant possession of the tenure site to Council.

The community organisation must ensure that the tenure site is returned in good, tenantable repair and condition prior to vacating the site.

5.14 Compliance with Tenure Agreements

By entering into a tenure agreement over Council-Owned or Controlled Land, a community organisation accepts and agrees to all terms and conditions contained in their tenure agreement.

Failure to comply with the terms and conditions of a tenure agreement may result in Council terminating the agreement, or refusing to renew the tenure arrangement.

It is the responsibility of the community organisation to familiarise itself with the *Community Organisation Tenure Policy, Procedure* and *Community Tenure Organisation Information Kit* to ensure compliance.

6. Changes to this Procedure

This Procedure is to remain in force until any of the following occur:

1. The related information is amended/replaced; or
2. Other circumstances as determined from time to time by the Council.

7. Repeals/Amendments

Version	Date	Action
1.0	16/11/2021	Adopted

CALE DENDLE
CHIEF EXECUTIVE OFFICER