

# **Community Organisation Tenure with Council**

## DEFINITIONS

Community Organisation	Interchangeable with a club, association, or community group, an entity that is not-for-profit and exists for a public purpose providing programmes and services to the community.
Council	Livingstone Shire Council.
Council-Controlled Land	State land (Reserve) of which Council is Trustee.
Council-Owned Land	Freehold land of 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-Owned land without any legal right to exclude others.
Not-for-Profit	A community organisation, registered as not-for-profit that does not operate for the profit, personal gain or other benefit of a particular person, people, or members.
Shire	Area defined by the electoral boundaries of Livingstone Shire Council.
Tenure	Tenure is 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 Minister for Natural Resources Mines and Energy and is responsible for the day to day management of trust land.
Trust Land	Queensland Government owned land that has been set aside under the <i>Land Act 1994</i> for public or community purposes. These are either reserves or deeds of grant in trust, collectively referred to as trust land. Tenure agreements may be in the form of a trustee lease or trustee permit.

**This information kit is a general guide to community organisation tenure with Council. In all cases, Council will determine the most appropriate form of tenure and associated responsibilities. This will occur in collaboration with the respective community organisation and is dependent on the site area and community organisation's proposed use.**

## INTRODUCTION

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 focussed on community development and the provision of community services.

Organisations eligible to apply for tenure agreements 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.

Tenure agreements 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, 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.

## BEFORE APPLYING FOR TENURE

Be clear about why your organisation wants to utilise Council owned or controlled land and/or facility. Do some brainstorming and weigh your alternatives. Your organisation needs to think about:

- Why is the service or program important to Livingstone?
- Who is the target clientele?
- Will your service or program run for a short term or long term? If the service is going to run short term, your organisation might opt to hire facilities.
- Are there other ways of delivering the service or program without having to access Council owned or controlled land or facility?
- What other resources would you need to run the service or program?

Careful planning can significantly assist you in achieving your goals as an organisation.

Meet with existing organisations and learn how they implement their program. Understand what issues they faced and if they are using someone else's land or facility, find out what sort of arrangements they have with the land owners. Do they have a partnership in place? Do they have tenure agreements?

Developing your program or service takes a great deal of time and commitment, especially if you are a new organisation. For more established organisations who are already operating a service, they may find that sustaining it can be a challenge. To achieve what you have set out to do, you need to research and plan thoroughly.

Consider all potential locations or facilities for conducting your activities like church halls, schools, and other commercial premises. Council owned and controlled land and facility are not often readily accessible. In some cases where there is available Council owned and controlled land and facilities this might not necessarily suit an organisation's need or requirement for a space.

Think about how much space you need to successfully deliver your service or program. There is a limited range of facilities in Livingstone with varying capacity and size. Some are equipped with kitchens, some have meeting rooms and some have open areas that can host large groups.

There are several questions you have to consider when identifying possible sites:

- What type of land or facility do you need?
- What size of land/facility would be suitable for your organisation?
- Does your site need to be accessible by public transport?
- What are your facility requirements? Kitchen? Toilets? Meeting rooms?
- What is your plan if there is no suitable facility available?

## 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 tenant 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 tenant or user. If a suitable tenant 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 *Community Organisation Tenure Application Form*. Depending on how the organisation intends to use the land, there may be additional requirements (e.g. Food Licence, Liquor Licence).

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; and
- be able to demonstrate its ability to meet the financial obligations under the form of tenure sought (including public liability insurance).

## RENEWAL

If the organisation currently has a tenure agreement with Council, Council will contact the organisation to discuss renewal approximately three months before it is due to expire.

If the organisation wishes to renew their current tenure agreement with Council, the organisation must complete a *Community Organisation Tenure with Council Renewal Application Form*.

## IMPROVEMENT WORKS

If the organisation wishes to make improvements to the area within the tenure agreement, the organisation must complete a *Community Organisation Tenure Improvement Works Application Form*.

Examples include:

- Building works
- Play Equipment
- Fencing
- Permanent signage
- Lighting
- Earthworks
- Water tank/s

Depending on the type of works required, further approvals may be required. Council will provide feedback on the application and advise what further actions are necessary.

## TYPES OF TENURE

### LEASES

#### **Exclusive Use of Building/s or Facilities**

A lease provides the lessee with exclusive use of a defined area for a specified purpose and term.

Areas will generally be defined by building footprints, but will include access ramps, staircases and gardens that bound the building/s. Areas may include the whole parcel of land on which the building is located.

Areas may 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.

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 tenant where possible.

#### **Trustee Lease**

This form of tenure agreement provides exclusive use of Council-Controlled land and / or facilities thereon of which Council is the Trustee.

### LICENCES

#### **Shared Use of Building/s or Facilities**

A licence or permit to occupy provides the tenant with non-exclusive use of a defined licence or permit area for a specified purpose and term.

Licence 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 exclusively occupying separate parts of the same building or site, leases may be offered.

## Trustee Permit

This form of tenure agreement provides non-exclusive use of Council-Controlled land and / or facilities thereon of which Council is the Trustee.

In all cases, Council will determine the most appropriate form of tenure to be granted.

## TENURE DOCUMENTATION

Council will prepare tenure agreement documents, which reflect the *Community Organisation Tenure with Council Policy*.

After a tenure agreement is 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. Council's delegated officer will then execute the documents and one original copy will be returned to the community organisation.

The community organisation cannot take possession of the tenured area until documents are executed.

## LENGTH OF TENURE

Tenure agreements offered to community organisations is dependent on a number of factors and can be modified at Council's discretion through consultation with the community organisation.

## OPTIONS TO RENEW

Council may, at its discretion and depending on requirements of the associated tenure agreement, offer the community a tenure agreement with an option to renew for an additional term. Please note that the total term must not extend beyond the maximum term.

Trustee leases and permits cannot include options to renew.

## 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. The maximum term of a trustee permit is governed by the *Land Act 1994*.

In all cases, Council will determine the most appropriate term in conjunction with the *Land Act 1994*, up to the maximum term indicated in the *Community Organisation Tenure Policy*, for any form of tenure.

## FEES AND CHARGES

The annual rental fee for a tenured area is one dollar (\$1) for community organisations.

The tenant is solely responsible for a range of charges in respect of the tenured area including but not limited to:

- Rent
- Utilities Consumption (water, waste, electricity, telephone, internet/data)
- Titles Queensland Registration Fee (if applicable)
- 50% of Survey Plan Cost (if applicable) and 100% of Survey Plan Lodgement Fee (if applicable)
- Public Liability Insurance
- Contents Insurance
- Licencing (food, liquor, gaming etc.)
- QLD State Government compulsory Emergency Services Levy

- Disaster Response Levy
- Rural Fire Levy

These charges may differ depending on whether the community organisation has an exclusive or non-exclusive use agreement.

Community organisations may be eligible to apply for a remission 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.

Depending on the site, there may be an option to enter into a *Recycled Water Use Agreement with Council*. Council will inform the applicant if this is available and advise of any further action required.

## SURRENDER

The community organisation may wish to surrender its interest in the tenure during the tenure term. The organisation must write to Council, specifying the date the organisation wishes the tenure to end. The organisation must state the specific reasons why it wishes to surrender the tenure.

If Council approves the surrender, Council will prepare the relevant documents for execution. The organisation may be responsible for additional fees if applicable (e.g. Registration with Titles Office).

Once the tenure has terminated, the tenant must return ownership of the tenured premises to Council. The tenant must ensure the tenured premises or facility are returned in good, tenantable repair and condition prior to vacating.

## BUILDING AND STRUCTURES MAINTENANCE

The tenant is solely responsible for the costs of maintaining, repairing and replacing all improvements within the tenured area as may be required to enable those improvements to be used in accordance with the purpose specified in the tenure agreement.

These costs will include:

Description	Details
Details Electrical (including field lighting and monthly testing of RCDs)	All maintenance, repairs and replacement
Cleaning and waste disposal.	All cleaning, collection, emptying and disposal
Plumbing, sewerage, water supply and draining (including items on the exterior of the building/s)	All maintenance, repairs and replacement
Carpentry	All maintenance, repairs and replacement
Fittings and Fixtures (all other)	All maintenance, repairs and replacement
Fire services (including fire and evacuation plans, evacuation signs and diagrams and fire evacuation practice records)	All provision, updating and monitoring
Security and Access	All maintenance, repairs and replacement

Council officers will initially work with community organisations to complete grant applications to seek funding for replacements 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 take responsibility for the repair and replacement of any items identified in the condition audit as:

- i. major asset failure (structural, utility services i.e. water, sewer, power);
- ii. major replacement required (pending budget approval); or
- iii. high risk/vulnerable asset (i.e. heritage listed site or building).

Council will issue rectification orders for any items, which the tenant has not maintained, to Council's expectations.

Should the tenant 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 tenant for the cost of the works.

The tenant must engage registered and suitably qualified tradespeople to undertake maintenance works where required, for example, when completing electrical works, the electrician must have the appropriate licence.

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 e.g. framing, posts, bearers, joists and hand rails)

Council will also be responsible for the cost of the following specific items as relevant:

- Statutory services (e.g. smoke detectors, emergency lights, FIP alarm panels, fire extinguishers, RPZ valves)
- Replacement of fire services (unless misused by the tenant or other party/individual)
- Play equipment repairs if provided with site (excluding child care centres and kindergartens)
- Retaining walls
- Facility naming signage
- Initial supply of keys/access cards/padlocks
- Car park maintenance
- Car park lighting
- Switchboard replacement (unless an upgrade is required due to improvements being made by the tenant)
- Pest and termite treatment (on a risk basis at Council's discretion)



- Repairs and replacement of gutters and down pipes
- Lift servicing
- Annual ERA licence (waste treatment system)

## OTHER MAINTENANCE

Tenants will be responsible for grounds maintenance (mowing, pathways, gardens etc.) of their tenured area. Tenants will be responsible for repairing, maintaining and replacing all activity related infrastructure within the tenured area.

Activity related infrastructure includes, but is not limited to:

- Field line marking
- Goal posts
- Dugouts
- Spectator seating

## ADDITIONS AND ALTERATIONS

Tenants must obtain Council's approval before making any improvements, additions or alterations within or to the tenured area. Council may approve, approve with conditions or refuse applications for improvement at its discretion. Applications must be made by completing the *Application for Improvement Works on a Community Lease Site* form.

Council may require the 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.

## OWNERSHIP OF FIXED ASSETS

Existing structures on a tenured area are owned and insured by Council.

Fixed improvements and structures constructed or installed upon the tenured area 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 tenured area once the tenure has ceased.

## ACCESS BY COUNCIL

Council officers, contractors or tradespersons are entitled to enter any tenured 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 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 must temporarily yield up possession and immediately make available the premises to Council for use as a designated evacuation and/or recovery centre.

Council officers intend to meet with the community organisation representatives at the tenured area every six months for the duration of the tenure agreement.

## **INSURANCES**

Tenants and any community organisation applying for a tenure agreement 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 for an amount not less than Twenty Million Dollars (\$20,000,000) or such higher amounts as Council may reasonably require. Council may require evidence that required insurance policies are current at any time.

Generally, Council will insure all existing buildings, unless alternative provisions are expressly indicated in the tenure agreement. Any new structures erected by the tenant during tenure are to be insured by the tenant for the duration of the tenure.

## **WORKPLACE HEALTH & SAFETY AND RISK MANAGEMENT**

Tenants are responsible for Workplace Health and Safety (WH&S) tasks in relation to the tenured areas. Tenants 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 statutory servicing of fixed electrical switchboards and fire safety equipment 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 tenant including monthly testing of RCDs, provision and updating of fire evacuation drawings and payment of Queensland Fire and Rescue Service's monitoring costs.

Council is committed to ensuring safety in all its facilities and in the conduct of activities and events. Council strongly supports the management of risks. As the primary users of tenured facilities and organisers of events in these premises, tenants have the primary responsibility of managing risks associated with the implementation of programs and activities. Tenants must ensure that risk assessments have been completed and that appropriate risk management processes are in place to treat potential risks. The preparation and development of a comprehensive risk management plan is important for the organisation in order to control and/or mitigate risk.

## **FOOD LICENCE**

A community organisation does not require a food business licence unless they are selling meals on twelve or more occasions per financial year.

Examples of food licence exempt activities:

- BBQ sausage sizzle
- an annual school fete
- cake and biscuit stalls
- sale of snow cones
- chocolate, lamington or pie drives
- raffles

Even though a food business licence may not be required, you have a responsibility to ensure the sale of safe and suitable food, and an obligation to comply with the Food Act 2006 and Food Safety Standards.

If you handle or prepare unpackaged food and/or sell meals on more than twelve occasions per year, you generally will require a food business licence.

Examples of unpackaged foods that require a food business licence are:

- fruit or vegetable juice that is processed at place of sale
- cakes, muffins or biscuits with fresh cream or custard in the filling or icing
- takeaway food such as hot chips and hamburgers
- making food by combining ingredients such as jams, sauces, curries or soup
- bread and bread rolls
- sandwiches, including toasting sandwiches at a cafe
- bulk coffee that is repackaged into smaller containers
- any other unpackaged food that is not exempt.

This is not an exhaustive list and if you have further questions or wish to discuss the requirements further please contact Livingstone Shire Council's Environmental Health Unit.

## **LIQUOR OR 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 tenant must obtain Council's approval prior to subleasing or otherwise sharing the use and occupation of all or any part of the tenured area 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.

## **TERMINATION**

Where a tenant 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 tenant to a suitable alternative facility.

Once the tenure agreement has terminated, the tenant must return ownership of the tenured area to Council. The tenant must ensure the tenured area or facility should be returned in good, tenantable repair and condition prior to vacating the area.

## **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 tenure agreement.

Failure to comply with the conditions of tenure agreement may result in Council terminating or not offering renewal of the tenure arrangement.

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

Community organisations must familiarise themselves with the *Community Organisation Tenure Policy, Procedure and Community Tenure Organisation with Council Information Kit* to ensure compliance.

## ANNUAL REPORT

The tenant is required to report to Council annually as stipulated in the tenure agreement. The reporting requirements are to be collected following the organisations' annual general meetings. The reports will come in the form of the *Community Organisations Details Update* form and the following (or a combination thereof):

- Annual report and audited financial statements.
- Copy of licenses/permits (e.g. liquor or gaming licence).
- Current insurance coverage.
- List of current office bearers and number of members.

Organisations should inform and update Council if any changes to officers or committee members has taken place. Council may also request other reports, which it deems necessary in the management of tenured areas. These can include (but are not limited to) 5 year development plans, asset management plans and risk management plans.

## REPORT

The tenant must inform Council of any damage to the premises including:

- damage to or the defective operation of a service.
- an unsafe condition of the premises or another part of the land.
- an unsafe condition in an area adjacent to the land in which persons access the land or the premises.

## CAPACITY BUILDING WORKSHOPS

The Community Development, Sport and Recreation Team conducts a series of workshops on an annual basis. The workshops aim to educate local community organisations groups about governance of their organisations.

Topics include:

- Strategic Planning
- Policies and Procedures
- Building Volunteers
- Continuity and Recovery Planning
- Grants and Funding
- Financial Planning
- Marketing and Sponsorship

## IMPORTANT THINGS TO REMEMBER

The Community Development, Sport and Recreation Team conducts a series of workshops on an annual basis.

Organisations are often not fully aware of their obligations under the agreement until informed by Council following an unintentional breach of conditions. Some of the important responsibilities you need to keep in mind are:

- Understanding that your tenure agreement is a legally binding document.
- The payment of annual rent charges, by the due date each year.
- The payment of Council charges by the due date on rates notices.
- Keeping the tenured area free of rubbish, litter etc.
- The need to obtain regulatory approvals relevant to Planning Scheme and Building Code of Australia when constructing new or renovating old buildings, etc.
- Keeping the tenured area well maintained on a year-round basis.
- Acting within the best interests of Council and the residents surrounding the tenured area, i.e. illegal, improper, immoral, noxious or offensive activities in and around tenured areas are avoided.
- Maintaining public liability insurance to the required level.
- Complying fully with the insurance provisions of the tenure agreement.

## COUNCIL CONTACTS

**To submit a form relating to Community Organisation Tenure:**

Customer Service [enquires@livingstone.qld.gov.au](mailto:enquires@livingstone.qld.gov.au)

**Requests for Maintenance and/or Repair, Reporting Vandalism and/or Damage:**

Customer Service 4913 5000 or [enquires@livingstone.qld.gov.au](mailto:enquires@livingstone.qld.gov.au)

Online Services [www.livingstone.qld.gov.au](http://www.livingstone.qld.gov.au)

**Enquires relating to the availability of Council Owned or Controlled Land.**

Online Services [www.livingstone.qld.gov.au](http://www.livingstone.qld.gov.au)

Community Development, Sport and Recreation Team [cdsr@livingstone.qld.gov.au](mailto:cdsr@livingstone.qld.gov.au)

**Enquires relating to community organisation eligibility, the application or renewal process, improvement works and Capacity Building Workshops or support.**

Community Development, Sport and Recreation Team 4913 5000 or [cdsr@livingstone.qld.gov.au](mailto:cdsr@livingstone.qld.gov.au)

**Enquiries relating to food preparation and/or sale.**

Environmental Health Unit 4913 5000 or [enquiries@livingstone.qld.gov.au](mailto:enquiries@livingstone.qld.gov.au)

