

Community Group Exclusive Use of Council Land and Facilities Policy

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Responsible Officer	Manager Development and Governance	Date Approved:	24/01/2024
Review Officer:	Manager Development and Governance	Review Due:	24/12/2027
Author:	Manager Development and Governance	Commencement:	24/01/2024

1. PURPOSE

To set out the different community tenure arrangements and levels of Council subsidy for *the exclusive use of Council land and facilities* by not-for-profit community groups and organisations conducting activities and services for community benefit.

Council makes affordable land and facilities available to approved community groups to conduct community, cultural, sporting, environmental and recreational activities which contribute significantly to the liveability of the Shire's towns and districts, making them places where people want to live, work, invest and visit.

Community groups exist in many sizes and legal forms and conduct different types of activities for community benefit, and there are different types of Council facilities and open space areas used by groups. Therefore, different community tenure arrangements and levels of Council subsidy for the community's management and use of Council land and facilities are warranted. This policy outlines how subsidised Council land and facilities for exclusive use by community groups is approved in a fair, consistent, and transparent manner which is affordable to both community groups and ratepayers.

Not-for-profit organisations not eligible for subsidised community tenure can request Council to consider negotiating a commercial lease, for example, for the operation of state and federal government funded community services or to conduct commercial for-profit operations on Council land or facilities where there is community benefit.

2. SCOPE

This policy:

- Covers tenure arrangements between Council and eligible not-for-profit smaller community groups and larger organisations for the exclusive occupation and use of Council land or facilities to conduct activities for community benefit.
- Applies to vacant land, sporting fields, buildings, and other structures as well as multi-purpose facilities on freehold land owned by Council or reserve land for which Council is trustee.
- Sets out the level of Council subsidy and community group responsibilities for each type of community tenure.

- Outlines the conditions under which Council will consider approving a commercial lease with government funded services or not-for-profit organisations with commercial operations.
- Outlines the community tenure application and approval processes.

This policy applies to:

- Type 1 Community Tenure: Exclusive use by funded community services and not-for-profit commercial operators;
- Type 2 Community Tenure: Exclusive use by community groups;
- Type 3 Community Tenure: Exclusive use of space within a multi-purpose Council facility.

This policy does not apply to the following types of tenure arrangements with community groups as other Council policies and procedures apply:

- Commercial leases with businesses operating for the profit or gain of its individual members;
- Agreements for the community management of Council halls (Type 4 Community Tenure) and the community management of other Council facilities and land on behalf of the community (Type 5 Community Tenure);
- Casual hall hire arrangements.

3. POLICY STATEMENT

3.1 POLICY OBJECTIVES

The objectives of the policy are to:

- a) Provide eligible not-for-profit community groups with exclusive occupancy and use of Council facilities or land to conduct community activities for community benefit that are affordable to both the groups and ratepayers.
- b) Enable community groups with exclusive occupation and use of Council land and facilities to responsibly manage and take care of the land and facilities as they see fit so the Council assets are well managed and utilised;
- c) Enhance the sustainability of not-for-profit community groups by providing security of tenure to occupy and invest in facilities and access grants for the benefit of the community;
- d) Define the level of responsibility of community groups regarding the three types of exclusive use tenure of Council land and facilities that is fair, reasonable and affordable to both community groups and the Shire's ratepayers;
- e) Recognise that while Council acknowledges the good work of not-for-profit community organisations conducting services and activities for community benefit, Council does not subsidise state and federal government funded community services, fee for service models, pre-school services and childcare services or support commercial activities that compete with other businesses even when these are conducted by not-for-profit organisations.

3.2 ELIGIBILITY

3.2.1 Definition of Community Group

A community group eligible to apply for subsidised exclusive occupation and use of Council land and/or facilities is defined as:

- a) A not for profit, incorporated group or association of persons with the primary aim of conducting activities and providing services for community benefit; and
- b) The community group is volunteer led and relies predominantly on volunteer labour, community fundraising, membership fees and donations; and
- c) The community group does not receive state or federal government operational grants; and
- d) The community group does not rely on a fee for service business model; and
- e) The organisation does not retain profits from commercial activities for the gain of the business or its individuals but uses profits for community benefit.

3.2.2 Exclusions

This policy excludes the following community groups:

- a) Community groups that do not meet the definition of a community group as defined in this policy at Section 3.2.1;
- b) Community groups that will use the Council land or facilities to undertake commercial activities for the gain of the business or individuals in the business;
- c) Community groups managing Community halls or other Council facilities or land on behalf of the community, for example walking trails;
- d) Community groups where religious worship is the primary purpose;
- e) Political groups.

3.2.3 Exception

If requested, Council will consider negotiating a commercial lease for the exclusive use of Council land and/or facilities to:

- A government funded community service to conduct funded services and activities; or
- A not-for-profit organisation to conduct for-profit commercial activities where profits are not retained by the business or its individuals but are used for community benefit.

The terms and conditions of a commercial lease will be negotiated on a case-by case-basis with approval by Resolution of the Council. This arrangement is defined as Type 1 Community Tenure and further details are at Section 3.3.

3.3 TYPES OF EXCLUSIVE USE COMMUNITY TENURE

3.3.1 Type 1 Community Tenure: Exclusive Use by Funded Services and Not-for-Profit Commercial Operators

Type 1 Community Tenure applies when:

- Council is requested by a government funded community service or a not-for-profit organisation conducting commercial activities to consider entering into a commercial lease for the exclusive use of Council land, facilities or premises where there are demonstrable community benefits from the arrangement; and
- The terms and conditions of the commercial lease will be negotiated on a case-by case-basis with approval by Resolution of the Council.

a) **Funded Community Service:** A government funded not-for-profit community service may request exclusive use of Council land and/or premises for the delivery of funded activities and services to meet community needs.

No Council Subsidy – Commercial Lease

The delivery of community services such as family and youth support, aged care and kindergartens is not a local government responsibility, therefore Council does not subsidise state or federal government funded community services.

It is expected that the state or federal government funds or fees charged by the service provider will cover the operating costs of funded services, including costs for premises.

Therefore, a subsidised community tenure arrangement is not appropriate and commercial leasing terms and conditions will apply. For example, the charging of market rent will be considered, and Council will not contribute to maintaining the premises, grounds or facilities used or occupied by a funded community service.

b) **Not-for-Profit Commercial Operator:** Where profits from the not-for-profit organisation are not retained by the business or its individuals but are used for community benefit, Council is willing to consider entering into a commercial lease with the organisation for the exclusive use and occupation of Council land and/or premises. Commercial activities could include gaming, horse racing, restaurant, catering, event hire, licensed premises, camping, accommodation services.

No Council Subsidy – Commercial Lease

Council does not subsidise activities or operations that compete with local businesses including commercial operations by not-for-profit organisations.

It is expected that revenue from the commercial operations is used to cover operating costs including all costs for premises and facilities.

Therefore, a subsidised community tenure arrangement is not appropriate and commercial leasing terms and conditions will apply. For example, the charging of market rent will be considered, and Council is not responsible for maintaining the premises, grounds, or facilities from which not-for-profit organisations operate commercial activities, even where there are community benefits.

3.3.2 Type 2 Community Tenure: Exclusive Use by an Eligible Community Group

Type 2 Community Tenure applies when:

- The eligible community group has exclusive occupation and use of a clearly defined Council facility or parcel of land and while the services and activities conducted deliver community benefits, the primary beneficiaries are the community group's members; and
- The land or facilities are not used for any other purpose or by any other groups or the general public without the permission of the community group.

Examples include a sporting club with its own clubhouse and/or sporting fields and an arts group operating a community art gallery with free entry and workshop space.

Subsidised Community Tenure

While it is recognised there are broad and indirect community benefits generated by the activities of sporting clubs and community groups, it is also acknowledged that where a community group has exclusive use of Council land and/or facilities, it is the group's members that are the primary beneficiaries of the exclusive use arrangement.

As such, it is fair and reasonable the group's members are responsible for all maintenance and operating expenses associated with the group's exclusive use and occupation of the land, facilities and/or premises.

3.3.3 Type 3 Community Tenure: Exclusive Use Within a Shared Facility

Type 3 Community Tenure applies when:

- The eligible community group may or may not be an incorporated body relying on a relatively small volunteer membership that has been allocated exclusive use of a space within a multi-purpose Council facility or community precinct; and
- The defined space is used exclusively by the community group's members, but other elements or areas of the land or facility are used for other purposes by other groups or are shared with the public eg. public toilets, car park, grounds; and
- The community group's members are the primary beneficiaries of the exclusive use space within the multi-use facility even though indirect community benefits are generated by the group's activities; and
- It is not practicable to assign responsibility for the exclusive use and occupation of a clearly defined facility or substantial section of a facility to a specific community group. Neither is it feasible to survey the land or the exclusive use spaces within the facility and consequently there is no Land Lot and Plan for each exclusive use area.

Examples include:

- A community group with exclusive use of one room within a facility with multiple rooms and a community hall and public amenities are attached to the facility.
- Two community groups share a building or a space with each having an exclusive use area in which to meet and store equipment and both groups share one set of toilets.

Subsidised Community Tenure

Under Type 3 Community Tenure, the community group is allocated exclusive use of a space within a Council owned multi-use facility, for example, a room at the Geraghty Park facility. As the group members are the primary beneficiaries of the space for which the Group has exclusive use, it is fair and reasonable they should be responsible for the internal maintenance of this exclusive use space and for the group's operating expenses. The group's members will share some of the costs of maintaining and operating the shared spaces and amenities, where practicable.

4. LEVEL OF COUNCIL SUBSIDY

4.1 Type 1 Community Tenure – funded services and NFP organisations with commercial operations

Council does not subsidise state or federally funded community services as this is a state or federal government responsibility and Council does not subsidise activities or operations that compete with local businesses including commercial operations by not-for-profit organisations. In these tenure arrangements, commercial leasing terms and conditions will prevail.

Therefore, Council has no responsibility for, and does not contribute towards the costs of the management, maintenance and operating expenses associated with the exclusive occupation and use of Council land and facilities by funded services or not-for-profit commercial operators. In extenuating circumstances, Council assistance may be requested on a case-by-case basis and consideration will be given to, amongst other factors, the sustainability of the organisation, community needs and the demand for services.

4.2 Type 2 and Type 3 Community Tenures – volunteer led community groups

Council recognises the community benefits from the services and activities of volunteer led not-for-profit community groups. Consequently, Council is willing to provide affordable land and facilities from which these services and activities can be delivered by volunteers.

Council substantially subsidises eligible community groups with Type 2 and Type 3 Community Tenures by:

- Not charging an application fee or an annual administration fee to prepare, manage or renew the community tenure as long as the standard tenure documents are used; and
- Not charging rent to occupy the land or facilities under a Type 2 or Type 3 Community Tenure; and
- Offering generous rate rebates and remissions to eligible groups under the *Rate Rebate and Remissions Policy* and a donation towards water consumption costs under the *Community Partnerships Program Policy* for those groups charged rates and services; and
- Sharing the maintenance responsibilities with community groups with Type 3 Community Tenure in a multi-purpose facility where there are multiple user groups.

5. COMMUNITY GROUP AND COUNCIL RESPONSIBILITIES

A consolidated summary of the respective responsibilities of Council and community groups with exclusive use tenures is presented in the Table on the following pages.

Community group Exclusive Use of Council Land and Facilities Policy

		Type of Community Tenure					
		Type 1: Exclusive Use by Funded Service or NFP Commercial Operator		Type 2: Exclusive Use by Community Group		Type 3: Exclusive Use within a Multi-Purpose Facility	
No.	Responsibility	Funded Service or NFP Commercial Operator	Council	Community Group	Council	Community Group	Council
1	Costs for preparation, management & renewal of tenure agreements	No charge provided the standard tenure instrument documents are used					
2	Rent	✓	No rent charged for groups with no commercial operations				
3	Operating expenses including cleaning, gas, telephone, administration	✓	x	✓	x	✓	x
4	Insurance – Public Liability	✓	x	✓	x	✓	x
5	Insurance - contents/chattels	✓	x	✓	x	✓	x
6	Insurance - general building at Group's discretion	✓	x	✓	x	✓	x
7	Waste disposal	✓	x	✓	x	✓	x
8	Workplace Health and Safety	✓	x	✓	x	✓	x
9	Electrical equipment testing and tagging	✓	x	✓	x	✓	x
10	Fire equipment maintenance and compliance	✓	x	✓	x	✓	x
11	Furniture and equipment – purchase, repair and replacement	✓	x	✓	x	✓	x
12	Cost to repair facility damage including vandalism and graffiti removal	✓	x	✓	x	✓	x

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No.	Responsibility	Funded Service/ NFP Commercial Operator	Council	Community Group	Council	Community Group	Council
13	Water and Electricity consumption costs (sole or shared connections)	✓	x	✓	x	✓	If required
14	Septic tank maintenance (sole or shared connections)	✓	x	✓	x	✓	If required
15	Minor Maintenance and refurbishments + grounds maintenance	✓	x	✓	x	✓	x
16	Major maintenance, refurbishments, and renewals	✓	x	✓	x	x	✓
17	RCD testing and tagging	✓	x	✓	x	x	✓
18	Building fire and safety compliance	✓	x	✓	x	x	✓
19	General property rates and utility charges	✓	NA	✓	NA	x	NA
20	State Emergency Management Levy	✓	NA	✓	NA	x	NA

Explanatory Notes:

Item 1 Council does not charge for legal or other costs associated with the preparation, management and renewal of tenure agreements provided the standard documents are utilised.

Item 2 Not-for-profit commercial lessees are charged market rent.

Items 3-12 These items are the responsibility of all community groups with tenure to occupy and use Council land or facilities, irrespective of the type of community tenure.

Items 13 -20 These items involve responsibilities that may be shared between Council and the community group depending on factors outlined in the specific item.

Community group Exclusive Use of Council Land and Facilities Policy

- 4 The community group must at its own cost maintain public liability insurance having a minimum limit of twenty million dollars.
- 5 Each community group is responsible for insuring chattels and contents, at its discretion and own expense. Council is not responsible for insuring the furniture or equipment or other unspecified contents contained within facilities and accepts no liability for equipment owned by the community group.
- 6 Community groups with facility tenure are responsible for general building insurance, including community groups managing land and facilities on behalf of the community such as community halls. However, each community group can decide to effect general building insurance at its discretion and own expense.
- 7 Waste disposal is the responsibility of all community groups including organising and paying for their own waste disposal.
- 8 All community groups with a type of community tenure are responsible for complying with the relevant workplace health and safety requirements.
- 9 & 10 All community groups are responsible for the testing and tagging of electrical equipment and for fire equipment maintenance and compliance within the facility, space within a multi-use facility or on the land for which they are responsible.
- 11 All community groups are responsible for the purchase, repair and replacement of their own equipment and furniture.
- 12 It is the responsibility of all community groups to repair any asset damage including costs associated with, or arising from, anti-social behaviour for the land, facilities and premises for which it has exclusive use.
- 13 In principle, it is the responsibility of each community group with facility tenure to pay for the Group's **electricity and water consumption costs** to ensure these resources are managed in a responsible and sustainable manner. In practice, the assignment of these respective responsibilities depends on whether the facility (hall, clubhouse, building) or parcel of land (sports field, walking trails) has a separate water connection and a separate electricity connection for each Community group with facility tenure and whether public amenities/spaces are connected.

The most common arrangement is one community group with tenure for one facility/parcel of land with a **sole water connection and a sole electricity connection**. The Community group with exclusive use tenure of this type of facility is therefore responsible for paying all water and electricity costs.

Under the Community Partnerships Program, financial assistance is available to eligible, not for profit community organisations for water consumption fees, by application to the Program. Current assistance for eligible groups using >\$100 water/year is:

Group 1:	35% donation of annual water costs up to a maximum	\$2,000
Group 2:	35% donation of annual water costs up to a maximum	\$1,000
Group 3:	35% donation of annual water costs up to a maximum	\$500

Less common is a facility with **shared connections for water and/or electricity**. This generally involves more than one community group with facility tenure and public amenities may or may not be connected. In this case, the costs will be shared on a pro-rata basis with Council contributing the water and/or electricity costs for the public amenities such as toilets or sports fields. If the administration of a pro-rata payment system is not feasible when public amenities are connected, Council will pay all water and electricity costs for the facility. Payment of costs for water and power for community assets for free public access managed under a Type 5 community tenure agreement will be negotiated on a case by case basis where it is not feasible for the management group to cover all costs.

14 Where there is a shared connection, it is the responsibility of each community group with facility tenure to contribute to the maintenance of the facility's septic system on a pro-rata basis. Where the facility has one septic tank and public amenities are attached, the septic system maintenance costs will be met by Council.

15 & 16 Minor Maintenance is defined as a sensible and practical repair on a like-for-like basis for the continuance of operations, preservation, protection, repair to and upkeep, normally lasting no longer than one day. It can also include tangible changes to improve service delivery within the asset.

Major Maintenance is defined as maintenance which is either infrequent in nature or which is scheduled on a non-routine basis and may require setting aside funds over time or issuing additional debt to fund it.

Community Groups with Type 1 and Type 2 Community Tenure are responsible for *all* maintenance including grounds maintenance, building and facilities maintenance including repairs due to fair wear and tear and structural renewals. This is appropriate for commercial lessees and fair and reasonable for Type 2 Community Tenure as the Group's members have exclusive occupation and use of the facilities and grounds. Council will consider a request for maintenance assistance on a case-by-case basis.

Community Groups with Type 3 Community Tenure for the exclusive use of a space within a shared Council facility are responsible for minor maintenance within the Group's exclusive use area, for example, within a room at the Geraghty Park complex. Council is responsible for major maintenance including structural renewals of the building. This is fair and reasonable as the group generally has use of a relatively small space and shares the main facility with other groups and/or the public.

However, Council reserves the right to not undertake major maintenance on facilities under a **Type 3 Community Tenure agreement**. Should this occur the Community group will be issued with a Notice to Terminate the User Agreement. Such notice will be in writing and be served not less than three (3) months prior to the intended date of termination.

17 For similar reasons outlined at Item 16 Major Maintenance, community groups with Type 1 & 2 Community Tenures are responsible for Residual Current Device (RCD) testing obligations within the Facility or on the land e.g., Sports field. Council is responsible for Residual Current Device (RCD) testing obligations for community groups with Type 3 Community Tenure.

18 For similar reasons outlined at Item 16 Major Maintenance, community groups with Type 1 & 2 Community Tenures are responsible for meeting building fire safety compliance. Council is responsible for building fire safety compliance including providing facility evacuation plans for facilities occupied by community groups with Type 3 Community Tenure.

19 It is appropriate that commercial lessees (Type 1 Community Tenure) pay rates and service charges. Community groups with Type 2 Exclusive Use Community Tenure charged general property rates and service charges are responsible for payment of the rates and charges. However, significant rate rebates and remissions are offered to eligible community groups on application under Council's *Rate, Rebate and Remission Policy*.

It is not practicable to charge rates to community groups with Type 3 Community Tenure where they are sharing a small space in a multi-use facility and the facility may also have amenities or spaces used by the public.

20 Community groups charged rates and utilities are expected to pay the State Emergency Management Levy. Council is required to collect this levy and pass it onto the State Government and no Council rebate applies.

6. LEASE APPLICATION AND ASSESSMENT

- Groups wishing to apply to Council for a community tenure instrument under this policy can register their interest by contacting Mareeba Shire Council and submitting an *Application for Community Use and/or Occupation of Council Land and Facilities*.
- When a new space becomes available for tenure, Council will invite applications through open advertisement and direct notification to groups who have registered interest and to Council's Indigenous Land Use Agreement (ILUA) partners.
- The following factors may be assessed when considering an application:
 - Community group eligibility for subsidised community tenure
 - Funded service or not-for-profit commercial operator eligibility for commercial lease
 - Alignment with Council strategies
 - Type of services and activities the group provides
 - Willingness of the group to share the facility and/or building, if relevant
 - Planning and Building requirements
 - Native Title and Cultural Heritage issues
 - Ability to fulfil lease requirements including maintenance of the land/facilities/premises
 - Level of community need for the community activity proposed or proximity to other services offered
 - Accessibility of the community activity proposed
 - Community group facility requirements
 - An assessment of the impact of the proposed activity on open space (where the lease is on open space)
 - Whether there are alternative tenure options for the applicant.

7. TENURE INSTRUMENTS

7.1 TRUSTEE AND FREEHOLD LEASES

A community lease with terms and conditions, roles and responsibilities will be executed between Council (Lessor) and a community group approved for subsidised exclusive occupation and use of Council land or facilities (Lessee).

A trustee lease or a freehold lease may be issued over the whole of the land or part of the land where the lease area is defined by survey plan. Trustee Leases will be registered with the Queensland Titles Registry in accordance with requirements under the *Land Act 1994* (Qld).

A commercial lease will be issued for approved tenure agreements with funded community services and not-for-profit organisations with commercial operations requesting the exclusive use of Council land and/or facilities.

7.2 OTHER TENURE INSTRUMENTS

Where the community group has exclusive use of a clearly defined parcel of land and/or an identified facility or is allocated a defined space within a multi-use facility and it is not feasible to survey the land/facilities, tenure instruments may take the form of an Agreement or Licence with substantially the

same terms and conditions as an exclusive use trustee or freehold lease. It should be noted this type of tenure instrument is unable to be registered with the Queensland Titles Registry.

8. TENURE INSTRUMENT TERM, REVIEW, RENEWAL AND COMPLIANCE

8.1 TERM

A 10 year term will be offered under a community lease. Equal or varied terms may be applied at the sole discretion of Council to other tenure instruments for the exclusive use and occupation of Council land and facilities. This ensures the community group has security of tenure and eligibility for government grants; encourages investment for improved facilities for the benefit of the community; and fosters a sense of responsibility for managing the facilities for which the group has exclusive use.

8.2 REVIEW

Tenure instruments will be reviewed at the end of the relevant term. Factors considered can include:

- Compliance with the core community activities as stated in the tenure instrument;
- Compliance with the definition of an eligible community group as defined at Section 3.2.1.
- Compliance with Community group responsibilities such as maintenance and annual reporting;
- The level of community use of the facilities;
- Whether Council requires the land and/or buildings for another purpose which, in the opinion of Council, is of higher public interest;

8.3 RENEWAL

Subject to a satisfactory tenure review, a new tenure instrument may be offered for a further term.

8.4 COMPLIANCE WITH TERMS AND CONDITIONS

It is the responsibility of Community groups with exclusive occupation and use arrangements to comply with all conditions in the tenure instrument including changes in the group's level of commerciality or business model which could affect eligibility for tenure. Non-compliance with the conditions under the tenure instrument could result in the tenure being terminated.

Community Leases and other tenure instruments will be terminated for non-payment of charges and / or loans if a Community group falls in arrears for a period of in excess of two years (2) years and where a satisfactory repayment scheme is not agreed upon.

9. REPORTING

- No additional reporting is required.

10. DEFINITIONS

Community group – means a group approved for exclusive occupation and use of Council land or facilities and a formal tenure instrument has been executed between Council and the Group. Refer definition of an eligible community group at Section 3.2.1 of the Policy.

Community Lease – means a tenure instrument used to execute the exclusive use and occupation of council land and facilities by a community group where the reserve or freehold land has been surveyed and the Land Lot and Plan is used to register the lease on title.

Community Management Agreement or User Agreement – a tenure instrument used to execute the exclusive use and occupation of council land and facilities by a community group where the land has not been surveyed and there is no Land Lot and Plan for the exclusive use area.

Lessor – means Council as the owner or trustee of the land.

Multi-Purpose Facility – means a Council owned facility that has multiple user groups, each with an allocated space for exclusive use and there may be public use of amenities or a section of the facility, for example a sporting field, car park or public toilets.

11. RELATED DOCUMENTS AND REFERENCES

Community Management of Halls and Other Council Land and Facilities Policy (MSC)

Community Partnership Program Policy (MSC)

Rate Rebate and Remissions Policy (MSC)

Standard Requirements for Public Liability Insurance for Approval Holders (MSC)

12. REVIEW

It is the responsibility of the Manager Development and Governance to monitor the adequacy of this policy and implement and approve appropriate changes. This policy will be formally reviewed every four (4) years or as required by Council.