

Community Tenure Guidelines

Policy Type	Governance Procedure	Version:	2.1
Responsible Officer	Manager Development and Governance	Date Approved:	15/04/2024
Review Officer:	Director Corporate & Community Services Governance	Review Due:	24/12/2027
Author:	Manager Development and Governance	Commencement:	15/04/2024

1. PURPOSE

This guideline sets out the approval and administration of community tenure arrangements for the community's use of Council land and facilities in a fair, consistent, and transparent manner which is affordable to both community groups and ratepayers.

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 with varying levels of Council subsidy for the community's use of Council land and facilities are warranted.

2. SCOPE

This guideline:

- a) Directly relates to the *Community Group Exclusive Use of Council Land and Facilities Policy* and the *Community Management of Halls and other Council Land and Facilities Policy* and should be read in conjunction with these policies.
- b) Sets out the approval and administration processes for five (5) types of community tenure administered by Council:
 - Type 1 - Exclusive use by funded services and not-for-profit commercial operators (not-for-profit commercial operations)
 - Type 2 - Exclusive use by eligible community groups (subsidised community tenure)
 - Type 3 – Exclusive use within a shared/multiuse facility (subsidised community tenure)
 - Type 4 – Community management of halls on behalf of the community (subsidised community tenure)
 - Type 5 – Community management of other council land/facilities on behalf of the community (subsidised community tenure)
- c) Outlines for each type of community tenure, the level of Council subsidy, tenure instruments, responsibilities of the community group.

3. PROCEDURE STATEMENT

The procedural statement includes:

- 3.1 Overview of community tenure arrangements
- 3.2 Types of community tenure and levels of council subsidy
- 3.3 Types of community tenure and community group responsibilities
- 3.4 Types of community tenure and tenure instruments

3.1 Table 1. Overview of Community Tenure Arrangements

Type of Community Tenure	Tenure Group	Level of Council Subsidy	Tenure Instrument
Type 1: Not-for-profit commercial Operations	Funded services and not-for-profit commercial operators as per definition in policy	Nil <i>However, no fee for the preparation, management or renewal of a commercial lease is charged provided the standard documents are used.</i>	Trustee or Freehold Commercial Lease
Type 2: Exclusive use by eligible community groups	Eligible community group as per definition in policy	High	Trustee or Freehold Community Lease; or Community Group Exclusive Use Management Agreement
Type 3: Exclusive use within a shared/multiuse facility	Eligible community group as per definition in policy	Very High	Community Group User Agreement
Type 4: Community management of halls on behalf of the community	Eligible management group as per definition in policy	Highest	Community Management of Council Halls Agreement
Type 5: Community management of other council land/facilities on behalf of the community with free public access	Eligible management group as per definition in policy	Very High	Community Management of Council Land/Facilities Agreement

3.2 Table 2. Types of Community Tenure and Levels of Council Subsidy

Type of Community Tenure	Level of Council Subsidy
<p>Type 1 Community Tenure: Commercial</p> <ul style="list-style-type: none"> • State or Federal government funded community services • Not-for-profit organisations with commercial operations where the profits are not retained by the business or individual members but are used for community benefit • Organisation may request exclusive use of council land/facilities for the delivery of services and activities for community benefit 	<p><i>Nil – No Council subsidy applies, although no fee for the preparation, management or renewal of a commercial lease is charged provided the standard documents are used.</i></p> <ul style="list-style-type: none"> • Delivery of community services such as youth and family support, early childhood education and disability respite is not a local government responsibility so Council does not subsidise state or federal government funded community services. • It is fair and reasonable that grant funds for community services should cover all operational costs including premises. • Council does not subsidise activities or operations that compete with local businesses including commercial operations by not-for-profit organisations e.g., Gaming, restaurant, licenced premises, event facilities, childcare services. • It is expected revenue from the commercial operations are used to cover operating costs including all costs for premises and facilities. • Commercial lease terms and conditions will be negotiated, and approval is by Resolution of the Council.
<p>Type 2 Community Tenure: Exclusive Use:</p> <ul style="list-style-type: none"> • Eligible community group has exclusive occupation and use of the land/facility e.g., Sporting Club, Men’s Shed • Land/Facility is used by group members and is not used for any other purpose or by any other groups or the public without permission of the community group. • This is the most common type of community tenure. • It allows for the clearest assignment of respective responsibilities. 	<p><i>High level of Council subsidy</i></p> <ul style="list-style-type: none"> • No rent is charged for exclusive use of the land and facilities. • No fee is charged for the preparation, management and renewal of tenure instruments. • Generous rate rebates and remissions apply to eligible groups (if eligible for Type 2 exclusive use community tenure, then generally also eligible for rate rebates). Group needs to apply under the <i>Rate Rebate and Remissions Policy</i>. • Group members are the primary beneficiaries therefore it is fair and reasonable they should be responsible for the facility and any associated land such as sports fields. • Group is responsible for all planned and reactive maintenance and operating expenses.

Type of Community Tenure	Level of Council Subsidy
<p>Type 3 Community Tenure: Exclusive Use Within a Multi-use Facility:</p> <ul style="list-style-type: none"> • Eligible community Group has exclusive use of a space within a multi-use facility. Spaces do not comprise a full standalone facility e.g., Netball Club at Davies Park, Craft Group at Geraghty Park • Space is mainly used by group members, but some facilities are shared e.g., public toilets. 	<p><i>Very high level of Council subsidy Higher level than Types 1, 2 & 5 but lower than Type 4</i></p> <ul style="list-style-type: none"> • No rent is charged for the group’s exclusive use areas. • No fee is charged for the preparation, management and renewal of tenure instruments. • Group members are the primary beneficiaries therefore it’s fair and reasonable they should be responsible for their exclusive use areas. • Where possible, group contributes to costs for shared use spaces, but Council may be responsible for the shared use spaces when it’s not feasible to apportion costs and/or shared spaces are also used by the public e.g., car park, public toilets.
<p>Type 4 Community Tenure: Community Management of Halls:</p> <ul style="list-style-type: none"> • Community management group is managing a Council hall on behalf of the community for use by community members e.g., Mutchilba, Koah, Mt Molloy and Geraghty Park halls. • Generally, the group has been asked by Council to take on the role 	<p><i>Highest level of Council subsidy</i></p> <ul style="list-style-type: none"> • No rent is charged even if the management group uses the hall for only for its members up to 20% of the time. • No fee is charged for the preparation, management and renewal of tenure instruments. • Council is responsible for major maintenance. • Council does not charge the group rates and utilities for the hall and may cover other costs depending on the layout of the facility e.g., Public toilet cleaning. • This is fair and reasonable as volunteer group members are managing the hall on behalf of the community for community benefit and working to increase utilisation, yet halls have some revenue raising capacity.
<p>Type 5 Community Tenure: Community Management of Council Land/Facilities on Behalf of the Community:</p> <ul style="list-style-type: none"> • Community management group has developed a facility/asset on behalf of the community for community use e.g., Abattoir Swamp, Babbler’s Hill, Granite Ck Esplanade half basketball court • Generally, group has initiated the project on Council land/facility. 	<p><i>Very high level of Council subsidy, similar to Type 3 but Council does no maintenance.</i></p> <ul style="list-style-type: none"> • The group is fully responsible for the facility/asset it has developed including all maintenance. • Council’s contribution is the provision of free land, most often reserve land for which Council is Trustee for the project. • No rates and utilities are charged. • This level of subsidy is fair and reasonable as it is a facility/asset for community benefit and public access, but the project was initiated and led by the group and the group may have access to grant funds for establishment and ongoing maintenance / upgrades.

3.3 Types of Community Tenure and Responsibilities of Community Groups

		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		Type 4: Community Management of Halls		Type 5: Community Management of Council Land / Facilities for Public Use	
No.	Responsibility	Funded Service or NFP Commercial Operator	Council	Community Group	Council	Community Group	Council	Management Group	Council	Management Group	Council
1	Costs for the preparation, management & renewal of tenure agreements	No charge provided the standard tenure instruments are used									
2	Rent	✓	No rent charged to groups not operating commercial operations								
3	Operating expenses including cleaning, gas, telephone, administration	✓	x	✓	x	✓	x	✓	x	✓	x
4	Insurance – Public Liability	✓	x	✓	x	✓	x	✓	x	✓	x
5	Insurance - contents/chattels	✓	x	✓	x	✓	x	✓	x	✓	x
6	Insurance - general building at Group's discretion	✓	x	✓	x	✓	x	✓	x	✓	x
7	Waste disposal	✓	x	✓	x	✓	x	✓	x	✓	x
8	Workplace Health and Safety	✓	x	✓	x	✓	x	✓	x	✓	x
9	Electrical equipment testing and tagging	✓	x	✓	x	✓	x	✓	x	✓	x

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No.	Item	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		Type 4: Community Management of Halls		Type 5: Community Management of Council Land / Facilities for Public Use	
		NFP Commercial Operator	Council	Community Group	Council	Group	Council	Management Group	Council	Management Group	Council
10	Fire equipment maintenance and compliance	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗
11	Furniture and equipment – purchase, repair and replacement	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗
12	Cost to repair facility damage including vandalism and graffiti removal	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗
13	Water and Electricity consumption costs (sole or shared connections)	✓	✗	✓	✗	✓	If required	✓	If required	✓	✗
14	Septic tank maintenance (sole or shared connections)	✓	✗	✓	✗	✓	If required	✓	If required	✓	✗
15	Minor maintenance and refurbishments + grounds maintenance	✓	✗	✓	✗	✓	✗	✓	✗	✓	✗
16	Major maintenance, refurbishments & renewals	✓	✗	✓	✗	✗	✓	✗	✓	✓	✗
17	RCD testing and tagging	✓	✗	✓	✗	✗	✓	✗	✗	✓	✗

		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		Type 4: Community Management of Halls		Type 5: Community Management of Council Land / Facilities for Public Use	
No.	Item	NFP Commercial Operator	Council	Community Group	Council	Management Group	Council	Management Group	Council	Management Group	Council
18	Building fire and safety compliance	✓	✗	✓	✗	✗	✓	✗	✓	✓	✗
19	General property rates and utility charges	✓	NA	✓	NA	✗	NA	✗	NA	✗	NA
20	State Emergency Management Levy	✓	NA	✓	NA	✗	NA	✗	NA	✗	NA
21	Promotion of facility for community utilisation	NA	NA	✓	✗	✓	✗	✓	At Council's discretion	✓	✗
22	Administrative records for community utilisation	NA	NA	✗	✗	✗	✗	✓	✗	✗	✗
23	User/hire agreements and fee collection	NA	NA	✗	✗	✗	✗	✓	✗	✗	✗

Responsibilities of Community Groups - Explanatory Notes:

Item 1 Council does not charge for legal or other costs associated with the preparation, management and renewal of 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.

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** such as a multi-purpose facility or hall. This generally involves more than one community group/management 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, Type 2 or Type 5 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 it is the Group's members that have exclusive occupation and use of the facilities and grounds. Regarding Type 5 Community Tenure, it is fair and reasonable the group is responsible for all maintenance as the land and facilities were initiated, led and developed by the community group and not by Council and the group often has access to grant funds for establishment, upgrades and renewals. 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 (Licenced Area) 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.

Management Groups with Type 4 Community Tenure for the non-exclusive use of the community hall are responsible for all minor maintenance of the facility. Council is responsible for major

maintenance of the facility. This is fair and reasonable as the Community group does not have exclusive use and is managing the community hall for community use.

However, Council reserves the right to not undertake major maintenance on facilities under a **Type 3 or Type 4 Community Tenure agreement**. Should this occur the Community group will be issued with a Notice to Terminate the 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, Type 2 or Type 5 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 and Type 4 Community Tenures.
- 18** For similar reasons outlined at Item 16 Major Maintenance, community groups with Type 2 and Type 5 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 and Type 4 Community Tenures.
- 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 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.
Management groups with Type 4 & Type 5 Community Tenures are managing a community hall or another community asset or facility on behalf of the community and not for the sole benefit of group members, so are not charged rates and services.
- 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.
- 21** Management Groups responsible for community halls are required to promote the community hall to increase community utilisation and Council may assist at its discretion and in consultation with the Management Group. Other groups with community tenure can encourage and promote use and membership at their own discretion and cost.
- 22** Management Groups managing a Council owned hall (Type 4 Community Tenure) are required to keep administrative records for public utilisation including accounts, monthly usage statistics and other records reflecting the management of the facility. Groups with other types of community tenure keep relevant records at their discretion.
- 23** Management Groups with a Type 4 Community Tenure to manage community halls are responsible for ensuring user/hall hire agreements are in place with all user groups and that fees are collected and accounted for appropriately.

3.4 Types of Community Tenure, Eligible Groups and Tenure Instruments

Type of Community Tenure	Type of Tenure Group	Tenure Instrument	Comment
<p>Type 1: Commercial</p>	<ul style="list-style-type: none"> Funded Community Services Not for Profit organisations with commercial operations 	<p>Commercial Lease</p>	<p>Site is surveyed and commercial lease is registered on title.</p>
<p>Type 2: Exclusive Use of Council Land/Facilities</p>	<p>Eligible community groups meeting the definition in the <i>Community Group Exclusive Use of Council Land and Facilities Policy</i></p>	<p>Community Lease</p>	<p>The site can be clearly identified by survey or is the whole of a Lot, and the intention is to grant exclusive possession of the site.</p> <p>The issuing of a lease registered on title is the preferred option where feasible as it allows for the clearest assignment of respective responsibilities and is the most secure form of tenure.</p> <p>The lease is for a fixed term, with a maximum term of 10 years. If Reserve land, the permitted use must be consistent with the gazetted purpose, Land Management Plan, and zoning regulations.</p>
		<p>Community Group Exclusive Use Management Agreement</p>	<p>The issuing of a management agreement should only be considered where a lease cannot be achieved; such as, where the site cannot be surveyed and therefore there is no Lot on Plan number.</p> <p>A management agreement is a contractual agreement, and is not registered on title. Therefore, security of tenure is inferior compared to a lease. The management agreement is for a maximum term of 10 years.</p> <p>If Reserve land, the permitted use must be consistent with the gazetted purpose, Land Management Plan, and zoning regulations.</p>
<p>Type 3: Exclusive Use Within a Multi-use Facility</p>	<p>Eligible community groups meeting the definition in the <i>Community Group Exclusive Use of Council Land and Facilities Policy</i></p>	<p>Community Group User Agreement</p>	<p>Used where Community Group has exclusive use of a space within a multi-use facility or community precinct.</p>

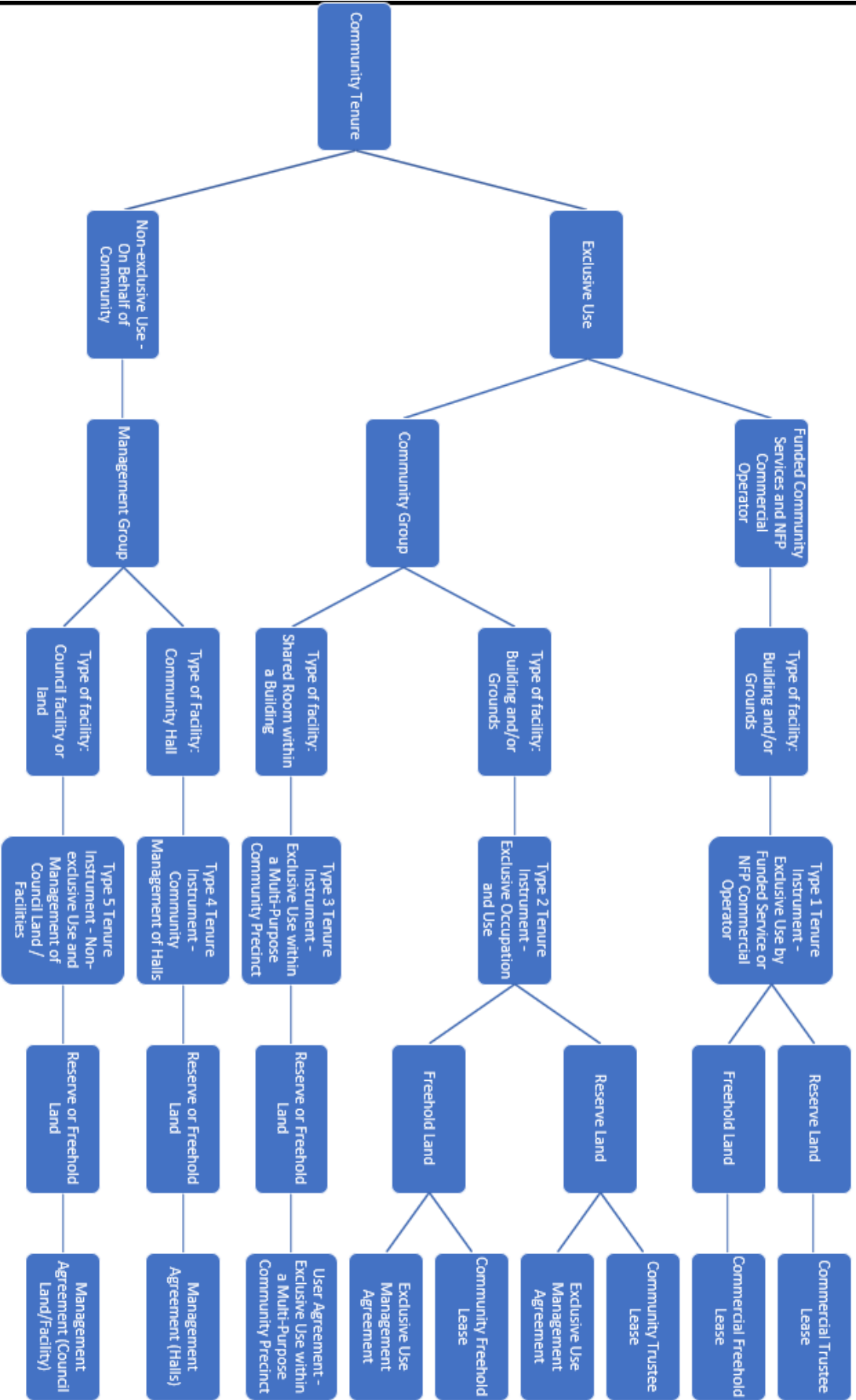
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Type of Community Tenure	Type of Eligible Group	Tenure Instrument	Comment
Type 4: Community Management of Halls	Eligible management groups meeting the definition in the <i>Community Management of Halls and Other Council Land and Facilities Policy</i>	Community Management of Council Halls Agreement	Used where a Community Group is managing the whole of a Council hall on behalf of the community for use by community members.
Type 5: Community Management of Council Land/Facilities on Behalf of the Community	Eligible management groups meeting the definition in the <i>Community Management of Halls and Other Council Land and Facilities Policy</i>	Community Management of Council Land and Facilities Agreement	Used where a Community Group is managing a Council asset on behalf of the community for use by community members.

Workflow Chart – Types of Tenure Instruments

The Workflow Chart on the following page shows the type of tenure instrument to be issued for each type of tenure arrangement.

Workflow Chart – Types of Tenure Instruments



4. REPORTING

- "No additional reporting is required".

5. 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 *Community Group Exclusive Use of Council Land and Facilities 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 Licence 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.

6. RELATED DOCUMENTS AND REFERENCES

Community Group Exclusive Use of Council Land and Facilities Policy (MSC)

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

Community Partnerships Program Policy (MSC)

Rate Rebate and Remission Policy (MSC)

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

7. REVIEW

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