

 <p>Central Highlands Regional Council</p>	COUNCIL POLICY
	Tenure of Council Owned or Controlled Land to Sporting and Active Recreation Organisations Policy
POLICY NUMBER: C H R C 0 0 3 7 EFFECTIVE DATE: 11 December 2018	DEPARTMENT: Communities UNIT: Sport and Recreation

1.0 Objective

To provide Council with an operational framework for the granting and renewal of tenure on Council Owned or Controlled Land to Sporting or Active Recreation Organisations.

2.0 Purpose and Scope

This Policy will apply to the allocation, use and management of all tenure arrangements over Council Owned or Controlled Land for the purpose of providing sport and active recreation activities. This Policy seeks to:

- a) Provide a consistent framework for the granting and renewal of tenure;
- b) Provide certainty of tenure to Sporting or Active Recreation Organisations; and
- c) Proactively activate Council Owned or Controlled Land for the purpose of sport and active recreation.

3.0 Reference

Land Act 1994 (Qld)

Land Regulation 2009 (Qld)

*Local Government Act 2009 (Qld) (the **Act**)*

*Local Government Regulation 2012 (Qld) (the **Regulation**)*

Remissions to Sport and Active Recreation Organisations Policy

Sport and Active Recreation Committee Terms of Reference

4.0 Definitions

Act means the *Local Government Act 2009 (Qld)* (as amended);

Active Recreation Organisation means an incorporated body that encourages community participation through active recreation activities;

Business Process Model means the business process model for Council asset management for Recreation Facilities;

CEO means Council's Chief Executive Officer;

Club Planning Toolkit means the Council template for a forward planning document that will assist Sport and Active Recreation Organisations to reach Key Performance Indicators;

Club Strategic Plan means the strategic plan to be developed by the Sporting or Active Recreation Organisation setting out its strategic objectives and implementation strategy;

Committee means the Sport and Active Recreation Committee established by Council from time to time;

Council means Central Highlands Regional Council;

Council Owned or Controlled Land includes land, built facilities, hard courts, sporting fields and arenas owned by Council or controlled by Council as trustee of a Reserve;

Days means normal calendar days (not business days);

General Council means the full Council as convened from time to time;

Lease means an agreement under which Council grants to a lessee, in return for valuable consideration, the right to occupy Council Owned or Controlled Land for an agreed period of time, and includes a Trustee Lease;

Licence means any allowable use as directed by Council (without allowing exclusive possession) from time to time and including a licence or permit;

Parks People Play means the plan for parks in the Council region (as adopted by Council from time to time);

Regulation shall mean the *Local Government Regulation 2012* (Qld) (as amended);

Request to occupy means the process undertaken by Council seeking expressions of interests and the making of applications by prospective lessees for access to Council Owned or Controlled Land ;

Reserve means land set aside for a community purpose or public purpose under the *Land Act 1994* (Qld);

Specialised Facility has the meaning provided in Parks People Play;

Sporting Organisation means an incorporated body that encourages community participation through sporting activities;

Standard Tenure Documents means the standard terms and conditions for Leases or Licences approved by Council from time to time;

Tenure Agreement means a Lease, Licence or other right of use granted by Council;

Tenure Offer means the issue of formal tenure documents by Council to a Sporting or Active Recreation Organisation following conclusion of engagement between Council and the Sporting or Active Recreation Organisation; and

Trustee Lease means a Lease of the whole or any part of a Reserve.

5.0 Policy Statement

This Policy is intended to ensure Council validly issues its Tenure Agreements using an open and transparent process.

The Granting of tenure to Sporting and Active Recreation Organisations will be a decision of Council. Council will consider granting tenure over Council Owned or Controlled Land where:

- a) The highest and best use of the site is achieved;
- b) Internal processes have been complied with;
- c) Tenure arrangements respond to unique social and demographic needs where applicable; and
- d) The term of the tenure is consistent with anticipated future requirements of the site.

5.1 Sport and Active Recreation Committee

5.1.1 Establishment of Committee

The Sport and Active Recreation Committee (Committee) will be comprised of five (5) Councillors, General Manager Communities and Manager of Community Recreation & Facilities. The Committee will commence from August 2019. The Committee will act in accordance to a Terms of Reference.

5.1.2 Role of Committee

The Committee will be convened for the purpose of the Manager of Community Recreation & Facilities referring the following matters for determination:

- a) Consideration and recommendation of requests for the granting and renewal of Tenure Agreements, where they are consistent with this Policy (i.e. as part of the renewal process, consider the achievement of key performance indicators);
- b) The undertaking of a request to occupy process, including the consideration and determination of responses to applications made through a request to occupy;
- c) Consideration and recommendation of a request for Council to consent to a sub-lease, where consistent with this Policy;
- d) Consideration and recommendation of a request for extension to the execution period for tenure documents, as prescribed under section 5.3.2;
- e) Consideration and recommendation of the sport and recreation grants program and applications received under that program;
- f) Consideration of willingness to support Sport and Active Recreation Organisations making grant applications to other grant funding sources, that relate to Council owned or controlled sporting and active recreation facilities;
- g) Consideration and recommendation of strategic planning matters that relate to sporting and active recreation facilities that advance Council's Parks People Play strategy;
- h) Making recommendations and referring matters to General Council in accordance with this Policy including:
 - i. Where a request for the granting or renewal of tenure is not consistent with this Policy;
 - ii. Consideration of a request for Council to consent to a sub-lease, where not consistent with this Policy; and
 - iii. Strategic planning matters that relate to sporting and active recreation facilities that do not advance Council's Parks People Play strategy.

5.2 General Council

The following matters must be considered and decided by the General Council:

- a) The Standard Tenure Documents, including standardised terms such as Key Performance Indicators, maintenance responsibilities and eligibility;
- b) Any tenure-related matters which are not consistent with this Policy or have been referred from the Committee; and
- c) Where a recommendation is made which is not consistent with other Council policies, plans or strategic documents (i.e. all decisions which do not advance this Policy or Parks People Play).

Where matters are not identified to be decided by the General Council, the Sport and Active Recreation Committee is the decision maker.

Council has resolved, in accordance with section 236(2) of the Regulation, that the exception in section 236(1)(b)(ii) applies to Council in relation to the disposal of a valuable non-current asset, by way of lease, for Council Owned or Controlled Land to a Sport and Active Recreation Organisations under this Policy.

5.3 Tenure process

5.3.1 Granting of Tenure

- a) Sporting or Active Recreation Organisations shall generally be granted tenure in accordance with the terms and conditions specified in the Standard Tenure Documents.
- b) Council's preferred length of tenure is five (5) years. Freehold leases may include options to renew the lease or holding over clauses if appropriate.
- c) Council's preferred length of tenure for a renewed term is five (5) years. Under the provisions of the *Land Act 1994*, trustee leases cannot include options to renew or hold over at the expiry of the arrangement.
- d) For clarity, holding over refers to a situation where, at the expiry of the lease, the lessee is able to remain in occupation on a month by month basis on the same terms and conditions as the expired lease until terminated as provided for in the lease.
- e) The form of tenure to be offered by Council for facilities may include tenure over specialised fields, courts and buildings (i.e. excluding carpark areas and any surplus undeveloped reserved/freehold land).
- f) Individual tenure arrangements may be required to be subject to a security bond or bank guarantee in favour of Council.

5.3.2 Execution of Tenure Agreement

- a) Upon receipt of a formal Tenure Offer from Council the Sporting or Active Recreation Organisation has a period of forty-five (45) days to return the signed Tenure Agreement, unless an extension is granted by the Committee. If this is not achieved Council may offer the facility through a request to occupy process.
- b) All applications for a Lease or Licence over a Reserve are subject to Ministerial approval.

5.3.3 Eligibility and Suitability

To be eligible to hold tenure over Council Owned or Controlled Land, the following criteria must be met:

- a) All applicants must be incorporated under the Association Incorporation Act 1981 or similar legislation, prior to tenure being granted;
- b) All applicants must provide evidence of public liability insurance for a minimum amount of twenty million dollars (\$20,000,000.00) in respect of any one event. There may be circumstances where Council will request a higher level of public liability cover and this is at the sole discretion of Council;
- c) Sporting or Active Recreation Originations must take out and maintain:
 - i. Contents insurance for any and all plant and equipment at the facility;
 - ii. Plate glass insurance;
 - iii. Workers compensation insurance as required by the *Workers' Compensation and Rehabilitation Act 2003*;
- d) Current registration with the relevant state or national sporting organisation/body (if any);
- e) In determining an application for tenure, Council may take into account the following factors:
 - i. The (demonstrated) capacity of the Sporting or Active Recreation Organisation to undertake development and maintenance of the facility/identified tenure area, including over specialised fields, courts and buildings, as required by the Standard Tenure Documents;
 - ii. The ability of the Sporting or Active Recreation Organisation to share facilities, fully activate and utilise the facilities and resources;
 - iii. The submission to Council of a compliant Club Strategic Plan;
 - iv. The potential to grow membership and participation from the community and capitalise on the opportunities the tenure offers; and
 - v. An ability to meet key performance indicators required by the Standard Tenure Documents.

5.4 Activation of Council Owned or Controlled Land

5.4.1 Tenure obligations

Sporting or Active Recreation Organisations, in accepting an offer of tenure from Council, will generally be responsible for:

- a) Payment of tax invoices for refuse collection service costs in line with the Water and Waste for Sport and Active Recreation Organisations Policy;
- b) All services and utilities used by the Sporting or Active Recreation Organisation including, electricity and telecommunications and associated connection and disconnection fees;
- c) Achievement of key performance indicators specified in the tenure document;
- d) Obtaining all necessary licences and approvals to engage in the activities permitted by the tenure and that require licences and/or approvals to allow that activity to be undertaken; and
- e) Sporting and Active Recreation Organisations will take responsibility for the general maintenance and upkeep on infrastructure and site improvements as per the signed Tenure Agreement.

5.4.2 Key performance indicators

The following are the minimum key performance indicators which are included in the Standard Tenure Documents:

- a) Attendance or participation by one or more committee members in 2 online or face-to-face workshops per annum that are deemed mandatory by Council;

- b) Submission to Council of an annual report or survey, completed using the Council template and submitted at the time specified in the Tenure Agreement, detailing the Sporting or Active Recreation Organisation's performance over the past 12 months, including:
 - i. A maintenance log including all parts of the leased area where works have been carried out including contractor details, licence details and the nature of work completed;
 - ii. A risk management assessment of the building (if relevant), grounds, space and courts identifying all relevant safety issues either known or considered an imminent risk;
 - iii. A compliance checklist (i.e. test and tag, chemical storage);
 - iv. A summary of achievements for the Sporting or Active Recreation Organisation, including:
 - A. participation and membership numbers;
 - B. number of events held;
 - C. athlete development;
 - D. internal or external training that was provided to members and volunteers; and
 - E. facility matters requiring attention by Council, consistent with Council's maintenance obligations in the standard Lease or Licence;
 - v. Operation in accordance with approved governing body regulations, the association's constitution, rules and by-laws and with Council and other regulating body rules.
 - vi. Demonstrated evidence of engaging with the community through activating the space over which the organisation holds tenure (e.g. hiring the facility to other community organisations, holding events open to the broader community); and
 - vii. Completion of the Club Planning Toolkit.

5.4.3 Council Responsibilities

- a) Sporting or Active Recreation Organisations will not be responsible for Council's legal costs associated with the tenure document preparation (including survey costs and lease registration fees, variation, extension or surrender.
- b) Council will undertake condition audits every 3 years on Council Owned or Controlled Land as outlined in the Business Process Model, including of the following structures:
 - i. Fields and hard courts;
 - ii. Clubhouses;
 - iii. Specialised Facilities; and
 - iv. Infrastructure and site improvements.
- c) Compliance audits of all Council Owned or Controlled Land will be progressively undertaken to ensure certificates of classification have been issued.
- d) In addition to the condition audits stated in section 5.4.3 (b) above, Council's sport and recreation unit will undertake yearly visual reviews/inspections of facilities on Council Owned and Controlled Land.
- e) Information accumulated from the yearly review will be used to inform:
 - i. Maintenance priorities for the lessees or licencees;
 - ii. Sporting or Active Recreation Organisation /Club development opportunities;
 - iii. Council's Master Plans and long-term planning;
 - iv. Capital Investment;
 - v. Sport and Recreation Grants program (funding opportunities); and
 - vi. Risk Management.
- f) Council will take responsibility for the repair and replacement of any items identified in the condition audit as:
 - i. Major asset failure;
 - ii. Major replacement; and
 - iii. High risk/Vulnerable asset (including major/scheduled maintenance).

- g) Mowing of the tenure and surrounding areas consistent with the obligations outlined in the Standard Tenure Documents.
- h) Major field maintenance of the playing surfaces consistent with the obligations outlined in the Standard Tenure documents.
- i) Maintenance of the general community's right to access the sporting facilities outside of organised sport or recreation participation, subject to the nature of the facility and the terms and conditions of the tenure granted to any particular Sport and Active Recreation Organisation.
- j) Council will be responsible for insurance of capital assets including all infrastructure that is in an acceptable condition as per asset ratings (e.g. buildings and grandstands) on Council Owned or Controlled Land leased or licenced for Sport and Active Recreation Organisations.
- k) Council will be responsible in coordinating the online and face to face mandatory workshops.
- l) Specialised maintenance responsibilities will be a shared responsibility between Council and the Sporting or Active Recreation Organisation as outlined in the Maintenance Schedule.

5.4.4 Failure to perform

The Standard Tenure Document will detail the process for non-compliance and dispute resolution.

In summary however, if the Sport or Active Recreation Organisation breaches its obligations under its Tenure Agreement, Council may:

- a) Be able to perform the Sport or Active Recreation Organisation's obligations and recover the cost of doing so from the Sport or Active Recreation Organisation;
- b) Re-enter and take possession of the Premises and the Tenure Agreement may be terminated; and/or
- c) Sue to recover damages from the Sport or Active Recreation Organisation for any loss or cost incurred by Council as a result of the breach.

5.5 Tenure Fees

The following annual tenure fee will be applied for Sporting or Active Recreation Organisations with tenure over Council Owned or Controlled Land:

Annual tenure fee amount	Tenure classification
\$1 (including GST), payable on demand	Sporting or Active Recreation Organisations

5.6 Essential Requirements

- a) Before a Tenure Agreement may be signed the following must be provided/completed:
 - i. Certificate of Incorporation;
 - ii. Copy of the Constitution of the Sporting or Active Recreation Organisation; and
 - iii. Certificate of Currency.
- b) Before funding applications will be considered the following essential elements must be provided or completed:
 - i. Current annual financial statements;
 - ii. Club Planning Toolkit;
 - iii. No outstanding debt to Council;

- iv. Certificate of classification check; and
- v. Food business and Liquor Licence check (if relevant).

6.0 Council's Standard Tenure Documents

Council will adopt Standard Tenure Documents, consistent with this Policy.

A Tenure Agreement may include additional or special conditions relevant to a particular facility, having regard to the particular nature of that facility and the requirements of the Sporting or Active Recreation Organisation.

7.0 Policy Review

This Policy will be reviewed biennially or when any of the following occurs:

- a) Relevant legislation, regulations, standards and policies are amended or replaced; or
- b) Other circumstances as determined from time to time by the Chief Executive Officer/Executive Leadership Team/Managers.