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## TENURE POLICY

### *INTENT*

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To standardise the manner in which Council grants tenure over Council owned land, Council Controlled Land and Council facilities to external parties, so that there is a framework through which:

- a) Council may (as far as practicable) implement standardised agreements (including standardised rentals, terms and conditions) based on the applicable Organisation Type; and
- b) Council can ensure that the provision of Tenure Agreements by Council is cost neutral.
- c) The process by which council enters into a Land Tenure Agreement complies with the relevant legislation.

### *SCOPE*

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This policy applies to:

- a) All employees (including management and elected representatives) engaged in tenure negotiation *and* funding agreement negotiation from which tenure arrangements derive; and
- b) Any/all parties, groups, entities or persons either proposing/applying to, or whom currently, hold a tenure agreement (i.e. Lease, Licence or Management Agreement) from Cook Shire Council; and
- c) Any agreement type whereby Cook Shire Council assumes the role of lessor (or other like title) and Periodical Payments (or other forms of consideration) are made to (or waived by) Cook Shire Council, in exchange for occupancy or management of land, buildings, or part thereof, on a temporary, short or long-term basis, other than a single instance, i.e. the booking of a hall.
- d) This Policy does not apply to Council supplied staff accommodation or seniors' accommodation.

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# PROVISIONS

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## 1. LEGISLATION

This policy has been made with reference to the Queensland *Land Act 1994*, *Land Regulation 2020*, *Local Government Act 2009* and the *Local Government Regulation 2012*: Part 3, Default Contracting Procedures.

## 2. SECURING OF TENURE

### 2.1 Advertising the Property

As per the *Local Government Regulation 2012*, section 227:

- Subject to any legislative exceptions, all property interests available for Tenure need to first be advertised (by way of an invitation for written tender) for 21 days on the Cook Shire Council website. Additionally, Cook Shire Council must take all reasonable steps to publish the invitation for tenders in another way to notify the public about the tender process (i.e. publishing an invitation in an industry publication or on the QTENDERS website or in a newspaper or newsletter deemed to reach the majority of constituents). The invitation to tender must clearly state the criteria (including the weighting of that criteria) by which the tender submissions will be evaluated.

### 2.2 Exceptions to the requirement for Advertisement/Tender

An exception to the requirement for advertisement/tender must be considered in line with the relevant legislation, and on a case-by-case basis.

However, for the purpose of this policy it is noted that under section 236(1)(b) of the *Local Government Regulation 2012*, Cook Shire Council may grant a property interest (without having to go to tender) if the grant is to:

- A Community Organisation; or
- A government agency.

An exception under section 236(1)(b) of the *Local Government Regulation 2012* applies only if, before any grant/disposal, Council has decided by resolution that the exception may apply and that the specific grant/disposal can take place without a tender (section 236(2) *Local Government Regulation 2012*).

In the circumstances of an exception under section 236(1)(b) of the *Local Government Regulation 2012* the grant of the property right does not need to be for market value/market rate, and as such a nominal rent may be considered and/or applied at Council's discretion (section 236(3) and (4) of the *Local Government Regulation 2012*) and otherwise in line with this policy.

### 2.3 Evaluating Submissions

Where a tender process occurs, all submission from parties interested in the property

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tenure from Council will be reviewed in light of any/all legislative requirements, the tender weighting criteria, and in line with Cook Shire Council's endorsed goals and objectives.

Where no provision for the determination of Tenants is provided for in the tendering process, then in addition to the above considerations, selection will be in accordance with the *Local Government Act 2009*: Sound Contracting Principles, namely:

- a) Value for money;
- b) Open and effective competition;
- c) The development of competitive local business and industry;
- d) Environmental protection; and
- e) Ethical behaviour and fair dealing.

### 3. REGISTRATION

All Leases whereby an interest in land is offered will, if required by legislation, be lodged with the Department of Resources, including, but not limited to, Trustee Leases.

### 4. TENURE CONDITIONS

To the maximum extent practicable, Terms and Conditions will be standardised across Leases, Tenancy Agreements, Licences to occupy, and other Tenure arrangements.

Key to the provisions in each arrangement is the requirement for the Tenant/Occupant to provide for their own services, either through direct engagement, or to reimburse Council for the provision of those services. Where Council provides services, an administration fee may be charged. Services include, but are not limited to:

- a) Phone and Data
- b) Electricity
- c) Water
- d) Sewerage
- e) Gas
- f) Rates
- g) Gardening and Landscaping
- h) Cleaning
- i) Security
- j) Refuse removal

Major maintenance, i.e. capital renewal and structural repairs, will be undertaken by Council (to the extent the required maintenance is not caused or contributed to by the occupant), with the rental set to cover forecast costs where appropriate. Minor and operational maintenance will be the responsibility of the lessee.

Exemptions to the requirement for the Tenant to provide for their own services will be considered on a case-by-case basis by Council.

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## 5. TERM

The Term of any Tenure Agreement will be no less than one (1) year and no greater than thirty (30) years. Exceptions will be by negotiation with Council.

Trustee Leases for sporting clubs will be for a maximum term of 20 years unless otherwise approved by the Minister.

## 6. RENTAL SCHEDULE

All rental (for property) shall be charged according to the following schedules. Amounts as detailed in the policy shall be reviewed yearly in accordance with the relevant CPI Index † and new rental agreements shall be charged at the indexed price.

Exceptions to the endorsed rental schedule shall:

- a) Form part of Council's Community Service Obligation; or
- b) Will be considered by Council on a case-by-case basis.

Organisation Type *	Base Rental	Annual Increase	Administrative Fee ‡
Government, Commercial and Private	Market rate as a minimum, or as otherwise determined by Council.	CPI †	15%
Community Organisation	Determined on a case-by-case basis, noting market rate exemptions under the <i>Local Government Regulation 2012</i> , and having regard to nature of the Community Organisation, the financial means of the Community Organisation, and the community benefit/need which may be met by the proposed use of the Premises	CPI †	5% - Dependent upon capacity of organisation to pay
Sporting Association	Nominal rate by negotiation, having regard to nature of the Sporting Association, the financial means of the Sporting Association, and the community benefit/need which may be met by the proposed use of the Premises	CPI †	5% - Dependent upon capacity of organisation to pay
State or Federally Funded Not for Profit/Community	Determined on a case-by-case basis, having consideration to the community benefit/need which may be met by the proposed use of the Premises. Where the organisation falls within the definition of a 'Community Organisation' under the <i>Local Government Regulation 2012</i> , refer to corresponding item above.	CPI †	10% - Dependent upon capacity of organisation to pay

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Social Housing	Determined annually by Council Budget or by State Government-mandated Criteria.	N/A	N/A
Special Categories			
DOGIT/Trustee Lease	Determined on a case-by-case basis, by Council or by State-mandated or Legislated Criteria.	CPI †	N/A
Land only	Market Rate	CPI †	10%

\* All Associations must be incorporated prior to leasing from Council.

† “CPI” means the Consumer Price Index (All Groups) Brisbane figure published from time to time by the Australian Bureau of Statistics or, if no Consumer Price Index (All Groups) Brisbane figure is published at the relevant time by the Australian Bureau of Statistics, an index that the Australian Statistician nominates as appropriate (whether by public notice or by specific advice to the Principle or the Contractor). CPI shall be calculated as follows:

On each anniversary of the Tenure Agreement Commencement Date during the Term, the rental shall be adjusted by applying the formula:

An adjustment of rent calculated in accordance with the following formula:

$$R = \frac{X \times Y}{Z}$$

Where:

R= the rental payable for the year in respect of which the rental is being calculated.

X= the CPI for the quarter ended immediately prior to the commencement of the year in respect of which the rental is calculated.

Y= the rental payable during the year immediately preceding the year in respect of which the rental is being calculated.

Z= the CPI for the quarter ended immediately prior to the commencement of the year immediately preceding the year in respect of which the rental is being calculated.

‡ The administrative fee is a percentage of the service cost and is applied under the following circumstances:

- Where services are supplied in Council’s name and Council invoices the tenant for the services; or
- Where services are provided by Council (including: electricity, data, phone, gas, gardening and landscaping, cleaning, requested improvements above that scheduled by Council, pest control, refuse removal, air conditioning, etc.)

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## DEFINITIONS

TERM	DEFINITION
<i>Association</i>	An incorporated association under the <i>Associations Incorporation Act 1981</i> , or similar legislation.
<i>Commercial Organisation</i>	An entity that is <i>not</i> defined as not-for-profit and/or is funded by the public or commercial (i.e. the provision of a service directed at making a profit_ and is registered under the <i>Corporations Act 2001</i> , or similar legislation.
<i>Community Organisation</i>	Has the same meaning as given under the <i>Local Government Regulation 2012</i> , being an entity that carries on activities for a public purpose or other entity whose primary objective is not directed at making a profit. A Community Organisation often takes the form of an Association.
<i>Council Controlled Land</i>	Land for which Council is: <ol style="list-style-type: none"> <li>The Trustee of Trust Land; or</li> <li>The lessee under a head lease agreement; or</li> <li>The holder of Freehold Title for the land.</li> </ol>
<i>DOGIT</i>	Means, Trust Land under a Deed of Grant in Trust. Tenure in respect of DOGITs are typically negotiated in a way that is consistent with the purpose for which the Trust Land was granted in trust, and with the intention of providing the community with a particular service – likely to involve State of Federal Government imposed conditions.
<i>Government Organisation</i>	Program or organisation (or a division thereof) funded primarily by Federal, State or Local government.
<i>Social/Community Housing</i>	Housing provided based on means testing, or other criteria, as part of Council's community service obligation.
<i>Lease(s)</i>	Any arrangement whereby a party, group or person exclusively occupies property (or part thereof) on a temporary, short, or long-term basis, other than a single instance, in exchange for payment (or other consideration) to the lessor. Includes a Trustee Lease or Trustee Permits under the <i>Land Act 1994</i> .
<i>Lessee or Tenant</i>	For the purposes of this policy, a party to which Cook Shire Council provides a Tenure Agreement.
<i>Lessor</i>	The party or persons to whom payment is made. Cook Shire Council is the lessor for the purposes of this policy.
<i>Licence</i>	A contractual right to occupy or use Council land without any legal right to exclude others, on a temporary, short, or long-term basis, other than a single instance, in exchange for payment (or other consideration) to the licensor.

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TERM	DEFINITION
<i>Management Agreement</i>	A contractual right to manage a Council owned facility located on Council land (i.e. camping sites, pool complexes), on terms and conditions and agreed with Cook Shire Council.
<i>Periodical Payment</i>	Regular payments made by a party to Cook Shire Council in exchange for the granting of rights (usually occupancy rights) under a Tenure agreement.
<i>Property</i>	Land, buildings, or part thereof.
<i>Rental</i>	A form of payment – inclusive of all its connotations.
<i>Reserve</i>	Unallocated State land dedicated by the Minister as a reserve for one or more community purposes under the <i>Land Act 1994</i> .
<i>Sporting Association</i>	An entity (usually an Association) that is funded solely through the provision of subscription fees and/or donations and/or fundraising activities. For the purposes of this Policy an entity will only be considered a Sporting Association where the Tenure is for Unimproved Land only, and any structural improvement (approved by Cook Shire Council) are to be self-funded by the entity.
<i>Tenure</i>	A Lease (including all its connotations), Licence or Management Agreement.
<i>Trust Land</i>	Has the same meaning given to that term in the <i>Land Act 1994</i> , being land comprising a Reserve or DOGIT.
<i>Trustee Lease</i>	A lease of Reserve Trust Land by the applicable trustee under the <i>Land Act 1994</i> . Tenure in respect of Reserves are typically negotiated in a way that is consistent with the purpose for which the Reserve was dedicated, and with the intention of providing the community with a particular service - likely to involve State or Federal Government imposed conditions (in particular, the 'Prescribed Terms' under Schedules 3 and 4 of the <i>Land Regulation 2020</i> ).
<i>Unimproved Land</i>	Land with no structural improvements. Upon which the Lessee may place improvements for the benefit of the Lessee (subject to obtaining the Lessor's prior consent).

## REFERENCES, LEGISLATION AND GUIDELINES

*Local Government Act 2009*

*Local Government Regulation 2012: Part 3, Default Contracting Procedures*

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Land Act 1994 (Queensland)

Land Regulation 2020

## IMPLEMENTATION/COMMUNICATION

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This policy will be available on Council's Website and in Council's EDRMS, Content Manager and RelianSys Monitor module. The policy will be shared with relevant Council officers.

## APPROVED BY

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Council Resolution 2024/143

## REVIEW

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SPONSOR:	Director Growth & Liveability
OFFICER RESPONSIBLE FOR REVIEW:	Property & Commercial Services Coordinator
ADOPTION DATE:	23 July 2024
REVIEW DATE:	July 2027

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*THIS POLICY IS TO REMAIN IN FORCE UNTIL OTHERWISE DETERMINED BY COUNCIL*

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## AMENDMENT HISTORY

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VERSION	AMENDMENT DETAILS	AMENDMENT DATE	APPROVAL
V4	New name (previously Leasing Policy) Minor changes to Definitions	23 July 2024	Council Resolution 2024/143

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