

Program: Property Services
Date of Adoption: 24 May 2023
Resolution Number: ORD-2023-127
Review Date: 24 May 2026

Scope

This policy relates to Community Organisations utilising Mackay Regional Council Land (MRC Land) or buildings for sporting and community-based service purposes.

This policy does not relate to commercial occupation of Council Land.

Objective

The objective of this policy is to ensure that there is an equitable and consistent approach in providing Tenure to Community Organisations. Mackay Regional Council (MRC) seeks to promote optimal use of all MRC Land and buildings and adoption of responsible and sustainable practices through the provision of land for sporting and community based organisations.

Policy Statement

This policy aims to provide a consistent framework for managing community leasing and licensing matters. Some matters will require special terms and conditions to be negotiated between MRC and the individual community organisation.

MRC considers that to the extent this policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

This process to remain in force until otherwise determined
by Mackay Regional Council

Contents

1.0	Principles	3
1.1	Enquiries by Community Organisations wishing to utilise MRC Land.....	3
2.0	Complaints	3
3.0	Definitions	4
4.0	Review of Policy	4
5.0	Reference	5
6.0	Attachments	5

1.0 Principles

MRC owns and controls a range of different types of land such as sporting fields, community facilities, commercial, residential and rural land holdings. The portfolio of MRC Land at any one time is based on the needs of MRC and the community.

This policy must be read in conjunction with its associated Corporate Standard 065.1 Community Leasing.

1.1 Enquiries by Community Organisations wishing to utilise MRC Land

- (a) Enquiries for the use of MRC Land for a community purpose must be made in writing and referred to the Community Lifestyle Program.
- (b) The type of Tenure available will depend on the type of land (freehold, leasehold or reserve land) to which the enquiry relates.

Some forms of Tenure grant an exclusive right to occupy the Premises to the exclusion of others and other forms of Tenure grant a non-exclusive right to occupy the Premises which mean the occupancy may be shared. Example Tenure types include:

- (i) a lease or licence of MRC owned freehold land;
- (ii) trustee lease or trustee permit of reserve land controlled by MRC as trustee; or
- (iii) a sublease of land leased by MRC.

2.0 Complaints

Any complaints in relation to a decision or a service relating from this policy will be assessed and managed in accordance with MRC's Administrative Action Complaints Policy, a copy of which can be found on MRC's website.

When an individual feels that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC. These complaints will be assessed against the Human Rights Act 2019.

Complaints may be made as following:

In writing to
Chief Executive Officer
Mackay Regional Council
PO Box 41
MACKAY QLD 4740

Via Email - complaints@mackay.qld.gov.au

In person at the following MRC Client Services Centres:

- MRC Mackay Office – 73 Gordon Street, Mackay
- MRC Sarina Office – 65 Broad Street, Sarina
- MRC Mirani Council Office – 20 Victoria Street, Mirani

3.0 Definitions

To assist in interpretation the following definitions shall apply:

Community Organisation shall mean a not for profit community based organisation incorporated under the Associations Incorporations Act and/or has the appropriate status under other legislation acceptable to Council.

Council shall mean all elected representatives, including the Mayor of Mackay Regional Council.

MRC Land shall mean land and buildings owned or controlled by Mackay Regional Council.

DOR shall mean the Department of Resources.

MRC shall mean the Mackay Regional Council.

Premises shall mean MRC Land, or part of MRC Land, occupied by a Community Organisation under a Tenure Agreement.

Rates Remission shall mean a partial reduction in the amount of Council MRC rates payable.

Tenure shall mean the right to occupy land or buildings pursuant to an agreement.

Tenure Agreement shall mean an agreement or deed setting out the terms and conditions of Tenure. For example: a lease, licence, trustee lease or trustee permit.

Tenure Application Form shall mean the application form contained in Annexure D of this Policies associated Corporate Standard

Term shall mean the period of time from commencement to expiry of the Tenure Agreement. For Example: 12 months, 3 years, 5 years.

4.0 Review of Policy

This policy will be reviewed when any of the following occur:

- The related documents are amended or replaced.
- Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three (3) years.

5.0 Reference

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Residential Tenancies and Rooming Accommodation Act 2008*
- *Land Title Act 1994*
- *Land Act 1994*
- *Land Valuation Act 2010*
- MRC Corporate Standard - 065.1 Community Leasing

6.0 Attachments

- MRC Corporate Standard - 065.1 Community Leasing

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		Council	13.03.19
2	Review	Amendments	Council	24.05.23

Program	Property Services
Date of Endorsement	24 May 2023
Review Date	24 May 2026

1.0 Scope

This standard relates to Community Organisations utilising Mackay Regional Council Land (Council Land) or buildings for sporting and community-based service purposes.

This standard does not relate to commercial occupation of Mackay Regio Council MRC Land.

2.0 Objective

The objective of this standard is to define:

- a) how Community Organisations may enter into a Tenure Agreement with Council; for available Council Land;
- b) what form of Tenure may be offered; and
- c) defining the keys responsibilities and costs of entering into a Tenure Agreement with Council.

3.0 Reference

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Residential Tenancies and Rooming Accommodation Act 2008*
- *Land Title Act 1994*
- *Land Act 1994*
- *Land Valuation Act 2010*
- MRC Policy 065 – Community Leasing

4.0 Definitions

To assist in interpretation the following definitions shall apply:

Community Organisation shall mean a not for profit community based organisation incorporated under the Associations Incorporations Act and/or has the appropriate status under other legislation acceptable to Council.

Council shall mean all elected representatives, including the Mayor of Mackay Regional Council.

MRC Land shall mean land and buildings owned or controlled by Mackay Regional Council.

DOR shall mean the Department of Resources.

MRC shall mean the Mackay Regional Council

Premises shall mean MRC Land, or part of MRC Land, occupied by a Community Organisation under a Tenure Agreement.

Rates Remission shall mean a partial reduction in the amount of MRC rates payable.

Tenure shall mean the right to occupy land or buildings pursuant to an agreement.

Tenure Agreement shall mean an agreement or deed setting out the terms and conditions of Tenure. For example: a lease, licence, trustee lease or trustee permit.

Tenure Application Form shall mean the application form contained in Annexure D of this Corporate Standard.

Term shall mean the period of time from commencement to expiry of the Tenure Agreement. For Example: 12 months, 3 years, 5 years.

5.0 Standard Statement

This standard is intended to fulfil the following objectives and must be read in conjunction with its associated Council Policy 065 - Community Leasing:

5.1 Steps to formalise a Tenure Agreement

- (a) A written enquiry is received by Community Lifestyle or Property Services;
- (b) A properly completed Tenure Application Form is received by Community Lifestyle;
- (c) Community Lifestyle and Property Services will evaluate the Tenure Application Form taking into consideration member numbers, sustainability and need, and the ability of the Community Organisation to meet the terms of a Tenure Agreement;
- (d) Property Services will consider available MRC Land and Tenure types and consult with MRC's Legal Services regarding the form of Tenure Agreement required and whether any approvals are required;
- (e) If the new lease proposal requires community consultation, with the result having a negative community impact, the lease proposal will not proceed;
- (f) If an appropriate Tenure is available, Property Services will advise the Community Organisation what type of Tenure and Tenure Agreement Council can offer, and the applicant and Council will agree on the terms of a Tenure Agreement;
- (g) Community Lifestyle will report to Council and seek Council approval to the grant of the Tenure Agreement;
- (h) MRC's Legal Services and/or Property Services team will proceed to arrange execution and registration (if applicable) of the Tenure Agreement;

- (i) Property Services will liaise with the Community Organisation in relation to the ongoing management and monitoring of the Tenure Agreement.

5.2 Tenure Term

The Term of Tenure must comply with Council's maximum Tenure Terms set out in Table 1 of Annexure A hereto.

5.3 Tenure Rental

- (a) Once a Tenure Agreement is entered into, the Community Organisation will be responsible for the payment of rent payable under the Tenure Agreement.
- (b) For annual rental charged by Council, refer to Table 2 in Annexure B hereto.

5.4 Tenure Rates and Charges

- (a) Once a Tenure Agreement is entered into, the Community Organisation will be responsible for the payment of rates and charges assessed against the Premises and the Tenure Agreement.
- (b) For rates and charges charged by MRC, refer to Table 3 in Annexure C hereto.
- (c) In addition to the rates and charges charged by MRC set out in Table 3 of Annexure C hereto, the Community Organisation may also be responsible for the following charges (if applicable):
 - (i) all costs of connecting to, upgrading (if applicable) and usage and metering for, utilities, for example, electricity, gas, water, sewerage, telephone and internet;
 - (ii) trade waste and grease trap connections, upgrades, renewals, maintenance, usage, and metering charges; and
 - (ii) all costs of cleaning and removing refuse from the land.

5.5 Costs of Lease

- (a) All reasonable costs incurred by the Community Organisation and MRC associated with the preparation, negotiation, stamping and registration of any Tenure Agreement, including the costs of preparation of a survey plan (if applicable), are the responsibility of the Community Organisation.
- (b) In addition, the Community Organisation will be responsible for MRC's reasonable costs in relation to any assignment of the Tenure Agreement or subletting of the Premises, any consent required to be obtained by MRC under the Tenure Agreement, the surrender or termination of the Tenure

Agreement and any breach by the Community Organisation of the Tenure Agreement.

- (c) It is usual for a tenant or licensee under a lease or licence to bear these costs. MRC endeavours to mitigate these costs where possible so that such costs are not overly burdensome on the Community Organisation.

5.6 Insurance

Community Organisations entering into a Tenure Agreement with MRC will be required to obtain and maintain, at their own cost, such insurances (including but not limited to Public Liability Insurance) as are reasonably required by MRC in respect of the occupation and use of the Premises and in accordance with the conditions of the Tenure Agreement.

5.7 Compliance with Tenure Agreement Conditions

- (a) In accepting a Tenure Agreement with MRC, the Community Organisation agrees to be bound by the terms of the Tenure Agreement and must comply with the conditions of the Tenure Agreement. Depending on the form of Tenure, the Community Organisation may also be required to comply with the *Land Act 1994* (Qld) and *Land Regulation 2020* (Qld) and the mandatory standard terms imposed by State of Queensland which will also be attached to the Tenure Agreement.
- (b) A breach of the terms of the Tenure Agreement may result in termination of the Tenure Agreement and additional costs being incurred by the Community Organisation.
- (c) It is important for the Community Organisation to read and understand the Tenure Agreement. MRC recommends the Community Organisation seek legal advice to understanding its obligations under the Tenure Agreement.

5.8 Ownership of Improvements

- (a) All improvements and alterations to the Premises, both internal and external, require the prior written consent of MRC and all required regulatory approvals must be obtained.
- (b) The ownership of all fixed improvements constructed or installed on the Premises will vest in MRC from the time they are installed or constructed. This means the Community Organisation will not be permitted to remove those improvements without the consent of MRC.
- (c) All pre-existing fittings and fixtures will remain in the ownership of MRC on expiry of the Tenure Agreement.

5.9 Maintenance of Premises

The Tenure Agreement will set out the Premises maintenance obligations of the Community Organisation and MRC, including but not limited to:

- (a) Be responsible of all fittings, fixtures, and infrastructure upon and within the Premises;
- (b) Maintain, preserve, and keep in good and tenantable repair all improvements;
- (c) At the end of the Tenure Agreement, yield up all fittings, fixtures and infrastructure in good order and condition, fair wear, tear and damage by fire, flood, storm tempest or otherwise by Act of God or the King's enemies excepted.

5.10 Liquor Licenses and Permits

- (a) The grant of consent to the lodgement of an application for a liquor licence or permit will be subject to a successful initial assessment of the application under the Local Government Planning Scheme.
- (b) The grant of consent to the lodgement of an application for a restricted liquor permit or community liquor permit will be subject to an initial assessment by the Local Government Planning Scheme and MRC and owner or controller of the land.
- (c) The Community Organisation must not apply for any licence or permit or for any variation to a licence or permit without the prior consent of MRC.
- (d) It should be noted that Community Organisations that have an ability to generate income through their liquor licence will occur a higher rental fee, refer to Table 2 in Annexure B hereto.

5.11 Assignment, subleasing, sublicensing and use of the Premises by third parties

- (a) The Tenure Agreement must not be assigned, sublet, or sublicensed to a third party without the prior written consent of MRC. Furthermore, use of the Premises must not be granted to a third party (including a caretaker) without the prior written consent of Council.
- (b) MRC may impose conditions of consent which it considers reasonably in its absolute discretion.
- (c) Community Organisations may in some cases consider a sublease or sublicense to a commercial entity subject to MRC approval and when required, the approval of DOR.

5.12 Mortgages and Security

The Community Organisation must not mortgage, charge or otherwise use the Premises as security without the prior consent of MRC. MRC may impose conditions of consent which it considers reasonable in its absolute discretion.

5.13 Advertising and Signage

The Community Organisation must not erect advertising or signage on the Premises without the prior written consent of MRC.

5.14 Nuisance

The Community Organisation must not carry on any illegal, improper, immoral, noxious or offensive, trade, business, occupation, activity or calling nor will it do, upon the Premises anything which might be or become a nuisance, annoyance or grievance or cause damage to MRC or the neighbours.

5.15 Pests and Vermin

The Community Organisation will:

- (a) Destroy and keep down all noxious weeds, plants, and under-growth that from time to time grown on the Premises;
- (b) Keep the Premises free of rodents, termites, cockroaches, and other vermin; and
- (c) For any of those purposes at the Community Organisation's expense treat the Premises with such insecticides or other chemicals as the Lessor requires and so often as it reasonably requires.

5.16 Drainage and Vegetation

The Community Organisation must not carry out or cause to be carried out on the Premises any drainage or other interference with the surface of the ground and shall not cut down or remove any trees without the consent of MRC.

5.17 Fencing

Restrictive fencing of the Premises is not supported by MRC with fields and/or open space areas of the Premises to be made available for use by the general public when not in use by the Community Organisation.

Non-restrictive fencing such as installation of bollards or low fencing with access gaps or similar vehicle restricting fencing may be considered.

The Community Organisation must not install any fencing of any kind on the Premises without first having sought and obtained consent of MRC.

The costs of installation of any agreed fencing shall be solely borne by the Community Organisation.

5.18 Access by Council

Where the Land is reserve land, during a civil emergency event or force majeure event, MRC may use the Premises:

- (i) to provide shelter or other relief to the displaced, the injured or the endangered;
- (ii) as a storage, logistics or communications facility; or
- (iii) any other emergency response purpose for which the Premises is suitable.

5.19 Rights at the end of the Tenure Agreement

- (a) At the end of the Term of the Tenure Agreement, the Community Organisation will be required to vacate the Premises and make good the Premises to the condition it was in at the commencement of the Tenure Agreement.
- (b) A Community Organisation will not have a right to stay in the Premises at the end of the Term unless the Tenure Agreement expressly gives the Community Organisation the right to do so. Such a right may be included in the Tenure Agreement by way of an 'option to renew' the Tenure Agreement or a 'holding over' right remain in the Premises on a temporary basis with the consent of Council, or as agreed with MRC.

6.0 Review of Standard

This corporate standard will be reviewed when any of the following occur:

- 1. When any related policy documents are amended or replaced.
- 2. Other circumstances as determined from time to time.

Notwithstanding the above, this Corporate Standard is to be reviewed at intervals of no more than three (3) years.

7.0 Attachments

- A. Table 1 – Tenure Agreement Term
- B. Table 2 – Tenure Agreement Rental
- C. Table 3 – Tenure Agreement Rates & Charges
- D. Tenure Application Form

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New		Council	24.5.23

Attachment A

Table 1 – Tenure Agreement Term

Category	Tenure		Tenure Length
1	New Tenure		Maximum 5 years
2	Renewed Tenure (Following review of sustainability, need, activation and financial capability.)		Maximum 10 years*
3	Renewed or new tenure where contribution to capital improvements & demonstrated community benefit of greater or equal to:-	\$1,000,000.00	15 years*
		\$2,000,000.00	20 years*
		\$5,000,000.00	20 years +* (upon assessment)
* Subject to Council discretion			

Attachment B

Table 2 – Tenure Agreement Rental

Proposed New Tenure Agreement Rental						
Category of Tenure	Description	First Year of New Tenure (Not Renewal)	Annual Charge – balance of Tenure	Liquor Licence	Gaming Licence	Total Per Annum
1	Tenant has limited ability to generate income. (Income between \$0 to \$20,000.00 e.g. Progress associations or small community groups.	0.00	20.00	0.00	0.00	20.00
2	Tenant has ability to generate income through their liquor licence. (Income between \$20,000.00 to \$30,000.00) Small sporting clubs. E.g. Football Clubs	0.00	25.00	25.00	0.00	50.00
3	Tenant has ability to generate income through their liquor licence. (Income between \$30,000.00 to \$40,000.00) Medium sporting clubs. e.g. Mackay Jnr Rugby League, Mackay Netball, Pioneer Tennis.	50.00	75.00	25.00	0.00	100.00
4	Tenant has ability to generate income from both a liquor licence and gaming licence. (Income over \$40,000.00) Large sporting clubs e.g. Magpies, Southern Suburbs etc.	50.00	100.00	25.00	100.00	225.00

Attachment C

Table 3 – Tenure Agreement Rates & Charges

Rating categories:

100% Rate Remission of general rates and any special rate or charge levied where no utility services are applicable to the property.
[Tenure category - all categories]

75% Rate Remission of total rates, charges and levies (excluding water consumption charges) to Community Organisations that hold a current lease with Mackay Regional Council and has a limited ability to generate income (income up to \$20,000). Capacity to earn this amount not inclusive of grants* [Tenure category - category 1]

50% Rate Remission of total rates, charges, and levies (excluding water consumption charges). [Tenure category - categories 2 & 3]

Examples:

	Rates	Rebate	Amount Payable
Rates - no services	\$747.25	100%	Nil
Rates - Lessee with income up to \$10,000	\$1445.45	50% 75%	\$722.72 (current rates) \$361.36 (proposed rates with new rebate)

*New rating category only be available to sustainable organisations that are struggling to pay lease payments and maintain group activities.

Annexure D

TENURE APPLICATION FORM

COUNCIL OWNED OR MANAGED PROPERTY



1. APPLICANT ORGANISATION'S DETAILS

NAME OF APPLICANT ORGANISATION	
ADDRESS	
NAME OF PRESIDENT	
PHONE	
EMAIL ADDRESS	
NAME OF SECRETARY	
PHONE	
EMAIL ADDRESS	
NAME OF TREASURER	
PHONE	
EMAIL ADDRESS	

2. PROPERTY REQUIREMENTS

PROPERTY DESCRIPTION OR PREFERRED LOCATION (IF KNOWN)	LOT NUMBER	
	ADDRESS	
USE PROPOSED FOR LEASE AREA		
EXISTING IMPROVEMENTS OR REQUIRED DEVELOPMENT		
LICENCE DETAILS - DOES THE ORGANISATION HOLD OR INTEND TO HOLD	RESTRICTED LIQUOR PERMIT	YES / NO
	FULL LIQUOR LICENCE	YES / NO
	GAMING LICENCE	YES / NO

**3. PROVIDE A SKETCH PLAN OF PROPOSED LEASE AREA & DEVELOPMENT
(INCLUDING DIMENSIONS)**

A large, empty rectangular box with a thin black border, intended for a sketch plan of the proposed lease area and development. The box is oriented vertically and occupies most of the lower half of the page.

[illegible]

CURRENT YEAR
PREVIOUS YEAR 1
PREVIOUS YEAR 2
PREVIOUS YEAR 3

[illegible]

7. CURRENT FINANCIAL POSITION & COPY OF MOST RECENT AUDITED FINANCIALS

**8. DOES YOUR ORGANISATION CURRENTLY OWN/LEASE/RENT ETC ANY LAND?
IF YES, PLEASE PROVIDE DETAILS.**

9. IF APPLICABLE, WOULD YOUR ORGANISATION BE WILLING TO SHARE A LEASE WITH ANOTHER GROUP? IF YES, PLEASE PROVIDE DETAILS OF POTENTIAL GROUP/S.

10. HAS YOUR ORGANISATION BEEN OFFERED A LEASE PREVIOUSLY, WAS THE OFFER ACCEPTED? IF NO, PLEASE PROVIDE DETAILS AS TO WHY THE OFFER WAS REJECTED.

**11. DEVELOPMENT PROPOSAL – DETAILS OF THE ORGANISATION'S DEVELOPMENT PLANS
FOR THE SUBJECT FACILITY/PROPERTY**

DESCRIPTION OF PROPOSED DEVELOPMENT	
REASONS TO JUSTIFY DEVELOPMENT	
EXPECTED/ESTIMATED TIMEFRAME FOR DEVELOPMENT	
ESTIMATED COST OF DEVELOPMENT	
OUTLINE THE SOURCE OF FUNDING	
RESOURCES REQUIRED TO ENSURE SUCCESSFUL COMPLETION OF DEVELOPMENT	
ATTACH ANY PLANS OF FUTURE	

12. APPLICANT'S SIGNATURE

SIGNATURE	
FULL NAME	
POSITION WITHIN ORGANISATION	
DATE	

Please return signed and completed Application to:

Sport & Recreation Development Officers Mackay
Regional Council
PO Box 41
MACKAY QLD 4740

Email: sport@mackay.qld.gov.au

ATTACHMENT CHECKLIST	
COPY OF CERTIFICATE OF INCORPORATION	YES / NO
MINUTES OF LAST AGM CONFIRMING APPOINTMENT OF OFFICER BEARERS AND RECENT TREASURER'S REPORT	YES / NO
COPY OF LAST AUDITED FINANCIAL STATEMENT	YES / NO
COPY OF CONSTITUTION (IF APPLICABLE)	YES / NO
COPY OF PUBLIC LIABILITY INSURANCE COVER	YES / NO
COPY OF CLUB DEVELOPMENT PLAN (IF APPLICABLE)	YES / NO
PROPOSED BUILDING OR FACILITY PLANS	YES / NO
EVIDENCE OF PROJECT FUNDING	YES / NO
LOCATION MAP/PLAN	YES / NO