

	<b>COUNCIL POLICY</b>	
	<b>Community Organisations Leasing Policy</b>	
	POLICY NO	065
	DEPARTMENT	Organisational Services
	PROGRAM	Property Services
	ENDORSED BY COUNCIL	13 March 2019, Folio 61359

## 1.0 Scope

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

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

## 2.0 Purpose

The purpose of this policy is to:

Ensure that there is an equitable and consistent approach in providing Tenure to Community Organisations. Council seeks to promote optimal use of all Council Land and buildings and adoption of responsible and sustainable practices through the provision of land for sporting and community based organisations.

Provide guidance to Community Organisations wishing to utilise available Council Land and buildings for sporting and community-based service purposes.

This Policy provides a framework for:

- 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)
- Division 4 Section 236(b) of the Local Government Regulation 2012
- Division 2 Section 224 of the Local Government Regulation 2012.
- Residential tenancies and Rooming Accommodation Act (2008)
- Land Title Act (1994)
- Land Act (1994)
- Land Valuation Act (2010)

## 4.0 Definitions

To assist in interpretation the following definitions shall apply:

<b>Community Organisation</b>	means 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.
<b>Council</b>	means Mackay Regional Council.
<b>Council Land</b>	means land and buildings owned or controlled by Council.
<b>DNRME</b>	means the Department of Natural Resources, Mines and Energy.
<b>Premises</b>	means Council Land, or part of Council Land, occupied by a Community Organisation under a Tenure Agreement.
<b>Rates Remission</b>	means a partial reduction in the amount of Council rates payable.
<b>Tenure</b>	means the right to occupy land or buildings pursuant to an agreement.
<b>Tenure Agreement</b>	means an agreement or deed setting out the terms and conditions of Tenure. For example: a lease, licence, trustee lease or trustee permit.
<b>Tenure Application Form</b>	means the application form contained in Annexure B of this Policy.
<b>Term</b>	means the period of time from commencement to expiry of the Tenure Agreement. For example: 12 months, 3 years, 5 years.

## 5.0 Background

- (a) Council 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 Council Land at any one time is based on the needs of Council and the community.
- (b) Policy and associated procedures, a standardised process can be adopted for all Council Land that is leased or licensed to Community Organisations.

## 6.0 Policy Statement

### 6.1 Enquiries by Community Organisations wishing to utilise Council Land

- (a) Enquiries for the use of Council 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 Council owned freehold land;
  - (ii) trustee lease or trustee permit of reserve land controlled by Council as trustee;

or

- (iii) a sublease of land leased by Council.
- (c) Any Tenure Application Form received by Council will be submitted for consideration by Community Lifestyle and Property Services Programs and assessed to ensure:
- (i) the purpose of the use is for a sporting, recreational or community service and there is a need for that purpose;
  - (ii) application is for a Community Organisation;
  - (iii) the applicant can demonstrate the ability to meet all financial obligations under the Tenure Agreement and can maintain appropriate insurances;
  - (iv) there is appropriate Tenure available for the purpose; and
  - (v) the Term of the Tenure proposed does not exceed Council's maximum Tenure Term.
- (d) The steps to formalising a Tenure Agreement with Council are as follows:
- (i) A written enquiry is received by Community Lifestyle or Property Services;
  - (ii) A properly completed Tenure Application Form is received by Community Lifestyle;
  - (iii) Community Lifestyle and Property Services will evaluate the Tenure Application Form taking into consideration the criteria set out in 6.1(c)(i)-(v) above and member numbers, sustainability and need, and the ability of the applicant to meet the terms of a Tenure Agreement;
  - (iv) Property Services will consider available Council Land and Tenure types and consult with the Council's Legal Services regarding the form of Tenure Agreement required and whether any approvals are required;
  - (v) If the new lease proposal requires community consultation, with the result having a negative community impact, the lease proposal will not proceed;
  - (vi) If an appropriate Tenure is available, Property Services will advise the applicant what type of Tenure and Tenure Agreement Council can offer, and the applicant and Council will agree on the terms of a Tenure Agreement;
  - (vii) Community Lifestyle will report to Council and seek Council approval to the grant of the Tenure Agreement;
  - (viii) Council's Legal Services and/or Property Services team will proceed to arrange execution and registration (if applicable) of the Tenure Agreement;
  - (ix) Property Services will liaise with the applicant in relation to the ongoing management and monitoring of the Tenure Agreement.

## 6.2 Tenure Term

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

### 6.3 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 A of this Policy.

### 6.4 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 Council, refer to Table 2 in Annexure A of this Policy.
- (c) In addition to the rates and charges charged by Council set out in Table 2 of Annexure A of this Policy, 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) de waste and grease trap connections, upgrades, renewals, maintenance, usage and metering charges; and
  - (ii) all costs of cleaning and removing refuse from the land.

### 6.5 Costs of Lease

- (a) All reasonable costs incurred by the Community Organisation and Council associated with the preparation, negotiation, stamping and registration of a 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 Council's reasonable costs in relation to any assignment of the Tenure Agreement or subletting of the Premises, any consent required to be obtained by Council under the Tenure Agreement, the surrender or termination of the Tender 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. Council endeavours to mitigate these costs where possible so that such costs are not overly burdensome on the Community Organisation.

### 6.6 Insurance

Community Organisations entering into a Tenure Agreement with Council 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 Council in respect of the occupation and use of the Premises and in accordance with the conditions of the

Tenure Agreement.

#### 6.7 Compliance with Tenure Agreement Conditions

- (a) In accepting a Tenure Agreement with Council, 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 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. Council recommends the Community Organisation seek legal advice to understanding its obligations under the Tenure Agreement.

#### 6.8 Ownership of Improvements

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

#### 6.9 Maintenance of Premises

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

- (i) Be responsible of all fittings, fixtures and infrastructure upon and within the Premises;
- (ii) Maintain, preserve and keep in good and tenantable repair all improvements;
- (iii) At the end of the lease, 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 Queen's enemies excepted.

#### 6.10 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 Council 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 Council.
- (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 A of this policy.

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

#### 6.12 Mortgages and Security

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

#### 6.13 Advertising and Signage

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

#### 6.14 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 Council or the neighbours.

#### 6.15 Pests and Vermin

The Community Organisation will:

- (i) Destroy and keep down all noxious weeds, plants and under-growth that from time to time grown on the Premises;
- (ii) Keep the Premises free of rodents, termites, cockroaches and other vermin; and
- (iii) 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.

#### 6.16 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 Council.

#### 6.17 Fencing

Restrictive fencing of the Premises is not supported by Council 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 Council.

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

#### 6.18 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 Council.

### **7.0 Review of Policy**

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

1. The related documents are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of the Local Government.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than two years.

---

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		Council	13.03.19



## **ANNEXURE 'A' TABLES**

### **TABLE 1 TENURE AGREEMENT TERM**

<b>Category</b>	<b>Tenure</b>	<b>Tenure Length</b>	
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			

Please note this table applies to leases, licences and trustee leases only. A trustee permit cannot be for a term exceeding 3 years.

**TABLE 2 TENURE AGREEMENT RENTAL**

<b>Proposed New Tenure Agreement Rental</b>						
<b>Category of Tenure</b>	<b>Description</b>	<b>First Year of New Tenure (Not Renewal)</b>	<b>Annual Charge – balance of Tenure</b>	<b>Liquor Licence</b>	<b>Gaming Licence</b>	<b>Total Per Annum</b>
1	Tenant has limited ability to generate income. (Income between \$0 to \$20,000.00 eg. 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. Eg. 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. eg. 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 eg. Magpies, Southern Suburbs etc	50.00	100.00	25.00	100.00	225.00

Please note this table applies to leases, licences and trustee leases only and does not include Trustee Permits, these will be negotiated on a case by case basis.

### **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 \$20,000	\$1445.45	50%	\$722.72 (current rates)
		75%	\$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 'B' - TENURE APPLICATION FORM

### TENURE APPLICATION FORM COUNCIL OWNED OR MANAGED PROPERTY

---



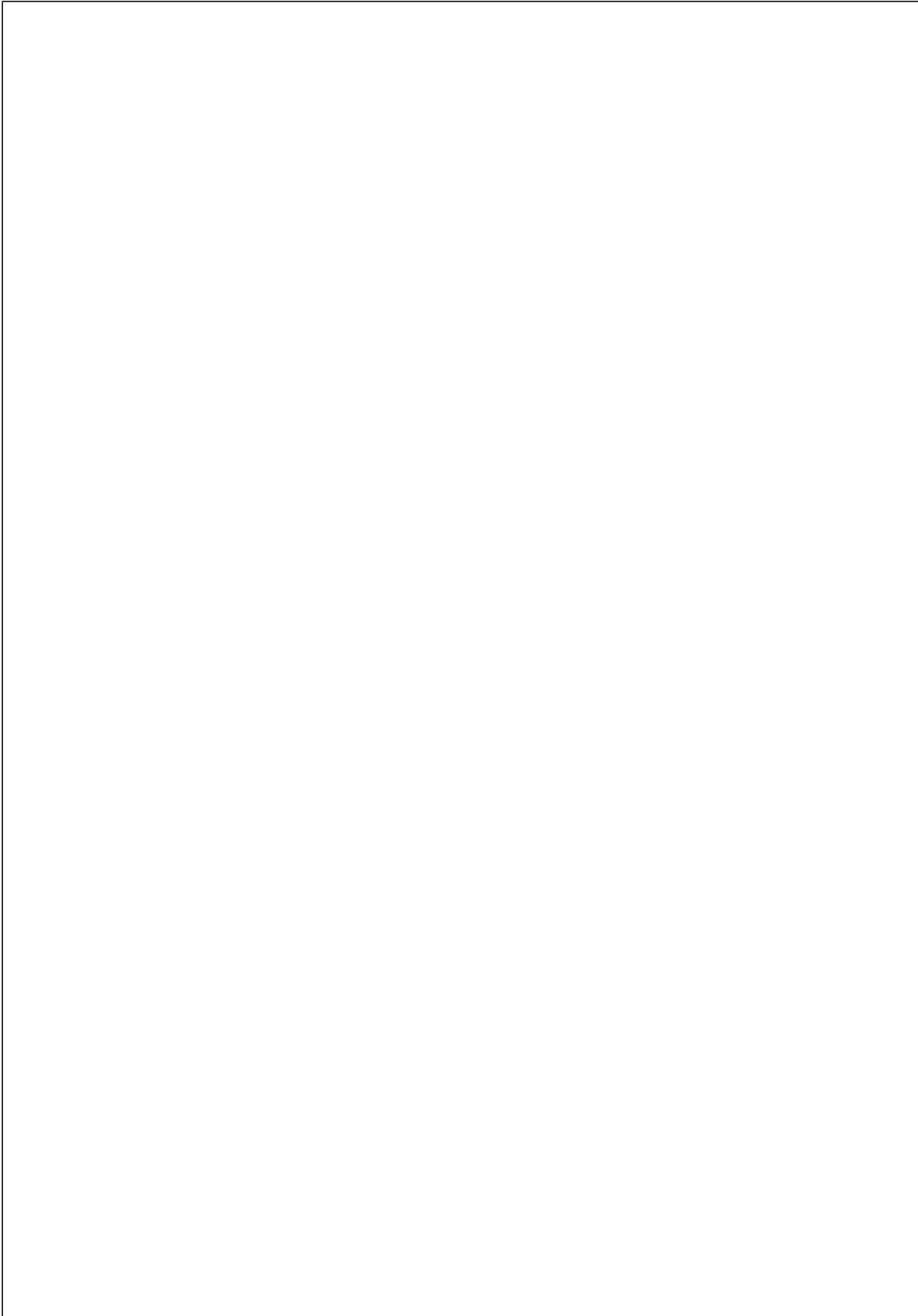
#### 1. APPLICANT ORGANISATION'S DETAILS

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)**



**4. BRIEF HISTORY OF THE APPLICANT ORGANISATION – INCLUDE THE YEAR OF FORMATION**


**5. MEMBERSHIP DETAILS – PROVIDE MEMBERSHIP NUMBERS OF CURRENT MEMBERS AND MEMBERSHIP NUMBERS FOR THE PREVIOUS THREE (3) YEARS**

<b>CURRENT YEAR</b>
<b>PREVIOUS YEAR 1</b>
<b>PREVIOUS YEAR 2</b>
<b>PREVIOUS YEAR 3</b>

**6. AIMS AND OBJECTIVES OF THE APPLICANT ORGANISATION**


**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 DEVELOPMENT	

**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](mailto:sport@mackay.qld.gov.au)

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