

Program:	Corporate Governance & Performance - Land, Leasing & Cultural Heritage
Date of Adoption:	26 August 2026
Resolution Number:	ORD-2026-193
Review Date:	26 August 2031

Scope

This Policy applies to any/all unauthorised encroachments and unauthorised occupation on Mackay Regional Council (MRC) Land, including:

- a) Council freehold land;
- b) Reserve / trust land under Council's trusteeship and control; and
- c) Road reserves and local government-controlled areas where Council is the road authority or manager (excluding State-controlled roads).

The Policy does not apply to:

- a) Matters covered under existing legislation, Local Law or policy (e.g. outdoor eating areas or advertising structures);
- b) Structures of a temporary nature approved or required as part of a development application process;
- c) Authorities, corporations or other parties that have a statutory right to create such encroachments.
- d) State-Managed Land including Unallocated State Land, national parks, conservation areas, State forests and State-controlled road transport corridors

Objective

The objective of this Policy is to ensure encroachments onto MRC Land are managed consistently, transparently and in the public interest, while protecting public safety, public access and the long-term use and function of public land.

Policy Statement

Encroachments onto MRC Land are generally unauthorised and may compromise public safety, access and community use.

Council adopts a risk-based and complaint-driven approach to the management of encroachments to ensure decisions are consistent, transparent and defensible.

In the first instance, encroachments are expected to be removed and the land restored at the expense of the Encroaching Owner. Where supported by the risk-based assessment framework, Council may allow proportionate alternative outcomes, including modification or commercial regularisation, where this does not materially compromise public safety, access, statutory obligations or the public interest.

All encroachments must be assessed in accordance with the Corporate Standard.

Council will act compatibly with human rights and consider relevant human rights in making decisions under this Policy, in accordance with the Human Rights Act 2019.

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

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1.0 Principles

The following principles apply collectively:

- Protection of public safety, access and amenity;
- Risk-based, proportionate and defensible decision making;
- Clear communication with affected landowners;
- No unfair private benefit from public land;
- Appropriate transfer of risk, maintenance and liability to Encroaching Owners; and
- Compliance with statutory land purposes, legislative requirements and human rights obligations.

1.1 Complaint-Based Approach

Council manages encroachments primarily through a complaint-driven framework.

Matters may arise from complaints from members of the public, referrals from Councillors, Council officers or external agencies, or where encroachments are incidentally identified during lawful Council activities.

Council may take action outside of this approach where required to address risks to public safety, essential infrastructure or statutory obligations.

1.2 Encroachments that will not be permitted

Notwithstanding any other provision of this Policy, Council will not permit encroachments where the encroachment:

- Creates or increases a risk to public safety;
- Compromises current or future infrastructure, transport, drainage or service functions;
- Results in exclusive private use of land required for public or community purpose;
- Captures habitable floor space or creates a permanent structure that cannot be easily removed;
- Is inconsistent with the statutory or trust purpose of the land; or
- Would establish an adverse precedent for the management of MRC Land.

Encroachments of this nature are required to be removed and the land restored at the expense of the Encroaching Owner.

1.3 Commercial Regularisation

Commercial regularisation is not an entitlement and may only be considered where the encroachment:

- Does not compromise public safety, access or the intended purpose of the land;
- Can be lawfully authorised having regard to the relevant land tenure; and
- Transfers responsibility for risk, maintenance and liability to the Encroaching Owner.

Where approved, appropriate tenure arrangements, compensation (fees/rent/charges), indemnity and insurance requirements must be applied.

Nothing in this Policy confers or implies any right, title or interest in MRC Land unless formally granted in accordance with relevant legislation. The existence of an encroachment does not create any entitlement to continued use or occupation of MRC Land. Council may review and reassess an encroachment where circumstances change, public safety concerns arise, or the land is required for a public purpose.

1.4 Encroaching Owner Responsibilities

Encroaching Owners are responsible for all costs associated with an encroachment, including:

- Removal of the encroachment;
- Reinstatement of the land to an acceptable condition;
- Survey, investigation and assessment costs; and
- Ongoing maintenance, management and liability associated with any approved encroachment.

Encroaching Owners are responsible for all risks and liabilities associated with the encroachment.

1.5 Approval for Encroachment Actions

The CEO or delegate has authority to make decisions regarding the management of encroachments, including enforcement actions, modification requirements and the approval of tenure arrangements, in accordance with this Policy and within delegated authority.

Where appropriate, matters may be escalated for determination by the CEO.

Council endorsement or approval may be sought for matters involving the proposed disposal, tenure change or relinquishment of MRC Land, including where land is proposed to be surrendered, revoked or otherwise dealt with under relevant legislation, particularly where the matter has significant community, financial or precedent implications.

Statutory approvals required under applicable legislation, including the revocation of reserve land, remain the responsibility of the State.

All decisions must be documented and managed in accordance with Council's governance and record-keeping requirements.

2.0 Complaints

Any complaints in relation to this service 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 Council 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:

CEO means the Chief Executive Officer of Mackay Regional Council. A Person who holds an appointment under section 194 of the *Local Government Act 2009*. This includes a person acting in this position.

Commercial Regularisation means the establishment of a formal tenure or legal arrangement in response to an existing encroachment on MRC Land, including a permit, licence, lease, indemnity deed or similar arrangement, subject to appropriate conditions and charges. Commercial Regularisation does not confer ownership of public land or any entitlement to ongoing occupation.

Council means the Mayor and Councillors of Mackay Regional Council.

Encroachment means any unauthorised use, occupation, structure or improvement on, over or under MRC Land.

Encroaching Owner means the owner or occupier of the land responsible for the encroachment on MRC Land.

Freehold Land means freehold land owned by MRC.

MRC means Mackay Regional Council.

MRC Land means land owned, managed or controlled by MRC, including, freehold, reserve or trust land for which Council acts as trustee and other land under MRC control or management, excluding State-Managed Land.

Public Interest means the collective interests of the community, including but not limited to public safety and access, equity of use of public land, protection of infrastructure and service corridors, environmental, cultural and heritage values, and Council's long-term land management and statutory obligations.

Reserve Land/Trust Land means land set aside under the *Land Act 1994* for a public or community purpose, including reserves and deeds of grant in trust, for which Council acts as trustee or manager.

Road or Road Reserve means land that is dedicated, declared or otherwise set aside for public road purposes, whether surveyed or unsurveyed, and for which Mackay Regional Council is the road authority or manager, and includes the road corridor and any associated infrastructure within that corridor.

State-Managed Land means land owned or controlled by the State of Queensland that is not held in trust or otherwise managed by Mackay Regional Council, including Unallocated State Land and land managed by State agencies such as national parks, conservation areas and State forests.

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 five (5) years.

5.0 Reference

- *Local Government Act 2009*
- *Land Act 1994*
- *Local Government Regulation 2012*
- *Property Law Act 1974*
- *Building Act 1975*
- Local Law No. 1 (Administration) 2011
- Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011
- MRC Corporate Standard 109.1 - Encroachment

6.0 Attachments

- MRC Corporate Standard No. 109.1 - Encroachment

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		ORD-2022-278	14/09/2022
2	Review Policy	Major Change	ORD-2026-193	26/08/2026

Program	Corporate Governance & Performance – Land, Leasing & Cultural Heritage
Date of Endorsement	26 August 2026
Resolution Number	ORD-2026-193
Review Date	26 August 2031

1.0 Scope

This Corporate Standard applies to all Council employees and contractors involved in the identification, assessment and management of encroachments onto MRC Land. It supports the implementation of COU109 – Encroachment.

2.0 Objective

The objective of this Corporate Standard is to provide a consistent, transparent and defensible framework for assessing encroachments and determining appropriate management and enforcement outcomes.

3.0 Reference

- *Local Government Act 2009*
- *Land Act 1994*
- *Local Government Regulation 2012*
- *Property Law Act 1974*
- *Building Act 1975*
- Local Law No. 1 (Administration) 2011
- Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011
- MRC Council Policy 109 - Encroachment

4.0 Definitions

To assist in interpretation the following definitions shall apply:

CEO means the Chief Executive Officer of Mackay Regional Council. A person who holds an appointment under section 194 of the *Local Government Act 2009*. This includes a person acting in this position.

Commercial Regularisation means the establishment of a formal tenure or legal arrangement in response to an existing encroachment on MRC Land, including a permit, licence, lease, indemnity deed or similar arrangement, subject to appropriate conditions and charges. Commercial Regularisation does not confer ownership of public land or any entitlement to ongoing occupation.

Council means the Mayor and Councillors of Mackay Regional Council.

Employee shall mean all persons directly employed by Mackay Regional Council on a permanent, temporary or casual basis.

Encroachment means any unauthorised use, occupation, structure or improvement on, over or under Council Controlled Land.

Encroaching Owner means the owner or permitted occupant(s) of the land responsible for the encroachment on MRC Land.

MRC means Mackay Regional Council.

MRC Land means land owned, managed or controlled by MRC, including, freehold, reserve or trust land for which Council acts as trustee and other land under MRC control or management, excluding State-Managed Land.

Public Interest means the collective interests of the community, including but not limited to public safety and access, equity of use of public land, protection of infrastructure and service corridors, environmental, cultural and heritage values, and Council's long-term land management and statutory obligations.

Reserve Land/Trust Land means land set aside under the *Land Act 1994* for a public or community purpose, including reserves and deeds of grant in trust, for which Council acts as trustee or manager.

Road or Road Reserve means land that is dedicated, declared or otherwise set aside for public road purposes, whether surveyed or unsurveyed, and for which Mackay Regional Council is the road authority or manager, and includes the road corridor and any associated infrastructure within that corridor.

State-Managed Land means land owned or controlled by the State of Queensland that is not held in trust or otherwise managed by Council, including Unallocated State Land and land managed by State agencies such as national parks, conservation areas and State forests.

5.0 Standard Statement

This Corporate Standard must be read in conjunction with COU109 – Encroachments on Council Controlled Land. Encroachments onto Council Controlled Land are generally unauthorised and, in the first instance, are expected to be removed.

In most circumstances, removal of the encroachment and restoration of the land, with full cost recovery from the Encroaching Owner, is the most appropriate management outcome. Where appropriate, Council may allow limited opportunity for timely and proportionate corrective action, having regard to public safety, public interest and the application of the Encroachments Assessment Matrix.

5.1 Complaints-Based Application

The management of encroachments under this Corporate Standard is complaint-based. Council will assess and respond to encroachments where they are identified through a complaint from a member of the public, a referral from a Councillor, Council officer or external agency, or where an encroachment is incidentally identified during lawful Council activities. Council does not proactively investigate, audit or survey encroachments across Council Controlled Land as a routine compliance activity.

5.1.1 *Immediate Action Exception*

Notwithstanding clause 5.1, Council may take immediate action where an encroachment presents an urgent or unacceptable risk to public safety, essential infrastructure or Council's statutory obligations.

5.2 Assessment Framework

All encroachments identified in accordance with clause 5.1 must be assessed using the unified Encroachments Assessment Matrix set out in section 5.3.

5.2.1 *Assessment Factors*

- Public Safety Risk
- Impact on Public or Community Purpose
- Impact on Public Access / Amenity
- Practicality and Cost of Removal

5.3 Encroachments Assessment Matrix

- The Encroachments Assessment Matrix assesses all relevant risk factors concurrently.
- The highest risk rating identified across any factor determines the outcome pathway.

Assessment Factor	LOW	MEDIUM	HIGH
Public Safety Risk	No identified safety risk. Stable and does not interfere with pedestrians, vehicles or services.	Potential safety risk that can be mitigated through conditions or modification.	Actual or likely safety risk that cannot be reasonably mitigated.
Impact on Public or Community Purpose	No compromise to the intended public or community purpose of the land.	Partial limitation of purpose, but future public use remains viable.	Exclusive private use or fundamental undermining of public or community purpose.
Impact on Public Access and Amenity	No material impact on public access, connectivity or amenity.	Some impact on access or amenity that can be managed with modification.	Restricts or prevents public access, creates exclusivity, or materially degrades amenity.
Practicality & Cost of Removal	Simple and proportionate to remove.	Feasible but moderate cost or disruption.	Complex, high cost or structurally integrated.

The Encroachments Assessment Matrix is applied as a single, unified tool. The highest risk rating identified across any assessment factor determines the applicable outcome pathway.

Highest Rating Triggered	Outcome
Any HIGH	Pathway C – Removal and Compliance
No HIGH, but 2 or more MEDIUM	Pathway C – Removal or Major Modification
No HIGH, 1 MEDIUM only	Pathway B – Modification / Partial Removal
All LOW	Pathway A – Commercial Regularisation

5.4 Outcome Pathways

5.4.1 Pathway A – Commercial Regularisation

Where removal is preferred but not required to protect safety or the public interest, Council's response may be to pursue commercial regularisation.

This may include:

- Permit to Occupy
- Licence or Lease

All agreements must include appropriate compensation, public liability insurance and indemnity provisions. Commercial regularisation may only be considered where the proposed arrangement is lawful and consistent with the relevant land tenure, reserve purpose, statutory requirements and any other applicable approvals required under legislation or local laws.

Notwithstanding MRC still reserves the right to seek removal in the first instance before consideration of regularisation.

5.4.2 Pathway B – Modification or Partial Removal

Where an encroachment presents a moderate risk, officers may require modification or partial removal to mitigate impacts on safety, access or land purpose.

This may include:

- Reduce footprint
- Remove fencing / gates
- Improve safety or access

Failure to comply may result in escalation to Pathway C.

5.4.3 Pathway C – Removal and Compliance

Where an encroachment presents an unacceptable risk or significantly undermines public purpose, officers must pursue removal and restoration.

This includes

- Issuing a Notice to Remove and Restore;
- Issuing notices or infringement actions available under applicable legislation or local laws;
- Considering representations and reasonable extensions; and
- Referring non-compliant matters to Legal Services for enforcement action.

5.5 Land Tenure Considerations

Officers must ensure that outcomes are lawful for the relevant tenure:

- Council freehold land: regularisation or disposal subject to delegations and Council resolution;
- Reserve or trust land: trustee tenure or transactions subject to statutory approvals; and
- Road reserves: outcomes must not compromise transport, safety or future infrastructure needs.

5.6 Reserve and Trust Land – Revocation and Cost Responsibility

Reserve and trust land managed by Council is subject to statutory constraints and is held for a defined public or trust purpose. Such land cannot be sold or permanently disposed of as a routine land management action.

Any consideration of revocation of reserve or trust land requires evidence that the land is no longer required for its public or trust purpose and must comply with statutory processes, including community consultation. The outcome of any consultation does not guarantee approval of revocation or subsequent disposal from the State.

Where an Encroaching Owner seeks Council consideration of revocation or change of land status as an alternative to removal, all costs associated with that process, including investigations, community consultation, statutory processes and external advice, are to be borne by the Encroaching Owner.

Consideration of revocation does not create an entitlement to retain an encroachment, nor does it suspend compliance or enforcement action unless expressly approved by Council.

5.7 Additional Information

- Entering an arrangement with MRC may be subject to bond, annual rent, insurance and rates charges.
- MRC may note the Encroachment on the relevant rates file(s).
- Notice to remove the Encroachment at the Encroaching Owner's expense may be issued by MRC at any time in the future should it be deemed appropriate to do so.
- Where notice to remove is not complied with then MRC may take further legal action.
- MRC or Council's failure to take action in relation to an encroachment does not constitute approval, consent or acquiescence.

6.0 Governance, Escalation and Reporting

Land, Leasing & Cultural Heritage will upon receiving an encroachment issue, facilitate initial investigations and research required into the matter. Land, Leasing & Cultural Heritage will liaise directly with the Encroaching Owner to discuss the most appropriate way forward to achieve a successful outcome.

Assistance from MRC Health & Regulatory Services, Infrastructure Planning, Development Compliance, Design Services, and Legal Services Programs may be required to provide support in assessing certain matters.

The Chief Executive Officer or delegate may approve outcomes within delegated authority. Council approval is required for land disposals, certain leases and matters of significant community or precedent impact.

Councillors may refer encroachment matters for investigation and will be briefed on medium or high-risk matters

7.0 Review

This Corporate Standard will be reviewed when any of the following occur:

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

Notwithstanding the above, this standard is to be reviewed at intervals of no more than five (5) years.

8.0 Attachments

1. Deed of Indemnity

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy/Standard		ORD-2022-278	14/09/2022
2	Review Corporate Standard	Major Change	TBA	27/02/2026
3	Review		ORD-2026-193	26/08/2026

INDEMNITY DEED POLL

Given by

_____ (insert name/s) (“**Encroaching Owner**”)
_____ (insert address) (“**Property**”)
_____ (insert email)
_____ (insert contact number)

In favour of **Mackay Regional Council ABN 56 24 721 069** of 73 Gordon Street, Mackay in the State of Queensland (“**Council**”)

Council land encroachment upon (“Land”):	Lot on
Land Tenure:	Title reference: MRC Freehold / Reserve
Encroachment:	Insert detailed description of encroachment. Attach aerial and or identification survey if available.

1. Recitals

- A. Council owns/manages the Land.
- B. The Encroaching Owner has an Encroachment on the Land.
- C. Council has identified the Encroachment and has agreed to enter into this Deed for the purpose of managing risks associated with the Encroachment.
- D. This Deed does not authorise the Encroachment, grant any right, title or interest in the Land, or create an entitlement to the ongoing occupation or use of the Land. Any approval, tenure or authority relating to the Encroachment must be obtained separately and in accordance with the applicable legislative and policy framework.
- E. The Encroaching Owner acknowledges that the Encroachment remains subject to Council's assessment and management processes and any applicable compliance, tenure or statutory requirements.

The Encroaching Owner agrees to indemnify Council and, where required, any other entity with an interest in the Land, against claims arising from or connected with the Encroachment on the terms set out in this Deed.

2. Indemnity

- 2.1 The Encroaching Owner is liable for and indemnifies Council and, where applicable, the State of Queensland, against all actions, claims, demands, losses, damages, costs and expenses including legal fees and costs and disbursements (“**Claim**”) arising out of or in any way connected to the Encroachment on the Land (“the indemnified acts or omissions”).
- 2.2 The Encroaching Owner acknowledges that Council will hold the Encroaching Owner liable for any claims made against Council relating to the Encroachment on the Land.

- 2.3 The Encroaching Owner hereby releases and discharges Council from any Claim relating to the indemnified acts or omissions which may be made against Council, save to the extent that the Claim arises as a result of any negligent act or omission of Council.

3. Covenant

- 3.1 The Encroaching Owner is responsible for any maintenance required for the Encroachment.
- 3.2 The Encroaching Owner must provide a Certificate of Currency for Public Liability Insurance for the Encroachment of at least \$20 Million.
- 3.3 This deed is not transferable with change of ownership by the Encroaching Owner. The Encroaching Owner must obtain and provide to Council a signed indemnity from the purchaser/transferee to Council prior to the sale or transfer of the Encroaching Owner's interest in the Property.

EXECUTED as a deed poll by **the**)
Encroaching Owner in the presence of:)

)

Signature of Encroaching Owner

.....

Witness Signature

.....

Signature of Encroaching Owner/s

.....

Date: ____/____/20____

Witness Name