



Council Policy – No 200  Version: 1	Adopted:	OM16.11.15
	Amended	

**TITLE: PROPERTY MANAGEMENT POLICY**

**STRATEGY: To create, acquire, maintain, enhance and manage assets in line with best practice**

**BUSINESS UNIT: Corporate Development & Commercial**

**RELEVANT LEGISLATION:**

**Council's property activities will be managed within the legislative parameters of the:**

- Local Government Act, 1993
- Valuation of Land Act, 1916
- Environmental Planning and Assessment Act, 1979
- Residential Tenancies Act, 2010
- Land Acquisition (Just Terms Compensation) Act, 1991
- Roads Act, 1993
- Retail Lease Act, 1994
- Crown Lands Act, 1989
- Environment Protection and Biodiversity Conservation Act, 2000
- National Parks and Wildlife Conservation Act, 1975
- Telecommunications Act, 1997
- Real Property Act, 1900
- Conveyancing Act, 1919
- Residential Parks Act, 1998
- Strata Scheme Management Act, 1996
- Government Information (Public Access) Act 2009
- Any other legislation applicable in a matter.

**RELATED POLICIES: *Leases over Council Owned or Controlled Land (Policy 195)***

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## 1) **Objective**

The objective of this policy is to:

- Respond to the Community Strategic Plan of providing effective property and land management
- Facilitate effective management of Council's property assets.
- Establish the underpinning principles of equity and transparency in Council's property dealings.
- Ensure that all dealings in property matters relating to Council owned property or property acquisitions by Council are handled within legislative requirements.
- Support the objective of using Councils property portfolio to create additional forms of income that would support on-ground works into the future for the benefit of the community
- Facilitate local business activity where appropriate.

- That the community would be consulted with when dealing with Council property using councils Community Engagement Framework

## 2) **Policy Statement**

The purpose of the Property Management Policy is to establish the principles for effective management of all Council's property activities and dealings to achieve the best outcome for the Pittwater community.

## 3) **Statutory Obligations**

Council's property activities will be managed within the legislative parameters of the:

- Local Government Act, 1993
- Valuation of Land Act, 1916
- Environmental Planning and Assessment Act, 1979
- Residential Tenancies Act, 2010
- Land Acquisition (Just Terms Compensation) Act, 1991
- Roads Act, 1993
- Retail Lease Act, 1994
- Crown Lands Act, 1989
- Environment Protection and Biodiversity Conservation Act, 2000
- National Parks and Wildlife Conservation Act, 1975
- Telecommunications Act, 1997
- Real Property Act, 1900
- Conveyancing Act, 1919
- Residential Parks Act, 1998
- Strata Scheme Management Act, 1996
- Government Information (Public Access) Act 2009
- Any other legislation applicable in a matter.

## 4) **Property Activities**

In the context of this policy, corporate property activities include:

1. Reclassification of Council land – Community
2. Sale of Council land – Operational
3. Acquisition of property for Council purposes
4. Sale of Council Road Reserve
5. Addition, modification or removal of encumbrances on Council owned land- Community
6. Addition, modification or removal of encumbrances on Council owned land- Operational
7. Addition, modification or removal of Council encumbrance on privately owned land
8. Lease & Licence on Council owned/managed property/building - Community
9. Lease & Licence on Council owned/managed property/building - Crown
10. Lease & Licence on Council owned/managed property/building - Operational
11. Management Agreements on Council owned/managed property/building
12. Annual Facility Licence Agreements.

The above Property Activities, numbers 1 to 12 will have a flow diagram (workflow) outlining the procedure Council Officers will follow to manage each of these property dealings. These workflow diagrams will be reviewed and updated by Council Officers on a regular basis to ensure procedures are kept up to date.

## 5) **Asset Management Approach**

In managing its land and property asset portfolio, Council's challenge is to determine whether its asset portfolio meets the strategic objectives of the organisation.

Council's portfolio will be reviewed and assessed on a regular basis to ensure the highest and best use of the facility is being achieved.

The objective of this approach is to minimise cost and maximise usage of its assets so that Council's asset portfolio is managed and maintained to a standard that benefits the whole community now and into the future.

6) **6. Professional Services**

i) **Valuations** – In the case of acquisitions and disposals or where a valuation report is required, Council Officers will engage a registered Valuer from its tendered panel to ensure accuracy and transparency. Valuers will be fully qualified and have experience in the following areas: commercial & residential property valuation; rental determinations; easement valuations, statutory valuation; asset valuation; compulsory acquisition as well as other specialised valuations. Valuations directed by Council remain the property of Council and are commercial in confidence.

A second valuation can be obtained at the discretion of Senior Management or Council. This can be assessed on a case by case basis.

ii) **Legal Services** – Council Officers will engage legal services from its tendered panel when required to ensure Council's interests are protected. The panel will be fully qualified and have experience in sales, acquisition, leasing and licensing transactions as well as complex land dealings.

7) **7. Property Strategy**

Under this Policy, all property owned by the Council will fall into one of the following three classes which describe the primary purpose for which the property is held. Properties within each class will not necessarily be static and may be re-classified following a review by the Council. Any dealings will need to be resolved by Council.

(i) **Held for Community Purposes**

This class includes property held for administration, operations, recreation, and/or infrastructure usage. Where appropriate, consideration will be given to leasing improvements to not-for-profit community groups at a subsidised rental (e.g. community halls, clubrooms, community centres, libraries, toilets/change rooms, drainage sites, and parks/public open spaces etc.). Property held for *Community Purposes* will generally not be considered available for liquidation. However, there may be some instances where property held in this class may be transacted for a greater community benefit.

(ii) **Held for Capital Appreciation**

This class includes property which is either undeveloped or underdeveloped, but which is not held for *Community Purposes*. Property held for *Capital Appreciation* will be developed for income when market conditions are favorable and the development risk is considered to be acceptable.

Alternatively, these properties will be liquidated to take advantage when market conditions are favourable. In general, income from any improvements should be maximised and property in this category will not be made available for community usage (e.g. vacant lots, underdeveloped sites etc.).

(iii) **Held for Income Generation**

This class includes property where the maximisation of the income stream is considered to be the primary objective. Property held for *Income Generation* will be developed to the highest and best use of the site. Leases and agreements will be set by reference to market levels, with regular reviews, depending on the circumstances. In general, subsidised rentals will not be considered for properties within this class (e.g. car parks, commercial buildings etc.).

It should be noted that whilst these classifications are intended to capture all property owned and managed by the Council, it is recognised that not all property will fit exactly within these

classes. Appropriate discretion therefore, will be used by Council when dealing with any such property activities (including hiring, leasing/licensing, liquidating etc.).

## 8) **Property Transaction Types**

### (i) **Sale of Council Owned Land (Figures 1&2)**

Council owned land must be classified as, “Operational” or “Community”. In accordance with the provisions of the *Local Government Act, 1993* land classified, as “Operational” is saleable; however, “Community” land cannot be sold without first being reclassified and rezoned following a resolution of Council. The reclassification of community land is achieved by an amending LEP.

Property sales may include sale of Council surplus land and property, airspace and stratum. To be able to strategically manage its land sales activities, it is necessary for Council to establish a Property Disposal and Investment Program (PDIP). The key principles guiding a decision to sell a property asset is that Council will only consider a sale under the following circumstances:

- If the property is not being used for the purpose intended at the time of Council’s purchase (subject to acquisition notice being approved by the Governor).
- If the property is not serving an operational or community need.
- If the property is not facilitating Council’s service delivery objectives.
- If the property disposal would result in better outcomes for the local community.

If the property does not provide the expected return and represents a risk to Council, the key principles in disposal of these assets are:

- Council will dispose of property assets using a process that is transparent and equitable to all interested parties.
- Generally Council will not sell property which has future development potential for community facilities or commercial return.
- Council will identify the most appropriate marketing strategy for each sale on a case by case basis.

### (ii) **Acquisition of Land or Property (Figure 3)**

Council may decide to purchase land and property for statutory, public or investment/redevelopment purposes. For example, Council could acquire land for road widening, road opening, recreational and sporting facilities, parks and reserves, bushland and environmental conservation, investment, redevelopment, subdivision and resale, or development of community facilities purposes.

The key principles in the acquisition of land and property are:

- After identifying a property for acquisition for a council function and public purpose, Council will:
  - Firstly make its best endeavours to negotiate with the owner a fair and reasonable price in accordance with the directive of Office of Local Government.
  - Only if agreement cannot be reached will Council pursue compulsory acquisition (under Section 187 of *Local Government Act 1993*) if the acquisition has strategic importance or is very important for the local community.
- Where Council decides to purchase operational land at auction, it will be resolved in a closed Council meeting so the decision and proposed purchase price will not be publicised prior to auction.

### Land Swaps

Under certain circumstances Council may enter into Land Swap transactions with landowners to achieve a broad community benefit. Pittwater Council has many examples of this form of

transaction, contributing positively to Council's existing land holding (e.g. Ingleside Escarpment).

The following principles will always be taken into account;

- There will be no net disadvantage to Council in the transaction in relation to the area of open space acquired or sold.
- Independent valuations will be undertaken in all instances.
- Council may receive land swap proposals from landowners or may be the proposer of such transaction.
- In some instances there may be a need for financial settlement in addition to the actual land being swapped.

### **(iii) Sale of Council Road Reserves (Figure 4)**

Road Reserve enquiries regarding closure of a public road/or portion of a public road are typically made by a land owner/s, or may be identified through a development application.

As the local road authority, Council will consider all applications within the following principles:

- Status of Road Reserve (e.g. Crown or Local Road, made or unmade) will need to be determined by a Council Officer as some are not suitable for sale.
- All adjoining property owners and relevant authorities will be notified by Council following receipt of application.
- Management of an application for road closure benefiting an individual or company will be cost neutral to Council. Application fees and charges applied by Council will be based on full cost recovery.
- The market rate will be determined by an independent Valuer and will provide the basis of the sale price of a public road/portion of public road.

It is important to note that Council is required to submit a formal application to the New South Wales Trade and Investment Crown Lands for road closure approval, registration and gazettal. Once this has taken place, Council will be in a position to sell the land via a contract for sale to the applicant.

### **(iv) Encumbrances - Rights of Way & Easements etc. (Figures 5,6,7)**

Council may add, modify or removal an easement over its land in favour of a private land owner. Council may also require easements over private land. Encumbrances can be for different purposes such as rights of way, drainage, sewerage, electricity, utility and any other specific purposes. The addition, modification or removal of easements or rights of way may be initiated through scenarios including but not limited to:

- A conditional DA approval on Council owned land.
- A proposed development adjoining Council land.
- Council's proposed drainage system.
- Council's existing pipes under the surface of the land.

The key principles in effective management of encumbrances are:

- Council will advise and negotiate (if required) with the private landowners affected by Council's proposed works.
- Council will negotiate a fair and reasonable package with the private landowner(s) who seek to create an easement over Council owned land provided that the proposed easement would not detrimentally affect the objectives of the land and the applicant agrees to fairly and reasonably compensate Council.
- Council will relinquish encumbrances if:
  - The encumbrance is no longer required or serving Council's objectives.
  - All associated costs are paid for by the other party.
  - Council's interests are protected.

#### **(v) Tenure Arrangements – Lease, Licence & Management Agreements (Figures 8-12)**

Under this Policy, standard tenure arrangements will apply to lease, licence and management agreements granted by Council for Council owned and managed properties. This will be done in accordance with sections 46, 46A & 47 of the Local Government Act 1993.

An annual facility licence agreement will be issued on a case by case basis, where there is no current agreement in place. This is considered to be a short term arrangement to ensure both parties' responsibilities are clearly outlined and interests are protected.

For lease, licence and management agreements on Crown Land where Pittwater Council acts as Trust Manager, prior approval will be obtained from NSW Trade & Investment Crown Lands, in accordance with the *Crown Lands Act 1989*.

#### **1) Tenure Guidelines - Legal Framework**

The following key principles will guide Council's approach to tenure arrangements;

- Council acknowledges its obligation to provide and maintain its properties to meet community needs for present and future generations.
- Council recognise and support the contribution made by community groups in achieving an active and sustainable community.
- Council encourages the use of its properties by organisations that provide a community benefit.
- Council promotes tenure arrangements that are consistent, transparent and equitable.
- Council promotes tenure arrangements which allow access to the property by the wider community.
- Council promotes tenure arrangements that contribute to the financial viability of Council.

#### **2) Tenure Guidelines - Groups**

The following tenure guidelines are intended to apply to leases and licenses for all groups within each category. It is recognised however, that some groups (especially *Not-for-Profit Community Groups*) may be constrained by specific circumstances and Council will apply appropriate discretion in determining tenure arrangements for these groups.

- **Commercial Organisations**

In general, *Commercial Organisations* will be permitted to lease or license facilities which are located on property held for *Capital Appreciation* or property held for *Income Generation* or in certain circumstances on *Community Land*.

As such, income received from the lease or license should be maximised. Subsidised rental should not be considered.

If on community land, Council is obliged to undertake tenders for the leasing or licensing for terms over 5 years where dealing with a for profit lessee in accordance with Section 46A of Local Government Act 1993.

Rental will be based on a market rate, determined with the guidance from a licensed Valuer selected from Councils tendered panel or a market appraisal obtained from a local agent. Rents will be reviewed every 12 months in line with the terms of the lease/licence agreement.

These can be broken up into further sub categories:

- a) Commercial Operations - Restaurants, Kiosks and any other fully commercial enterprise run for commercial gain on operational land.

However, if the commercial operations are located on Community land, it must comply with the provisions of section 46, 46A and 47 of the Local Government Act 1993.

### COMMERCIAL OPERATIONS

ANNUAL LEASE/LICENCE FEE	At commercial rates determined by market valuation.
MAXIMUM TERM	Twenty Years (10 + 10)
OTHER COSTS	All outgoings, including but not limited to telephone, water usage, electricity (where separately metered), cleaning, repairs and maintenance to the interior part of the tenancy including hard wired electrical appliances.
BUILDING INSURANCE	Lessor
CONTENTS INSURANCE	Lessee
PUBLIC LIABILITY INSURANCE	Lessee
WHS LIABILITY & WORKERS COMPENSATION	Lessee
LEGAL COSTS	Lessee

- b) Sporting Clubs – Commercial – Examples include Golf Clubs, Bowling Clubs etc.

These clubs are in receipt of membership fees, green fees, poker machine income and income from sale of alcohol and catering.

### SPORTING CLUBS – COMMERCIAL

ANNUAL RENT	At commercial valuation based on comparable rents paid by similar clubs in the Sydney metropolitan region.
MAXIMUM TERM	Ten years (5 + 5) however terms greater than ten years can be sought with the provision of a business plan that demonstrates capital expenditure that may need to be amortised over a period greater than ten years.
OTHER COSTS	All outgoings, including but not limited to telephone, water usage (if applicable), electricity (where separately metered), cleaning, repairs and maintenance to the interior part of the tenancy including hard wired electrical appliances.
BUILDING INSURANCE	Lessor
CONTENTS INSURANCE	Lessee
PUBLIC LIABILITY INSURANCE	Lessee
WHS LIABILITY & WORKERS COMPENSATION	Lessee
LEGAL COSTS	Lessee

- **Commercial Telecommunication Carriers**

Although considered to be carrying out commercial activities, *Telecommunications Carriers* are differentiated from *Commercial Organisations* due to their unique powers under the *Telecommunications Act 1997* (as detailed in ‘Council’s role and statutory obligations’ above). The *Telecommunications Act 1997* does provide for an entitlement to compensation. For this purpose, carriers generally negotiate to pay a form of ‘rental’ and occupy their sites under a lease or license agreement. Due to the nature of the *Telecommunications Act 1997*, carriers are permitted to lease/license land located on property held for Community Purposes, Capital Appreciation or Income Generation. Tenure arrangements for Telecommunications Carriers therefore will be determined on a case-by-case basis and Council will seek an access fee from Carriers requesting co-location of another carrier.

- **Government Departments/Agencies**

Leases and licenses held by *Government Departments/Agencies* can range from neighborhood child health centres to large departmental offices. Consequently, depending on the purpose for which the lease/license is to be used, *Government Departments/Agencies* may be permitted to lease or license facilities which are located on property held for *Community Purposes*. In general, *Government Departments/Agencies* will be treated in the same manner as *Commercial Organisations*; however, subsidised rental may be granted on a case-by-case basis depending on the purpose for which the property is to be used. In addition, other formal agreements, memorandums-of-understanding or past obligations etc. may necessitate special tenure arrangements.

- **Not-for-Profit Community Groups**

Not-for-Profit Community Groups are those whose charter, constitution, articles of association or equivalent identify the purpose of the organisation as being not-for-profit and perform activities within Pittwater Council. In general, Not-for-Profit Community Groups will only be permitted to lease or license facilities held for Community Purposes that have a perceived benefit to the Pittwater community. As such, where appropriate, these organisations will be granted a lease or license at a subsidised rate in recognition of their perceived benefit to the community.

These can be broken up into a further two sub categories:

1. **Community Based Services-** Examples include Surf Clubs, KU Kindergarten, Scout and Guide organisations etc.
2. **Sporting Clubs- Non Commercial** - Examples include Football clubs (all codes), Equestrian, Swimming etc.

## 1. COMMUNITY BASED SERVICES

RENT	Subject to negotiation
MAXIMUM TERM	Twenty One Years
OTHER COSTS	The tenant is responsible for all outgoings, including but not limited to telephone, electricity (where separately metered), cleaning, repairs and maintenance to the interior part of the tenancy including hard wired electrical appliances.
BUILDING INSURANCE	Lessor
CONTENTS INSURANCE	Lessee
PUBLIC LIABILITY INSURANCE	Lessee
WHS LIABILITY & WORKERS COMPENSATION	Lessee

LEGAL COSTS	Each party to bear their own legal costs.
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This group will receive the greatest discount or subsidy and will include community groups that service the local community.

In the case of approved commercial operations within community based service leased areas, Council will receive a minimum 20% of the gross income from the operator to be utilised by Council for the maintenance of the associated reserve and infrastructure.

At the date of adoption of this policy clubs running commercial facilities without prior formal Council approval shall, at Council's discretion, be required to either cease the operation or enter into an Agreement with Council to return 20% of the income received from the facility to Council as above.

## 2. SPORTING CLUBS – NON COMMERCIAL

ANNUAL RENT	As per Council's Fees & Charges
MAXIMUM TERM	Ten years (5 + 5) however terms greater than ten years can be sought with the provision of a business plan that demonstrates capital expenditure that may need to be amortised over a period greater than ten years.
OTHER COSTS	All outgoings, including but not limited to telephone, electricity (where separately metered), water usage (where applicable), cleaning, repairs and maintenance to the interior part of the tenancy including hard wired electrical appliances.
BUILDING INSURANCE	Lessor
CONTENTS INSURANCE	Lessee
PUBLIC LIABILITY INSURANCE	Lessee
WHS LIABILITY & WORKERS COMPENSATION	Lessee
LEGAL COSTS	Each party to bear their own legal costs.

This group will pay a nominal fee, as per Council's Fees and Charges, subject to annual CPI increases to partially offset the cost of ongoing lease administration and includes recreational or community groups that provide a service to the community but non-the-less have fund raising potential and are not reliant solely on grant income or subsidisation.

End.