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## R90. Road Reserve Leases

**Title:** Road Reserve Leases

**Policy No:** R90.

**Replaces Policies:** R80, R90, R100 & R120

**Keywords:** Road Reserve, Leases, Parent Lot, Driveways, Right of Access, Annual Rental

**Responsible Officer:** Executive Manager, Corporate Services

### 1. PURPOSE AND AUTHORITY

The purpose of this policy is to give effect to Council's policy positions with respect to various matters pertaining to road reserves.

### 2. POLICY STATEMENT

Council is committed to the orderly and equitable use of road reserves, and this policy seeks to give effect to that commitment as respects the various matters regulated by the policy. Those matters are as follows:

#### Lease for parking as a development application condition

1. That Council inform new applicants for road reserve leases that because of the wording of the *Roads Act 1993*, road reserve leases for the provision of parking which is required as a condition of development approval cannot be met by the use of a road reserve lease, as the *Roads Act* prescribes:-
  - (a) Such leases may only be for a period of five years and may be terminated at any time and for any reason.
  - (b) Any proposed structure on the road reserve lease may only be a temporary structure of a kind that can be easily demolished or removed.
2. That Council inform applicants renewing their road reserve lease that the *Roads Act* has changed the requirements for road reserve leases and as such:-
  - (a) Such leases may only be for a period of five years and may be terminated at any time and for any reason.

Any proposed structure on the road reserve lease may only be a temporary structure of a kind that can be easily demolished or removed.

(O.M. 31.5.94)  
(Confirmed 20.10.97)

#### Leases – adjoining and conjoining parent lot

That as a matter of policy Council not grant leases of road reserves unless the area to be leased is adjacent and conjoining the parent lot.

(Prior to Council reaching that decision legal advice was obtained verbally from the Local Government Department which indicated that, although there had never been a legal challenge to the administration of Section 153 of the *Roads Act 1993*, Council's practice of leasing only portions of a road reserve immediately adjacent to a parent property was correct and the interpretation of "adjacent" should also mean contiguous, and not the portion on the opposite side of the road to the parent lot.)

(O.M. 31.5.83)  
(Confirmed 20.10.97)

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## Driveways

That having regard to the provisions of the *Roads Act 1993* (the "Roads Act") regarding the right of access to private property from public roads and the ability of Council approve consents (sections 138 and 139) in respect of structures erected on public roads, all future driveway constructions which are considered by the Executive Manager, Corporate Services to be substantial erected structures on the road reserve require a road reserve consent approval.

That all existing driveway consents pertaining to elevated structures continue under the same terms and conditions presently observed.

That all existing driveways constructed in structure without a prior requirement for a lease/consent be permitted to continue without having to enter into a road reserve lease/consent. The Council will require the property owners to enter into a road reserve consent in the event of any future development involving use of the road reserve area

That all existing driveway leases relating to excavated driveways and which are not considered to be a structure not be renewed when the current five year term has been completed.

That as a matter of policy Council not require leases where the end result of construction is nothing more than an access "at grade" from the public road to their boundary.

*(O.M. 8.2.99)*  
*(Previously R100.)*

## Formula for determination of annual rental/ occupation payment

Application to Council to lease road reserve can be approved by Council as a Consent under Section 138 of the Roads Act. Such applications do not require the consent of the Minister. Consents are issued on an on-going basis, and Council may terminate the consent at any time and for any purpose. Council can only lease land to an adjoining property owner.

This policy sets out the methodology that Council will adopt in calculating the annual charge for use of Council road reserves, as well as providing a mechanism for annual review of the charge.

## Formula for Determination of Annual Fee of use of Council's Road Reserves

1. The formula for charging for Annual Fee for use of Council's Road Reserve to be based on the "Precinct Valuation";
2. The "Precinct Valuation" is to be calculated based on the average value per square metre of the land valuations for all residential rated assessments within each Precinct;
3. The basis for the Precinct Valuations will be the current July base date land valuations as provided by the NSW Valuer General;
4. The formula for calculating the road reserve leases/consents annual fee adopted by Council on 20 July 1993, be amended as follows:

Council shall charge an annual fee for the Road Reserve Consent in accordance with the following formula:

$$(PV \times A \times L) + GST$$

Where:

PV = Precinct Valuation (*average valuation per square metre for each Precinct determined as follows*):

$$\frac{\text{Valuation of all residential rated property within the Precinct}}{\text{Total land area of all residential rated property within the Precinct}}$$

A = area of road reserve lease/consent  
L = land use according to the following table:  
GST = Goods and Services Tax

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Land Use:

<u>Exclusive Use</u>	<u>(Base CPI)</u>
Car Parking - (Carports/Slab/Garage)	1.0%
Gardens/Landscape (Enclosed land)	1.0%
<u>Access Use Only</u>	
Elevated Driveways /Stairs /Structures)	0.5%
Minimum Charge	\$327.00 pa <i>(subject to CPI increases as below)</i>

5. The annual fee shall be varied on each anniversary of the commencement of the consent as set out follows;
- (a) The percentage by which the Precinct Valuation shall be increased on each anniversary of the commencement of the Consent shall be the same percentage as the percentage increase in the Valuer General's valuation of the Precinct(s) where a general revaluation has occurred for the area;
- (b) In the event that there is no variation in the Valuer General's valuation for the area, then the percentage by which the annual fee shall increase on that anniversary shall be the same percentage as the Consumer Price Index (all groups) Sydney current as at the review date has increased over and above the Consumer price Index figure current on the previous review date or the commencement of the Consent whichever last occurred.
6. The following base valuations to apply to each Precinct for 2006/2007:

<b>Precinct</b>	<b>Total Area (sq.m.)</b>	<b>Total LV (Base Date July 2005)</b>	<b>Precinct Valuation</b>
Balgowlah	306,186	421,954,316	\$1,378.10
Balgowlah Heights	886,054	1,285,937,305	\$1,451.31
Clontarf	446,315	741,295,000	\$1,660.92
Fairlight	508,278	906,080,900	\$1,782.65
Fairy Bower	167,878	526,560,816	\$3,136.57
Ivanhoe Park	445,863	864,303,050	\$1,938.49
Little Manly	257,866	738,885,200	\$2,865.38
North Harbour	354,706	512,136,277	\$1,443.83
Ocean Beach	237,013	718,546,462	\$3,031.68
Seaforth	1,174,243	1,302,287,085	\$1,109.04
Seaforth North	432,420	379,269,750	\$877.09
The Corso	133,564	245,200,319	\$1,835.83

*(O.M. 19.02.07)*

### 3. PRINCIPLES

The underlying principle behind this policy is the recognition that Council must manage and otherwise deal with road reserve land in an orderly and equitable manner, cognizant of the need to ensure that persons who benefit from the use and enjoyment of road reserve land, for purposes not directly related to the use generally made by members of the public of that land as a matter of general right, ought to pay for their user of the land in question. The policy seeks to regulate a number of different matters which, if not properly managed and regulated, have the clear potential to result in a derogation of the general right of the public to use public roads as a means of thoroughfare.

### 4. SCOPE

This policy applies to all Council officials (including Councillors and Council staff and consultants engaged by Council) who are involved, directly or indirectly, in decision-making (including preparatory and recommendatory decision-making) with respect to the subject-matter of this policy.

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Insofar as land is concerned, this policy applies to all public roads in the Manly local government area in respect of which Council is the relevant roads authority under the Roads Act 1993.

## 5. DEFINITIONS

See the Dictionary at the end of the Roads Act 1993 for definitions of various terms and expressions used in this policy.

## 6. IMPLEMENTATION

This policy will be implemented without delay once adopted by Council. Upon adoption this policy will be entered into Council's policy register, made available online and provided to all staff and any other people directly affected by this policy.

Council and/or the General Manager may, during a civil emergency only, set aside any policy terms to ensure public safety.

## 7. MONITORING AND BREACHES

Regular monitoring of compliance with this policy, relevant legislation and Manly policies and procedures will be undertaken and documented by the responsible officer for this policy.

Breaches of this policy are considered to be breaches of Manly Council's Code of Conduct and therefore invoke the relevant sanctions outlined in that Code. Persons in breach of any legislation may be subject to relevant criminal action.

## 8. REPORTING

No specific reporting is required by this policy.

## 9. POLICY REVIEW

This policy is subject to regular review as required by legislation.

For the purposes of carrying out and giving effect to this policy, the General Manager may from time to time prepare, adopt or vary, and otherwise issue to Council staff, guidelines and directions relating to any aspect of this policy.

Any recognised change to relevant legislation; or directives or guidelines issued by agencies including the NSW Ombudsman and the Division of Local Government; or to Manly Council's related guidelines and procedures will activate an immediate review of this policy to ensure it remains current and aligned to best practice policies.

## 10. RELEVANT REFERENCES AND LEGISLATION

Roads Act 1993  
Local Government Act 1993

## 11. RELEVANT COUNCIL POLICIES

R70: Road Reserves – Outdoor Eating Areas – For the Purpose.

## 12. REVISION SCHEDULE

Minute No	Date of Issue	Action	Author	Checked by
PS53/11	2 May 2011	Periodic Review	Secretariat, Corporate Services	Manager, Administration
	June 2013	Comprehensive Review		General Counsel
PS16/14	3 March 2014	Periodic Review	OM CSS	Manager Governance