

# Land and Property Policy (rev8)

<b>Title</b>	Land and Property Policy
<b>Summary</b>	The Inner West Council is committed to optimising community benefits to meet the needs of our community now and in the future through consistent management of council owned or controlled land or buildings. The objective of this policy is to demonstrate a sustainable, equitable, transparent, risk management approach to property and land management.
<b>Background</b>	This is the first Land & Property Strategy for the new Inner West Council. The former Marrickville, Leichhardt and Ashfield Councils each had various policies for informing property and land management.
<b>Policy Type</b>	Council
<b>Relevant Strategic Plan Objective</b>	<p>2.2 Manage Change with Respect for place community history and heritage.</p> <p>4.3.1 Provide facilities, spaces and programs that support wellbeing and healthy communities.</p> <p>5.2.3 Collaborate with partners to deliver positive outcomes for the community, economy and environment.</p> <p>5.3.3 Deliver innovation, excellence, efficiency, effectiveness and probity in Council processes and services.</p>
<b>Relevant Council References</b>	<p>Hazardous Material Policy – Draft to be approved.</p> <p>Procurement Policy – Draft to be approved.</p>
<b>Main Legislative Or Regulatory Reference</b>	<p><a href="#">Local Government Act, 1993</a> (LGA)</p> <p>Crown Lands Act, 1989 (CLA 1989)</p> <p>Roads Act, 1993</p> <p>Retail Leases Act, 1994</p> <p>Real Property Act, 1900</p> <p>Conveyancing Act, 1919</p> <p>Residential Tenancies Act, 2010</p> <p>Independent Commission Against Corruption Act, 1988</p> <p>Anti-discrimination legislation (various)</p> <p><i>Crown Lands Management Act 2016</i> – assented to 14 November 2016 (CLM Act )</p> <p><i>Crown Land Legislation Amendment Act 2017</i> (CLLA Act)</p> <p><i>Crown Lands Management Regulations</i> (CLMR)</p> <p>Plans of Management</p>
<b>Applicable Delegation of Authority</b>	As per <a href="#">Council Approved Delegations</a>
<b>Other External References</b>	Building Code of Australia
<b>Attachments</b>	Nil

<b>Record Notes</b>	Internal or External available document		
<b>Version Control</b>	See last page		
<b>Document:</b>	Operational Policy or Council Policy	Uncontrolled Copy When Printed	
<b>Custodian:</b>	Primary Responsible Policy Owner	Version #	Version #
<b>Approved By:</b>	Group Manager Property, Major Building Projects and Facilities	TRIM Ref #	XXXXXX
<b>Adopted By:</b>	Leadership Team	Publish Location	Intranet/ Internet
<b>Adopted Date and Minute #:</b>	xx / xx / xx	Next Review Date	xx / xx / xx

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## **1. BACKGROUND**

Inner West Council owns community and operational land, including public roads in the Inner West Council Local Government Area and manages Crown Land as Trustee. Council has the responsibility to maintain its land and building asset portfolio in the best interests of the local community and stakeholders. Council's portfolio includes community and sporting facilities, parks, Crown Reserves and commercial property.

## **2. PURPOSE**

This policy provides council with the decision making framework to operate a consistent approach to land and property management.

## **3. OBJECTIVE**

The objective of this policy is to demonstrate a sustainable, equitable, transparent, risk management approach to property and land management.

All leasing or licensing of Council-controlled land assets, including Crown Land, will:

- be consistent with Council's economic, social and environmental objectives,
- be undertaken in compliance with legislative and other obligations,
- occur only after consultation with all affected stakeholders and relevant sections of the community taking into account all relevant comments and representations,
- be undertaken with the intention of securing an optimum mix of financial and other benefits for the community,
- be through a fair and open process and include regular market testing, be in accordance with ICAC guidelines (Managing Risks in Direct Negotiations),
- be open to public scrutiny while maintaining appropriate levels of commercial confidentiality, and
- be conducted in accordance with Council's procedures covering Business Ethics and the Model Code of Conduct.

## **4. SCOPE**

### **4.1. In scope**

This policy relates to

- a) Council owned or controlled land or buildings;
- b) Leases; of land including residential Leases and Leases under the Roads Act, 1993
- c) Licenses of land which give the Licensee exclusive or sole possession of the premises for a specified period of time (even if the Lessor reserves rights of access and use);
- d) Licenses to operate ventures on Council land for a specified period whether on a full time or part time basis (for example a License to park and operate a mobile coffee van in a park or road);
- e) Agreements analogous to the above including memorandums of understanding and service agreements for community and commercial uses;
- f) Air Space Leases and Licenses; and
- g) Accommodation grants; and
- h) Land classifications

## **4.2. Out of scope**

This policy does not deal with

- a) Casual or periodic bookings of community spaces or sporting fields as set out in the Fees and Charges.
- b) Footpath dining under s.125 of the Roads Act 1993.

## **5. DEFINITIONS**

For the purpose of this document:

Lease:	A Lease will provide a right of exclusive possession of an area for a specified term. Lease includes all property related Licenses, Service Level Agreements (SLA) and Memorandums Of Understanding (MOU) that detail the terms for a Party to occupy Council owned property;
Licence:	A Licence will provide part of a building or land at specific times. A Licence provides for use of space that may or may not be exclusive.
Lessor:	Lessor is the Council and includes Licensor and Landlord.
Lessee:	The recipient in the agreement that gains the use of the property also called Tenant, Occupant, and Licensee. Excludes short-term hirers of Council property.
Rent:	Includes Rent, Outgoings, Licence Fee or any other payment to Council detailed in the Lease.
Fees & Charges:	Includes all costs relating to the transaction and charged as per cost incurred or as detailed in Council's published Fees and Charges.
Market Rent:	The rent amount a willing landlord might reasonably expect to receive, and a willing tenant might reasonably expect to pay, for a tenancy. It needs to be similar to the rent charged for similar properties in similar areas.
Property:	Refers to land and/or buildings and access to public land under Council management.

## **6. LAND CLASSIFICATIONS**

Under the LGA land under Council's control, other than roads and Crown Land (as defined being land under the Crown Lands Act) must be classified as either "operational land" or "community land." Land and buildings Leased by Council falls into four groups as described under Division 1 of Part 2 of Chapter 6 of the LGA.

- a) Operational Land;
- b) Community Land;
- c) Crown Land covered by the Crown Lands Act, 1989; and
- d) Road Reserve

Council must manage all land under its control as detailed in LGA Refer to

Table 1 - LGA four groups of Land and Permitted Use and related Legislation for summary of key guidelines and terms.

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**Table 1 - LGA four groups of Land and Permitted Use and related Legislation**

Land Classification	Permitted Use	Legislation
<b>Operational Land</b>	Used for Council's administrative and works functions, affordable housing, commercial and investment opportunities. Do not require a Plan Of Management.	Subject to the Local Government Act 1993 NSW; Real Property Act 1900 NSW; Conveyancing Act 1919 NSW and Retail Leases Act 1994 NSW
<b>Community Land</b>	<p>Leasing of Community land is restricted as it should be kept for use by the general public. Lease/Licenses must be consistent with the core objectives of the category of land, for a use prescribed by the Act or Regulations and expressly authorised under a Plan of Management for that land. A Lease or License for a term exceeding 5 years may be granted only after a tender process, unless it is granted to a non-profit organisation.</p> <p>Section 55(3)(e) Provides that Leases and Licenses are exempt from tendering requirements unless a Lease or License is in respect of Community Classified Land and for a term exceeding five (5) years. In which case the Lease or License is only exempt from tendering requirements if the proposed Lessee is a community organisation.</p>	Subject to provisions under Sections 45 to 47 of the <i>Local Government Act 1993 NSW</i> .
<b>Crown Land</b>	<p>Land which is owned by the State of NSW, reserved or dedicated for public recreation or similar purpose. Councils may be appointed as the Reserve Trustees on behalf of the Minister for Primary Industries Land &amp; Water to manage and care for the reserved land to facilitate and encourage community use and enjoyment.</p> <p>A Lease/License of Crown land enables exclusive use over a particular piece of land for a specified term and purpose. Lease/Licenses of Crown land are subject to Ministerial consent. Any Community or Crown Land Lease/License longer than 5 years must be advertised (advising the intention to give consent to the Lease/License) and allow 28 days for submissions to be made.</p>	Crown Lands Act 1989 - Section 99 to 111A. The leasing and licensing of Crown Land will be generally carried out under the same conditions as Council Community land.
<b>Roads</b>	Leasing and licensing of parts of public roads including road closures. (Not covered by this policy).	Subject to the Roads Act 1993.

## **7. REQUIRED REGISTERS - LAND REGISTER, OTHERS**

- a) The Land Register details the Lot & Deposited Plan, Address and Classification of all Council controlled land;
- b) Crown Land Register details all land owned by the Crown that Council is the Trustee and Manager of;
- c) Compulsory Acquisitions Register details all land that may or may not be transferred to Council by Dedication, Voluntary Planning Agreement, State Government Transfers and other transfers of ownership to Council;
- d) Register of all easements, rights or way and other burdens on Council owned land or that benefit land owned by Council; and
- e) Hazardous Materials Register as per Councils Hazardous Materials Policy (DRAFT)

## **8. LINKS TO COMMUNITY STRATEGIC PLAN (CSP)**

The Community Strategic Plan is structured around a guiding principle: to work together in a way that is creative, caring and just. Five strategic directions give effect to this principle: an ecologically sustainable Inner West; unique, liveable, networked neighbourhoods; creative communities and a strong economy; caring, happy, healthy communities; and progressive local leadership.

## **9. POLICY STATEMENT**

The Inner West Council is committed to optimizing community benefits to meet the needs of our community now and in the future through consistent management of council owned or controlled land or buildings.

## **10. POLICY**

### **10.1. Land Management**

- a) A Council resolution following a public exhibition period is required to classify land as operational.

### **10.2. Lease Management**

- a) Leasing objectives are used to assess Lease value and include:
  - i) Optimising the use of public assets;
  - ii) Facilitation of an endorsed strategy or plan;
  - iii) Generate revenue to contribute to councils sustainability;
- b) Lease types include commercial, retail, community, air space and residential,
- c) Lease term is generally 5 to 10 years including lease options to renew.
- d) A lease term of longer than 5 years requires an Expression of Interest or Tender process.
- e) A lease term of no longer than 29 years is permissible for community land.
- f) Service Level Agreements will be set dependent on the type of service being provided from the property.
- g) Market rent will be set for all leases and documented on the contract and determined by an independent Valuer or similar rates in precedence.
- h) Rent is to be reviewed annually. Leases will provide for annual rent reviews in accordance with changes in the Consumer Price Index (all groups) – Sydney or a percentage amount detailed, whichever is the greater. Upon expiry of the Lease or exercise of any Option Period the rent is reviewed to Market Rent.

- i) All tenants to pay its percentage share of outgoings including but not limited to rates, land tax, utilities and maintenance.
- j) Maintenance and repair. The Lessee will be required to maintain the premises and keep them in good repair having regard to their condition at the start of the Lease. If council finds the premises are not being kept in good repair, Council may carry out the repairs and invoice the Lessee for the costs including any project management fees.
- k) Structural Repairs - A Lessee is not usually responsible for structural repairs unless needed because of the failure by the Lessee to maintain the premises as required including pest inspections and control or unless the works are required because of the specific use of the Lessee or unless they related to capital works the Lessee was required to do.
- l) The parties may negotiate for the Lessee to responsible for structural repairs to repairs to Council's buildings as part of an agreement for the Lessee to pay less than market rent. If the Lessee erects any structures, it will be required to undertake any structural repairs needed. It is preferred that Council will carry out structural repairs and recoup the costs from the Lessee including any project management fees applicable.

### **10.3. Retail and other Commercial Leases**

- a) Commercial Leases are Leases where the Lessee operates a business in, undertakes commercial activities on, obtains income from and/or there is private gain from the use of, the premises. Leases of kiosks, restaurants, shops, offices and other premises used for the operation of a business are commercial Leases. Leases of Childcare Centres to a person or company which operates a for-profit service are Commercial Leases. A Lease to a Lessee which sub-Licenses or hires the premises for profit is a Commercial Lease.
- b) A Lessee may be a non-for-profit organization but it may sub-License or hire part of the premises for a fee or operate, or permit a sub-Lessee, Licensee, contractor or other person to operate on the Leased premises a for-profit business, a commercial activity which provides private gain, profit or income for the sub-Licensee, contractor or other business operator and/or which competes with other private businesses. This is also a commercial Lease.
- c) Market rent will be payable for commercial Leases.
- d) If there is direct negotiation with one potential Lessee only, the market rent may be determined by an external valuer having regard to the terms of the proposed Lease.
- e) An assessment of market rent by a registered valuer is an opinion by an expert. It is noted that it will not give as true a measure of market rent as a competitive process (auction, tender or expressions of interest) between two or more interested parties.
- f) With a competitive process the current market rent is the highest rent offered in a complying proposal. However, this may be outweighed by other factors so long as the public receives value for money from the commercial use of public land.

### **10.4. Accommodation Grants**

- a) Accommodation Grants (Grant) equivalent to all or part of the market rent may be granted to Non-Government Organizations (NGO's), incorporated Not-For-Profit (NFP) service providers, sporting and community organizations for non-commercial purposes provided that such uses align with the community's demonstrated needs or aspirations, and further the objectives in Council's Statement of Vision and Priorities and/or Strategic, Community or other adopted Plans. Refer to Table 1.0 Accommodation Grant Eligibility Criteria
- b) Priority areas of support for not-for-profit businesses will be determined by Council.
- c) The percentage of the Accommodation Grant will reflect the community benefit to the Community from the Lease and service provided the extent to which it aligns with Council's



Statement of Vision and Priorities and any adopted Strategic Plans, and the Lease applicant's capacity to pay. Refer to Table 1.0 Accommodation Grant Eligibility Criteria

- d) Council will from time to time provide a reduced rate (below market valuation).
- e) The Grant will be detailed in the Lease and the Services annexed as a condition to the Grant to ensure the occupation continues to be in the interests of the public. These may include those factors that were important in deciding to award the Lease and may include, but not limited to:
  - Requirements for the services to be offered, clientele to whom the service is to be provided, membership open to all, shared use or access by third parties, prices to be charged, hours of operation, and preference for Inner West Council area residents.
  - Key Performance Indicators and annual reporting requirements
- f) The Accommodation Grant cannot be considered in perpetuity.
- g) The Accommodation Grant does not include building outgoings, non-structural maintenance and repairs, utilities to cover Council's costs and the costs of the premises having regard to the costs of acquisition, construction, repairs and maintenance, depreciation, sinking fund, utilities, rates, staff time and other expenses.
- h) The Accommodation Grant is only for all or part of the market rent foregone and no other expenses incurred or to be incurred by Council. These costs must be met by the occupant unless an exemption is approved.
- i) The Accommodation Grant is a financial contribution from Council to the Lessee and to the service the Lessee is providing, and must be acknowledged in the Lease, by signage on the premises, in annual reports and other communications by the Lessee to its clients and others.

## Accommodation Grant Eligibility Criteria

Grant	Comments and Examples
100%	Council provides a grant for 100% of the market rent excluding the cost the outgoings.
90%	Despite this indication, the rent must at least cover outgoings arising as a direct result of the occupation and if Crown Land must be at least the specified annual minimum. This category will usually be for small volunteer groups with little funding or capacity to raise income and who meet Council's strategic objectives and/or priorities to a very high degree and who are occupying 1-2 small rooms with shared facilities or co-location.
75%	This will usually be organizations meeting Council's objectives or priorities to a high degree, with some funding but unable to pay close to market rent.
50%	This will usually be organizations which align with Council's priorities, have some funding or capacity to obtain income but unable to pay market rent.
25%	This will usually be organizations which align with Council's priorities, and have some funding or capacity to obtain income or funding but are unable to pay full market rent.
10%	This will usually be organizations with capacity to pay market rent or close to market rent, by charging its clients fees at market rates and/or through other commercial avenues or funding sources, but a small Council subsidy is justified due to the need and uniqueness of the service provided or other factors.
0%	This will usually be organizations with capacity to pay market rent, due to its size and/or by charging its clients fees at market rates and/or through other commercial avenues or funding sources. Commercial Leases.

### 10.5. Capital Works

- a) Following negotiation, the Lease may require the Lessee to do capital works. The value of the works may be amortized over the term of the Lease represent a form of rent payment noted in the Grant Deed.
- b) At Council's option, the Lease may require that capital work undertaken by the Lessee is to be project-managed by Council.
- c) If the Lease requires the Lessee to undertake capital works or improvements to the premises, the Lease will state that the works are or become the property of the Lessor not the Lessee.
- d) Capital works undertaken by the Lessee do not give the Lessee any interest or claim in the works or improvements or the premises beyond what is in the Lease nor give the Lessee any claim to the premises after the expiry date of the Lease. Undertaking capital works during the Lease term does not entitle the Lessee to demand a new Lease following expiry of the Lease term.
- e) Before undertaking any work, the Lessee to ensure they have all relevant approvals for the proposed use & any works in accordance with the Environmental Planning & Assessment Act 1979.
- f) If not contrary to other Council Policy, project management and other fees may be waived or discounted in line with Table 1.0 Accommodation Grant Eligibility Criteria by written approval of the Group Manager, Property, Major Building Projects and Facilities.

## **10.6. Licenses**

- a) As for Lease Management.
- b) The License fee must at least cover utilities, consumables and other expenses incurred by Council as a direct result of the occupation of the premises.

## **10.7. Service Agreement Management**

- a) As for Lease Management

## **10.8. Leases to Sporting Clubs and Community Groups**

- a) Council recognizes that many existing Lessees or Licensees of community land and Crown Land, notably sporting bodies and community groups, have strong historical and/or social and/or recreational ties to the facilities they use. In some cases, they have contributed financially to the development of these facilities. In considering new or continued Leases or Licenses of such facilities, Council will take these factors into account and may, at its discretion and subject to a report to Council, not require Expressions of Interest or Tenders to be called (subject to the legislative requirements then current).
- b) If Council decides to grant a Lease to an incorporated sporting organization or Community Group for a set term to the exclusion of other users compared to a License of a storage room and seeks to pay less than market rent, the proposal will be assessed under the Grant Eligibility Criteria.
- c) Whether or not Council grants a Lease and of what premises, will be determined by Needs Studies and research. Recreation Policy and/or Strategy, Park Plans of Management, and community need assessments.
- d) There is no automatic right to re-new. It should not be assumed that a new Lease/License will be automatically granted to the same not-for-profit Lessee at the end of a Lease/License term. Council will consider the issue of a community benefit to the community on each occasion a new Lease/License is to be entered.
- e) Similarly, it should not be assumed that a new Lease/License will be automatically granted with the same terms and conditions.
- f) Lessee/Licensee Requirements: A not-for-profit, sporting or community organization requesting a new Lease/License or renewal of a Lease/License of Council premises at less than market rent is expected to provide Council with all the information sought to enable Council to assess the proposed benefit to the community based on the organization's merit. This may include some or all of the following requirements:
  - Confirmation of legal entity and ABN
  - The last 3 years audited financial statements
  - The organization's Constitution
  - Details and copies of any agreements or arrangements with or to any third parties
  - A Business Plan for the period of the proposed Lease/License (including any option periods). The Business Plan should demonstrate the proposed Lessee's capabilities to carry out any items specific to the proposed Lease/License during the tenure and provide details and time-lines of any maintenance, improvements or enhancements proposed to be carried out and completed and paid for by the Lessee during the tenure.

## **10.9. Council Land or Property Sales or Acquisition**

- a) All requests to buy or sell council land or property are directed to Group Manager Property, Major Projects & Facilities for review and feasibility.

- b) Council Resolution is required to sell any council land or property.
- c) An independent valuation will be commissioned by Council staff and paid for by the proposed purchaser as a 'cost of sale'.
- d) Community land cannot be sold. If it is intended to sell community land it must be first reclassified to operational land through a public exhibition process and LEP process approved by the Minister.
- e) Operational land including roads can be sold.
- f) A road will need to be closed prior to the sale. The Roads Act sets out a procedure for a Road Closure including public exhibition and gazettal.
- g) The objectives of sales of land or property must align with the Land & Property Strategy and these include to obtain revenue and improve land use.
- h) A sale can be undertaken through a
  - Tender Process – this could include a public tender for the sale of land or property plus added community benefits eg additional carparking, activation of space or provision of community or commercial rooms/space
  - direct negotiation – this could include where an adjacent owner wishes to buy a drainage space or adjacent unused piece of land. If there is only one buyer than a direct negotiation can be undertaken.
  - Representative or Agent – this could be an auctioneer, real estate agent or property consultant who has a network of buyers and a marketing platform to increase revenue prospects.

#### **10.10. Dividing Fences**

- a) Dividing Fences Act 1991 applies to all land owners.
- b) Council will not contribute to any costs or liability for any dividing fences adjacent to land that is owned Community or Crown.
- c) Council staff will review and may contribute to operational costs for 50% of repairs, replacement and maintenance for fenced on land that is classified operational land.

#### **10.11. Unsolicited Offers**

- a) Unsolicited offers include requests to occupy council property or land through a lease or licence arrangement, approach to sell or develop council land, approached by sporting/community groups to apply for a grant to construct on council owned land.
- b) The NSW Guideline for Unsolicited proposals will guide review and decision making <https://static.nsw.gov.au/nsw-gov-au/1505101800/Unsolicited-Proposals-Guide-2017.pdf>
- c) Unsolicited proposals process will look to optimize outcomes, however it is not a substitute for routine competitive procurement. The Assessment Criteria will include
  - Uniqueness
  - Value for money
  - Multiple benefits
  - Return on investment
  - Capability and capacity
  - Affordability
  - Risk Allocation

- d) Requests to occupy space by Not For Profits will be reviewed for any available and suitable space. If there is no space available that can be provided the Requestor will be registered for the next RFT/EOI or opportunity to share services. Applicants wanting to share and collocate with other tenants or services will be given priority to enable increased utilisation of council assets

#### **10.12 LEASES OF AIRSPACE OVER ROADS**

Any approval for the construction of a verandah or balcony in the air space over a public road will be subject to:

- the owner entering into a 99 - year Lease with Council in accordance with section 149 of the Roads Act, 1993;
  - the consent of the Director of the Department of Infrastructure Planning & Natural Resources as required under s.149(2) of the Roads Act, 1993.
- a) The owner/Lessee is to pay all costs in connection with the Lease including legal, survey, valuation and registration fees and stamp duty.
  - b) The rent for the total 99 years of the Lease is to be paid prior to release of the Construction Certificate for construction of the structure.
  - c) Except as set out in point (d) below, the rent is to be at market value, determined having regard to the increase in value of the subject property.
  - d) Where the structure is a restoration of a balcony or veranda that existed prior to 1900 (or where a veranda or balcony exists on a building built after 1900 which is of heritage significance) and where the restoration is in strict accordance with a conservation plan endorsed by Council, no rent is payable.
  - e) Where any existing development consent approved the erection of a balcony or veranda over a footpath subject to the execution of a 5 year commercial or 10 year residential air space License, the relevant property owner be given the option of entering into a 99 year Lease in accordance with the above provisions.

#### **10.13 COMPLIANCE, DEFAULT & EARLY TERMINATION**

- a) Lessees of Council land and buildings are expected to comply with the terms of their Lease/License. The obligations are specifically set out in the Development Application Consent; Lease/License agreement or any other legislative requirement pertaining to the use of the property and are not reduced (and should not be) because the Lessor is a Council rather than a private landlord.
- b) If a Lessee breaches a Lease/License, the General Manager or delegate may serve a Notice of Breach of Lease/License requiring rectification of the breach or payment of compensation for the breach. If a Lessee does not comply with a Notice to remedy a breach of Lease/License or to pay compensation, or if the Lessee continues to commit breaches of the Lease/License, Council may terminate the Lease/License.
- c) A default procedure will commence when a tenant falls in breach of the requirements of the Lease/License. Relevant and appropriate measures will be undertaken accordingly to the Lease/License to remedy an issue. Full compliance is expected by the tenant to ensure the matter is resolved quickly and amicably to mitigate further risks and avoid legal action being undertaken. Council's Debt Recovery Policy may also apply. Council reserves the right to terminate the agreement by re-entry in the event of non-payment of rent.
- d) Lessees of Council are expected to comply with Council's Business Ethics and Model Code of Conduct policies and any other Council policy as the case may be.