

BACKGROUND

Council owns both community and operational land, public roads and manages Crown Land as trustee. Council will manage the use of its land holdings for the benefit of the community and/or to maximise the amount of revenue it derives from its land holdings.

OBJECTIVE

The main objective of this policy is to outline the general requirements for the grant of occupation agreements for Council owned and managed land and buildings in a timely manner that meets legislative requirements.

POLICY STATEMENT

- Approvals to grant occupation agreements of Council owned or managed land, buildings and public roads are to be made by either a resolution of Council or delegated officer.
- These guidelines should be read in conjunction with Council's Management Policy *Occupation of Council Owned and Managed Land, Buildings and Public Roads* and the *Community and Sporting Group Rentals Policy* and the *Outdoor Dining on Council Land Policy and Allocation of Community Facilities to Community Groups*.
- Management of the occupation of Council's land, buildings and public roads will be undertaken in accordance with this policy.
- Direct negotiations of occupation agreements over Council owned and managed land, buildings and public roads will be undertaken in accordance with this policy.

GENERAL REQUIREMENTS

- 1 Unless exempt by legislation, applicants/tenants shall be responsible for the payment of all application fees (when applicable) and Council's legal costs in the preparation of leases and licences as set down in Council's Annual Fees and Charges.
- 2 All tenants shall indemnify Council and hold Public and Product Liability Insurance to the minimum value of \$20 million (or other amount as advised by Council).
- 3 Tenants, if required by a Council policy, shall hold Building Insurance to the full replacement value of the building as advised by Council. This requirement does not apply to non-commercial agreements.
- 4 Non-commercial tenants are only required to cover the below excess costs of repair for minor damage in cases where they are responsible for minor maintenance in accordance with their occupation agreement.
- 5 Rent and licence fees payable by Community and Sporting groups shall be in accordance with Council's Community and Sporting Group Rentals Policy.
- 6 Rent and licence fees for commercial operations shall be based on independent valuation advice unless –
 - a determined through public competition process (quotation or invitations for proposal); or
 - b provided for in Council's Annual Fees and Charges (street vending, outdoor dining on public roads etc).
- 7 The application of this Policy must be read in conjunction with the Allocation of Community Facilities to Community Groups Policy.
- 8 The General Guidelines associated with the procedures for the occupation of Council's owned and managed land are detailed in the Council Management Policy "Occupation of Council Owned and Managed Land, Buildings and Public Roads" to assist staff in the application of this policy.

DIRECT NEGOTIATIONS

1 General

- a All direct negotiations should be undertaken having regard to the guidelines issued by the Independent Commission Against Corruption (ICAC) in May 2006.
- b Examples of direct negotiation include:
 - i Lease of public road to adjoining land owner.
 - ii Short term casual agreement over land (up to 12 months) pursuant to either the Local Government Act or the Crown Lands Act as prescribed where a pre-determined fee has not been established in Council's fees and charges.
 - iii Where an Invitation for Proposal, Expressions of Interest or Tender for the agreement of Council property is unsuccessful.
 - iv Where an existing tenant requests an extension to the original agreement term, and where they have demonstrated sound business practice, demonstrated a tangible benefit to Council and the community, is not in default of the existing agreement terms/conditions and will agree to a market review.
 - v Where the prior approval has been granted by the Minister administering the Crown Lands Act 1989 for the agreement over Crown land under Council's trusteeship.
 - vi Where there is a demonstrated public benefit, an occupation agreement on Operational land can be negotiated and directly supported by independent valuation.
- c To avoid suggestions of impropriety:
 - i Council officers involved in Direct Negotiation should sign a declaration stating that they are not aware of any conflict of interest. That form shall be witnessed by the one up manager and trimmed against the relevant file.
 - ii An independent valuation shall be obtained to guide negotiations in respect to rent/licence fees.

2 Crown Reserves

- a In matters where the consideration is being given to direct negotiations on Crown Reserves regard should be given to the NSW Government Unsolicited Proposals – Guide for Submission and Assessment document of February 2014. In particular matters to be considered in these cases should address the following:
 - i Proposal needs to be referred to Crown Lands early, preferably before any discussions or negotiations have taken place.
 - ii The Trust needs to clearly demonstrate that it has considered the 2006 ICAC Guidelines for managing risks in direct negotiations in making a determination of the appropriateness of direct dealing in line with Chapters 1 and 2 of the ICAC Guidelines.
 - iii The Trust must demonstrate that it has documented the decision and has a process in place that meets ICAC recommendations for negotiating direct deals.
 - iv The Trust needs to be able to document that the process is fair and impartial at all stages of the negotiations and any potential conflicts have been recorded.
 - v In some cases the Trust may be able to demonstrate that it is impractical or not cost-effective to apply a competitive process.
 - vi Any proposal of a commercial nature is generally expected to be by way of a competitive process. Where a lease for a commercial activity is proposed to be granted, then there would need to be a strong case presented to justify direct dealing. Any such direct dealing negotiations would need to follow the process outlined in Chapter 3 of the ICAC Guidelines.
 - vii The Trust needs to provide details of the decision together with a copy of a draft of the proposed agreement.
- b Following receipt of the above, Crown Lands will then need to consider the issue in relation to the ICAC Guidelines and the following matters:

- i Public interest;
 - ii The reserve's public purpose;
 - iii Consistency with any Plan of Management for the reserve;
 - iv Native Title interest;
 - v Any Aboriginal Land Claims lodged over the site;
 - vi Are the proposed terms and conditions of the proposed agreement acceptable to Crown Lands?
 - vii Is the proposed agreement to a not for profit or community organisation or is it a commercial activity?
 - viii Are the proposed activities of a nature that is dependent on the use of the land in that location?
 - ix Is the proposed term long or short?
 - x If long term, is the lease negotiation supported by a business case to ensure financial viability and sustainability of the project?
 - xi Is the direct deal supported by the Trust's own governance/policies?
 - xii Does it have any unique attributes that warrant direct dealing?
 - xiii How has the rent been established – independent valuation or Council policy for community sporting/volunteer organisations?
 - xiv Has the Trust demonstrated a fair and impartial process and have all potential conflicts of interest been declared?
- c In any event Council must first make written application to the Minister Administering the Crown Lands Act 1989 and request approval to direct deal. This application is to be accompanied by a relevant **Negotiation Protocol** and **Probity Plan**.
- d Submissions should address the background of the property, history, previous tenure arrangements and any other issues which may support the application to direct deal.

SUMMARY SHEET

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| Responsible Division | Property and Recreation |
| Date adopted by Council | 3 April 2017 |
| Date of previous adoptions | 13 October 2014, 28 November 2005, 26 May 2003, 5 September 1994 |
| Date of next review | April 2019 |
| Prepared by | Property Services Manager |
| Authorised by | Manager Property and Recreation |