



MANAGEMENT OF COMMUNITY PROPERTIES POLICY

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Purpose

To provide direction and a framework for community property operations covering plans of management for community property and the controls in the granting and management of leases, licenses and permits over community property.

Council reports on objectives wherever feasible and this policy provides for performance measures for desired outcomes of plans of management where appropriate and practical having regard to scale, scope and resources available to capture and report on those performance measures. Financial reporting for facilities and localities is available to assist in gauging and reporting financial position and sustainability of community property.

The benefits of the policy include:

- clarification and documentation of principles and best practice in managing community properties
- provision of direction and framework to applicants proposing use or ongoing use of community properties
- provision of direction and framework to Council and Council staff when assessing and determining applications for use of community properties
- demonstration to the community and the Crown that Council has appropriately considered the issues surrounding the management of community properties

Definitions

Agreement means leases, licenses and permits granted by Council to users of community property.

Community based organisation includes (and is not limited to) charitable, non-profit, volunteer and unincorporated groups/clubs that deliver community benefit.

Community land means land which is owned by Council and classified as community land pursuant to Chapter 6 Part 2 of the *Local Government Act 1993*.

Community property means:

- community land
- Crown land which Council manages as Crown land manager under the *Crown Land Management Act 2016* and upon which Council has community facilities, or which adjoin Council facilities

Excludes community land categorised as a natural area or community facilities subject to the *Roads Act 1993*.

Council means Mosman Municipal Council.

Crown land means land that was Crown land as defined in the *Crown Lands Act 1989* immediately before the Act's repeal and the Crown land managed by Council as the manager of the former Reserves Lands Trusts.

Crown land manager means Mosman Municipal Council.

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Lease means an agreement where the lessee has exclusive control or occupancy of community property owned or managed by Council.

Licence means an agreement where the licensee does not have sole rights to community property, however has consent to use the community property or part of it in a limited way, that may be restricted by times or uses.

Minister means the Minister responsible for the administration of the *Crown Land Management Act 2016*.

Native Title Manager means the trained Council officer or officers who advise on dealings for land possibly affected by native title, to ensure that Council's management of Crown land complies with the *Native Title Act 1993 (Cth)*. Council is required to give notice of the details of its Native Title Manager/s to the Minister annually under section 8.8 of the *Crown Land Management Act 2016*.

Permit means Council approval of an application to use community property for seasonal, short-term or casual use. Includes applications for hire of parks, playing fields and reserves for sporting, recreational and social activities.

Plans of management are the documents which defines the value, use, management practices and intent for the broad public purpose for which the community property has been provided by Council or reserved or dedicated by the Crown. They also confirm the categorisation of Council Crown reserves initially assessed under Section 36 of the *Local Government Act 1993*.

Social subsidy means the difference between the market rental and the actual rental collected by Council.

Scope

Covers the management of community property within the Mosman local government area.

Community Property Portfolio

Council develops, implements and reviews plans of management for community properties as appropriate. The use of community property is formalised and regulated by legal instruments such as leases and licences or the granting of permits. All agreements are subject to a merit based assessment of application for use.

Council's community property portfolio comprises community based and commercial use of facilities including buildings, structures, equipment, playing fields, parks and reserves. Activities and facilities provided or permitted on Council's community property include:

- Community based:
 - community groups (including scouting)
 - single interest and sporting groups and clubs (including croquet, bowling, sailing, rowing, rugby, football, cricket, water sports, nippers)
 - schools and educational institutions
- Commercial (including private) based:
 - restaurants and kiosks
 - child care centres
 - telecommunication facilities
 - boatshed
 - houseboat services
 - filming and photography

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- weddings
- functions
- special events
- licensed clubs
- health and fitness trainers
- trading

Some community based activities involve a commercial component where income generated is directed to the funding of the community based activity being conducted on the community property.

Further to the activities and facilities provided or permitted above, Council provides facilities such as foreshore reserve parking, dinghy storage, playgrounds and amenities. Special events such as the Festival of Mosman are also conducted on community property.

Plans of Management

Plans of management for community property consolidate information about the particular locality and its users, and state what, why, how and by whom the values of a community property are being managed, together with the statutory categorisation of the land.

Purpose

Plans of management can set directions and provide a framework for the strategic and operational use and management of community property.

A plan of management may fulfil many purposes. Council may use a plan of management to:

- set out strategic directions
- outline operational and day-to-day use and management
- act as a conservation tool
- contain directions for development and provision of infrastructure
- specify how broader legal and policy requirements are to be applied to the particular property
- create a concept design for future developments
- provide a landscape master plan
- identify and minimise any risks, including any potential emergencies
- develop a budgeted program for maintenance and development work
- ensure the environment is appropriately managed
- define and resolve tenure matters

When to prepare

Council must prepare a plan of management for land defined as “community land” under the *Local Government Act 1993*. Community lands are owned directly by Council.

There is no requirement to prepare a plan of management for other land owned directly by Council and defined as “operational land” under the *Local Government Act 1993*.

Council is also required to prepare plans of management for Crown land which Council manages as Crown land manager (and forms part of Council's community property portfolio) under the *Local Government Act 1993 and Crown Land Management Act 2016*.

Any plan of management for Crown land should be consistent with the public purpose for the reserve and the principles of Crown land management, as well as other guidelines, policies, and

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legal requirements which may apply to the reserve such as the provisions of environmental planning instruments (such as local environmental plans) and development control plans made under the *Environmental Planning and Assessment Act 1979* and threatened species or native vegetation controls.

Plans of management developed for Crown land are to be prepared in accordance with the *Crown Land Management Act 2016* and adopted by the Minister.

Content

Plans of management for community properties may contain the following:

- aim (the desired outcomes)
- purpose and values of the community property
- specification of timeframe
- visitor management and facilities (what activities are and are not permitted and what facilities are required now and within the timeframe of the plan of management to provide for those activities)
- environmental management
- commercial management
- leasing, licensing and permit issues
- financial management
- risk management
- action plan
- performance measurements for each of the desired outcomes listed in the plan of management
- *Local Government Act 1993* categorisation

Implementation and review

Once a plan of management has been approved (and in the case of Crown land, adopted by the Minister) Council ensures that it is implemented. Noting that a plan of management can take several years for the Minister to approve, to avoid undue delay, plans of management are implemented upon adoption by Council pending Ministerial approval.

The desired outcomes of the plan of management should be relevant for five to 10 years. The plan of management specifies when management strategies should be reviewed and updated, if required. Management direction may change over time and the plan of management may be amended (to address proposed changes or issues arising) following a community consultative process.

Council monitors and evaluates the progress of the implementation and reviews the action plan annually. This may involve:

- monitoring and review to ensure that actions are undertaken
- monitoring and review project milestones for ongoing projects
- regular site inspections
- audit programs
- the collection of data
- review of the financial position of the community property
- measure the performance measurements for each of the desired outcomes

The result of this evaluation is measured against the intended outcomes of the plan of management, in order to assess the overall success of the implementation. In the event of disparity

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between the evaluation and the performance measures, Council may review the allocation of resources to achieve implementation or propose certain amendments to the plan of management.

Plans of management prepared under the *Local Government Act 1993*, *Crown Land Management Act 2016* or at Council's discretion, are updated no less than every 10 years or as otherwise directed by Council.

Reporting

Where performance measures are included in a plan of management, Council reports performance every four years in association with the reporting on the conduct of the four yearly condition assessments of all assets (which includes community properties). Condition assessments are conducted every four years in association with the review of the Council's Asset Management Policy.

Reporting plan of management performance measures in conjunction with the condition assessments highlights significant connections between community properties and asset management and avoids duplication.

Reporting of all plans of management includes a progress update of relevant actions within the plans. Reporting is included in the Council's relevant statutory Annual Report required under the *Local Government Act 1993* every four years.

Managing Agreements

Community property is used by a wide range of bodies and individuals conducting activities or providing services for the community.

As Council is not conducting the activity or providing the service, it does not take responsibility for the risks involved and enters into suitable agreements that pass the responsibilities to the lessee, licensee or permit holder. Any lease or licence granted documents the terms and conditions under which the other party may use the community property. Any permit granted is subject to an applicant agreeing to the terms and conditions detailed in the application to Council and any further conditions imposed upon granting the permit.

Council may grant agreements to individuals, clubs, groups and organisations, schools and companies who may want to use all or part of the community property on a temporary or ongoing basis.

Competitive tender process

Council invites competitive tenders for use of community properties in order to attract the best operator (and financial return having regard to the community benefit). This relates to both new and renewal leases and licences.

All commercial proposals are subject to a competitive tender process.

Community based proposals and renewals are generally not subject to a competitive tender process. However, community based proposals are subject to a competitive tender process where:

- the community benefit of the ongoing occupation by an existing community based lessee or licensee is not significant or clear
- an existing community based lessee or licensee has not provided and maintained or proposes not to upgrade or develop facilities, buildings or improvements at its own expense

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- a proposed community based lessee or licensee proposes not to develop required facilities, buildings or improvements at its own expense
- any commercial activity conducted as part of a community based operation is not minor and not incidental to the community based use
- there is competing demand or proposals for community based facilities (with or without a minor and incidental commercial component)
- there is no significant historical occupation of the land by the present lessee or licensee

Assessment

Consideration is given to the following issues when determining whether or not to consent to the granting of an agreement:

- whether the proposed agreement is in the public interest
- whether the purpose of the proposed agreement is compatible with the purpose of the community property including the purpose of dedicated and reserved Crown land
- whether the purpose of the proposed agreement is consistent with the adopted plan of management for the property
- balance between equitable usage and priority of need - consideration is given to whether the proposed use is a fair allocation of property and facilities to users that allows a degree of continuity of usage without permitting one user group to monopolise a property or facility (unless subject to an exclusive lease agreement). This is balanced against the priority of needs dictated by matters such as giving priority to Mosman residents and organisations, changing demographics and changing community interests and priorities
- the environmental impacts of the activities to be permitted by the agreement
- the proposed term of the agreement
- whether the proposed agreement was or is proposed to be selected by competitive tender or, if not, the circumstances relating to the selection of the proposed agreement holder
- whether the proposed rent represents a proper return to the public for the use of the community property
- whether the proposed agreement will contain provisions for the periodic updating or review of the rent
- whether the proposed agreement will contain provisions for the maintenance and upgrade of the facility at the user's expense together with associated reporting
- whether the proposed agreement provides for:
 - the termination of the agreement in the event of Council requiring the land for alternative uses, or in the case of Crown land, a revocation of the reserve
 - the indemnification of the Council and the Crown as appropriate against claims for compensation
 - appropriate insurance provisions

Approval

Consent to agreements for use of community property are determined by Council in accordance with the delegations granted by Council and the legislative requirements of the *Local Government Act 1993* and *Crown Land Management Act 2016*.

Financial Issues

Council has regard to financial issues and principles in the granting and management of leases, licenses and permits over community property.

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1. Social subsidy

Appropriate discounts to commercial market rent for non-commercial users and lessee funded development and improvements to a locality may be applied. This social subsidy may be applied as either a nominal rent or a rebated rent from market.

The level of social subsidisation provided to users of community properties may be measured and reported upon in order to better manage community properties. This will be done by determining:

- the community benefit
- current market rent
- costs incurred by Council in providing and maintaining community property
- any levy imposed on Council under the Public Reserves Management Fund in respect to Crown land agreements
- actual rent received by Council

Assessment of a "market rent" for community property is generally subjective given the nature of community based uses, lack of commercial activity and limited market to benchmark upon. Any measurement of the level of social subsidisation requires regular assessment of all community property by an independent qualified valuer. Given the relative minor scale and scope of Council's community property portfolio and for the reasons above, there is little benefit in measuring and reporting on the level of social subsidisation particularly given the cost of conducting regular market rent assessments and providing staff resources.

Council has regard to State Government policy on concessions and hardship relief for Crown land tenures in managing its community property portfolio. Council applies rebates of market rental to community based organisations (community service, sporting or recreational organisations) where:

- the organisation is the holder of an authority under the *Charitable Fundraising Act 1991* or
- the organisation is incorporated under the *Associations Incorporation Act 2009* or
- the Council is satisfied it is a non-profit organisation, whose holding is used as a help or service facility of benefit to the general community or as an active sporting, passive recreational or youth advancement facility of general benefit to a local community

Such organisations must comply with the following criteria in order to be considered for a rebate of market rental. They must be:

- using the holding for the specified purpose, and
- able to clearly demonstrate the activities of the organisation are of benefit to the welfare of the community to justify a rebate of market rental

Community based organisations may be eligible to receive a rebate of market rent (no less than the statutory minimum rental applicable to tenures under the *Crown Land Management Act 2016*), depending on the nature of their operations. Rebates for these organisations are considered on merit on a case-by-case basis. Assessment of the rebate is guided by the following criteria:

1. administration is purely voluntary
2. membership comprises a majority of Mosman residents
3. the level of cost recovery from membership fees
4. the level of capital expenditure invested in facilities provided by the organisation under the agreement and associated amortisation
5. the level of recurrent expenditure incurred by the organisation in maintaining facilities and providing services and programs
6. community benefit is provided and to what extent

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7. identified community needs are addressed (in accordance with approved Council plans and strategies)
8. the level of commercial activity being conducted on the leased premises having regard to:
 - the community benefit derived from permitting limited commercial activity incidental to the use of the premises
 - the delivery of a broader range of experiences, activities, programs, services and facilities incidental to purpose and activities approved under the agreement that would otherwise not be available to the organisation and the community

Commercial proposals may also provide some community benefit. Child care facilities for instance may provide services including the provision of affordable places, highly qualified staff or catering for children with special needs. These may warrant a degree of social subsidisation of market rent which Council assesses on merit in consultation with expert valuation advice.

Organisations seeking a rebate of market rent are required to submit full details demonstrating the above criteria with any application made to Council. This includes financial statements, management plans, annual and periodic reports, business plans, membership details, constitutions and prior compliance reporting.

Social subsidy principles do not apply to the seasonal and casual hire of parks, playing fields and reserves as these fees are reviewed annually in the Pricing Policy - Schedule of fees and Charges having regard to cost recovery and benchmarking considerations.

2. The community benefit

The provision of community benefit from the use of community property is determined by demonstrating:

- provision of a help or service of benefit to the general community
- provision of an active sporting, passive recreational or youth advancement facility of general benefit to a local community
- provision of a strong single interest/purpose community (for instance, scouting, sailing and rowing communities)
- access for children, youth, the aged and the disabled
- access to community, sporting and recreational facilities that would not otherwise be available
- opportunities for community members to learn and enjoy new experiences, activities and programs
- provision of high quality and safe experiences for the community

3. Rent and fees

Council provides affordable access to community property and facilities by users however balances this against the financial sustainability of providing, maintaining and replacing property and facilities. This necessitates all non-public users of community property to make an appropriate financial contribution.

The rent or licence fee under leases and licences are normally a commercial market rent. Relevant factors to consider include:

- the permitted use under the lease or licence
- the value of the part of the community property being used
- who owns the building or improvements to be used by the lessee or licensee
- costs to be incurred by Council

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- State Government policy on concessions and hardship relief for Crown land tenures

Fees for permits are reviewed and determined by Council annually and included in the Council's Pricing Policy - Schedule of Fees and Charges having regard to demand for use of the community property, cost recovery principles and benchmarking with similar metropolitan local government areas.

4. Nominal rents

Council may impose a nominal rental on community based organisations. Such rental is not less than the statutory minimum rental applicable to tenures under the *Crown Land Management Act 2016* which changes on a quarterly basis in line with the Sydney All Groups Consumer Price Index. The discount to market rent given to the lessee or licensee is specified in the agreement.

5. Rebated rent

A rental rebate from market rent may be appropriate in certain circumstances where the lessee is a community based organisation and the minimum rent applicable under the *Crown Land Management Act 2016* is not appropriate due to factors such as:

- value of land
- community benefit
- competition for use of the land
- commercial activities being conducted

Council determines the level of subsidisation for use having regard to social subsidy and community benefit principles detailed in this policy. The level of rebated rent may also be balanced against cost recovery in providing facilities for the community. Rebated rent is greater than the nominal rent prescribed in this policy. The rebate given to the lessee or licensee is specified in the agreement.

6. Rent review

Leases and licences provide for regular rent reviews. Rent is:

- reviewed annually by reference to the Sydney All Groups Consumer Price Index or a fixed percentage
- further reviewed to market rent at least every three years for the term of the agreement
- in respect of significant commercial agreements of community property (such as Balmoral Bathers' Pavilion and Balmoral Baths), further reviewed to market rent every two years for the term of the agreement.

Market rent is determined by an independent expert such as a valuer. Where a lessee does not accept Council's offer of a market rent, the lessee, in the first instance, is requested to obtain their own independent valuation advice and the respective valuers are instructed to discuss and negotiate a compromise. Where, following this process, agreement cannot be reached on a current market rent, such disputes are resolved by referral to the Australian Property Institute, NSW for binding arbitration.

Other Management Issues

Council has regard to other management issues and principles in the granting and management of leases, licenses and permits over community property.

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1. Terms

The term of a lease or licence will be as short as possible, taking into account the particular circumstances of the community property and the proposed use. Regard will be had to future changes in community needs when negotiating the length of term. Terms of more than 21 years will not normally be approved.

Agreements involving community land for terms greater than five years must follow the notification and exhibition process required under the *Local Government Act 1993*. However, the lease or licence of Crown land from Council to **emergency services organisations, not-for-profit groups and community groups** have a maximum term of 21 years (as provided by Clause 70 of the *Crown Land Management Regulation 2018*).

Options for renewal or lengthy 'holding over' rights at the end of a lease or licence with a 21 year term will also not normally be approved. Any 'holding over' will not exceed 12 months. If a need for the activity at the end of the term remains, a new lease or licence is negotiated. This allows the Council the opportunity to review the arrangement having regard to current and anticipated community needs.

2. Risk management

When considering whether to grant a lease or a licence Council considers the risks and related regulations that may apply to activities conducted on community property.

The agreement, where feasible, obligates the agreement holder to manage regulatory compliance and risk management. Activities may have work health and safety (WHS), public safety, bushfire and contamination implications amongst other risks.

Wherever feasible activities, where significant risks to people or property may exist, are assessed and documented together with any controls put in place so that the agreement holder is clear on obligations and responsibilities. The agreement, wherever appropriate, contains an emergency management provision which sets out the communication protocols and actions that should be undertaken in the event of an emergency.

3. Insurance

Council proactively obtains all relevant insurance policies in a timely manner, and ensures that all the conditions of the agreement relating to insurance are complied with.

4. Maintenance and facilities management obligations

Council ensures that the repair and maintenance obligations (including facilities maintenance plans and associated reporting) of agreement holders are closely monitored and complied with. Any breaches are acted upon to ensure compliance in a timely manner.

5. Bonds

Security deposits are only required for commercial activities. Community based agreements are generally with voluntary-run organisations often with limited resourcing. Given the prevalence of nominal or rebated market rent under agreements for community property with community based organisations, delinquency of rent and fees is not viewed as a risk.

6. Sub-letting

Council's agreements for community properties provides that sub-letting of all or part of a facility is permissible however only with the written consent of Council. The head lease contains a provision that allows a sublease and the preamble of the sublease references the head lease. The term of any sublease will not extend beyond the date of expiry of the head lease.

7. Development, improvements and ownership of assets

Facilities located on community property are either owned by Council or by the agreement holder. Agreement holders under existing agreements have often built or developed premises for adaptive re-use at their own expense or may propose to do so in the future. A proposed agreement may require the agreement holder to undertake building or development works. In all of the above circumstances, agreements specify that no work is to be undertaken until:

- owner's consent to the lodgement of any development application has been granted by the Council and any other appropriate authorities including adjoining lands owners such as Transport for NSW (TfNSW)
- plans have been approved by the Council and any other appropriate authorities
- any necessary development consents or construction certificates have been obtained from Council
- consent to vary agreements as required has been obtained from the Council and any other appropriate authorities

At the end of an agreement, any improvements (ex-fittings) become the property of the Council. An agreement will not give the agreement holder a right to receive compensation for buildings or other improvements made or installed by them.

In appropriate cases, the agreement holder is required to clear and restore the land to the satisfaction of the Council at the expiry of the agreement within a reasonable period.

8. Multiple agreements for one facility

Facilities may be located on both community property and land owned by other authorities, such as maritime property owned by Transport for NSW (TfNSW). In such cases the occupancy is covered by separate agreements with Council and the other authority. Council liaises with the other authority concerned to ensure consistency between the respective agreements particularly purpose, rent, maintenance, special conditions and a common term and expiry.

9. Financial governance

In relation to income received from Crown land, Section 3.16 of the *Crown Land Management Act 2016*, requires the net amount of the proceeds of dedicated or reserved Crown land managed by a Crown land manager to be **applied** by the manager for a permitted purpose for the land.. T Each party to an agreement is responsible for its own costs in preparing and finalising agreements.

Council's financial systems are capable of producing financial statements including profit and loss statement and asset statement for both community property as a whole and the Crown land component.

10. Reporting

Council is required to submit to the Minister an annual report as prescribed in the *Crown Land Management Act 2016*. Annual reports are submitted online in the Crown Reserve Reporting System.

Financial reporting for community property including individual facilities is provided to assist in assessing and reviewing the financial position and sustainability of community property. Council does not measure and report on the level of social subsidies applied to community property due to the cost and little benefit of providing such a performance measure.

Council may report on the financial position of community property in its statutory annual report.

11. Procedures

Operational level procedures for community properties are administered through Council's property management system, ProgenNet. Operational procedures which address policy directives are automated in ProgenNet. These include diarising and notifying staff of events for action including:

- submission of insurance certificates, facilities maintenance reports, compliance reports, fire and equipment certifications
- action and follow up non-compliance
- market valuations
- rent reviews
- outgoing
- rent delinquencies
- lease expiry and notification for exercise of options
- expiry of bank guarantees

Responsibility

The Manager Governance is responsible for the management of Council's community properties portfolio including assessment of use proposals and reporting and recommending action.

The Property Administration Officer administers Council's property management system, ProgenNet and the day to day management of Council's community properties portfolio. The Property Administration Officer also acts as Council's principal Native Title Manager. Open Space and Environment staff are also qualified to act in that role as required to ensure Council meets its Native Title obligations.

Related Information

- *Associations Incorporation Act 2009*
- *Charitable Fundraising Act 1991*
- *Crown Land Management Act 2016*
- *Crown Land Management Regulation 2018*
- *Local Government Act 1993*
- *Native Title Act 1993 (Cth)*
- *Real Property Act 1900*
- *Retail Leases Act 1994*
- Asset Management Policy, Mosman Council (August 2013)
- Trust Handbook, Crown Lands Division, NSW Department of Trade and Investment, March 2015

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- Crown Lands Division, NSW Department of Trade and Investment policy on concessions and hardship relief for Crown land tenures
- Mosman Local Environmental Plan 2012
- Public Land Management, Practice Note No. 1, Office of Local Government, May 2000
- Plans of Management - Balmoral Reserves; Balmoral Bathers' Pavilion and Surrounds; Rawson Park and Surrounds; The Spit Reserves

Review

This policy will be reviewed every four years unless otherwise directed by Council or senior management.

Contact

Enquiries should be directed to the Manager Governance on 9978 4010 or council@mosman.nsw.gov.au

Amendments

Date	Amendment	Reference
4 February 2020	Scheduled review and introduction of <i>Crown Land Management Act 2016</i> and <i>Crown Land Management Regulation 2018</i>	CS/2