



ROAD RESERVES SALE, LEASE AND CONSENT POLICY

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Ownership: Manager Governance

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Purpose

To ensure that, when considering the sale, leasing or the granting of consent for the occupation of road reserves, Council takes into account the public interest in having land alienated from public use, explore options for the use of the land, applies processes that are demonstrably equitable, consistent and transparent, complies with appropriate legislative requirements and obtains best value outcomes for the Mosman community.

Objectives

Council will refer to this policy when considering applications for the sale and lease of road reserves, or for consent to occupy those road reserves with private structures. As a matter of principle, Council not support the leasing or sale of road reserves and take the view that an alternative to refusal of sale of land is to grant a lease.

This policy seeks to ensure that any approval for such applications, on balance, passes the public interest test and are:

- undertaken in compliance with legislative and other obligations
- only granted following consultation with all affected stakeholders and relevant sections of the community taking into account all relevant comments and submissions
- granted with the intention of securing maximum benefits for the community
- consistent with Council's economic, social and environmental objectives
- subject to fair and open process and include regular market testing
- open to public scrutiny while maintaining appropriate levels of commercial confidentiality
- in accordance with government agency and ICAC guidelines

Scope

This Policy covers all road reserves vested in fee simple in Mosman Council which may be subject to applications for the sale and lease of road reserves, or for consent to occupy those road reserves with private structures.

It does not apply to:

- Council's footpath approvals related to outdoor dining and shop and goods displays which are managed in accordance with Council's Outdoor Dining and Goods on Footpath Policy
- Applications made under Council's Nature Strip Maintenance Policy
- Applications for work zones and hoardings

Definitions

Act means the Roads Acts 1993

Council means Mosman Municipal Council

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

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

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Public interest test means satisfying, on balance, the principles and considerations set out under the “Principles” section of this Policy.

Regulation means the Roads Regulation 2018

Road reserve means all public roads within the Council local government area (other than freeways and Crown roads) which are vested in fee simple in Council pursuant to Section 145 of the Act. For the purpose of this policy, road reserve does not mean the formed roadway however includes footpaths and unformed road reserve surplus to the Council’s infrastructure works requirements.

Forms of encroachment and uses

Structures which may encroach upon road reserves include but are not limited to elevated driveways, pedestrian bridges, garages, carports, car hardstands, fences, gates, letterboxes, retaining walls, stairs, steps and inclinators.

Other encroachments and uses are generally limited to landscaping or planting.

There are existing and legacy encroachments of private structures and uses onto Council’s road reserves that may have once been subject to historic permissive occupation agreements. These are essentially “remain at Council’s pleasure” agreements involving minor encroachments.

Council receives requests for consent to allow both existing or proposed private structures and uses on its road reserves generally as part of the redevelopment of the adjacent private property. Existing encroachments may be identified when properties are surveyed or when proposed structures are unable to be contained wholly within the site due to technical, topography or setback reasons. Encroachments of structures may also occur inadvertently through builder error.

Authority

Council is authorised to close council public roads in compliance with Part 4 Division 3 of the Act.

Consent for structures may be granted pursuant to Section 138-139 of the Act.

Leases of public road for other “temporary” structures are for a maximum of five years pursuant to Section 153-157 of the Act.

Exception No. 25 to the delegations granted by Council to the General Manager means that the General Manager may only grant owner’s consent for lodgement of development applications or approval of applications under Section 138 of the Act on Council controlled land where the works are not significant. Where submissions are received by way of objection to the proposal, the General Manager will consider the merits of any unresolved objections and determine whether or not to exercise the delegation. Applications for lease or consent to occupy would otherwise be referred for report to Council for determination.

All applications for the closure and sale of a road reserve which satisfy the principles detailed in this policy must be the subject of a report to Council for determination.

The coordination of the staff assessment of applications is conducted by the Manager Governance or nominee and will generally involve consultation with the Engineering, Environment and Open Space and Urban Planning Units of the Department of Environment and Planning and may involve collaboration with the Director Environment and Planning. Dependent upon circumstances, other functional areas of Council may be engaged in the assessment.

Principles

The principles and considerations set out under this section must be satisfied, on balance, to pass the public interest test.

Council will consider applications for the **sale** or **lease** of unformed road reserves or for **consent** to occupy those road reserves with private structures, on their merits, having regard to the following general principles:

- The particular circumstances of the case support the sale of public land
- There is a public benefit arising from the proposal
- There are no alternate uses of the land for Council purposes
- The land is not required for future widening, footpath construction or other Council infrastructure works and is surplus to Council's requirements
- The size of the land is not material
- The land does not constitute valuable open space
- The land does not form part of a bushland pocket or corridor
- The land offers no or little public amenity or use
- There is no existing or potential future public access that may be alienated
- The proposed use of the land does not conflict with Council's planning controls, the local amenity or streetscape
- The land may be occupied by existing encroachments and/or use making it impracticable or unreasonable to warrant removal
- The economic return to the community is within market expectations as determined by Council's valuer

Apart from these general principles, there are overarching considerations that must be satisfied to determine whether Council would consider an application to close and sell, lease or grant consent to occupy a road reserve, as follows:

Road closure and sale

- Applicants must demonstrate that the portion of unformed road reserve proposed to be closed and sold has at some stage been constructed as a road or contained structures associated with its use as a road or for access, pursuant to section 38E(2) of the Act, otherwise the land would not vest in Council upon closure of the road
- Except where the dimensions of the parcel proposed to be sold are sufficient to permit independent development of the site, Council will only consider sale to the owner/s of the adjoining property/properties
- Applications for road reserve that abuts Sydney Harbour or Middle Harbour or which is used or capable of being used to provide public access to the foreshore or for the associated purpose of public open space, will not be considered
- The sale of the land would not otherwise be detrimental to the public interest and community benefit

Road leases and consents

- Council will only consider the granting of leases and consents to the owner/s of the adjoining property/properties

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- Whether the outcome of the proposal will result in the road reserve looking and feeling for all intents and purposes part of the adjoining private property and whether this is an appropriate use of public land

Roads Act lease or consent not required

Council will not require Roads Act consent for minor and immaterial encroachments of structures onto the road reserve where:

- it is the assessment of staff that risk exposure to Council is negligible; and
- it is unreasonably uneconomic to require removal of the encroachment; and
- removal of the encroachment would disrupt the existing amenity and streetscape

Council will not require a Roads Act lease for an approval of a request to plant on a road reserve only, subject to:

- written approval by the Manager Environment and Open Space; and
- it is for the purposes of bushland restoration; and
- it not preventing Council access to and maintenance of the land; and
- it not alienating public access to the road reserve; and
- the occupied road reserve does not appear as part of the private property

Application principles

Applicants are made aware that submission of an application and payment of a fee and the placing of the proposal on public exhibition does not guarantee any approval.

Where any application fails to address and satisfy all principles detailed under this policy, it will not be progressed. There are no avenues available for review or reconsideration of the application once it has been determined by either the General Manager or Council.

Financial Considerations

Prior to selling, leasing or granting consent for structures on any road reserve, Council will obtain a valuation by an independent and suitably qualified valuer. Except in special circumstances, Council will not sell or encumber its land at a market rental below that established by the independent valuation. The assessment will have regard to the value the land adds to the private property.

Should prospective applicants wish to obtain an indication of the market value of the land, rent or occupation fee, prior to proceeding with an application, Council will obtain that assessment using its nominated valuer at the applicant's expense.

Where Council holds relevant comparable data on valuations from recent assessment by the valuer that can be reasonably applied to a current proposal requiring an assessment of rent or occupation fee, Council staff may use that data to determine the rent or fee in lieu of engaging a valuer.

Applicants are to pay all fees and costs related to their application including but not limited to Council's application fee (as provided in Council's Schedule of Fees and Charges) and valuation, surveyor, advertising, subdivision, registration and legal costs. Further, should any utilities object to the proposal due to the presence of services in the land and require relocation or easements created, the applicant is also responsible for all costs in that regard.

Road Closures and Sales

Applications for the sale of a portion of a road reserve will be assessed by Council staff to determine compliance with the principles detailed in this policy.

Council may only sell a portion of Council road reserve once the road has been closed and vested as Council land upon closure. Council is responsible for closing council public roads under the Act. When closing council public roads, Council must comply with Part 4 Division 3 of the Roads Act 1993. Notifiable authorities are set out in Section 32B of the Act and Clause 81 of the Regulation.

Prior to commencing a council road closure process, Council must confirm that a road is a council road before completing any part of the council road closure process. This is done by determining road status. To confirm road status as a council road, council must determine the formal action that dedicated, transferred or opened a road as a council road. Applicants proposing to purchase road reserve need to demonstrate that the portion of unformed road reserve has at some stage been constructed as a road or contained structures associated with its use as a road or for access, pursuant to section 38E(2) of the Act, otherwise the land would not vest in Council upon closure of the road.

Applications

Council will process applications for the closure and sale of road reserves in accordance with the Act and Regulation and the information contained within the council road closure information pack issued by Crown Lands, Department of Planning, Industry and Infrastructure in January 2020.

To lodge an application for a road closure and sale, an applicant needs to submit a letter to Council applying for a road closure and sale, addressing the principles detailed in this policy together with detailed photographs of the site, a survey of the land showing structures, dimensions, area calculation and association with surrounding structures. Payment of Council's application fee should accompany the application.

Following receipt and initial assessment of an application, a staff report will be submitted to Council seeking determination on whether the proposal is supported in principle and authority to place it on public exhibition to allow the application to progress. Should Council resolve to proceed with the application, the notification process will be conducted in accordance with the Act and Regulation where neighbours, the community, utilities and government agencies are advised of the proposal and to invite submissions.

An independent valuation of the land will also be obtained from Council's nominated valuer at this time. Following the close of the notification period, a further staff report will be submitted to Council advising the outcome of the exhibition and any submissions received and updating the final assessment of the application together with a recommendation for determination.

If an application for closure and sale is approved by Council, the applicant would be required to enter into a Deed of Agreement for the road closure and sale. A plan of subdivision would be prepared and registered prior to gazettal of the closure. Upon gazettal the land would be vested in Council and Council may proceed with a sale to the applicant and its consolidation with the title of the applicant's adjoining private property.

Road Leases and Consents

Applications for either a Section 153-157 **lease** or Section 138-139 **consent** will be assessed by Council staff to determine compliance with the principles detailed in this policy.

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Leases of road reserve under Section 153-157 of the Act are for uses and “temporary” structures for a maximum of five years. Council may continue to lease the land where the encroachment and use remains unchanged, by renewing the lease every five years subject to normal notification provisions under the Act. Should the need arise for the granting of a **licence** over a road reserve, Council will progress such an application in accordance with Section 153-157 of the Act.

Consents under Sections 138-140 of the Act are a one-off consent for structures constructed on Council land for the life of the structure. Such consents however can be terminated without reason should Council ever require the land for operational or infrastructure purposes.

Applications

To lodge an application for a lease or consent relating to road reserve, an applicant needs to submit a letter to Council applying for either a Section 153-157 lease or a Section 138-140 consent for the encroachments, addressing the principles detailed in this policy together with detailed photographs of the site, a survey of the land showing structures, dimensions, area calculation and association with surrounding structures. Payment of Council’s application fee should accompany the application.

Following receipt and initial assessment of an application, the proposal would be placed on public exhibition as required by the Act. An independent valuation of the land will also be obtained from Council’s nominated valuer at this time.

Upon the close of the exhibition period, a staff report will be submitted to the General Manager advising the outcome of the notification and any submissions received and unresolved. The report will provide a final assessment of the application together with a recommendation for determination. Should the General Manager decline to exercise the authority to approve the application delegated by Council, then a report will be submitted to Council for determination of the matter.

Roads Act Leases

As the majority of Section 153-157 leases are for landscaping and the planting of vegetation on road reserves, applications do not require prior development consent or approval for works on Council property.

Any granting of a lease will be subject to standard terms and conditions including:

- an annual rent as determined by Council’s valuer plus GST applying from the date of occupation
- submission of an annual certificate of currency for public liability insurance
- submission of a planting plan approved to the satisfaction of the Manager Environment and Open Space (when relevant)

Roads Act Consents

Any consent granted under Sections 138-140 of the Act for private structures on road reserve must be preceded by:

- the granting of owner’s consent from Council to lodge a development application involving structures on Council road reserve
- the granting of development consent for the structures and use
- approval of application for construction works on Council property

The consent will be subject to standard terms and conditions of consent including:

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- an annual fee as determined by Council's valuer plus GST applying from the date of issue of an Occupation Certificate or practical completion of the development, whichever is the sooner
- in the event of a dispute regarding the fee, the applicant is to appoint their own valuer to conduct a market assessment at their expense in order to liaise with Council's valuer and reach agreement on the proper fee. Failing that the matter would be referred to the industry professional association for arbitration at the applicant's expense
- submission of an annual certificate of currency for public liability insurance
- registering on the title of the land a positive covenant relating to the Roads Act consent to bind all successors in title in relation to the obligations under the consent

Responsibility

The Manager Governance is responsible for the review of this policy and for the management of applications for the sale and lease of road reserves, or for consent to occupy and use those road reserves with private structures.

The Property Officer administers the operational aspects of these applications including ensuring applications are complete and valid, the community consultation process and receipt of submissions, the assessment of proposals, and reporting and recommending action to the Manager Governance.

The General Manager, Director Corporate Services and Manager Governance are responsible for determining applications under their respective delegated authorities, if exercised. Otherwise, the Manager Governance reports the matter to Council for determination.

The General Manager is responsible for determining whether to grant landowner's consent to the lodgement of a development application for occupation and use of road reserves with private structures, subject to the delegations detailed under the "Authority" section above. Where the development application proposal is outside of the authority of the General Manager or should the General Manager decline to exercise that delegated authority, the Manager Governance reports the matter to Council for determination.

For the sake of clarity, the General Manager's authority to grant landowner's consent to the lodgement of a development application for occupation and use of road reserves with private structures, and to grant consent to Sections 138-140 Roads Act applications is limited to non-significant works.

Related Information/Glossary

Local Government Act 1993

Roads Act 1993

Roads Regulation 2018

Mosman Council Asset Management Plan 2020-2029

Mosman Council Community Properties Management Policy

Mosman Council Nature Strip Maintenance Policy

Mosman Council Outdoor Dining and Goods on Footpath Policy

Mosman Council Delegations to the Mayor and General Manager

Review

This policy will be reviewed every four years unless otherwise directed by Council or the Executive.

Contact

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

Amendments

Date	Amendment	Reference
7 May 2024	Scheduled review.	CS/10