

POLICY TITLE

Version-control information:

Adopted by CEO: 8 March 2022

Next review due: March 2028

Previous versions: 18/9/2018, 3/12/2022

Policy register reference: 017

Responsible service: Property & Commercial Service

Contact position: Manager – Property & Commercial Service

Policy statement

Blue Mountains City Council will manage its dealings with property that it owns, manages or acquires in accordance with legislative requirements, the Council's adopted Community Strategic Plan and the framework set out in this policy.

Commercial property dealings will be conducted efficiently and in a way that:

- helps to generate income for the Council through property development/investments;
- facilitates local business activity, including tourism and centre-based renewal;
- accords with the principles of equity and transparency;
- manages property income in order to sustain capital investment and renewal; and
- considers Council's objectives within relevant strategic plans.

Council commits to:

- being a good custodian of public infrastructure, including property;
- delivering best practice when acting in relation to property or similar assets; and
- ensuring regulatory observance and compliance.

This policy is supported by Council's Property Procedure.

Scope

This policy applies to dealings associated with Council's property (this includes strategic, investment and corporate property and community property used commercially). It does not guide Council in the management of its community buildings and facilities, which are the subject of a separate policy.

Strategic direction

Council's strategic direction is to improve the property portfolio to better meet business and community needs through strategic acquisition and divestment of property interests.

Triggers and methods for assessing commercial property (and community property used commercially) are provided in this policy and the Property Procedure.

Overall strategic direction is guided by the Council's Executive Leadership Team, which puts forward recommendations for the elected Council to approve.

Roles and responsibilities

• Positions	• Responsibilities
Property & Commercial Activities team	Manage Council's property portfolio. Implement and review Council's Property Policy and associated documents.
Manager Property & Commercial Services	Ensure that assets are maintained to the required operational standard, works are undertaken and that required property maintenance, repairs and capital works are completed. Manage and assign tasks to ensure outcomes or recommendations are met.
Program Leader Property & Commercial Activities	Create and manage asset management plans, condition reports and capital works. Action and complete tasks as required, including internal and external consultation.
Director Economy Place & Infrastructure Services	Provide strategic direction to ensure property dealings align with Council's fit-for-purpose and service-delivery objectives.
Manager Special Projects	Facilitate and guide projects as required.
Director Strategy & Corporate Services	Approve budget allocations to facilitate works and reduce backlog of outstanding building works.
Strategic Resource Allocation team	Manage PIF investment actions. Monitor how funds from the PIF are allocated and used.
Manager Strategic Resource Allocation	Ensure that financial information is available on a biannual basis for reporting to ELT and/or Council when required. Monitor and report on financial outcomes or recommendations for the PIF.

Definitions

Term	Definition
agreement	A negotiated and binding legal arrangement between parties, such as a lease or a licence.

community land	Land classified as community land under Division 1 of Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> (NSW).
community property	Land or building held as a part or whole asset that is used to deliver services and facilities that benefit the community.
commercial property	Land or building held as a part or whole asset generally used for income-generating purposes.
Council-managed	Refer to meaning (a) under 'occupier' in the <i>Local Government Act 1993</i> 's dictionary.
ELT	Executive Leadership Team.
investment property	Land or building held as a part or whole asset to earn rental income, capital appreciation or both.
lease	An agreement between Council and another party offering an exclusive use of a property.
licence	An agreement between Council and another party offering non-exclusive use of a property.
market rent	Rent based upon valuation advice by a suitably qualified professional or market estimates from real estate agents.
operational land	Land classified as operational land under Division 1 of Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> (NSW).
Property Investment Fund (PIF)	A mechanism to facilitate actions for property held or used for a commercial purpose by Council.
Property Investment Panel	An internal panel used to assess funding, investment and divestment programs for commercial buildings or community buildings used for a commercial purpose.
property dealing or property-related activity	For the purpose of this policy, a property dealing or property-related activity refers to any of the following: <ul style="list-style-type: none"> • property sales; • property acquisitions; • easements and right-of-way management; • road encroachments, permanent road closures and sale or leasing of roads (closed or otherwise); • leases and licensing arrangements in relation to property; • property-related research and advisory service by or to Council; and

	<ul style="list-style-type: none"> entrepreneurial or other activities relating to Council's properties.
proponent	A person who puts forward a proposal or proposition to Council in favour of something.
real property	Any land or building under the care, control and management of Council that could be leased or licensed to a tenant under an agreement.
strategic property	Property bought to achieve long-term goals and projects set out in strategic plans.
tenant	A person or entity that occupies a property under agreement.
the procedure	Council's Property Procedure.
use	The primary use of a property; for example, future development, child care or community uses.

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- **Overview**

Council is required under the *Local Government Act 1993* (LG Act) to be a good custodian of public assets. Council must therefore effectively, efficiently and transparently manage property assets as a corporate entity while balancing Council's service-delivery requirements with community needs to achieve positive community and economic outcomes.

Council maintains a property portfolio to:

- accommodate its operational needs;
- provide community facilities and public amenities;
- facilitate development, employment and economic activities within the local government area;
- undertake strategic acquisition aligning with Council's Strategic Local Planning Statement and Community Strategic Plan; and
- achieve returns on investment.

A well-managed property portfolio should reduce maintenance and public liabilities and benefit a community's economic, social and environmental wellbeing. The management of the portfolio is supported by strategic short-, medium- and long-term targets to maximise the use of these assets.

Council is asset manager and owner of a range of commercial, strategic, investment and managed property. Council generally engages in property-related activities either by purchase, gift, vesting or default of various property asset classes, including:

- commercial property;
- Crown land, both vacant and improved;
- easements, rights of way and covenants;
- residential property;
- roads and road reserves;
- state government assets and infrastructure;
- tourist parks; and
- vacant operational and community land.

Council has three distinct roles in its property activities:

1. as the developer/owner/service provider seeking the best possible return for its property;
2. as a statutory authority responsible for the assessment and approval of any development application for the property; and
3. as a corporate entity seeking to implement innovative ideas to capture income and value and deliver tangible benefit to the community.

Council must exercise particular care to ensure its roles as a developer/owner and as consent authority are kept separate and transparent, having high levels of governance.

- **Risk and benefit analysis**

In carrying out property-related activities, consideration must be given to the risks and benefits associated with this portfolio.

Risk and benefit analysis of property dealings, including appropriate market research, sensitivity analyses and feasibility studies, must be conducted in the following circumstances:

- prior to engaging in new property dealings;
- upon a change of property status or use;
- upon a change in Council's strategic direction that may affect the property;
- upon signs of significant property market fluctuation;
- as required to maintain a sustainable credit rating for investment purposes; and
- at a time and frequency appropriate to the nature of the activity.

In managing property, Council's challenge is to determine the purpose of assets held and the burden of subsidy that Council is willing to bear (and disperse) among stakeholders.

Risk and benefit analyses must consider financial viability as well as environmental, social, economic, political and reputational strategic matters.

- **Property decision-making**

- **Property Investment Panel**

Council has a Property Investment Panel that supports the implementation of this policy. The purpose of the panel is to guide property direction and periodically review the performance of Council's commercial property portfolio to recommend actions in relation to its management. Required actions are reported to either the ELT or Council as appropriate.

- **Sales, disposals and acquisitions**

Council can acquire and dispose of land for the purposes of carrying out its functions under the LG Act. For the purposes of this policy, this includes the acquisition of land and property for road widening, road opening, road encroachments, environmental conservation, investment, redevelopment, consolidation, subdivision and resale. Council may acquire property or land by the compulsory acquisition process where a matter of strategic importance is identified or it is necessary for the provision of services to the community.

Council will comply with the principles of the *Land Acquisitions (Just Terms) Compensation Act 1991* (NSW) and apply for ministerial approval in accordance with section 187(2) of the LG Act. The property sale values shall be determined by an independent valuation conducted by a certified practising valuer or by an open market process such as tendering, auctioning or expression of interests.

Under section 377(1)(h) of the LG Act, a resolution of Council is required to sell, purchase or otherwise acquire land and other property. Reports to Council recommending such decisions must detail the method and circumstances surrounding the proposed divestment or acquisition of the asset.

- **Easements**

Council may grant (or relinquish) an easement over its land for different purposes, including but not limited to establishing a right of way, or for drainage, sewerage, electricity or other utility services. Council will consider granting an easement over Council land only if it does not detrimentally affect the use of Council-owned land. The proponent is required to fairly and reasonably compensate Council, including all fees and charges related to the granting of the easement.

Under sections 59A and 191A of the LG Act, Council may enter any premises to carry out water-supply work, sewerage work or stormwater drainage work on or under the premises. Council is not obliged to notify present or future owners of a property that Council's infrastructure exists within the property. However, Council will follow best practice and endeavour to negotiate the creation of an easement over the affected land. Should the negotiations be unsuccessful, it is in Council's best interests to include advice in a planning certificate under section 10.7(5) of the *Environmental Planning and Assessment Act 1979* (formerly known as a section 149(5) Planning Certificate).

- **Access over public parking areas**

Historical informal arrangements exist with respect to access to private property over Council's public parking areas. Such arrangements are formalised over time.

For any new developments that propose to gain access over Council's land, a formal agreement must be made with Council prior to lodgement of the development application. Reaching such an agreement is separate from the development application process and does not presume or imply approval of the development application.

- **Permanent road closures**

As the local roads authority, Council may be asked by a landowner to close an unused public road or a portion of one. (Closing a road may also be proposed via a development application.) Council may decide to sell, lease or license the land (closed road) as supported by ELT and determined by the Council.

Under section 38E(2) of the *Roads Act 1993*, the ownership of any closed road that was unformed, unconstructed and not maintained by Council would be vested in the Crown. Therefore, with Council's support, road closure and sale in this particular situation would be handled by NSW's Crown lands office.

- **Leases and licences**

As a property owner it is, from time to time, necessary for Council to enter into commercial agreements for a range of uses including residential, commercial, retail or special uses, telecommunication towers, recreational and sporting facilities, road closures, road encroachments, golf courses and bowling clubs.

Dealings relating to leases and licences may require the engagement of an external managing agent who will be subject to a performance review program including site inspections by Council staff. In managing leases and licences, the *Retail Leases Act*

1994 (NSW) will prevail to guide Council in determining the purpose of the agreement, the industry standard of income and anticipated return on investment. In assessing return on investment, Council must assess the burden of subsidy it is willing to bear and disperse among stakeholders.

Commercial agreements that incorporate a community element, such as Katoomba Civic Centre and the Blue Mountains Theatre and Community Hub, are to be reviewed every four years or as needed to ensure the use of the building is delivering a sustainable, efficient and effective service to the community.

For practical reasons, decisions relating to the lease or licensing of Council land will generally be made by the Chief Executive Officer or their delegate. The Chief Executive Officer may decide to report leasing and licensing matters that may be strategically important or sensitive to Council for its consideration and approval.

○ **Management of hazardous materials**

Council's best practice is to check its Asbestos Register prior to entering into property dealings that require works on Council land and buildings. Certain events relating to property may trigger the need to obtain a hazardous materials report. These include:

- repairs, maintenance or refurbishment;
- proposals for development;
- proposals to lease or license a property; and
- proposals to acquire or dispose of a property.

Subject to the situation, the burden of cost shall be borne by Council, the proponent or both. A bond shall be payable to Council for parties proposing to use Council land or buildings and shall be set according to the risk associated with the proposed use. This bond is separate from and in addition to a rental bond.

A hazardous materials report shall be obtained from an appropriately qualified independent consultant if it is known or suspected that a property may have been operated or used in a manner that involved hazardous materials, or where there is knowledge or suspicion that the building materials may be hazardous. This shall also apply if Council has no historical knowledge about the property.

Any recommendation for an investigation or a detailed sample analysis will be referred to the Property & Commercial Activities team for consideration. A remediation plan and/or a management action plan may be required to remove or manage the hazardous materials identified on site, and shall be referred to the Property & Commercial Activities team in the first instance, then to the ELT and Council for approval as required.

○ **Crown land**

Council manages leases and licences on Crown land. Council requires authorisation from the plan of management for the land and permission from the Crown, either implied or direct, to ensure alignment with the Crown land reservation purposes.

Council is required to comply with the provisions of the *Crown Land Management Act 2016* when leasing, licensing or granting other estates over Crown land. Council shall maintain buildings and infrastructure on Crown land or other government agencies' land to a standard fit for use and occupation.

- **Probity**

Council seeks to conduct all property dealings with integrity and transparency. When dealing with complex property development matters, Council must develop a probity plan early in the process to ensure integrity and transparency and to mitigate any potential or perceived conflicts of interest associated with the project.

Proposals or propositions shall be assessed in line with this policy and other relevant Council policies. The following principles aim to ensure all parties are aware of the integrity of the decision-making process.

- **Maintaining impartiality**

Fair and impartial treatment will feature in all Council's property-related activities. Should the assigned officers be unable to resolve a property matter, the matter can be referred to the panel for review and recommendation.

- **Maintaining accountability and transparency**

Accountability and transparency shall be demonstrated in all property dealings and matters via mechanisms available to Council including feedback, consultation and documentation. This process shall be open for scrutiny, constructive debate and comments.

- **Managing conflicts of interest**

Appropriately skilled and trained professionals shall conform to Council's measures to identify, manage and monitor potential conflicts of interest as per Council's Code of Conduct. If any potential conflict of interest is identified in a property dealing, the property dealing will be referred to the panel for review, assessment and recommendation.

- **Maintaining confidentiality**

As details and information about property matters can vary, confidentiality will be managed on a case-by-case basis to ensure the integrity of all of Council's property-related activities. Participants in sensitive property matters may be required to sign a confidentiality agreement. Council may decide to consider sensitive property reports in a closed session in accordance with section 10A(2) of the LG Act.

Council shall release information in accordance with the *Government Information (Public Access) Act 2009*.

- **Obtaining value for money**

Obtaining value for money is fundamental to the delivery of repairs, maintenance and capital works, consultancy and property development or divestment proposals. Value for money will be holistically assessed against the following criteria:

- experience of contractors/consultants;
- price/cost of the project;
- project delivery time;
- quality of outcomes; and
- risk management.

- **The Property Investment Fund**

Council is directed by the LG Act to deal with property in a corporate capacity. Council has established its Property Investment Fund (PIF) to provide a sustainable reinvestment mechanism to support the effective management, maintenance, development and growth of Council's commercial property portfolio.

The PIF's objectives are to:

- accumulate income generated from Council's property sales, leases and development proposals for reinvestment and capital growth;
- inflation-proof itself and provide alternative sources of income for Council; and
- have sufficient funding for strategic acquisitions.

All income received from property-related activities is directed into the PIF. This is achieved by implementing property rationalisation and divestment plans and property asset management plans, replacing aging assets with new ones and preserving the value of property assets for the future.

- **PIF accumulation principles**

The PIF shall retain sufficient fund levels to maintain a stable level of interest/return on investment to support prioritised asset works and ongoing capital investment in commercial property. Income generated from Council's property dealings shall be accumulated in accordance with the following principles:

- All unrestricted non-current revenues and income from property leases, licences, sales and developments will be directed to the PIF.
- The annual return on investment from the PIF will be reinvested.

- **PIF utilisation principles**

As mentioned above, the annual return on investment generated from the PIF shall be reinvested to grow the portfolio value and accumulate sufficient funding for:

- strategic acquisition or investment;
- entrepreneurial activities such as development, consolidation or subdivision of Council's properties;
- value-added activities such as land investigation, reclassification or rezoning; and
- facilitating joint ventures, precinct redevelopment or place activations that enhance Council's property values and local employment and economic activities.

The use of income generated from property dealings is also regulated by various Acts:

- Under section 32(5) of the LG Act, the net proceeds of sale by a council of any land dedicated in accordance with a condition imposed under section 7.11 (formerly section 94) of the *Environmental Planning and Assessment Act 1979* must be dealt with under that section as if those net proceeds were a monetary contribution paid instead of the dedication.
- Monetary contributions under section 7.4 Planning Agreement (formerly section 93F) of the *Environmental Planning and Assessment Act 1979* must be used for the purposes specified by the agreement.
- Proceeds generated from public roads under section 43(4) of the *Roads Act 1993* must be used for road purposes.
- Income generated from Crown land under section 3.16 of the *Crown Land Management Act 2016* must be used for Crown land purposes.

Exceptions to the PIF utilisation principles will require ELT's approval and Council's decisions as appropriate.

○ **PIF investment principles**

The following principles are essential to guide Council's approach to investment:

- The form of investment authorised by the Minister under section 625(2) of the LG Act.
- Property investments that provide:
 - potential cash flow comparable with market rental returns; or
 - potential capital gain; or
 - opportunities for achieving Council's Local Strategic Planning Statement or Community Strategic Plan; or
 - a return at least equivalent to the current 10-year bond rate plus 2%; and/or
 - potential for development/value-added activities.
- Property development activities that provide an average yearly return of at least double the current 10-year bond rate.

The investment of PIF shall be subject to close performance monitoring together with:

- an annual review of market trends in hand with discounted cash flows, return on investment and/or whole-life costing analysis to assist Council to recognise and act upon investment opportunities as they arise;
- best industry practice in property dealings; and
- minimising maintenance and public liabilities and maximising returns to deliver commercial and community benefits.

○ **PIF performance management**

The performance and outcomes of the PIF shall be monitored and reported to the Council biannually. The PIF performance report will include information on:

- property and investment transactions;
- income and outgoings from the PIF;
- PIF portfolio value including the funds accumulated and reinvested; and
- the values and benefits derived from the distribution of PIF return on investment.

Council's property investment or property development decisions shall consider:

- returns (profit or social purpose) on funds employed;
- risks (by a full risk-benefit analysis) associated with the proposal;
- locality of the development/investment;
- current market trends and conditions;
- market demand for and supply of the subject property in question;
- security of income;
- ongoing costs relating to the life cycle of the asset;

- measured community expectations; and
- appropriateness and use of the public asset.

Related documents

This document should be read in conjunction with:

Legislation

- *Local Government Act 1993* (NSW)
- *Local Government (General) Regulation 2005* (NSW)
- *Conveyancing Act 1919* (NSW)
- *Independent Commission Against Corruption Act 1988* (NSW)
- *Land Acquisition (Just Terms Compensation) Act 1991* (NSW)
- *Real Property Act 1900* (NSW)
- *Residential Tenancies Act 2010* (NSW)
- *Retail Leases Act 1994* (NSW)
- *Retail Leases Amendment (Review) Act 2017* (NSW)
- *Roads Act 1993* (NSW)
- *Telecommunications Act 1997* (Cth)
- *Valuation of Land Act 1916* (NSW)
- *Crown Land Management Act 2016* (NSW)

Other documentation

- Blue Mountains City Council, *Community Strategic Plan 2035*
- Blue Mountains City Council, *Asset Management Policy*
- Blue Mountains City Council, *Investment Policy*
- Blue Mountains City Council, *Community Buildings Policy*
- Blue Mountains City Council, *Property Procedure*
- Blue Mountains City Council, *Property Investment Panel – Terms of Reference*