

POLICY OF APPROVAL OF THE WYPTE AND THE WYITA IN RELATION TO THE DISPOSAL OF INTERESTS IN LAND BY THE WYPTE

1. INTRODUCTION

- (1) The Executive has powers to dispose of interests in land that it owns, whether or not the land is used for the business of the Executive, but subject in either case to the approval of the Authority, by virtue of s10(1)(xxiii) Transport Act 1968.
- (2) Disposal of interests in land is a power of the Executive that may be used in order to deliver the policies of the ITA.
- (3) The majority of disposals of land are short term lettings of office or accommodation and retail space within bus stations, at a market rent.
- (4) Disposals of land are approved on the basis of:
 - Legal advice from the Legal Section, or from external lawyers;
 - Professional valuation advice from external surveyors;
 - Credit checking and procedures by the Finance Section.
- (5) The PTE and ITA have adopted this policy in order that property management decisions can be taken by appropriate officers of the Executive with the legal approval required within prescribed criteria. This is distinguished from disposals of interests in land that are of strategic or capital consequence to the PTE and ITA (as defined within this policy) where specific approval is still required under Standing Orders.

2. POLICY

2.1 DISPOSAL OF FREEHOLD LAND

The approval of the Executive Board and of the ITA shall be required for:-

- 2.1.1 any disposal of a freehold interest in land except a disposal of a site where the Director of Passenger Services considers a bus shelter is or will become redundant and where the advice of an appropriately qualified consultant indicates the consideration will not exceed the Category B threshold (£25,000) for contract values under the Standing Orders of the PTE; and
- 2.1.2 any creation or relinquishing of rights over land except where created by way of an Approved Lease under paragraph 2.3 or relinquished by the surrender or other termination of such an interest.

2.2 LEASEHOLD DISPOSALS THAT REQUIRE APPROVAL

The approval of the Executive Board of the PTE and of the ITA shall be required for the granting of any lease if any of the following criteria apply:

2.2.1 The term of the lease exceeds ten years.

Policy Rationale: Strategic interest - this may restrict development of any facility owned by Metro.

2.2.2 There is either a premium payment in the nature of a capital receipt to be paid for the granting of the lease OR the annual rent exceeds the category E contract value under the Standing Orders of the PTE (£156,000)

Policy rationale: Capital disposal - this may have budgetary/revenue or other taxation implications for Metro that require Board or ITA approval.

2.2.3 That the use proposed for the premises is not an **Approved Use**. An **Approved Use** is any one of following:

- a. Retail within use class A1 – includes the sale of most goods and services & sandwich bars.
- b. Office space.
- c. Staff accommodation or storage associated with retail, or bus & rail operator presence at Metro facilities.
- d. The sale of hot or cold food and drinks for consumption on or off the premises within use classes A3 and A5.
- e. Services within use class A2 e.g. financial and professional services, betting shops, agencies, banks and financial advisers

provided this is in the reasonable interests of the travelling public.

Policy Rationale: Strategic - some uses may not be appropriate to Metro's business or to the needs of the travelling public, such as licensed premises; or that they attract lower market rents generally, such as storage and industrial uses.

2.2.4 That Metro is likely to wish to redevelop the land or buildings where the premises is situated within the next 3-5 years.

Policy Rationale: Strategic - this should form part of the overall project scheme considerations for such redevelopment.

2.3 APPROVED LEASEHOLD DISPOSALS

2.3.1 Provided that none of the criteria in paragraph 2.2 apply and subject to paragraph 3 below then the disposal will be an **Approved Lease** and the approval of the ITA required under the 1968 Act is given subject to the terms of this policy. A lease may be granted without further reference to the Executive Board of the PTE or the ITA.

2.3.2 It is a condition of the approval of the ITA that all **Approved Leases** be granted subject to all of the following conditions being met:

- (i) That the rent payable is a rent that it would be reasonable in the open market to accept for the premises and that a report confirming this has been obtained from an external professional property letting agent.
- (ii) That the Chief Financial Officer or their nominee has carried out a credit check on the tenant and confirms in writing to the Secretary and Solicitor that there is no reason to suspect the tenant will be unable to meet the obligations of the lease.
- (iii) That the Secretary and Solicitor has given or procured legal or other professional advice in writing on the heads of terms and other provisions of the lease confirming that these are reasonable terms for Metro to accept in the circumstances of the transaction and that this advice is confirmed in writing to the Director of Passenger Services or Assistant Director responsible for facilities.
- (iv) If the tenant is an individual or partnership then a rental deposit of preferably 6 months but under no circumstances less than 3 months rent and service charge and any VAT must be obtained under formal deed, or a 3rd party guarantor may be provided, under formal deed.
- (v) In the case of any tenant, personal or corporate, where there are insufficient filed accounts or trading history for the Chief Financial Officer to form a proper view on the tenant's ability to perform the lease obligations then a rental deposit of preferably 6 months but under no circumstances less than 3 months rent and service charge and any VAT must be obtained under formal deed.

3. RENEWALS OF EXISTING TENANCIES

3.1 Where an existing tenant has a right to renew its tenancy under the provisions of the Landlord and Tenant Act 1954 then this will be an **Approved Lease**.

- 3.2 It will still be a condition of ITA approval for the granting of any such renewal lease that the conditions in paragraphs 2.3.2 (i) (ii) and (iii) must be met.
- 3.3 If the identity of the tenant under the renewal lease is not the same as the existing tenant then the matter should be treated as a new lease and paragraph 2 will apply.
- 3.4 An inspection for wants of repair and decoration should be carried out and the cost recovered from the tenant if this is possible under the lease. The renewal lease MUST provide that any repairs and redecoration that are required must be done in the first year of the term.

4. CONSENTS GRANTED TO TENANTS

- 4.1 The Secretary and Solicitor has a delegated authority under Standing Orders to grant consent on behalf of the PTE to a tenant of the PTE. In relation to the following matters such consent may only be given provided that all the listed conditions are also met:

4.1.1 Licences to Assign – subject to the following conditions:

- The use of the property by the new tenant will be an **Approved Use**.
- If the use is going to change then a Licence to Change use must also be granted.
- The Assistant Director responsible for facilities confirms to the Secretary and Solicitor in writing that any new use is acceptable.
- All of the conditions in paragraph 3(2) of this policy are met by the new tenant.
- Metro would not be in breach of an agreement with another tenant restricting competitive uses.
- An inspection of the premises is carried out and the Secretary and Solicitor is satisfied that any disrepair can be satisfactorily provided for before the lease is assigned.
- The old tenant should, where practicable, enter into an authorised guarantee agreement wherever the lease would permit Metro to insist upon this.

4.1.2 Licences to change use – subject to the following conditions

- The use is an **Approved Use**.
- Metro would not be in breach of an agreement with another tenant in relation to competitive uses.

- The Secretary and Solicitor is satisfied on external advice that there would be no adverse rental effect because of the new use.
- Planning permission is not required for the new use.
- The Secretary and Solicitor and the Assistant Director responsible for facilities are satisfied that any alterations required as a result of the change of use are acceptable, permitted under the lease and consent must be granted by way of a separate Licence for Alterations.

4.1.3 Licences for alterations – subject to these conditions:

- Planning permission is not required for the alterations.
- The alterations do not affect the structure of any building.
- Plans and specifications must be approved by an appropriate officer to the satisfaction of the Secretary and Solicitor.
- The lease must permit the alterations.

4.2 The terms of all licences or written consents must be approved by the Secretary and Solicitor and must be in writing.

5. LICENCES CONCESSIONS AND VENDING MACHINES

5.1 Any such agreement is not a disposal of land for the purposes of s10 Transport Act 1968 and does not require the approval of the ITA.

5.2 All such agreements must be in writing and must be approved by the Secretary and Solicitor or their nominee before being entered into.

5.3 All such agreements must comply with the following requirements:

- They must not be for longer than 3 years
- They must be capable of being terminated by Metro on not more than 3 months notice.
- In the case of concessions and vending machines they must be approved by the Director or Assistant Director Responsible for Facilities in writing to the satisfaction of the Secretary and Solicitor.
- They must not exceed the category B threshold for contracts under the standing orders of the PTE without having been approved at a meeting of the Business Case Group of the PTE.

6. FURTHER APPROVAL TO BE OBTAINED

6.1 If any of the conditions in paragraphs 2, 3, 4, or 5 can not be met then that lease, licence, concession or consent can not be granted without the further approval of the Executive Board of the PTE. If the Executive Board consider it appropriate they may refer the matter to the ITA for further approval.

- 6.2 If either the Secretary and Solicitor, the Chief Financial Officer, the Assistant Director Finance or the Director or Assistant Director Responsible for Facilities considers that any matter should be brought before the Executive Board for further approval notwithstanding this policy then they will notify the others in writing and bring a report before the Executive Board at the next opportunity. Until the Executive Board of the PTE has approved the matter, it may not be concluded.

7. RECORDS AND NOTIFICATIONS

- 7.1 The Secretary and Solicitor in conjunction with the Assistant Director responsible for facilities the Chief Financial Officer or their nominee and any other relevant officer shall be responsible for maintaining records of all relevant matters pertaining to the granting of leases licences and agreements under this policy.
- 7.2 The Secretary and Solicitor shall report to the Executive Board of the PTE annually, or more frequently if requested, with a summary of all leases licences or other agreements entered into under this policy for review.
- 7.3 If the Executive Board consider that this policy has not been complied with and that the consent of the ITA should have been obtained then the Executive Board will seek the direction of the ITA as to any appropriate measures required pursuant to s15 (6) of the Transport Act 1968.