



# CAPITAL ASSET REFERENCE GUIDE for Public Post-Secondary Institutions

Ministry of Infrastructure

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Module 4 – Property

February 2025

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## 1.0 Acquisitions & Dispositions of Property

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Universities, colleges, and institutes must comply with statutory requirements applicable to the acquisition and disposition of property. Post-secondary legislation refers to the terms “acquire” and “dispose”, defined under Section 29 of the *Interpretation Act* as follows:

"Acquire" means to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control, or occupation of, and agree to do any of those things, but does not include expropriate.

"Dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release, and agree to do any of those things.

It is imperative that the Institution notifies the Ministry in advance whenever there is an intention to acquire or dispose of property, where Ministerial approval will be required. Submissions will be reviewed to determine if they meet the requirements of the applicable Acts and Ministry policy, what level of First Nations consultation is required, and advise if the Ministry supports the request.

The process to complete the Ministry review and to obtain a Ministerial decision depends on the complexity of the acquisition/disposition. Institutions are advised to provide notice at least two to three months in advance of when a decision will be required. Please note, for complex transactions or ones requiring consultation with First Nations, additional lead time will be required, and timelines can be significantly longer.

It is the responsibility of the Board of Governors to manage all property decisions (cf. *University Act* s.27 and *College and Institute Act* s.19). The Ministry expects that the Board and institution administration have considered the long-term educational needs of the institution prior to submitting any request for Ministerial approval. All requests must include a Board resolution confirming approval, except for Statutory Rights of Way. Board approvals conducted via in-person meetings, virtual meetings or e-vote will be accepted.

Institutions should liaise regularly with Ministry staff and provide draft documentation that will allow sufficient time to obtain a decision of the Minister in advance of the desired closing date of the transaction. To proceed with a request for Ministerial consent, draft Agreements must be substantially the same as the final Agreement.

Note that the requirement for Ministerial consent applies to all interests in land, buildings and/or space, including interests granted through rights of way, easements, and covenants, in addition to sales and leases. **The Minister cannot approve an executed agreement or an agreement that pre-dates the Minister's decision.**

Below is a matrix of the requirements for both Acquisitions and Dispositions. The required documentation for all property transactions follows the matrix.

## 1.1 Acquisitions

|                               | Universities  | Colleges and Institutes  |   |  |   |
|-------------------------------|---|--|---|--|---|
| Type of Acquisition           | Acquisition of Land, Building and/or Space  | Acquisition of Land, Buildings, and/or Space - excluding Leases  | Acquisition of Land, Buildings, and/or Space through Leases   | Acquisitions of Land, Buildings, and/or Space through Joint-Use Capital and/or Operating Agreements  | Acquisition by Lease Renewal  |
| <b>Acts and Regulations</b>   | Based on Section 50 (1) <i>University Act</i> .<br>(1) For the purposes of carrying out and advancing, directly or indirectly, the purposes of a university, a university may acquire, by gift, purchase or any other manner, and hold, property of any kind. | All based on Part 6, Section 50, <i>College and Institutes Act</i> .<br>(1) An institution is for all its purposes an agent of the government and its powers may be exercised only as an agent of the government.<br>(2) An institution may, in its own name, carry out its powers and duties under this Act and, with the consent of the minister, acquire and dispose of land or buildings.<br>(3) Despite subsection (2), an institution may lease, or enter into an agreement to lease, land or buildings for a term that ends on or before the end of the fiscal year in which the Institution entered into the lease or agreement.<br>(4) If an institution disposes of land or buildings, <b>it must not spend the proceeds of the disposition without the consent of the Minister.</b> |   |  |   |
| <b>Approval Required</b>      | <b>Does not require Minister approval</b>   | <b>Requires Minister (or designate) approval</b>   |   |  |   |
| <b>Reference</b>              | N/a   | Institutions request approval to acquire land, buildings and/or space, noting that educational facilities should not be proposed for land in the Agricultural Land Reserve.  | Discussion with the Ministry is required prior to the submission of related documents and any commitment of funds.<br><b>a)</b> Institutions required to pay for all operating and maintenance costs through operating budget.<br><b>b)</b> Insurance to be maintained by landlord, but fire and other standard insurance to be provided by institution.<br><b>c)</b> Institutions should refer to UCIPP for insurance requirements for leases. | Requires approval to enter into Joint-Use Capital/Operating Agreements. If joint use is related to an educational program, Institutions gain approval through the Institution's Education Council or equivalent. Capital and/or operating funding is normally proportional to the institution's use of facility. | Requires approval prior to renewing leases. If a lease with renewal terms has been fully expended or terms of the agreement are substantially revised, then the Institution requires approval (Please see Acquisition of Land, Buildings and /or Space through Leases). Government funding is not guaranteed.   |
| <b>Process</b>                | N/a   | <b>1)</b> The Institution submits an acquisition request with required documentation.<br><b>2)</b> If Minister (or designate) approval is obtained, the approval letter and signed Consent Form are forwarded to the Institution.<br><b>3)</b> Institutions are required to provide the fully executed agreement to the Ministry. Once received, funding will be released to the Institution.  |   |  | <b>1)</b> The Institution must submit a written request to exercise the renewal option(s) <b>at least 2-3 months in advance</b> of the lease term expiry date (or longer, depending on the lease requirements).<br><b>2)</b> The renewal request must include the lease costs, terms, area size, and a description of the educational programs including the number of FTEs intended to occupy the space.<br><b>3)</b> If Minister or designate approval is obtained, the approval letter is forwarded to the Institution.<br><b>4)</b> Institutions are required to provide the fully executed agreement to the Ministry. Once received, funding will be released. |
| <b>Documentation Required</b> | <b>For all required documentation, please see page 6 of this document</b>   |  |   |  |   |

## 1.2 Dispositions

|                              | Universities   |   | Colleges and Institutes   |  |
|------------------------------|--|---|---|--|
| Type of Property Transaction | Dispositions of Land, Buildings, and/or Space through Sale, Lease, or Other Grant (e.g., Statutory Right of Way)   | Dispositions of Land, Buildings, and/or Space through Lease Renewal   | Dispositions of Land, Buildings, and/or Space through Sale, Lease, or Other Grant (e.g. Statutory Right of Way)   | Dispositions of Land, Buildings and/or Space through Lease Renewal   |
| Reference                    | <p>Applies to Section 50 (2) and (3) of the <i>University Act</i>.</p> <p>(2) Subject to the approval of the Minister and to the terms of any grant, conveyance, gift or devise of land, a university may</p> <p style="padding-left: 40px;">(a) Mortgage, sell, transfer, lease for not more than 99 years, or otherwise dispose of its land, and</p> <p style="padding-left: 40px;">(b) Lease for any term any of its land to a college affiliated with the university.</p> <p>(3) Subject to the terms of any grant, conveyance, gift or bequest of any personal property, a university may mortgage, sell, transfer, lease or otherwise dispose of its property.</p> |   | <p>Applies to Part 6 Section 50 of the <i>Colleges and Institutes Act</i>.</p> <p>(1) An institution is for all its purposes an agent of the government and its powers may be exercised only as an agent of the government.</p> <p>(2) An institution may, in its own name, carry out its powers and duties under this Act and, with the consent of the minister, acquire and dispose of land or buildings.</p> <p>(3) Despite subsection (2), an institution may lease, or enter into an agreement to lease, land or buildings for a term that ends on or before the end of the fiscal year in which the Institution entered into the lease or agreement.</p> <p>(4) If an institution disposes of land or buildings, <b><u>it must not spend the proceeds of the disposition without the consent of the Minister.</u></b></p> |  |
| Approval Required            | Requires Minister (or designate) approval  |   |   |  |
| First Nations Consultation   | Institutions are to identify First Nation(s) that could be impacted by its proposed decision or activity (as identified using the First Nations Consultation Area Database, located at <a href="http://maps.gov.bc.ca/ess/hm/cadb/">http://maps.gov.bc.ca/ess/hm/cadb/</a> ). Refer to Section 2.0 of this document for First Nations Consultation requirements.   |   |   |  |
| Proceeds                     | All proceeds from the disposition must be first applied to any outstanding provincial debt on the property.  |   |   |  |
| Net Proceeds                 | N/a  | N/a   | If an Institution spends the net proceeds after receiving Consent to Dispose, then the net cash received must be accounted for within the accumulated surplus as an external restriction. Thereafter, the College or Institute must seek approval from the Minister prior to any expenditures from these funds.   |  |
| Process                      | <p><b>1)</b> The Institution submits a disposition request with required documentation.</p> <p><b>2)</b> If Minister (or designate) approval is obtained, the approval letter and signed Consent Form are forwarded to the Institution.</p> <p><b>3)</b> Institutions are required to provide the fully executed agreement to the Ministry.</p>  | <p><b>1)</b> The Institution must submit a written request to exercise the renewal option(s) <b>at least 2-3 months in advance</b> of the lease term expiry date.</p> <p><b>2)</b> The renewal request must include the lease costs, terms, and area size.</p> <p><b>3)</b> If Minister (or designate) approval is obtained, the approval letter is forwarded to the Institution.</p> <p><b>4)</b> Institutions are required to provide the fully executed agreement to the Ministry.</p> <p><b>Please note:</b> If the renewal option was not included in the original approval, or the terms of the renewal have substantially changed, a new request for Ministerial approval must be submitted.</p> | <p><b>1)</b> The Institution submits a disposition request with required documentation.</p> <p><b>2)</b> If Minister (or designate) approval is obtained, the approval letter and signed Consent Form are forwarded to the Institution.</p> <p><b>3)</b> Institutions are required to provide the fully executed agreement to the Ministry.</p>   | <p><b>1)</b> The Institution must submit a written request to exercise the renewal option(s) <b>at least 2-3 months in advance</b> of the lease term expiry date.</p> <p><b>2)</b> The renewal request must include the lease costs, terms, and area.</p> <p><b>3)</b> If Minister (or designate) approval is obtained, the approval letter is forwarded to the Institution.</p> <p><b>4)</b> Institutions are required to provide the fully executed agreement to the Ministry.</p> <p><b>Please note:</b> If the renewal option was not included in the original approval, or the terms of the renewal have substantially changed, a new request for Ministerial approval must be submitted.</p> |
| Documentation                | For all required documentation, please see page 6 of this document   |   |   |  |

### 1.3 Acquisitions and Dispositions – Required Documentation

| Required Documentation   | Acquisitions | Dispositions | Lease Renewal |
|--|--------------|--------------|---------------|
| A copy of the proposed agreement, including renewal term(s), and lease rate, if applicable <sup>1 2</sup>  | X            | X            | X             |
| A copy of the survey plan with the disposal property clearly outlined in red   | X            | X            |               |
| Estimate of the total capital cost of the acquisition, including the costs of any improvements   | X            |              |               |
| A Business Plan for loan or Tenant improvement payments, if applicable <sup>3</sup>  | X            |              |               |
| Listing of the Programs being provided in the new space and listing of the number of FTEs the new space will accommodate   | X            |              |               |
| A legal description of the property including the civic address and measurements (property size in hectares, building area in square meters) <sup>4</sup>                      | X            | X            |               |
| A Board Resolution approving the request <sup>5</sup>  | X            | X            |               |
| Copy(ies) of the Certificate of Title, including PIDs, Certificate of Encumbrance and any Reversion Clauses:   | X            | X            |               |
| Verification of any specific public purpose limitations on the land established by a Crown land grant  | X            | X            |               |
| Current use of land/space and proposed future use of land/space, if known  |              | X            |               |
| An estimate of property value prepared by an independent Appraiser <sup>6</sup>  |              | X            |               |
| A statement from the Institution declaring that “the agreement(s) have been vetted by their legal advisor to ensure full protection of the Institution’s rights and interests” | X            | X            | X             |
| A statement from the institution declaring that the agreement(s) have been vetted by Risk Management at the Ministry of Finance <sup>7</sup>                                   | X            |              |               |
| Current Zoning, showing proposed use is allowed <sup>7</sup>   | X            |              |               |
| First Nations Consultation Record if applicable  | X            | X            |               |

(1) If applicable, please include details of all capital and operating cost-formulae, estimated annual operating and maintenance costs for the asset, details of liability and other required insurance, details of arbitration guidelines and/or other procedures to resolve disputes.

(2) For joint use agreements, include a description of the Parties to the agreement.

(3) If applicable, for joint use agreements, include a sketch plan of any proposed Tenant improvement.

(4) This information can be included as part of an agreement instead of a separate attachment.

(5) Not required for Statutory Rights of Way.

(6) Not required for leases.

(7) Not required for joint use agreements.

## 2.0 First Nations Consultation

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A provincial decision regarding a request to approve a disposition of land under Section 50(2) of the *University Act*, R.S.B.C. 1996, c 468, or Part 6, Section 50(2) of the *College and Institution Act*, R.S.B.C. 1996, c 52 may trigger the Crown's constitutional duty to consult.

A disposition under these acts includes sales, leases, statutory rights of way, and/or mortgages.

The Crown's duty to consult is triggered when government:

- a) Has knowledge, actual or constructive, of an established or asserted Aboriginal or treaty right;
- b) Is contemplating Crown conduct; and
- c) That contemplated Crown conduct may adversely affect the established or asserted Aboriginal or treaty right.

Where a Post-Secondary Institution (Institution) requires ministerial approval under s. 50(2) of the *University Act* or under s. 50(2) of the *College and Institution Act* for any form of land disposition under these Acts, we may proceed on the basis that the first and second components of the trigger for consultation are met. The question is whether the contemplated ministerial decision has the potential to adversely affect an Aboriginal or treaty right. This assessment is highly fact-specific and the duty to consult can be triggered even for seemingly more discrete uses of or changes to land, such as a lease, a statutory right of way, or a mortgage, not only for sales of land in fee simple. The threshold for triggering the duty to consult is low.

Where provincial decisions or actions have the potential to adversely impact claimed or proven Aboriginal rights (including title) or treaty rights, the Province has a legal obligation to consult with and, where appropriate, accommodate First Nations. Prior to approving a disposition of land under the *University Act* or the *College and Institution Act*, the Minister of Post-Secondary Education and Future Skills (the Minister), must consider whether the duty to consult with First Nations is triggered by the proposed disposition. Where the duty is triggered, the Minister must be satisfied that it has been adequately fulfilled before approving a proposed disposition under Section 50 of the *University Act*, R.S.B.C. 1996, c 468, or Part 6, Section 50(2) of the *College and Institution Act*, R.S.B.C. 1996, c 52.

Generally, the scope of the duty to consult is proportionate to a preliminary assessment of the strength of any claimed Aboriginal right (including title) and the seriousness of the potential impact of the provincial decision. Precisely what is required to fulfill the duty will vary with the circumstances, but it always requires meaningful, good faith consultation,

and commonly it will mean that government must have the intention of substantially addressing Aboriginal concerns as they are raised.

While the Province is responsible for ensuring appropriate consultation and accommodation for the circumstances, it may delegate the procedural aspects of consultation to Institutions. Institution engagement with First Nations can facilitate effective and timely information exchange and may include the modification of plans to mitigate and avoid impacts to First Nations' rights and Interests. Institutions are often in a better position to explain their proposals and address any First Nation concerns. Institution engagement can also contribute to some of the Province's broader objectives, including partnerships and relationship building with First Nations.

The courts have held that to be effective, consultation should be initiated at the earliest possible stages in the decision-making process, before irrevocable steps have been taken. Institutions preparing for making an application to government under s. 50(2) of the *University Act* or under s. 50(2) of the *College and Institution Act* are encouraged to engage First Nations as early as possible when seeking a decision. Engagement early in the planning stage to build relationships and for information sharing purposes provides opportunities to identify any concerns by First Nations about the proposed activity and may increase the likelihood of successful consultation outcomes. Institutions who are involved in consultation should document their engagement activities, share their consultation record with provincial staff, and advise staff of any issues that arise.

The Province has developed several guides to assist with First Nations consultation. The [\*Updated Procedures for Meeting Legal Obligations\*](#) was created to provide guidance to government when carrying out First Nations consultation. The Ministry will be following the process set out in those procedures.

Please contact the Ministry for access to templates and tools, and for further details on this process at [psfs.propertyrequests@gov.bc.ca](mailto:psfs.propertyrequests@gov.bc.ca).



## 3.0 Property Trusts

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### 3.1 Overview

Property trusts can play a key role in expanding housing supply and establishing an additional source of revenue for public post-secondary institutions. Property trust proposals are long-term endeavors and must be contemplated considering the long-term implications for decades.

Under the *University Act* (s.50), universities must seek Ministerial approval for dispositions, which include long-term leases to the property trust. This section is intended to assist public post-secondary institutions seeking approval for dispositions into new or existing property trusts. Institutions are strongly encouraged to engage Ministry staff early in the planning process to discuss intent and requirements for any submission for ministerial consideration.

It's important to note that institutions are responsible for the establishment of the property trust and ensuring due diligence in all aspects of the property trust design and administration, including legal and financial reviews. It is recommended that institutions meet with other public post-secondary institutions that have existing property trusts to learn from their experiences.

### 3.2 Eligibility Requirements

New property trust proposals will be considered where the following primary criteria are met:

- Property trusts are currently only an option for universities as defined in the *University Act*.
- The proposal will expand housing supply in British Columbia, and considerations have been made to ensure the housing is attainable by those employed in the workforce for the region.
- The financial benefits generated by the trust will flow in its entirety to support the educational mandate of the institution.
- First Nations rights holders have been appropriately considered in the proposal and formally consulted through the required process.
- The institution has completed due diligence to ensure the trust will not negatively affect the educational mandate of the institution (e.g. financial, legal, governance, etc.).
- The institution is in a positive financial position.

Additional secondary criteria may be used to evaluate the proposal.

### 3.3 Types of Proposals

There are three broad categories for property trust proposals:

1. Establishment of a new trust
2. Significant additions / changes to an existing trust
3. Transactions

The establish of a new trust requires sufficient information for government to assess the long-term value and implications of the proposal. For existing trusts, less information is required, as the trust should already be demonstrating that it is viable. Proposals that are deemed to be a transactional addition or change to an existing trust may flow through the standard acquisition/disposition process. Ministry staff will provide guidance on the necessary requirements.

### 3.4 Overview of Process

In general, proposals will follow a five-stage process, outlined below. This process may be scaled based on the opportunity identified and the complexity of the proposal.



#### ***Initial Concept***

Institutions are strongly encouraged to engage with the ministry about the initial concept. This can be an informal conversation, usually accompanied by a short document outlining the general concept. The concept presented should outline key considerations – including describing the opportunity, indicating key risks, and identifying a potential high-level timeline. Ministry staff will provide initial advice on this concept prior to the development of a business case.

If there are property ownership issues, this needs to be flagged with the initial concept.

For simple transfers into the property trust, it may be possible to use the standard disposition process. The Ministry will provide guidance on the process after receiving the initial concept.

#### ***Business Case Development***

Institutions are responsible for the development of their business case. The business case is intended to provide a high-level overview of the merits and risks of the proposal. In particular, proposals need to:

- Outline the opportunity, including how the proposal aligns with key government and institutional strategic priorities (e.g. institution mandate letter);
- Quantify the magnitude of the opportunity (e.g. how many homes will be built and what is the magnitude of the financial benefit to the institution);
- Confirm the proposal will not affect the institution's ability to expand academically (e.g., 50-60 years)
- Provide an overview of the development or redevelopment plan for the property;
- Discuss how the proposal will benefit First Nations rights holders;
- Provide an overview of key financial considerations; and,
- Discuss any key risks (e.g., legal, financial, governance, etc.).

Institutions are encouraged to engage with First Nations rights holders early in this process.

Additional appendices are required to provide details about key aspects. In general, these materials are intended to be documents normally created to establish or manage a property trust (i.e. encourage reuse of documents produced for the Institution and the Board of Governors). These requirements are outlined in the template. Institutions are not required to use the format of the template but must address the topics outlined within. Please contact [PSFS.CapitalPolicy@gov.bc.ca](mailto:PSFS.CapitalPolicy@gov.bc.ca) to request a Business Case Template.

### ***Technical Review by Government***

The Ministry will conduct an internal review of the business case and all required documentation to ensure it meets requirements of the applicable Act(s), regulations, and policy. The Ministry will also coordinate any necessary reviews with other ministries.

This review is typically conducted in two stages. An initial review is completed by the Post-Secondary Capital Policy Team to ensure the proposal meets eligibility requirements, demonstrates strategic alignment, and that it is clear and complete. The secondary review involves a more detailed review of key aspects of the proposal with other areas of government.

### ***Formal First Nations Consultation***

In addition to engagement with First Nations to develop the business case (see above), institutions are required to formally consult with local First Nations regarding the disposition of property through the process outlined by the Ministry of Attorney General. To ensure this step only needs to occur once, institutions are encouraged to wait until the technical review has been completed. Please see section 4.0 of this module for First Nation Consultation information.

The Ministry will provide draft templates for the formal consultation. Please ensure that draft letters are reviewed by the Ministry prior to send out. If you require assistance in

determining which First Nations to consult with, provide the following information and email: [psfs.propertyrequests@gov.bc.ca](mailto:psfs.propertyrequests@gov.bc.ca) and include:

- Legal Description, PID Number of the property (or property title)
- Municipal/street address
- Map showing location of the property/site outlined in red
- What the property is currently being used for
- What the property will be used for once disposed

An important step in First Nations consultation is requesting read receipts (via email) to ensure that the email has been seen. Once First Nations consultation letters are submitted to the Ministry at [psfs.propertyrequests@gov.bc.ca](mailto:psfs.propertyrequests@gov.bc.ca), materials will be sent for review to Ministry of Attorney General.

Please note, while letters of support from First Nations will be accepted as part of the submission, it does not replace this formal consultation requirement.

### ***Ministerial Review and Consent***

Once all previous steps are complete, the institution will provide a final version of the business case for review. If consent of the Minister is obtained, the Institution will be notified by letter with the signed Consent Form.

## **3.5 Key Considerations**

Institutions should be aware of the following:

- Proposals are more likely to be approved if there is a clear development plan that can be articulated for the property.
- Ministerial approval is typically provided for a period of up to fifteen years, at which time an institution will need to seek further approvals.
- Student housing is ineligible to be held in a property trust, as it is inconsistent with the accounting requirements of the Government Reporting Entity.
- Property held within the property trust is ineligible for provincial funding (e.g. routine capital, Carbon Neutral Capital Program, etc.).

## **3.6 Sponsored Crown Grants**

In some instances, reverter clauses exist on the property indicating that the property will revert to the Crown if it is not used for educational or academic purposes. Typically, property trust dispositions will not be considered unless these reverter clauses are amended or removed.

The Minister of Water, Land and Resource Stewardship (WLRS) is responsible for approval of any change or removal of reverter clauses on Land Title, which must meet certain

criteria. Typically, the institution must either pay fair market value for the property or be sponsored by the appropriate provincial ministry (e.g. Ministry of Housing). Applications are reviewed and assessed to determine the economic, social and environmental benefits to the community for the proposed use of the land.

The Ministry will facilitate a conversation with WLRS to discuss the potential for changes or removal. Institutions are strongly encouraged to engage the Ministry early in planning.