

## Commercial Activities Policy

### Abstract

The Commercial Activities Policy fulfils the obligation of Council under [section 21B\(1\)](#) of the *University of Technology Sydney Act 1989* (NSW) that ‘Council must by resolution determine, and must maintain, Guidelines requiring specified processes and procedures to be followed in connection with university commercial activities’. The policy provides requirements for the evaluation of proposed commercial activities, necessary approvals and ongoing monitoring.

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Related documents	<a href="#">Accounting Standards (Australian Accounting Standards Board)</a> <a href="#">Code of Conduct</a> <a href="#">Delegations</a> <a href="#">Facilities Hire Vice-Chancellor's Directive</a> <a href="#">Fraud and Corruption Prevention and Public Interest Disclosures Policy and Guidelines</a> <a href="#">Outside Work Vice-Chancellor's Directive</a> <a href="#">Policy on Competitive Neutrality and Pricing</a> <a href="#">Protocol for the Execution of Documents</a> (docx, Staff Connect) <a href="#">Research Ethics and Integrity Policy</a> <a href="#">Short Courses Policy and Vice-Chancellor's Directive</a> <a href="#">University Consulting Vice-Chancellor's Directive</a> <a href="#">UTS Enterprise Agreements</a> <a href="#">Voluntary Code of Best Practice for the Governance of Australian Universities</a>	

Legislation	<a href="#">University of Technology Sydney Act 1989 (NSW)</a> <a href="#">University of Technology Sydney By-law 2005 (NSW)</a> <a href="#">Public Finance and Audit Act 1983 (NSW)</a> <a href="#">Australian Accounting Standard 124 — Related Party Disclosures</a> (PDF)
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Superseded documents	UTS Guidelines for Commercial Activities Council Directives for UTS Commercial Activities

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## 1. Purpose

The University of Technology Sydney has the power to undertake commercial activities. This power is found in [section 6\(3\)\(a\)](#) of the *University of Technology Sydney Act 1989* (NSW) (the Act).

Commercial activities allow the university to fulfil its research and development roles; to contribute to national, state and regional economic advancement; to contribute to UTS's financial viability; and act as a vehicle for transferring the benefits of the university's broader functions, including the creation of intellectual property, to the community.

As university commercial activities involve significant use of public resources, and must be for the university's benefit, they are required to be established and undertaken prudently within clear and systematic arrangements.

The Commercial Activities Policy (the policy) fulfils the obligation of Council under [section 21B\(1\)](#) of the Act that 'the Council must by resolution determine, and must

maintain, Guidelines requiring specified processes and procedures to be followed in connection with university commercial activities’.

This policy sets out requirements for the development and ongoing conduct of commercial activities, which allow the university to identify and act on opportunities while also effectively managing risk and compliance.

Specifically, this policy details the requirements for:

- evaluating proposals for commercial activities, including undertaking feasibility and due diligence assessments
- conducting an initial risk assessment of activities and identifying ongoing risk management measures
- identifying appropriate governance and administrative arrangements for the activity
- identifying means by which the activity will comply with the university’s instruments governing the [research ethics and integrity](#), [fraud and corruption prevention and public interest disclosures](#) and with the [Code of Conduct](#), and
- monitoring and reporting on commercial activities.

## 2. Scope

This policy applies to all activities classified as commercial activities as defined in section 3.

## 3. Definitions

The following definitions apply to this policy. These are in addition to terms defined in [Schedule 1](#), Student Rules.

**Controlled entity** means any person, group of persons or body as defined in [section 16A](#) of the Act. See also section 3.1 of this policy.

**Council** means the Council of the University of Technology Sydney (the university).

**Delegate** means a person, committee or entity to whom the Council delegates a function in accordance with section 5.4 of this policy and the university’s Delegations.

**Proposal** means any proposal for the university to participate in a commercial activity.

**Risk** means:

- a. risk of financial loss
- b. risk of incurring a legal liability
- c. risk of loss of or damage to the reputation of the university
- d. risk of corruption or malpractice
- e. risk to workplace health and safety
- f. risk of impairment of the conduct of the university’s principal functions under [section 6](#) of the Act
- g. risk of adverse tax or duty consequences to the university
- h. other risks specific to a particular commercial activity where those risks are believed to be material, or
- i. any other type of risk determined by the Council to be a risk for the purposes of this policy.

**University commercial activity** means:

- a. any commercial activity as defined in [section 21A](#) of the Act or in other legislative instruments
- b. any activity described in section 3.1 of this policy
- c. any activity of the university where:
  - i. the principal purpose of the activity is to make a financial profit, either in the short or long term
  - ii. the activity involves ‘commercial’ partners, that is, other parties not involved in teaching or research
  - iii. the activity involves the university’s operation offshore
  - iv. the activity involves the commercial exploitation of the university’s intellectual property, or
  - v. the activity involves user-charges for goods and services, and managers of the activity have a degree of independence in relation to production or supply of the good or service and the price at which it is provided
- d. any other activity or class of activity which is determined from time to time by the Council to be a commercial activity for the purpose of this policy.

**Table 3.1. University commercial activity classification**

<b>Class of commercial activity</b>	<b>Definitions (in italics), examples and/or comments</b>
Controlled entity	<i>An entity over which UTS exercises control, and that satisfies the definition in <a href="#">section 16A(6)</a> of the Act, or the test of control in sections 39(1A) and 45A(1A) of the <a href="#">Public Finance and Audit Act 1983 (NSW)</a>, and <a href="#">Australian Accounting Standard 124 — Related Party Disclosures</a> (PDF).</i>
Commercial joint venture projects	<p><i>Joint ventures with a specific commercial purpose that are undertaken by UTS in collaboration with another university and/or entity, conducted either offshore or in Australia, where both parties remain otherwise independent.</i></p> <p>An example would be a student housing project, where UTS is to provide marketing services for some form of consideration.</p> <p>This does not include:</p> <ol style="list-style-type: none"> <li>a. award courses</li> <li>b. research projects, or</li> <li>c. short courses valued under \$1,000,000 which are conducted by joint venture.</li> </ol>
Intellectual property commercialisation	<i>A legal agreement that specifically deals with the commercial exploitation of UTS intellectual property, including licensing or assignment agreements for a royalty stream or lump sum payment, or the licensing or future assignment of UTS intellectual property into a start-up company where UTS receives shares in consideration for the value of the UTS intellectual property.</i>

Class of commercial activity	Definitions (in italics), examples and/or comments
Cooperative Research Centres (CRC)	Industry-led collaborations between researchers, industry and the community. See also the Australian Government's <a href="#">CRC website</a> .
University consulting	<p><i>Consulting arranged with an external party.</i></p> <p>University consulting is approved by deans and directors and undertaken through <a href="#">accessUTS</a> in accordance with the <a href="#">University Consulting Vice-Chancellor's Directive</a>.</p> <p>It does not include private consulting (see section 3.2 of this policy and the <a href="#">Outside Work Vice-Chancellor's Directive</a>).</p>
Capital development	<p><i>Capital development of a commercial nature, involving parties external to the university.</i></p> <p>It does not include university capital developments, general maintenance or the management of UTS capital funds.</p>
Commercial leases	<i>The lease of UTS property to an external party on a long-term basis (a period of or greater than twelve months).</i>
UTS facilities and property hire	<p><i>The hire of UTS property and/or facilities to external parties for a fee.</i></p> <p>See also <a href="#">Facilities Hire Vice-Chancellor's Directive</a>.</p>
Commercial conferences, workshops and events	<p><i>A conference, workshop or event whose principal purpose is to make a financial profit.</i></p> <p>This includes a conference, workshop or event that is conducted on behalf of, or in conjunction with, an external entity, including where the external entity shares in the revenue or profit in the activity, or that is run on behalf of the external entity, or where a fee for service is charged.</p> <p>This does not include academic conferences, workshops and events.</p>
Public clinics	<i>The provision of health or other services to the public for a fee, where UTS students and/or staff are not the primary client group.</i>
Acquisition and disposal of property and shares	<p><i>Where the university:</i></p> <ul style="list-style-type: none"> <li>• <i>acquires or purchases shares in a company either by providing cash, intellectual property or any other consideration, or</i></li> <li>• <i>disposes of shares, or</i></li> <li>• <i>purchases or disposes of property.</i></li> </ul>

<b>Class of commercial activity</b>	<b>Definitions (in italics), examples and/or comments</b>
Sale of publications (and/or other goods or services)	Examples would be publications, DVDs and kits sold by the university's centres and institutes. This does not include research publications.
Offshore projects	Any activity which involves the university's operations offshore is a university commercial activity, excluding: <ul style="list-style-type: none"> <li>a. research projects, and</li> <li>b. short courses valued under \$1,000,000.</li> </ul>

**Table 3.2. UTS activities that are not commercial**

<b>Class of activity</b>	<b>Definitions (in italics), examples and/or comments</b>
Award courses	—
Research	Research is any activity where the main purpose is to create and disseminate newly created knowledge. Examples include: <ul style="list-style-type: none"> <li>• any research, including contracted research, that is funded by federal, state and/or local governments, including agencies of government</li> <li>• <a href="#">ARC Linkage Project grants</a></li> <li>• contract research where UTS provides research services to a corporate entity or other external party for a fee.</li> </ul>
Sale or provision of services, goods, facilities or equipment to units within the university	Provision of services between units or faculties. This may or may not include the transfer of funds.
Services provided on a cost-recovery basis	Including, but not limited to, academic conferences, graduation gown hire, printed materials, library fines, field trips and late fees, facilities hire (where the activity is undertaken on a not-for-profit basis).
Provision of amenities and services for staff and students as members of the university community	Including, but not limited to, the campus health services, <a href="#">Student Legal Service</a> , IT services, sporting facilities, library services and housing, where UTS students and/or staff are the primary client group.
Private consulting	As defined in the <a href="#">Outside Work Vice-Chancellor's Directive</a> .

<b>Class of activity</b>	<b>Definitions (in italics), examples and/or comments</b>
Charitable fundraising or development activities conducted by or on behalf of the university	See also the <a href="#">Fundraising Policy</a> .
Short courses	As defined in the <a href="#">Short Courses Policy</a> : <ul style="list-style-type: none"> <li>• UTS Short Courses include UTS Continuing Professional Education (CPE) and UTS Study Tours</li> <li>• Offshore short courses valued at over \$1,000,000 should be conducted as a commercial joint venture.</li> </ul>

#### **Note: Classification of new types of UTS activity**

Any new activity that may potentially be commercial and does not fall into one of the classes identified in tables 3.1 or 3.2 must be referred to the Deputy Vice-Chancellor (Resources) for consideration as to whether the activity is commercial or not commercial with reference to the criteria in the definition of 'university commercial activities' in this policy. The Deputy Vice-Chancellor (Resources) will report any such consideration to the Commercial Activities Committee, which will make a recommendation to Council for approval or otherwise.

## **4. Policy principles**

In respect of the university's commercial activities, and in accordance with the university's obligations under [section 21B\(3\)](#) of the Act, this policy:

- a. requires feasibility and due diligence assessment
- b. requires the identification of appropriate governance and administrative arrangements (including as to legal structures, financial treatments and audit requirements)
- c. requires the undertaking of risk assessment and risk management measures
- d. imposes requirements concerning the delegation by Council of any of its functions in connection with university commercial activities
- e. declares specified activities to be a university commercial activity for the purposes of [section 21A](#) of the Act, and
- f. establishes a protocol regarding the rights and responsibilities of members of the Council in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.

## **5. Policy statements**

### **5.1 Evaluation of a commercial activity**

Any proposed activity, which is potentially commercial or a significant change to an approved commercial activity must follow the requirements prescribed by section 5 of this policy. Key phases for each activity include evaluation, approval, and review and monitoring. A copy of the [Protocol for the Execution of Documents](#) (docx, Staff Connect) must be attached to the cover of each proposal.

## 5.2 Process for evaluation of a proposal

In evaluating a proposed activity that is potentially commercial or a significant change to an approved commercial activity, the person delegated to evaluate a proposal (see section 5.4) must follow this procedure:

- a. determine if the activity is commercial in terms of section 3 in this policy
- b. if the activity is commercial, create a business case for the activity, identifying whether the proposal is for the overall (financial and non-financial) benefit of the university, taking into account the risks, opportunity costs and effect on the university's core activities
- c. carry out a risk analysis and in particular consider the range of risks outlined in the definition of risk in section 3
- d. recommend risk mitigation, including assessment of the insurance coverage required, its cost and limitations, and make recommendations as to appropriate insurance, including whether adequate coverage for any exposure for liability above \$500,000 is available and would be of a cost commensurate to the likely returns, and management procedures, as deemed necessary
- e. carry out a financial analysis, including the source(s) of funding (including any contribution by the university), tax implications, projected cash flow and rates of return to the university, in consultation with the UTS Financial Services Unit
- f. where a new controlled entity is being proposed, ensure that the financial analysis in (e) above, is signed off by the university's Chief Financial Officer
- g. conduct a legal due diligence of the proposal and relevant assets including options for legal frameworks and due diligence of each proposal participant, in consultation with UTS Legal Services
- h. where a new controlled entity is being proposed, ensure that the legal structure, is signed off by the university's Director of Legal Services
- i. assess compliance with UTS policies including, but not limited to, the [Policy on Competitive Neutrality and Pricing](#) (including the setting of appropriate pricing) and section 4.4 (on conflict of interest) in the [Code of Conduct](#)
- j. identify the effect of the proposal on intellectual property ownership and value, and recommend a strategy for protecting the university's intellectual property interests
- k. define the corporate governance provisions (in consideration of the requirements outlined in section 5.5 of this policy, but including appointment of directors and managers, accounting and auditing procedures, control mechanisms in the constitution or other constituent document and in any agreement between shareholders, partners or participants) for the activity
- l. prepare a [Protocol for the Execution of Documents](#) (docx, Staff Connect) for signature by the authority delegated to approve the activity in accordance with section 5.4 of this policy
- m. prepare a Commercial Activity Evaluation, Approval and Registration form (available from UTS Commercial) for signature by the authority delegated to approve the activity in accordance with section 5.4, and
- n. report to the authority delegated to approve the activity on each of the matters in subsections (a) to (l) of this list.



### **5.3 Approval of a commercial activity**

#### **5.3.1 Processes prior to approval**

Before giving final approval for the proposal to be implemented, the delegated authority is to be satisfied that the following steps have been completed, where relevant to the activity:

- a. Review the recommendations made and documentation prepared under section 5.2, and any legal and accounting advice obtained in relation to the proposal.
- b. Select the appropriate structure for the activity from legal, tax and accounting perspectives, based on independent legal advice from UTS Legal Services and/or accounting advice from UTS Financial Services Unit.
- c. Prepare, or supervise the preparation of, the transaction documents (including warranties, indemnities and limitations of liability), based on independent legal advice from UTS Legal Services and/or accounting advice from UTS Financial Services Unit and requirements specified by Council.
- d. Define accounting and auditing procedures and requirements (both internal and external) noting how these will be regularly reported to Council or its delegate.
- e. Ensure availability of insurance and funding for the activity.
- f. Recommend appropriate exit arrangements, including termination and asset distribution, and liability payment obligations which protect the interests of the university.
- g. Certify that the governance provisions and documentation for the activity satisfy the requirements under this section.

#### **5.3.2 Approval of the activity**

In order to approve the activity, the manager or proponent recommending the commercial activity to the delegated authority for approval must agree to, or sign, the [Protocol for the Execution of Documents](#) (docx, Staff Connect) and Commercial Activity Evaluation, Approval and Registration form (available from UTS Commercial).

#### **5.3.3 Processes following approval**

Following approval, the delegated authority must ensure that the approval is communicated to relevant areas of the university, and that appropriate records management processes have been established.

The delegated authority must ensure that the manager or proponent has included in the establishment of the entity undertaking the commercial activity, the assumptions, recommendations and advice obtained under sections 5.2 and 5.3.

The delegated authority must ensure that the manager or proponent follows the established procedure to ensure that the activity is included on the Register of university commercial activities (see section 5.7).

### **5.4 Approval framework**

#### **5.4.1 Interaction with Delegations**

Authority to approve a commercial activity under section 5.3 is given in accordance with the university's [Delegations](#), and resolutions of Council.

- a. [Section 17](#) of the Act provides that Council may, by resolution, delegate any or all of its functions in relation to the commercial activities of the university (except this power of delegation) to any member of Council, a committee of Council or to any authority or officer of the university or to any other person or body prescribed by the [University of Technology Sydney By-law 2005 \(NSW\)](#).

- b. Notwithstanding subsection (a) above, Council does not delegate the power to give approval to any proposal for a commercial activity:
  - i. which involves the receipt or expenditure (including funding) by the university in excess of limits set in the [Delegations](#), or
  - ii. where the proposed commercial activity would not be covered by the university's existing insurance policies and the uninsured liability is in excess of \$500,000.
- c. A delegation by Council may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by Council.
- d. In all cases, delegations to the persons or person in respect of university commercial activities may only be exercised where those persons have appropriate commercial experience.
- e. The person approving a proposed activity under delegated authority must not also be the sponsor of the activity.
- f. Authority to approve a commercial activity also extends to delegated authority to execute instruments to give effect to the commercial activity, in accordance with UTS policies and the [Protocol for Execution of Documents](#) (docx, Staff Connect). For clarity, authority to approve a commercial activity also extends to authority to discontinue that commercial activity.
- g. In accordance with section 3.3 of the [Delegations](#), the appointment of a person to hold a position on behalf of the university as a director of a company is made by Council. The exception being the appointment of a person to hold the position of director of a cooperative research centre, which can be made by the DVC (Research).

**Table 5.4.2. Delegated authorities in relation to commercial activities**

University commercial activity	Procedure	Delegation (within area of responsibility)
<b>Controlled entities</b>	Evaluation	DVC (Resources)
	Approval	Council
	Review and monitoring	Council Commercial Activities Committee
<b>Joint venture projects</b>		
• Award courses	Evaluation	Courses Planning Committee
• Non-course	Evaluation	Relevant member of UTS Senior Executive
• Award courses	Approval	Provost
• Non-course activities with over \$5,000,000 annual UTS income or expenditure or involving a UTS interest in a company	Approval	Council

<b>University commercial activity</b>	<b>Procedure</b>	<b>Delegation (within area of responsibility)</b>
<ul style="list-style-type: none"> <li>• Non-course activities between \$1,000,000 and \$5,000,000 annual UTS income or expenditure, and not involving a UTS interest in a company</li> </ul>	Approval	Council Commercial Activities Committee
<ul style="list-style-type: none"> <li>• Non-course activities with under \$1,000,000 annual UTS income or expenditure, and not involving a UTS interest in a company</li> </ul>	Approval	Delegate with the appropriate authority under financial delegation 1.2 or 1.7 (see <a href="#">Delegations</a> )
<ul style="list-style-type: none"> <li>• All joint venture projects</li> </ul>	Review and monitoring	Commercial Director
<b>Intellectual property commercialisation</b>		
<ul style="list-style-type: none"> <li>• Research-related intellectual property</li> </ul>	Evaluation	Director, Research and Innovation Office
<ul style="list-style-type: none"> <li>• All other intellectual property commercialisation</li> </ul>	Evaluation	Provost
<ul style="list-style-type: none"> <li>• Establishment of a start-up company</li> </ul>	Approval	Council
<ul style="list-style-type: none"> <li>• Licensing or assignment of research-related intellectual property</li> </ul>	Approval	DVC (Research)
<ul style="list-style-type: none"> <li>• Licensing or assignment of all other intellectual property</li> </ul>	Approval	Provost
<ul style="list-style-type: none"> <li>• Research-related intellectual property</li> </ul>	Review and monitoring	Director, Research and Innovation Office
<ul style="list-style-type: none"> <li>• All other intellectual property commercialisation</li> </ul>	Review and monitoring	Commercial Director
<b>Cooperative Research Centres (CRC)</b>	Evaluation	Director, Research and Innovation Office
	Approval	DVC (Research)
	Review and monitoring	DVC (Research)
<b>University consulting</b>	Evaluation	Manager, Operations and Systems, Commercial Unit
	Approval	Commercial Director

<b>University commercial activity</b>	<b>Procedure</b>	<b>Delegation (within area of responsibility)</b>
	Review and monitoring	DVC (Resources)
<b>Capital development (commercial)</b>	Evaluation	DVC (Resources)
	Approval	Council
	Review and monitoring	Council Physical Infrastructure Committee
<b>Commercial lease</b>	Evaluation	Commercial Director
<ul style="list-style-type: none"> <li>Where lease is included in Council-approved Lease Plan</li> </ul>	Approval	DVC (Resources)
<ul style="list-style-type: none"> <li>Where lease is not included in Lease Plan, and valued up to \$5,000,000 and in exceptional circumstances.</li> </ul>	Approval	DVC (Resources)
<ul style="list-style-type: none"> <li>Where lease is not included in Lease Plan, valued over \$5,000,000.</li> </ul>	Approval	Council
<ul style="list-style-type: none"> <li>All leases</li> </ul>	Review and monitoring	Council Physical Infrastructure Committee
<b>UTS facilities, property hire, commercial conferences, workshops and events</b>		
<ul style="list-style-type: none"> <li>All UTS facilities and property hire</li> </ul>	Evaluation	Property Manager
<ul style="list-style-type: none"> <li>All commercial conferences, workshops and events</li> </ul>	Evaluation	Head of relevant school/centre/unit
<ul style="list-style-type: none"> <li>Amounts &gt;\$2,000,000</li> </ul>	Approval	Vice-Chancellor
<ul style="list-style-type: none"> <li>Amounts &lt;\$2,000,000</li> </ul>	Approval	DVC (Resources)
<ul style="list-style-type: none"> <li>Amounts &lt;\$750,000</li> </ul>	Approval	Commercial Director; Director, Facilities Management Office; Director, Program Management Office
<ul style="list-style-type: none"> <li>Amounts &lt;\$250,000</li> </ul>	Approval	Manager, Building Services; Manager, Security; Manager, Central Services; Manager Sustainability; Manager, Projects, FMO;

<b>University commercial activity</b>	<b>Procedure</b>	<b>Delegation (within area of responsibility)</b>
		Finance Business Partner (Resources)
<ul style="list-style-type: none"> <li>• Amounts &lt;\$100,000</li> </ul>	Approval	Manager, Property
<ul style="list-style-type: none"> <li>• All UTS facilities and property hire</li> </ul>	Review and monitoring	Council Physical Infrastructure Committee
<ul style="list-style-type: none"> <li>• All commercial conferences, workshops and events</li> </ul>	Review and monitoring	DVC (Resources)
<b>Public clinics</b>	Evaluation	Dean/Director of relevant faculty/unit/institute
	Approval	Provost
	Review and monitoring	DVC (Resources)
<b>Purchase and disposal of properties on behalf of UTS</b>		
<ul style="list-style-type: none"> <li>• All properties</li> </ul>	Evaluation	DVC (Resources)
<ul style="list-style-type: none"> <li>• Purchase Amounts &gt;\$2,000,000</li> <li>• All disposals</li> </ul>	Approval	Council
<ul style="list-style-type: none"> <li>• Amounts &lt;\$2,000,000</li> </ul>	Approval	Vice-Chancellor (and reported to next Council meeting)
<ul style="list-style-type: none"> <li>• All purchase and disposal of properties on behalf of UTS</li> </ul>	Review and monitoring	Council Physical Infrastructure Committee
<b>Acquisition and disposal of shares</b>	Evaluation	DVC (Resources)
	Approval	Council
	Review and monitoring	Council Finance Committee
<b>Sale of publications (and/or other goods or services)</b>	Evaluation	Head of relevant school/centre/unit
	Approval	Dean/director of relevant faculty/unit/institute
	Review and monitoring	Commercial Director
<b>Offshore projects</b>		
<ul style="list-style-type: none"> <li>• Award courses</li> </ul>	Evaluation	DVC (International and Advancement) and DVC (Resources) and

University commercial activity	Procedure	Delegation (within area of responsibility)
		UTS Courses Planning Committee
<ul style="list-style-type: none"> <li>All other offshore projects</li> </ul>	Evaluation	As per class of activity, following consultation with DVC (International and Advancement)
<ul style="list-style-type: none"> <li>Award courses</li> </ul>	Approval	Provost
<ul style="list-style-type: none"> <li>All other offshore projects</li> </ul>	Approval	As per class of activity, following consultation with DVC (International and Advancement)
<ul style="list-style-type: none"> <li>Award courses</li> </ul>	Review and monitoring	UTS Courses Planning Committee
<ul style="list-style-type: none"> <li>All other offshore projects</li> </ul>	Review and monitoring	As per class of activity, following consultation with DVC (International and Advancement)

## 5.5 Additional requirements in relation to controlled entities

### 5.5.1 Council's obligations in respect of controlled entities

Council must adhere to the obligations outlined in sections [16\(1B\)](#) and [16A](#) of the Act in respect of the controlled entities, which include, amongst others, the following limits on activities and functions, and governance requirements and arrangements.

### 5.5.2 Limits on activities and functions

- a. Council shall require each controlled entity to agree to observe the same limits on its activities and functions as apply to the university itself. This is to be achieved by requiring the inclusion of an appropriate limitation provision in the constitution of the controlled entity, or a formal commitment by those in charge of a controlled entity (eg board of directors).
- b. Council shall secure the agreement of those in charge of a controlled entity to provide it with sufficient information about its functions and activities on a regular basis to enable Council to satisfy itself that the activities and functions of the controlled entity remain within the limits imposed on the university itself.

### 5.5.3 Governance requirements and arrangements

- a. Council must discharge the obligations outlined in sections [16\(1B\)](#) and [16A](#) of the Act in respect of the university's controlled entities subject to, and within, the general framework of corporations law and prudential risk management considerations to safeguard the university's interests and limit the university's liability.
- b. As far as is reasonably practical, Council must ensure that the board of directors of or other persons responsible for managing the affairs of each controlled entity:
  - i. possess the expertise and experience necessary to provide proper stewardship and control, and that where possible, comprise at least some members who are not members of Council or members of staff or students of the university, and
  - ii. adopt and evaluate their own governance principles.

- c. The board of directors of or other persons responsible for managing the affairs of each controlled entity must ensure that appropriate and effective evaluation, risk management, independent audit and accountability processes are in place. In assessing the adequacy of such processes, Council and the board of the controlled entity should have regard to the comparable requirements for such processes under the Act and this policy.
- d. As far as is reasonably practical, Council must ensure that the controlled entity documents include, and keep updated, a corporate or business strategy containing achievable and measurable performance targets.
- e. To enable Council to satisfy itself that the directors or others responsible for managing the affairs of a controlled entity continue to meet the responsibilities specified in (a) to (c) above, Council must obtain:
  - i. regular relevant information and reports of the nature, operation and efficacy of the relevant systems and processes
  - ii. expert assessment and evaluation of the nature, efficacy and adequacy of the relevant systems and processes, and
  - iii. the identification of such amendments, additions and improvements to the systems and processes as Council believes are necessary to ensure that those systems and processes are adequate and appropriate.
- f. The framework for the regular reporting detailed in subsection (e) above is contained in Council's Controlled Entities Reporting Protocol, which is provided as Appendix 1 to this policy.
- g. Council may at any time declare that any particular commercial activity, or class of commercial activities, shall be subject to additional processes and systems for assessment and approval.
- h. Council may at any time request that UTS management work with the management of a controlled entity to review whether any particular commercial activity, or class of commercial activities, proposed to be undertaken by a controlled entity, should be subject to processes and systems more closely aligned or consistent with those that are employed by the university for its own commercial activities.

## **5.6 Conflicts of interest in relation to commercial activities**

- a. The requirements for the disclosure of material interests by members of Council and its committees, as detailed in [Schedule 2A](#) of the Act, in particular [section 5](#), are applicable to all university commercial activities.
- b. University staff shall be regularly made aware of their responsibilities under the [Code of Conduct](#) in relation to declaring conflicts of interest. Council may direct from time to time the development of particular codes and protocols relating to the management of conflicts of interest in specific circumstances.

## **5.7 Register of commercial activities**

### **5.7.1 Establishing and maintaining the Register**

- a. The Council shall establish and maintain, in accordance with [section 21C](#) of the Act, a Register of university commercial activities (the Register). The Register must be directly accessible to members of Council under conditions determined by Council from time to time and recorded in the minutes of Council.
- b. The Register is maintained by the UTS Commercial Unit.

### **5.7.2 Information to be included in the Register**

- a. The Register will contain the following details for each commercial activity:

- i. a description of the activity
  - ii. details of all parties who participate in the activity
  - iii. details of any appointment by or on behalf of the university to relevant boards or other governing bodies
  - iv. details of any meetings at which relevant matters were considered and approved for the purposes of compliance with the policy, and
  - v. such other details as Council may require.
- b. The Register must contain the following information in respect of controlled entities and their commercial activities:
- i. information concerning the controlled entity required by [section 21C\(1\)](#) of the Act, and including the basis upon which it was established, formal status of the entity, names of the directors or other persons responsible for managing the affairs of the entity, a short statement of their qualifications and experience, a summary of the governance arrangements and processes that have been established by the entity in respect of its own commercial activities, and details of where further information about the entity, including all reports received from the controlled entity, can be obtained; and
  - ii. information of a nature, quality and extent that is equivalent to information concerning the university's own commercial activities, in relation to those activities or classes of activities for which Council has made a declaration or request under subsection 5.5.3(g) or (h) above.
- c. Information in relation to activities covered by subsection (b) above may be contained in a separate subsection of the Register relating to controlled entities.

### **5.7.3 Exemptions**

- a. In accordance with [section 21C](#) of the Act, Council may from time to time:
- i. exempt specified activities or activities of a specified class from all or specified requirements of the Register
  - ii. alter the details to be included in the Register in respect of specified activities or activities of a specified class, and
  - iii. determine that specified activities may be treated as a single activity for the purposes of the Register.
- b. A record of such determination shall be included in the Register.

### **5.7.4 Amending the Register**

- a. Council may authorise the custodian of the Register to amend or supplement any details included in the Register if:
- i. the custodian considers that the details are inaccurate or incomplete, or
  - ii. there is a change in a proposal or in a commercial activity which necessitates a change in the details included in the Register.

### **5.7.5 Review of the Register**

The Register must be reviewed once every three years by a person or persons designated by the Deputy Vice-Chancellor (Resources). The review shall be conducted in accordance with a self-assessment process developed and overseen by an independent auditor. The purpose of the review is to ensure that the Register is up-to-date and that the information contained is sufficient to meet the purposes of the Act and this policy. A report of each such review must be provided to the Council's Audit and Risk Committee, and then to the Commercial Activities Committee (with any Audit and Risk Committee's comments) for noting.



## **5.8 Review and monitoring of commercial activities**

### **5.8.1 Annual management review**

Every approved commercial activity, or class of activities subject to a declaration under section 5.7.3(a)(iii), must be reviewed at least annually by the management representative responsible for the activity. The following information shall be included in each annual review:

- a. identification of any significant changes to the activity, including changes to the risks involved, or the financial basis of the activity, and
- b. in light of the above, a recommendation as to whether the activity should be modified or ceased, or
- c. a statement as to the continuation of the activity for a further period.

In cases where the risk level of the activity indicates that further review is warranted, management shall report by exception to the authority delegated to review the activity (see section 5.4.2 of this policy).

If a recommendation is made under 5.8.1(b) that a commercial activity is to be ceased or modified, this determination will be reported back to the approval authority under 5.4.2 for final decision.

### **5.8.2 Annual review report to Commercial Activities Committee**

Following the annual management reviews conducted in accordance with 5.8.1, the Deputy Vice-Chancellor (Resources) shall prepare an annual report for the Council Commercial Activities Committee including a summary of all commercial activities (or as approved classes of activity), plus more detailed information for:

- a. all activities, or class of activities, valued above the delegated financial level for a Deputy Vice-Chancellor as detailed in section 1.2 of the [Delegations](#) (currently \$2,000,000)
- b. any reviews undertaken under exception reporting in accordance with section 5.8.1, and
- c. any cases in which the delegated approval authority (under section 5.4.2) did not accept a recommendation to cease or modify an activity.

### **5.8.3 Triennial review of all commercial activities**

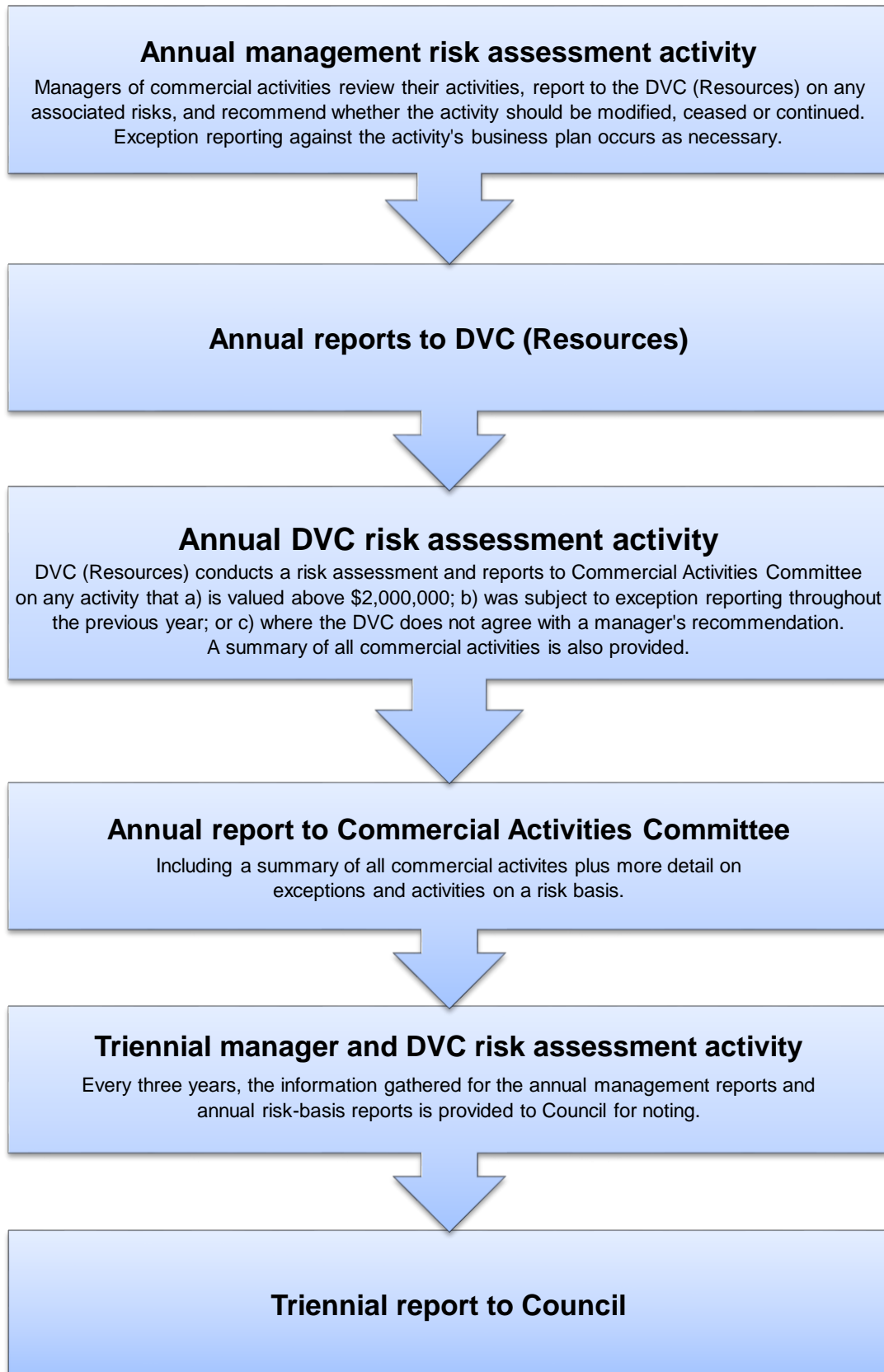
Every three years, the information gathered as part of the annual reviews conducted under 5.8.1 and 5.8.2 shall be provided to the Deputy Vice-Chancellor (Resources) who shall provide a report to the Commercial Activities Committee of all activities contained in the Register.

The Deputy Vice-Chancellor (Resources) will assess the risk arising from any commercial activity involving the ownership of any entity (including an associated company as defined in the [Accounting Standards](#) issued by the [Australian Accounting Standards Board](#)), partnership and joint venture. The Deputy Vice-Chancellor (Resources), where appropriate in light of the risk assessment, will use his or her best endeavours to obtain an auditor's report (including audit certification and management letter) of the entity. The triennial review, to be thereafter provided to Council, will include:

- a. identification of any significant changes to the activity, including changes to the risks involved or the financial basis of the activity, and
- b. in light of 5.8.3(a) above, any determination made, or to be made, as to whether the activity should be modified or ceased, or
- c. justification of the continuation of the activity for a further period.

## 5.8.4 Flowcharts of review and monitoring activities

### 5.8.4.1 All commercial activities



#### 5.8.4.2 Controlled entities



#### 5.9 Breaches of the policy

Breaches of this policy will be dealt with in accordance with the relevant [Enterprise Agreement](#), employment contracts, the [Code of Conduct](#) and Council's resolutions relating to conflicts of interest.

### 6. Roles and responsibilities

#### Accountable Officer

The **Deputy Vice-Chancellor (Resources)** has overall accountability for the enforcement of this policy.

### **Implementation Officer**

The **Deputy Vice-Chancellor (Resources)** has accountability for implementing this policy, including providing education to the university community about the operation of UTS commercial activities.

The Deputy Vice-Chancellor (Resources) or nominee is responsible for authorising corrective action to rectify all breaches of this policy, and must report any activities that may involve corrupt conduct, maladministration, or serious and substantial waste of public funds to the Vice-Chancellor or the Deputy Vice-Chancellor (Corporate Services) as appropriate.

### **Other positions and committees**

**Delegates** as listed in section 5.4.2 have specific responsibilities in relation to this policy.

**Council's Audit and Risk Committee** and **Commercial Activities Committee** receive specified reports in relation to commercial activities as outlined in this policy.

## **7. Version control and change history**

<b>Effective date</b>	<b>Version</b>	<b>Approved by, resolution no. (date)</b>	<b>Amendment</b>
01/09/2015	1	Council, COU/15-4/78 (19/08/2015)	New policy.
29/01/2018	1.1	Acting Director, Governance Support (under Council resolution COU/17-4/78.2e) (17/01/2018)	Various updates to reflect changes to the UTS Delegations.
13/06/2018	1.2	Council, COU/18-3/56 (13/06/2018)	Amendments to section 5.7.5 of the policy regarding the processes for reviewing the register of UTS commercial activities.

## Appendix 1. UTS Controlled Entities Reporting Protocol

This reporting protocol elaborates on the responsibilities outlined in the Commercial Activities Policy.

Following a review by Council's Committee(s), the reports in this schedule marked with an asterisk (\*) are then provided to Council for noting.

No	Frequency	Reporting requirement	Commercial activity	Reviewed by	Responsibility	Timing	Source of requirements
*1	Every 12 months	<p><b>Annual financial reports of controlled entities</b></p> <ol style="list-style-type: none"> <li>1. Audited financial statements for each controlled entity</li> <li>2. Audited consolidated financial statements</li> <li>3. UTS Annual Report including consolidated financial statements and independent auditor's report</li> <li>4. Annual Reports for each entity including audited financial statements and independent auditor's report</li> </ol>	All controlled entities <sup>i</sup>	<p>Commercial Activities Committee (reports 1 and 4)</p> <p>Finance Committee and Council (reports 2, 3 and 4)</p>	Controlled entity board via accountable DVC	<p>Reports 1 and 2 to be provided annually at start of year</p> <p>Reports 3 and 4 to be provided annually, at financial year-end, following the entity's formal approval of the annual report</p>	<p>UTS Council requirement</p> <p><a href="#">Voluntary Code of Best Practice for the Governance of Australian Universities</a> (Voluntary Code), section 12(e)<sup>ii</sup></p>
2	Every 12 months	<p><b>Business plans of UTS controlled entities</b></p> <p>The controlled entity's business plan including an overview of the entity's strategy, measurable performance targets and milestones, and a statement of assurance that the entity has not conducted, and does not plan to conduct, any activity which UTS itself cannot conduct.</p>	Controlled entities	Commercial activities	Controlled entity board via accountable DVC	Annually (first meeting of the year)	<p><i>University of Technology Sydney Act 1989</i><sup>iii</sup> (UTS Act), <a href="#">16A(1) and (5A)(a)(iv)</a></p> <p>Commercial Activities Policy<sup>iv</sup> section 5.5.3(e)</p> <p><a href="#">Voluntary Code</a> 12(d) and (e)</p>

No	Frequency	Reporting requirement	Commercial activity	Reviewed by	Responsibility	Timing	Source of requirements
3	Every 12 months	<b>Governance principles</b> Reviewed written statement of the entity's own governance principles.	Controlled entities	Commercial activities	Controlled entity board via accountable DVC	Annually (year-end)	UTS Act <a href="#">16A(5A)(a)(iii)</a>  Commercial Activities Policy 5.5.3(e)  <a href="#">Voluntary Code</a> 12(c)
4	Every 12 months	<b>External audit documentation</b> 1. Management letters 2. Client service plan 3. Client service report 4. Independent audit report 5. Statutory audit report	Controlled entities	Audit and Risk Committee	Controlled entity board via University Secretary <sup>v</sup> and Commercial Activities Committee	Annually	Council requirement (COU/08-2/31), that controlled entities provide copies of these reports to Audit and Risk Committee and Council.  Commercial Activities Policy 5.5.3(e)  <a href="#">Voluntary Code</a> 13
*5	Every 12 months	<b>External audit documentation</b> Auditor-General's Report to Parliament on the operations of each entity	Controlled entities	Audit and Risk Committee and Council	Auditor General via University Secretary and accountable DVC	Annually	Council requirement (COU/08-2/31)  Commercial Activities Policy 5.5.3(e)
6	Every 12 months	<b>Assessment of UTS risk arising from controlled entities</b> An assessment of the risks incurred by UTS as a result of the operations of the controlled entities	Controlled entities	Commercial Activities Committee	Accountable DVC	Annually	Council requirement (COU/08-2/31)  Commercial Activities Policy 5.2

No	Frequency	Reporting requirement	Commercial activity	Reviewed by	Responsibility	Timing	Source of requirements
7	Every 3 months	<p><b>Quarterly reports of UTS controlled entities</b></p> <ol style="list-style-type: none"> <li>1. Advice of new directions and emerging opportunities, major activities including special projects, emerging significant risk, establishment/ disestablishment of subsidiaries.</li> <li>2. A brief statement on the entity's achievement of performance targets and milestones including a statement of financial position against budget.</li> <li>3. Advice of any significant failures of the entity's risk management or compliance management frameworks and corrective action, together with any significant threatened litigation, disputes or complaints.</li> <li>4. Advice of any impending changes to the membership of the entity's board and senior management and an assessment of the skills, knowledge and experience required of any new board member(s) to ensure that the board as a whole, with senior management, can continue to provide proper stewardship and control of the entity, and to</li> </ol>	Controlled entities	Commercial Activities Committee, and by exception to Council	Controlled entity board via accountable DVC	After each quarter	<p><a href="#">Voluntary Code 12(e)</a> and Commercial Activities Policy 5.5.3(e) (reports 1 and 2)</p> <p><a href="#">Voluntary Code 12(e)</a> and 13 and Commercial Activities Policy 5.5.3(e) (report 3)</p> <p>UTS Act section <a href="#">16A(5A)(a)(i)</a>, <a href="#">Voluntary Code 12(a)-(b)</a>, and Commercial Activities Policy 5.5.3(e) (report 4)</p>

No	Frequency	Reporting requirement	Commercial activity	Reviewed by	Responsibility	Timing	Source of requirements
		ensure that at least some directors are non-UTS.					
8	Triennial	<b>Review of the Register of commercial activities</b> Triennial review of the Register to ensure its integrity and that it contains all the information required under the UTS Act and Commercial Activities Policy.	Every approved commercial activity on the Register, including controlled entities	Audit and Risk Committee	Designee of the DVC (Resources)	Triennially (from 2015)	Commercial Activities Policy 5.7.5
9	Annual	<b>Annual management review of commercial activities</b> Management review of the activities in accordance with policy section 5.8.1.	Every approved commercial activity, or class of activities, including controlled entities (see section 5.7.2)	None  Exception and high-risk reporting to Commercial Activities Committee	Management representative responsible for the activity	Once a year (normally year-end)	Commercial Activities Policy 5.8.1
10	Annual	<b>Annual review report to Commercial Activities Committee</b> Following the annual management reviews conducted in accordance with 5.8.1 of the policy, the Deputy Vice-Chancellor (Resources) shall prepare a report for the Council Commercial Activities Committee in accordance with 5.8.2.	Every approved commercial activity, or class of activities, including controlled entities (see section 5.7.2).	Commercial Activities Committee	DVC (Resources)	Once a year (normally year-end)	Commercial Activities Policy 5.8.2



No	Frequency	Reporting requirement	Commercial activity	Reviewed by	Responsibility	Timing	Source of requirements
*11	Triennial	<p><b>Review of all commercial activities</b></p> <p>Every three years, the information gathered as part of the annual reviews conducted under 5.8.1 and 5.8.2 of the policy shall be provided to the Deputy Vice-Chancellor (Resources) who shall provide a report in accordance with 5.8.3 to the Commercial Activities Committee of all activities contained in the Register, to be thereafter provided to Council.</p>	Every approved commercial activity, or class of activities, including controlled entities (see section 5.7.2)	Commercial Activities Committee and Council	DVC (Resources)	Triennially (from 2015)	Commercial Activities Policy 5.8.3

<sup>i</sup> The UTS controlled entities are accessUTS Pty Ltd, Insearch Ltd and UTS Global Pty Ltd.

<sup>ii</sup> [Voluntary Code of Best Practice for the Governance of Australian Universities](#).

<sup>iii</sup> [University of Technology Sydney Act 1989 \(NSW\)](#) (UTS Act).

<sup>iv</sup> [UTS Commercial Activities Policy](#), as approved by Council (19/08/2015).

<sup>v</sup> The University Secretary will coordinate the submission of reports with the board of each UTS controlled entity, or with the contact officers they designate.