

ITEM 8

POLICY REVIEW - LAND AND EASEMENT ACQUISITION AND DISPOSAL COUNCIL POLICY

The Land and Easement Acquisition and Disposal Council Policy has been reviewed as part of Council's rolling review schedule of its policies. The Policy has been revised to:

- 1 ensure all dealings (whether that be land, interests in land or road) are considered.
- 2 comply with legislative changes; and
- 3 update formatting to suit the current Council Policy template.

RECOMMENDATION

Council adopt the revised Land and Easement Acquisition and Disposal Council Policy.

REPORT AUTHORISATIONS

Report of: Lani Richardson, Manager Commercial Operations + Property

Authorised by: Kerry Hunt, Director Community Services - Creative and Innovative City

ATTACHMENTS

- 1 Land and Easement Acquisition and Disposal Council Policy

BACKGROUND

The Land and Easement Acquisition and Disposal Council Policy (the Policy) was initially adopted in 2010, with further revisions in 2013 and 2017. The purpose of the Policy is to provide a clear and consistent framework for Council's land dealings that ensures transparency and adheres to relevant legislation. Recent legislative changes, such as the introduction of the *Crown Land Management Act 2016* and amendments to the *Roads Act 1993* (NSW), and the need for a policy that broadly considers all of Council's potential land dealings, has predicated a review of this Policy.

Changes to the Policy are listed below:

- 1 Removal of the Statement of Procedure, which will be included in a revised Land & Easement Acquisition & Disposal Procedure, whilst retaining key requirements such as the criteria for determining whether land is surplus to Council's requirements.
- 2 Removal of the statement that a sale price may vary by up to 10% over or under the assessed market value, as this may suggest that Council is willing to pay a premium for the acquisition of land; although in some specific circumstances there could be a reason why Council would look to pursue a purchase above market value. Any proposal for Council to agree to a purchase price that varies from the assessed market value shall require a resolution of Council that authorises the General Manager to finalise the purchase price. This will be dealt with in further detail in the Land & Easement Acquisition & Disposal Procedure.
- 3 Improved readability, with a focus on plain English terminology.
- 4 Updated formatting to comply with the current Council Policy template.
- 5 Addition of Council's dealings with roads, such as dedication and closure.
- 6 Review of Council's policy regarding dealing with easements.
- 7 Changes to reflect other Council policies, ensuring consistency and best practice.

PROPOSAL

It is proposed that Council adopt the revised Land and Easement Acquisition and Disposal Council Policy.

CONSULTATION AND COMMUNICATION

Consultation was undertaken with:

- Legal Services
- Land Use Planning
- Financial Services
- Infrastructure Strategy and Planning

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 4 – *'We are a connected and engaged community'*.

It specifically delivers on the core Business of Property Services, in particular *'manage Council's commercial property portfolio including purchase, sale and leasing'*.

CONCLUSION

The revised Land and Easement Acquisition and Disposal Council Policy provides Council with a clear and consistent framework for Council's land dealings that ensures transparency and adheres to relevant legislation.



LAND AND EASEMENT ACQUISITION AND DISPOSAL COUNCIL POLICY

ADOPTED BY COUNCIL: : [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

Council from time to time acquires and disposes of land or interests in land. This policy aims to provide a framework that ensures transparency and adheres to relevant legislation.

POLICY INTENT

The main objectives of this policy are to:

1. Establish the criteria under which Council will consider acquisition and disposal of land or interests in land.
2. Ensure that Council has open and accountable processes to consider the acquisition and disposal of land or interests in land.
3. Ensure optimal financial return and minimum risk is achieved in Council land dealings.
4. Ensure impartiality and probity in Council land dealings.

WOLLONGONG 2032 OBJECTIVES

This policy supports our Community Goals outlined in Wollongong 2032, with interconnected objectives being:

1. We value and protect our environment.
2. We have an innovative and sustainable economy.
3. We have a creative, vibrant city.
4. We are a connected and engaged community.
5. We have a healthy community in a liveable city.
6. We have affordable and accessible transport.

This Policy contributes to Goal 4 – “we are a connected and engaged community” specifically, the Core Business of Property Services, in particular “manage Council’s commercial property portfolio including purchase, sale and leasing”.

POLICY

When acquiring and disposing of land and interests in land, Council will ensure due probity of process, optimal financial return and minimal risk in accordance with its statutory obligations.

Dealings involving land

General principles

Under the provisions of the *Local Government Act 1993*, all land owned by Council (excluding public roads) must be classified as either Community land or Operational land.

Community land includes land intended for public access and use (e.g. public reserves) and is managed in accordance with the *Local Government Act 1993*.

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Operational land does not have any specific legislative restrictions other than those that may apply to any piece of land e.g. planning restrictions. Land classified as Operational includes commercial and residential property (either held for operational purposes, capital gain or providing rental yields).

Public roads are managed in accordance with the *Roads Act 1993*.

All acquisitions and disposals of land (including roads) are subject to Council resolution, except where community land is dedicated to Council through subdivision or as a condition of development consent.

Land acquisitions

Council may acquire land by agreement or compulsory process in accordance with the provisions of the *Local Government Act 1993*, the *Roads Act 1993* and the *Land Acquisition (Just Terms Compensation) Act 1991*.

When assessing potential acquisitions, Council should consider the following:

1. Whether the acquisition complies with the exercise of Council's functions under the *Local Government Act 1993*.
2. The acquisition purpose, strategic nature of the site and value to the community. For compulsory acquisitions, land must be acquired for a public purpose.
3. Where land parcels are listed for sale on the open market, the terms of sale.
4. Where land parcels are not listed for sale on the open market, compliance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
5. The classification of land, as either Operational or Community land or dedicated as Road.

Land disposals

Council will only dispose of land (including public road) surplus to Council's requirements or if there is strategic merit and otherwise in accordance with any statutory requirements (such as the sale of land for unpaid rates).

Community land cannot be sold unless it is reclassified to Operational land.

When assessing whether a land parcel (whether Community or Operational) is surplus to Council's requirements, Council should consider the following:

1. Statutory restrictions or limitations to disposal, such as actual or implied trusts.
2. Existing use, considering operational, community and/or recreational needs.
3. Potential future use for Council's operational purposes.
4. Spatial distribution, considering existing facilities in the vicinity of the land parcel.
5. Conservation, ecological or cultural value.
6. Any site constraints, for example, flooding, land slip or mine subsidence.
7. Maintenance considerations.
8. Financial impacts associated with the potential disposal.

If land is surplus to Council requirements, Council will determine the most appropriate method of disposal, set out below:

1. Disposal on the open market via public auction or EOI process – where land is capable of being sold on the open market and able to be developed independently. In this case, the General Manager will set the reserve price based on a valuation obtained from an independent certified valuer.
2. Disposal by direct negotiation – in circumstances where:

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- a. The cost of an open market process exceeds the expected community benefit/value of the land.
- b. The land, due to its size, cannot be developed on its own and the only potential purchaser would be an adjoining landowner. In circumstances where there are two or more adjoining landowners, each landowner will be offered a proportionate share.
- c. Council is bound by a contractual obligation.
- d. Where the transaction involves a government or utility authority for the delivery of public infrastructure subject to any relevant legislation, for example the *Land Acquisition (Just Terms Compensation) Act 1991*.
- e. Where an open market process undertaken in the last 12 months has failed to achieve Council's desired outcome.
- f. In response to a proposal which achieves specific policy or strategic goals of Council. This criterion enables Council to respond to an approach for the development of a unique project, however, must be considered together with Council's Unsolicited Proposals Policy and Public Private Partnerships Policy.
- g. Recommendations noted in the Independent Commission Against Corruption (ICAC) (NSW) Direct Negotiations: Guidelines for Managing Risks are considered and complied with where appropriate.

Dealings involving interests in land

Council deals with interests in land such as easements, restrictive covenants and positive covenants. The granting or release of interests will be subject to the requirements of the *Local Government Act 1993* including requiring a Council resolution where applicable.

When dealing with interests on Council owned land, Council will consider the same principles that apply to *Land Acquisitions* and *Land Disposals* above as applicable.

Dealings involving roads

General principles

Council can only deal with roads for which it is the roads authority, in accordance with the *Roads Act 1993*.

Council is the roads authority for Council public roads and regional classified roads within the Wollongong Local Government Area.

The Minister administering the *Crown Land Management Act 2016* is the roads authority for Crown roads.

Transport for NSW is the roads authority for freeways and state classified roads.

Dedication of roads

Council has the power to dedicate certain land as public road in accordance with the *Roads Act 1993*.

Road closure / disposal

Council has the power to close Council public roads under the *Roads Act 1993*.

Council may only close and dispose of roads that are formed and are considered surplus to Council's requirements in accordance with the principles outlined under *Land Disposals* above and the provisions of the *Roads Act 1993*.

Generally, Council does not support the closure and disposal of unformed roads because unformed roads vest in the Crown upon closure. Only in exceptional circumstances, where the applicant can demonstrate that the unmade road remaining open is detrimental to their property will Council consider processing an unmade road closure application.

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Valuation Requirements

When Council proposes to acquire or sell land, Council will obtain a valuation from an independent certified valuer to establish the market value, considering highest and best use and any conditions relevant to the acquisition/disposal (for example specific valuation requirements under the Voluntary Purchase Scheme or the *Land Acquisition (Just Terms Compensation) Act 1991*). This ensures due probity, accountability, transparency, and best value for the community.

In addition to the above, where Council proposes to sell land via direct negotiation and the value of the land is greater than \$1 million, Council will obtain a second independent valuation or peer review from a certified valuer.

Where the sale or disposal of Council land is conditional upon circumstances such as the determination of a development application, road closure or LEP amendment, and settlement is not achieved within one year of in-principle agreement or Council resolution, Council will at Council's discretion obtain an updated market valuation to inform the revised purchase price. Settlement will not proceed until the parties have agreed on the purchase price, as revised.

LEGISLATIVE REQUIREMENTS

The following instruments of legislation must be considered and are applicable to this policy (as amended from time to time):

- *Local Government Act 1993*
- *Roads Act 1993*
- *Real Property Act 1900*
- *Conveyancing Act 1919*
- *Land Acquisition (Just Terms Compensation) Act 1991*
- *Strata Schemes Management Act 2015*
- *Crown Land Management Act 2016*
- *Environmental Planning and Assessment Act 1979*
- *Native Title Act 1993*
- *Community Land Management Act 1989*
- *Aboriginal Land Rights Act 1983*

If there are any amendments to legislation that are contrary or inconsistent with this policy, then the amended legislation will prevail to the extent of the inconsistency.

REVIEW

This Policy will be reviewed a minimum of once every term of Council, or more frequently as required.

REPORTING

Council maintains a public land register which is updated each time that Council acquires or disposes of land or an interest in land.

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ROLES AND RESPONSIBILITIES

Council

The elected Council has final responsibility for the approval of any dealings in land. If a proposal is considered acceptable a Council resolution will be required to progress and finalise the proposal.

Property Services

Council's Statutory Property team, along with the Property Services Manager and the Manager Commercial Operations & Property are responsible for implementing this Policy.

Advisers

Advisers must follow all governance and probity requirements. The following key advisers may be appointed, as required, to provide specialist expertise to assist in scoping and assessment:

- Legal
- Financial
- Environmental
- Valuation services
- Survey services
- Probity advisors
- Real estate advisors

RELATED PROCEDURES

Land & Easement Acquisition & Disposal Procedure

Road Closure Procedure

Reclassification Procedure

APPROVAL AND REVIEW	
Responsible Division	Commercial Operations & Property
Date adopted by Council	
Date/s of previous adoptions	29 May 2017 11 November 2013 30 March 2010
Date of next review	This Policy will be reviewed a minimum of once every term of Council, or more frequently as required.