



Land and Easement Acquisition and Disposal

POLICY OBJECTIVE

To establish criteria for land, property and easement acquisitions and disposals.

LEGISLATIVE PROVISIONS

Local Government Act 1993
Local Government (General) Regulations
Environmental Planning and Assessment Act 1979
Land Acquisition (Just Terms Compensation) Act 1991
NSW Property Acquisition Standards
Real Property Act 1990
Real Property (Legal Proceedings) Act 1970
Conveyancing Act, 1919
Biosecurity Act 2015
Biodiversity Conservation Act 2016

POLICY STATEMENT

Council (as custodian of public assets) acquires and disposes of all property interests in an open market format to ensure due probity of process and optimal financial return (and minimal risk). All registered dealings for the acquisition of land and property or the disposal of Council owned land and property can only be achieved through a resolution of Council.

Land Acquisitions

Section 186 of the *Local Government Act 1993* prescribes what purposes Council can acquire land and property for, as follows:

1. *A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.*
2. *Without limiting subsection (1), a council may acquire:*
 - a. *land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or*
 - b. *land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.*

Land Disposals

Where land (including surplus areas of public road, both formed and unformed) is capable of being sold on the open market and able to be developed independently of any other property, the sale shall be by competitive process involving public auction, tender or expression of interest unless circumstances warrant sale by Direct Negotiation. For public auction, the Chief Executive Officer and Business Manager Property & Community Services will recommend the reserve price to Council in a Closed Session Report based on written advice obtained from independent registered valuation consultants.

When considering the disposal of any land or property, Council shall weigh-up social, community, environmental, engineering, and economic considerations versus a range of divestment options.

Easements

Easements are a registered legal right over private property for Council to use land for a specific purpose (drainage easement, easement in gross for access etc) and can be in the

form of a covenant restricting the use of privately owned land (i.e. Restriction as to User for unstable land etc) or can be a Positive Covenant that requires a land owner to use and/or maintain the site for a specific use (eg. maintain detention basin etc).

Where Council requires an easement over a private property and the easement is not created in a subdivision or as a condition of development consent, compensation may be payable to the landowner and shall be paid to the respective landowner where appropriate. The amount of compensation shall be assessed by a registered valuation consultant in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* and the *NSW Property Acquisition Standards*.

Where a Council easement over private land is no longer required, Council can agree to the extinguishment of that easement at the request of the affected landowner. Where appropriate, Council can seek compensation from the landowner for the benefit of that extinguishment as determined by the independent registered valuation consultant.

Criteria

The acquisition or sale of Council-owned land and property, easements or public road shall be undertaken in accordance with the following criteria aimed at ensuring a transparent process and maximising income for Council.

ACQUISITION OF LAND AND EASEMENTS

Acquisition Criteria

1. Section 186 of the *Local Government Act 1993* prescribes what purposes Council can acquire land for, as follows:

A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.

1.2 Without limiting subsection (1), a council may acquire:

- (a) land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or*
 - (b) land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.*
2. Properties are identified taking into consideration the purpose for which they need to be acquired, the strategic nature of such properties and the value that such properties have to the community.
3. Where properties are listed for sale on the open market, council officers negotiate the terms of purchase with either the vendor or the vendor's agent.
4. Where properties are not listed on the open market, Council officers arrange a valuation report as a basis for negotiation and the valuation report be attached to the report submitted to Council, as required.
5. For all land and easement acquisitions for properties not listed on the open market, the acquisition must be undertaken in strict accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* and the *NSW Property Acquisition Standards*.
6. Authority to compulsorily acquire land is granted under the *Roads Act 1993* or the *Local Government Act 1993*.
7. Any negotiations be on the basis that a formal offer cannot be made until Council has considered a report authorising purchase of the property or registration of an easement.

8. In the event of a formal valuation being obtained, this be used as a guide in any negotiations and subsequent Closed Session Report to Council.
9. At the time of acquisition, Council must resolve the classification of the land to be either Operational or Community land as defined in the *Local Government Act 1993*.

DISPOSAL OF LAND

Disposal Criteria

Land and buildings are to be tested against several criteria to determine whether the land and property is retained and developed for community use or developed or sold to realise its full commercial and/or other potential.

Seven (7) criteria contained in the assessment are:

1. Statutory influences (restrictions or limitations) – are there statutory reasons for the Council ownership of the property? This will extend to actual or implied trusts that have been established because of Council’s acquisition of the land.
2. Existing usage – Is the land used or likely to be used to meet operational, community or recreational needs in accordance with respective strategic or operational plans.
3. Potential future use – is the land or road likely to be required for Council’s operational needs.
4. Spatial distribution – are there adequate-like facilities and opportunity to meet future needs in the area and serving the local community?
5. Conservation value – does the land or road have cultural, natural or heritage value that should be maintained?
6. Site constraints and opportunities – in addition to conservation value, are there other site constraints which may extend to, but not restricted to, flood liability, land slip, mine subsidence or other physical impairment?
7. Maintenance issues – what maintenance requirement does Council have for the land?

Should the proposed sale be impacted by any of these matters, the request shall be refused unless it can be demonstrated that there is a public and/or economic benefit to the sale or the contract conditions can be structured to ensure that the issue is addressed.

Version	Council Meeting Date	Resolution	Adoption Date	Effective From
1	18 July 2017	2017/317	18 July 2017	18 August 2017
2	6 September 2022	2022/315	6 September 2022	4 October 2022
All policies can be reviewed or revoked by resolution of Council at anytime.				

DIRECTORATE: Corporate & Community Services

BUSINESS UNIT: Property & Community Services