

POLICY

Acquisition and Disposal of Council Real Estate Assets

Date adopted by Council	27 July 2020
Minute number	C.07.2.7
Endorsed by	Senior Management Group Upper Hunter Shire Land Committee
CM Ref	CD-148/21
Due for review	
Related documents	Procedure: Acquisition and Disposal of Council Real Estate Assets
Responsible officer	Property & Business Coordinator
Department/Section	Corporate Services / Business Services
Category	Financial & Asset Management
Community Strategic Plan goal	<p>Goal 5 A sustainable and prosperous economy Goal 8 Provide Community leadership</p> <p>CS19 Encourage retail and commercial business to locate and prosper within our Shire. CS36 Effective management of risk underpins all Council decisions, service delivery and behaviours. CS37 Ensure long-term financial sustainability through short, medium and long term financial planning.</p>



Policy Statement

Council is committed to ensuring an open, fair, transparent and accountable process in the acquisition and disposal of Council’s real estate assets, while obtaining best value for money and avoiding and conflicts of interest, real or perceived.

Objective

The main objectives of this policy are to:

1. Ensure that Upper Hunter Shire Council has open and accountable processes to consider the acquisition and disposal of land assets
2. Ensure best value is achieved in Council land dealings
3. Establish the criteria under which Council will consider acquisition and sale of land and easements.

Scope

This policy provides clear guiding principles for the disposal and acquisition of Council real estate (land and buildings). A probity plan is inherent in this policy for ensuring overall fairness and integrity in the acquisition and disposal of Council’s assets.

This policy applies to all Councillors and Council Officers of Upper Hunter Shire Council.

Definitions

Act	<i>Local Government Act 1993 (NSW)</i>
Real Estate	Includes land as a physical entity including buildings, structures or improvements to land or land covered by water or a strata lot or unity. Land also includes a legal estate or interest such as a leasehold estate.
Council Officers	All staff
Elected Members	Mayor and Councillors



Policy Details

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

Land Acquisitions

1. Section 186 of the *Local Government Act 1993* prescribes what purposes Council can acquire land for, as follows:
 - a. A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.
 - b. Without limiting subsection (1), a council may acquire:
 - I. land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or
 - II. 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.
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.
6. Authority to compulsorily acquire land is granted under the Roads Act 1993 or the Local Government Act 1993 and must be for a public purpose.
7. An offer is made subject to Council's consideration and resolution of a staff recommendation to purchase the property.
8. In the report to Council, the classification of the land must be resolved as either Operational or Community land.



Land Disposals

1. Disposal of land will be consistent with Council's economic, social and/or environmental objectives.
2. At all times, the disposal of land will be conducted in a manner that maximises returns whilst ensuring open and effective competition.
3. Commercial confidentiality will apply to negotiations for disposal of real estate asset transactions unless Council determines otherwise.
4. Land and buildings are to be tested against a number of criteria to determine whether the property is:
 - a. Retained and developed for community use, or
 - b. Developed for operational/commercial purposes, and/or
 - c. Sold to realise its commercial potential.
5. The seven (7) criteria contained in the assessment are:
 - a. **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 as a result of Council's acquisition of the land.
 - b. **Existing usage** – Is the land used or likely to be used to meet operational, community or recreational needs?
 - c. **Potential future use** – is the land or road likely to be required for Council's operational needs?
 - d. **Spatial distribution** – are there adequate like facilities and the opportunity to meet future needs in the area and serve the local community?
 - e. **Conservation value** – does the land or road have cultural, natural or heritage value that should be maintained?
 - f. **Site constraints** – Are there site constraints which may extend to (but are not restricted to) contamination, flood liability, land slip, mine subsidence or other physical impairment?
 - g. **Maintenance issues** – what is the cost benefit to Council of retaining or disposing of the land? Should the proposed sale have an adverse impact on Council by any of these matters, the request may be refused.



Method of Disposal

Where land (including surplus areas of public road) 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 as set out below:

1. **Where the total cost of the public sale process will exceed the expected community benefit.** For example, where the land is worth \$1,000 and the cost to market the land is \$5,000.
2. **Where there is only one identifiable purchaser.** For example, where a site is not large enough for development in its own right (including a portion of road reserve). Where a site adjoins two owners such as laneways, they will each be offered 50%.
3. **Where Council is bound by a contractual obligation.** For example, a tenant with a first right of refusal, where that tenancy has been entered into as a result of public competition.
4. **Disposal of land to a government or utility authority for the purpose of infrastructure provision.**
5. **Where a public marketing process which has been undertaken within the last 12 months in accordance with this policy has failed to achieve the desired outcome.**
6. **In response to a proposal which achieves specific policy goals of Council.** This exclusion aims to allow Council to respond to an approach for the development of a unique project. Any such proposal must comprise a concept plan and description of the project and clear demonstration of the achievement of specific policy and strategic goals and objectives of Council, e.g. a land-swap transaction.
7. The report to Council covering these sales will identify the reasons why this sale process was chosen.

An open competitive process is the preferred process for the disposal of all surplus land, excepting non-marketable land. As such, Council should seek one of the following methods of disposal taking into account market strength and other economic community and social conditions which may limit the full realisation of the value of the surplus land:

- **Expressions of interest** – where land involves unusual properties capable of a variety of development which would otherwise make valuation difficult.
- **Tender** – for high value property
- **Auction** – the preferred method of disposal for all land other than non-marketable land.
- **Private treaty** – in the event that a property is not sold at auction, Council may:
 1. Directly negotiate a sale itself by advertising the property for sale at the valuation price; or
 2. Call for expressions of interest from local real estate agents which address criteria – see below.



Valuation

At least one formal market valuation undertaken by a valuer registered to value such property is required to be commissioned prior to all property disposals. Two valuations may be required when the value of the property is likely to exceed \$500,000 and/or the process of disposal is not competitive (as defined below).

Proceeds of Sale

Council will use the proceeds from the sale of 'operational' Land to leverage investment or strategic outcomes. This may include generating private investment that creates jobs or a range of services that normally require residents to travel outside the Shire.

Council may also use funds generated from land disposal to leverage acquisition of other land critical to the orderly development of important urban or environmental areas and to supplement its revenue sources and minimise the demand for increasing rates above rate-pegging, or a reduction in services.

Easements

Easements are a right over a 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 land (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 (maintain detention basins etc).

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

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

Variation

Council reserves the right to vary the terms and conditions of this Policy subject to a report to Council.

Procedures

Refer to the Acquisition and Disposal of Council Real Estate Assets procedure



Responsibilities

Councillors (policy template only)

Councillors will ensure all real estate acquisitions and disposal are in line with this policy

Senior Management Group

The Senior Management Group will ensure the Policy and the Acquisition and Disposal of Council Real Estate procedure is adhered to

Particular/relevant Director

The Director Corporate Services will ensure all staff follow this Policy and the Acquisition and Disposal of Council Real Estate procedure is adhered to

Particular/relevant Manager

The Manager Business Services will adhere to the Policy and the Acquisition and Disposal of Council Real Estate procedure

Particular/relevant Coordinators and Supervisors

The Property & Business Coordinator will adhere to the Policy and the Acquisition and Disposal of Council Real Estate procedure



References and Related Legislation

- The Local Government Act 1993 vests authority in Council to sell or exchange Real Property. In respect of this Procedure, “exchange” includes property acquisition and other related activities including Land swaps etc.
- In accordance with Section 377(1)(h) of the LG Act any decision to dispose of Land must be made by resolution of Council, as the power to sell, exchange or surrender Land cannot be delegated.
- Section 45 of the LG Act prevents Council from selling, exchanging or otherwise disposing of community Land other than to become or be added to a Crown Reserve or National Park.
- Section 55 of the LG Act requires tenders to be called in certain circumstances. However, it is not necessary to call tenders for the sale of Land.
- Council’s property activities will be managed within the legislative parameters of the:
 - Local Government Act, 1993;
 - Valuation of Land Act, 1916;
 - Conveyancing Act, 1919;
 - Environmental Planning and Assessment Act, 1979;
 - Residential Tenancies Act, 1987;
 - Land Acquisition (Just Terms Compensation) Act, 1991;
 - Roads Act, 1993;
 - Retail Lease Act, 1994;
 - Crown Lands Act, 1989;
 - Environment Protection and Biodiversity Conservation Act, 2000;
 - National Parks and Wildlife Conservation Act, 1975;
 - Real Property Act, 1919;
 - Regulations under each of the above Acts;
 - Any other legislation applicable to the Procedure.

Version History

Version No.	Date	CM Reference	Reason for Review
1	27/06/2020	INT-14790/17	To replace Council Properties – Policy – Disposal of Surplus Council Land and Buildings – Adopted June 2017
2	Draft	INT-23288/20	Timed review