



Council Policy

Acquisition and Divestment of Land

Table of Contents

Table of Contents	1
Policy	2
1 Scope	2
2 Objectives	2
3 Policy Statement	2
3.1 Land Acquisition	3
3.1.1 Land Acquisition Procedures.....	3
3.1.2 Methods of Acquisition	3
3.2 Land Divestment Review	4
3.2.1 Land Deemed to be Surplus.....	4
3.2.2 Method of Disposal.....	4
3.2.3 Disposal below Market Value	5
3.2.4 Sale to Adjoining Owners	5
3.2.5 Sale of Roads – <i>Roads Act 1993</i>	6
3.3 Form of Contract.....	6
3.4 Goods & Services Tax.....	7
3.5 Delegated Authority	7
3.6 Confidentiality	7
3.7 Valuation Process.....	7
3.8 Departure from this Policy	8
Controlled Document Information	9

Policy

1 Scope

To define the criteria which Council must consider prior to acquiring or divesting of land and outlining the processes to be undertaken to ensure the policy's objectives are realised.

2 Objectives

Council must have regard to the following fundamental objectives when acquiring or divesting of land:

i. Best Value for Money

Achieving "best value" may include financial, social and environmental benefits.

ii. Transparency

Processes that appropriately balance openness to scrutiny with commercial confidentiality.

iii. Accountability

Demonstrates the best use of public resources and the highest level of performance through appropriate record keeping and audit trails.

iv. Impartiality

Prevent or address any actual or perceived conflicts of interest ensuring fairness and equity.

3 Policy Statement

The purpose of this policy is to describe the manner in which Lake Macquarie City Council (Council) will undertake the acquisition and divestment of land in conjunction with legislation by providing Council with:

- a document reference to guide its decision making process;
- an endorsed framework to enable and pursue land acquisition and divestment opportunities of merit;
 - to provide the principles, framework, responsibilities and processes for Council's officers to account for and manage the acquisition and disposal of Council's land assets;
 - to identify, manage and mitigate the risks associated with the acquisition and disposal of land;
 - to ensure that in acquiring and disposing of land the objectives of the policy are adhered to;
 - to recognise the complexity of land transactions, applying discretion and flexibility in achieving outcomes and best use of the available methods of sale (i.e. auction, private treaty, tender etc.) and;
 - to acknowledge that Council is the custodian and trustee of public assets and is required to effectively account for and manage such public assets.

3.1 Land Acquisition

3.1.1 Land Acquisition Procedures

Council will acquire land for the purpose of carrying out its functions under the *Local Government Act 1993*.

Upon identification of a land acquisition opportunity a comprehensive assessment of the land must be conducted including, but not limited to:

- due diligence. This can include but is not limited to legal, environmental, planning and commercial investigations
- a valuation from an appropriately qualified and experienced valuer indicating a maximum price.
- in accordance with the principles and objectives of Council's Integrated Planning Framework;
- identification of funding source and assessment against Council's Long Term Financial Plan;
- identifying any acquisition urgency against goals and/or objectives for the proposed use of the land that is to be acquired, which may warrant an "Incentive Value" payment to secure the acquisition, which may not be reflected in the assessed current market value. Any "Incentive Value" attributed with the acquisition must be referenced when reporting to Council seeking a resolution for the acquisition;
- identification of a justified reason for Council to acquire the property at a price above the current market valuation assessment (i.e. purchaser's premium) in order to guarantee the successful securing of the property to achieve defined goals and objectives of Council or to acquire property with a view to adding value (or reducing risk) to a larger scheme or development (current or future). Prior to the finalisation of the acquisition negotiations, any purchaser's premium is to be identified within the Council report dealing with the matter, including appropriate justification and reference to achievement of specific goals and objectives of Council.

The assessment must be conducted in consultation with the relevant departments within Council. The *Local Government Act 1993* provides "*that all public land must be classified either community or "operational" upon its acquisition*".

While the Chief Executive Officer / General Manager and/or their delegate may make preliminary enquiries and negotiations regarding a possible purchase price, any formal offer is to be conditional upon a resolution of Council authorising the acquisition.

In carrying out their duties, the Chief Executive Officer / General Manager and/or their delegate shall:

- be responsible for the conduct of all negotiations;
- seek such other professional advice as is considered necessary in the circumstances; and
- have regard to the Independent Commission Against Corruption's publication *Direct Negotiations* so far as is appropriate in the circumstances.

3.1.2 Methods of Acquisition

Wherever possible Council's preferred method of acquisition is to acquire land through mutual agreement with the owner of the land. The key methods in the acquisition of land are:

- Opportunistically responding when the desired land is offered to the market;
- Pro-actively initiating negotiations for the desired land; and
- An owner approaching Council to initiate negotiations for the desired land.

Council has an obligation to provide services to the community and if a land acquisition is required for those services and/or public purposes, Council has statutory powers to “compulsorily acquire” land.

Alternatively, should mutual agreement not be achieved and Council invokes its powers to “compulsorily acquire” under the *Land Acquisition (Just Terms Compensation) Act 1991* using the framework provided under that Act.

3.2 Land Divestment Review

3.2.1 Land Deemed to be Surplus

In order to establish whether or not land (vacant or improved) is deemed to be surplus land a process of consultation is required to be completed across relevant departments within Council prior to a sale.

Land that is classified “Community” land and identified as surplus to the community’s needs must be reclassified to “Operational” land in accordance with the *Local Government Act 1993* before it is able to be sold.

3.2.2 Method of Disposal

While the Chief Executive Officer / General Manager and/or their delegate may make preliminary enquiries and negotiate regarding a possible disposal price, any formal offer is to be conditional upon a resolution of Council authorising the disposal.

Members of the public seeking to acquire Community Land from Council should be referred to Council’s Policy for Assessing Public Requests to Reclassify Community Land to Operational Land.

An open competitive process of disposal is preferred utilising one of the following methods:

- **Expression of Interest**

Often used for unusual properties difficult to determine a market value, or where Council seeks to achieve “best value” triple bottom line (TBL) benefits.

- **Tender**

Used predominantly in high value, limited market situations.

- **Auction**

An open and public method, favoured by government bodies, but reliant on high levels of competition. Often achieves a quick sale. Can fail in a poor market.

- **Private Treaty**

Most common method where an asking price is set and negotiated by individuals, usually through a real estate agent (who can be an independent third party to the negotiation process).

Council may approve a non-competitive process of divestment such as direct negotiations, subject to clearly documented and authorised reasons, plus the employment of risk mitigation measures.

Risk mitigation measures for direct negotiations may include:

- obtaining two valuations from appropriately qualified and experienced valuers, where the land may be valued at more than \$500,000 and consequently establishing a range for negotiation, having regard to the two valuations;
- managing conflicts of interest by obtaining declarations of no personal or financial associations; and
- establishing a project specific Probity Plan, describing the manner in which meetings, negotiations, decisions and progress reporting is to be managed and documented.

3.2.3 Disposal below Market Value

Land may be disposed of to achieve strategic outcomes.

In such situations, “best value” may comprise financial, environmental or social elements with the price falling below the “market value” range.

The report seeking resolution of Council should clearly state the reasons for such sale and quantify the amount below market value attributable to each element.

The obligation to obtain a market valuation still exists in accordance with the above in order to provide a measure of the non-financial element of the sale.

3.2.4 Sale to Adjoining Owners

In circumstances where land is not able to be sold in isolation on the open market, such as:

- small parcels;
- undersized lots not permissible to be developed in isolation;
- former road widenings and closed laneways; and
- large commercial sites where improved outcomes may be achieved by selling to adjoining owners.

Where potential purchasers are the adjoining landowners, the land must first be offered in equal proportions to each adjoining owner or apportioned according to adjoining land boundary length or frontage and on similar terms and conditions.

If an adjoining owner does not wish to purchase their proportion of the land, it can similarly be offered to the remaining adjoining owners. Where one or more adjoining owners accept Council's offer to purchase the land, but then decline to proceed with the purchase, Council will again reissue offers to all adjoining landowners.

The recommended method of determining the sale price is the “before and after” method as related to the purchasers land. For small portions of land, the “piecemeal” (\$ rate per square metre) method may be more appropriate.

In most circumstances, a condition of sale is that the purchaser is required to consolidate the subject land with their existing holding at no cost to Council.

Council will consider, on a case-by-case basis, the sale of land to adjoining owners when in the circumstances it can be established that the sale will:

- i) rectify an encroachment on Council’s land
- ii) facilitate future management of any infrastructure assets, and/or
- iii) provide wider social and economic benefits to the community.

3.2.5 Sale of Roads – *Roads Act 1993*

A road, or any part thereof, cannot be sold until it is formally closed in accordance with the provisions of the *Roads Act 1993*.

Road closures can be initiated either by Council or by prospective purchasers who wish to acquire the redundant road following its closure.

When Council initiates the road closure (in order to realise the value of surplus land) all costs are borne by Council as development costs.

In relation to closures initiated by, or on behalf of, prospective purchasers all costs for the closure will be borne by the prospective purchasers.

The agreed purchase price and estimated costs will be reported to Council seeking a resolution agreeing to the application to close the road and dispose of the land in accordance with the terms of the sale.

In accordance with Section 43 of the *Roads Act 1993* any funds realised from the sale of roads are required to be set aside for acquiring land for public roads or for carrying out of work on public roads.

3.3 Form of Contract

A Contract for the Sale & purchase of Land is the document required to sell and acquire land, in all circumstances other than those specifically exempted under the Conveyancing (Sale of land) Regulation 2017, in particular:

- i) a contract between owners of adjoining land that will result solely in an adjustment of a common boundary;
- ii) a contract with the Roads & Martine services for acquisition of land for the purpose of road; and
- iii) a contract for the sale of part or whole of a former public road.

Contracts for the sale of land will usually contain standard conditions of sale. Complex or non-standard Contracts of Sale or Purchase of Land and their conditions, should be drafted in consultation with relevant departments.

Council’s Corporate Legal department is responsible for ensuring that Contracts for the Sale of Land satisfy statutory disclosure and warranty obligations and that title to the land is transferred in accordance with the relevant legislation.

3.4 Goods & Services Tax

Relevant consultation needs to occur with Financial Services to ensure that the relevant application of the Goods & Services Tax is applied to the Contract for Sale of Land.

3.5 Delegated Authority

The Chief Executive Officer / General Manager and/or their delegate shall be responsible for the conduct of all preliminary negotiations for land acquisitions and divestments in accordance with this Policy and/or any resolution of Council, having regard to a valuation provided by an appropriately qualified and experienced valuer and any other professional advice considered necessary to protect Council's interests.

The *Local Government Act 1993* prohibits the delegation of decisions relating to the acquisition or divestment of land. Consequently, a specific resolution of Council is required to acquire or divest of land.

All negotiations must be conducted on the basis that the acquisition is subject to consideration by Council and an appropriate resolution adopted.

3.6 Confidentiality

In the majority of disposals of land, and in some cases the acquisition of land, the information contained in reports to Council may confer an advantage upon another party.

Accordingly, it would be contrary to public interest for Council to deal with such matters in an open session because release of information could prejudice Council's ability to operate in a commercially competitive manner.

Therefore, it is acknowledged that reports to Council on the disposal or acquisition of land will on occasions be deemed confidential in accordance with the *Local Government Act 1993*. This confidentiality may be lifted upon settlement if considered to be in the public interest.

3.7 Valuation Process

When acquiring or disposing of land (vacant or improved) by Council, at least one formal market valuation is to be undertaken by an appropriately qualified and experienced valuer.

When the value of the land to be acquired is likely to exceed \$1.5m two valuations are required. The requirement for a valuation may be varied where, in the informed opinion of the Chief Executive Officer/General Manager or relevant Director such an action is impractical.

An internal review of the valuation(s) is to be carried out and reported, with specific attention to the valuation rationale, method of valuation, calculations and sales evidence used. After such review, the valuation is to be considered in the setting of an asking price for sale, reserve price for auction or benchmark for negotiations, tender or expression of interest or acquisition.

When two valuations have been provided, averaging is the preferred method for considering the price when any difference in the valuation is 10% or less. Differences in valuations of more than 10% require an assessment of the reasons why they are different and more detailed justification of the price.

If a Contract, Deed or Agreement documenting the transaction has not been entered into within 12 months from the date of the original valuation the valuation is required to be updated or at any other time there is considered to be a material movement in the marketplace that may vary value,

the valuation is required to be updated.

Valuation instructions must clearly identify the following:

- the purpose of the valuation, i.e. acquisition or disposal;
- the primary basis of the valuation being market value unless an alternative basis is considered more appropriate in the circumstances. There may be multiple bases of valuations if required;
- that the valuation be retained in a secure folder within Council's Records Management System;
- that the valuation includes details of sales evidence and adjustments, valuation rationale and methodology, a valuation range (for negotiations) and comments on marketability, most appropriate method of disposal and opportunities to add value.

In addition, the valuer must make a written statement that there is no actual or perceived conflict of interest in undertaking the valuation.

3.8 Departure from this Policy

Any provision of this Policy may be varied to meet the needs of a particular matter by resolution of Council.

The reasons for changes will be clearly articulated within the report submitted to assist Council with its consideration to adopt that resolution and will only apply to that specific matter.

Controlled Document Information

Authorisation Details

Folder No:	F2015/00497	TRIM Record No:	D09317389
Audience:	External - General public and Council staff		
Department:	Property & Business Development		
Officer:	Valuation & Property Development Coordinator - Anthony O'Reilly		
Review Timeframe: Max < 4 years	2 Years	Next Scheduled Review Date:	23 September 2021
Authorisation:	Adopted by Council - 23 September 2019		
Authorisation - Council Adoption Date:	23 September 2019		

Related Document Information, Standards & References

Related Legislation:	Local Government Act 1993 Land Acquisition (Just Terms Compensation) Act 1991 Roads Act 1993 Conveyancing Act 1919 Real Property Act 1900	(Relationship/Context)
Related Policies (Council & Internal):	Not Applicable	(Relationship/Context)
Related Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements:	Amending LMLEP to Reclassify Land - Procedure - Version 14 – D08986201 Road Closures - Form - Version 12 – D08947657 GST Determination –Sale of Council Property – Form – Version 4 – D09218505 Policy for Assessing Public Requests to Reclassify Community Land to Operational Land - Version 3 – D02828777	(Relationship/Context)
Standards COP's & Other References	(Standard, COP or Other References)	(Relationship/Context)

Definitions

Term / Abbreviation	Definition
Land	Includes tenements and hereditaments, corporeal and incorporeal, and every estate vested or contingent, freehold or leasehold, and whether at law or in equity.
Before & After Method	Valuation methodology that can be applied to partial and whole property acquisitions. The before approach notionally considers the value of the property as if unaffected by the acquisition. The after approach notionally considers the value as if the acquisition was completed, with the difference between the two assessments being the loss or gain in value attributed to the acquisition.

This is a controlled document. Before using this document, check it is the latest version by checking it on Council's intranet. Unless otherwise shown, printed or downloaded versions of this document are uncontrolled.

Consultation (update for each version created)**Key Departments, Teams, Positions, Meetings:**

Property & Business Development Team, Chief Financial Officer, General Counsel, Diverse Economy Portfolio, Councillor Briefing Session

Version History

Version No	Date Changed	Modified By	Details and Comments
1	12/02/15	M Shepherd	Policy created
2	13/4/17	A O'Reilly	Policy updated
3	8/10//19	A O'Reilly	Policy updated with additions and amendments included in: Objectives, Land Acquisition Procedures, Methods of Acquisition, Land Deemed to be Surplus, Sale to Adjoining Owners, Form of Contract, Departure from this Policy and inclusion of Chief Financial Officer wording.