



## **1. ACQUISITION AND DISPOSAL OF ASSETS**

Policy 1.6

LAND ACQUISITION AND DISPOSAL

Version 1

## LAND ACQUISITION AND DISPOSAL POLICY

From time to time Council may acquire or dispose of land for the purpose of exercising its functions and achieving its strategic objectives.

It is Council's policy to acquire and dispose of land in a manner that is consistent with the Guiding Principles for Local Government, including:

- achieving best value for public money;
- being accountable and transparent;
- ensuring all interested parties are given a fair chance;
- avoiding conflicts of interest; and
- minimising risk.

To achieve the objectives of this Policy Council adheres with the Land Acquisition and Disposal Procedures included with this Policy, applicable procedures set in legislation and government adopted guidelines.

The scope of this policy and the accompanying procedures is limited to land owned by Lithgow City Council or land to be purchased by Lithgow City Council from a third party. For the avoidance doubt, this policy and the accompanying procedures do not address acquisition or disposal of Crown land, which must be dealt with in accordance with the *Crown Land Management Act 2016*.

## LAND ACQUISITION – PROCEDURE

### Definitions

For the purpose of this land acquisition procedure the following definitions apply:

**acquire** or **acquisition** of land means an acquisition of land or of any interest in land.

**Council** means Lithgow City Council.

**LA Act** means *Land Acquisition (Just Terms Compensation) Act 1991*.

**LG Act** means *Local Government Act 1993*.

**land** has the meaning set out in the *Interpretation Act 1987* and includes an interest in land.

**public sale** means the land is:

- (a) advertised by the owner as being available for sale, or
- (b) listed by the owner with a real estate agent as being available for sale, or
- (c) otherwise held out by the owner as being available for sale.

### Power of council to acquire land

A Council may only acquire land for the purpose of exercising its functions or, in its capacity as a roads authority for a purpose specified in the *Roads Act 1993* including road widening.

### Procedure

#### 1. Assessing whether to acquire the land

Council identifies land based upon the purpose for which Council needs to acquire the land. Matters to be considered when assessing whether to acquire land include:

- What is the nature of interest, for example freehold, leasehold, public-private partnership, easement, etc?
- Does the use of the land fall within Council's strategic plan?
- What value will the land bring to the community or service?

- Is the land suitable for its intended use?
- Will the community receive a return on investment?
- What is the projected cost of ownership, including ongoing maintenance costs?

## **2. Classification of land**

All public land must be classified as either “community” or “operational” prior to acquisition or within 3 months, otherwise the land will automatically be deemed “community”. Note however, in limited circumstances, compulsory acquisition of land that is classified as “community land” before acquisition must remain community land after acquisition.

At the time of resolving to acquire land (point 8 below), the land should be classified as either “operational” or “community”.

## **3. Method of purchase - land listed for public sale**

Land that is being sold on the open market falls outside the scope of the LA Act. In this situation the procedure for purchase is governed by the general property law. Note however, that Council must adhere to the requirements of Council resolution and classification of land.

For land available by public sale Council’s officers will either:

- instruct Council’s appointed agent or solicitor to negotiate with the vendor or the vendor’s agent; or
- negotiate directly with the vendor or the vendor’s agent.

All negotiations must be on the basis that a formal offer cannot be made until Council has resolved to purchase the land.

## **4. Method of acquisition - land not listed for public sale (acquisition by private agreement)**

Council may acquire land by entering direct negotiations with the owner. In this situation Council will first obtain a valuation of the land which will form the basis of its negotiations with the owner.

Where Council resolves to acquire land by private agreement, it does not need to follow the same processes that apply to compulsory acquisitions, but Council must comply with the compensation provisions of the LA Act.

#### **5. Method of acquisition - compulsory acquisition (with consent of owner)**

The owner of the land and Council can agree to a compulsory acquisition under the LA Act.

If all relevant terms of the acquisition are agreed by the parties, including the amount of compensation, there is no requirement for Council to comply with the provisions regarding pre-acquisition procedures and compensation for acquisition of land. However, in all other respects, Council must comply with the LA Act.

#### **6. Method of acquisition - compulsory acquisition (without consent of the owner)**

Before compulsorily acquiring land Council must make reasonable efforts for at least 6 months to acquire the land by agreement. If agreement cannot be reached, Council can acquire land without the owner's consent and must strictly adhere with the provisions of the LA Act.

After Council has made a valid resolution to acquire the land, the consent of the Minister for Local Government and/or the Governor to compulsorily acquire the land or any interest in the land is required.

Acquiring land for re-sale is not allowed without the owner's consent, unless the land forms part of, or adjoins or lies in the vicinity of, other land acquired at the same time for a purpose other than re-sale.

#### **7. Probity plan**

A probity plan is to be prepared to establish and document tasks, procedures and treatment options for managing acquisition of the particular land. The probity plan will address the following matters:

- how the acquisition will achieve Council's strategic objectives;
- the method of acquisition to be adopted (based on 3, 4, 5 or 6 above);
- conflicts of interest (where applicable, any actual or perceived conflicts of interest must be disclosed and effectively managed);

- accountability and transparency (the manner in which Council will ensure a clear audit trail).

## **8. Report to Council and resolution to acquire land**

Prepare a report to Council seeking a resolution to acquire the land. The report is to cover the matters listed in 1 to 7 above.

A Council's power to acquire land or an interest in land cannot be delegated to staff or individual councillors. Only the Council can determine to acquire land, which it must do by way of a resolution.

### **Summary of land acquisition procedure**

1. Assess whether to acquire the particular land, having regard to the factors outlined in 1. above.
2. Consider whether the classification of the land should be either "community" or "operational".
3. Consider what the most suitable method of acquisition will be – see points 3, 4, 5 and 6 above.
4. If the land is not listed for public sale, obtain an independent valuation report to use as the basis for negotiation.
5. Prepare a probity plan.
6. Prepare a report to Council for resolution purposes.

## LAND DISPOSAL – PROCEDURE

### Definitions

For the purpose of this land disposal procedure the following definitions apply:

**Council** means Lithgow City Council.

**direct negotiation** means exclusive negotiations between Council and a proponent without first undergoing a competitive process.

**dispose or disposal** includes sell, exchange or otherwise dispose of.

**land** has the meaning set out in the *Interpretation Act 1987* and includes an interest in land.

**LG Act** means the *Local Government Act 1993*.

### Power of council to dispose of land

A Council may dispose of land for the purpose of exercising its functions. All negotiations to dispose of land are to be conducted subject to and conditional upon a resolution of Council to dispose of the land.

This procedure does not apply to sale of land due to non-payment of rates. For a sale of land due to non-payment of rates Council must comply with the requirements set out in the LG Act and any other applicable legislation.

### Procedure

#### 1. Assessing whether to dispose of land

Prior to disposing of land Council will assess the benefit to be gained from disposing of the land, whether financial or otherwise, factoring in:

- Restrictions or limitations – are there any existing encumbrances or interests over the land, such as trust arrangements, licences, leases, caveats, or other contracts entered by Council, which negate the ability of Council to dispose of the land?
- Site limitations – is the land subject to flooding, contamination, land slip, mine subsidence, road widening or other physical impairment?

- Conservation value – does the land have cultural significance, such as heritage value, works on the land, vegetation or relics?
- Strategic objectives – is the land suitable for future needs of the community, including open space, social, recreational, ecological, environmental considerations?
- Future needs of Council – can the land be utilised in the future by Council?
- Economic assessment:
  - o what is the cost of retaining and maintaining the land, including the day to day management, maintenance, insurance, security and cleaning?
  - o what is the difference between the value of land and the disposal costs?
- any other relevant considerations.

If, on balance, the assessment indicates that disposal of the land will not benefit the community or the functions of Council, Council may decide not to proceed with disposal.

## **2. Classification of land**

Council may dispose of land that is classified “operational”. However, Council has no power to sell, exchange or otherwise dispose of “community” land, unless the land is to become, or be added to, a Crown reserve or land that is reserved or dedicated under the *National Parks and Wildlife Act 1974*.

If Council identifies an area of “community” land to be sold, exchanged or otherwise disposed of the land must first be re-classified as “operational”. Reclassification of land may be effected either by a local environmental plan or by means of a resolution of Council under sections 31, 32 or 33 of the LG Act.

## **3. Valuation**

Prior to initiating the disposal of land an independent valuation must be obtained to determine the market value of the land. The valuation will form part of Council’s assessment (point 1. above) and assist with determining

the reserve price at auction or the basis for direct negotiations (if applicable).

#### **4. Tender or other competitive process**

Although Council is exempt from the requirement to tender in relation to disposal of land, if the Council is of the view that the disposal is at risk of being considered controversial, contentious or political, it may, by resolution, apply the tender process, in which case Council must adhere with the requirements of Part 7 of the *Local Government (General) Regulation 2005*.

In all other situations (except where direct negotiation is warranted) Council must dispose of land through a competitive process, consistent with the Principles for Local Government, by way of auction or expression of interest.

#### **5. Direct negotiation**

Direct negotiation may be warranted and used as the method of disposal in very limited circumstances, such as where:

- the land is required for use by another government agency for the purpose of infrastructure;
- the land will only be of benefit to a particular landowner(s) - for example, a laneway that is not large enough to be used as an independent parcel of land would be of use only to adjoining owners;
- Council is bound by a contractual obligation; for example, Council may have obligations under a contract that provides the other party with a right of first refusal, an option to purchase or an option to lease;
- a competitive process undertaken in the last 12 months has failed to achieve the desired result;
- Council has undertaken to achieve a unique project that is part of Council's strategic objectives; for example, a land swap.

Where Council determines it is appropriate to use direct negotiation as the method of disposal, a business case will be prepared to demonstrate why direct negotiation is warranted in light of the circumstances.

#### **6. Probity Plan**

A probity plan is to be prepared to establish and document tasks, procedures and treatment options for managing disposal of the particular land. The probity plan will address the following matters:

- achieving best value for money (this does not necessarily mean the highest price, but may include non-price elements, such as the use to which the land will be put, the settlement time, etc);
- the reason for using direct negotiation (if applicable);
- dealing with conflicts of interest (where applicable, any actual or perceived conflicts of interest must be disclosed and effectively managed);
- impartiality (where land is sold subject to a development application, the development application will be referred to an independent panel for assessment);
- ensuring accountability and transparency (the manner in which Council will ensure a clear audit trail).

## **7. Report to Council and resolution to dispose of land**

Prepare a report to Council (following assessment of the matters listed in 1 to 6 above), including a copy of the valuation and probity plan. The report will form the basis of Council's resolution.

The report to Council shall recommend where any proceeds of sale are to be applied, for example any proceeds may be internally restricted for future acquisition purposes.

A Council's power to dispose of land cannot be delegated to staff or individual councillors. Only the Council can determine to dispose of land, which it must do by way of a resolution.

### **Summary of land disposal procedure**

1. Assess whether disposal of the land will be beneficial, having regard to the factors outlined in 1. above.
2. Establish whether the land is classified as operational or community. If community, explore whether it is capable of reclassification.
3. Obtain an independent valuation.

4. Determine the method to be used for disposal of the land, based on 4. and 5. above.
5. Prepare a probity plan, and a business case if disposal is to be by way of direct negotiation.
6. Prepare a report to Council for resolution purposes.

### **Source of information**

The following sources have assisted with preparing this policy:

Interpretation Act 1987

Local Government Act 1993

Local Government (General) Regulation 2005

Land Acquisition (Just Terms Compensation) Act 1991

Roads Act 1993

DLG – Guidelines for the Compulsory Acquisition of Land by Councils, June 2006

DLG - Tendering Guidelines for NSW Local Government, October 2009

ICAC – Direct negotiations, Guidelines for managing risks in direct negotiations, May 2006

ICAC - Probity and probity advising, Guidelines for managing public sector projects, November 2005

NSW Treasury – Total Asset Management Guideline, Asset Disposal Strategic Planning, June 2004

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