



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

Policy 1.6

LAND ACQUISITION, PURCHASE AND DISPOSAL

Version 2

## **LAND ACQUISITION, PURCHASE AND DISPOSAL POLICY**

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

### **Policy**

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

- achieving best possible value for residents and rate payers;
- being transparent and accountable for decisions and omissions;
- acting fairly, ethically and without bias in the interests of the local community;
- minimising risk.

To achieve the objectives of this policy Council adheres with the Land Acquisition and Purchase Procedure and the Land Disposal Procedure included with this Policy, in addition to applicable legislative requirements and government adopted guidelines.

### **Scope of policy**

The scope of this policy and the accompanying procedures is limited to land owned by Lithgow City Council or land to be acquired or purchased by Lithgow City Council from a third party.

This policy and the accompanying procedures do not apply to:

1. acquisition or disposal of Crown land managed by Council, which must be dealt with in accordance with the *Crown Land Management Act 2016*;
2. the sale of land due to non-payment of rates, which must be dealt with in accordance with applicable provisions of the *Local Government Act 1993*;
3. land resumed from Council for a public purpose under the *Land Acquisition (Just Terms Compensation) Act 1991*.

## LAND ACQUISITION AND PURCHASE – PROCEDURE

### Definitions

The following definitions apply to this procedure:

**acquire** or **acquisition** means an acquisition of land or any interest in land for a public purpose under the *Land Acquisition (Just Terms Compensation) Act 1991*.

**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 and fixtures on the 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.

**purchase** means a purchase of land, the purchase of which is outside the scope of the *Land Acquisition (Just Terms Compensation) Act 1991*, for example, a purchase of land for investment.

### Power of Council to acquire or purchase land

Council's power to acquire or purchase land cannot be delegated to staff or individual councillors. Only the Council can determine to acquire or purchase land, which must be done by way of resolution.

Council may acquire land for the purpose of exercising any of its functions or, in its capacity as a roads authority for a purpose specified in the *Roads Act 1993* including road widening. Such acquisitions are subject to the LA Act.

As a statutory corporation having the legal capacity and powers of an individual, Council may purchase land for ancillary purposes, such as investment. Such purchases are outside the scope of the LA Act and will be governed by the general law applying to property and this policy.

## **Procedure**

### **1. Assessing whether to acquire or purchase the land**

Council identifies land based upon the purpose for which Council needs to acquire 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 "community land" or "operational land" prior to or within 3 months of acquisition or purchase, otherwise the land will be automatically deemed "community land".

If it is appropriate to classify land being acquired or purchased as "operational land", at the time that Council resolves to acquire or purchase the land (point 8 below), Council should also resolve to classify the land as "operational land". This will avoid the risk of the land inadvertently being deemed "community land".

### **3. Purchase of land**

The procedure to purchase land is governed by this policy and the general property law. Additionally, Council must adhere to the requirements of the LG Act in relation to classification and resolving to purchase land.

If Council wishes to purchase land for an ancillary purpose (that is, for a purpose other than an acquisition under the LA Act) it will search for land that is available by public sale. Council 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.

Council will not purchase land unless it is available for public sale unless Council resolves to override this policy in relation to a particular parcel of land.

#### **4. Acquisition of land - land not listed for public sale (acquisition by private agreement with the landowner)**

Council may acquire land for a public purpose (such as roads or a sewerage treatment plant) by entering direct negotiations with a landowner. In this situation Council will first obtain a valuation of the land which will form the basis of negotiations with the landowner.

The landowner and Council may agree to the acquisition of land by private agreement, in which case the only provisions of the LA Act that apply are the compensation provisions.

#### **5. Acquisition of land - compulsory acquisition (with consent of the landowner)**

A landowner and Council can agree to treat the acquisition of land for a public purpose as 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. Acquisition of land - compulsory acquisition (without consent of the landowner)**

A landowner can reject Council's offer to acquire land for a public purpose, but Council may elect to compulsorily acquire the land after reasonable consultation.

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 – required for purchase or acquisition**

A probity plan is to be prepared to substantiate the acquisition or purchase of land. The probity plan will 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 or purchase will achieve Council's strategic objectives;
- the method of acquisition or purchase 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 or purchase land**

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

The project officer will prepare a report to Council seeking a resolution to acquire or purchase land (as applicable) and classify the land as either "operational land" or "community land". The report is to cover the matters listed in 1 to 7 above.

### **Summary of land acquisition or purchase procedure**

1. Assess whether to acquire or purchase land, having regard to the factors outlined in 1. above.
2. Consider whether the land should be classified “community land” or “operational land”.
3. Consider whether the land needs to be acquired under the LA Act or purchased under the general property law – 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 in accordance with point 7 above.
6. Prepare a report to Council for resolution purposes addressing points 1 to 8 above.

## LAND DISPOSAL – PROCEDURE

### Definitions

The following definitions apply to this procedure:

**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

Council may dispose of public land that is classified “operational land”. However, the power to dispose of land cannot be delegated to staff or individual councillors. Only the Council can determine to dispose of land, which must be done by way of resolution.

All negotiations to dispose of land are to be conducted subject to and conditional upon a resolution of Council to dispose of the land.

### 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 land”. Council has no power to sell, exchange or otherwise dispose of land classified “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 land”. Community land can be re-classified as “operational land” by an amendment to the Lithgow Local Environmental Plan 2014.

## **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 negotiation (if applicable).

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

Although Council is exempt from the requirement to tender in relation to disposal of land, if 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 justified) Council must dispose of land through a competitive process, consistent with the Guiding Principles for Local Government, by way of auction or expression of interest. If auction or expression of interest is unsuccessful, the land may be listed with an agency for sale by private treaty.

#### **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 Direct Negotiation Statement will be prepared to document why direct negotiation is justified.

## **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**

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.

The project officer will prepare a report to Council (following assessment of the matters listed in 1 to 6 above), including a copy of the valuation, probity plan and direct negotiation statement (if applicable). 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.

### **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 to be classified “operational land” or “community land
3. Obtain an independent valuation.
4. Determine the method to be used for disposal of the land, based on points 4. and 5. above.
5. If the disposal involves direct negotiation, prepare a Direct Negotiation Statement referred to in 5. above outlining why direct negotiation is justified.
6. Prepare a probity plan in accordance with point 6 above.
7. Prepare a report to Council for resolution purposes addressing points 1 to 7 above.

### **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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