

Item 9: Corporate Services

9.1 Policy Review - Land Acquisition and Disposal

REPORT BY THE ACTING MANAGER - PROPERTY AND REVENUE
TO 17 APRIL 2024 ORDINARY MEETING
GOV400105, GOV400047

RECOMMENDATION

That Council:

1. **receive the report by the Acting Manager - Property and Revenue on the Policy Review - Land Acquisition and Disposal;**
 2. **place on public exhibition for 28 days the revised *Land Acquisition and Disposal Policy*; and**
 3. **adopt the revised *Land Acquisition and Disposal Policy* if no submissions are received during the exhibition period.**
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Executive summary

The existing *Land Acquisition and Disposal Policy* (the Policy) has been reviewed and proposed amendments are suggested as part of Council's ongoing policy review program.

Disclosure of Interest

Nil

Detailed report

The Policy has been reviewed with proposed changes as highlighted in the attached document.

The objective of this Policy is to:-

- ensure Council has open and accountable processes to consider the acquisition and disposal of all land assets;
- establish the criteria under which Council will consider acquisition and disposal of land;
- ensure best value is achieved in all Council land dealings;
- ensure impartiality by addressing perceived or actual conflicts of interest.

The proposed changes to the Policy are:-

- Update of references to guidelines issued by the Independent Commission Against Corruption and the Office of Local Government;
- Update to Section 8A(1)(F) of the Local Government Act – Guiding principles for Councils;
- Adding ability to negotiate non-monetary compensation in acquisitions by agreement; and
- Adding the ability to dispose of low value land without a valuation in limited circumstances.

Community Plan implications

Theme	Good Government
Goal	An effective and efficient organisation
Strategy	Prudently manage risks associated with all Council activities

Strategic implications

Council Strategies

Not Applicable

Council Policies

By adopting the recommendation, Council is endorsing the changes to the Policy to be placed out on public exhibition for comment. Should any submissions be received, a further report will be presented back to Council for consideration. If no submissions are received at the end of the exhibition period, the revised Policy will be adopted and apply from that date.

Legislation

Not Applicable

Financial implications

Not Applicable

Associated Risks

The review of this Policy ensures suitable governance arrangements and guidance exists for the implementation of Council's functions. Amending this Policy reduces the risk of it becoming out of date, not meeting best practice or referencing out of date or incorrect legislation.

IAN CLAYTON
ACTING MANAGER - PROPERTY AND
REVENUE

LEONIE VAN OOSTERUM
DIRECTOR CORPORATE SERVICES

19 January 2024

Attachments: 1. POLICY - DRAFT - Land acquisition and disposal - 2024.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



POLICY Land Acquisition and Disposal

*A prosperous
and progressive
community*

ADOPTED		VERSION NO	1.12
COUNCIL MEETING MIN NO	58/18	REVIEW DATE	MARCH 2022/2026
DATE	21 MARCH 2018	FILE NUMBER	A0010006

Objective

Land owned by Mid-Western Regional Council (MWRC) on behalf of its ratepayers and local community is a valuable public asset. Council has the responsibility to maintain its land asset portfolio in the best interests of its ratepayers and local community, and to act consistently, fairly and transparently in accordance with its Community Plan objectives.

MWRC will from time to time acquire and dispose of its land assets, including interests in land such as an easement, right, charge, power or privilege over, or in connection with, the land.

The Policy aims to:

- ensure MWRC has open and accountable processes to consider the acquisition and disposal of all land assets; and
- establish the criteria under which Council will consider acquisition and disposal of land; and
- ensure best value is achieved in all Council land dealings; and
- ensure impartiality by addressing perceived or actual conflicts of interest.

Legislative requirements

- Local Government Act 1993
- Valuation of Land Act 1916
- Real Property Act 1900
- Land Acquisition (Just Terms Compensation) Act 1991
- Roads Act 1993
- Environmental Planning and Assessment Act 1979
- Independent Commission Against Corruption, [*Guidelines for managing risks in direct negotiation*](#), May 2006 [*Direct Negotiations: Guidelines for Managing Risks*](#), August 2018
- Office Local Government, [*Land Acquisition Information Guide*](#), December 2014 [*Guidelines for the Compulsory Acquisition of Land by Councils*](#), June 2006

Scope

This policy applies to all acquisition and disposal of Council lands, including interests in land.

POLICY: ~~LAND ACQUISITION AND DISPOSAL~~ | 1.11.2. ERROR! REFERENCE SOURCE NOT FOUND.

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Policy

Applicable provisions of the Local Government Act 1993 (the Act)

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Section 8(1)8A(1)(F) of the Act dictates Council's charter in that Council is the custodian and trustee of public assets and is required to effectively plan for, account for and manage the assets for which it is responsible. Guiding principles for councils, including that Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

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Section 22(1)(d) of the Act vests authority in Council to enable it to exercise its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property.

Section 186 of the Act prescribes the purposes for which Council can acquire land.

Section 377(1)(h) of the Act dictates that the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property must be made by resolution of Council as these decisions cannot be delegated.

Section 45 of the 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.

Land acquisition

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PURPOSES AND ASSESSMENT CRITERIA

Land is to be identified for acquisition having due regard to the acquisition considerations as outlined, but not limited to circumstances described in the Table at Appendix 1.

Council may acquire land or interests in land for the purpose of carrying out its functions under the Local Government Act. Refer s186.

METHODS OF ACQUISITION

Acquisition by Agreement and Value

Council may acquire land that is available for public sale under the same terms as any other prospective purchaser without having to satisfy the requirements of the Land Acquisition (Just Terms Compensation) Act 1991.

Where land is listed for sale on the open market, the General Manager shall negotiate the terms of purchase with either the vendor or the vendor's agent.

If Council identifies land or interests in land that is required to facilitate functions of Council, but the land is not available for public sale, Council may approach the landowner and negotiate the purchase of the required land or interest in land. In this case, the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 apply irrespective of whether the acquisition is by agreement or by compulsory process. This Act requires Council to pay a fair compensation for the land or interest in land that is being acquired.

Where Council has identified land for acquisition which achieves specific strategic and policy goals and objectives of Council, consideration may be given to any land swap opportunities and/or in-kind works in lieu of monetary consideration (e.g. fencing, access earthworks etc.).

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Where land or interests in land are not listed on the open market, the General Manager is to obtain at least one valuation of the land or interests in land to be provided by a Registered Valuer as the basis for negotiation and the valuation report shall be attached to the report submitted to Council.

In some cases there will be justified basis for Council acquiring land or interests in land at a price above the valuation benchmark in order to guarantee the successful securing of the property to achieve defined goals and objectives of Council; or to acquire the land with a view to adding value, or reducing risk to a larger scheme or development, future or current.

Any special value should be determined and quantified within the initial decision of Council and referenced to the achievement of specific goals and objectives of Council.

Acquisition by Compulsory Process

If agreement of the acquisition of land or an interest in land cannot be made with the landowner, Council has the right to compulsorily acquire land or an interest in land. A compulsory acquisition can only be pursued under the requirements of the Roads Act 1993 or the Local Government Act 1993, and in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991.

The compulsory process cannot be used to acquire land for the purposes of resale.

The process to be followed for compulsory acquisition is as set out in the ~~Land Acquisition Information Guide (December 2014)~~ [Guidelines for the Compulsory Acquisition of Land by Councils, June 2006](#), as issued by Office of Local Government. It will be necessary for Council to satisfy the Office of Local Government that the acquisition is required for a public purpose.

Approval of the Minister for Local Government, and the Governor, is required to finalise the compulsory process.

Compensation for Acquisitions (other than land available for public sale)

In determining the amount of compensation to which a person is entitled, Part 3 Division 4 of the Land Acquisition (Just Terms Compensation) Act 1991 requires that regard must be given to the following matters only:

- a) the market value of the land on the date of its acquisition;
- b) any special value of the land to the person on the date of its acquisition;
- c) any loss attributable to severance;
- d) any loss attributable to disturbance;
- e) solatium (that is, compensation for non-financial disadvantage arising the need to relocate as a result of the acquisition); and
- f) any increase or decrease in the value of any other land of the person at the date Of acquisition which adjoins or is severed from the acquired land by reason of the carrying-out of, or the proposal to carry out, the public purpose for which the land was acquired.

Classification of Acquired Land

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At the time of acquisition, Council must resolve the classification of the land to be either Operational or Community land in accordance with Sections 25-27 of the Act.

Land disposal

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PURPOSES AND ASSESSMENT CRITERIA

Land is to be identified for disposal having due regard to the disposal considerations as outlined, but not limited to circumstances described in the Table at Appendix 1.

Should a proposed disposal be detrimentally impacted by any circumstance identified in the Table at Appendix 1, or any other circumstance, unless it can be demonstrated that there is an overriding public and/or economic benefit in relation to the disposal, the proposed disposal should be reviewed.

METHODS OF DISPOSAL AND VALUE

Competitive Process and Value

Where land is capable of being disposed of on the open market and is able to be developed independently of any other property, the disposal shall be by competitive process involving public auction, private treaty, tender or expression of interest unless circumstances warrant disposal by direct negotiation.

The General Manager is to obtain at least one valuation of the land or interests in land to be provided by a Registered Valuer to establish the disposal value. The valuation/s shall be based on the valuation methodology most advantageous to Council. The General Manager is to then negotiate with Council's selling agent to ascertain an appropriate disposal value.

It is recognised that valuation advice is not an exact science and it is not unreasonable that a disposal value of up to 10% variation from that valuation may be achieved. Where the negotiated outcome results in a sale price more than 10% less than the assessed disposal value, it shall be acknowledged in the report to Council giving reason why that variation may be adopted.

Direct Negotiation and Value

Disposal of land by direct negotiation will have regard to, but will not be limited to, the following considerations::

- Where the total cost of the public disposal process will exceed the expected community benefit (for example, where the disposal value of land is \$1,000 and the cost to market the land is \$5,000);
- Where there is only one identifiable purchaser (for example, an adjoining owner; or where a site is not large enough for development in its own right);
- Where Council is bound by a contractual **or legal** obligation;
- Disposal of land to a government or utility authority for the purpose of infrastructure provision;
- 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;
- In response to a proposal which achieves specific strategic and policy goals and objectives of Council; for example, a land swap opportunity.

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The report to Council will identify the reasons why the direct negotiation disposal process was chosen.

The General Manager is to obtain at least one valuation of the land or interests in land, based on the valuation methodology most advantageous to Council, to be provided by a Registered Valuer to establish the disposal value. A valuation is not required where the General Manager has clear evidence that the cost in obtaining a valuation is likely to exceed the lands value. The General Manager is to then negotiate with Council's selling agent (if applicable) or the prospective purchaser to ascertain/establish an appropriate disposal value.

The report to Council will identify the method used to establish the appropriate disposal value.

~~Where land is to be disposed to an adjoining owner, the necessary valuation/s shall be based on the valuation methodology which is most advantageous to Council.~~

Purchaser-Initiated Divestments

For purchaser-initiated divestments, all costs associated with the disposal of the land, including Council's reasonable legal costs, will be borne by the purchaser.

Classification of Land to be Disposed

Section 45 of the Act provides that only Operational Land can be sold, exchanged or otherwise disposed of.

Land classified as Community must be reclassified, in accordance with procedures prescribed by the Environmental Planning and Assessment Act 1979, as Operational prior to disposal proceeding.

Permanent Council Road Closures

A Council Public Road reserve (a Reserve) must be closed under the Roads Act 1993. The closure process is managed by Council and NSW Trade and Investment NSW Department of Industry – Crown Lands Division.

A resolution of Council is required to close a Reserve and where applicable, a further resolution is required to dispose of the land vested in Council upon the closure of a Reserve.

An application for the closure of a Reserve and where applicable, disposal of a Reserve, may be initiated by Council or by an individual.

An application from an individual must be accompanied with the Investigation Fee - Road Closure fee as set out in Council's adopted Fees and Charges.

Consideration of an application will take into account, but will not be limited to:

- The likelihood of a Reserve being required as a through road; and
- Legal requirements of a Reserve to provide access to properties; and
- Access to public infrastructure or public waterway; and
- Whether the land upon closure of a Reserve will vest in Council (Section 38(2)(b) & (c) Roads Act 1993); and
- Disposal considerations as outlined in the Table at Appendix 1.

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For land which vests in Council upon closure of a Reserve with the intent for its disposal, ~~the General Manager is obtain at least one valuation of the land to be provided by a Registered Valuer to establish the disposal value.~~ the General Manager is to obtain at least one valuation of the land, based on the valuation methodology most advantageous to Council, to be provided by a Registered Valuer to establish the disposal value. A valuation is not required where the General Manager has clear evidence that the cost in obtaining a valuation is likely to exceed the lands value. The General Manager is to then negotiate with Council's selling agent (if applicable) or the prospective purchaser to establish an appropriate disposal value.

The report to Council will identify the method used to establish the appropriate disposal value.

~~Where land is to be disposed to an adjoining owner, the necessary valuation/s shall be based on the methodology which is most advantageous to Council.~~

For individual-initiated Reserve closures and disposals, all costs associated with the disposal of the land, including Council's reasonable legal costs, will be borne by the purchaser.

▲ Variation

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MWRC reserves the right to vary the terms and conditions of this policy, subject to a report to Council.

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Appendix 1

SUMMARY OF LAND ACQUISITION AND DISPOSAL CONSIDERATIONS

ACQUISITION	ACQUISITION
<p>Purposes</p> <ul style="list-style-type: none"> • Statutory For public purposes by other public authorities such as RMS, etc. • Conversion from unused or underused properties to cash for acquisition or development of more useful community facilities • Investment For accumulation of property development and investment funds and subsequent acquisitions and/or investments for recurrent cash flows 	<p>Purposes</p> <ul style="list-style-type: none"> • Statutory For public purposes by other public authorities such as RMS, etc. • Conversion from unused or underused properties to cash for acquisition or development of more useful community facilities • Investment For accumulation of property development and investment funds and subsequent acquisitions and/or investments for recurrent cash flows
<p>Value</p> <ul style="list-style-type: none"> • Fair market value • Provisions under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> • Value to Council versus Value to the owner • Valuation – at least one by Registered Valuer 	<p>Value</p> <ul style="list-style-type: none"> • Fair market value • Provisions under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> • Value to Council versus Value to the owner • Valuation - at least one by Registered Valuer
<p>Assessment Criteria</p> <ul style="list-style-type: none"> • Identification in Council's Community Strategic Plan, Delivery Program, or Operational Plan • Identification in any other Council strategy • Land classification upon acquisition • Any land swap opportunities • Prospect for capital gain • Any redevelopment opportunity • Acquisition and ongoing management costs • Availability of funds or funding arrangements • Whole of life costing assessment • Current and future market conditions 	<p>Assessment Criteria</p> <ul style="list-style-type: none"> • Identification in Council's Community Strategic Plan, Delivery Program, or Operational Plan • Identification in any other Council strategy • Land classification upon acquisition • Any land swap opportunities • Whole life costing assessment including any likely maintenance/capital works required • Any value added activities such as rezoning, DA approval to eliminate any uncertainties as possible • Current and future market conditions • Methods of sale having regard to current market conditions and consideration of sale versus long-term lease