

**ITEM 4 DRAFT POLICY - LAND AND EASEMENT ACQUISITION AND DISPOSAL**

Council's Land and Easement Acquisition and Disposal Policy is due for review. It has now been reviewed and amended, and is submitted for adoption by Council.

### RECOMMENDATION

The Land and Easement Acquisition and Disposal Policy be adopted.

### REPORT AUTHORISATIONS

Report of: Peter Coyte, Manager Property and Recreation  
Authorised by: Kerry Hunt, Director Corporate and Community Services - Creative, Engaged and Innovative City (Acting)

### ATTACHMENTS

- 1 Draft Land and Easement Acquisition and Disposal Policy

### BACKGROUND

Council's Land and Easement Acquisition and Disposal Policy is due for review. It has been revised and amended to ensure that it is consistent with contemporary practices. Most of the changes are minor in nature and have been undertaken in order to simplify the document. The key changes are:

#### **1 Page 3 – Procedure for the Acquisition of Land**

Point 1 – Information has been added into this point on the procedure to be used where the value of a property is considered to be in excess of \$1M. This is to make it consistent with Page 5 – Procedure for Disposal of Land – Point 4 – Valuation Requirements.

#### **2 Page 6 – Point 6 – Escalation Fee**

The timeframe from Council resolution to settlement has been increased from 12 months to 2 years.

#### **3 Page 6 – Point 8 – Unmade Public Roads**

This point has been added in.

The policy was submitted to the Executive Management Committee on 8 November 2016 where it was endorsed for referral to Council for adoption.

### CONSULTATION AND COMMUNICATION

Executive Management Committee – report of 8 November 2016.

### PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal "We are a healthy community in a liveable city".

It specifically delivers on core business activities as detailed in the Property Services Service Plan 2016-17.

### CONCLUSION

It is recommended that the review of the policy be adopted, as set out in this report.



## LAND AND EASEMENT ACQUISITION AND DISPOSAL COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY CORP SUPPORT]

### BACKGROUND

Council from time to time acquires and disposes of its land assets. Council has obligations under a range of legislation and this policy has been developed in order to provide the framework for a transparent process that adheres to the relevant legislation.

### OBJECTIVE

The main objectives of this policy are to –

- 1 Ensure that Wollongong City 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.

### POLICY STATEMENT

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

Section 186 of the *Local Government Act* prescribes what purposes Council can acquire land for, as follows:

- 1 A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.
- 2 Without limiting subsection (1), a council may acquire:
  - a. land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or
  - b. land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.

#### Land Disposals

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. For public auction, the General Manager will set the reserve price based on a recommendation of an independent valuer.

Council can dispose of land by Direct Negotiation under the following circumstances -:

- 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.**

## LAND AND EASEMENT ACQUISITION AND DISPOSAL

## COUNCIL POLICY

- 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, eg a land-swap transaction.

The report to Council covering these sales will identify the reasons why this sale process was chosen.

### 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.

## LAND AND EASEMENT ACQUISITION AND DISPOSAL

## COUNCIL POLICY

### STATEMENT OF PROCEDURES

The acquisition or sale of Council-owned land, easements or public road shall be undertaken in accordance with the following procedures aimed at ensuring a transparent process and maximising income for Council.

#### ACQUISITION OF LAND

##### Acquisition Criteria

- 1 Section 186 of the Local Government Act prescribes what purposes Council can acquire land for, as follows:  
*A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.*
  - 1.2 *Without limiting subsection (1), a council may acquire:*
    - (a) *land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or*
    - (b) *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.

#### PROCEDURE FOR ACQUISITION OF LAND

- 1 **Obtain valuation report** from a registered valuer and negotiate based on this report. Where a property is considered to be in excess of \$1M, the procedure will be as outlined in Item 4 of Procedure for Disposal of Land.
- 2 **Method of negotiation**  
Where a property is placed for sale on the open market, Council can negotiate the purchase price and terms of acquisition to achieve the best possible outcome for the community.  
All other acquisitions must be negotiated having regard to the provisions of the Land Acquisition (Just Terms Compensation) Act 1991.
- 3 **Council Resolution**  
The acquisition of land cannot be delegated and, as required by the *Local Government Act 1993*, must be effected by a resolution of Council.
- 4 **Classification**  
In the report to acquire the land, Council must resolve what the classification of the land will be (either Community or Operational) at the time of resolving to acquire the land. Failure to do so means that the land will default to Community land 3 months after the acquisition date under Sec 31 of the Local Government Act 1993.

## LAND AND EASEMENT ACQUISITION AND DISPOSAL

## COUNCIL POLICY

### DISPOSAL OF LAND

#### Disposal Criteria

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.

The seven (7) criteria contained in the assessment are:

- 1 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.
- 2 Existing usage – Is the land used or likely to be used to meet operational, community or recreational needs?
- 3 Potential future use – is the land or road likely to be required for Council's operational needs?
- 4 Spatial distribution – are there adequate like facilities and the opportunity to meet future needs in the area and serve the local community?
- 5 Conservation value – does the land or road have cultural, natural or heritage value that should be maintained?
- 6 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?
- 7 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.

### PROCEDURE FOR DISPOSAL OF LAND

#### 1 Council Resolution

The sale of Council land cannot be delegated and, as required by the *Local Government Act 1993*, all sales must be effected by a resolution of Council.

#### 2 Classification

All Council land is classified under the *Local Government Act 1993* as either Operational or Community land. The Act provides that only Operational land can be sold and if an area of Community land is identified as being surplus, the land must first be reclassified to Operational prior to that sale proceeding. The process of reclassification must be undertaken in accordance with the *Environmental Planning and Assessment Act 1979*.

#### 3 Probity Plan

Where land is being sold by direct negotiation, a probity plan and negotiation protocol will be developed to cover the following matters:

- a obtaining best value for money;
- b demonstrating accountability and transparency;
- c dealing with conflict of interest;
- d The reasoning for direct negotiation;
- e providing a community benefit; and
- f where Council sells property subject to a development application, that application will be assessed independently and submitted to either the Independent Hearing and Assessment Panel or the Joint Regional Planning Panel.

#### 4 Valuation Requirements

Where Council proposes to sell land valued at greater than \$1m, Council will obtain either:

- a two independent valuations where the site has no special value to an adjoining owner and attits highest and best use; or
- b one valuation undertaken jointly by two consultant valuers, or
- c one valuation undertaken jointly by a consultant valuer in conjunction with either a land economist, quantity surveyor or retail specialist in the case of the site being deemed to have a special value either to an adjoining

## LAND AND EASEMENT ACQUISITION AND DISPOSAL

## COUNCIL POLICY

owner or where the purchaser is acquiring the land for a specific purpose for which direct comparable sales data is not available.

When Council land is proposed to be sold on the open market, Council will obtain a valuation from an independent valuer to establish the market value, taking into account the highest and best use of the site and any conditions Council may place on the sale. When land is for sale for unpaid rates, a valuation report is not always required as the value of the land may be less than the cost of the valuation report.

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

### 5 Escalation Fee

Where the sale is conditional on the determination of a development application, approval of a road closure or the making of an LEP to reclassify the land to Operational land and settlement is not achieved within 2 years from the date of the Council resolution authorising the sale, Council will obtain a further valuation report and the matter will not progress until the compensation amount is agreed. The report will recommend that the General Manager be delegated the authority to finalise the terms of the sale.

### 6 Form of Contract

Where Council resolves to sell its land, the method of transfer will be determined by Council's Legal Services Section.

### 7 Public Roads

Areas of surplus Public Road must be closed under the *Roads Act 1993* and consent obtained from Department of Primary Industries – Crown Lands Division to enable the sale to proceed.

For public roads, the proposal shall also be subject to compliance with local service authorities whose utilities are located within the area affected by the proposed sale.

For classified roads, the approval of the Roads and Maritime Services must be obtained prior to the matter being referred to Council for consideration.

### 8 Unmade Public Roads

Council's position is that it does not support the closure and sale of unmade public roads due to the length of time and cost to Council in processing the application and the road vesting in the Crown upon closure as per Section 38(2)(b) of the *Roads Act 1993* ie the proceeds go to the Crown.

Only in exceptional circumstances, where the applicant can demonstrate that the unmade road remaining open is detrimental to their property will Council consider processing an unmade road closure application.

## MAJOR LEGISLATIVE AND CORPORATE REQUIREMENTS

- 1 This policy complies with the requirements of the *Local Government Act 1993*.
- 2 Other major legislative requirements that may be relevant include the following:
  - *Real Property Act 1900*
  - *Strata Titles Act 1988*
  - *Community Titles Act 1996*
  - *Roads Act 1993*
  - *Crown Lands Act 1989*
  - *Land Acquisition (Just Terms Compensation) Act 1991*
  - *Conveyancing Act 1919*
- 3 This policy is to be implemented in conjunction with other relevant Council policies and strategies including the following:
  - Asset Management Policy
  - Community Consultation Policy
  - Open Space and Recreation Strategy –Planning People Places and Spaces

## LAND AND EASEMENT ACQUISITION AND DISPOSAL

## COUNCIL POLICY

- 4 The *Local Government Act 1993* requires all land vested in a council (except a road or land to which the *Crown Lands Act 1989* applies) to be classified as either community or operational.

The purpose of classification is to identify clearly that land which should be kept for use by the general public (community) and that land which need not (operational). The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means.

Classification or reclassification of land does not affect any estate or interest a council has in the land.

DRAFT

LAND AND EASEMENT ACQUISITION AND DISPOSAL

COUNCIL POLICY

SUMMARY SHEET	
Responsible Division	Property and Recreation
Date adopted by Council	[To be inserted by Corporate Governance]
Date of previous adoptions	11 November 2013, 30 March 2010
Date of next review	November 2019
Responsible Manager	Property Services Manager
Authorised by	Manager Property and Recreation

DRAFT