

FILE NO: PSC2009-02488

TITLE: ACQUISITION AND DIVESTMENT OF LAND POLICY

OWNER: DIRECTOR CORPORATE STRATEGY AND SUPPORT

1. PURPOSE:

- 1.1 The purpose of this policy is to ensure that acquisition and divestment of land transactions are undertaken in a transparent manner underpinned by consideration of probity, due diligence, analysis of risk and other key objectives.
- 1.2 The acquisition and divestment of land is undertaken by Council to provide non-rate revenue to support Council's services.
- 1.3 Council will exercise its functions under this policy having consideration for the financial position of Council and the need for differing revenue requirements of Council at the relevant time. In this regard consideration will be given to the short and long term financial position of Council as detailed in its Long Term Financial Plan.

2. CONTEXT/BACKGROUND:

- 2.1 Acquisition and divestment of land is crucial to the strategic provision of open space, attaining operational and community benefits, achieving planning outcomes, generating non-rate revenue to support Council's operational needs and achieving the intent and objectives of Council's adopted strategic plans.
- 2.2 Council may acquire lands for community, strategic or investment purposes either by agreement with the landowner or where agreement cannot be reached, by compulsory acquisition under the Land Acquisition (Just Terms Compensation) Act 1991.
- 2.3 The Property Investment Strategy outlines a strategic agenda for the efficient and effective management of Council's landholdings and establishes a framework for assessing acquisition, development and divestment opportunities.
- 2.4 All acquisitions and divestments are subject to a formal resolution of Council authorising the transaction.

2.5 Proceeds

2.5.1 Proceeds from Council's commercial property portfolio, net profits from land developments, bio banking credits, royalties, investments and sale of operational land are initially allocated to the Commercial Properties Restricted Reserve to fund agreed property developments, reinvestments required to maintain income from commercial activities, and asset management costs for the property portfolio.

2.5.2 Any surplus funds will be reallocated to the Resilience Fund for future use, which will be managed in accordance with the Financial Reserves Policy.

3. **SCOPE:**

3.1 This policy applies to all acquisitions of land whether by agreement with the owner or by compulsory acquisition, but only to the divestment of land classified as Operational under the Local Government Act 1993.

3.2 This policy acknowledges the principles set out in Chapter 3 of the Local Government Act 1993 and Circular 19-16 from the Office of Local Government dated 6 August 2019 relating to compulsory acquisitions.

4. **DEFINITIONS:**

4.1 An outline of the key definitions of terms included in the policy.

Community Land	All lands classified as Community under the provisions of the Local Government Act 1993, and shown on the Land Register as being Community Land.
Direct negotiations	Exclusive dealings between Council and a landowner without undergoing a publicly competitive process.
Land Register	The register of lands under Council's care and control that is published on Council's website from time to time in accordance with section 53 of the Local Government Act 1993.
Low value land	Land that is valued at less than \$100,000 or 200% of the total cost of conducting a public offering.
Off market	Where a property is not listed for sale on the open market or subject to any other public marketing campaign.

Operational Land	All lands classified as Operational under the provisions of the Local Government Act 1993, and shown on the Land Register as being Operational Land.
Surplus land	Land that has been identified by Council as no longer required for the use it has been held for.

5. STATEMENT:

5.1 Acquisitions

5.1.1 Council will always seek to acquire land by agreement, either through negotiation with a listing agent where the property is listed on the open market or by direct negotiation with the landowner if the property is off market.

5.1.2 Council will engage an independent registered valuer to determine the current market value of the land for all acquisitions (excluding compulsory acquisitions). The purchase price is to be benchmarked to the independent valuation unless the size of the land or the agreed value is negligible.

5.1.3 Premium

- a) In some cases there will be a justified basis for Council acquiring land at a price above the valuation in order to secure the land to achieve defined goals and objectives, or to acquire the land with a view to adding value to a larger scheme or development, or reducing risk.
- b) It is acknowledged that to achieve strategic goals there are sometimes overwhelming reasons to consider an acquisition outside of valuation range. Council can make a commercial decision to pay in excess of the valuation range due to the importance of the acquisition for the public purpose and any such decision must be made by the elected Council.

5.1.4 Prior to finalisation of an acquisition, Council shall determine the classification of the land as either Operational or Community Land.

5.2 Compulsory Acquisition

5.2.1 Where Council has negotiated with a landowner for a minimum period of six (6) months and agreement has not been reached, Council may resolve to acquire the land compulsorily under the Land Acquisition (Just Terms Compensation) Act 1991 (LAJTC Act).

5.2.2 Where compulsory acquisition is pursued, compensation will be assessed by the Valuer General in accordance with Part 3 of the LAJTC Act, unless the parties otherwise agree in writing to the amount of compensation to be paid.

5.2.3 Council will not be required to consider an offer of compensation if it is not based on valuation evidence but may, in its absolute discretion, agree to an offer if it is considered in the wider Council or public interest.

5.3 Divestment

5.3.1 Council may divest of land where it is supported by the Property Investment Strategy, or has been declared surplus to needs, or has been identified as a high risk or underperforming asset.

5.3.2 Any divestment will be subject to the criteria contained within the Property Investment Strategy and a formal resolution of Council.

5.3.3 Council may refuse any application or request to purchase Council owned land where it has not been publicly advertised, conclusively determined that it is surplus to needs, or for any other reason Council deems appropriate in its sole discretion.

5.3.4 Any divestment must be benchmarked to an independent valuation unless the cost of obtaining a valuation will exceed the potential sale price. Where obtaining a valuation is cost prohibitive, the divestment may be benchmarked to a market appraisal by a licensed real estate agent.

5.3.5 Two valuations may be required where the value of the land exceeds \$5,000,000 and/or the property has not been publicly marketed for sale.

5.4 Easements

5.4.1 Council may agree, in its absolute discretion, to the creation of an easement over its Operational land holdings, or Community land if authorised by a Plan of Management.

5.4.2 Any creation will be subject to compensation payable at market value and a formal resolution of Council required to authorise the transaction.

5.4.3 Council may refuse any application or request for an easement over Council owned land where it has not been publicly advertised, conclusively determined that the land is surplus to needs, or for any other reason Council deems appropriate in its sole discretion.

5.5 Closed Roads

- 5.5.1 Where a person has made application to close and purchase a Council public road, on completion of the road closure process the land may be sold to the applicant by direct negotiation.
- 5.5.2 The closed road will be sold at market value as determined by an independent registered valuer appointed by Council, and subject to a formal resolution of Council. All costs incurred by Council in transacting the closure and sale will be borne by the applicant.
- 5.5.3 Receipt or acceptance of an application to close and purchase a road does not guarantee the application will be immediately processed, or that the road will ultimately be closed or sold.
- 5.5.4 Council will prioritise processing of applications subject to the availability of resources and volume of projects at hand, and completion of the transaction will be subject to formal assessment by Council staff, concurrence of adjoining owners and all notifiable authorities, agreement on price and a formal resolution of Council.
- 5.5.5 Council may, in its absolute discretion, refuse to process an application if it has not been conclusively determined that the road is surplus to future needs, or if construction cannot be evidenced.

5.6 Authority

- 5.6.1 Section 377(1)(h) of the Local Government Act 1993 provides that the decision authorising land transactions cannot be delegated. A specific resolution of Council is required.
- 5.6.2 The General Manager and/or their delegate may enter into non-binding indicative offers in the form of:
- a) Letter; or
 - b) Heads of Agreement; or
 - c) Memorandum of Understanding.
- 5.6.3 Provided that the document clearly states that the offer is not legally binding and is subject to:
- a) Adoption of a final Council resolution authorising the transaction; and
 - b) Legally binding agreements on terms acceptable to both parties being entered into.

6. RESPONSIBILITIES:

- 6.1 The Property Investment and Development Coordinator is responsible for implementing, monitoring, evaluating, reviewing and providing advice on this policy.
- 6.2 Primarily, responsibility for complying with this policy rests with:
- a) Director Corporate Strategy and Support.
 - b) Director Facilities and Infrastructure.
 - c) Financial Services Section Manager.
 - d) Assets Section Manager.
 - e) Property Investment and Development team.
 - f) Statutory Property team.

7. RELATED DOCUMENTS:

- 7.1 Property Investment Strategy.
- 7.2 Financial Reserves Policy.
- 7.3 Office of Local Government Circular 19-16 dated 6 August 2019.
- 7.4 Local Government Act 1993.
- 7.5 Roads Act 1900.
- 7.6 Land Acquisition (Just Terms Compensation) Act 1991.
- 7.7 Regulations under each of the above Acts.

CONTROLLED DOCUMENT INFORMATION:

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EDRMS container No.	PSC2009-02488	EDRMS record No.	TBA
Audience	Staff		
Process owner	Director Corporate Strategy and Support		
Author	Property Investment and Development Coordinator		
Review timeframe	4 years	Next review date	TBA
Adoption date	29 May 2012		

VERSION HISTORY:

Version	Date	Author	Details	Minute No.
1	29 May 2012	Property Services Section Manager	Original Policy	110
2	14 April 2015	Land Acquisition and Development Manager	Changes to position titles and dates	079
3	23 February 2016	Land Acquisition and Development Manager	Policy has been formatted into new template. No changes required to policy – only review date.	034
4	10 April 2018	Land Acquisition and Development Manager	2.2 - Background updated to reflect current legislation by removing reference to the Council Charter. 6.9.6 - Policy amended to set out process for nonbinding offers to sell being documented prior to a formal resolution being secured. 6.10 - Policy amended to specify marketing of divestment lands in certain circumstances.	079
5	TBA	Property Investment and Development Coordinator	Substantial re-write of the policy which necessitates replacing the existing policy dated 10 April 2018. Policy reflects current practices and aligns with the implementation of the Property Investment Strategy. Controlled document information: amended review timeframe to 4 years as per Council's policy review process.	TBA