Policy name | Land Acquisition and Disposal
---|---
Responsible manager(s) | Divisional Manager Property and Commercial Services
Contact officer(s) | Property Officer
Directorate | Corporate and Commercial Services
Approval date | 12 September 2017
Outcome area | 9. Innovative and proactive leadership
Strategy | 9.2 Ensure financial sustainability and support the organisation in achieving efficient ongoing operations
Delivery Program link | 9.2.2 Manage land under Council control to achieve a return for the community
Operational Plan link | 9.2.2.2 Facilitate property sales and development

**Purpose**

Eurobodalla Shire Council will from time to time acquire or dispose of land or its interest in land, including road reserves.

The policy aims to:

1. Ensure Eurobodalla Shire Council has open and accountable processes to consider the acquisition and disposal of land or its interest in land.
2. Ensure best value is achieved in Council land dealings.
3. Establish the criteria under which Council will consider acquisition and disposal of land or its interest in land.

**Policy criteria**

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<tr>
<th>1</th>
<th>Application</th>
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<tr>
<td></td>
<td>This policy applies to all acquisition and disposal of Council lands or its interests in land including easements over private property. 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.</td>
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<tr>
<th>2</th>
<th>Legislation</th>
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<tr>
<td></td>
<td>This policy ensures Eurobodalla Shire Council’s compliance with the Local Government Act 1993; the Real Property Act 1900; the Land Acquisition (Just Terms Compensation) Act 1991; and the Roads Act 1993.</td>
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<th>3</th>
<th>Land Acquisition</th>
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<td>Section 186 of the Local Government Act 1993 prescribes what purposes Council can acquire land for:</td>
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<tr>
<td>a)</td>
<td>A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.</td>
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<tr>
<td>b)</td>
<td>Without limiting subsection (a), a council may acquire:</td>
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i. Land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or

ii. Land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.

Acquisition Requirements

1. Properties are to be 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.

2. Where properties are listed for sale on the open market, Council officers shall negotiate the terms of purchase with either the vendor or the vendor’s agent.

3. Where properties are not listed on the open market, council officers shall arrange a valuation report as a basis for negotiation and the valuation report shall be attached to the report submitted to Council, as required.

4. 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.

5. Authority to compulsorily acquire land is granted under the Roads Act 1993 or the Local Government Act 1993.

6. Any negotiations are to be conducted on the basis that a formal offer cannot be made until Council has considered a report authorising purchase of the property.

7. In the event of a formal valuation being obtained, this shall be used as a guide in any negotiations and subsequent report to Council.

8. At the time of acquisition, Council must resolve the classification of the land to be either Operational or Community land.

4 Land Disposals

Land and buildings are to be tested against a number of criteria to determine whether the property is retained and developed for community use or developed or 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 opportunity to meet future needs in the area and serving the local community?

5. Conservation value – does the land or road have cultural, natural or heritage value that should be maintained?
6. Site constraints and opportunities – in addition to conservation value are there other site constraints which may extend to [but not restricted to] flood liability, land slip, mine subsidence or other physical impairment?

7. Maintenance issues – what maintenance requirement does Council have for the land?

Should the proposed sale be impacted by any of these matters, it should not proceed unless it can be demonstrated that there is a public and/or economic benefit to the sale or the contract conditions can be structured to ensure that the issue is addressed.

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, private treaty, 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.

4.1 Direct Negotiation
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) and is surrounded by public roads on all sides other than the adjoining owner. 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.

6. In response to a proposal which achieves specific policy goals of Council.

7. 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.

4.2 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.
### 4.3 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*.


### 4.4 Probity Plan
Where land is being sold by direct negotiation, a probity plan 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) providing a fair chance for all to participate; and
- e) 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.

### 4.5 Valuation Requirements
Where Council proposes to sell land by direct negotiation and the value of the land is greater than $1 million, Council will obtain either:

- a) two independent valuations where the site has no special value to an adjoining owner and the market value based on the highest and best use can be established by analysis of direct comparative sales data; or
- b) one valuation undertaken jointly by two consultant valuers or a consultant valuer and land economist, quantity surveyor or retail specialist where the sale has a special value either to an adjoining owner or where the purchaser is acquiring the land for a specific purpose for which direct comparable sales data is not available.

For all other Council land proposed to be sold other than by public auction, 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.

For land being sold to an adjoining owner, the valuation shall be carried out on an added-value basis and the sale price shall be consistent with the difference in values on a before-and-after basis.

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.
4.6 **Escalation Fee**

Where the sale is conditional on the determination of a development application, approval of a road closure, or making of a LEP to reclassify the land to operational, the agreed value shall increase at a rate of 5% pa (or such other amount as determined by Council from time to time) if:

- settlement is not achieved within 12 months from the date of the Council resolution authorising the sale, and
- the delay is not as a result of Council or statutory process.

4.7 **Form of Contract**

Where Council resolves to sell community land (subject to reclassification) to a prospective purchaser, a Deed of Agreement shall be entered into between Council and the prospective purchaser committing each party to entering into a contract immediately should the reclassification be finalised. That Deed will be structured so that Council’s regulatory responsibilities are not compromised.

Where Council resolves to sell a portion of public road that is subject to a road closure under the Roads Act 1993 [www.austlii.edu.au/au/legis/nsw/consol_act/ra199373/](http://www.austlii.edu.au/au/legis/nsw/consol_act/ra199373/) and the value of that land is less than $100,000, the sale can be by memorandum of transfer.

All other land sales shall be by contract.

4.8 **Public Road Closures**

Areas of surplus Public Road must be closed under the **Roads Act 1993** to enable a sale to proceed. The closure process is managed by the Department of Primary Industries – Crown Lands Division.

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.

For purchaser-initiated closures and sales, the costs associated with the road closure will be borne by the prospective purchaser.

4.9 **Transfer of Crown Roads to Council**

A Crown road may need to be transferred to Council for a development to proceed where the road provides the only means of legal access to the development. When Council becomes the roads authority, it also assumes the liability for the roads. If the road is not constructed or only a gravel surface, Council may face future requests from the user(s) of the road to upgrade the road to a higher standard. Eurobodalla Shire Council will comply with **Roads Act 1993 Section 151**.

Council will only consent to the transfer of a Crown road to a public road under the care and control of Council if:

1. The Crown road reserve cannot be closed to become a private access; or
2. Access cannot be practically provided by an easement over private land; and
3. The road is constructed at the beneficiary’s cost at the time of transfer to the minimum standard required by Council.

4.10 Extinguishment of Easement

Council supports the extinguishment of easements it has over private properties when the benefits of the easements are no longer required.

Where Council no longer requires an existing easement(s), such easement(s) can be extinguished provided the landowner pays Council at least an amount determined by a registered Valuer.

If the extinguishment is owner initiated then an application fee together with a deposit to cover the legal, valuation and Council administrative costs as determined annually by Council are to be borne by the owner.

If the extinguishment is Council-initiated then legal and valuation costs are to be borne by Council.

Implementation

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Responsibility</th>
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<tbody>
<tr>
<td>1 Staff</td>
<td>Council Officers</td>
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<tr>
<td>2 Concerns</td>
<td>Council Officers</td>
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<tr>
<td>3 Consultation</td>
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Review

This policy will be reviewed every 4 years. It may also be reviewed and updated as necessary if legislation requires it; or when Council’s related policies, functions, structure or activities change; or when technological advances or new systems change the way that Council manages the acquisition and disposal of land or interest in land.

The policy may be revoked at the expiration of twelve months after the declaration of the poll for the next general NSW local government election, unless Council updates or revokes it sooner. Note: The next general local government election is expected to be held in September 2020.
Reviews of the effectiveness of this policy could include the following:

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<th>Performance indicator</th>
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<tr>
<td>Concerns or Complaints registered</td>
<td>Council records</td>
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<td>Customer Feedback Survey Responses</td>
<td>Surveys</td>
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<td>Internal or external review</td>
<td>Audit</td>
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<tr>
<td>Delivery Program/ Operational Plan achieved</td>
<td>Council reporting</td>
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**Governance**

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies, and guidelines.

**Related legislation and policies**

<table>
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<tr>
<th>Name</th>
<th>Link</th>
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<tbody>
<tr>
<td>• Land Investment</td>
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<td>• Asset Management</td>
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<td>• Property – Use by</td>
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<td>• Community Organisations</td>
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**Supporting documents**

<table>
<thead>
<tr>
<th>Name</th>
<th>Link</th>
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<tr>
<td>Property Strategy</td>
<td><a href="http://www.esc.nsw.gov.au">www.esc.nsw.gov.au</a></td>
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**Change history**

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<td>1</td>
<td>14 Oct 2014</td>
<td>Council</td>
<td>14/284</td>
<td>E01.5073 E06.0365</td>
<td>Policy commenced</td>
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<td>2</td>
<td>12 Sep 2017</td>
<td>Council</td>
<td>17/307</td>
<td>E16.0297 E06.0365</td>
<td>Reviewed, merged with previous ‘Transfer of Crown Lands to Council’ and ‘Extinguishment of Easements’ policies (now repealed)</td>
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**Internal use**

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<thead>
<tr>
<th>Responsible officer</th>
<th>General Manager</th>
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