

Policy name	Land Management – Acquisition, Disposal and Leasing/Licensing
Responsible manager(s)	Divisional Manager Property and Commercial Services
Contact officer(s)	Property Coordinator
Directorate	Corporate and Commercial Services
Approval date	22 November 2022
Outcome area	5. Our engaged community with progressive leadership
Strategy	5.3 Work together to achieve our collective vision
Delivery Program link	5.3.2 Manage land under Council control
Operational Plan link	5.3.2.1 Undertake strategic management of Council’s operational land portfolio

Purpose

Eurobodalla Shire Council will from time to time acquire, dispose of or lease/licence land or its interest in land, including road reserves. The *Local Government Act 1993* requires all sales and acquisitions of Council land can only be achieved through a Resolution of Council.

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 and leases or licences of 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
4. guide the development of a business plan to use land acquisitions to support Council strategy and generate a revenue stream to finance other Council objectives.

Policy criteria

1	Application This policy applies to all acquisition and disposal of Council lands or its interests in land, including easements over private property and leases/licences. Council (as custodian of public assets) acquires and disposes of property interests in open market format to ensure due probity of process and optimal financial return (and minimal risk). Section 377 of the <i>Local Government Act 1993</i> requires all sales and acquisitions of Council land can only be achieved through a Resolution of Council. The report to Council to make any such resolution will outline how any transactions are consistent with Council’s policies including on community engagement.
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2	<p>Legislation</p> <p>This policy sets out how Eurobodalla Shire Council ensures compliance with the: <i>Local Government Act (LGA) 1993; Real Property Act 1900; Land Acquisition (Just Terms Compensation) Act 1991</i>, and the <i>Roads Act 1993</i>.</p> <p>Council will also comply with: Section 625 of the <i>Local Government Act (NSW) 1993; Trustee Regulation 2020</i>; ICAC Direct Dealing Guidelines; OLG Capital Expenditure Guidelines; Local Government Code of Accounting Practice and Financial Reporting and Investment Policy Guidelines dated May 2010 (issued by the Office of Local Government), and Chapter 12, Part 6 LGA – Public-Private Partnerships.</p>
3	<p>Land acquisition - general</p> <p>Section 186 of the <i>Local Government Act 1993</i> prescribes what purposes Council can acquire land for:</p> <ul style="list-style-type: none"> a) <i>A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.</i> b) <i>Without limiting subsection (a), a council may acquire:</i> <ul style="list-style-type: none"> i. <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</i> ii. <i>land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.</i> <p><u>Acquisition requirements:</u></p> <ul style="list-style-type: none"> 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 the acquisition of such properties will have to the community. 2. Council officers shall arrange a valuation report as a basis for negotiation in-line with section 9 of this policy. 3. Where properties are not listed on the open market, the acquisition must be undertaken in accordance with Office of Local Government guidelines and the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>, where applicable. 4. Authority to compulsorily acquire land is granted under the <i>Roads Act 1993</i> or the <i>Local Government Act 1993</i>. 5. 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. 6. At the time of acquisition of land other than for roads, Council must resolve the classification of the land to be either 'operational' or 'community land'.
4	<p>Land acquisition – projects</p> <p>Council often acquires land for infrastructure or other projects. Many such projects are grant-funded and when a Council report seeks to accept a grant, it will include all the details of land acquisitions that are available at the time.</p>

In order to ensure infrastructure projects proceed in a timely fashion, Council often enters into Permits to Enter with a landowner, which allows us to commence work on their property while the acquisition process is being followed.

This policy recognises that in some circumstances, the most efficient method to proceed with the project may be to adopt specific acquisition procedures related to that project. Such circumstances could include:

- for acquisitions of small parcels of land e.g., when Council widens roads
- where the other party is a government entity
- where the value of the land being acquired is extremely minor compared to the importance or cost of the project
- where there is an urgent need to proceed with an identified Council project.

In these cases, the policy will be that the procedures followed are noted in the Council report regarding the land acquisition and this may include:

- Direct negotiating with one landowner
- Not obtaining a formal valuation
- Agreeing a price different from the valuation

5	<p>Land disposals</p> <p>Land and buildings are to be tested against a number of criteria to determine whether the property is retained and developed for an alternative community use, or developed or sold to realise its commercial potential. Staff will review these matters and note how any important matters have been considered in the Council report.</p> <p>The criteria contained in the assessment are:</p> <ol style="list-style-type: none"> 1. statutory influences (restrictions or limitations) – are there statutory reasons for 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 or community needs? 3. potential future use – is the land 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 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? <p>Should the proposed sale be impacted by any of these matters, the Council report should demonstrate 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.</p> <p>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, unless circumstances warrant sale by direct negotiation (as set out below).</p> <p>For public auction, the General Manager will set the reserve price consistent with this policy and based on a recommendation from an independent registered valuer.</p>
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6	<p>Direct negotiation</p> <p>Council can acquire or dispose of land by direct negotiation in compliance with the ICAC document 'Direct Negotiations: Guidelines for managing Risks' under any of the following circumstances:</p> <ol style="list-style-type: none"> 1. where the total cost of the 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 an urgent need to proceed with an identified Council project 3. where there is only one identifiable purchaser/vendor. 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% 4. 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 5. acquisition or disposal of land from/to a government or utility authority for the purpose of infrastructure provision 6. 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 7. in response to a proposal which achieves specific policy goals of Council. This 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, e.g., a land-swap transaction. <p>The report to Council covering these transactions will identify the reasons why direct negotiation is proposed. If the land involved in the direct negotiation is worth more than \$10,000, a summary of the completed transaction will be provided to the Audit, Risk and Improvement Committee.</p>
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7	<p>Council Resolution</p> <p>The sale of Council land cannot be delegated and, as required by the <i>Local Government Act 1993</i>, all acquisitions and sales must be effected by a Resolution of Council.</p>
8	<p>Direct negotiation - Probity Plan</p> <p>Where land is being sold by direct negotiation, staff will consider how to address probity to cover the following matters:</p> <ul style="list-style-type: none"> 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 e) where Council sells property subject to a development application, that application will be assessed independently of Council and submitted to either or the Joint Regional Planning Panel or Council for determination. <p>For transactions worth more than \$50,000, a detailed, written Probity Plan will be developed.</p>
9	<p>Valuation requirements</p> <p>For land proposed to be acquired or sold, Council will obtain a valuation from an independent, registered 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.</p> <p>This policy recognises that valuation advice is not an exact science and so on occasion Council may accept a price of up to 10% adverse to the valuation. Council will always seek to obtain the highest value for the ratepayer.</p> <p>Where the negotiated outcome is more than 10% adverse to the assessed market value, it shall be acknowledged in the report to Council giving reasons why that variation shall be adopted.</p> <p>In some circumstances where the land value is low or there is adequate other evidence of the land value, a valuation may not be cost effective and in these cases, the reasons for not obtaining a valuation will be noted in the Council report. For example, Council may have recently valued Forestry land in one area and later needs to acquire similar land elsewhere. If the land involved in the direct negotiation is worth more than \$10,000, a summary of the completed transaction will be provided to the Audit, Risk & Improvement Committee.</p> <p>Where Council proposes to sell or acquire land by direct negotiation and the value of the land is likely to be greater than \$1 million, Council will obtain two independent valuations.</p> <p>For land being sold to or acquired from an adjoining owner, the valuation shall be carried out on a added- value basis, and the sale price shall be consistent with the difference in values on a before-and-after basis.</p>

10	<p>Escalation fee</p> <p>Where the sale is conditional on the determination of a development application, approval of a road closure, or making of a Local Environmental Plan (LEP) to reclassify the land to 'operational', the agreed value shall increase at a rate of 5% pa (or as otherwise noted in the sales contract) if:</p> <ul style="list-style-type: none"> • settlement is not achieved within 12 months from the date of the Council Resolution authorising the sale • the delay is not as a result of a Council or statutory process.
11	<p>Public road closures</p> <p>Areas of surplus public road must be closed under the <i>Roads Act 1993</i> to enable a sale to proceed.</p> <p>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.</p> <p>For classified roads, the approval of Transport for NSW must be obtained prior to the matter being referred to Council for consideration.</p> <p>For purchaser-initiated closures and sales, the costs associated with the road closure will be borne by the prospective purchaser.</p> <p>Council will also consider other options rather than a sale of a public road, including creating an easement or leasing the road itself or the airspace above it.</p>
12	<p>Transfer of Crown roads to Council</p> <p>A Crown road may need to be transferred to Council for a development to proceed where the Crown road provides the only means of legal access to the development. When Council becomes a 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. Council will comply with the <i>Roads Act 1993</i>.</p> <p>Council will only consent to the transfer of a Crown road to a public road under the care and control of Council if:</p> <ol style="list-style-type: none"> 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.

13	<p>Extinguishment of easement</p> <p>Council supports the extinguishment of easements it has over private properties when the benefits of the easements are no longer required.</p> <p>Where Council no longer requires an existing easement(s), such easement(s) can be extinguished provided the landowner pays compensation paid in accordance with the valuation section of this policy.</p> <p>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.</p> <p>If the extinguishment is Council-initiated then legal and valuation costs are to be borne by Council.</p>
14	<p>Leasing/licensing of Council-managed land</p> <p>Council supports the leasing or licensing of Council-managed land where it is consistent with legislation, in particular sections 45 to 47C of the <i>Local Government Act 1993</i>, and Council strategies and adopted Plans of Management.</p> <p>Section 47 of the <i>Local Government Act 1993</i> requires public notice to be given of Council's intent to issue a lease or licence over Council-managed community land. Staff will issue such public notice unless a lease or licence request is inconsistent with Council policies, strategies or plans, in which case staff will reject the licence application. Councillors will be informed via the Councillor Newsletter of public notifications.</p> <p>When no adverse submissions are received, or where staff are able to address submissions to the correspondent's satisfaction, a lease or licence will be approved under delegation.</p> <p>Where unresolved adverse submissions are received, a report to Council will be made to consider approving the lease or licence.</p> <p>Leases over operational land may be approved by the General Manager.</p>
15	<p>Land investment</p> <p>Council will invest in land to develop revenue streams that may be used to finance community infrastructure and other objectives determined by Council.</p> <p>The Audit, Risk and Improvement Committee will provide governance and probity oversight of Council's land investment activities. The Audit, Risk and Improvement Committee, where appropriate, shall seek independent expert advice in relation to its consideration of land investment activities.</p> <p>Staff shall prepare a business plan as part of the DPOP action 5.3.2.4 'Review the Property Strategy', to define its land investment activities for review by the Audit, Risk and Improvement Committee and endorsement by Council. It is acknowledged that individual actions within the business plan are likely to be kept confidential due to their commercially sensitive nature however the written business plan must be made available to councillors to discuss aspects of the plan and the need for confidentiality.</p>

Implementation

Requirements		Responsibility
1	Staff Under supervision, applicable Council staff will be responsible for ensuring that policies are implemented appropriately within their work area, after they have received relevant training to do so.	Council officers
2	Concerns Public concerns communicated to Council in relation to this policy will be recorded on Council's records system and handled in accordance with Council's Customer Service or Complaints Policy. These records will be used to determine any follow-up actions and analyze the history of reported public concerns.	Council officers
3	Consultation Any consultation deemed necessary will occur as required with key stakeholders, which may include (but not be limited to) the community, other agencies, statutory and industry bodies. Public submissions regarding this policy are invited for consideration during the exhibition period.	As applicable

Review

This policy will be reviewed every four 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 2024.

Reviews of the effectiveness of this policy could include the following:

Performance indicator	Data source(s)
Concerns or complaints registered	Council records
Customer feedback survey responses	Surveys
Internal or external review	Audit
Delivery Program/Operational Plan achieved	Council reporting

Governance

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

Related legislation and policies

Name	Link
<i>Local Government Act 1993</i>	Local Government Act 1993 No 30 - NSW Legislation
<i>Real Property Act 1900</i>	Real Property Act 1900 No 25 - NSW Legislation
<i>Land Acquisition (Just Terms Compensation) Act 1991</i>	Land Acquisition (Just Terms Compensation) Act 1991 No 22 - NSW Legislation
<i>Roads Act 1993</i>	Roads Act 1993 No 33 - NSW Legislation
Procurement Policy	Council policies Eurobodalla Council website (nsw.gov.au)
<i>Trustee Regulation 2020</i>	Trustee Regulation 2020 - NSW Legislation
Ministerial Investment Order 12 Jan 2011 - OLG Local Govt Code of Accounting Practice and Financial Reporting	11-01 - Revised Ministerial Investment Order - Office of Local Government NSW
OLG Local Government Code of Accounting Practice and Financial Reporting	Local Government Code of Accounting Practice and Financial Reporting - Office of Local Government NSW
OLG Investment Policy Guidelines	Department of Premier and Cabinet (Local Government), Investment Policy Guidelines (nsw.gov.au)
ICAC Direct Dealing Guidelines	Direct Negotiations - guidelines for managing risks in direct negotiations 3Aug18 (4).pdf
OLG Capital Expenditure Guidelines	Capital Expenditure - Office of Local Government NSW

Supporting documents

Name	Link
Property Strategy	Plans and strategies Eurobodalla Council website (nsw.gov.au) when available

Change history

Version	Approval date	Approved by	Min No	File No	Change
1	14 Oct 2014	Council	14/284	E01.5073 E06.0365	Policy commenced
2	12 Sep 2017	Council	17/307	E16.0297 E06.0365	Reviewed, merged with previous 'Transfer of Crown Lands to Council' and 'Extinguishment of Easements' policies (now repealed)
3	22 Nov 2022	Council	22/314	S004- T00060	Merged the previous Land Investment Policy into this document and updated relevant information.

Internal use

Responsible officer		General Manager	Approved by	Council	
Min no	22/314	Report no	GMR17/031	Effective date	22 Nov 2022
File No	S004-T00060	Review date	Sep 2026	Pages	10