



Land Transaction Policy

February 2021

Policy No: CCC 057

Policy owner:	Innovation and Futures
Approved by:	Central Coast Council
Date of approval:	26 October 2020
Policy category:	Strategic
Content Manager No:	D14271708
Review date:	October 2024

Contents

Contents.....	2
Purpose	2
Objectives.....	2
Scope	2
Principles.....	4
Acquisitions	4
Competitive sales process.....	4
Compulsory acquisition	4
Council resolutions	4
Covenants and restrictions on Council land	4
Dedications.....	5
Due Diligence	5
Easements over Council owned land.....	5
Land Classification	5
Land Swaps.....	6
Market Value.....	6
Off Market Sales	6
Review of land portfolio	6
Valuations.....	6
Compliance, monitoring and review.....	7
Records management.....	7
Related resources	7
History of revisions	7

Purpose

1. The purpose of the Land Transaction Policy is to provide a framework for Council which will inform decisions and directions in a consistent manner and in accordance with relevant legislation. The Land Transaction Policy is a strategic policy which should be read in conjunction with any operational-level procedures which guide the implementation of this Policy.

Objectives

2. Central Coast Council is committed to:
 - a. ensuring Council retains or acquires ownership of land that is needed for its current and future service delivery;
 - b. ensuring that land is retained, acquired or sold to provide for the current and future needs of the community;
 - c. Council's land portfolio is managed strategically, having regard to the key themes in Council's Community Strategic Plan;
 - d. ensuring that land transactions include appropriate consultation with relevant stakeholders; and
 - e. ensuring that land transactions are undertaken in accordance with applicable laws.

Scope

3. This Policy applies to the following transactions involving land owned by Central Coast Council (Land Transactions):
 - a. sales;
 - b. acquisitions;
 - c. the creation of easements or restrictions over Council's land;
 - d. land swaps;
 - e. dedications and donations of land;
 - f. transfer or vesting of land in Council by government agencies.
4. This Policy does not apply to:
 - a. the dedication of land to Council as a development contribution under the *Environmental Planning and Assessment Act 1979*;
 - b. leasing, licensing or hiring of land or facilities owned by Council or third parties;

- c. transactions involving Crown land managed by Council; or
- d. acquisition of land pursuant to the Roads Act 1993.

Principles

- 5. The following principles are provided to define duties and obligations of Council and Council staff. It should be noted that there will be occasions where an exception to the principle is required for the best outcome of all parties. Such exceptions require approval at a Council meeting.

Acquisitions

- 6. Land acquisitions require a Council resolution to support the decision; the report to Council must include justification for the acquisition and details of the long-term maintenance costs, outcome of due diligence investigations, and an independent valuation (unless the value of the land does not justify a valuation).

Competitive sales process

- 7. Land sales should normally occur through a competitive open market process (for instance: expressions of interest, auction, or private treaty undertaken by an estate agent). Exceptions may occur only in special circumstances, such as off-market transitions, sales to adjoining landowners of small lots that are not developable as stand-alone lots or that have little use or commercial appeal to the wider market, or where a competitive process is not appropriate or practical in the circumstances. Any proposal to sell land other than by a competitive open market process must be authorised by a Council resolution.

Compulsory acquisition

- 8. Council may only acquire land by compulsory process if the land is needed for the purpose of carrying out any of its functions. Any compulsory acquisition must be done in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW) and Section 186(1) of the Local Government Act 1993. Council will also comply with the NSW Government Property Acquisition Standards.

Council resolutions

- 9. A Council resolution is required to authorise the compulsory acquisition, purchase, sale, exchange or surrender of any land, in accordance with Section 377(1)(h) of the Local Government Act 1993.

Covenants and restrictions on Council land

- 10. *Covenants and* restrictions that benefit other parties imposed on Council land should not be imposed or agreed in relation to Council land unless there is a net tangible benefit to

Council, the public or the environment and provided the restriction does not unreasonably impact service delivery or the future use or development potential of the land. The beneficiary of the restriction must compensate Council for any diminution in the market value of the land arising from the restriction, as assessed by Council's independent valuer. All costs associated with the restriction including valuer costs should normally be paid for by the person benefitting from the restriction.

Dedications

11. Land dedications must be treated in the same way as a land acquisition or sale by Council. In seeking Council resolution to support the decision, the report to Council must include details of the long-term maintenance costs, benefits of the land dedication (including social, environmental and /or economic), outcome of due diligence investigations, financial impact analysis and an independent valuation (unless the value of the land does not justify a valuation). Appropriate records must be kept detailing the purpose of the dedication and any conditions or restrictions of the dedication.

Due Diligence

12. All land which Council proposes to acquire or sell requires thorough investigation through a due diligence process, ensuring a net tangible benefit to Council, the public or the environment in accordance with the Community Strategic Plan. As a minimum this process must include: preparing a business case, land transaction plan and financial impact analysis; assessing the strategic value of the land having regard to need, the geographic context, environmental values and applicable strategic plans; assessing opportunities to capture uplift in the land through value adding proposals if applicable; inspecting Council records relating to the land; carrying out appropriate site investigations; and for land owned by Council, confirming the land classification and the historical details of the acquisition.

Easements over Council owned land

13. An easement should not normally be granted over Council land unless there is a net tangible benefit to Council or the public and provided the easement does not unreasonably limit service delivery or the future use or development potential of the land. The person or entity benefitting from the easement should pay full market value for the easement as assessed by Council's independent valuer. All costs associated with the easement including valuer costs should normally be paid for by the person benefitting from the easement. If the land is classified as community land, easements may not be granted other than for public utilities or if expressly authorised in a Plan of Management.

Land Classification

14. Council may only sell land if it is classified as operational land under the *Local Government Act 1993* and provided the sale is not inconsistent with the terms of any trusts, conditions or restrictions that affect the land. Land classifications must be done in accordance with Division 1 of the *Local Government Act 1993* and any relevant land classification policy.

Land Swaps

15. A land swap must be treated in the same way as a land acquisition and/ or sale by Council. The Council resolution which authorises the land swap must include justification for the land swap, details of the outcome of due diligence investigations, and an independent valuation (unless the value of the land does not justify a valuation).

Market Value

16. Land transactions will occur at market value, as assessed by a registered independent valuer appointed by Council, unless the value of the land does not justify a valuation. Council resolutions should allow scope for negotiation to ensure market value is secured

Off Market Sales

17. Sale of Council land off-market directly to a state or federal government agency may be appropriate in certain circumstances, particularly where the off-market sale would help facilitate Council's initiatives that could not otherwise be achieved through a sale in the open market. Circumstances may include where a government agency could facilitate economic or social outcomes (such as affordable housing, regionally significant community facilities, place activation, environmental protection or infrastructure provisioning).

Review of land portfolio

18. A strategic review of Council's land portfolio needs be undertaken periodically by Council. A review of Council's land portfolio should be a public process with all considerations listed below being documented and reported to Council for approval This should consider the following:
 - a. Utilisation – whether assets are being optimally utilised in accordance with their intended use, opportunities for greater utilisation of the land (i.e. highest and best use), as well as to assist in planning priorities and expenditure for capital works;
 - b. Purpose – due diligence checks to investigate how the land came into Council's ownership;
 - c. Surplus Land – whether land which is surplus to Council's current and future needs, in which case could be sold subject to undertaking the appropriate due-diligence and obtaining Council resolution;
 - d. Future Needs - identify additional land required for Council's future needs and as such appropriate due diligence and a Council resolution would be sought to support the requirement.

Valuations

19. A valuation must be obtained for acquisitions, sales, land swaps, or easements by an independent registered valuer who is suitably qualified in the asset type and locality. An assessment of the value of land or easements may, however, be undertaken by Council staff if the land or easement is of low strategic or financial value, or a valuation has been recently undertaken and Council staff can confirm the validity of the previous valuation.

Compliance, monitoring and review

20. Suspected breaches or misuse of this policy are to be reported to the Chief Executive Officer. Alleged breaches of this policy shall be dealt with by the processes outlined for breaches of the Code of Conduct, as detailed in the Code of Conduct and in the Procedures for the Administration of the Code of Conduct.
21. This policy will be reviewed every four years.

Records management

22. Staff must maintain all records relevant to administering this policy in a recognised Council recordkeeping system.

Related resources

23. Legislation:

- a. Local Government Act 1993 (NSW)
- b. Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

24. Associated documents:

- a. Council's Code of Conduct
- b. NSW Government Property Acquisition Standards

History of revisions

Amendment history	Details
Original approval authority details	<p>Council</p> <hr/> <p>26 October 2020, resolution number 1087/20</p> <hr/> <p>This policy sets out principles that apply to land transactions of Central Coast Council, drawing where appropriate on former policies including:</p> <ul style="list-style-type: none"> • Policy for Property Transactions - Sales and Acquisitions (former Wyong Shire Council) and • Land and Property Transactions policy (former Gosford City Council) <p>The policy may be underpinned by operational procedures.</p>

Version 2

Amendment to Policy approved by CEO 12 February 2021

CM document number - D14538686

Add principle number **17 – Off Market Sales**

Section 55(3)(b) of the Local Government Act 1993 allows Council to enter into a contract directly with governmental agencies.

Notwithstanding, the purpose of this amendment seeks to ensure that the intention of this section of the Act is fulfilled, and further that the Policy supports Council in seeking all opportunities for the disposal of its land – including both direct negotiations and open market transactions.
