

# Property Acquisition and Disposal Policy

## POLICY ADMINISTRATION

<b>Dates</b>	Policy approved 26/07/2022 (Version 2) This policy is effective upon its approval. Policy is due for review 07/2025
<b>Approved by</b>	Executive 26/07/2022 (Version 2) EXE083-22
<b>Policy Type</b>	<input type="checkbox"/> Executive Policy <input checked="" type="checkbox"/> Council Policy
<b>Exhibition Period</b>	N/A
<b>Policy Owner</b>	Head of Strategic Property Business and Corporate Services
<b>Related Documents</b>	Property Asset Strategy and Business Plan 2017 Community Lease Policy 2020
<b>References &amp; Legislation</b>	Local Government Act 1993 Roads Act 1993 Real Property Act 1900 Land Acquisition (Just Terms Compensation) Act 1991 Crown Land Management Act 2016
<b>Document Identifier</b>	Policy #: Pol-024.02 Doc #: D17/58264
<b>Breaches of Policy</b>	Breaches of any policy will be dealt with and responded to in accordance with adopted codes and/or relevant legislation.
<b>Record Keeping</b>	All documents and information obtained in relation to the implementation of this policy will be kept in accordance with the NSW State Records Act 1998, Georges River Council's Corporate Records Policy and adopted internal procedures.

## PURPOSE

To establish a framework through which Council can consider its freehold property assets and make decisions using a systematic, open and transparent approach to land acquisition and disposal.

To ensure that decisions made ensure best value, maximising returns by either realising a commercial level of financial return or fulfil a community benefit aligned to the visions of the Community Strategic Plan or a combination thereof.

## SCOPE

Georges River Council will, from time to time acquire and dispose of property to support the future financial success of the organisation. Optimising the return from Council's property assets will ensure that Council continues to reduce its reliance on rate revenue and expand its income-earning potential from alternative sources.

## DEFINITION OF TERMS

Term	Meaning
Acquisition Classification	the buying or obtaining of assets means of identifying status of Council's freehold assets.
Community Land	refers to Community classified land under the community provisions of the <i>Local Government Act 1993</i> and <i>Crown Lands Management Act 2016</i> .
Crown Land	land that is vested in the Crown as per <i>Crown Lands Act 1989</i>
Land Classification	All Council land must be classified as operational or community land in accordance with the community provisions of the <i>Local Government Act 1993</i> .
Surplus	property identified as no longer required by Council for community or operational purposes

## POLICY STATEMENT

When deciding whether to acquire or dispose of property assets, Council will consider the purposes for this action, which can be to provide:

- a service;
- a strategic purpose; and/or
- a commercial return on investment

Any property that is not providing an optimum level of return, or not providing either services or other functions should be rationalised as the lost opportunity places an additional burden on rates and other income sources.

## **1. Property Asset Classifications**

1.1. The following property asset classifications will be considered to assess each freehold property asset owned by Council.

### Surplus

- No services of Council are provided from the property and/or the property is underutilised.
- The property is unlikely to be let to a third party.
- The property has no capacity to influence or support any other desired planning outcome or redevelopment project.

### Commercial/Investment

- No services of Council are provided from the property.
- The property may be let to a third party at market value determined by an independent valuer.
- The property may have the capacity to influence or support other desired planning outcomes or redevelopment projects.

### Civic

- Properties from which key services of the Council are provided.

### Residential

- Properties which are primarily used to provide residential accommodation.
- Properties may be jointly owned by Council and either other Government Departments or the private sector.
- The property may be let to a third party.

### Community

- Properties from which community support activities or services are provided on behalf of Council.
- The property may be Crown Land vested in the Council.
- The property may be let to a third party.

### Utilities

- Properties used by Council for the provision of essential infrastructure.
- The property may be Crown Land vested in the Council.

### Public Open Space

- Property held by Council for the purpose of providing parks or nature reserves.
- The property may be Crown Land vested in Council.
- The property may be let or sold to a third party.

## **2. Property Acquisitions**

### Acquisition Criteria

2.1. The following should be taken into consideration:

- a) Properties are identified taking into consideration the purpose for which they need to be acquired and/or the strategic nature of the acquisition.
- b) Suitability of the property for its intended use.
- c) Return on investment (if applicable).
- d) Analysis of cost of ownership including maintenance costs.
- e) Options for acquisition such as purchase, lease or public partnership.
- f) Condition assessments and asset management plans should be prepared for each property.

### Acquisition Requirements

2.2. Where properties are listed for sale on the open market, Council officers or its property consultants negotiate the terms of purchase with either the vendor or the vendor's agent.

2.3. Where properties are not listed on the open market, Council officers arrange a valuation report as a basis for either negotiation or acquisition by way of public auction and the valuation report be attached to the report submitted to Council, as required.

2.4. For all land and 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. Authority to compulsorily acquire land is granted in accordance with the *Roads Act 1993* or the *Local Government Act 1993*.

- 2.5. Any negotiations are in principle and on the basis that a formal offer cannot be made until Council has considered a report authorising purchase of the property.

### Acquisition Procedure

#### 2.6. Council Resolution

- 2.6.1. The acquisition of land cannot be delegated and, as required by the *Local Government Act 1993*, must be effected by a resolution of Council.

#### 2.7. Classification

- 2.7.1. Council must resolve what the classification of the land will be (either Community or Operational) at the time of resolving to acquire the land or in accordance with Section 31 *Local Government Act 1993*. Land which has been compulsorily acquired cannot be reclassified by way of Council resolution and reclassification changes will require a planning proposal to amend the Local Environmental Plan and include the discharge of any trusts.

#### 2.8. Method of negotiation

- 2.8.1. 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 commercial value.

- 2.8.2. All other acquisitions must be negotiated having regard to the provisions of the *Land Acquisition (Just Terms Acquisition) Act 1991*.

#### 2.9. Due Diligence

- 2.9.1. The scope and focus of the due diligence investigations depends upon the objectives of the acquisition as these objectives may vary depending on the purpose of the acquisition (for example for investment, development or community purposes). A due diligence checklist for acquisitions should be developed on an individual case by case basis with input from Council's legal advisors prior to acquisition.

## **3. Land Disposals**

### Disposal Criteria

- 3.1. The following should be taken into consideration:

- a) Property should be unable to be utilised for service provision, or is only able to provide services that Council has determined to be non-essential
- b) Property should be unable to be used to create a sustainable income generation, or the ability of the property to generate financial returns should be less than that obtainable from other investments

- c) Properties identified for disposal should be able to provide the maximum return to Council upon sale
- d) Statutory influences (restrictions or limitations) that have been established as a result of Council's acquisition of the land

### Disposal Requirements

- 3.2. The disposal of Council's property assets, including the preferred disposal method will be determined by Council via a formal Council resolution.
- 3.3. Where land 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 or expression of interest unless a sale by direct negotiation is warranted. For a public auction, the reserve price will be based on a recommendation from an independent valuer.
- 3.4. Council can only dispose of land by direct negotiation under the following circumstances. Note, a report to Council should identify the reasons why this sale process was chosen and the process should be followed in accordance with ICAC 'Guidelines for managing risk in direct negotiations (May 2006).
  - a) 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
  - b) Where there is only one identifiable purchaser. For example, where a site is not large enough for development in its own right and is surrounded by public roads on all sides other than the adjoining owner. Where a site adjoins two owners such as laneways, each adjoining owner will have the opportunity to participate in a competitive sale process.
  - c) 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
  - d) Disposal of land to a Government or utility authority for the purpose of infrastructure provision.
  - e) 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.
  - f) In response to a proposal which achieves specific policy goals of Council.
  - g) 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.

### Disposal Procedure

#### 3.5. Council Resolution

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

#### 3.6. Classification

3.6.1. 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*.

3.6.2. If reclassification is required as part of direct commercial negotiations, all costs to reclassify the land will be met by the applicant.

#### 3.7. Probity Plan

3.7.1. 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;
- 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.

#### 3.8. Valuation Requirements

3.8.1. Where Council proposes to sell land by direct negotiation and the value of the land is greater than \$1m, 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.
- 3.8.2. 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.
- 3.8.3. 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.
- 3.8.4. 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.

### 3.9. Escalation Fee

- 3.9.1. 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, 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.

### 3.10. Form of Contract

- 3.10.1. 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.

## 4. Land Register

- 4.1. Council's Land Register is to be updated where ownership changes relating to Council's property assets occur.

## RESPONSIBILITIES

Position	Responsibility
Strategic Property	<p>Head of Strategic Property is the responsible officer and will;</p> <ul style="list-style-type: none"> <li>provide a point of contact about the meaning and application of the policy</li> <li>Update the policy when necessary</li> </ul> <p>The Strategic Property Specialist and Strategic Property Assistant will;</p> <ul style="list-style-type: none"> <li>adhere to this policy</li> <li>review and update the policy when required</li> <li>develop and adhere to related procedures</li> </ul>
Staff	<p>To adhere to this policy.</p> <p>To file related documentation into Council's Electronic Document &amp; Records Management System.</p>
Councillors	<p>Approve or deny the acquisition or disposal of Council's real property assets by way of a formal Council Resolution.</p>

## VERSION CONTROL AND CHANGE HISTORY

Version	Amendment Details	Policy Owner	Period Active
HCC	Former Hurstville Council Policy discontinued	Hurstville Property	24/2/2016 – 6/8/2017
1.0	<p>New Property Acquisition and Disposal Policy</p> <p>Placed on public exhibition 21 June to 19 July 2017</p> <p>Adopted by Council 7/8/2017 (CCL174-17)</p>	Manager Strategic Property	7/8/2017 – 26/7/2022
2.0	<p>Review of policy in line with Council's policy review cycle resulting in minor amendments such as transfer to new policy templates and updates to position titles and legislation references.</p>	Head of Strategic Property	26/7/2022 - ongoing