

Acquisition and disposal of land and easements policy



RESPECT



INNOVATION



INTEGRITY



TEAMWORK



EXCELLENCE

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Acquisition and disposal of land and easements policy

1.0 Purpose

Council from time to time acquires and disposes of its land and easement assets. Council has obligations under a range of legislation and this policy has been developed in order to provide the framework for a transparent process that adheres to the relevant legislation and provides the best value outcome for Council.

2.0 Objectives

The objectives of this policy are:

- Ensure that Kiama Municipal Council has open and accountable processes and guiding principles for the acquisition and disposal of land.
- Ensure best value is achieved in Council's land dealings.
- Establish the analysis process which will be undertaken and criteria under which Council will consider acquisition and sale of land including easements.

3.0 Scope

This Policy applies to all strategic and compulsory land acquisitions and disposals and to the establishment and disposal of easements.

4.0 References

This document should be read in conjunction with the following:

- Local Government Act 1993
- Local Government (General) Regulation 2021
- Land Acquisition (Just Terms Compensation) Act 1991
- Real Property Act 1900
- Strata Titles Act 1988
- Community Titles Act 1996
- Roads Act 1993
- Crown Land Management Act 2016
- Conveyancing Act 1919
- Kiama Municipal Council Public Land Management Guidelines
- Tendering Guidelines for NSW Local Government
- other relevant legislation

5.0 Definitions

For the purpose of this document the following definitions apply:

Term	Definition
Land	Land as a physical entity including buildings, structures and improvements to land held in fee simple

Term	Definition
Easement	An interest in land owned by another that entitles its holder to a specific limited use or enjoyment
Council easement	An interest in land owned by a third party that exists for specific public use, benefit or enjoyment
Privately owned property	Land owned by an individual, partnership, company or any government agency, department or utility authority

6.0 Policy

Council (as custodian of public assets) acquires land including interests in land through transparent processes in normal property market settings and the disposal of land with full transparency through identified methods. Acquisition and disposal processes will ensure due probity of process, optimal financial return (and minimal risk) and compliance with the Local Government Act and Regulations. All dealings in Council land can only be achieved through a resolution of Council.

Proposed acquisition and disposal of land and easements will consider:

1. The guiding principles expressed in Section 8A of the *Local Government Act 1993* and in particular securing the best value for residents and ratepayers.
2. The current property market and independent valuation advice.
3. The state of the local economy and capability to generate economic benefit.
4. The objectives and general directions of the Community Strategic Plan, Delivery Program and Operations Plan.
5. The current costs and liabilities to Council of managing and maintaining land considered surplus to operational needs.
6. Local Environmental Plans, Masterplans and Strategies.
7. Assessment of the extent to which the land contributes to (or the future needs of) community well-being and amenity, including: whether the land improves the quality and opportunities for public space including sport and recreation opportunities; whether it provides enhanced arts and cultural activities and cultural development; whether it maintains and protects bio-diversity; whether it protects and conserves natural, cultural and built heritage; and whether it provides for operational needs of Council.

6.1 Land acquisition

Acquisition of land will meet the purposes defined in Section 186 of the *Local Government Act 1993*, as follows:

1. A council may acquire land (including an interest in land) for the purpose of exercising any of its functions
2. Without limiting subsection (1), a council may acquire:
 - a. land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument, or
 - b. land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.

The following principles will be applied when Council is considering acquisition of land:

1. The process for acquisition of land will be as open and transparent as possible to ensure that Council obtains the best outcome and price and Council's commercial position is protected.
2. For all transactions Council will obtain relevant information, including but not limited to valuation reports in order to assist decision making.
3. Where privately owned property is available for purchase on the open market, Council will negotiate the purchase price and terms to achieve the best possible commercial value.
4. Where privately owned property is not listed on the open market, Council officers will commission a valuation report as a basis for commencement of negotiations.
5. When acquiring land Council will take into consideration the current property market to ensure that any acquisitions are acquired for a reasonable price and if required independent valuation advice.
6. Wherever possible Council's preferred method of acquisition is to acquire land through negotiated agreement with the owner/vendor.
7. Where land is not able to be acquired through negotiated agreement and otherwise where land is not on the open market for sale, Council may acquire the land by compulsory acquisition under the *Land Acquisition (Just Terms) Compensation Act 1991*.
8. Decision making and assessment criteria for land acquisitions must consider:
 - a. Assessment of the extent to which the land contributes to improving community well-being and amenity, including; whether the land improves the quality and opportunities for public space, whether it delivers equitable provision of a diverse range of sport and recreation opportunities, whether it provides enhanced arts and cultural activities.
 - b. Assessment of the extent to which the acquisition maintains and protects the natural environment by conserving bio-diversity or protecting, conserving and managing natural, cultural and built heritage.
 - c. Assessment of the state of the local economy and capability to promote long-term economic growth by supporting opportunities for local businesses and local employment.
9. Council may acquire land for entrepreneurial purposes. Assessment of land opportunities suitable for acquisition for entrepreneurial outcomes are to consider: the competing needs of the community and development of the Municipality and the Community Strategic Plan; permissible use of the land/approvals for use of the land taking into consideration the Kiama Local Environmental Plan and Council's Public Land Management Guidelines; and costs of ongoing maintenance and operations and Council's Operational Plan.
10. Commercial confidentiality will apply to negotiations for the acquisition of land subject to the requirements of relevant legislation. The purchase price and other costs associated with the acquisition will be disclosed once settlement has occurred.
11. Council shall resolve the appropriate funding source for each acquisition.
12. Council must resolve to acquire land including the classification of the land as either Operational or Community land.

6.2 Land disposal

Where land (including surplus areas of public road) is capable of being sold on the open market and able to be developed/used independently of any other property, the sale shall be by competitive process involving public auction, tender or expression of interest unless circumstances warrant sale by Direct Negotiation as set out below. For public auction, the Chief Executive Officer will set the reserve price based on a recommendation of an independent valuer.

Notwithstanding Section 55(3) of the *Local Government Act 1993*, Council will consider using a tender process for land disposal where the sale may be considered controversial, contentious or political. Council resolution is required for sale of land.

Commercial confidentiality will apply to negotiations for the land disposal. Sale price and other costs associated with the disposal will be disclosed once settlement has occurred.

Council can dispose of land by Direct Negotiation under the following circumstances:

1. Where the total cost of the public sale process exceeds the expected community benefit. For example, where the land is worth \$1,000 and the cost involved in marketing the land proposed for disposal 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 closed under the *Roads Act 1993*). Where a site adjoins two owners such as laneways, the respective owners will 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 in conjunction with an intended land disposal undertaken within the previous 12 months in accordance with this policy has failed to achieve the intended outcome.
6. In response to a proposal which achieves specific policy goals of Council. This exclusion aims to allow Council an opportunity for delivery of a unique project. Any such proposal must include a concept plan, 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.
7. Following valuation advice.

The report to Council recommending sale of a property will identify the reasons for a Direct Negotiation sale process method.

6.3 Easements

Easements are a right over a property for Council to use land for a specific purpose (drainage easement, easement in gross for access, etc) and can be in the form of a covenant restricting the use of land (restriction as to user for unstable land, etc) or can be a positive covenant that requires a landowner to use and/or maintain the site for a specific use (maintain detention basins, etc).

Where Council requires an easement over a property and the easement is not created in a subdivision or as a condition of development consent, compensation may be payable to the landowner and shall be paid to the respective landowner where appropriate. The amount of compensation shall be assessed by a registered valuer in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

Where a Council easement over land is no longer required, Council can seek to extinguish or agree to the extinguishment of that easement if requested by the affected landowner. Where appropriate, Council will seek compensation from the landowner for the benefit of that extinguishment to the landowner as determined by a consultant valuer.

Council must resolve to acquire or dispose an interest in land by an easement.

7.0 Attachments / supporting documents

- Nil

8.0 Review history

This Policy was adopted by Council on 16 August 2022.


This Policy will be reviewed biennially. Any amendments to this document must be by way of Council resolution.

Council reserves the right to review or vary this document and associated processes at any time if required.

9.0 Document control

Date reviewed	Date adopted	Amendment
16 August 2022	16 August 2022	New Policy

10.0 Signature

Name: Jane Stroud – Chief Executive Officer	Date: 16 August 2022
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