

# ACQUISITION, DISPOSAL AND MANAGEMENT OF LAND POLICY

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The acquisition, disposal and management of Council Land requires a formal and transparent process that is underpinned by probity, due diligence, commerciality, risk analysis and adherence to legislation.

## Purpose

This Policy sets out the principles, framework, responsibilities, and processes relating to the acquisition, disposal and management of Council Land.

## Objectives

- To ensure the processes adopted in the management of acquisition, disposal and management of Council Land are transparent, consistent, efficient, impartial, accountable, and comply with legislation.
- To identify, manage and mitigate risks associated with the acquisition, disposal and management of Council Land
- To provide appropriate levels of discretion and flexibility in achieving desired outcomes recognising the potentially complex nature of Land transactions, the wide variety of circumstances, and range of acquisition, disposal and management methods available to Council.
- To ensure that dealings involving Council Land deliver best value, benefit the community, and assist Council in providing services and facilities.
- To ensure that Council acquires Land by agreement wherever it is fair and reasonable to do so, and only acquires land by compulsory process where agreement cannot be reached within a reasonable time and the public interest would be disadvantaged by Council not acquiring the Land or where compulsory acquisition is a requirement of the landowner, such as acquisitions from other government authorities.

## Scope

This Policy applies to:

- all acquisitions and disposals of Land by Council excluding Land acquired from the State of New South Wales under part 5 of the Crown Land Management Act 2016, and Land acquired under Section 64 of the Local Government Act or Section 7 of the Environmental Planning and Assessment Act 1979, including Planning Agreements.
- all Land leased, licensed or otherwise managed by Council in both its personal capacity and its capacity as Crown Land Manager.

- all Councillors, staff and agents of Council and to any other person involved in the acquisition and disposal of Land for or on behalf of Council.

## Fundamental Principles

All decisions and actions in relation to the acquisition, disposal and/or management of Land should have due regard to the following fundamental principles: -

- Best value for money – achieving ‘best value’ for the whole of the community may include both direct and indirect benefits in relation to economic, financial, social and environmental outcomes.
- Transparency – processes should be open to scrutiny and provide full information and record the reasons behind decisions.
- Accountability – demonstrate the best use of public resources and the highest level of performance through appropriate record keeping and audit trails.
- Impartiality – address perceived and/or actual conflicts of interest.

## Policy Provisions

### 2. Land Acquisitions

#### 2.1 Council Resolution

The acquisition of Land within the terms of this policy cannot be delegated by Council and can only be effected by a resolution of Council in accordance with section 377 (1) (h) of the Act.

Note: There are exclusions to the policy under item 1.1.3

#### 2.2 Classification of Land

Whenever Council considers the purchase or other acquisition of Land, Council should consider whether the land is to be classified as Community Land or as Operational Land as defined in section 27 of the Act.

Council may:

- resolve to classify the Land at the time that it resolves to acquire the land, or
- resolve to classify the Land within 3 months of the time at which the Land is acquired, or
- fail to resolve to classify the land within 3 months of the time it is acquired, in which case the Land will be deemed to be classified as Community Land.

In accordance with the Act, Council must give public notice of a proposed resolution to classify or reclassify public land.

Land being acquired for dedication as a public road does not require classification.

#### 2.3 Acquisition of Land Framework

Section 186 of the Act states:

- (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.
- (3) However, if the land acquired is, before its acquisition, community land vested in a council, the acquisition does not discharge the land from any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land or any part of the land immediately before that acquisition.

In summary, Council may acquire land for either statutory purposes or non-statutory purposes.

Statutory purposes means for the carrying out of its functions pursuant to legislation (such as the *Local Government Act 1993*, or the *Roads Act 1993*), being for public purposes including but not limited to public roads, recreation uses, open space, sporting grounds, sewer and stormwater management.

Non-statutory purposes include for strategic, redevelopment and/or investment purposes.

Where Land is to be acquired for statutory purposes and it is publicly advertised as being available for sale, or the owner otherwise indicates that the land is available for sale, the terms of the *Land Acquisitions (Just Terms Compensation) Act 1991* do not apply, and Council can negotiate an agreed purchase price and terms of acquisition to achieve the best outcome.

In all other Land acquisitions governed by the *Land Acquisitions (Just Terms Compensation) Act 1991*, the principles set out in the *Land Acquisitions (Just Terms Compensation) Act 1991* apply.

**These principles apply irrespective of whether the acquisition is with or without the agreement of the Landowner.**

## 2.4 Independent Valuation Benchmark

Ordinarily, Land acquisition price should be benchmarked to:

- The Valuer General's Land value (on a pro-rata basis per square metre) where the value is estimated at less than \$50,000, or
- an independent valuation provided by a suitably qualified valuer where the value is estimated at between \$50,000 and \$500,000, or
- at least two independent valuations provided by a suitably qualified valuer where the value is estimated at more than \$500,000.

Valuations should follow the principles set out in Part 3, Division 4 of the *Land Acquisition (Just Terms Compensation) Act 1991* where that Act applies

In specific circumstances, it may also be relevant to take account of one or more market appraisals prepared by a licensed real estate agent, in which case the methodology that is applied by the agent to establish the appraisal price must be fully documented (e.g. comparative sales, canvassing of owners of like or adjacent properties).

This may be of particular relevance in circumstances where it is considered that a valuation would not capture the full strategic value of a proposed purchase but Council wishes to consider the acquisition of particular land to secure the land and carry out Council's functions and/or achieve Council's strategic aims.

## 2.5 Acquisition Process

No binding actions may be commenced in the acquisition of Land until a report has been considered by Council and an appropriate resolution adopted.

Discussions, negotiations or correspondence should be qualified as “subject to a resolution of Council” if there is no current resolution to acquire the land.

The process of acquiring Land should include the following steps:

- Identification of the Land acquisition opportunity or requirement,
- Preparation of an information brief for the Executive Team regarding the proposed Land acquisition including:
  - i. description of Land including current use, improvements and encumbrances;
  - ii. reason/s for recommended Land acquisition;
  - iii. recommended timing and method of acquisition;
  - iv. assessment of value;
  - v. recommended acquisition price range and justification if range is more than the assessment of value;
  - vi. any terms, conditions, or negotiation parameters associated with the acquisition;
  - vii. any actions to be undertaken prior to acquisition
  - viii. costs to be incurred as a prerequisite to the acquisition;
  - ix. identification of funding source for the acquisition and associated costs and assessment against Council’s Long Term Financial Plan;
  - x. recommendation as to whether the Land should be acquired in conjunction with other Land; and
  - xi. details of any risks that have been identified in relation to the Land, together with an explanation of how such risks might be managed or mitigated.
- An in-principle decision, in accordance with the delegation provided by the General Manager, being made by the Executive Team to progress the acquisition of the Land.
- A report being submitted to Council regarding the land acquisition seeking resolution that the General Manager (or other appropriate delegate) can proceed to conclude negotiations and execute documents under seal where required.
- The General Manager (or appropriate delegate) completing negotiations and all other matters necessary for the preparation and execution of any Contract or other documentation required to complete the acquisition.

## 3. Land disposal

### 3.1 Council Resolution

The disposal of Land cannot be delegated by Council and can only be effected by a resolution of Council in accordance with section 377 (1) (h) of Act.

## 3.2 Land Types

Land cannot be sold by Council unless it is:

- classified as Operational Land. Section 45 of the Act specifically prohibits Council from selling, exchanging or otherwise disposing of Community Land other than to become or be added to a Crown Reserve or National Park.
- Surplus Council public road Land where a road closure application has been approved in accordance with Crown Land road closure procedures and the Land has been vested in Council as Operational Land.

## 3.3 Identifying Land for Disposal

Land may be disposed of for any reason considered relevant by Council, subject to any restriction in dealing in the land that exists at the time that the land is disposed of (e.g. a restriction in dealing on title or classification as Community Land).

## 3.4 Disposal Process

No binding actions may be commenced in the disposal of Land until a report has been considered by Council and an appropriate resolution adopted. Informal discussions or negotiation must always be qualified as “subject to resolution of Council” if there is no current resolution of Council to dispose of the Land.

The process of disposing of Land should include the following steps:

- Identification of the Land disposal opportunity or requirement
- Preparation of an information brief for the Executive Team regarding the Land disposal including (where applicable):
  - i. description of Land including current use, improvements, zoning, holding costs and encumbrances;
  - ii. details of how, why and when Council acquired the Land, including any restrictions on dealing in the land that may have been associated with the acquisition of the land;
  - iii. reasons for recommended disposal;
  - iv. details of consultation with internal / external parties including any approaches by external parties to purchase the Land;
  - v. assessment of value and recommendation for the setting of a price benchmark;
  - vi. recommended method and timing of disposal;
  - vii. any legal means by which Council may wish to control the future use of the Land e.g. covenant, easement, restriction, right of way, lease;
  - viii. any pre-requisites which must be addressed prior to the disposal;
  - ix. details of costs which will be incurred to undertake prerequisites and dispose of the Land;
  - x. information regarding GST and the application of the margin scheme;
  - xi. parameters for future actions delegated to the General Manager (or other appropriate delegate) if the Land fails to sell; and
  - xii. how the net proceeds of the sale will be used or allocated to deliver Council’s objectives.
- In principle decision in accordance with the delegation provided by the General Manager, will be made by the Executive Team to progress disposal of the Land
- A report is submitted to Council regarding the Land disposal seeking resolution that the

General Manager (or other appropriate delegate) can proceed to conclude negotiations and execute documents under seal where required.

- The General Manager (or appropriate delegate) complete negotiation and all other matters necessary for the preparation and execution of any Contract or other documentation required to complete the acquisition.

### **3.5 Valuation of Land (for Disposal)**

Ordinarily, Land disposals should be benchmarked to:

- The Valuer General's Land value (on a pro-rata basis per square metre) where the value is estimated at less than \$50,000, or
- an independent valuation provided by a suitably qualified registered valuer where the value is estimated at between \$50,000 and \$500,000, or
- at least two independent valuations provided by a suitably qualified registered valuer where the value is estimated at more than \$500,000, or the proposed disposal of land where the value is estimated at more than \$50,000 is not undertaken by way of a competitive process. Council may require the a proposed Purchaser to supply the second valuation.

The valuation instructions must clearly state the following:

- Purpose of the valuation being "disposal";
- Basis of valuation being "market value highest and best use", unless an alternative basis is considered more appropriate in the circumstances;
- Valuation is to be marked confidential; and
- Valuation must include market commentary, details of sales evidence and adjustments, valuation rationale and methodology, a valuation range (for negotiations) and comments on marketability, most appropriate method of sale and opportunities to add value.

An updated valuation should be obtained if more than 12 months has elapsed since the initial valuation was obtained, or if it is considered that factors have changed so significantly as to materially affect the value.

In specific circumstances, it may be relevant to take account of one or more market appraisals prepared by a licensed real estate agent, in which case the methodology that is applied by the agent to establish the appraisal price must be fully documented (e.g. comparative sales, canvassing of owners of like or adjacent properties).

This may be of particular relevance in circumstances where it is considered that a valuation would not capture the current market circumstances of a proposed disposal but Council wishes to dispose of the land to achieve Council's strategic aims.

### **3.6 Methods of Disposal**

Disposal of Land should occur by an open competitive process such as auction, tender or expression of interest (EOI) unless exceptional circumstances warrant disposal by means of direct negotiation with a single party.

### **3.7 Auction Guidelines**

Auctions are to be conducted by a suitably qualified and experienced licenced auctioneer. The auctioneer should be appointed by Council or, in accordance with the delegation provided by Council, by the General Manager.

The reserve price is to be set by Council or, in accordance with the delegation provided by Council, by the General Manager. In specific circumstances, the view of other parties may need to be taken into account, for example, when property and/or land has been developed with the benefit of public funds and an agreement exists as to the process of on-sale.

The reserve price (specifically noting whether GST is included or excluded) is to be notified in writing to the auctioneer on the day of the auction. The reserve price is not to be disclosed to any party apart from the real estate agent and auctioneer whether before or after the auction.

Where possible Council officers will attend the auction for the purpose of delivering the reserve instructions, facilitating exchange of contracts and observing the auction process.

### **3.8 Tender Guidelines**

The use of sale by tender is recommended in certain circumstances. If the sale is subject to complex conditions of sale which may need to be refined to effect an outcome, or where the sale of land may be considered controversial, contentious or political, sale by tender may be the most appropriate approach.

Also, if land is in the process of being subdivided and is the subject of an off-the-plan contract, this may be the best method of disposal to ensure certainty of outcome, as sale by auction cannot be used to effect a sale in such circumstances.

### **3.9 Expression of Interest (EOI) Guidelines**

An EOI process may be conducted inhouse using Council resources by Council or through a real estate agent appointed by Council, or, in accordance with the delegation provided by Council, by the General Manager

The EOI documentation will include specific criteria against which responses will be evaluated. The criteria will be included in the report to Council and may vary depending upon the intended outcomes of the disposal of the land.

### **3.10 Direct Negotiation Guidelines**

Direct negotiations can be conducted by Council, or by a third party appointed by Council

Direct negotiations may be carried out subject to clearly documented reasons and the employment of risk mitigation measures. Potential risk mitigation measures for direct negotiations may include:

- obtaining at least two valuations where the value is estimated at more than \$500,000;
- pre-establishing a range for negotiation, having regard to the valuation/s;
- establishing a Probity Plan to manage conflicts of interest, ensure transparency, ensure fair treatment of potential purchasers, maintain confidentiality and ensure accountability;
- establishing a Negotiation Protocol, describing the way meetings, negotiations, decisions and progress reporting are to be managed and documented; and
- Upper and lower limits on marketing budgets.

Examples of situations where direct negotiations might occur include:

- Where marketing costs exceed expected income to be derived from the sale;
- There is only one identifiable purchaser;
- Council is bound by a Contract or Agreement such as a first right of refusal or option to



purchase;

- The disposal is to another government agency or utility provider for establishment of infrastructure
- Where competitive marketing undertaken within the last 12 months has failed to achieve an outcome
- In response to a proposal which achieves specific objectives of Council

### **3.11 Sales to Adjoining Owners Guidelines**

In circumstances where the only potential purchasers are adjoining owners; the Land should in the first instance be offered in equal proportions to each adjoining owner on similar sale terms and conditions.

Where an adjoining owner does not wish to purchase their proportion of the Land, the rejected Land will be equally offered to the remaining adjoining owner/s.

Contracts in these circumstances should include a Special Condition requiring the purchaser to consolidate the subject Land with their existing Land holdings at no cost to Council.

The costs associated with the sale of land to adjoining owners should ordinarily be borne by the prospective purchaser/s.

### **3.12 Sale of Closed Public Road Guidelines**

No road can be sold until it is formally closed in accordance with the provisions of the *Roads Act 1993*.

For purchaser-initiated closures and sales, the costs associated with administering the road closure will be borne by the prospective purchaser in the form of a Road Closure Application Fee charged in accordance with Council's Fees & Charges.

In addition, the prospective purchaser will be responsible for the payment of all costs associated with the road application including legal fees and disbursements, survey fees, registration fees.

When Council initiates the road closure (in order to realise the value of surplus Land), the costs will be borne by Council.

In accordance with Section 43 of the *Roads Act 1993*, funds from the sale of closed public roads are required to be set aside for acquiring Land for public roads or for carrying out work on public roads.

### **3.13 Disposal Below Assessed Market Value Guidelines**

In some circumstances it may be desirable to dispose of land below assessed value to achieve strategic outcomes. In such situations, financial, environmental or social benefits may be taken into account in addition to the benchmarked valuation price. These benefits should be clearly identified in the information brief.

## **4. Land Management**

### **4.1 Leasing and Licensing of Council Land**

All proposed leases or licences should be executed by the lessee or licensee within six months of a Council resolution being obtained unless otherwise agreed by Council.



Should the proposed Lease or Licence Agreement not be finalised within the nominated time frame then a further report should be submitted to Council outlining the reasons for the delay in executing the documentation and seeking direction as to how to proceed, which may include taking the property back to market.

Leases / Licences should include a clause granting Council the right to terminate the Lease / Licence on giving an appropriate amount of notice. The appropriate amount of notice will be dependant on the nature of the Lease / Licence.

## **4.2 Calculation of Rental Charges**

Where a property is subject to a normal commercial, retail or residential Lease (or to a licence that is comparable in intent) a market rental amount shall be charged. This applies whether or not the property is on Operational Land or on Community Land.

Market rental should be determined by reference to a formal valuation for the premises obtained within the last 12 months. Any sporting group occupying premises on Council Land that hold a "non-temporary" liquor licence shall be treated as if they were a commercial tenant and charged a market rental amount.

Where the circumstances of a lease or license are not comparable to a normal commercial, retail or residential lease, and the lessee / licensee of Community Land or Crown land is a not-for-profit organisation, community organisation or sporting group the rental / licence fee is to be calculated in accordance with Council's Annual Fees and Charges.

Where the Licence is a grazing licence the rental is to be determined by way of Expression of Interest. It is considered that the costs savings to Council in vegetation management and hazard reduction offset any shortfall in market rent.

Where the Licence is a road licence / enclosure permit, the rental is to be calculated by reference to 1% of the Valuer General's valuation of the property (or adjoining land), subject to a maximum threshold of \$750.00.

The Lessee/Licensee will be required to pay GST (Goods and Services Tax), if such is applicable, in addition to any rent / licence fee payable.

## **4.3 Rent Reviews**

All commercial, retail or residential Leases should be subject to rental reviews every year by way of a fixed increase. The level of increase should be not less than a fixed percentage, which should be varied whenever this policy is reviewed. For the time being, the percentage increase should be not less than two percent (2%), with the first review to take place on the anniversary of commencement of the Lease.

A full market rental review should occur on the exercise of any option to renew or, if the Lease exceeds five years, on the fifth anniversary of the start of the Lease and every subsequent five-year period thereafter.

All Leases and Licenses to a not for profit organisation, community organisation or sporting group shall be subject to rental reviews every year in accordance with Council's Annual Fees and Charges with the first review to take place on the anniversary of commencement of the Lease or Licence.

#### 4.4 Outgoings / Maintenance

All Lessees/Licensees including not for profit organisations, community groups or sporting groups should be responsible for the payment of all outgoings including rates (if applicable), land tax, water, electricity, gas, telephone, and any other operating costs associated with their respective activities unless otherwise approved by Council.

Where appropriate any invoices for payment of outgoings are to be issued the name of the lessee / licensee. If it is not possible for invoices for payment of outgoings to be issued in the name of the lessee / licensee, or there are multiple tenancies on the subject Land and each tenancy is not separately metered, then the cost of outgoings should be paid by Council and on costed to the relevant lessees / licensees. The apportionment of outgoings should be determined in consultation with the impacted lessees / licensees.

All lessees / licensees of Council Land will be responsible for any building/ construction work to the property that is of a cosmetic or improvement nature, where such work is desired by the lessee / licensee. Council will be responsible for structural maintenance of the property as it existed at the commencement of the lease / licence. Any improvements made by the lessee / licensee are to be maintained by the lessee / licensee at their cost.

On termination of the lease/ licence, ownership of any improvements paid for by the lessee / licensee will either:

- a) if Council is prepared to accept the improvement, revert to Council ownership for no additional cost, or
- b) if Council is not prepared to accept the improvement, or the lessee / licensee wishes to remove or retain the improvement, be removed by the lessee / licensee and the property otherwise reinstated to pre-improvement condition.

Regular inspections of tenancies will be conducted to ensure that the lessee / licensee is complying with its maintenance obligations under their respective lease / licence.

#### 4.5 Indemnities

Each Lease or Licence Agreement should include provisions that incorporate the following:

- The lessee / licensee unconditionally releases all claims, suits, demands, actions or proceedings (whether at law, in equity or arising under any statute) which lessee / licensee has or may have against Wagga Wagga City Council, its councillors, officers, employees or agents (other than lessee / licensee) arising out of or in connection with an act, default or omission of lessee / licensee or any of its officers, employees or agents. The lessee / licensee agrees not to sue or make any claim or demand against the Wagga Wagga City Council, its councillors, officers, employees or agents in respect of matters covered by this release.
- The lessee / licensee indemnifies, holds harmless and defends Wagga Wagga City Council, its Councillors, officers, employees or agents (other than the lessee / licensee) against loss (including legal costs and expenses) or liability reasonably incurred or sustained by any of the indemnified persons arising from a claim, suit, demand, action or proceeding by any person against any of the indemnified persons where the loss or liability arises out of or in connection with an act, default or omission of the lessee / licensee or any of its officers, employees or agents.
- The Release and Indemnity above do not extend to a claim, suit, demand, action or proceeding where the claim, suit, demand, action or proceeding is based upon errors, negligent omissions negligence or work performed or advice given in a negligent manner

by the Wagga Wagga City Council or any of its councillors, officers, employees or agents (not including the lessee / licensee). The indemnity provided by the above is reduced proportionally to the extent that the negligence of Wagga Wagga City Council, its councillors, officers, employees or agents (other than the lessee / licensee) as contemplated in this clause contributed to the loss or liability.

#### **4.6 Insurance Requirements**

All lessees / licensees must hold Public Liability insurance for the entire duration of their lease / licence. Any claims excess payable under the terms and conditions of the insurance policy are entirely the responsibility of the lessee / licensee.

All insurance policies must be held with approved insurers. To be acceptable for the purposes of this agreement, an insurance policy must be underwritten by:

- An Australian registered insurance company, approved by the Australian Prudential Regulation Authority (APRA) to conduct general insurance business in Australia; or
- A Lloyds of London Underwriter;

All insurance policies must meet the insurance requirements set out by Council as varied from time to time.

The Lessee must provide to Wagga Wagga City Council evidence of the insurances nominated whenever requested to do so. A copy of the Policy is to be provided to Council at the commencement of any new Agreement. The evidence must be in a form acceptable to Council and should be as issued by the insurer (not an Insurance Broker or other intermediary).

#### **4.7 Costs associated with Lease & Licence Agreements**

Lessees / licensees will be responsible for payment of Council's costs in relation to the preparation or renewal of leases/licence agreements as follows:-

- All costs incurred by Council in relation to the preparation of agreements including legal fees and disbursements, survey fees, registration fees and other related costs are to be reimbursed by the lessee / licensee.
- In respect of any agreements prepared by Council staff (including Community and Grazing Licences and Road Enclosure Permits), a preparation fee will be charged in accordance with Council's Annual Fees and Charges.
- Should work be commenced but not completed due to default by the lessee / licensee or should the lessee / licensee decide not to proceed, the lessee / licensee remains responsible for costs incurred up to the date of default or such other time as Council staff are notified in writing that the lessee / licensee is not proceeding with the matter.

#### **4.8 End of Tenancy**

Where a property is vacant or will become vacant at the expiry of an existing lease / licence, a report will be submitted to Council presenting a range of options for future use. Options shall include but not be limited to retention for community or commercial lease / licence or other purpose, modifications/alterations to the property and disposal.

In circumstances where Council has determined that a Council property will be retained for community or commercial lease, recommended criteria for selection of a preferred tenant will be reported to Council for approval, prior to proceeding to invite expressions of interest from the community.

Once expressions of interest have been invited, received and assessed against the criteria, a further report detailing all applicants and assessment against the selection criteria will be submitted together with a recommendation for a preferred applicant.

Council reserve the right to renew a lease or licence on operational land without advertising for expressions of interest. Each property is to be assessed on an individual basis and advertised at the discretion of the relevant Director.

#### **4.9 Additional Provisions – Crown Land**

The grant of any lease or licence over Crown Land managed by Council is subject to the following additional considerations:

- Entry into a lease or licence over Crown Land should not be considered unless the proposed lease or licence is:
  - compatible with the purpose of the reserve / dedication; and / or
  - authorised by a Plan of Management for the relevant reserve / dedication; and / or;
  - otherwise authorised by legislation such as *Crown Land Management Act 2016* and associated regulations.
- The term of the lease or licence should be for an appropriate period of time, provided it is consistent with the obligations contained in the relevant Plan of Management and or the *Crown Land Management Act 2016* and associated regulations.. A longer term may be justified if major capital investment is involved or if the lessor / licensee is directly associated with the existence of the Reserve (e.g. Racing clubs and Racecourses, Show Societies and Showgrounds).
- If an option to renew is included in the lease/ licence then the agreement must specify that no further option will be granted on exercise of the option (to avoid creating a Perpetual Lease).
- Clauses conferring a right to compensation for improvements are not acceptable. In appropriate cases the lessee / licensee should be required to clear and / or restore the land to the satisfaction of the Minister. In all circumstances the lease / licence should clearly reflect the intentions with respect to improvements within the leased land at the determination of the lease / licence.

### **5. General provisions**

#### **5.1 Conflicts of Interest**

Conflicts of interest will be appropriately managed through open and competitive processes.

#### **5.2 Contracts**

Contracts for the Sale of Land will usually contain standard conditions of sale. In accordance with the delegation provided by the General Manager the relevant Director will approve the final form of any Contract for execution on behalf of Council in relation to any Land transactions

#### **5.3 Real Estate Agency Appointments**

Council may engage a suitably qualified licenced real estate agency to assist with the acquisition or disposal of Land.

Appointment of real estate agencies will be via a competitive process in accordance with the delegation provided by Council directly, or as delegated by Council to the General Manager. For standard sales and purchase transactions, the duration of any exclusive agency agreement between Council and a real estate agency shall not exceed six (6) months.

#### **5.4 Use of the Common Seal**

Where application of Council's Common Seal is required for execution of documents this requirement will be clearly articulated in the resolution of Council noting the appropriate delegation/s.

Council will delegate authority to the Mayor and General Manager to execute all Lease and Licence Agreements.

#### **5.5 Confidentiality**

Commercial details and personal particulars referred to in reports to Council on the acquisition and disposal of Land (including granting of easements or other interests) and commercial lease arrangements will generally be deemed confidential in accordance with Section 10A (2)(c) or (d) of the *Local Government Act 1993*.

#### **5.6 Departure from this Policy**

Any provision of this Policy may be varied to meet the needs of a particular matter, by way of a resolution of Council. The reasons for change will be clearly articulated within the report submitted for consideration by Council in adopting such resolution.

#### **5.7 Review of Policy**

Council should review the Leasing Policy in 2 years unless circumstances or legislative changes required an interim review.

### **Legislative Context**

- Local Government Act 1993
- Valuation of Land Act 1916
- Conveyancing Act 1919
- Environmental Planning and Assessment Act 1979
- Land Acquisition (Just Terms Compensation) Act 1991
- Roads Act 1993
- Crown Lands Management Act 2016
- Real Property Act 1900
- Interpretation Act 1987
- Regulations under each of the above Acts
- Office of Local Government, Land Acquisition Information Guide, December 2014
- Commonwealth Legislation (where relevant)

## Related Documents

- Long Term Financial Plan
- Community Engagement Strategy
- Council's Asset Management Plans
- Direct Negotiations: Guidelines for Managing Risks
- Wagga View: Community Strategic Plan 2040
- Recreation, Open Space and Community Strategy & Implementation Plan 2040
- Wagga Wagga Integrated Transport Strategy & Implementation Plan 2040
- Wagga Wagga Local Strategic Planning Statement

## Definitions

Term	Definition
<i>Act</i>	Means the <i>Local Government Act 1993</i> , except where the context indicates otherwise.
<i>Community Land</i>	Is as defined in the Act
<i>Contract</i>	Means any form of contract which legally binds the Council (or potentially binds the Council) and includes formal contracts and other forms of contractual arrangements including deeds, heads of agreement, in principle agreement, options to purchase etc.
<i>Council Land</i>	Includes Land owned directly by Council and Land otherwise managed or controlled by Council, including Crown land of which Council is the appointed Crown Land Manager or management has otherwise devolved to Council pursuant to Section 48 of the Act.
<i>Land</i>	Is as defined in Section 21 of the <i>Interpretation Act 1987</i> . For the purpose of this Policy, Land is defined as a physical entity including: <ul style="list-style-type: none"> <li>(i) any building or structure on, or an improvement to Land; or</li> <li>(ii) any stratum of Land whether below or above ground; or</li> <li>(iii) a strata lot pursuant to relevant strata subdivision legislation</li> </ul> a closed road or any part of it which has been vested in Council.
<i>Operational Land</i>	Is as defined in the Act

## Revision History

Revision number	Council resolution	Council meeting date
1	Res No: 1155/00	25 September 2000
2	Res No: 827/01	27 August 2001
3	Res No: 141/03	24 February 2003
4	Res No: 04/243	23 August 2004
5	Res No: 07/121.8	23 April 2007
6	Res No: 09/077	27 July 2009
7	Res No: 13/224.1	26 August 2013
8	Res No: 17/279	28 August 2017
9	Res No: 22/222	18 July 2022
10	Res No: 22/354	17 October 2022