



LAND
ACQUISITION AND
DISPOSAL
POLICY
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LAND ACQUISITION AND DISPOSAL POLICY

DIVISION: Customer and Corporate Strategy

BRANCH: Finance and Property Services

CATEGORY: 2

PART 1 - INTRODUCTION

1. BACKGROUND

- 1.1 With the growth of the Camden Local Government Area (LGA), Council is responsible for providing public infrastructure and services to the residents within the LGA.
- 1.2 In NSW, state agencies including local councils can acquire land for a public purpose.
- 1.3 Council may acquire land (including any interest in land) under the *Local Government Act 1993* and the *Roads Act 1993* for the purpose of exercising any of its functions.
- 1.4 Council may seek to acquire improved or unimproved land in fee simple to upgrade existing infrastructure, provide access or additional infrastructure to facilitate the growth of the LGA.

2. OBJECTIVE

- 2.1 To ensure that Council meets its obligations under the Acquisition Act and to provide a framework for a transparent process that adheres to the relevant legislation.
- 2.2 To ensure that Council has open and accountable processes in place for the acquisition and disposal of land assets.
- 2.3 To ensure that best value is achieved in Council Property dealings.

3. SCOPE

- 3.1 This policy applies to all divisions of Council.

4. DEFINITIONS

- 4.1 **Acquiring Authority** means the NSW Government agency that can carry out Property Acquisitions. For the purposes of this policy, the Acquiring Authority is Council.
- 4.2 **Acquisition Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*. It is the legislation that governs the process for acquiring land in NSW and defines compensation entitlements.

- 4.3 **Acquisition Notice** means a notice under section 19 of the Acquisition Act published in the NSW Government Gazette, declaring that property described in the notice as acquired by compulsory process.
- 4.4 **Compulsory Acquisition** means the process under the Acquisition Act by which land is acquired by Acquisition Notice published in the NSW Government Gazette.
- 4.5 **Hardship Claim** means an application made by an Owner that is designated for acquisition by Council for a public purpose and the Owner considers that he or she will suffer hardship if there is a delay in the acquisition.
- 4.6 **Market Value** means the amount that would have been paid for Property to be acquired under this policy if it had been sold at a particular time by a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):
- Any increase or decrease in the value of the Property caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
 - Any increase in the value of the Property caused by the carrying out (by the Acquiring Authority) of improvements for the public purpose for which the land is to be acquired, and
 - Any increase in the value of the Property caused by its use in a manner or for a purpose contrary to law.
- 4.7 **NSW Government Gazette** means the official Government Gazette, which is published weekly, in which official proclamations, orders, declarations and notices are published at legislation.nsw.gov.au.
- 4.8 **Owner** means a person who has the fee simple estate in a Property or a person who has become entitled to exercise a power of sale over the Property.
- 4.9 **Property** means land in fee simple to be acquired under this policy together with any improvements e.g. buildings or other fixed structures (subject to section 12 of this policy).
- 4.10 **Property Acquisition** means the purchase of Property by agreement or Compulsory Acquisition under the Acquisition Act.
- 4.11 **Valuer General** means the independent statutory officer appointed by the Governor of New South Wales. The Valuer General is required to independently determine the amount of compensation to be paid by the Acquiring Authority to the Owner when an agreement cannot be reached.

PART 2 - POLICY STATEMENT

5. POLICY STATEMENT

5.1 When deciding whether to acquire Property, Council will consider the purposes of such action, which can be to provide:

- A service/public infrastructure
- Parkland, or
- Public roads.

5.2 Council may acquire Property by the following methods:

- Acquisition by agreement
- Compulsory Acquisition, or
- Owner-initiated acquisition (Hardship Claim).

5.3 Council, at its discretion, may purchase Property via a private treaty sale for a strategic purpose.

6. METHODS OF ACQUISITION

6.1 Acquisition by Agreement

- Council may acquire privately-owned Property for public or infrastructure purposes.
- When Council identifies Property to be acquired, Council will aim to acquire the Property via a negotiated private treaty sale if practicable.

6.2 Compulsory Acquisition

- Compulsory Acquisition is a statutory process available to Council under the Acquisition Act to acquire land for a public purpose if Council and the Owner have failed to reach agreement on the terms of the sale for at least six months.
- If Council undertakes the Compulsory Acquisition process, the Valuer General determines the amount of compensation.

6.3 Owner-Initiated Acquisition (Hardship Claim)

- Council may only accept Hardship Claims if they are made in accordance with the Acquisition Act.
- Council will consider a Hardship Claim if an Owner can demonstrate that he or she will suffer hardship if there is any delay in the acquisition of the land in accordance with the requirements of the Acquisition Act.

- Further information is provided in Council's Land Acquisition Hardship Policy.

7. STRATEGIC PURCHASES

- 7.1 Council may acquire Property strategically for investment purposes.
- 7.2 Generally, Property acquired for investment purposes has attributes that will generate income for Council or provide future growth opportunities.
- 7.3 Strategic investment acquisitions are transacted in accordance with the relevant sale method available (e.g. private treaty or auction).

8. ACQUISITION OF AN INTEREST (EASEMENTS)

- 8.1 Where the public purpose can be achieved via the grant of an easement or a right in favour of Council, Council may, at its discretion, decide to negotiate the terms of the easement or right with the Owner.

9. PARTIAL PURCHASE OF LAND

- 9.1 Sometimes Council will only require the partial acquisition of Property.
- 9.2 In this situation, Council will provide the Owner with a map outlining the area of the Property to be acquired. It will also include the proposed new boundary as a result of the partial acquisition.
- 9.3 Where partial acquisition of the Property is required, Council will hold discussions with the Owner and agree what property adjustments are required as a result of the acquisition, such as modifications to driveways or fencing.

10. PROPERTY VALUATION AND COMPENSATION

- 10.1 Council will engage an independent registered valuer to determine the Market Value of the Property.
- 10.2 Where Council considers the Property to have a Market Value over \$1 million (excluding GST), Council may engage two independent registered valuers to assist Council to determine the Market Value.
- 10.3 Council will take Market Value into account in any negotiations with Owners.
- 10.4 Owners are entitled to engage an independent registered valuer to carry out a valuation of the Property.
- 10.5 If an Owner engages an independent registered valuer, Council will reimburse the Owner the fees associated with the valuation, if prior approval is obtained from Council.

11. PROCESS OF LAND ACQUISITIONS

- 11.1 Council must comply with its 'Land Acquisition Information Guide' when acquiring Property by agreement and by Compulsory Acquisition, which is available on Council's website www.camden.nsw.gov.au.

12. ADDITIONAL CONSIDERATIONS

12.1 Fixtures and Fittings

- The Owner must advise Council, prior to a valuation, if there are any items in, on or at the Property that are considered fixtures or fittings that the Owner intends to retain.
- The Market Value of the Property will be assessed having regard to the attributes and inclusions at the time of inspection.

12.2 Contents and Personal Items

- Council is under no obligation to purchase any contents and personal items within the Property such as furniture, televisions, whitegoods, vehicles or any other moveable items.
- It is at Council's sole discretion to purchase such items upon a request by the Owner. Such a request must be made prior to a valuation being undertaken.

12.3 Monies Owing

- Council will not pay any money owing with respect to the Property, including, but not limited to, Council rates, land tax, fees or any other items.

12.4 Inspections

- Council will require access to undertake inspections of the Property on providing reasonable notice to the Owner.
- Inspections are to be kept to a reasonable number however several Council Officers and agents of Council will need to inspect the property and it will be necessary for the Owner to facilitate access.

12.5 Condition of Property

- The Property must be maintained throughout the acquisition process by the Owner.
- Upon acquisition, the Owner must ensure that:
 - The Property is left in a clean and tidy condition;
 - Swimming pools are clean and comply with any relevant statutory or Council requirements including fencing and signage; and
 - Any inclusions that form part of the sale are intact and in proper working order, unless there has been disclosure to and written acknowledgement from Council prior to any acquisition agreement being finalised.

12.6 Occupying the Property

- If Council does not require the Property for the public purpose immediately upon completion of the acquisition, Council may, at its discretion, consider a lease to the former Owner at market rental rates.
- If the Property is the Owner's principal place of residence or the place of business, the Owner of the Property may submit a written request to Council for the occupation of the Property for up to three months from the date of settlement (in accordance with section 34(2) of the Acquisition Act).
- Unless the Owner submits to Council a written request to lease the Property within 14 days after acquisition occurs, vacant possession must be given on settlement.

13. APPROVAL BY COUNCIL

13.1 In accordance with section 377(1) of the *Local Government Act 1993*, the Compulsory Acquisition, purchase, sale, exchange or surrender of any land or other property by Council requires a resolution of Council.

13.2 All acquisitions or sales of Property will be reported to Council for a resolution.

14. LAND CLASSIFICATION

14.1 All Council land is classified under the *Local Government Act 1993* as either operational or community land.

14.2 The *Local Government Act 1993* 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 as operational prior to that sale proceeding.

14.3 The process for reclassification must be undertaken in accordance with the *Environmental Planning and Assessment Act 1979*.

14.4 Council must determine the classification of the land as at the time it resolves to acquire the land or in accordance with section 31 of the *Local Government Act 1993*.

15. ENTRY FOR CIVIL WORKS

15.1 Once an acquisition has been settled, entry to the Property for civil works can take place.

15.2 In some circumstances, Council may require early entry to the Property prior to the completion of the acquisition.

15.3 If required and the Owner is agreeable, Council may arrange formal right of entry via a Deed of Access.

15.4 If a Deed of Access is not achievable and early entry is required to facilitate the delivery of a public purpose that includes roadworks, Council may issue a notice pursuant to section 175 of the *Roads Act 1993*, to use and occupy the land to carry out roadworks.

16. DISPOSAL OF PROPERTY

- 16.1 The disposal of any Council Property, including the preferred disposal method, will be determined by Council via a formal Council resolution.
- 16.2 Where Property 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 Council determines that a sale by direct negotiation is appropriate.
- 16.3 For a public auction, the reserve sale price will be based on a recommendation from an independent valuer.
- 16.4 All Council Property proposed to be sold will be sold for no less than Market Value.
- 16.5 For all Council Property proposed to be sold, Council will obtain 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.

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RELEVANT LEGISLATIVE INSTRUMENTS:

Land Acquisition (Just Terms Compensation) Act 1991
Local Government Act 1993
Real Property Act 1900
Conveyancing Act 1919
Roads Act 1993
Environmental Planning and Assessment Act 1979

**RELATED POLICIES, PLANS AND PROCEDURES:
RESPONSIBLE DIRECTOR:**

Land Acquisition Hardship Policy
Customer and Corporate Strategy

APPROVAL:

Council

HISTORY:

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1	Council	New	08/10/2019	19/309352
2		No changes	26/07/2022	19/309352