

# Policy

## Acquisition and Disposal of Council Owned Property

Responsible Manager (Title)	Director Corporate & Governance		
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Document(s) this policy Supersedes	V3.0 – 18/3/2014 – 14.013/14 – Disposal of Surplus Council Land and Buildings V2.0 – 15/11/2011 – 13.240/11 – Sale Price for Unused Council Lands and Closed Roads		
Community Plan Linkage	<b>5 Leadership</b>		
	5.1 We will have a strong, accountable and representative government		
	5.1.4 Ensures transparent accountable decision making for our community		

### 1 Purpose

To define Council's position on the acquisition and disposal of property assets.

### 2 Definitions

For the purposes of this policy:

- Closed Road** – a road or part of a road identified as unused and surplus to Council requirements which has been closed and becomes a land parcel.
- Land** - all real property whether vacant or improved and which is classified as operational land pursuant to the *Local Government Act 1993*.
- Non-marketable** – a parcel of surplus land of a size, configuration, location, or development/use restriction which renders it unsuitable for development.
- Property** – land or road.
- Road** – a Council public road pursuant to the *Roads Act 1993*.
- Surplus** - any land identified as not required for Council's strategic requirements in the foreseeable future and which is not otherwise suitable for development by Council.

## 3 Background/legislative requirements

This policy has been drafted with reference to the ICAC publications “Corruption Risks in NSW Development Approval Processes”, Chapter 7, Council land disposal (September 2007) & “Direct Negotiations for Managing Risks” (August 2018) and the NSW Procurement Policy Framework.

### 3.1 Local Government Act 1993

- (a) Under s.45(1) Council has no power to sell, exchange or otherwise dispose of land classified as community land.
- (b) Under the Act, there is no restraint on Council’s ability to sell or otherwise dispose of land classified as operational land.
- (c) Under Section 377(1)(h) a specific resolution of Council is required to acquire or dispose of any land. The decision cannot be delegated.

### 3.2 Roads Act 1993

- (a) Council public roads are owned by Council in *fee simple*. Crown public roads, private roads and freeways under the control of Transports NSW are not administered by Council and are not subject to this policy. Council roads must first be formally closed before they can be sold.
- (b) The disposal of land under this Act will proceed under the provisions of Part 4 of the Act.
- (c) Disposal of closed roads and acquisition of land for road purposes requires a resolution of Council.
- (d) Under S43 all proceeds from the sale of closed roads must be utilised for roadwork purposes or acquisition of land for road purposes.

## 4 Policy statement

Council is committed to:

- (a) ensuring that all disposals of Council land & buildings are in accordance with the Local Government Act 1993 and Roads Act 1993,
- (b) ensuring that Council’s assets are utilised to their full potential for the benefit of the Clarence Valley community,
- (c) establishing processes which demonstrate good governance,
- (d) properly reviewing future land requirements before designating any land as “surplus”, and
- (e) optimising Council revenue from the sale of surplus land.

## 5 Implementation

### 5.1 Acquisition

Council may acquire property strategically for purposes such as providing a service or public infrastructure, public road or investment purposes.

Acquisition may be via agreement, compulsory acquisition or via private treaty.

Where the public purpose can be achieved via the grant of an easement or a right in favour of Council, Council may decide to negotiate the terms of the easement/right with the owner.

## **5.2 Disposal**

Land identified to be sold and capable of being placed on the open market shall be sold via a competitive process involving public auction, private treaty or expression of interest unless Council determines that a sale by direct negotiation is appropriate. Land that is non-marketable can be sold via direct negotiation.

Closed Road will be sold via direct negotiation with the adjoining landowner/s.

The net proceeds from sale of Council's land assets will be paid into a Property Development Reserve unless it is a sewer or water asset in which case the net proceeds will be returned to the associated fund.

All proceeds from the sale of closed roads must be utilised for roadwork purposes and will be paid into a 'Road Acquisitions' Reserve. All funds in this reserve are to be used for future road acquisitions.

Where an easement or interest is required over Council property, Council reserves the right to negotiate the terms.

## **6 Appeal/objections process**

Nil

## **7 Related Documents**

Privacy Management Plan

Code of Conduct

## **8 Attachments**

Nil