



POLICY TITLE:	LAND ACQUISITION, DISPOSAL & LEASE POLICY
POLICY NUMBER:	LC36
CATEGORY:	COUNCIL
CLASSIFICATION:	GOVERNANCE
STRATEGIC PLAN REFERENCE:	
CORPORATE GOVERNANCE AND PERFORMANCE :Provide systems of council governance and service delivery that are financially sustainable, accountable, equitable and efficient	
STATUS: APPROVED	Council Resolution PA13/CAM/060

Date Approved:	11/04/2013	Approved By:	COUNCIL	Date for review:	31/03/2016
Date Approved:		Approved By:		Date for review:	
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Policy Summary:

The Policy establishes clear processes for the acquisition of land (real property) (Part A) including conditions for taking control over Crown Land or other open space (Part B), the disposal of land including the disposal of land held for ‘community purposes’ (Part C) and for the lease of land (Part D) with necessary delegations to achieve implementation.

The Local Government Act vests authority in the Council to “deal with or dispose of” property of which the Council is the owner.

ORGANISATIONAL SCOPE:

To establish a process for the acquisition; acceptance of Crown Land; sale and/or disposal of land and the lease of land or other assets which is considered, fair and transparent to ensure Council obtains the best outcomes and price.

PART A Land Acquisition

The number of property acquisition processes undertaken in any given year is relatively low. However the process, probity, due diligence, risk assessment, decision points and other key issues required to be addressed relative to the short time frame often afforded to property acquisition activities, drives the need for a Policy.

The purpose of a Land Acquisition Policy therefore, is to provide Council with:

A documented reference to guide its decision making process,

Provide a reference that will survive successive Council,

Provide a Council endorsed framework to enable the Administration to pursue land acquisition opportunities of merit and pro-actively present such opportunities to Council,

Establish delegations necessary to allow implementation functions to be addressed by the Administration and meet market drivers.

Inherent to Council's role (or intervention) in the marketplace via land ownership is the strategic facilitation of desired goals and objectives to ensure the growth and prosperity of the Municipality, which, if left to the private marketplace alone, may not be achievable.

This may encompass a range of opportunities for Council's involvement including the expansion of key community facilities or new sites for same, strategic sites for core Council uses (depots, admin etc).

The framework of the Policy aims to provide a Policy which adopts the following principles:

Probity, (The quality of having strong moral principles; honesty and decency)

Statutory Compliance,

Commercial Maximisation and Flexibility and confidentiality,

Transparency of Process,

Achievement of specific Policy outcomes of Council.

Application: This Policy applies to any form of contract which legally binds the Council (or potentially binds Council) and includes formal contracts and other forms of contractual arrangements including heads of agreement, in principle agreement, options to purchase, leases etc.

Exclusion of Compulsory Acquisition: This Acquisition Policy does not extend to the statutory right granted to Council in the Local Government Act in respect of "compulsory acquisition".

Exclusion from Council's Purchasing Policy: In accordance with Council's Purchasing Policy, land acquisition activities are excluded from the provisions of the Purchasing Policy.

Subject to Financial and Risk Policy: Any land acquisition is subject to compliance with Council's financial and risk policies. Any land acquisition is subject to standard commercial due diligence as a minimum.

Procedure

Formal resolution

Any Land to be acquired by Council is subject to a formal resolution of Council.

Independent Valuation Benchmark and Special Value

Any Land acquisition is to be benchmarked to an independent valuation of the Land. In many cases however, there will be a justified basis for Council acquiring property at a price above the valuation benchmark in order to guarantee the successful securing of the

interest to achieve the defined goals and objectives of Council or to acquire the interest with a view to adding value (or reducing risk) to a larger scheme of development (future or current).

The consideration of a purchase or lease (or other) price over the valuation benchmark is to be a case by case decision however it should be supported by the reasons for such a decision and supporting advice and risk analysis.

Any Special Value should be determined and quantified within the initial decision of Council and referenced to the achievement of specific Goals and Objectives of Council.

Acquisition Process

Council's process of land acquisition must include the following steps:

Identification of the Land acquisition opportunity by Members of Council,

In-principle decision by the Chief Executive Officer and Mayor to pursue a pre-acquisition process,

Preparation of a comprehensive assessment of the Land acquisition including required due diligence, independent valuation, maximum price (purchase or lease or other) and Statement of Goals and Objectives for the proposed Land including a statement of any "Special Value" deemed appropriate by Council etc,

Formal consideration by Council of dealing with the matter in confidence in accordance with its confidentiality policy,

Formal report to Council including the property acquisition assessment and documentation of the reasons for Council's acquisition the Land, and if supported, delegation to the Chief Executive Officer to negotiate an outcome subject to financial and risk parameters as determined by Council,

Negotiation, and if successful, implementation of all matters necessary for the preparation, signing and sealing of documentation required,

Once completed, a formal report to Council advising of the outcome (successful or otherwise).

PART B Acceptance of Land (Open Space) By Council

Council will only accept responsibility for land which meets the following guidelines:

Undeveloped Crown Land.

Council to be granted freehold title to the land.

The area is to be cleared of rubbish and debris and levelled where appropriate.

The area is to be free of declared weeds and appropriate fire breaks on all boundaries.

A water service of a size adequate to properly water the area will be provided at the boundary, where appropriate.

Council will accept no responsibility until the land is properly vested to Council control.

Developed Crown Land

The development is at a standard agreed by Council and Government. Council will not accept any legal or ownership responsibility for the development until the land is properly vested in Council with freehold title.

Private Subdivisions

Private developers will be required to develop the land to a standard approved by Council in accordance with its relevant standards and as set out in writing.

Council will accept no responsibility until the land is vested to Council control.

Council to be issued freehold title.

Ovals, Sporting, Recreational and Community Facilities

Where ovals, sporting, recreational and community facilities are to be managed and maintained by Council, the funding, development and maintenance responsibility costs will be subject to a formal agreement between Council and Government.

PART C Land Disposal

As a general rule, Council (as custodian of public assets) would dispose of all property interests in an open market format to ensure due probity of process and optimal financial return (and minimal risk).

However, one of Council's roles of participating in the marketplace via land ownership is to facilitate desired goals and objectives to ensure the growth and prosperity of the Municipality, which if left to the private marketplace alone, may not be achievable.

This may encompass a range of opportunities for Council's involvement (i.e. site amalgamations with adjoining owners, facilitation of key projects etc) where property disposal activities based on an open market approach and due probity process alone will/may not achieve such objectives.

The purpose of a Land Disposal Policy therefore, is to provide Council with:

A documented reference to guide its decision making process,

Provide a reference that will survive successive Councils,

Provide a Council endorsed framework to enable the Officer to discuss potential land disposal activities with third parties,

Establish delegations necessary to allow day-to-day property management functions to be addressed by Council Officers.

The framework of the Policy aims to provide Council with a policy which adopts the following principles:

Probity,

Statutory Compliance,

Commercial Maximisation and Flexibility and confidentiality,

Transparency of Process,

Achievement of specific Policy outcomes of Council.

Application: This Policy applies to any form of contract which legally binds the Council (or potentially binds Council) and includes formal contracts and other forms of contractual arrangements including heads of agreement, in principle agreement, options to purchase, leases etc.

Statutory Context: The Local Government Act vests authority in the Council to "deal with or dispose of" property of which the Council is the owner subject to the Minister's Guidelines.

Exclusions: This Policy does not extend to the disposal of "public roads" or any interests in public roads (i.e. permits etc) as such matters are dealt with in accordance with the specific provisions of the Local Government Act and any other relevant legislation.

Procedure

Public Sale

All Land is placed on the open market through an appropriate public sale process as established in accordance with this Policy unless Council determines that an alternative process will be adopted.

Open Market Process

Council's Open Market Process will include the following steps:-

As a public agenda item, identification of the land, declaration as surplus to requirements or set aside for the facilitation of a strategic outcomes where such outcomes are clearly documented and ratified by formal resolution. This may include public consultation to define the outcomes at Council's discretion.

On the basis of Council's resolution above, prepare a Statement of Goals and Objectives (the Brief) for the proposed land sale (or ratified in the above process if required for major projects).

The implementation of a commercial marketing process based on the Brief (using agents or direct processes as appropriate).

Assessment of proposals on an appropriate weighted basis assessed against Council's endorsed outcomes (the Brief).

Benchmark all proposals by an independent valuation of the land.

Formal consideration by Council of dealing with the matter in confidence in accordance with its confidentiality procedures.

Formal consideration by Council recommending the successful party (and if not the party with the optimal weighted score – documentation of the reasons for Council's decision otherwise) and a formal resolution nominating the land, contracting parties, nature of contract, the price, conditions to ensure the achievement of Council's objectives and delegation to the Chief Executive Officer and Mayor to effect all things necessary for the implementation of the land transaction.

Circumstances for an Alternative Process

Council may undertake an alternative process for the disposal of land where in Council's opinion, an alternative disposal approach will achieve greater benefits to the ratepayers than could be achieved through a public process and will entertain a direct sale, lease or similar to the exclusion of a public process.

The circumstances which give rise to an alternative process include:

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.

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 Council is bound by a contractual obligation. For example, a tenants with a first right of refusal.

Disposal to adjoining owners or persons with an option over adjoining land where Council's Land is required as part of a larger scheme of development.

Disposal of land to the NT Government to facilitate a strategic project.

Disposal of land to a government or utility authority for the purpose of infrastructure provision.

Where a public marketing process which has been undertaken in accordance with this Policy has failed to achieve the desired outcome.

In response to a proposal which achieves specific policy goals of Council. 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 of land for consolidation with adjoining private land to form a larger site 'where the sale of the land to the adjoining land owner facilitates Council's strategic objectives'.

Procedure for an Alternative Process

Council's Alternative Process will include the following steps:

Receipt of a preliminary proposal comprising a concept plan and description of the project and clear demonstration of the achievement of specific policy and strategic goals and objectives of Council.

The Chief Executive Officer in consultation with the Mayor assesses any proposal for the disposal of land in accordance with the criteria for adopting an alternative processes and if applicable,

Formal consideration by Council of dealing with the matter in confidence in accordance with its confidentiality policy,

Submission of the preliminary proposal to Council seeking Council's resolution to deal with such a party in respect of the preliminary proposal for the land on an "in-principle" (without prejudice) basis where Council's resolution identifies the circumstances/basis upon which it will deal with such a party to the exclusion of a public process and a Statement of Goals and Objectives which must be delivered,

Subsequent submission to Council of a formal proposal in respect of the disposal of the land to the party including a statement of the achievement of Council's Statement of Goals and Objectives and financial and risk matters,

Benchmark of the proposal by independent valuation of the land,

Formal decision (resolution) of Council nominating the successful party (or otherwise) and a formal resolution nominating the land, contracting party(s), nature of contract, the price,

conditions to ensure the achievement of Council's Goals and Objectives and delegation to the Chief Executive Officer and Mayor to effect all things necessary for the implementation of the land transaction.

Sale of Public Land held for Community purposes

Council's policy on the sale of public land held for community use is that this not be approved where the sole purpose of the sale is to enable an applicant to meet requirements under the NT Planning Act.

This part of the Policy should be read in conjunction with the ministerial guidelines viz.

Authority to Dispose of Property

Property which has been purchased, or the purchase of which has been contributed to, by a funding source, may not be disposed of unless the terms of the funding agreement have been met. This includes any requirement to gain approval from the funding body to dispose of property.

Decisions for sale or disposal of real property must be made by Council resolution unless Council has delegated this authority.

Council may delegate authority under s32 of the Local Government Act. For example, the CEO may be given a delegation to approve the sale or disposal of certain property.

Where Council delegates such authority the delegation should be limited. For example, the CEO may have a delegation to dispose of property that fits certain criteria.

Method to be used

Generally, Council will sell or dispose of land and other assets through adoption of the following practices:

Direct sale - advertisement for sale and the nature of the advertisement i.e. public notice, local paper etc;

Quotation – seeking quotations for the sale of land and other assets;

Selected tender – seeking tenders from a selected group of persons, companies, organisations, or other interested parties;

Open tender – openly seeking, through advertisement, tenders, or buyers for Council, land and other assets; or

Other means as deemed appropriate by Council or the CEO (provided disposal has been authorised by Council).

Considerations

In considering the method of disposal of an asset, Council should consider a number of issues, for example:

The potential for the Council to obtain the best price.

The number of known potential purchasers of the land assets.

The current and possible preferred future use of the land or assets.

The existence of local purchasers of the land or asset.

The opportunity to promote local economic growth and development.

The total estimated value of the sale.

Delegation limits taking into consideration accountability, responsibility, operational efficiency and urgency of the sale.

Compliance with statutory and other obligations.

Council or its officers with delegated authority shall, when making decisions, act in accordance with the council's budget, relevant policies, plans, resolutions, and all relevant statutory or common law requirements.

Proceeds from Sale of Assets

Proceeds from the sale of assets (capital revenue) should be applied to purposes approved under Council policy, for example the policy could include that proceeds are applied:

To the reduction of any debt associated with the asset acquisition or upgrade since the original purchase or construction; or

To offset the cost of replacement assets required for operations arising from identified asset sale; or

To a specific Reserve fund if appropriate or to the asset replacement reserve; or

For other purposes as authorised by Council resolution.

PART D Term Lease Policy

As a general rule, Council (as custodian of public assets) would provide a term lease on all property through an open market format to ensure due probity of process and optimal financial return (and minimal risk).

However, one of Council's roles of participating in the marketplace via property ownership is to facilitate desired goals and objectives to ensure the growth and prosperity of the Municipality, which if left to the private marketplace alone, may not be achievable.

This may encompass a range of opportunities for Council's involvement (i.e. site amalgamations with adjoining owners, facilitation of key projects etc) where term leases are based on an open market approach and due probity process alone will/may not achieve such objectives.

The purpose of a term lease policy therefore, is to provide Council with:

A documented reference to guide its decision making process,

Provide a reference that will survive successive Councils,

Provide a Council endorsed framework to enable the Officers to discuss potential leases with third parties,

Establish delegations necessary to allow day-to-day property management functions to be addressed by the Council Officers.

The framework of the Policy aims to provide Council with a Policy which adopts the following principles:

Probity,

Statutory Compliance,

Commercial Maximisation and Flexibility and confidentiality,

Transparency of Process,

Achievement of specific Policy outcomes of Council.

Application: This Policy applies to any form of contract which legally binds the Council (or potentially binds Council) and includes formal contracts and other forms of contractual arrangements including heads of agreement, in principle agreement, options to purchase, leases etc.

A term lease is one which exceeds a period of 10 years or more inclusive of any renewal options

Statutory Context: The Local Government Act vests authority in the Council to "deal with or dispose of" property of which the Council is the owner subject to the Minister's Guidelines.

Procedure

Public Process

All term leases are placed on the open market through an appropriate public process as established in accordance with this Policy unless Council determines that an alternative process will be adopted.

Open Market Process

Council's Open Market Process will include the following steps:-

As a public agenda item, identification of the lease, declaration as available or set aside for the facilitation of a strategic outcome where such an outcome is clearly documented and ratified by formal resolution. This may include public consultation to define the outcome at Council's discretion.

On the basis of Council's resolution above, prepare a Statement of Goals and Objectives (the Brief) for the proposed lease (or ratified in the above process if required for major projects).

The implementation of a commercial marketing process based on the Brief (using agents or direct processes as appropriate).

Assessment of proposals on an appropriate weighted basis assessed against Council's endorsed outcomes (the Brief).

Benchmark all proposals by an independent valuation of the lease.

Formal consideration by Council of dealing with the matter in confidence in accordance with its confidentiality procedures.

Formal consideration by Council recommending the successful party (and if not the party with the optimal weighted score – documentation of the reasons for Council's decision otherwise) and a formal resolution nominating the lease, contracting parties, nature of contract, the price, conditions to ensure the achievement of Council's objectives and delegation to the Chief Executive Officer and Lord Mayor to effect all things necessary for the implementation of the land transaction.

Circumstances for an Alternative Process

Council may undertake an alternative process for the term lease where in Council's opinion, an alternative lease approach will achieve greater benefits to the ratepayers than could be achieved through a public process and will entertain direct negotiations to the exclusion of a public process.

The circumstances which give rise to an alternative approach include:-

i) Where the total cost of the public process will exceed the expected community benefit. For example, where the annual lease has no significant commercial value

ii) Where there is only one identifiable lessee. For example where a site is not large enough for development or lease in its own right and is surrounded by public roads on all sides other than the adjoining owner

iii) Where Council is bound by a contractual obligation. For example, a tenant with a first right of refusal.

iv) Where a term lease is nearing the end of its term and implementing an open market process would impose either:

a significant and commercially undesirable reversionary cost (or risk of such cost) to Council or,

an unsatisfactory capital investment scenario which will impact (or is at risk of impacting) the achievement of the Goals and Objectives of Council.

the term of the extension of lease should be commensurate with a period required to satisfactorily reduce such risks or costs to Council.

- v) The sitting lessee has a special interest in the land and no other similar party can be identified (i.e. a unique community based club, education use etc).
- vi) Term lease to adjoining owners or persons with an option over adjoining land where Council's land is required as part of a larger scheme of development.
- vii) Term lease to a government or utility authority for the purpose of infrastructure provision.
- viii) Where a public marketing process which has been undertaken in accordance with this Policy has failed to achieve the desired outcome.
- ix) In response to a proposal which achieves specific policy goals of Council. 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.

LEGISLATIVE REQUIREMENTS

Section 182(1) of the Local Government Act
Section 7 of the Minister's Guidelines

Legislation, terminology and references

Legislation

Section 182 (1) of the Local Government Act provides that ' subject to the Minister's Guidelines, a Council may deal with or dispose of property of which the Council is the owner'.

Ministerial Guidelines made pursuant to S 258 of that Act were made on June 29 2008 with effect from July 1 2008. Part 7 Deals with the disposal of property.

The Council may also have access to the powers contained within the Lands Acquisition Act by arrangement with the Minister.

Definitions

Authorised Officer is a person appointed by Council for the purposes of enforcement of the Local Government Act and associated legislation.

Land is all "real property" that being "land and all things attached to the land so as to become part of it".

As a more specific reference for the purpose of this Policy, land is defined as:

- (1) Land as a physical entity including:
 - (i) any building or structure on or improved to land; or
 - (ii) land covered by water and, in such a case, the overlying water; or,
 - (iii) air rights; or,
 - (iv) a strata lot pursuant to relevant strata legislation.

- (2) A legal estate or interest in, or right in respect of land.

Responsible Officer means an officer nominated by the Chief Executive Officer with responsibility for ensuring that Council's

Land Acquisition Policy and principles are followed; and

Land Disposal Policy and principles are followed; and
Long term lease Policy and principles are followed.

Implementation and delegation

Delegations

Delegation is granted to the Responsible Officer to deal with:-

1. In relation to acquisition - Leases, licences and other interests of less than 1 year in term and in accordance with budgeted expectations for the relevant financial year.
2. In relation to disposal and long term leasing of land - Leases, licences etc up to ten (10) years procured via a due probity process and other appropriate procurement processes. As a minimum, all such interests are to be advertised publicly in accordance with standard commercial leasing practices and assessed via a value assessment matrix.
3. In relation to acquisition, disposal and term leases– the acquisition or disposal of easements and other minor interests with the NT Government or utilities authorities or other public entities.
4. When these delegated powers are used an information report must be provided to Council providing details.
5. Evaluation and review
6. Council can alter this Policy or replace it with a new policy at any time so long as it does not affect a process which has already commenced.

REVISION DATE

This policy is to be revised within four months after the next Local Government elections.

REFERENCES:

Policy Number:	LC36
Policy Owner:	GOVERNANCE
Endorsed by:	COUNCIL
Final Approval:	COUNCIL
Date Approved:	11/04/2013
Revision Date:	WITHIN 4 MONTHS OF 31/03/2016
Amendments:	
Related Policies:	
Related Publications:	

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