



# ACQUISITION AND DISPOSAL OF LAND POLICY

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## Purpose

Central Darling Shire Council (CDSC) from time to time acquires and disposes of land and easement assets. CDSC has obligations under a range of legislation and this policy has been developed to provide the framework for a transparent process that adheres to the relevant legislation and provides the best value outcome for CDSC.

The objectives of this policy are to:

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

## Application

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

## Definitions

**Land** - Land as a physical entity including buildings, structures and improvements to land held in fee simple.

**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.

## Provisions

Central Darling Shire 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 CDSC land can only be achieved through a resolution of Council.

Proposed acquisition and disposal of land and easements will consider:

- The guiding principles expressed in Section 8A of the *Local Government Act 1993* and securing the best value for residents and ratepayers.
- The current property market and independent valuation advice.
- The state of the local economy and capability to generate economic benefit.
- The objectives and general directions of the Community Strategic Plan, Delivery Program and Operational Plan.
- The current costs and liabilities to CDSC of managing and maintaining land considered surplus to operational needs.

- Local Environmental Plans, Masterplans and Strategies.
- 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 CDSC.

### Land Acquisition

Acquisition of land will meet the purposes defined in Section 186 of the *Local Government Act 1993*.

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

- The process for acquisition of land will be as open and transparent as possible to ensure that CDSC obtains the best outcome and price and CDSC's commercial position is protected.
- For all transactions CDSC will obtain relevant information, including but not limited to valuation reports in order to assist decision making.
- Where privately owned property is available for purchase on the open market, CDSC will negotiate the purchase price and terms to achieve the best possible commercial value.
- 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.
- When acquiring land CDSC 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.
- Wherever possible CDSC's preferred method of acquisition is to acquire land through negotiated agreement with the owner/vendor.
- Where land is not able to be acquired through negotiated agreement and otherwise where land is not on the open market for sale, CDSC may acquire the land by compulsory acquisition under the *Land Acquisition (Just Terms) Compensation Act 1991*.
- Decision making and assessment criteria for land acquisitions must consider:
  1. 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.
  2. Assessment of the extent to which the acquisition maintains and protects the natural environment by conserving biodiversity or protecting, conserving and managing natural, cultural and built heritage.
  3. 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.
- 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 Shire and the Community Strategic Plan; permissible use of the land/approvals for use of the land taking into consideration the Local Environmental Plan; costs of ongoing maintenance and operations and CDSC's Operational Plan.

- 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.
- Council shall resolve the appropriate funding source for each acquisition.
- Council must resolve to acquire land including the classification of the land as either Operational or Community land.

### Land Disposal

In deciding to sell land, Council will consider the following matters that are relevant to the proposed sale:

- Whether CDSC can lawfully sell the land.
- Existing usage.
- Potential future usage.
- The likely sale price.
- The cost of retaining the land.
- The public interest.

Under Section 713 of the Local Government Act 1993, CDSC has the power to sell land to recover unpaid rates and charges. The sale of any land to recover unpaid rates and charges that have been outstanding for the legislated period is regarded as a last resort enforcement measure to be undertaken only after other CDSC debt management processes have failed. The benefit to CDSC is that monies owed may be recovered, and the land may become an income-producing property again with a new owner who pays rates when due. A confidential report will be presented to Council for approval, detailing each property's circumstances, prior to the commencement of any sale of land for unpaid rates and charges.

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 via CDSC's preferred method – be it public auction, tender or expression of interest - unless circumstances warrant sale by Direct Negotiation as set out below. For public auction, the General Manager will set the reserve price based on a recommendation of an independent valuer.

Notwithstanding Section 55(3) of the *Local Government Act 1993*, CDSC 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.

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

- 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.

- 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%.
- Where CDSC is bound by a contractual obligation. For example, a tenant with a first right of refusal, where that tenancy has been entered into because of public competition.
- Disposal of land to a government or utility authority for the purpose of infrastructure provision.
- 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.
- In response to a proposal which achieves specific policy goals of CDSC. 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 CDSC, e.g., a land-swap transaction.
- Following valuation advice.

Where land is being sold by direct negotiation, a probity plan will be developed to cover the following matters:

- obtaining best value for money.
- demonstrating accountability and transparency.
- dealing with conflict of interest.
- providing a fair chance for all to participate.

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

### Easements

Easements are a right over a property for CDSC 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 CDSC 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, CDSC 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.

### Closed Roads

An application for the full or partial closure and disposal of a road may be initiated by CDSC or by an individual. In the latter case, CDSC is still responsible for following the *Roads Act 1993* requirements for road closure.

### **Legislation**

*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*

### **Related Documents**

#### External

Tendering Guidelines for NSW Local Government

#### Internal

Disposal of Assets Policy

Debt Recovery Policy

Asset Management Policy

Asset Management Plans

Procurement Policy

### **Monitoring and Review**

This policy will be monitored and reviewed by the General Manager to ensure compliance. Once adopted, it remains in force until it is reviewed by Council. It is to be reviewed approximately every two (2) years to ensure that it meets requirements, or sooner if the General Manager determines appropriate.