

MURRAY RIVER COUNCIL  
COUNCIL POLICY

**DRAFT**  
**LAND  
ACQUISITION  
AND  
DISPOSAL  
POLICY**

POL-601 V#1



murray river  
council

## **1. INTRODUCTION**

From time to time, Murray River Council (Council) will need to acquire (as per s186 of the Act) and dispose of land assets for the purpose of exercising its functions under the Act.

Council has duties and obligations under a range of legislation and regulations applicable to land acquisition and disposal. This Policy has been developed in order to provide the framework for a transparent process that adheres to the relevant legislation.

## **2. OBJECTIVES**

The objectives of the Land Acquisition & Disposal Policy (Policy) are to:

- ▶ ensure that Council has a transparent and accountable process to consider the Acquisition and Disposal,
- ▶ establish the criteria under which Council will consider Acquisitions and Disposals,
- ▶ ensure best value is achieved in Council land dealings, and
- ▶ ensure that Council meets its obligations under relevant legislation and regulations.

## **3. SCOPE**

This Policy applied to all Acquisitions and Disposals undertaken by Council (subject to the exclusions stated herein).

This Policy will NOT apply to sale of land undertaken to recover unpaid and overdue Rates & Charges. Sale of land undertaken for such purpose will be carried out in keeping with the relevant provisions of the Act (Chapter 17, Part 2, Division 5) and the Regulation.

## **4. LEGISLATION**

This policy complies with the requirements of the Local Government Act 1993 (Act) and the accompanying Local Government (General) Regulation 2021 (Regulation).

Other major legislative requirements that may be relevant include the following:

- ▶ Community Titles Act 1996
- ▶ Conveyancing Act 1919
- ▶ Crown Lands Act 1989
- ▶ Land Acquisition (Just Terms Compensation) Act 1991
- ▶ Real Property Act 1900
- ▶ Roads Act 1993
- ▶ Strata Titles Act 1988

## **5. POLICY STATEMENT**

In keeping with s 377 of the Act, all Acquisitions and Disposals will be conducted only based on a specific resolution of Council. Such authority cannot be delegated to the CEO.

As a first principle, all resolutions for the Acquisition or Disposal will be made in the open section of a general meeting of Council. Where the information relating to the Acquisition or Disposal falls within the definitions of s10A(2)(c), 10A(2)(d), or 10A(2)(g) of the Act, deliberations relating to such matters may be made at a meeting of Council that is closed to the public.

Where report recommending an Acquisition or Disposal has been deliberated in a meeting closed to the public, due to circumstances related to s10A(2)(c), 10A(2)(d), or 10A(2)(g) of the Act, such confidentiality will be deemed lifted once all transactions related to the Acquisition or Disposal has been completed, unless the resolution specifically states that the report is to continue to be maintained as confidential even after the transaction has been completed. Where such a statement is included in the resolution, the report shall clearly identify the reasons why the confidentiality should not be lifted on completion of the transaction(s).

The Act (Chapter 6, Part 2) requires all land vested in a Council (except a road or land to which the Crown Lands Act 1989 applies) to be classified as either community or operational. The purpose of this classification is to identify clearly that land which should be kept for use by the general public (Community) and that land which need not (Operational). Council has the option of classifying any purchase of land as Operational, within 3 months of purchase. If no specific classification occurs, the land defaults to a Community classification.

Classification (and reclassification) of land will be done either through an LEP or through a specific resolution of Council. The Act places certain limitations on how community land can be sold or leased. Classification or reclassification of land does not affect any estate or interest that Council has in the land.

In keeping with s53 of the Act, Council will maintain a register of all land vested in Council or under its control.

Prior to any Acquisition or Disposal, a process of internal consultation will be undertaken with relevant directorates and departments, to determine the need for acquisition or that the land identified for disposal is deemed surplus, as the case may be. Where a Disposal of a land classified as community is being considered, such consultation shall take place prior to the reclassification of the land to operational.

Council, as custodian of public assets, in furthering public accountability and transparency and to ensure that Council received best value, will endeavour to undertake all Acquisitions and Disposals through an open market process such as an auction, public tender, open call for offers to sell/purchase, or an expression of interest process, except in circumstances where it is clearly not practical to do so.

Where deemed necessary, Council may undertake the Acquisitions and Disposals through direct negotiations. In such instances, the relevant Council resolution shall specify that the transaction is to be made through direct negotiation. The Council report accompanying the said resolution will lay out the reasons justifying the undertaking the transaction through direct negotiation, instead of an open market process.

## 5.1 Acquisition of Land:

The acquisition of land whether for community or operational purposes, shall be undertaken in accordance with the following procedures aimed at ensuring an accountable and transparent process that will deliver optimum value for Council.

Acquisitions are to be identified taking into consideration the purpose for which they needed to be acquired, the strategic nature of such properties, and the value that such properties have to the community.

### Valuation

Unless there is a pressing reason which makes it impractical to do so, a valuation by a registered licenced valuer shall be commissioned, in accordance with Council's procurement requirements, for all Acquisitions prior to any negotiations with the Landowner or the adoption of a Council resolution for Acquisition. Such valuation report shall indicate a value range for the land being valued. Council reports related to Acquisitions shall be accompanied by the relevant valuation report that is no older than six months from the date of the Council meeting.

In instances where an Acquisition is expected to be made exceeding a value of one million dollars (\$1,000,000), two valuation reports shall be commissioned, independent from each other, and both reports shall be appended to the Council report accompanying the resolution authorising the Acquisition.

## Method of Acquisition

In instances where the purpose of the proposed Acquisition makes it viable for the land to be located in more than one specified location, such Acquisitions shall be undertaken through an open market process such as calling for offers or expressions of interest. Such open market process shall specify the criteria which would make the land suitable for the identified Acquisition and any other conditions that may be applicable to the acquisition.

Where an open market process is not viable, and subject to the other provisions of this Policy, Council may undertake Acquisitions either:

- at an auction,
- agreement with the Landowner, or
- compulsory acquisition in keeping with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991.

It is acknowledged that it may not always be possible to adopt a Council resolution prior to commencement of negotiations with the Landowner. In such instances, Council Officers may:

- Enter into negotiations, subject to notifying the Landowner in writing that any negotiations are subject to adopting a Council resolution for the acquisition of the land and obtaining a valuation of the land, and
- where necessary make a conditional offer for the Acquisition, subject to the Council adopting a resolution for the Acquisition under the agreed terms and conditions.

No Council officer shall make a firm offer for an Acquisition without a Council resolution authorising such Acquisition and a valuation of the land.

When an Acquisition is a compulsory acquisition, such acquisitions shall be made strictly in keeping with all relevant legislation including the Act, the Land Acquisition (Just Terms Compensation) Act 1991, and the Roads Act 1993.

## Other Considerations

A range of other considerations may come into play in the acquisition of land, especially where the acquisition is being made for a specific purpose. Officers engaged in land acquisitions need to ensure that all relevant legislative and regulatory requirements are taken into considered and addressed in any reports presented to Councillors. Where necessary, external legal advice should be sought to clarify these requirements. Some examples of such considerations are:

- Native Title
- Private Public Partnerships (PPP)
- National Competition Policy (NCP) and Competitive Neutrality Policy (CNP)

## Council Resolution

A Council resolution for the acquisition of the land will be adopted prior to commencing negotiations or making an offer. In such instances, either the maximum price to be paid for the land or a range of prices will be identified in the Council report accompanying the resolution. Such a Council report will be deemed to be falling within the definition of s10A(c) of the Act, and as such may be deliberated at a Council meeting closed to the public.

All Council resolutions for Acquisitions shall indicate the classification (Community or Operational) of the land post-acquisition. Unless the Acquisition is specifically for use by the general public, the classification of the land shall be identified as Operational.

Where the Council report recommending an Acquisition is recommending a maximum purchase price above the upper limit identified in the valuation report, that fact and the amount by which the recommendation exceeds the upper limit specified in the valuation report, shall be clearly stated in the Council report.

Council Officers shall not participate in an auction for an Acquisition unless a Council resolution has been adopted prior to participating in the auction. Such resolution shall clearly identify that the acquisition is to be undertaken through an auction. The report accompanying the resolution shall indicate the maximum value to be bid for the Acquisition. It is acknowledged that such a report will fall within s10A(2)(c) of the Act and as such may be deliberated at a Council meeting closed to the public.

## Delegated Authority

A Council resolution for an Acquisition shall include a delegation to the CEO to negotiate the purchase price (below the maximum price or within the set limits, if necessary negotiate any minor conditions, and to execute any documents deemed necessary for the Acquisition by Council's legal advisors.

A Council resolution for an Acquisition through an auction shall make a specific delegation of authority to the CEO to participate in and make bids at the auction, subject to any limitations (including the maximum value to be bid) that applies to the delegation.

The CEO may sub-delegate the authority to participate in and make bids at a specific auction to another Council Officer who is a director (or equivalent) who directly reports to the CEO.

## **5.2 Disposal of Land:**

Council will undertake a Disposal only if the land is classified as operational under Chapter 6, Part 2 of the Act. Where a land classified as community is identified for disposal, Council shall undertake the process, in keeping with the Act, to reclassify the land as operational, before a Disposal.

### Criteria for Disposal

Where the proposed Disposal is a surplus public road, such road must be closed under the Roads Act 1993 and consent obtained from Department of Primary Industries, Crown Lands Division. Where relevant such proposal shall also be subject to compliance with local service authorities whose utilities are located within the area affected by the proposed Disposal. For classified roads, the approval of Transport for NSW must be obtained. All of the above activities must be undertaken prior to the matter being referred to Council for consideration and resolution.

Disposals are to be tested against several criteria to determine the need for disposal and the ability to be disposed.

- › Statutory Influences (restrictions or limitations): Are there statutory reasons for the Council ownership of the property? This will extend to actual or implied trusts that have been established as a result of Council's acquisition of the land.
- › Existing and Potential Usage: Is the land used or likely to be used to meet operational, community or commercial needs now or in the foreseeable future?
- › Spatial Distribution: Are there adequate similar facilities that can meet current and future needs in the area and serve the local community?
- › Conservation Value: Does the land or road have cultural, natural or heritage value that should be maintained?
- › Site constraints: Are there site constraints which may extend to (but are not restricted to) contamination, flood liability, land slip, mine subsidence, or other physical impairment?
- › Maintenance & Operational Issues: What is the cost benefit to Council of retaining or disposing of the land?

Should the proposed Disposal be adversely impacted by any of these matters, such Disposal should not proceed unless it can be demonstrated that there is a public and/or economic benefit and the sale conditions are able to be structured in a manner to ensure that such issues are addressed.

Once the Disposal has been assessed by a relevant Council Officer and reviewed by a second Officer holding the designation of a Director, such officer shall present a proposal for approval by the CEO, demonstrating that the proposed Disposal has been satisfactorily assessed against the above criteria and identifying the internal consultations that has been undertaken in the course making the assessment. Where



deemed necessary, at his/her discretion, the CEO may make his/her own assessments and consultations before approving or rejecting the proposal.

## Valuation

Once CEO approval has been obtained for the proposed Disposal, a valuation of the identified land by a registered licensed valuer, shall be commissioned in accordance with Council's procurement requirements.

The valuation instructions to the valuer(s) must clearly state:

- the purpose of the valuation being "disposal",
- the basis of valuation being "market value highest and best use" unless an alternative basis is considered more appropriate in the circumstances,
- where relevant the zoning of the land, and whether any impacts of possible rezoning,
- that the valuation is to be marked confidential,
- that the valuation includes 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 disposal and opportunities to add value.
- any conditions, covenants or caveats that Council proposes to place on the proposed Disposal,
- any other property information relevant to the preparation of a valuation which may not generally be available or known to a valuer (e.g., existence of underground infrastructure not covered by an easement, contamination or subsidence issues or new public infrastructure to be constructed on site prior to disposal), and
- that the valuation report includes a statement that the valuer has no actual or perceived conflict of interest in undertaking the valuation.

The valuations may indicate a value range, provided such range is within a reasonable upper and lower limit. Where the value of the land exceeds One Million dollars (\$1,000,000), a second valuation, independent of the first, shall be commissioned.

Were two valuations are required, and the valuations are within 10% of each other, an average value or the lower of the low value and the higher of the higher value range may be adopted as the value or the value range, as the case may be.

Differences in valuation in excess of 10% requires a written assessment of the factors contributing to the differences in the valuations and a detailed justification of the recommended minimum price in the Council report.

## Council Resolution

No Disposal shall take place without a specific Council resolution for such Disposal. The report accompanying the Council resolution shall specifically indicate the minimum price for the Disposal. The required valuation reports shall be attached to the report accompanying the Council resolution. Valuation reports so attached shall be dated no more than six months prior to the date of the Council meeting.

The report accompanying the Council resolution shall also clearly specify the proposed method of disposal and contain extensive justification if the proposed method is an "alternative method of disposal", i.e., not a transparent open market process.

## Delegated Authority

A Council resolution for a Disposal shall include a delegation to the CEO to undertake the Disposal using the identified method of disposal, negotiate the sale price (above the minimum price or within the set limits), if necessary negotiate any minor conditions, and to execute any documents deemed necessary for the Disposal by Council's legal advisors.

## Method of Disposal

Subject to the “alternative methods of disposal” identified later in this section, where a subject property of a Disposal is able to be developed independently of any other property, the Disposal shall be undertaken through one of the following transparent and competitive open market methods.

- › Auction: the most open and public method, favoured by government, but reliant on high levels of competition. This method often achieves a quick sale but can fail in poor market conditions.
- › Expression of Interest: usually used for unusual properties capable of a variety of different types of development and/or where it is difficult to determine a market value. This method also lends itself to assessing factors other than price (community benefit, economic development, job creation etc.) in the selection of the successful buyer. It also enables the specification of additional conditions of the sale of the land (e.g., specified development to be undertaken within a certain period of time, placing caveats on the land etc.).
- › Tender: least common and used predominately in high value, limited market situations.
- › Competitive Direct Sale: where the Disposal is advertised using mass media (including online real estate marketplaces). An asking price is set and negotiated with individuals, usually through a real estate agent (who can be an independent third party to the negotiation process). This method can also be used after an unsuccessful auction.

## Alternative Method of Disposal

Council may resolve to undertake a Disposal using an alternative method of disposal under one or more of the following scenarios. Alternative methods of disposal are non-competitive processes that does not involve an open market process.

- › Costs Exceed Value: Where the total costs of undertaking an open market method exceeds the value of the Disposal. This may occur where the disposal is of very low value.
- › One (or Limited Number of) Buyers: For example, where a site is not large enough for development in its own right or where a site adjoins two owners such as laneways, and each owner is offered the option of buying the whole or a portion of the Disposal.
- › Contractual Obligation: Such as with a tenant with a first right of refusal, where that tenancy has been entered into as a result of a competitive open market process.
- › Disposal to Government or Utility: Where the disposal is to a state or federal governmental entity or to a utility (such as water, sewer, electricity, gas, telecommunications) for the purpose of infrastructure provision.
- › Achieve Specific Policy Objectives: Where the primary and overwhelming purpose of the proposed Disposal is to achieve one or more specified significant policy objectives of Council. This provides the Council with the required flexibility to negotiate an identified set of objectives.

Where an “expression of interest” method enables the Council to achieve substantially all of the policy objectives envisaged through this method, the open market “expression of interest” methods should be the preferred option.

Where such a method is proposed to be adopted, the report accompanying the Council resolution for the Disposal shall articulate in detail:

- › the proposed activity to be undertaken at the land to be disposed,
- › how such activities will contribute to the policy objectives to be achieved, and
- › have appended to it two independent valuation reports (irrespective of the value of the land).

In such instances, the resolution of Council shall contain the disposal price. If the recommended disposal price is below the value identified in the valuation reports, that fact shall also be contained in the resolution.

Where such an approach is being envisaged the following information shall be made public at least twenty one (21) days before the date of the Council meeting where the resolution for the Disposal is being tabled.

- details of the land proposed for Disposal (location, extent etc.)
- the fact that the Disposal will be through a direct, non-competitive process,
- basic description of the activities to be undertaken at the identified location
- how such activities will contribute to the policy objectives of Council
- the proposed buyer,
- the proposed disposal price, and
- the valuation of the land as identified by the valuers.

Any objection to the proposed Disposal received by Council shall be presented to councillors at the Council meeting where the resolution for the disposal of the land is to be debated.

- Failed Open Market Process: Where a transparent open market process undertaken within the last 12 months in accordance with this Policy has failed to achieve the desired outcome.

## Probity Plan

A probity plan shall be developed and implemented in relation to all Disposals meeting the following criteria:

- the value of the Disposal is in excess of \$250,000, or
- where the disposal method is an "Alternative Method of Disposal"

Where the Alternative Method of Disposal is to Achieve Specific Policy Objectives, and independent probity officer shall be appointed to review the plan and report on the manner in which the probity plan was adhered to. The report of the independent probity officer shall be tabled at a Council meeting that is open to the public.

Where deemed appropriate, a probity plan may be established for Disposals outside of the identified criteria.

The probity plan shall address the following matters:

- obtaining best value for money,
- demonstrating accountability and transparency,
- dealing with conflicts of interest,
- providing a fair chance for multiple participants, and
- where Disposal is subject to a development application, assessing that application independently of the Disposal.

## Disposal Below Market Value

In rare circumstances Disposals may be considered and made to achieve strategic outcomes. In such situations, "best value" may comprise non-monetary factors such as economic, environmental or social elements, with the price falling below the "market value" range.

In such an instance, the report seeking resolution of Council shall:

- be tabled at a meeting open to the general public,
- have a one or two valuations undertaken in keeping with the requirements of the Policy, appended to the report,
- clearly state the reasons for such Disposal and the non-monetary strategic objective being achieved through the Disposal, and
- quantify the amount below market value attributable to each element.

## **5.3 Easements:**



Where Council requires an Easement over a property and it has not been created in subdivision or as a condition of development consent, compensation may be paid to the respective landowner where appropriate. The amount of compensation shall be assessed by an independent registered licensed valuer in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

Where a Council Easement over land is no longer required, Council can agree to the extinguishment of that Easement. Where appropriate, Council shall seek compensation from the landowner for the benefit of that extinguishment as determined by an independent registered licensed valuer.

## 6. RESPONSIBILITIES

Position	Responsibility
Chief Executive Officer	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy and related Procedures.
Directors, Managers and Supervisors	To communicate, implement and comply with this policy and related Procedures.
Council Officers	To be aware of and ensure compliance with this Policy.
Council Committees	To be aware of and adhere to this Policy.

## 7. EVALUATION AND REVIEW

It is the responsibility of the Director Corporate Services to monitor the adequacy of this Policy and recommend appropriate changes.

This Policy will be formally reviewed every four (4) years or as needed, whichever comes first.

## 8. ASSOCIATED DOCUMENTS, DEFINITIONS AND ACRONYMS

### Associated Documents

- › MRC Asset Management Policy (POL-305)
- › MRC Delegations of Authority (General Manager & Mayor) Policy (POL-102)
- › MRC Delegations of Authority (General Manager to Staff) Policy (POL-107)
- › MRC Statement of Business Ethics Policy (POL-111)
- › MRC Procurement Policy (POL-205)

### Definitions and Acronyms

Term:	Description:
Act	Local Government Act 1993

Acquisition (of land)	Outright purchase of land (whether vacant land or not) resulting in freehold title to Council, the establishment of easements over land, or the lease of a land (whether vacant land or not) for a period greater than or equal to ten (10) years.
Chief Executive Officer or CEO	the General Manger of Council appointed in keeping with s334 of the Act.
Council	Murray River Council
Council Officer	A Council Officer is defined as being one of the following: <ul style="list-style-type: none"> <li>› an employee of Council, or</li> <li>› a contractor or subcontractor retained by Council including an employee of such contractor or subcontractor, or</li> <li>› an employee of a labour hire company who has been assigned to work for Council, or</li> <li>› an apprentice or trainee of Council, or</li> <li>› a student gaining work experience at Council, or</li> <li>› a volunteer of Council.</li> </ul>
Disposal (of land)	Outright sale of land vested in or controlled by Council (whether vacant land or not), the replenishment of easements over land, or the lease of such land for a period greater than or equal to ten (10) years.
Easement	A right over a property for party other than the owner of the land (usually Council) to use land for a specific purpose (e.g., drainage easement, easement in gross for access) and can be in the form of a covenant restricting the use of land (e.g., no vegetation permitted) or a positive covenant that requires the landowner to use and or maintain the site for a specific use (e.g., maintain detention basins).
Landowner	Registered owner of the land being considered for acquisition by Council or an authorised agent representing the owner of the land.
LEP	Local Environmental Plan
Policy	Land Acquisition and Disposal Policy (this Policy)
Rates & Charges	General Rates, Utility Charges and other amounts due to Council that are capable of being registered as a charge against the ratepayer property.
Regulation	Local Government (General) Regulation 202

## 9. DOCUMENT CONTROL

Version No.	Details	Dates	CM9 Reference	Resolution No.
1	Initial Issue	DRAFT		

Council reserves the right to review, vary or revoke this policy at any time  
This Policy is scheduled for review in before 2027.

### NOTE:

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**DISCLAIMER:**

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