

Newcastle City Council

Policy

Internal Review of Council Land

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Internal Review of Council Land Policy



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Related forms	Nil
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Table of Contents

Part A	Preliminary	1
1	Purpose	1
2	Scope	1
3	Principles	2
4	Definitions	2
Part B	Application of Policy	5
5	Identifying Council Interests	5
6	Policy Outcomes	6

Part A Preliminary

1 Purpose

- 1.1 The purpose of the policy is to ensure all of Council's interests are considered when determining the purpose, use, or ownership of Council Land.
- 1.2 The policy also ensures that Council only obtains land for which there is an identified need or interest.

2 Scope

- 2.1 The policy applies to all proposals seeking to change the purpose, use, or ownership of Council Land, including:
 - 2.1.1 amendment to the Zone and/or Classification of Council Land within the LEP
 - 2.1.2 change of Categorisation and/or Council Land Manager within Land Register
 - 2.1.3 development on Council Land that requires consent under the LEP or State Environmental Planning Policy (Infrastructure) 2007
 - 2.1.4 the commencement or expansion of a use on Council Land by a Council Asset Operator other than the Council Land Manager
 - 2.1.5 the Disposal of Council Land
 - 2.1.6 consenting to the dedication or transfer of land to Council by an external party.
- 2.2 Circumstances that may trigger the aforementioned changes include:
 - 2.2.1 a change, reduction or closure of a Council program or facility
 - 2.2.2 an identified need for a new asset or the extension, expansion, redevelopment, or relocation of an existing asset (e.g. community facility or infrastructure) by another Council Land Manager that requires the land
 - 2.2.3 an external request to purchase, lease or gain access over Council Land
 - 2.2.4 an evaluation of the efficacy of Council assets
 - 2.2.5 identified inconsistencies between Zone, Classification and/or land use
 - 2.2.6 an external body wishing to dedicate or transfer land to Council (e.g. provision of open space as part of a development proposal).
- 2.3 Despite the above, the policy does NOT apply to:
 - 2.3.1 Council assets other than Council Land
 - 2.3.2 land classified as Operational Land where each of the following apply:
 - a. the Manager of Commercial Property is the Council Land Manager
 - b. the land was purchased for the specific intent of investment
 - c. the land is not used by or on behalf of another Council Asset Operator.
 - 2.3.3 any specific action resulting from a Council resolution
 - 2.3.4 action resulting from a previous Internal Review Process, where commenced within a 24 month period of such a review
 - 2.3.5 A temporary use of the land, where each of the following applies:
 - a. the use is identified as acceptable to the Council Land Manager
 - b. the proposal is consistent with Clause 2.8 of the LEP.
 - 2.3.6 Summerhill Waste Management Centre

Note: Clause 2.8 of the LEP enables consent of temporary land uses that do not compromise the future potential of the land, nor have detrimental economic, social, environmental effects on the land. Furthermore such consent may only be granted for a maximum of 52 days (whether or not consecutive days) in any 12 month period.

3 Principles

- 3.1 Council commits itself to the following principles for determining changes in the purpose, use and/or ownership of Council Land:
- 3.1.1 **Accountability and transparency** – achieved through implementation of a process that enables representation of all internal interests in the land.
 - 3.1.2 **Collaboration and Strategic focus** – achieved through a multidisciplinary process that considers the long-term service delivery of all business units.
 - 3.1.3 **Alignment with Council Strategies** – achieved through consideration of priorities identified in adopted strategies of Council, in particular the Newcastle 2030 Community Strategic Plan.
 - 3.1.4 **Compliance with legislation** – achieved by Council meeting its obligations under Part 2 ‘Public land’ of the *Local Government Act 1993*. Furthermore ensuring compliance with Part 3 ‘Environmental Planning Instruments’ of the *Environmental Planning and Assessment Act 1979*, when amending the Zone and/or Classification of Council Land.
 - 3.1.5 **Consistency** – achieved through implementation of an Internal Review Process for all relevant proposals regardless of how these were initiated.
 - 3.1.6 **Efficiency and reliability** – achieved by coordinating Business Unit to provide a conclusive response to proposals concerning Council Land.
 - 3.1.7 **Sustainability** - achieved through consideration of the implications of land transactions on Council's long term financial security, community wellbeing, and environmental protection.

4 Definitions

- 4.1 Unless stated otherwise, a reference to a **Clause** is a reference to a Clause of the policy.
- 4.2 Despite any other meaning or definition used to describe the following terms, within this policy the term:
- 4.2.1 **AAC** means Council's Asset Advisory Committee, which advises Council on matters concerning property assets. Membership consists of EMT and nominated Councillors.
 - 4.2.2 **Categorisation** means the Categorisation of land, in order to govern the use of the land and define its designated purpose. The meaning of Categorisation within this policy is consistent with Division 2 of Part 2 of Chapter 6 within the *Local Government Act 1993*.

Note: The *Local Government Act 1993* categorises Community Land into one or more of the following:

- a) natural area
- b) sportsground
- c) park
- d) area of cultural significance
- e) general community use.

Furthermore land that is categorised as a natural area is further categorised as one or more of the following:

- a) bushland
- b) wetland
- c) escarpment
- d) watercourse
- e) foreshore.

- 4.2.3 **Classification** means the Classification of Council land as either “community” or “operational”, as described under Division 1 of Part 2 of Chapter 6 with the *Local Government Act 1993*.
- 4.2.4 **Community Land** means land that is classified as Community Land, as defined within the Local Government Act 1993.
- 4.2.5 **Council** means The City of Newcastle.
- 4.2.6 **Council Land** means land owned by Council, regardless of its classification, or land not owned by Council but that Council either leases from another party or Crown land controlled by Council.
- 4.2.7 **Council Asset Operator** means a business unit of Council or external service provider that operates a Council asset. The Council Asset Operator may be a separate Business Unit Manager from the Council Land Manager.
- 4.2.8 **Council Land Manager** means the manager of a business unit of Council delegated as being responsible for administering a parcel of Council Land for a specific purpose or function.
- 4.2.9 **Disposal** means the sale, gifting, long-term lease, or transfer of Council Land by other means to another party external to Council for a use or service, not carried out on behalf of Council. Notwithstanding this, where Council does not own the land, Disposal means relinquishing the continuation of tenure of the land.
- 4.2.10 **EMT** means Council’s Executive Management Team, which consists of The General Manager, Director Planning and Regulatory, Director Corporate Services, Director Infrastructure.
- 4.2.11 **Internal Review Panel** means a group of business unit managers who assess the merits of competing interest in Council Land in order to recommend options to EMT and ultimately the AAC.
- 4.2.12 **Land Register** means a database maintained by Council, as required under section 53 of the Local Government Act 1993, which contains details of Council Land including such information as:
 - a. the address or location of the land
 - b. the title of the land
 - c. the name of who owns the land
 - d. the zoning of the land under an environmental planning instrument
 - e. whether or not the land is Crown land
 - f. whether a plan of management applies to the land
 - g. particulars of any agreement (lease or licence) entered into by Council with respect to the land
 - h. the Classification of the land.

- 4.2.13 **LEP** means Newcastle Local Environmental Plan 2012.
- 4.2.14 **Operational Land** means land that is classified as Operational Land, as defined within the Local Government Act 1993.
- 4.2.15 **Proponent** means the party that initiates a proposal. The Proponent may include a Council Land Manager wishing to dispose of Council Land, a potential recipient (internal or external to Council) seeking to acquire or use Council Land, or an external party proposing to dedicate land to Council.
- 4.2.16 **Zone** means 'Land Use Zones' applying to land as identified within the LEP.

Part B Application of Policy

5 Identifying Council Interests

Proponent

- 5.1 A Proponent, not being the Council Land Manager, will make a written request to the Council Land Manager describing the Council Land and detailing their proposal to:
- 5.1.1 acquire ownership or tenure, where the Proponent is external to Council
 - 5.1.2 transfer management, where the Proponent is a Business Unit of Council
 - 5.1.3 become a Council Asset Operator but not the Council Land Manager.
- 5.2 A Proponent, being an external party to Council, proposing to dedicate ownership of land to Council will make a written offer to describing the subject land and detailing the purpose of the transfer.

Council Land Manager

- 5.3 A Proponent, being the Council Land Manager, may initiate a proposal to amend the purpose, use, or management of Council Land where:
- 5.3.1 the Zone and/or Classification are inconsistent with the Council Land Manager's requirements for the land
 - 5.3.2 the land is identified as surplus to the Council Land Manager's need.
- 5.4 Upon receipt of a request made under Clause 5.1 Council's Land Manager will consider if the described land is surplus to their existing or future needs.
- 5.5 In determining if land is surplus, as per Clause 5.3.2 or Clause 5.4 the Council Land Manager will consider such matters as:
- 5.5.1 Consistency between existing land use and the Zone, Classification, or Categorisation. Hence if consistent:
 - a. How much of the land is currently being used for its intended purpose?
 - b. Does the use meet contemporary standards, or can the use be upgraded to contemporary standards under Council's existing funding?
 - c. Is the use/s of the land required into the future?
 - d. Is there a viable alternative location for the use?If inconsistent:
 - e. Is the use on the land identified within any strategies or plans of Council?
 - f. What natural or man-made hazards affect the use of the land?
 - g. Has any alternative use been identified for the land, or part of the land, within any strategies or plans of Council?
 - 5.5.2 Is the land utilised by any other Council Asset Operator? If so:
 - a. What are their long-term requirements for the land for the delivery of service(s)?
 - b. Is the use by other Council Asset Operator linked to the physical location of the land or are there alternate locations readily available?
 - c. Is the other use on the land considered essential infrastructure / service?
- 5.6 Upon receipt of a request made under Clause 5.1.3 the Council's Land Manager will consider if the proposed use is consistent with the purpose of the Council Land, as defined by the Zone, Classification, and Categorisation

Other Business Units

- 5.7 Where advised in writing that Council land is surplus to the need of the Council Land Manager and relevant existing Council Asset Operators, the Manager Strategic Planning will invite internal expressions of interests in the land, from business unit managers of Council.
- 5.8 Where a Proponent offers to dedicate land to Council as per Clause 5.2, as part of a development proposal, the Manager Development and Building (or their delegate) will invite internal expressions of interests in the land from all business units of Council.
- 5.9 Where a Proponent offers to dedicate land to Council, as per Clause 5.2, not in relation to a development proposal, the Manager Strategic Planning will invite internal expressions of interests in the land, from business unit managers of Council.
- 5.10 Expressions of interest will include:
 - 5.10.1 identification of whether all or part of the land is required
 - 5.10.2 identification of whether the interested business unit proposes to become the Council Land Manager, a Council Asset Operator, or both
 - 5.10.3 The business units need for the land, including:
 - a. physical attributes of the land supporting or requiring the proposed use
 - b. vital connections to other infrastructure or facilities or service delivery within proximity of the land
 - c. business case to demonstrate the ability of Council to implement any proposed improvements.
 - 5.10.4 identification of any adopted Council strategy or plan that support the proposal
 - 5.10.5 community benefits of the proposed use
 - 5.10.6 financial benefits to Council
 - 5.10.7 any other matter justifying the proposed interest in the land.

6 Policy Outcomes

No Internal Interest in Land

- 6.1 Where no internal expression of interest is received in relation to Clause 5.1.1 the Council Land Manager will advise the Manager Commercial Property. The Manager Commercial Property will recommend Disposal options to EMT for decision on what should be presented to the AAC, having regard to Council's legal obligations regarding Disposal.
- 6.2 Where no internal expression of interest is received in relation to Clause 5.3.2, the Council Land Manager will request the Manager Commercial Property to identify viable Disposal options in discussion with the Manager Strategic Planning. The Manager Commercial Property will report any viable Disposal options to EMT for decision on what should be presented to the AAC.
- 6.3 Where no expressions of interest are received in relation to Clause 5.8, the Manager Development and Building will recommend to EMT that the AAC be advised that the land not be accepted.
- 6.4 Where no expressions of interest are received in relation to Clause 5.9 the Manager Strategic Planning will recommend to EMT that the AAC be advised that the land not be accepted.

Internal Review Panel

- 6.5 All expressions of interest in Council Land, or land being offered to Council, will be assessed by an Internal Review Panel in order to make recommendations to EMT for a decision on what should be presented to the AAC regarding the preferred option and further action required to enable this.

- 6.6 Where more than one business unit has expressed an interest in the land the relevant business unit managers are encouraged to meet and reach consensus, prior to the interests being considered by the Internal Review Panel.
- 6.7 The Internal Review Panel provides an advisory role and takes a collaborative approach to providing recommendations to EMT and the AAC. The Internal Review Panel is not a determining body.
- 6.8 The Internal Review Panel is chaired by the Manager of Strategic Planning and include the following membership:
 - 6.8.1 Manager Commercial Property
 - 6.8.2 Manager Infrastructure Planning
 - 6.8.3 Manager Facilities and Recreation
 - 6.8.4 Manger Cultural Facilities
 - 6.8.5 Manager Libraries
- 6.9 Members may delegate their staff to attend Internal Review Panel meetings on their behalf and/or provide technical expertise to inform the final recommendations.
- 6.10 The chair may also invite staff from other business units to provide technical expertise to the Internal Review Panel.
- 6.11 Where the Manager Strategic Planning is the Proponent, the Manager of Commercial Property will act as chair for the Internal Review Panel.
- 6.12 Where the Proponent is external to Council, they may present their interest to the Internal Review Panel but are not to partake in the discussion, assessment or formulation of recommendations to EMT and the AAC.
- 6.13 Where agreement cannot be reached by the Internal Review Panel, the identified options will be escalated to EMT for determination.

Matter of consideration

- 6.14 The Internal Review Panel will consider each interests having regard to the following:
 - 6.14.1 justification provided by each party for having an interest in the land
 - 6.14.2 the lifecycle of each proposed use
 - 6.14.3 physical attributes, including hazards, and their impact on future land use/s
 - 6.14.4 ability for multiple uses to be accommodated on the land having regard to the specific needs of each intended use.
- 6.15 Priority is given to actions identified within an adopted core strategy of Council, over those that are not strategic in their initiation.
- 6.16 Priority is given to internal parties over external parties unless:
 - 6.16.1 adequate alternate land is available to meet Council and community needs
 - 6.16.2 inadequate justification to identify a need for the land
 - 6.16.3 the necessary improvements and/or ongoing operating costs of the proposed use are deemed prohibitive and unlikely to be secured
 - 6.16.4 the external proposal provides a greater long-term net benefit to the community from a social, environmental, and/or economic perspective.

Reporting recommendations

- 6.17 The Internal Review Panel will report its recommendations to EMT for endorsement on what should be presented to Council's AAC for consideration prior to Council endorsement.
- 6.18 The report to EMT will include the following:
- 6.18.1 initial proposal by the Proponent, or prompt for review
 - 6.18.2 interest/s raised by Council business units
 - 6.18.3 assessment of options considered by Internal Review Panel, and resultant recommendations
 - 6.18.4 any competing interests remaining unresolved by the Internal Review Panel.

Restriction of outcomes

- 6.19 The intended outcome of this policy is a Council resolution to initiate one or more of the following processes:
- 6.19.1 amendment to the Zone or Classification within the LEP
 - 6.19.2 amendment to the Categorisation, Classification and/or Council Land Manager within the Land Register
 - 6.19.3 Disposal
 - 6.19.4 acquisition.
- 6.20 The outcomes of this policy will NOT, however, guarantee or bias the outcomes of the subsequent processes identified in clause 6.16, nor will they negate Council's legal responsibilities or obligation in relation to these.

Cost recovery

- 6.21 Council may include a fee within its annual schedule of fees and charges to recoup the cost of conducting a review under this policy where a request is made under Clause 5.1.1.