Shellharbour CITY COUNCIL

Policy

Acquisition of Land

Policy Owner: Executive Manager Technology and Corporate Services	
Date Last Adopted: 28 November 2023	**Review Date: 28 November 2026**

1. Policy Statement/Objective(s)

Shellharbour City Council is committed to ensuring there are transparent guiding principles when considering the acquisition of land.

The objectives of the policy are to:

- Provide an open and accountable framework for Council when considering the acquisition of land and complies with its obligations under relevant legislation
- Establish a criteria under which Council will consider the acquisition of land or interest in land
- Align acquisitions of land with Council's strategic direction, Community Strategic Plan, Delivery Program and other Operational Plans and Strategies of Council.

2. Scope

This policy applies to the acquisition of land, buildings and interests in land.

This policy does not apply to:

- Dedication of land or buildings as development contributions under s.7.11 of the *Environmental Planning & Assessment Act 1979*
- Land or buildings transferred to Council under a Voluntary Planning Agreement
- Land dedicated as road, drainage reserves or public reserves through a subdivision of land by a developer, not contained within a s.7.11 plan or Voluntary Planning Agreement
- Acquiring land by adverse possession.

3. References

Local Government Act 1993
Local Government (General) Regulation 2021
Land Acquisition (Just Terms Compensation) Act 1991
Roads Act 1993
Environmental Planning & Assessment Act 1979
OLG Guidelines for the Compulsory Acquisition of Land by Councils
NSW Government Property Acquisition Standards
Shellharbour City Council Property Strategy 2020-2030
Shellharbour City Council Community Strategic Plan 2022-2032

4. External/Internal Consultations

Executive Manager Technical and Recreation Services
Executive Manager Planning and Statutory Certification
Executive Strategic Planning and Environment
Executive Manager Corporate Governance and Risk
Chief Financial Officer
Manager Planning and Urban Release Planning
Manager Asset Planning Development
Governance Manager
Recreation Planner
Development Contributions Planner
Legal Advisors

5. Definitions

Acquisition by Agreement	The process by which property is acquired for a public purpose by agreement with the landowner.
Compulsory Acquisition	The process by which property is acquired for a public purpose where agreement has not been reached and an acquisition notice is published in the NSW Government Gazette.
Interest in Land	An easement, right, charge, power or privilege over, or in connection with the Land.
Land	Land in fee simple to be acquired under this Policy together with any improvements (structures and buildings)
Licence Agreement	An agreement between a landowner and Council under this Policy, authorising Council, Council's representatives or contractors' access to Land to facilitate a project.
Proposed Acquisition Notice	A notice under section 11 of the *Land Acquisition (Just Terms Compensation) Act 1991* of intention to acquire land by compulsory process

6. Variation and Review

Council reserves the right to review, vary or revoke this policy.

Review History -

Date Policy first adopted – version 1	3 February 2016
Date reviewed - amended – version 2	23 October 2020
Date reviewed - adopted – version 3	28 November 2023

Document Set ID: 11554826
Version: 2, Version Date: 08/02/2024

7. Policy

Council is recognised as an authority of the State which is granted legal rights to acquire land for a public purpose.

7.1. Purpose & Assessment Criteria

7.1.1. Council may acquire improved or unimproved land (including an Interest in Land) for the purpose of exercising any of its functions in accordance with the *Local Government Act 1993*.

7.1.2. Without limiting clause 7.1.1, Council may acquire land made available for any public purpose reserved or zoned under an environmental planning instrument.

7.1.3. Council may also acquire land in its capacity as roads authority for the purposes of facilitating road projects, in accordance with the *Roads Act 1993.*

7.1.4. The decision-making and assessment criteria for any acquisition will consider:

- Benefits to the community and local economy;
- Any potential impact on the environment;
- Council's strategic objectives; and
- Funding source and ongoing maintenance and operational costs.

7.1.5. When considering the acquisition of Land, Council will seek opportunities to enhance local amenity, community services, the environment, economic development and cultural development.

7.1.6. Council may acquire Land for investment or strategic purposes to optimise the financial sustainability and long-term community benefit that will provide for future growth opportunities in the Shellharbour Local Government Area.

7.1.7. All acquisitions will take into consideration the strategic directions and objectives of Council's Community Strategic Plan and other organisational plans and strategies.

7.2. Method of Acquisition

7.2.1. Council may acquire land by the following methods:

- Acquisition by Agreement (Contract or Deed);
- Compulsory Acquisition

7.2.2. Council's preferred method of acquisition is to acquire Land or Interest in Land through mutual agreement with the landowner.

7.2.3. For all acquisitions (excluding land for public sale), the acquisition will be undertaken in accordance with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991.*

7.2.4. Council may acquire Land available for public sale under the same terms as any other prospective purchaser without having to satisfy the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991.*

Document Set ID: 11554826
Version: 2, Version Date: 08/02/2024

7.2.5. Any potential land swap opportunities will take into account a comprehensive assessment of the land's characteristics and due diligence investigations to assist well-informed decision-making.

7.2.6. Where an agreement cannot be reached and Council has an obligation to provide services to the Community, Council may consider acquiring the Land or an Interest in Land by Compulsory Acquisition

7.3. Property Valuation and Compensation

7.3.1. Council will obtain a valuation report from a registered independent valuer as a basis for negotiations. The valuation report will be in accordance with Council's Valuation Policy and the *Land Acquisition (Just Terms) Compensation Act 1991*.

7.3.2. For Land acquired by public sale, Council will negotiate the purchase price and terms to achieve the best possible commercial outcome for Council. A valuation report may be obtained to assist decision making.

7.4. Timeframes

7.4.1. Council will make a genuine attempt to negotiate an agreement with a landowner for a minimum of six months before issuing a Proposed Acquisition Notice to proceed with compulsory acquisition as per the requirements of the *Land Acquisition (Just*

7.4.2. In some circumstances, the minimum six-month negotiation period may be shortened. Any proposal to shorten the negotiation period will be in accordance with section 10A of the *Land Acquisition (Just Terms Compensation) Act 1991.*

7.5. Early Access for Works

7.5.1. Council may require access to the land prior to the completion of an acquisition.

7.5.2. To allow for infrastructure projects proceed in a timely manner, Council may consider entering into a Licence Agreement with the landowner that allows Council access to the land for the purpose of commencing work on the landowner's property while the acquisition process is being undertaken.

7.5.3. Pursuant to works that satisfy the criteria of the *Roads Act 1993*, if a Licence Agreement is not achievable and early access is required to facilitate the delivery of roadworks, Council may consider issuing a notice in accordance with section 175 of the *Roads Act 1993* to occupy the Land and carry out the roadworks.

7.6. Approval by Council

7.6.1. Council's power to acquire land cannot be delegated and the decision to undertake any acquisition must be made by resolution of Council.

7.7. Classification of Land

7.7.1. Council will determine the classification of land as either Community or Operational land in accordance with the *Local Government Act 1993*, by resolution of Council.

7.7.2. The classification of land will be based on the intended use and purpose of the acquired land. Any land not classified by resolution within 3 months of acquisition

Document Set ID: 11554826
Version: 2, Version Date: 08/02/2024

will default to Community land pursuant to section 31 of the *Local Government Act 1993*.

8. Related Forms/Documents

- Office of Local Government - Land Acquisition Information Guide
- NSW Government Property Acquisition – A Guide for Residential Owners – August 2022

9. Attachments

Nil

Policy Authorised by:

Name: Council Resolution Number 189

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Document Set ID: 11554826
Version: 2, Version Date: 08/02/2024