LIVERPOOL PLAINS SHIRE COUNCIL

POLICY REGISTER **Policy No. 1.40**

POLICY TITLE: **CORPORATE PROPERTY**

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OBJECTIVES

The objective of this policy is to:

- facilitate effective management of Council's property assets

- establish the underpinning principles of equity and transparency in Council's property dealings

- ensure that all dealings in property matters relating to Council owned property or property acquisitions by Council are handled within legislative requirements

- support the objective of generating alternative /additional forms of income for the Council through property development/investment and

- facilitate local business activity, including tourism, where appropriate.

POLICY STATEMENT

1. BACKGROUND

To finance its activities, Local Government traditionally has derived the bulk of its revenue from:

- Rates on property
- Grants from the Commonwealth and State Government
- Charges for services provided and
- Borrowing within limits set by the Commonwealth and State Government.

As asset managers, Councils must provide effective and efficient management of property related activities to fulfill their legislative and community obligations.

Over the last 15 to 20 years it has been recognised that councils have excellent opportunities to become involved in property and entrepreneurial activities having regard to the principles of ecologically sustainable environment to supplement their traditional income base. This need has been re-emphasised in more recent years with the introduction of rate pegging, decreased levels of Government funding & cost shifting to local government and limitations on borrowing and the community expectation of Council's community roles and responsibilities.

2. PURPOSE

The purpose of the following policy framework is to establish the principles for effective management of Council's property activities that would assist Council in achieving the Vision and Mission as outlined in the Strategic Plan.

3. LEGISLATIVE FRAMEWORK

Council's property activities will be managed within the legislative parameters of the:

- Local Government Act, 1993
- Valuation of Land Act, 1916
- Environmental Planning and Assessment Act, 1979
- Protection of the Environment Operations Act, 1998
- Residential Tenancies Act, 1987
- Land Acquisition (Just Terms Compensation) Act, 1991
- Roads Act, 1993
- Retail Lease Act, 1994
- Crown Lands Act, 1989
- Environment Protection and Biodiversity Conservation Act, 2000
- National Parks and Wildlife Conservation Act, 1975 and
- Any other legislation applicable in a matter.

4. CONSIDERATIONS IN EFFECTIVE DECISION MAKING

In carrying out property related activities for Council, considerations must be given to the likely financial, environmental, social, economic, political, and risk factors associated with each matter. The end objective is to assist Council in reaching its vision – "improved quality of life through expanded opportunities for economic and social development being realized within an ecologically and financially sustainable framework."

These considerations include:

Financial

Council and ratepayers receive a direct financial benefit from property activities. This financial benefit is derived from:

- Achieving the highest and best use of Council's land
- Minimising costs associated with the maintenance of Council's properties
- Monitoring performance of Council's commercial/investment property portfolio
- Being aware of market trends, flexible and pro-active in property dealings
- Seeking commercial activities which on careful analysis, appear viable and suitable for Council
- Not selling land which has future development potential for community facilities.

Environmental

Environmental considerations for Council include:

- relevant Local Environmental Plans and Development Control Plans
- State wide Environmental Plans
- bushfire issues
- the restricted supply of developable land
- water/sewerage and other infrastructure issues and best practice development principles.

Social

Council's property activities are not always measured solely in financial terms. Non financial benefits to Council may accrue through:

- improvements in the social amenity
- additional community facilities
- enhancement of existing open space areas and/or protection of the environment.

Political

In the political sphere Council must be mindful of the following considerations when managing its property portfolio:

- Council's two distinct roles in its property activities - as the developer seeking the best possible return for its property, and as a statutory authority responsible for the assessment and approval of any Development Application for the property. Council must exercise particular care to ensure its roles as consent authority and as a developer are kept separate and seen to be separate.

- The desire of Council to generate alternative forms of income stemming from increasing demands made on its budget by the community and increasing financial constraints imposed by Federal and State Governments must be balanced with its other obligations.

- In asset managing both public land and funds in its property role Council may be subject to public scrutiny, criticism and censure.

Economic

Publicly owned land must be managed in the way that maximises its usefulness for the community, yet minimises costs to local residents. A property portfolio with too many parcels of land that are under-utilised or of no use to the public reflects an economic inefficiency.

Consideration must also be given to alterative uses for a property asset that facilitate:

- improvement in lifestyles
- social enjoyment, recreational activities or employment opportunities.

Council's property activities can also be seen as an agent to promote economic growth and tourist development in the Local Government Area for example cultural facilities, caravan parks, etc.

Asset Management

In managing its land and property asset portfolio, Council's challenge is to determining whether these parcels of land meet its strategic objectives or enhance the organisation's status. If not, strategies need to be put in place to transfer the ownership, control and liabilities to other parties who can better use these parcels of land. The focus is on property asset management and maintenance, not creating maintenance liabilities we cannot fund. This can be achieved by converting non-strategic/non-income producing assets to income producing assets.

The returns or savings from such transfers can then be applied to add value to those parcels of land that serve Council's objectives, and to increase community benefits. In implementing this, the underlying objective is to minimise cost and maximise usage and returns so that Council's land portfolio is managed and maintained to a standard that benefits the community now and in the future.

Risk

Risks associated with property projects include:

- Property market fluctuation
- Change in economic climate
- Weak financial feasibility
- Lack of appropriate market research
- Lack of sensitivity analysis
- Poor project delivery or project management system
- Unexpected costs derived from weather, strike, inflation, etc
- Unsuitable marketing strategies
- Unsecured tenants
- Lack of funding i.e. high level of borrowing
- Lack of long term asset management planning
- Not providing sufficient skills and resources.

5. PRINCIPLES IN PROPERTY DEVELOPMENT ACTIVITIES

In the context of this policy, corporate property activities include:

- Sales
- Acquisition
- Easement and right of way
- Road closures and sale or leasing
- Lease & licence – including footpath dining
- Property management
- Research and Advisory Service
- Entrepreneurial activities relating Council's properties.

All property projects must be carefully examined to identify any likely spill-over effects onto the local community in the future and to ensure that these are understood by the community and Council as decisions are made.

Sales

Property sales may include sale of Council surplus land and property, airspace and stratum. To be able to strategically manage its land sales activities, it is necessary for Council to establish a Property Disposal and Investment Program (PDIP). The key principle guiding a decision to sell a property asset is that Council will only consider a sale under the following circumstances:

- If the property is not being used for the purpose intended at the time of Council's acquisition
- If the property is not serving an operational or community need
- If the property is not facilitating Council's service delivery objectives
- If the property disposal would deliver better outcomes for the local community
- If the property does not provide the expected return and represents a risk to Council.

The key principles in disposal of these assets are:

- Council will dispose of property assets using a process that is transparent and equitable to all interested parties
- Generally Council will not sell property which has future development potential for community facilities
- Council will identify the most appropriate marketing strategy for each sale on a case by case basis.

Note: In accordance with the provisions of the *Local Government Act, 1993* land classified as "Operational" is saleable; however, "Community" land cannot be sold.

Acquisition

Council may decide to purchase land and property for statutory, public or investment/redevelopment purposes. For example, Council could acquire land for road widening, road opening, recreational and sporting facilities, parks and reserves, bushland and environmental conservation, investment, redevelopment, subdivision and resale, or development of community facilities purposes.

The key principles in the acquisition of land and property are:

- Council will follow the principles set out in the Land Acquisitions (Just Terms) Compensation Act, 1991 when managing its acquisitions.
- After identifying a property for acquisition Council will:
  - Firstly make its best endeavours to negotiate with the owner a fair and reasonable price
  - Only if agreement cannot be reached will Council pursue compulsory acquisition (under Section 187 of *Local Government Act 1993*) if the acquisition has strategic importance or is very important for the local community.
- Where Council decides to purchase operational land at auction in a closed meeting, it is not required to disclose the decision and thus the proposed purchase price will not be publicised before the auction.

Easements

Council may grant (or relinquish) an easement over its land in favour of private land or seek to create (or relinquish) easement over private land in favour of public land and/or a public utility. Easements can be for different purposes such as right of way, drainage, sewerage, electricity, utility and any other specific purposes.

The creation of easements or rights of way may be initiated by either Council or developer as a result of:

(i) a conditional DA approval on Council owned land

(ii) a proposed development adjoining Council land

(iii) Council's proposed drainage system

(iv) Council's existing pipes under the surface of the land.

The key principles in effective management of easement issues are:

- Council will advise and negotiate (if required) with the private landowners affected by Council's proposed works
- Council will negotiate a fair and reasonable package with the private landowner(s) who seek to create an easement over Council owned land
- Council will relinquish easements at the instigation of land owners if this is:
  - technically a sound decision for Council and
  - the initiating land owner agrees to pay all Council's costs.

Council will only consider granting an easement over Council land if the proposed easement would not detrimentally affect the objectives of the land and if the proponent agrees to fairly and reasonably compensate Council.

Road Closures

From time to time Council may be approached by a land owner/s regarding, or may identify through a development application, an opportunity for closure of a public road/or portion of a public road.

As the road authority Council will consider all applications within the following principles:

- All adjoining property owners must be consulted (by the applicant) before the application is submitted. These adjoining property owners must endorse the proposal and their endorsement must be submitted with the application before Council will consider the application.

- Management of an application for road closure benefiting an individual or company will be cost neutral to Council and application fees and charges applied by Council will be based on full cost recovery

- Market rates - as determined by an independent valuer - will be the basis of the price for any sale of a public road/portion of public road.

Lease and Licences

As a property owner it is necessary for Council to deal with various types of leases and licences. For example residential, commercial, retail, special use, outdoor eating areas, community land, recreational & sporting facilities, temporary road closures, neighbourhood centres etc.

The key principles in Council's management of commercial and residential leases, and in the setting of licence agreements are:

- community land will only be leased or licensed if it is specifically provided for in the Plan of Management
- any lease/licence of community facilities/land for the purposes of providing community services will be negotiated
- achieving a minimum commercial/retail market rental or + or – 2% of the current 10 year bond rate
- achieving a minimum residential market rental or at least 3% of the asset value.

Investment Strategy

Council's requirements as a potential developer/investor are similar to any other investors in the market. Accordingly, Council's property investment decisions consider:

- Returns (profits) on Funds employed
- Risks associated with the proposal
- Locality of the development/investment
- Current market trends and conditions
- Market demand for and supply of the property in question
- Security of income
- On-going costs relating to the provisions of building maintenance/refurbishment
- Community objectives expected
- Appropriateness of the property and its use as an asset owned by a public authority
- A considered risk analysis.

Property development/investment opportunities will thus be assessed in accordance with the following criteria:

- Any development/investment must have the potential to provide a greater return than is presently being obtained on invested funds
- Should take into account the provisions of market supply and demand, realistic development potential, capital growth, secured income and have potential for increase in resale value

- May span residential, industrial, commercial or community facilities
- Should allow Council to set high development standards as an example to other developers
- May possibly provide scope for increasing the return on property assets if certain alterations, renovation and/or change of land use are made.

Entrepreneurial Activities/Development and Investment

Entrepreneurial activities are those relating to the use and development of Council's properties such as subdivision proposals, development proposals, sales, purchase, entrepreneurial activities associated with Council land, joint venture developments and proposed change of land use or land classification.

The following principles are critical to Council's approach to entrepreneurial property activities:

- A range of investments notified by order of the Minister for Local Government in accordance with section 625(2) of the Local Government Act, 1993
- Council's property portfolio should achieve an annual income comparable with market evidence or the current 10 year bond rate
- Council's property development/investment should achieve a profit and risk factor comparable with the industry benchmarks being at least double the current 10 year bond rate
- Council will pursue a property/investment strategy based on the principle of diversification – in terms of property types and/or locations. This may include investment in property outside the Shire boundaries.
- Council will regularly review its property development/investment strategy and ensure that its strategy is "matching with market trends" and able to recognise and exploit investment opportunities as they arise. For example during buoyant markets when there is a high probability of achieving high capital gains Council's strategy may switch to options that emphasize capital gains and during stagnant markets Council's strategy should emphasize secure cash flows
- Council is not in the position to accept "the higher the risk the higher the return". In other words, Council's property development/investment proposal must expose to minimum risk and maximum certainty of return. Risks associated with the proposal must be holistically assessed at the planning phase to ensure balancing of Council's various objectives
- The use of delegated authorities will be limited when Council is the developer and the use of independent consultants for assessments of Council's Development Applications is encouraged
- In carrying out any property development activities Council must set standards that can be used as models for development, especially in development activities not detrimentally affecting the surrounding environment
- In order to minimise costs and maximise returns, Council will look for property development activities which provide for joint commercial/community facility benefit.

6. FUNDING STRATEGY

Council will establish a Property Investment Fund (PIF) for corporate property activities.

Any income received from property related activities will be directed into the PIF and then distributed within the following parameters:

- In accordance with Section 32(5) of the Local Government Act, 1993, "*the net proceeds of sale by a council of any land dedicated in accordance with a condition imposed under section 94 of the Environmental Planning and Assessment Act 1979 must be dealt with under that section as if those net proceeds were a monetary contribution paid instead of the dedication*"

- In accordance with Section 43(4) of the Roads Act, 1993, the net proceeds received from the closure and sale of an unused portion of a public road must be used for road purposes only

- The PIF reimburses any expenditure incurred from Council's General Fund such as legal, survey, valuation, marketing and research required for the conduct of corporate property and investment activities and the generation of income from such activities

  The balance of the PIF should be invested:

  - in accordance with the principles set out under "Investment Strategy" and "Entrepreneurial, Development and Investment Activities" of this policy
  - as part of the pool of funds invested by Council and available at call to be utilised for investment or for the purchase of investment properties
  - in property development projects and/or property investment purchases that will generate either viable short-term cashflows or long-term capital gains or both
  - in income producing activities and/or business investments (including investment funds and/or listed property trusts that comply with the Minister's order under Section 625 (2) of the Local Government Act, 1993) that will generate either viable short-term cashflows or long-term capital gains or both.

- 50% of the net profit generated from the PIF will be reinvested and the balance will be used to fund Council community building and facility projects or capital works programs as these opportunities arise and as determined by Council in the Budget process.