

Western Parkland City Authority

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Land Acquisition and Divestment Policy

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* The <u>Government Information (Public Access) Act 2009</u> (the GIPA Act) requires that all of the Department's current policy documents be made available on this website (unless there are overriding public interest <u>reasons</u> why that should not be done). WPCA Legal Branch can provide advice.			

Document approval

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1. Purpose

The Western Parkland City Authority (**Authority**) is the NSW Government agency responsible for delivering, coordinating and attracting investment to the Western Parkland City. In carrying out this role the Authority may from time to time acquire or dispose of land.

The Authority is a statutory corporation and “*may, for the purposes of exercising its functions, purchase, exchange, take on lease, hold, dispose of and otherwise deal with property*”¹ in, or in relation to, the Authority’s operational area.²

The Authority does not have power to compulsorily acquire land. The Authority will acquire land through negotiation or as a recipient of land acquired or held by another Government agency.

This Policy provides WPCA staff, stakeholders, counterparties and the public with guidance in relation to the Authority’s approach and sets out how the Authority will, in acquiring or disposing of land:

- comply with its statutory and ethical obligations, supporting the Authority’s mandate for the Western Parkland City and the delivery of jobs;
- ensure transparent, fair, and strategic decision making;
- identify land for acquisition or disposal, ensuring it is in line with the Authority’s strategic goals, is coordinated, and is complementary to the Authority’s asset portfolio; and
- ensure consistency between transactions and obtain value for money.

This Policy has been informed by legal and probity advice to ensure that the Authority and its Land acquisitions are consistent and best practice. The Policy:

- applies to all Land acquisitions by the Authority, including by its private subsidiary corporations (**Related Entity**), and a reference to the Authority in this policy should be read as including any Related Entity;
- covers the Authority and all personnel who are involved with the process of deciding whether a proposed acquisition should proceed; and
- does not address funding source or conveyancing process.

2. Land Acquisition

The Authority may acquire property in the Operational Area from the private market, local councils, or other Government agencies, through various processes including:

- public auction or private treaty (e.g., via a selling agent);
- by direct negotiation (subject to the NSW Independent Commission Against Corruption (**ICAC**) guidelines for ‘Direct negotiations: guidelines for managing risk’ and the Buy NSW Direct Dealing Guidelines); or
- through property transfers between Government agencies (subject to the Treasurer’s Direction TD89/1 (469.11) and the NSW Strategic Land and Property Framework as appropriate).

¹ Section 50 *Interpretation Act 1987* (NSW)

² Section 13 *Western Parkland City Authority Act 2018*

3. Due Diligence

Prior to entering into any formal acquisition agreement the Authority will obtain and consider the results of appropriate due diligence investigations.

The scope and nature of the due diligence investigations will be proportionate to the value, complexity, and risk profile of the proposed acquisition. This may include, but is not limited to the matters set out below:

Type	Examples
Engineering	Licenses, maintenance contracts, building surveys, tenancy compliance and relevant regulatory issues
Environmental	Consideration of heritage issues (including European and Aboriginal cultural heritage), contamination of the site or adjoining land or water, hazardous substances, materials and waste, biodiversity, amenity, geotech and relevant legislative requirements
Physical	Consideration of improvements and services
Financial	Lease arrangements, charges against the land and tenancies
Legal	Consideration of title, encumbrances, licenses, services, surveys and encroachments, access, zoning, notices from authorities, legislation and licenses, insurances, tenancies, planning issues and land use controls, health and safety matters, taxation, nuisance and relevant court proceedings
Management	Advice from authorities such as in connection with flooding risk, maintenance contracts and tenancies

4. Land Disposal

Within the bounds of its legislated Authority, potential disposal of land is to be tested against a number of criteria to determine whether the property is retained, developed for community benefit, or sold to realise its commercial potential.

The criteria are:

- Use - is the land used or likely to be used to meet operational, community environmental or recreational needs?
- Context - are there similar land or facilities within the operational area sufficient to meet current and anticipated future needs?
- Does the land or road have cultural, natural or heritage value that should be maintained?
- Are there site constraints such as flood liability, contamination, land slip, mine subsidence or other physical impairment?

Any sale will be by competitive process (public auction, private treaty, tender or expression of Interest). The Authority will set a reserve price based on the recommendation of an independent valuer.

5. The Authority's Commitments

5.1 Consistency with obligations and strategy

All acquisitions and disposals must be consistent with the legislative, regulatory, policy and strategy frameworks applicable to the Authority. This includes but is not limited to:

- *Western Parkland City Authority Act*;
- WPCA Corporate Strategy;
- WPCA Code of Ethics and Conduct;
- WPCA Commercial Governance Policy (once approved);
- NSW Procurement Framework; and
- NSW Government directions relating to land transactions.

5.2 Responsibility

The Authority will appoint a specific officer to be responsible for an acquisition or disposal.

The Authority will ordinarily also appoint a Probity Adviser in accordance with the NSW Procurement Policy Framework.

5.3 Structured Approach

Prior to entering into negotiations the Authority will develop a documented negotiation strategy that will include:

- a property acquisition/disposal plan;
- a risk management plan;
- procedures for ensuring (and transparently demonstrating) value for money (e.g., obtaining independent professional property valuations, due diligence report);
- identification of the decision making protocols, stage gates and approval processes to be followed;

- any authorised funding limits or conditions of purchase;
 - where necessary, the deployment of an independent chief negotiator; and
 - guidance for when external professional advice should be sought.
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5.4 Probity

The Authority must develop, and will engage an external probity advisor as appropriate to develop a probity plan tailored for each specific proposed land acquisition.

The Authority must ensure that employees and contractors who are part of the project team in relation to a land acquisition record any potential interests in the Authority's conflicts of interest register in relation to proposed land acquisitions.

The Authority's Code of Ethics and Conduct provides guidance on when a conflict of interest may arise and includes resources for managing conflicts of interest.

The Authority must undertake an assessment of the probity risks that may attend each proposed land acquisition. Some factors which may be relevant include:

- where there are difficulties in ascertaining the market value of the proposed land to be acquired;
 - the proposed time frame of the transaction;
 - where the transaction is of particular complexity;
 - where there may be a perception of bias or favouritism;
 - if the integrity of the process (or part of it) may be questioned;
 - where the transaction is of a high value or is high risk;
 - where it may be difficult to demonstrate value for money;
 - where the proposed land acquisition is politically sensitive and / or potentially controversial; and
 - where a proposed Land acquisition is assessed to be of a medium or high probity risk, the Authority must ensure the probity plan mitigates against such risk and may seek independent specialist probity advice or assurances as may be required.
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5.5 Documentation

The Authority must keep and preserve adequate records relating to the acquisition of land in accordance with its statutory obligations. This includes:

- the documented negotiation strategy;
 - records of negotiations and any decisions;
 - materials provided to the Decision Maker in respect of a proposed land acquisition;
 - advice or other documents received by the Authority from external advisors in relation to the proposed land acquisition;
 - any probity plans developed in respect of a proposed land acquisition; and
 - any other relevant documents relating to the proposed land acquisition.
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6. Value for Money

As part of the negotiation plans and information provided to Decision Makers, the Authority must be provided with a description of how value for money will be achieved. This analysis may include:

- acceptable prices to pay (an independent market valuation and the Valuer General of NSW, where relevant);
- definitions of ‘best alternative’ and ‘minimum acceptable positions’;
- a cost benefit analysis of proposed acquisition against its intended use (see NSW Government Guide to Cost-Benefit Analysis TPP 17-03);
- negotiation features that can be offered to achieve more significant outcomes;
- whether other options such as leasing would offer better value for money;
- whether risks associated with the acquisition are within an acceptable tolerance range;
- whether the property is affected by significant encumbrances or restrictions;
- whether the value of the property to the Authority is proportionate to its opportunity and may include unique value to the Authority (e.g., from a lot consolidation or future redevelopment perspective);
- whether the acquisition provides a special value to the Authority, for example enables lot consolidation to enhance site value;
- consistency with the Authority’s purpose and Corporate Strategy; and
- whether the acquisition supports local economies and jobs for the Western Parkland City.