



# Penrith Town Council

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## **ACQUISITION POLICY FOR LAND AND PROPERTY**

### **INTRODUCTION**

Procedures for the acquisition and disposal of land and buildings should be transparent and consistent. Land is a finite resource and a corporately owned asset. Land and buildings together should be managed and used wisely to achieve the Council's aims and objectives as defined in the Council Plan and other medium to long term strategy documents.

These policies should be read in conjunction with the Council's Financial Regulations and any acquisition should comply with the requirements of the 2015 Public Contract Regulations. Any proposal for an acquisition or disposal should come before the Finance Committee at the earliest opportunity and for approval by Full Council, or at a Management Meeting or Special Full Council meeting if time-sensitive.

The purpose of the Council's Acquisition Policy and Disposal Policy is to set out the principles and rules by which the Council will acquire and disposal of land to inform officers, Councillors and also other interested parties. It is the over-riding presumption of the Council that land and buildings are not for sale unless there is a clear need or desire or business case to do so.

Care should be taken not to dispose of parcels of land that are strategically placed in order to ensure that the Council can affect a level of control over developments that are otherwise open to normal market forces.

Legal advice should be sought for all property (land and buildings) transactions – the solicitor appointed should have an up to date Anti Money Laundering Policy and be registered with the Law Society.

Audit trails of all transactions will need to be maintained and accessible by Internal/External Audit to verify actions/values and how the authority made the decision. Any appointment of a third- party consultant must reserve the right of access to their records in relation to the transaction. This will need to be dealt with by way of appropriate contract conditions.

## **OVERVIEW**

- This policy document is to be followed when considering the acquisition by the Council of an interest in property, whether that be for operational or investment purposes.
- Reference to “property” includes any property constructed on land or land or an interest in land or property.
- This policy applies to the acquisition by the Council of the following interests in property: freeholds: long leaseholds (where the term is more than 49 years); and legal charges (to protect investments).
- Property is a corporate resource and is held and should be acquired in accordance with the Strategic Priorities in the Council Plan.
- This policy places emphasis on adopting procedures that are open, transparent and consistent and aims to ensure maximum benefit from the effective purchase and subsequent management of the Council’s assets.
- The policy will ensure the Council achieves best value, considers whole life costs, acts within the appropriate legal framework, and acts in a demonstrably fair and open manner.
- Each acquisition proposal will be considered on its own merits and must be supported by a business case, which sets out why, a property is required and what need the Council is seeking to deliver.
- All individual proposals for investment in property must be supported by a business case setting out the financial case for investment.
- This Policy will apply to both the acquisition of property for operational service delivery purposes and to the acquisition and development of property for investment purposes.

The two principal investment opportunities which are covered by this Policy can be categorised as follows:

- Direct investment in property that has the potential to produce a good return on investment but requires active management and development.
- Development of land, either already owned or purchased, then through the planning and development/construction of a commercial asset, which will then be let on the open market and retained.

## **1. LEGAL**

The powers under which the Council can acquire property assets are:

- 1.1 The actions of Penrith Town Council regarding assets, properties and estates are governed by the Council's Financial Regulations, adopted on 15 May 2015 and last reviewed September 2018. The relevant paragraphs are in Section 12 Assets, Properties and Estates.
- 1.2 The Council can choose to acquire property in any of the following forms:
  - Freehold
  - Leasehold (more than 7 years)
  - Short tenancy (less than 7 years)
- 1.3 The reasons for the Council to acquire land or property would be:
  - Service delivery
  - Investment
  - Strategic acquisition for future development in line with Council priorities and objectives
- 1.4 Without the General Power of Competence, the Council must ensure that the acquisition aligns with the Council's existing power and functions:
  - Power to acquire land by agreement, to appropriate land and to dispose of land-LGA 1972, subsections 124, 126 and 127
  - Public buildings and village halls Power to provide buildings for offices and for public meetings and assemblies - LGA 1972, section 133

- 1.5 The Local Government Act 1972 section 124 as amended confers powers on a local council to acquire land by agreement for the purposes of its functions or for the benefit, improvement or development of its area. There are many other acts of Parliament which contain specific powers for a local council to hold land.
- 1.6 The term "land" in the context of acquisition includes buildings, any interest in land and any easements or rights in, to or over land.
- 1.7 For the purposes of acquiring land the Council is empowered to borrow money, subject to obtaining the necessary loan consent from the Secretary of State.

## **2. GOVERNANCE**

- 2.1 When a property comes to the market to be bought or sold decision making needs to fit in to the due diligence processes however timetables are influenced by the professional property sector. These timetables can be tight, particularly where there is competition to secure a property. This policy recognises the necessity of the appropriate delegation of some powers to make decisions within a realistic timeframe.
- 2.2 A typical sequence for the acquisition of a property would be as follows: property appears on the market; potential buyers seek details and views; then submission of offers; followed by confirmation by the seller of the preferred buyer; then preparation of Heads of Terms; and period for due diligence investigations by the buyer; then exchange of contracts, followed by completion.
- 2.3 The Council governance process that would be adhered to would be as follows:
  - A request would be submitted by the Services and Contracts Manager to the Management Meeting/Finance Committee, setting out the need that the Council are seeking to meet by purchasing property, the implications of any proposed change of service and a business case that demonstrates the financial and service rationale underpinning the request for a property.
  - A report would then be compiled and would include clear criteria for the proposed property, size, location, type, etc. and details of the proposed funding.

- In those instances where the Management Meeting approved the business case, a decision report would be produced and would follow the council's governance process – the report initially going forward to the Finance Committee and then brought before the Full Council for final ratification
- 2.4 Where several potentially suitable properties exist in the market place, objective comparisons will be made to establish which is the most appropriate to meet the Council's needs. The assessment criteria will be developed by officers and will include both service and property considerations.
  - 2.5 After the identification of a suitable property, the Services and Contracts Manager shall consult with the agent, vendor, relevant statutory authorities, including planning, the Council's external solicitor and other appropriate services as required, to establish whether there may be constraints on the development or use of the property and to continue fact-finding.
  - 2.6 When the preferred property is identified it will be inspected and valued by an appropriately qualified surveyor, in consultation with the Services and Contracts Manager.
  - 2.7 The Services and Contracts Manager would be authorised to enter initial negotiations on behalf of the Council.
  - 2.8 No other party shall initiate negotiations nor make any contact with the agent or the vendor during these negotiations except with the express permission of the Town Clerk.
  - 2.9 On reaching an agreement for the terms of acquisition, a report will be prepared for approval.
  - 2.10 In all cases where valuation advice suggests that the open market value of the property is below the negotiated price the report must demonstrate there are overriding factors that justify the purchase. The report must include clear and supportable reasons for purchase above market value such as: service need, or that the Council is a "special purchaser". This report will then form the basis of the final Implementation Decision report. This report will be taken to the Council's Finance Committee and Full Council for final ratification.

- 2.11 When the report and recommendations are approved, all appropriate surveys have been satisfactorily completed or provided, the Council's solicitor will be instructed by the Services and Contracts Manager by way of delegated authority instructions, to complete the documentation associated with the acquisition.
- 2.12 Full records of the purchase process will be kept in a file relating to the property and these records shall include details as to the business case, the valuation relied upon in making the decision to acquire, with consents, approvals and papers recording decisions taken under any delegated powers.
- 2.13 Full Council will be regularly updated on acquisitions.

### **3. FUNDING**

- 3.1 The acquisition of operational property shall be prioritised in accordance with the Council Plan.
- 3.2 The Council can fund the acquisition of operational property through a range of options and it is accepted that the appropriate option will vary in each case.

All acquisitions shall have the necessary budgetary approval before the acquisition is complete.

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