



**Education &
Communities**

Sale of Surplus School Land/Facilities

GUIDELINES

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1 INTRODUCTION

When school buildings and grounds are not in use and are surplus to a school's requirements or for educational purposes generally, the Department of Education and Communities disposes of them so that the proceeds can be reinvested in capital works and maintenance projects in government schools.

Section 125(5) of the *Education Act 1990* empowers the Minister for Education to dispose of land and facilities no longer required for educational purposes.

The Department manages property disposals in accordance with the Government's Total Asset Management Guidelines and procedures. The principal objective in disposing of land and facilities is to achieve the highest return for the Department.

Closed schools, vacant sites, vacant and unused land associated with an operating school, and former teachers' residences no longer required for residential purposes are disposed annually by the Department.

In 2002 a former Minister for Education gave an undertaking that "...no school sites would be sold to non-government schools." This undertaking was formalised in 2007 by the Department's Sale of Surplus Land to Non-Government Schools Policy which stated that "*In those cases where the Minister has approved the sale of surplus land restrictions be placed on the land by way of restrictive or public positive covenant to limit its use by non-government schools.*"

Since then school properties offered for sale have included the registration of a 'restrictive and/or public positive covenant' on the Title pursuant to Section 88D of the *Conveyancing Act 1919*.

The new Sale of Surplus School Land/Facilities to Non-Government Schools Policy continues to apply a restrictive and/or public positive covenant to the Title when there is an educational justification for imposing the restriction. However, all other surplus sites will be sold unencumbered.

In regard to the sale of surplus school land the policy states that "*Individual cases may arise where the sale of school land/facilities encumbered is considered appropriate. In such cases the Minister will determine the merits of the restriction based on the Guidelines for the Sale of Surplus School Land/Facilities.*"

These Guidelines are provided to support the decision making process for the sale of surplus school land/facilities and the imposition of a restriction on sale to non-government schools, where appropriate.

These Guidelines should be read in conjunction with the Department's Sale of Surplus School Land/Facilities to Non-Government Schools Policy and Incentive Sales Policy

2 RATIONALE

The Department undertakes significant planning prior to determining that school land/facilities are surplus to educational needs.

Once land/facilities are declared surplus to educational needs, the Department has a responsibility to maximise the return on their sale. Pursuant to NSW Treasury Direction TD92/2: 469.01 the Department is required to realise market values on the sale of

Government assets. NSW Treasury has approved the Department retaining the net proceeds from the sale of surplus assets for use in accordance with existing legislation and Government Directions relating to its sphere of operation.

Where an entire school site is no longer required for educational purposes the Department disposes of the entire site and reinvests the proceeds of sale in capital works and maintenance projects.

Where part of an operational school site is surplus to educational requirements, the school may choose to dispose of that part of the site and seek to retain a proportion of the proceeds of sale to upgrade and maintain the school's facilities.

While the Department does not generally support restricting the sale of surplus school land/facilities to non-government schools, there are individual cases where such a restriction would be appropriate.

Where a sale to a non-government school will impact negatively on government school enrolments, with a consequent negative impact on the learning programs that the Department can offer its students, the sale of surplus school land/facilities to a non-government school would not be supported.

3 FORMAL ACTIONS

1. The Minister to consider the Department's advice when making a determination on the sale of surplus school land/facilities, and whether selling the land/facilities with a restriction on the sale to a non-government school is appropriate.
2. Public Schools NSW – Executive Director to prepare a submission seeking the Minister's approval for a school to be closed; for the land/facilities to be declared surplus to educational requirements and provide advice on whether the land/facilities should be sold with a restrictive covenant on Title preventing acquisition by a non-government school.
3. Asset Management Directorate – Property Unit to prepare submission to obtain the Minister's approval to dispose of surplus school land/facilities unencumbered or with a restrictive covenant to be placed on the Title preventing sale of the land/facilities to a non-government school, immediately or at any time in the future.

4 ASSESSMENT PROCESS

The Department has a responsibility to ensure that the school land/facilities being declared surplus will not be required for educational purposes in the short or long term; and that the sale of land/facilities to a non-government school will not negatively impact on the long-term viability of public education in the area.

At the time that a school is being considered for closure or amalgamation, Executive Directors, Public Schools NSW should consult with each other and the key stakeholders described in Section 5.

To assist the Minister to make a determination on any restriction on the future use of the site by a non-government school, should the site be considered for disposal, advice on the outcome of the consultation should be included in the documentation to the Minister for approval for the amalgamation or closure of a school.

Prior to land being declared surplus to educational requirements the following issues are to be taken into account by the Department:

1. Vacant land - is it in an area that is well serviced by government schools; with no projected need for additional educational provision in the long term?
2. Operating school being considered for closure:
 - Is there considerable excess accommodation in surrounding government schools?
 - Are projected student enrolments in the local area declining significantly due to changing demographics?
 - Is there an educational need for the school land/facilities in the short or long term?

The Department would recommend that a site be declared surplus to educational requirements and be disposed of only if there was no immediate or future educational need for the site.

Where a vacant or closed school site has been declared surplus to educational requirements, and is being considered for disposal, the placement of a restrictive and/or public positive covenant on the Title would only be considered appropriate where Public Schools NSW determines there will be a significant negative impact on government school enrolments in the area, or on the learning programs that the Department can offer its students, if the land/facilities are acquired by a non-government school, at the time of sale or into the future.

5 CONSULTATION AND APPROVAL

The following key stakeholders should be part of the consultation/approval process in relation to restricting sale of surplus school land/facilities to non-government schools:

- Local Council to establish whether there is any future development planned for the area which will impact on government education provision in the area.
- Parents and Citizens Association of subject school and/or of community of schools in the local area, regarding their views on land/facilities being sold to a non-government school.
- Relevant Education Director, Public Schools NSW, regarding the impact that the sale of land/facilities to a non-government school would have on government school enrolments in the area.
- Asset Management Demography and Planning Unit regarding projected student enrolments in an area and current and future educational provision need in the area.
- Asset Management Property Unit regarding obtaining the best possible financial return on the sale of school land/facilities.

6 PROBITY REQUIREMENTS

When considering the sale of surplus school land/facilities it is important that:

- the Department act in a transparent and accountable manner; and
- the decision making process is clear and well documented.

7 RESPONSIBILITIES AND DELEGATIONS

7.1 *Executive Directors, Public Schools NSW*

- Preparing a submission seeking the Minister's approval for:
 - the closure of a school or amalgamation of two schools onto one site;
 - a school site to be declared surplus to educational requirements, if appropriate.

- Determining if a vacant or closed school site is surplus to educational requirements, in conjunction with the Asset Management Directorate's Planning Unit.
- Determining if the sale of the surplus school land/facilities to a non-government school will negatively impact on the long-term viability of the government school sector in the area.
- Consulting with the local school community school regarding school amalgamation/closure and any potential sale of school land/facilities to a non-government school.

7.2 Asset Management Directorate – Planning Unit

- Consulting with Public Schools NSW on the short and long term need for educational facilities in an area, including considering demographic information and information on planned development, in respect of school land/facilities being declared surplus to educational requirements.

7.3 Asset Management Directorate – Property Unit

- Seeking the Minister's approval:
 - to declare vacant school land/facilities surplus to educational requirements, in consultation with Public Schools NSW and the Planning Unit, and for it to be disposed of; and
 - to place a restrictive and/or public positive covenant on the Title when disposing of a closed school that has been declared surplus to educational requirements to prevent use by non government schools, in consultation with the Executive Directors Public Schools NSW, if appropriate.
- Issuing instructions to Legal Services regarding the terms and conditions for the Contract for Sale for e.g. whether a restrictive and/or public positive covenant is required on the property Title; or the land is to be sold unencumbered.

7.4 Asset Management Directorate – Regional Asset Management Unit

- Maintaining a vacant/closed school site until it is disposed of.

7.5 Legal Services Directorate

- Arranging for the preparation of an appropriate Contract For Sale with all necessary terms and conditions.

7.6 Executive Director, Learning and Business Systems, Public Schools NSW Portfolio

- Liaising between the Public Schools NSW and Asset Management Directorate as required.

8 IMPLEMENTATION OF THESE GUIDELINES

These Guidelines will come into effect immediately for all surplus school land/facilities currently being assessed in terms of whether they are surplus to educational requirements and can be considered for disposal.

These Guidelines do not apply to surplus land/facilities where the sale of the land/facilities has already proceeded, but has not been finalised.

9 CONTACT INFORMATION

Policy issues relating to sale of surplus school land/facilities to non-government schools should be directed to the Director, Property and Facilities Management, Asset Management Directorate on (02) 9561 8269.

Operational and implementation issues should be directed to the Regional Asset Management Unit on 132 779.