

<b>POLICY:-</b>	
Policy Title:	Disposal of Council Real Estate Policy
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<b>PROCEDURES/GUIDELINES:-</b>	
Date procedure/guideline was developed:	N/A
Procedure/guideline reference number:	N/A

<b>RESPONSIBILITY:-</b>	
Draft Policy developed by:	Director of Finance and Administration
Committee/s (if any) consulted in the development of this Policy:	N/A
Responsibility for implementation:	General Manager
Responsibility for review of Policy:	Director of Finance and Administration

## **OBJECTIVE**

Council has a number of properties that on occasions it may seek to dispose of by way of sale or by way of agreement with the tenant or a community organisation. This policy aims to provide a coherent, transparent and ethical method of disposing of Council properties.

### **1. POLICY STATEMENT**

Land, buildings and real estate that is no longer needed by Council and for which Council has no long term plans of utilisation, may be disposed of. Disposal of such property provides one or more of the following benefits to Council:-

- (a) It earns immediate income for use in maintaining other assets;
- (b) It reduces operating costs, such as building or property maintenance, insurance, rates and depreciation expenses;
- (c) It prevents costs associated with the deterioration in the condition of an asset and remediation works;
- (d) It may increase the number of rateable properties in the Shire; and
- (e) It may provide land for economic development.

The disposal method chosen must promote fair and effective competition to the greatest possible extent, and disposals must be conducted in an ethical manner. The process of disposal is as important as the outcome as it reflects Council's level of commitment to fairness and equity.

### **2. APPLICATION**

This policy applies to the disposal of all Council owned real estate. It does not cover the sale of land for recovery of unpaid rates as this is not Council owned land.

### **3. DEFINITIONS**

#### **3.1 Council Real Estate**

Real estate means any freehold or leasehold property owned by Council, whether or not it is vacant land, business premises or residential property that is classified as "Operational Land".

#### **3.2 Community Land**

Community Land means land that is classified as "Community Land" under Chapter 6, Division 1 and 2, of Part 2, of the Local Government Act 1993.

Community Land classification reflects the importance of the land to the community because of its use or special features; i.e. includes crown land which Council is appointed as the Trustee, public parks and reserves are also examples of Community land. Community land is intended for public access and use, or where other restrictions applying to the land create an obligation to maintain public access (such as a trust deed or land dedication).

**Community land dealings:-**

- Council has no power to sell, exchange or otherwise dispose of community land;
- Council may grant a lease, or licence, or any other estate over the community land under certain provisions; and
- Council must have a Plan of Management for community land.

### **3.3 Operational Land**

Operational Land means land that is classified as “Operational Land” under Chapter 6, Division 1, of Part 2, of the Local Government Act 1993.

Operational Land would ordinarily comprise land held as a temporary asset or as an investment, or land which facilitates the carrying out by Council of its functions, or land which may not be open to the general public. Operational Land has no special restrictions other than those that may apply to any piece of land and may be sold without the restrictions applied to Community Land.

## **4. THE DISPOSAL PROCESS**

The typical disposal process is as follows:-

- (a) Council decision to dispose and inclusion in Council's Operational Plan.
- (b) Estimate the value.
- (c) Factors to consider in disposal.
- (d) Select appropriate disposal method.
- (e) Effect disposal process.
- (f) Evaluate disposal process.

### **4 (a) DECISION TO DISPOSE**

Before any real estate is disposed of, it is necessary to obtain Council approval to proceed with the disposal. The proposed disposal must be included in Council's strategic planning documents or a special report that covers the reasons for recommending disposal will be presented recommending a Council Resolution to dispose of real estate.

### **4 (b) VALUATION**

All Council real estate offered for disposal, by whichever method, shall first be assessed by a Registered Real Estate Valuer and the assessment will determine the value of the asset. The valuation provided shall become the reserve price for the land, property or building asset.

The only exception to this requirement is situations where the price for lots has been fixed based on development costs and profit margins.

#### **4 (c) FACTORS FOR CONSIDERATION**

Considerations to be made at the commencement of the disposal process include:-

##### **4.1.1 Conflict of Interest**

- (a) Staff involved in the disposal must disclose to their Director and/or Manager the actual or perceived conflicts of interest that may arise should they participate in the disposal process;
- (b) The Director and/or Manager must record the disclosure and implement procedures for the management and control of the conflict. This is of prime importance where an alternate staff member is not available to perform the disposal activity.

##### **4.1.2 Other Factors**

Apart from monetary value, the following factors must be considered:-

- (a) The current conditions in the property market;
- (b) Time considerations;
- (c) Council resources required to manage the disposal;
- (d) Costs associated with the different disposal methods, such as auctioneer's costs, administration costs etc;
- (e) Benefits of the different disposal methods;
- (f) Whether Council has an existing tenant occupying the property; and
- (g) Any encumbrance or caveat on the land.

#### **4 (d) DISPOSAL METHODS**

The disposal method chosen must be appropriate to the situation, and promote fair and effective competition to the greatest extent possible. Where practical, a competitive disposal method should be selected.

Disposal methods authorised by Council are:-

##### **4.2.1 Public Tender**

Tendering for the disposal of real estate is to be conducted as follows:-

- (a) Preparation of tender, including a list of the properties for sale, the conditions of the sale, the assessment criteria for evaluation of offers, and a closing time and place.
- (b) Public advertisement of the sale in a manner most likely to capture the anticipated market. This may involve advertising locally or nationally and on the internet, in newspapers or trade magazines, etc.
- (c) Provide bidders with sufficient information to formulate a proper bid, including arrangements to inspect the property.

- (d) Ensure that bidders are dealt with equally, and that any changes or clarifications to the disposal arrangements are promptly communicated.
- (e) Close and evaluate tenders with the utmost probity in accordance with Tendering Guidelines and Regulations, the Local Government Act 1993 and Council related policies.
- (f) Accept the highest tender, wherever possible, provided that it meets or exceeds the reserve price.
- (g) Should the reserve price not be attained by tendering, a sale can be effected by either:-
  - (i) Revising the reserve price, or
  - (ii) Negotiating with the highest tenderer.
- (h) Seek Council endorsement of the decision.
- (i) Notify the successful tenderer in writing.
- (j) Notify the unsuccessful tenderers in writing.
- (k) Notify any existing tenants, if applicable.

#### **4.2.2 Public Auction**

Public auction maximises the opportunity for public participation in the disposal process and is the appropriate method when:-

- (a) There is a high level of public interest in the properties being offered;
- (b) Alternative disposal methods are unlikely to realise higher revenue; and
- (c) The costs associated with the auction can be justified in relation to the expected revenue from the sale.

The process for conducting the auction should normally be:-

- (a) Obtain competitive quotes on a commission basis from potential real estate agents and auctioneers; or
- (b) Advertise for expressions of interest from registered real estate agents and auctioneers;
- (c) Select a real estate agent or auctioneer based upon:-
  - (i) The commission rates;
  - (ii) Whether the auctioneer and agent is licensed;
  - (iii) The past performance and/or industry reputation;
  - (iv) The relevant experience (i.e. years, sales) meets the selection criteria.
- (d) Prior to the auction ensure that the auctioneer is aware of the reserve price.

#### **4.2.3 Sale at a pre-determined or negotiated price**

This covers situations where Council is selling land that has been developed for the purpose of resale, such as land subdivisions:-

- (a) The land and prices will be publicly advertised;
- (b) Offers to purchase will be received at any time in writing and must be accompanied by a non-refundable deposit;
- (c) Offers lower than the advertised price will be considered by Council; in accordance with Council's Schedule of Fees and Charges current at the time of the sale;
- (d) Any decision to sell must be approved by Resolution of Council.

#### **4.2.4 Sale or Transfer to Other Agencies**

There may be occasions when Council may consider selling or transferring real estate to a community or charity organisation that is currently the tenant of that property.

The following factors must be considered in such cases:-

- (a) The revenue that could otherwise be realised through a sale or auction;
- (b) Savings in maintenance, insurances, rates, etc. that may be made;
- (c) The costs of donation or disposal compared to the benefits;
- (d) The credibility and reputation of the charity or organisation.

The following processes must be followed:-

- (a) The cost of the property transfer must be borne by the recipient;
- (b) All records of the process must be retained for audit purposes;
- (c) Council's contribution must be acknowledged by the recipient.

#### **4.2.5 Sale or Transfer by Private Treaty**

There may be occasions when Council may consider selling or transferring land by means of a private treaty.

The following processes must be followed:-

- (a) The cost of the land transfer must be borne by the recipient;
- (b) All records of the process must be retained for audit purposes.

#### **4 (e) EFFECTING THE DISPOSAL**

In effecting the disposal of Council real estate, the following procedure will be followed:-

##### **4.3.1 Obtaining Approval**

The decision to accept an offer to purchase a Council property must be approved by the General Manager and a Resolution made at Council Meeting.

##### **4.3.2 Property Transfer Costs**

In general, property transfer and legal costs will be borne by the purchaser unless otherwise specified. On occasions the costs may be shared if the value of the property being transferred is high.

##### **4.3.3 Informing Interested Parties**

It is the responsibility of the relevant Departmental Director to inform the Director of Finance and Administration that a property has been disposed of, so that Council's insurers can be advised, and Council's Asset Register and Land Registers are updated.

#### **4 (f) EVALUATION**

Each disposal of real estate must be reviewed to see if it has achieved its desired outcome. In particular it should determine whether the disposals have:-

- (a) Achieved value for money;
- (b) Been carried out in a fair and effective manner;
- (c) Achieved a profit margin for each disposal;
- (d) Whether the valuation/s and the cost of administering the disposal were accurate; and
- (e) Adhered to tendering guidelines and Council policies.

#### **5. NON-COMPLIANCE WITH THIS POLICY**

Failure to comply with the terms of this policy may lead to disciplinary procedures being implemented against the responsible staff member. Any instances of corrupt conduct can lead to dismissal and/or criminal prosecution.

## **6. RELEVANT LEGISLATION AND COUNCIL POLICIES**

- Local Government Act 1993;
- Local Government (General) Regulation 2005;
- State Records Act 1998;
- Privacy and Personal Information Protection Act 1998;
- Government Information (Public Access) Act 2009;
- Environmental Planning and Assessment Act 1979;
- Independent Commission against Corruption Act 1988;
- Ombudsman Act 1974;
- Trade Practices Act 1974;
- A New Tax System (Goods and Services Tax) Act 1999;
- Roads Act 1993;
- Work Health and Safety Act 2011;
- Anti Discrimination Act 1977;
- Crimes Act 1900;
- Tendering Guidelines for NSW Local Government;
- Designated Person Disclosing Interests Returns Policy;
- Council's Code of Conduct;
- Council's Code of Business Practice;
- Council's Integrated Plans; including Community Strategic Plan, Resourcing Strategy, Delivery Program and Operational Plan;
- Fraud and Corruption Prevention Policy;
- Purchasing - Acquisition of Goods and Services Policy;
- Bribes, Gifts and Benefits Policy;
- Disciplinary Policy;
- Complaints Management Policy; and
- Disposal of Council Assets Policy.

## **7. VARIATION**

That Council reserves the right to vary the terms and conditions of this policy to ensure it meets the requirements of the relevant legislation.