
POLICY TITLE: DISPOSAL OF LAND

FOLDER NUMBER: F2007/00307
POLICY OWNER / DIVISION: Corporate Support Division
POLICY OWNER / BRANCH: Land and Property Services
FUNCTION: Council Property & Land

RELEVANT LEGISLATION: Sections 8, 25, 55, 377 & 716 Local Government Act 1993
Section 43 Roads Act 1993
Crown Land Management Act 2016

POLICY ADOPTION/AMENDMENT DATE: 11 May 2022 **REPORT NUMBER:** CS4/22

REVIEW YEAR: 2024

AMENDMENT HISTORY: 9 April 2009 (Report WK18/08)
10 June 2009 (Report WK20/09)
15 June 2011 (Report WK15/11)
17 April 2013 (Report GM2/13)
8 April 2015 (Report CS6/15)
8 August 2018 (Report CS33/18)

RELATED POLICIES:

POLICY PURPOSE / OBJECTIVES:

1. To acknowledge Council's charter that it is the custodian and trustee of public assets and is required to effectively account for and manage the assets for which it is responsible (Section 8 Local Government Act 1993).
2. To set out the principles, framework, responsibilities and processes for Council officers to account for and manage the disposal of Council land assets.
3. To identify, manage and mitigate the risks associated with the disposal of land.
4. To ensure impartiality, transparency, accountability and the delivery of best value in the disposal of land ("fundamental principles").
5. To provide appropriate levels of discretion and flexibility in achieving desired outcomes recognising the highly complex nature of land transactions, the wide variety of circumstances and methods of sale available.

POLICY STATEMENT:

1. Fundamental Principles

All decisions and actions in relation to the disposal of land will have due regard to the following fundamental principles:

- **Best Value for Money** – Achieving “best value” may include financial, social and environmental benefits.
- **Transparency** – processes are open to scrutiny, provide full information and the reasons behind decisions.
- **Accountability** – demonstrate the best use of public resources and the highest level of performance through appropriate record keeping and audit trails.
- **Impartiality** – address perceived or actual conflicts of interests, ensuring fairness and equity.

2. Land Deemed to be Surplus

“**Land**” includes all real property whether vacant or improved. Land may not be sold by Council unless it is classified as “operational land” under section 25 of the Local Government Act 1993.

In order to establish whether or not land is deemed to be surplus, a process of consultation is required to be completed across relevant divisions of Council prior to reclassification in accordance with the Local Government Act, or application for road closure in accordance with the Roads Act.

3. Delegated Authority

Section 377 (1) (h) of the Local Government Act 1993 requires a specific resolution of Council to dispose of land. The decision cannot be delegated.

The resolution is to include reference (often contained within a confidential report) to the terms of the sale, any agreed price, or range for negotiations. The sale can not proceed outside of such parameters (without a further resolution).

The resolution should also provide for the General Manager to be provided with delegated authority to negotiate any outstanding (usually minor) conditions, and to be authorised to execute any documents in relation to the matter deemed appropriate by Council’s legal advisors.

No formal actions may be commenced in the disposal of land until a report has been considered by Council and an appropriate resolution adopted.

Informal pre-sale discussions/negotiations must always be qualified “subject to resolution of Council” if there is no current resolution of Council to dispose of the land.

4. Valuation Processes

At least one formal market valuation undertaken by a valuer registered to value such property is required to be commissioned prior to all property disposals.

Two valuations are required when the value of the property is likely to exceed \$50,000 and the process of disposal is not competitive (as defined below). The requirement for valuation(s) may be varied where, in the informed opinion of the General Manager or Director, Corporate Support Division, such action is impractical. Common examples would include (but not be limited to), sales of small parts of land and road widening strips.

An internal review of the valuation(s) is to be carried out and reported, with specific attention to the valuation rationale, method of valuation, calculations and sales evidence used. After such review, the valuation is to be considered in the setting of an asking price for sale, reserve price for auction or benchmark for negotiations, tender or expression of interest.

When two valuations have been provided, averaging is the preferred method for considering the price, when any difference in the valuation is 10% or less. Differences in valuations of more than 10% require an assessment of the reasons why they are different, and more detailed justification of the price.

An update valuation, or valuation advice is required after 12 months of the date of the original valuation if the land is not sold, or at any time there is considered to be a material movement in the value.

The valuation instructions must clearly state the following:

- The purpose of the valuation being “disposal”,
- The primary basis of valuation being “market value highest and best use”, unless an alternative basis is considered more appropriate in the circumstances. There may be multiple bases of valuations, if required.
- The agreed fee, update fee and completion date,
- That the valuation is marked confidential,
- That the valuation includes market commentary, details of sales evidence and adjustments, valuation rationale and methodology, a valuation range (for negotiations) and comments on marketability, most appropriate method of disposal and opportunities to add value.

In addition, the valuer must make a statement that there is no actual or perceived conflict of interest in undertaking the valuation.

5. Method of Disposal

An open competitive process of disposal is preferred choosing one of the following methods:

- Expression of interest – often used for unusual properties difficult to determine a market value, or where Council seeks to achieve “best value” triple bottom line (TBL) benefits.
- Tender – least common and used predominantly in high value, limited market situations.
- Auction – the most open and public method, favoured by government, but reliant on high levels of competition. Often achieves a quick sale. Can fail in a poor market.
- Private Treaty – most common, where an asking price is set and negotiated with individuals, usually through a real estate agent (who can be an independent third party to the negotiation process).

The General Manager or Director Corporate Support Division may approve a non-competitive process of disposal such as direct negotiations, subject to clearly documented reasons and the employment of risk mitigation measures.

Risk mitigation measures for direct negotiations may include:

- Obtaining two valuations where the land may be valued at more than \$50,000.
- Pre-establishing a range for negotiation, having regard to the two valuations
- Managing conflicts of interest with declarations of no personal or financial associations
- Establishing a Negotiation Protocol, describing the manner in which meetings, negotiations, decisions and progress reporting is to be managed.

6. Contract for the Sale of Land

Contracts for the Sale of Land will usually contain standard conditions of sale. Any unusual or special conditions of sale may require the delegated approval of Council or the General Manager as set out in 3 above. Any special conditions that materially alter the sale generally, purchase price or settlement period should require approval of Council.

Council's solicitor is responsible to ensure Contracts for the Sale of Land satisfy statutory disclosure and warranty obligations (*Conveyancing (Sale of Land) Regulation 2005*).

7. Disposal below Market Value

Land may be disposed of to achieve strategic outcomes. In such situations, "best value" may comprise financial, environmental or social elements, with the price falling below the "market value" range.

The report seeking resolution of Council should clearly state the reasons for such sale and quantify the amount below market value attributable to each element. The obligation to obtain a market valuation exists in accordance with the above, in order to provide a measure of the non-financial elements of the sale.

8. Sale to Adjoining Owners

In circumstances where land is not able to be sold in isolation on the open market (such as small parcels, undersized lots, former road widenings, closed laneways, etc) and the only potential purchasers are adjoining owners; the land must first be offered in equal proportions to each adjoining owner or appropriated according to adjoining land boundary length or frontage, on similar sale terms and conditions.

Where an adjoining owner does not wish to purchase their proportion of the land, the land will be similarly offered to the remaining adjoining owners.

The recommended method of determining the sale price is the "before and after" method as related to the purchaser's land. For small portions of land, the "piecemeal" (\$ rate per square metre) method may be more appropriate.

In most circumstances an essential condition of sale is that the purchaser is required to consolidate the subject land with their existing holding at no cost to Council.

Where the purchase price is deemed by Council to be a "nominal consideration", Council may impose a condition to recover all costs associated with the sale from the purchaser.

9. Sale of Roads – Roads Act 1993

No road can be sold until it is formally closed in accordance with the provisions of the Roads Act 1993.

For purchaser initiated closures and sales, the costs associated with the road closure will be borne up front by the prospective purchaser.

When Council initiates the road closure (in order to realise the value of surplus land), the costs will be borne by Council as development costs.

The agreed purchase price and estimated costs will be reported to Council seeking resolution agreeing to make application to close the road and dispose of the land upon closure in accordance with the terms of sale.

In accordance with Section 43 of the Roads Act 1993, funds from the sale of roads are required to be set aside for acquiring land for public roads or for carrying out work on public roads.

10. Confidentiality

In the majority of disposals of land, the information contained in reports to council to sell land may confer an advantage upon a person with whom Council is, or proposes, to be conducting business. On balance, it would be contrary to the public interest for Council to deal with such matter in an open session because release of the information could prejudice Council's ability to obtain the maximum return on the property.

Therefore, it is acknowledged that reports to Council on the disposal of land will be generally deemed confidential under Section 10A(2)(c) of the Local Government Act 1993. This confidentiality may be lifted upon settlement, if considered to be in the public interest.

11. Departure from change this Policy

Any provision of this policy may be varied to meet the needs of a particular matter, by resolution of Council. The reasons for change will be clearly articulated within the report submitted for consideration by Council in adopting such resolution and will only apply to such matters.

NOTE: This policy has been drafted with reference to the following:

1. ICAC position paper "Corruption Risks in NSW Development Approval Processes" – Chapter 7, Council land disposal (September 2007);
2. ICAC "Guidelines for Managing Risks in Direct Negotiations" (May 2006);
3. Various public sector policies on land disposal