



16.2 Council Owned Land at Murray Road

File:	QG170-02-02
Report Author:	Chief Executive Officer
Strategic Objective:	Maintain a cohesive, well governed, financially sustainable and independent Borough
Portfolio:	Governance and Performance
Portfolio Holder:	Cr Bob Merriman

Purpose

The purpose of this report is to seek a decision from Council about whether or not to sell Council owned land at 61 – 75 Murray Road, Queenscliff. The report recommends that Council should sell the land.

Background

At its 26 July 2018 Ordinary Meeting Council formally considered a report on 'Council Owned Land at Murray Road' that covered the following topics related to the Council owned land at 61 – 75 Murray Road, Queenscliff:

1. Contextual features
2. Land use planning
3. Previous Council plans related to this property
4. Additional Flora and Fauna Significance Impact Assessment
5. Referral to Department of Water, Environment, Land and Planning (DWELP)
6. Referral to Corangamite Catchment Management Authority (CCMA)
7. Referral outcomes
8. Results of, and response to, public notification and public submissions
9. Statutory processes for the intention to sell Council land

In giving due regard to these matters, Council resolved at this 26 July 2018 Ordinary meeting to give public notice of its intention to sell land at Murray Road, and to invite and consider submissions under Section 223 of the Local Government Act 1989. A public notice was published in the Geelong Advertiser on Saturday 3 November 2018, with a closing date for submissions of 3 December 2018. Ten submissions were received before the closing date. Five submitters spoke in respect of six of the submissions at a Special Council Meeting on 13 December 2018. Matters pertaining to the public submissions and other relevant considerations are addressed in the 'Discussion' section of this report.



Key Issues

- The draft Council policy on 'Sale, Exchange or Transfer of Council Land', to be considered at the January Ordinary Meeting
- Approved Development Plan for residential subdivision of the site
- Public submissions received in response to public notice of intent to sell the land

Discussion

Council Policy

Council's draft policy on the 'Sale, Exchange or Transfer of Council Land' sets out twelve matters to be addressed in a report to Council with respect to a proposed sale of land. These matters are:

- *Reason for recommended sale;*
- *Description of property;*
- *Current Council valuation and date of valuation;*
- *Council's book value of land;*
- *Locality map;*
- *Current use;*
- *History of Council ownership;*
- *Recommended method of sale;*
- *Recommended sale price range and justification if range is less than valuation;*
- *Any encumbrances;*
- *Timelines for sale; and*
- *Proposed purchaser, if applicable, or transferee where no sale price is involved*

In accordance with the policy, these twelve matters are addressed below.

- ***Reason for recommended sale***

Section 2 of Council's draft policy on the 'Sale, Exchange or Transfer of Council Land' sets the following criteria for assessing and determining whether land should be made available for sale:

"All properties will be reviewed periodically for its municipal usefulness and particular attention paid to land not adequately used for municipal purposes. Properties that are designated as surplus may be sold, exchanged or reserved for exchange for other land that the municipality requires, after having assessed strategic planning implications and future needs.

In conducting an assessment of Council property, to determine whether a parcel(s) of land should be made available for sale, the following criteria will be used:

- Identification of current and potential future usage;*
 - Ability to contribute to positive social outcomes;*
 - Facilitating investment and positive economic development outcomes;*
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- (d) *Positive environmental outcomes; and*
- (e) *Favourable financial outcomes.*

The Murray Road site is vacant and not used for municipal purposes. It is not being used nor is required for public open space. Council has no plans for the future municipal use of this resource. The land is surplus to Council's needs. Sale of the land would facilitate future subdivision and use in accordance with its residential zoning (Neighbourhood Residential Zone 1 and General Residential Zone 1), thus contributing positive social, investment and economic development outcomes through construction and new residents to the Borough. High environmental conservation values that exist on the balance of the Council owned land will not be impacted by subsequent development resulting from the sale of the smaller lot.

In relation to financial outcomes, section 5 of the draft policy states that *"... any future proceeds from asset sales are directed to either:*

- (a) *Retiring debt; or*
- (b) *Investing in projects that will generate additional revenue streams; or*
- (c) *Attracting matching grant funds from other levels of government.*

Whilst the Borough of Queenscliffe has almost no debt, its ability to match grant funding from other levels of government is increasingly becoming limited by financial constraints associated with its small size, minimal ability to generate additional revenue and the implications of rate capping.

It is therefore recommended that as the land at Murray Road is surplus to Council's needs, that it be sold to enable Council to invest in projects that will generate additional revenue streams, and/or achieve efficiencies that result in a reduction in future operating expenditure, and/ or to attract matching grant funds from other levels of government.

- ***Description of property***

The land proposed for sale is contained in one lot of approximately 9,509 square metres. Lot 1 was created pursuant to Planning Permit No. 2016/015. Council also owns the neighbouring Lot A, to the east, of approximately 6.045 hectares. Lot A is not proposed for sale. The land is located on the south-western side of Murray Road. Lot 1 has frontage to Murray Road of approximately 95 metres and is abutted to the south-east by privately-owned land at 81 Nelson Road. The land is cleared and sits approximately one metre higher than much of the balance of the Council owned land to the west. An existing vehicle crossover is located on the north-eastern corner of the site, providing vehicle access from Murray Road.

- ***Current Council valuation and date of valuation***

The most recent Council valuation for the land (Lot 1), dated 16 January 2019, values the site at \$2,075,000.

- ***Council's book value of land***

Council's book value of the land is \$2,075,000.

- **Locality map**

The general locality of the site is indicated by the black star on the map below.



Image: Google Maps, January 2019.

- **Current use**

The site is cleared, vacant land. It is not being used for municipal purposes. Council has no plans for the future municipal use of this resource. The land is surplus to Council's needs.

- **History of Council ownership**

Council has owned the land since August 1982. It has been used in the past for a rubbish tip. Council records show the land has been zoned for residential purposes since at least 1981.

- **Recommended method of sale**

It is recommended that the land be sold by a public process (eg. Expression of Interest / Tender / Auction) on commercial terms at market value.

Section 4 of Council's policy on the 'Sale, Exchange or Transfer of Council Land' includes the following:

After completing the relevant advertising process as required under the Act, once Council has resolved to sell land, the following procedures will apply:

4.1.1 At least two quotations to be obtained from licensed agents to act for Council.



- 4.1.2 *Selection of an appropriate real estate agent to dispose of the property may be based on, but not limited by, the following criteria:*
- (a) type of property to be marketed;*
 - (b) relevant experience;*
 - (c) proposed commission;*
 - (d) necessary licences.*
- 4.1.3 *The Chief Executive Officer, after consulting with Council, will determine whether sale is to be by auction, direct negotiation or expression of interest and whether any terms and conditions apply.*
- 4.1.4 *The Chief Executive Officer, after consulting with Council, will determine the reserve value, if sale is by auction or direct negotiation.*
- 4.1.5 *Where Council decides that land is to be sold by public auction, the sale of this land before auction must not be permitted. The date of the auction should be set, allowing four to six weeks for an effective advertising campaign, noting this period may need to be varied depending on the type of land. The advertising campaign should be conducted in a manner that adequately exposes the land to the market and the agent should be required to submit a summary to Council of the marketing campaign, enquiry rate and anticipated result, approximately two weeks before the auction.*
- 4.1.6 *Provided the reserve is met, the sale will proceed.*
- 4.1.7 *If the reserve is not met, then any offer or proposal to amend the reserve will be referred to the Chief Executive Officer for consideration and consultation with Council.*

- ***Recommended sale price range and justification if range is less than valuation***

Section 189 of the Local Government Act 1989 requires that before selling land, Council must “obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the Valuation of Land Act 1960 a valuation of the land which is made not more than 6 months prior to the sale or exchange.”

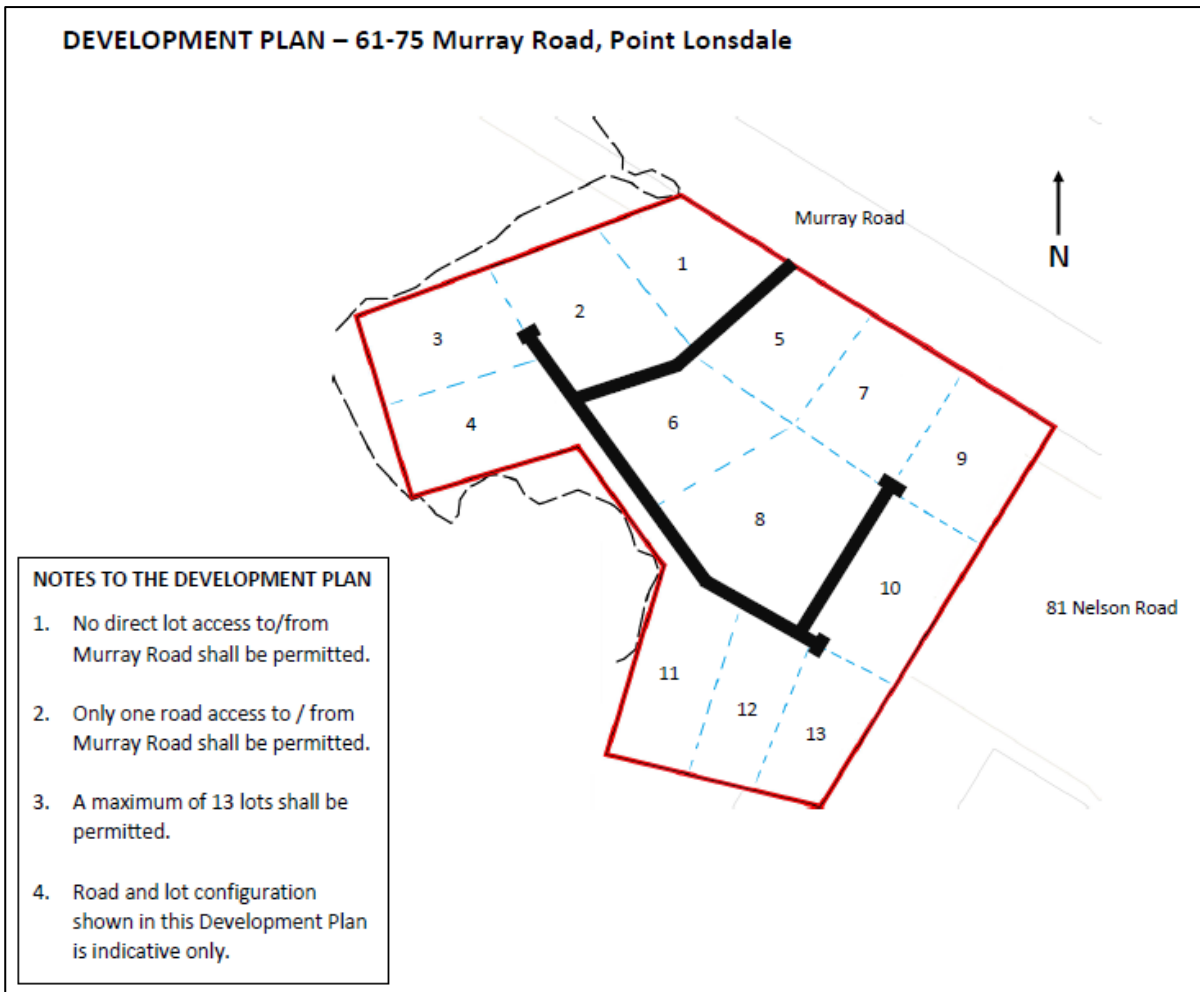
If Council resolves to sell the land, an independent valuation as required by Section 189 of the Act will be obtained. Thereafter, in accordance with section 4 of the Council policy, the Chief Executive Officer, after consulting with Council, will determine the reserve value. Provided the reserve is met, the sale will proceed. If the reserve is not met, the Chief Executive Officer will consult Council about any offer or proposal to amend the reserve.

- ***Any encumbrances***

The land is zoned Neighbourhood Residential Zone 1 and General Residential Zone 1. The Design and Development Overlay, Development Plan Overlay, Significant Landscape Overlay and Vegetation Protection Overlay apply to the land.

Further to the Development Plan Overlay, a Development Plan to allow subdivision of Lot 1 into 13 residential lots has been approved. The report to Council’s Ordinary Meeting in July 2018 provided detailed information about the Development Plan and its assessment. Following further consultation with Council late in 2018, the Development Plan was amended under officer delegation on 10 January 2019 to ensure that no proposed residential lots could be directly accessed from

Murray Road, and to provide for only one road access from Murray Road. The current approved Development Plan map appears below.



- **Timelines for sale**

If Council resolves to sell the land at its January 2019 Ordinary Meeting, it is proposed that the processes outlined in section 4 of the Council policy (refer above in this report) will commence soon after. This includes seeking the appropriate valuation and at least two quotations from licensed agents to act for Council. Thereafter, it is expected that marketing of the land for sale could commence around April 2019.

- **Proposed purchaser, if applicable, or transferee where no sale price is involved**

It is recommended that the land be sold via a public competitive process on commercial terms at market value. The land is not being recommended for sale with any particular proposed purchaser in mind.



Public Submissions

Council received ten submissions in response to the public notice in the Geelong Advertiser on Saturday 3 November 2018 advising of its intention to sell the land before the closing date of 3 December 2018. The ten submissions were circulated to Councillors within a confidential attachment to the agenda for – and form part of the Minutes of - the Special Council Meeting held on 13 December 2018. In accordance with section 223 of the Local Government Act, five submitters spoke in respect of six of the submissions at the Special Council Meeting. A late submission was received on 4 January 2019.

The general issues raised by each submitter are summarised below:

➤ Submitter 1

- Inadequate community consultation.
- Environmental concerns mainly relating to the roadside swale and the need to protect this from driveways and roads.
- The area should be rehabilitated for parkland for passive recreation.
- The beauty and safety of the Bellarine Rail Trail should be enhanced.

➤ Submitter 2

- Lack of financial justification for the proposed sale.
- Financially irresponsible to sell this appreciating asset.
- Questions how Council intends to use the sale proceeds.

➤ Submitter 3

- Council has not indicated where sale proceeds would be directed.
- Past decisions and discussions have already pre-determined council resolve to sell.
- Lack of information provided to the community.
- It would be financially irresponsible for Council to consider sale given the comparative rates of return.
- Lack of financial justification for the proposed sale.
- Environmental values and proximity to wetlands limits development potential.

➤ Geelong Environmental Council

- Environmental concerns mainly relating to interruption to the continuous roadside swale.
- The land should be restored to its original values and maintained for ecological values.
- Environmental values will be lost if the sale proceeds.

➤ Submitter 5

- The site should be revegetated to its natural state rather than sold for housing.
 - The unique Murray Road vista is admired by walkers and cyclist – the swale must be protected.
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- Road safety measures should be introduced to make the road safer for cyclists and pedestrians.
- Additional road and driveway access off Murray Road would make it more dangerous.

➤ Submitter 6

- Lack of financial justification for the proposed sale.
- Future generations of ratepayers would benefit by a decision to retain the land.

➤ Submitter 7

- Prior to any subdivision or sale, a Development Plan, including community consultation, should be prepared for the whole of the Council owned land, not just the small area at the eastern end of the site.
- Sale will create an unwelcome precedent for sale of other Council land.
- Community does not know why Council intends to sell the land.
- Lack of financial justification for the proposed sale.
- If sale and subdivision does occur, there should only be one access point to Murray Road rather than multiple vehicle crossings.

➤ Submitter 8

- Any additional driveways entering Murray Road will impact public amenity and have detrimental impact upon the swales.

➤ Point Lonsdale Civic Association

- Lack of financial justification for the proposed sale.
- Inadequate community consultation.
- The land is low lying and therefore subject to climate change variances.
- Questions the impact of development on the roadside swale and other natural features including the nearby Ramsar listed wetlands.
- A Development Plan, including community consultation, should be prepared for the whole of the Council owned land, not just the small area at the eastern end of the site.
- Environmental values and proximity to wetlands limits development potential.

➤ Queenscliffe Community Association (2 submissions)

Note: one of the Queenscliffe Community Association's two written submissions was received on 4 January 2019 (i.e., after the submission closing date and after Council's Special Meeting to hear submissions on 13 December 2018) and thus was not circulated to Councillors with the agenda or minutes of the Special Meeting. Therefore, the second of the QCA's written submissions is attached at **CONFIDENTIAL Appendix 4**. The issues below are taken from both submissions.

- Lack of financial justification for the proposed sale.
 - Inadequate community consultation.
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- The land will be subject to the flooding effects of climate change in future.
- Vehicle crossovers along Murray Road are undesirable.
- The land has high environmental values.
- The land continues to be used as public open space for passive recreation purposes by residents.
- Financially irresponsible to divest this potential growth asset.
- Development would result in the loss of open space.
- The land should be retained in public ownership for future coastal management purposes.
- Questions Council's planning processes and challenges confidentiality of Council reports.

The issues raised across all submissions generally focus on four main topic areas. These are addressed below.

- **Lack of financial justification and information**

This point is addressed earlier in this report. In summary, whilst Council has almost no debt, its ability to match grant funding from other levels of government is increasingly becoming limited by other financial constraints associated with its small size, minimal ability to generate additional revenue and the implications of rate capping.

The proceeds of this proposed sale would enable Council to invest in projects that will generate additional revenue streams, and/or achieve efficiencies that result in a reduction in future operating expenditure, and/ or to attract matching grant funds from other levels of government.

- **Inadequate community consultation**

Section 189 of the Local Government Act sets out the consultation process that must be undertaken when Council is considering selling land. The process is essentially as follows:

- **Step 1:** Council formally resolves to give notice of its intention to sell land. It is worth clarifying that by formally giving notice of its '*intention*' to sell land, the Council has not formally determined whether or not to sell the land in question. Rather, this step facilitates a formal community consultation process which is set out under Section 223 of the Act. Note; the terminology which Councils are required to use - i.e., "intention" (or "intent") – is set out in Section 189 (2)(a) of the Act.
- **Step 2:** Community input is invited by way of formal written submissions and an opportunity for submitters to be heard at a meeting. (In this case, the meeting occurred at 4:00pm on Thursday 13 December 2018 and five submitters were heard in respect of six submissions.)
- **Step 3:** Having formally considered the submissions and oral presentations, Council then makes a formal decision by resolution about whether or not to sell the land.

Council has fully complied with all legislative requirements relating to public notice and community consultation associated with proposed sale of land.



- **Impacts of future subdivision on the roadside swale**

As noted by some submitters, a previous version of the approved Development Plan included direct lot access to/from Murray Road. Following further consideration, the Development Plan was amended under officer delegation on 10 January 2019 to ensure that no proposed residential lots could be directly accessed from Murray Road, and to provide for only one road access from Murray Road. A new, single road access into the new subdivision would replace the one existing crossover that currently crosses the swale to provide access to the site.

- **Loss of open space and environmental and amenity concerns**

The land has been zoned for residential purposes since at least 1981 and, as such, sale of the land for subsequent development would be consistent with its long-established purpose. The Borough contains a significant amount of open space including high value coastal land. In this context, the availability of this site for current or future open space provision is not considered necessary.

The report to the July 2018 Ordinary Council meeting addressed in detail a number of environmental and amenity issues associated with future residential subdivision and development of the land. The information provided was used to inform assessment and approval of the Development Plan for up to 13 residential lots. It included:

- *Flora and Fauna Significance Impact Assessment (SIA)*

The Murray Road site has been the subject of a number of ecological assessments dating back to 2004. Biodiversity values identified from within (or in close proximity to) the land include remnant vegetation (Coastal Saltmarsh, Brackish Sedgeland and Estuarine Flats Grassland Ecological Vegetation Communities), as well as potential foraging habitat for the critically endangered Orange Bellied Parrot (OBP). The land is also identified to be in close proximity to the Port Phillip Bay (western shoreline) and Bellarine Peninsula Ramsar site. Both the OBP and the Port Phillip Bay (western shoreline) and Bellarine Peninsula Ramsar site are considered Matters of National Environmental Significance (MNES). OBP is listed as critically endangered under the Environment Protection and Biodiversity Conservation Act, 1999.

The most recent ecological report prepared for the site (PKA, 2017) recommends that development of the lot be referred to the Commonwealth Department of Environment and Energy (DoEE) for potential impacts on the two MNES identified above. On review of the proposed subdivision plan however, it was considered that the likely impacts could be considered minor in nature, and a SIA should be undertaken to inform the need or otherwise for the development to be referred to DoEE for impacts to the aforementioned MNES.

The Development Plan for the land avoids any need for the removal of vegetation that has been highlighted as having the potential to support the OBP. This has been achieved by limiting the extent of the developable land to the eastern corner of the site, within vegetation that is dominated by exotic grassy and broad-leaf weed species.

The subsequent SIA prepared by consulting firm AECOM, concluded that proposed development is unlikely to result in a significant impact to the MNES addressed. It considered that referral of the matter to the DoEE is not required, but that appropriate controls to mitigate the risk of



indirect impacts should be detailed in a Construction Environment Management Plan (CEMP) or similar. This has been incorporated as a requirement of the Development Plan.

- *DELWP and CCMA*

Advice was sought from DELWP and CCMA during assessment of the Development Plan application. Neither DELWP or CCMA objected to the approval of the Development Plan.

- *Sea level rise impacts*

The CCMA has previously (2014) noted that development on areas of the site below the 1 in 100 ARI flood event should not occur and will add to known flood risk. The Development Plan relates to an area of 1.2 hectares that is located above the 1 in 100 ARI flood extent. The Development Plan application was referred to the CCMA for comment. The CCMA has not objected to the proposal.

- *Traffic impacts to area*

Traffic assessment by Traffix Group indicates that any increased traffic would be minimal and not have undue impact on the surrounding road network including Murray Road.

Overall, the issues raised in the submissions are noted but, on balance, are not considered to be sufficient reasons to not proceed with selling the land.

Council Plan

The proposed sale of Council owned land in Murray Road is supported by the following Strategic Objective and Strategy from the Council Plan 2017-2021:

Strategic Objective 5 - Governance and Performance

Maintain a cohesive, well governed, financially sustainable and independent Borough.

Strategy

- Maximise the return on Council assets and leverage external funding opportunities.

Financial

Realisation of this asset via sale of the land would assist Council to invest in projects that will generate additional revenue streams, and/or achieve efficiencies that result in a reduction in future operating expenditure, and/or to attract matching grant funds from other levels of government.



Social

Sale of the land and the subsequent development of up to 13 residential lots would bring new residents to the Borough and assist in strengthening the local community and the sustainability of local organisations.

Environmental

Sale of the land and the subsequent development of up to 13 residential lots generally in accordance with the approved Development Plan is expected to result in minimal impact on the environment for the reasons outlined in the 'Discussion' section of this report. The Development Plan also recommends that during the 13 lot subdivision approvals stage, a Construction Environmental Management Plan be prepared by the developer to ensure impacts to Swan Bay, native vegetation and habitats during construction are minimal and appropriately managed.

Risk Management

There are no significant risks associated with this report.

Officer Direct or Indirect Interest

Under Section 80C (1) (2) of the Local Government Act 1989, Council staff and persons engaged under a contract to provide advice or a report to a meeting of the Council or a special committee, and who have a direct or indirect interest in a matter to which the advice or report relates, must disclose the type of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.

Officers involved in developing the report have no direct or indirect interests.

Assessment

The land at Murray Road is surplus to Council's needs. Having regard to Council's financial position and strategy, the 2017-21 Council Plan, Council's draft policy on the 'Sale, Exchange or Transfer of Council Land', the requirements of the approved Development Plan for 13 lot subdivision, and the public submissions received, it is considered that sale of the land by Council would be well-justified. In allowing for investment in income producing and/or expense reducing and/or grant funded projects, proceeds from the sale would benefit current and future generations of Borough residents and ratepayers.



Conclusion

It is recommended that the public submissions and the recent amendments to the Development Plan be noted, and that the land be offered for sale via a public process (eg. Expression of Interest / Tender / Auction) on commercial terms at market value.

Recommendation:

That Council:

- 1. Note the submissions received in response to the proposed sale of the land at Murray Road;**
 - 2. Write to the submitters to thank them for their submissions and to advise of Council's decision;**
 - 3. Note the recent amendment to the approved Development Plan for the site, which prohibits direct lot access to / from Murray Road and provides for only one road connection to the proposed subdivision area from Murray Road;**
 - 4. Resolve to sell Lot 1 on PS 746285U (part of the land known as 61-75 Murray Road, Queenscliff, comprising 9,509 square metres) by a public process (eg. Expression of Interest / Tender / Auction) on commercial terms at market value.**
 - 5. Authorise the Chief Executive Officer to take the action necessary to achieve sale of the land in accordance with the Local Government Act 1989 and Council's policy on the 'Sale, Exchange or Transfer of Council Land'.**
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