



## **Appendix 5d**

### **16.4 Review of Council Policies**


*CP044: Sale, Exchange or Transfer of Council Land*

# **Ordinary Meeting of Council**

Wednesday 27 October 2021 at 7:00pm

Via Videoconference (Zoom)

## COUNCIL POLICY

|   |                      |                                      |   |
|---|----------------------|--------------------------------------|---|
| Sale, Exchange or Transfer<br>of Council Land | Adopted By Council:  | 24/01/2019                           |  |
|   | Date/s Revised:      |                                      |   |
|   |                      |                                      |   |
|   | Next Review Date:    | XX/2024                              |   |
|   | Document No:         | CP044                                |   |
|   | Directorate:         | Finance & Corporate Services         |   |
|   | Responsible Officer: | Manager Finance & Corporate Services |   |

### CONTEXT

This policy applies to the sale, exchange or transfer of Council land, except where section 116 of the Local Government Act 2020 (the Act) which deals with the transfer, exchange or lease of land without consideration and section 181 of the *Local Government Act 1989* (despite the introduction of the Local Government Act 2020, the 1989 Act remains the legislation applicable to rating matters). The section 181 of the 1989 Act refers to the sale of land in order to recover unpaid rates and charges.

### PURPOSE

Council is obliged to manage its real estate so that municipal requirements are met. These requirements may change and properties need to be re-evaluated to establish their status. The purpose of this policy is to assist Council and officers in determining the procedures to be followed in the sale, transfer or exchange of Council Land, in compliance with legislation and in line with sound management practice.

### POLICY

The policy principles that form the basis of this policy are:

- Council will dispose of Council land in a considered and responsible way, and in accordance with legislation and this policy;
- The current and future use of property, as well as the economic potential of disposal, should be considered by Council; and
- Where Council disposes of real estate, the sale should maximise the total economic return to the Council, except where there is a clearly demonstrated community benefit for selling the land at a lower amount.

This policy only covers the Sale, Exchange or Transfer of Council Land. Council policy "CP030: Asset Disposal" includes all other asset categories.

#### 1. Legislative requirements

All sales, exchanges and transfers of land are required to comply with the provisions of the Local Government Act 2020.

#### 2. 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:

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

### **3. Preliminary report to Council with respect to a proposed sale of land**

Prior to any sale of land and the statutory processes commencing, a report to Council is to be prepared by officers, outlining the following information as a minimum:

- Reason for recommended sale;
- Description of property;
  - Current Council valuation and date of valuation (made by a qualified valuer as per the Act not more than 6 months prior);
- 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

### **4. Disposal of land**

Sale, exchange or transfer of land may be disposed of in the following manner:

- (a) Public competitive sale (auction or agent)
- (b) Private sale
- (c) Other sale

Generally, all sales, exchanges and transfers of land should occur at not less than the market value assessed by an independent Valuer engaged by Council. Where it is recommended that land is sold for less than the market value, the report to Council is to include an explanation of the circumstances, reasons or factors which led to the decision to accept a sale price that is less than market value.

#### **4.1 Public competitive sale**

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 three 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.

## **4.2 Private sale**

There may be circumstances where it is more appropriate to sell or exchange land by private treaty. Generally, it will depend on the nature of land that is proposed for sale or exchange (e.g. rear laneways and rights-of-way, disused/closed roads and allotments in inappropriate subdivisions). A change in public land access needs to be balanced with the public/community benefit arising from the sale of such land.

Prospective purchasers of this type of land may include:

- Owners of adjacent properties;
- Developers;
- Community groups;
- State/Commonwealth Government; and
- Other parties with a particular interest in that land.

The Chief Executive Officer, after consulting with Council, is empowered to negotiate with prospective purchaser(s) and approve the final sale price with any terms or conditions of sale.

## **4.3 Other sale**

If any sales fall outside the guidelines at 4.1 and 4.2 above, then Council approval will be required prior to acceptance of any offer to purchase.

## **4.4 Public notice**

Council is required to give public notice and undertake a community engagement process in accordance with the community engagement policy, with respect to its intention to sell land. The purpose of the public notice is twofold:

- (1) To inform ratepayers and residents of the Council's intention to dispose of, exchange or transfer a public asset; and

- (2) To give an indication that the Council is genuinely open to the best offer for that land, either on a price or alternative use basis.

The public notice should be informative and enable ratepayers and residents to:

- Clearly identify the land that is proposed for sale, exchange or transfer;
- Understand the proposed sale, exchange or transfer process; and
- Understand the public consultation process.

In order to achieve the above outcomes, the public notice should include the following information:

- References to the relevant sections of the Act that the Council is acting under;
- The location of the property including, wherever possible, a map of plan of the land;
- How the property is to be sold or disposed of;
- The timeframe for the proposed sale, exchange or transfer of land;
- The prospective purchaser, if this is known;
- The commencement and end of the consultation period;
- How submissions can be made, including that persons making a submission can request to be heard in person; and
- Contact details at the Council, if further information is required.

## **5. Use of proceeds from the sale of land**

Unless otherwise directed by Council, sale proceeds from land shall be assigned in accordance with the relevant key budget principles, as included in Council's financial plan and adopted budget. That is, any future proceeds from asset sales are directed to either:

- (a) Retiring debt; or
- (b) Investing in projects to generate additional revenue streams; or
- (c) Investing in projects to reduce operating expenses (invest-to-save projects).

## **6. Disclosure of land sale, exchange or transfer in Council's annual report**

All land sales for the financial year are to be disclosed in the Annual Report of Council.

The following process applies in recording property in Council's financial report:

- (a) Land is initially reported as a Non-current asset in Council's Balance Sheet;
- (b) Once Council resolves that a parcel(s) of land will be made available for sale, the relevant property is transferred from a Non-current to Current asset (assets held for sale) on the Balance Sheet; and
- (c) Upon sale, the asset is removed from Council's asset register and the profit/(loss) on sale is reported in the Comprehensive Income Statement.

## **CONTINUOUS IMPROVEMENT**

This policy will be reviewed as a minimum in the first year of each Council term, and as required. This policy is subject to immediate review should any relevant changes in legislation occur.

## **OTHER REFERENCES**

*Local Government Act 2020*

*Local Government Act 1989*

*Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land*

END