



HUON VALLEY COUNCIL

Sale and Disposal of Council Land Policy

GOV-CORP 018

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1	September 2019

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Department responsible for policy	Legal and Governance Services
Publication of policy	A copy of the <i>Sale and Disposal of Council Land Policy</i> be placed on Council's website and copies be made available for inspection free of charge at the Customer Service Centre
Related Documents	Appendix A – Disposal of Land Flow Chart

1. Purpose and Background:

1.1 Background

The Huon Valley Council is responsible for the acquisition, operation, maintenance, renewal and disposal of an extensive range of physical assets.

These assets include land, buildings & structures, parks & recreation areas, roads & car parks, footpaths/kerbs and walking tracks, drainage systems, and associated operating assets and provide service essential to our community's quality of life.

Land is a key asset required to be managed by the Council who owns a large number of land titles for a variety of purposes including for health, recreation and open space;; operational (offices and depots); child care centre services; retirement villages; medical centres; quarries; car parks; waste management facilities;; cemeteries; stormwater infrastructure; and, road and footways.

The Council has adopted a Land Strategy aimed at ensuring that the Council maximises use of its land, obtains a return on its capital investment, to providing development opportunities and returns to the community whilst retaining funding for future strategic land purchases.

The Strategy makes a number of recommendations for the disposal or sale of land that is considered to be surplus to Council's strategic requirements.

It was acknowledged in adopting the Strategy that the community have an attachment to land owned by the Council. Irrespective of statutory definitions Council land is seen as public land and Council is the owner of land for the benefit of the community.

This is considered to be important in any strategy such that, as custodian of the land, the Council needs to ensure that it receives the best return from land, utilises land to its maximum capacity and does not simply own land bearing costs and risks to the community that cannot be maintained.

The strategy recognises that land is a valuable asset and should not be used to fund recurrent or capital expenditure rather any funds received from the disposal of land no longer required by the Council ought, as a matter of first principle be retained for the purpose of future strategic land purchases.

There are though exceptions to the rule, which are specifically addressed within the Land Strategy, where funds may be directed toward capital improvement or specific projects which are considered to be a specific benefit to the community that cannot otherwise be funded within the Council's new Asset Programs.

The Land Strategy is adopted at this point in time and expectations from the community and use of land may change over time. The need for Council to own land changes over time, in response to demand for public services, population change or new policy priorities. As a result, from time to time there may be some land that becomes surplus to Council needs.

This Policy has been developed to set out the principles and procedures for Council in making a decision for the Disposal of land.

1.2 Legislative Context

Disposal of Council land is considered in the following provisions:

177. Sale and disposal of land

- (1) A council may sell, lease, donate, exchange or otherwise dispose of land owned by it, other than public land, in accordance with this section.
- (2) Before a council sells, leases, donates, exchanges or otherwise disposes of any land, it is to obtain a valuation of the land from the Valuer-General or a person who is qualified to practise as a land valuer under section 4 of the Land Valuers Act 2001.
- (3) A council may sell –
 - (a) any land by auction or tender; or
 - (b) any specific land by any other method it approves.
- (4) A council may exchange land for other land –
 - if the valuations of each land are comparable in value; or
 - in any other case, as it considers appropriate.
- (5) A contract pursuant to this section for the sale, lease, donation, exchange or other disposal of land which is public land is of no effect.
- (6) A decision by a council under this section must be made by absolute majority.

177A. Public land

- (1) The following land owned by a council is public land:
 - (a) a public pier or public jetty;
 - (b) any land that provides health, recreation, amusement or sporting facilities for public use;
 - (c) any public park or garden;
 - (d) any land acquired under section 176 for the purpose of establishing or extending public land;
 - (e) any land shown on a subdivision plan as public open space that is acquired by a council under the Local Government (Building and Miscellaneous Provisions) Act 1993 ;
 - (f) any other land that the council determines is public land;
 - (g) any other prescribed land or class of land.
- (2) The general manager is to –
 - (a) keep lists or maps of all public land within the municipal area; and
 - (b) make the lists and maps available for public inspection at any time during normal business hours.

178. Sale, exchange and disposal of public land

- (1) A council may sell, lease, donate, exchange or otherwise dispose of public land owned by it in accordance with this section.
- (2) Public land that is leased for any period by a council remains public land during that period.
- (3) A resolution of the council to sell, lease, donate, exchange or otherwise dispose of public land is to be passed by an absolute majority.
- (4) If a council intends to sell, lease, donate, exchange or otherwise dispose of public land, the general manager is to –
 - publish that intention on at least 2 separate occasions in a daily newspaper circulating in the municipal area; and
 - (ab) display a copy of the notice on any boundary of the public land that abuts a highway; and
 - notify the public that objection to the proposed sale, lease, donation, exchange or disposal may be made to the general manager within 21 days of the date of the first publication.

(5) If the general manager does not receive any objection under subsection (4) and an appeal is not made under section 178A, the council may sell, lease, donate, exchange or otherwise dispose of public land in accordance with its intention as published under subsection (4).

(6) The council must –

- consider any objection lodged; and
- by notice in writing within 7 days after making a decision to take or not to take any action under this section, advise any person who lodged an objection of –
 - that decision; and
 - the right to appeal against that decision under section 178A.

(7) The council must not decide to take any action under this section if –

- any objection lodged under this section is being considered; or
- an appeal made under section 178A has not yet been determined; or
- the Appeal Tribunal has made a determination under section 178B(b) or (c).

178A. Appeal

(1) Any person who lodged an objection under section 178 may appeal to the Appeal Tribunal against the decision of a council under section 178(6) within 14 days after receipt of notice of that decision under section 178(6)(b) .

(2) An appeal must be made in accordance with the Resource Management and Planning Appeal Tribunal Act 1993 .

(3) An appeal may only be made on the ground that the decision of the council is not in the public interest in that –

(a) the community may suffer undue hardship due to the loss of access to, and the use of, the public land; or

(b) there is no similar facility available to the users of that facility.

(4) The Appeal Tribunal is to hear and determine an appeal in accordance with the Resource Management and Planning Appeal Tribunal Act 1993 .

(5) The decision of the Appeal Tribunal on hearing an appeal is final and section 25 of the Resource Management and Planning Appeal Tribunal Act 1993 does not apply.

178B. Determination of appeal

In hearing an appeal against a decision of a council, the Appeal Tribunal may –

(a) confirm that decision; or

(b) set aside that decision; or

(c) set aside that decision and –

(i) substitute another decision; or

(ii) remit the matter to the council for reconsideration.

181. Land held on trust

A council may hold land on trust subject to any conditions on which it is to be so held.

1.3 Purpose

The purpose of this Policy is to ensure the equitable and appropriate disposal of Council Land pursuant to the *Local Government Act 1993*.

2. Definitions:

In this Policy:

“Act” means the *Local Government Act 1993*.

“Dispose/Disposal” includes to sell, donate, exchange or otherwise transfer Land to ownership other than the Council.

“Land” means Ordinary Land, Public Land and Trust Land owned by the Council and includes buildings and other fixtures that is owned by the Council on the Land.

“Land Strategy” means the Land Strategy adopted from the Council from time to time as an Asset Management Plan relating to Land.

“Ordinary Land” means land owned by the Council that is not Public Land or Trust Land.

“Public Land” has the same meaning as in Section 177A of the *Local Government Act 1993*.

“Public Open Space Land” has the same meaning as in *Local Government (Building and Miscellaneous Provisions) Act 1993*.

“Road Title” includes any title noted as “road” on a sealed plan within the meaning of *Local Government (Building and Miscellaneous Provisions) Act 1993* and includes a title over which a road is constructed.

“Trust Land” means land held on trust by the Council pursuant to Section 181 of the *Local Government Act 1993*.

3. Policy Statement

3.1 Policy Statement

Council will consider the Disposal of land where it has been determined that the Land no longer required for the Council or the community. Council will Dispose of Land in a considered and responsible way in accordance with the Act and the principles, considerations and procedures set out within this Policy.

3.2 Principles

Disposal of Land will be in accordance with the following principles:

- Consistent with Council's economic, social and environmental objectives;
- Undertaken in compliance with legislative and other obligations;
- Occur only after consideration, communication and, if appropriate, engagement taking into account all relevant objections, comments and submissions;
- Undertaken with the intention of securing the best return in the interest of the Huon Valley community;
- Through a fair and transparent process and include regular market testing;
- Open to public scrutiny while maintaining appropriate levels of commercial confidentiality and not compromising the Council's position in a competitive market to achieve the greatest return possible
- Conducted in accordance with the Procedures set out under this Policy.

3.3 Considerations

When considering proposals for Disposal of Land the Council will take into account the following matters:

- a) The content of the Council's Land Strategy;
- b) The reason the land was originally purchased by the Council;
- c) Whether the Land is used or intended to be used for a purpose associated with service provision by Council;
- d) The current market value of the Land
- e) The annual cost of maintenance, statutory costs, outgoings and internal administration costs (land tax, water and sewerage, electricity)
- f) Any identified risk or liabilities associated with the Land;
- g) Any relevant direct and indirect benefits to Council, both tangible and intangible;
- h) Any duplication of the Land or the service provided by the Land;
- i) Any impact the disposal of the Land may have on the community;
- j) Any cultural or historical significance of the Land;
- k) The value of any associated environmental benefits;
- l) The positive and negative impacts disposal of the Land may have on the operations of the Council;
- m) The long term plans and strategic direction of the Council;
- n) Any restrictions on the proposed disposal; and
- o) The results of the community engagement process where this has been undertaken in accordance with this Policy.

3.4 Modes of Disposal

Land may be disposed of by way of the following modes and methods:

3.4.1 Private Treaty

Subject to Clauses 3.4.2, 3.4.3 and 3.4.4 the default Policy position is that Disposal of Land will be on the open market through a licenced local real estate agent as the most efficient sales method to achieve the best financial outcome for Council.

3.4.2 Expression of Interest (EOI)/Tender

An EOI or Tender is appropriate in circumstances where, in addition to Disposal of the Land, Council wishes to guide the future use or development of the Land in line with its strategic vision or other identified plans (e.g. economic development, housing affordability strategies, community services programme delivery, etc.).

The marketing/offer of the Land by EOI/Tender is to be conducted substantially in accordance with Council's Code and Procedures Relating to Tenders and Contracts adopted pursuant to section 333B of the Act including consideration of the following matters:

- If Council has a desired development outcome for the Land, the EOI/Tender must include details of the proposal.
- Potential purchasers/service providers may be invited, but not limited, to provide details of:
 - A design concept;
 - Environmental, community or employment outcomes; or
 - To make a commitment to enter into an agreement to develop the land in accordance with the Council's desired outcome.
- Any valuation obtained to support the proposed Disposal of Land through an EOI/Tender process is to take into account the desired development outcome for the Land as set out in the EOI or Tender.

- The reserve price for the Disposal of Land is to be set before the receipt of offers and must remain confidential to ensure the integrity of the sale process.

3.4.3 Direct Negotiation, Exchange, Donation or other Transfer of Land

Disposal of Land direct to a third party other than by private treaty or through an EOI process carries a high risk of perceived lack of transparency. However, there are times community benefit outweighs the advantage of Council owning and managing Land or Disposal of Land through a different process. Therefore in limited circumstances, whereby this benefit can be demonstrated and documented, there may be times when it is prudent to pursue.

For the purposes of guidance examples include:

- Gifting land to achieve a desirable community outcome (for example, Aboriginal land hand-back, conservation covenants, etc.)
- Use by another government agency or utilities for the purpose of infrastructure or service delivery including agreement for transfer of Land where the *Land Acquisition Act 1993* may apply
- Council is bound by a contractual obligation; for example, Council may have obligations under a contract that provides the other party with a right of first refusal, an option to purchase or an option to lease
- Attempts at sale through private treaty and public auction have failed
- Total cost of the public sale process will exceed the expected community benefit (e.g. land is worth \$1,000 and the cost to market the land is \$5,000)
- The intended purchaser owns land adjoining the Land including the sale or exchange involves a boundary adjustments to facilitate correction of historic encroachments or to dispose of portions of land that are not required to support the current or future intended use of the land as a whole that could not otherwise be sold as a separate lot on the open market.
- The Land the subject of the proposed Disposal is of such a size or type, due to zoning or historic title or being a Road Title not otherwise required for road or access purposes, that it is not suitable or appropriate to be sold as a separate lot on the open market and may be offered to adjoining landowners for adhesion.
- The intended purchaser is an existing Lessee or occupier of the land and is a Sporting and Community Organisation or Community Based Business as defined in the Council's Lease Policy or State Government Department that has a strong historical and/or social, recreational or service delivery ties to the Land they use.
- The intended purchaser has contributed cash or in-kind to the development of the Land.
- The intended purchaser owns permanent approved structures on the Land.

Where the Council resolves to Dispose of Land under this Clause then the reasons for doing so under this clause will be stated within the Report presented to Open Council only excluding those matters properly considered in Closed Council pursuant to Regulation 15 of the *Local Government (Meeting Procedures) Regulations 2015*.

3.4.4 Other Disposal Methods

Notwithstanding Clauses 3.4.1, 3.4.2 and 3.4.3, the Council may Dispose of Land by public auction or public tender where it can be demonstrated that this will bring the best returns for the Council and the community and this is supported by external real estate advice as to the recommended course of action.

3.5 Engagement

The Council acknowledges that the community has an attachment to land owned by the Council. Irrespective of statutory definitions Council land is seen as public land and Council is the owner of land for the benefit of the community. Community engagement may still be needed even if not a statutory requirement. This is to take account of the views, needs, issues and aspirations expressed by the community balanced with strategic planning and further influences such as budgetary and legislative constraints.

Council will therefore consider engagement in relation to proposals for the Disposal of Land as follows:

3.5.1 Disposal of Public Land

Engagement for proposals for the Disposal of Public Land will be undertaken in accordance with the requirements of section 178 of the *Local Government Act 1993*. In addition to matters to be taken into account under the Act the Council will also consider the matters set out in the Considerations in Clause 3.3 and this Policy.

3.5.2 Disposal of Ordinary Land and Trust Land

There is no statutory requirement for the undertaking of Community Engagement for the Disposal of Ordinary Land or Trust Land however, there are times when it may prove desirable or necessary. The Council's Community Engagement Framework guidelines are used to evaluate the necessity of such a process and how to implement.

As a guide, in deciding whether Community Engagement is necessary, the following should be considered:

- Is there a history associated with the project or a known issue that may impact on the situation?
- Does the sale have the potential to become highly politicised?
- Is there an opportunity to build or maintain a positive relationship through engaging proactively and openly with a section of the community?
- Is there a chance that there will be considerable public outrage if the community is displeased with, or feels no ownership over, the outcome?
- Is there opportunity for stakeholders to influence the project or its outcome?

Where it is determined that engagement is unnecessary the Land may be disposed of in accordance with the Procedures set out in Clause 5.6.

Any feedback received during any engagement is to be considered by the Council prior to making any decision to Dispose of Land taking into account the matters set out in the Considerations in Clause 3.3 and this Policy.

3.6 Use of Funds

In accordance with the Land Strategy and Resolution of the Council funds received from the Disposal of land will be allocated to the Land Strategy Fund as a matter of first principle to fund the future purchase of strategic land and assets.

Funds received from the sale of land that is public open space within the meaning of the *Local Government (Building and Miscellaneous Provisions) Act 1993* will be allocated to the Trust held under section 117 of that Act

4. Application:

4.1 Application

This Policy applies to all Council owned land under Sections 177, 178 and 181 of the Act.

4.2 Non Application

This Policy does not apply to the sale of land for unpaid rates pursuant to section 137 of the Act.

5. Procedures:

Sale of Council Land will be undertaken in accordance with the following Procedures:

5.1 Land Assessment and Review

All Land will be reviewed on an Annual basis for its current and future required operational or strategic purpose having regard to the Considerations in Clause 3.3, where applicable.

Following the Assessment and Review the Land will be identified as one of the following:

- Required (leave as currently operating);
- Required but subject to modification (e.g. develop, subdivide, boundary adjustment, create right of way, seek lessee, etc.); or
- Not required for current or future Council or community purposes.

Land that is identified as not required for current or future Council or community purposes will be considered for Disposal in accordance with this Policy.

5.2 Valuation and Disposal Method

Before commencing with the Disposal of Land process Council must obtain an independent valuation, no more than twelve (12) months prior to the proposed Disposal.

The Valuation will be considered by the Council when determining the proposal to Dispose of Land and directions associated with setting of reserve or negotiated price considerations.

5.3 Disposal of Public Land: Community engagement requirements

Community engagement is to be undertaken and considered in accordance with the requirements of section 178 of the Act.

5.4 Disposal of Ordinary Land and Trust Land: Community engagement considered

Where an engagement process is undertaken at Consult level in accordance with the Community Engagement Framework in relation to proposals for Disposal of Ordinary Land and Trust Land, engagement must include:

- An advertised Notice of 21 day engagement period.
- A Notice specifying any relevant information, as a minimum:
 - Specific location of land and a map,
 - Legal information,
 - Full disclosure of any known risks or legacy issues (such as asbestos) relating to the land,
 - The proposed method of disposal,
 - Proposed timeline,

- How to make provide feedback, and
- How to contact Council.
- The Notice is to be placed on the Land subject to the proposed Disposal.

5.5 Decision

Where the Council has undertaken engagement in accordance with this Policy and the Council has resolved not to Dispose of the Land, the purpose and reason for doing so and retaining the Land are to be recorded in the Council's decision.

The Land will then be set aside for that purpose with directed action to address the issues that prompted the proposal for Disposal of the Land. The Land will be listed for consideration for budget funding and resources where required and not currently funded within existing Council programs.

The Land is to be included in Land Assessment and Review undertaken under Clause 5.1 until its future use has been determined.

Where the Council has undertaken engagement in accordance with this Policy and resolved to Dispose of the Land, or has otherwise resolved to Dispose of the Land without undertaking engagement, the Land will be Disposed of in accordance with the Council decision and the processes set out in Clause 5.6.

5.6 Disposal Process

The process for each Disposal Mode is as follows:

5.6.1 Private Treaty

5.6.1.1 *Agent*

Where Disposal of Land is by private treaty it will be undertaken through engagement of a Real Estate Agent through a Request for Quotation process based on the following criteria:

- Type of property to be marketed
- Relevant experience
- Proposed commission
- Necessary licences/accreditation.

Quotations will be obtained from all Real Estate Agents with principal offices based within the Huon Valley.

5.6.1.2 *Notification*

14 days prior to the Land being put onto open market Council is to notify the community of the intended Disposal by placement of a notice on the Council's website and on the Land to advising that:

- The Council intends to sell the Land;
- Details of the Land to be sold;
- The appointed Real Estate Agent;
- The date the Land will be on market; and
- Any other relevant information.

The purpose of the notification is to make the community aware of the upcoming sale of the Land. It is not otherwise an engagement process and no correspondence will be entered into once the Council's decision is being implemented.

5.6.1.3 Arms-Length

Sale of Land will be entirely at arms-length from the Council. Once notification has been provided under Clause 5.6.1.2 any enquiries regarding the Land to be sold are to be dealt with only through the nominated Real Estate Agent.

Enquiries will not be received by any Councillor, General Manager or any Council Employee.

5.6.1.4 Offer

Once on the market no offer shall be accepted until the Land has been on the market for a minimum of 7 days.

5.6.1.5 Sale Period

If the Land is not sold within 6 months of the date of listing, the valuation and method of sale are to be reviewed and the General Manager may:

- Continue as is for a further 6 months,
- Negotiate to sell for a lower value,
- Change method of sale.

If land is not sold after 12 months the Land will be included in the assessment and review undertaken in clause 5.1.

5.6.2 Expression of Interest (EOI) and Other Disposal Methods

5.6.2.1 Notification

14 days prior commencement of the EOI, Tender period or auction Council is to notify the community of the intended EOI, tender or auction by placement of a notice on the Council's website and on the Land to advising that:

- The Council intends to sell the Land by EOI, tender or auction;
- Details of the Land to be sold;
- Brief details of the purpose of the EOI, tender or auction;
- Details of when the EOI or tender will be commenced or when the auction is to be held; and
- Any other relevant information.

5.6.2.1 EOI Period

If no EOIs or tenders are received during the EOI or tender period or the Land is not sold at auction and agreement is unable to be reached with a preferred purchaser/service provider the matter will be referred to the Council for a decision taking into account this Policy and the particular circumstances of each case.

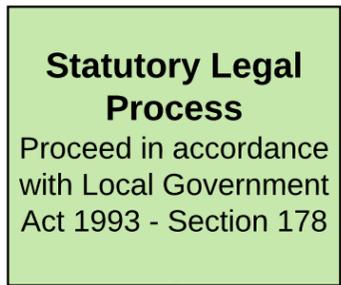
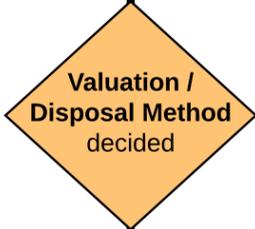
5.6.3 Direct Negotiation, Exchange, Donation or other Transfer of Land

5.6.3.1 Notification

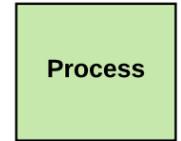
Notification of Disposal of Land by direct negotiation, exchange, donation or other transfer of Land will be considered by the Council at the time of making the decision taking into account the particular circumstances of each case.

5.6.3.2 Negotiation Period

If the Land is not sold after 12 months the matter will be referred to the Council for a decision taking into account this Policy and the particular circumstances of each case.



Is land classified as
public land?

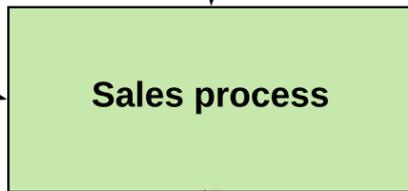
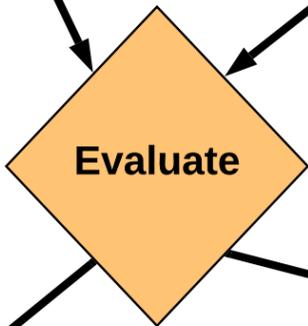


Yes No

Recommended



Proceed



Do Not Proceed

Proceed

