

POLICY LOCATION	Infrastructure and Delivery	POLICY TITLE	Sale of Land
POLICY NUMBER	CA37	DATE ADOPTED	9 Nov 2022
REVISION NUMBER	1	REVISION DATE	Nov 2026

Purpose

The purpose of this Policy is to outline Council’s policy position on the sale of Council Land within the municipal district to ensure the process is conducted in a lawful, transparent, and equitable manner.

This Policy provides guidance to the Council on the considerations which are to be taken into account when determining whether the sale of Council land should be pursued and establishes a framework for Council decision-making to provide the best result, both financial and non-financial, for the Council and the community.

This Policy has been prepared in recognition of the *Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land* dated June 2009 which remains the current authority on best practice principles for the sale, exchange, and transfer of land within the sector.

Scope

This Policy applies to all Council land, including buildings located on that land which are owned by the Council. This Policy does not apply to Crown Land including Crown Land for which Council is the appointed Committee of Management.

The discontinuance and sale of roads is carried out in accordance with clause 3, Schedule 10 of the *Local Government Act 1989*.

Definitions

Within this Policy –

Act means the *Local Government Act 2020*

Council Land means land which is owned by the Council

Guidelines means the *Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land* dated June 2009

Policy Statement

The primary consideration in the proposed sale of Council land is achieving the best outcome for the local community, taking into account future generations. Whilst the promotion of health and well-being within the community is an important objective, this must be balanced against the requirement for the Council to manage its finances responsibly and achieve strategic and operational objectives.

Guidelines

In order to promote good governance, the Council must in the performance of its role give effect to the overarching governance principles contained within section 9 of the Act.

These principles require Council to act lawfully, to prioritise achieving best outcomes for the community and to ensure the ongoing financial viability of the Council.

Specific Legislative Considerations

The sale of Council land must be undertaken in accordance with section 114 of the Act which provides that before selling or exchanging land, the Council must -

- (a) at least 4 weeks prior to selling or exchanging the land, publish notice of its intention to do so –
 - (i) on the Council's Internet site; and
 - (ii) in any other manner prescribed by the regulations for the purposes of this subsection; and
- (b) undertake a community engagement process in accordance with its community engagement policy; and
- (c) 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.

Public notification must be informative, ensuring that the subject land is clearly identified and the manner in which engagement activities are to be undertaken is clearly explained.

Legislative exemptions

Section 116 of the Act provides that Council has the power to transfer, exchange or lease any land, either with or without consideration to –

- (a) the Crown
- (b) a Minister
- (c) any public body
- (d) the trustees appointed under any Act to be held on trust for public or municipal purposes or
- (e) a public hospital within the meaning of the *Health Services Act 1988* or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society –

without having to comply with the public notification and community engagement obligations required under section 116.

Where Council transfers, exchanges, or leases land to a party other than those listed above, the Council is still required to comply with section 114 of the Act.

Sale of Council Land Considerations

The sale of Council land is a significant decision which requires a thorough and detailed assessment to be undertaken prior to commencing the sale process.

It is Council's stated Policy position that all Council land is to be retained, subject to the following exceptions –

- (1) the land is surplus to the Council's needs and is of no current or future utility, having no strategic or operational significance to Council
- (2) the land does not support, facilitate, or contribute to current or future strategic objectives having regard to the Long-Term Community Vision and Council Plan, or other strategic documents
- (3) the sale of the land will generate positive social, health-related, economic, or commercial outcomes for the local community which supports the divestment of the land
- (4) there is no tangible net benefit to the community by Council retaining ownership of the land or
- (5) the financial cost to the Council to retain ownership of the land presents as a liability and the revenue generated from the sale of the land could be diverted toward other municipal projects.

Unless there is a tangible net community or social benefit that will be realised from the sale of the land, Council must not offer land for sale at a price which is less than the current market value as assessed by a valuer and ensure (where practicable) that land is appropriately zoned prior to sale to achieve best value and to ensure that the ultimate use of the land is determined.

Circumstances that would justify a sale of Council Land for a price that is less than the current market valuation include –

- Achieving development outcomes
- Achieving employment outcomes
- Meeting educational, medical, housing, or other social objectives
- Meeting Council's strategic goals or
- Other exceptional circumstances

Reporting to Council

Before the statutory process for the sale of Council Land commences, a Report is to be provided to Council which outlines the following matters –

- Description of the land including the current use
- The estimated current market value of the land
- The reason for the proposed sale
- Recommended method of sale
- Timelines for sale and
- Any other relevant matters

If it is proposed that the land is to be sold for less than market value, the Report must explain the rationale for doing so.

Council approval is then required prior to commencing the statutory process under the Act.

Once the statutory process has been completed, and a meaningful and robust community engagement process has been undertaken, the matter should return before Council or a delegate of Council for a final decision on the proposed sale of the Council land.

Method of Sale

In order to ensure transparency, the sale of Council land must be conducted through a public process, unless exceptional circumstances warrant sale by private treaty.

The method of sale that is recommended will be determined having regard to the nature of the Council land, applicable market conditions and any restrictions affecting the land.

The following sale methods may be considered:

- Sale by Auction
- Sale by Public Tender
- Sale by Expression of Interest or
- Sale by Private Treaty

Sale of Public Open Space

In accordance with section 20(4) of the *Subdivision Act 1988*, public open space may only be sold by the Council if a replacement of that public open space is provided.

The Council must also use the proceeds from the sale of public open space to:

- Buy land for use for public recreation
- Improve land already set aside for use for public recreation or
- With Ministerial approval, improve land (whether set aside or not) used for public recreation

Use of Proceeds from Sale of Council Land

Except for the proceeds generated from the sale of public open space, proceeds from the sale of Council land must be received by the Council prior to the determination of the expenditure which is to be used for either –

- the acquisition of new assets or
- the enhancement of existing assets

The sale proceeds must not be utilised for recurrent or operational purposes.

References

- *Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land 2009*

- *Local Government Act 2020*
- *Local Government Act 1989*
- *Subdivision Act 1988*
- *Valuation of Land Act 1960*
- Council's Community Engagement Policy