COUNCIL PROPERTIES - POLICY - Disposal of Surplus Council Land and Buildings

POLICY

Council is committed to:

a) Ensuring that all disposals of Council land and buildings are in accordance with the Local Government Act and Roads Act
b) Ensuring that Council's assets are utilised to their full potential for the benefit of the Upper Hunter Shire community
c) Establishing processes which demonstrate good governance
d) Properly reviewing future land requirements before designating any land as "surplus"
e) Optimising Council revenue from the sale of surplus land

Objective

To provide a transparent and accountable process for the disposal of Council's Surplus Land parcels.

Procedures/Practice

1. Other Legislative Requirements

   Local Government Act 1993:
   - Under s45(1) Council has no power to sell, exchange or otherwise dispose of land classified as community land.
   - Under the Act, there is no restraint on Council's ability to sell or otherwise dispose of land classified as operational land.
   - Section 377(1)(h) Local Government Act 1993 requires a specific resolution of Council to dispose of any land. The decision cannot be delegated.

   Roads Act 1993
   - Council public roads are owned by Council in *fee simple* and include all roads within the Council area excepting for Crown public roads and motorways under the control of the Roads and Maritime Services. Council roads must first be formally closed before they can be sold.
   - The disposal of land under the Roads Act 1993 will proceed under the provisions of Divisions 1, 2 and 3 of Part 4 of the Act.
   - Disposal of closed roads requires a resolution of Council.
   - All proceeds from the sale of closed roads must be utilised for roadwork purposes.

Before surplus land is sold it must comply with the following criteria:

- All matters relating to the development and servicing of the Surplus Land shall be identified and made known in writing to the selling agent.
- All legal requirements such as easements or caveats will be identified and be in place or be required to be granted.

2. Definitions

For the purposes of this policy:
‘Land’ - all real property whether vacant or improved and which is classified as operational land pursuant to Section 25 Local Government Act 1993.

‘Non-marketable’ – a parcel of surplus land of a size, configuration, location, or development/use restriction which renders it unsuitable for development.

‘Surplus’ - any land identified as not required for Council’s strategic requirements in the foreseeable future and which is not otherwise suitable for development by Council eg. Council’s subdivisions or airpark lots.

3. Identification of Surplus Land

3.1 Council will identify all freehold land that is owned by Council and classified as operational.
3.2 From the stock of land identified in 6.1, Council will identify that land that is Surplus Land.
3.3 The decision to sell Surplus Land will be taken by resolution of Council after considering its future requirements for the land. The decision may be initiated by budget requirements, by a desire by Council to maximise the benefit it derives from its assets or by a one-off approach from a prospective buyer.
3.4 Before Surplus Land is sold it must comply with the following criteria:
   a) all matters relating to the development and servicing of the Surplus Land shall be identified and made known in writing to the selling agent.
   b) all legal requirements such as easements or caveats will be identified and be in place or be required to be granted.
   c) its value must be determined via a Valuation.
   d) if the valuation is greater than $250,000 a second valuation is to be obtained.

4. Valuation Process

Formal market valuations of surplus land prepared by a valuer registered to value such a property is required to be commissioned prior to all disposals (with the exception of non-marketable land parcels). A valuation must clearly indicate:

- The purpose of the valuation as “disposal”
- The basis of valuation being “market value highest and best use”, unless an alternative basis is considered more appropriate
- 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 any negotiations) and comments on marketability, appropriate method of disposal & any opportunities to add value
- Any actual or perceived conflict of interest the valuer may have in undertaking the valuation

Upon receipt, an internal review of the valuation is to be undertaken, with specific attention to:

- Valuation rationale
- Method of valuation
- Calculations and sales evidence used

5. Method of Disposal

An open competitive process is the preferred process for the disposal of all surplus land, excepting non-marketable land. As such, Council should seek one of the following methods of disposal taking into account market strength & other economic community and social conditions which may limit the full realisation of the value of the surplus land:

- Expressions of interest – where land involves unusual properties capable of a variety of development which would otherwise make valuation difficult.
- Tender – for high value property
- Auction – the preferred method of disposal for all land other than non-marketable land.
- Private treaty – in the event that a property is not sold at auction, Council may:
i. Directly negotiate a sale itself by advertising the property for sale at the valuation price; or

ii. Call for expressions of interest from local real estate agents which address criteria – see below.

In disposing of surplus land and buildings, Council should provide 25 days’ notice of its intention to do so and seek the community’s feedback before proceeding with any disposal.

A non-competitive process of direct negotiation may be adopted in regard to land (including non-marketable land), subject to clearly documented reasons and after the adoption of risk mitigation measures, which may include:

- Obtaining two valuations – if the property is valued in excess of $50,000
- Making equal offers to all adjoining land owners
- Pre-establishing a range for negotiation based on the two valuations
- A heightened standard of disclosure of conflicts of interest of all parties
- The imposition of conditions on the Contract of Sale such as the purchaser bearing all costs associated with the consolidation of titles or involving the recovery of all Council costs from the purchaser on settlement.

6. Disposal of Non-Marketable Land

6.1 Non-marketable land may be sold by negotiation or by an advertisement for offers. Council may determine a sale price for such land.

6.2 If Council resolves to sell land for a price less than the price determined by either method, the reasons for this are to be recorded in the Council Resolution.

7. Disposal by Auction

An auctioneer will be selected by the General Manager from expressions of interest called by Council which should address criteria including: remuneration, experience, marketing proposals & success rate.

Any auction involving the disposal of land must include a reserve which is set so as to adequately reflect the valuation.

8. Disposal by Real Estate Agents

Real estate agents will be selected by the General Manager from expressions of interest called by Council which address criteria including commission, experience and marketing proposals.

Two (2) agents are to be selected and any listing is to be:

- For sale at a price having regard to the valuation; and,
- For a period of up to six (6) months following the property passing in at Auction.

In the event that the property remains unsold at the end of that period then the property is to be withdrawn from the market for a period of at least 6 months.

Should Council resolve to allow the land to be sold by an agent or by negotiation for a price less than the Valuation, the reasons for this are to be recorded in the Council Resolution.

9. Proceeds of Sale

9.1 The net proceeds from all sales of Council real estate assets, other than closed roads, will be paid into the Property Disposal Internal Restrictions (Reserve).

9.2 Funds in the Reserve are to be utilised only for the acquisition of other income generating or capital improvement assets.

9.3 Any costs associated with the relocation of facilities from any site proposed to be sold, and costs associated with making a site ready for sale, may be financed, or reimbursed, from the ultimate proceeds of sale of that site.
References

- This policy was adopted by Council at its meeting on 26 June 2017, and replaces that of the same title adopted on 26 October 2015.
- It also replaces the policy COUNCIL PROPERTIES – Acquisition and Disposal – Real Estate Agents which is no covered under Section 8 of this Policy.

Review Date

June 2021, by the Director Operations.

Authorised by: .................................................................
Waid Crockett, General Manager  28/6/17

Date