

Real Estate Disposal Policy & Procedure

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AUTHORITY	General Manager
CONTACT OFFICER	General Manager

1 PURPOSE

- 1.1 Council is committed to ensuring an open, fair, transparent and accountable process in the disposal of Council's real estate assets, whilst obtaining best value for money and avoiding any conflicts of interest, whether real or perceived.

2 SCOPE

- 2.1 This Policy is to provide clear guiding principles for the disposal of Council real estate (land and buildings). A probity plan is inherent in this policy for ensuring overall fairness and integrity in the disposal of Council's assets.
- 2.2 This Policy applies to all elected members and Council Officers of Forbes Shire Council.

3 DEFINITIONS

- 3.1 For the purposes of this policy, the following definitions apply:

Term	Definition
Act	<i>Local Government Act 1993 (NSW)</i>
Real Estate	Includes land as a physical entity including buildings, structures or improvements to land or land covered by water or a strata lot or unity. Land also includes a legal estate or interest such as a leasehold estate.
Council Officers	All staff
Elected Members	Mayor and Councillors

4 POLICY STATEMENT

Council's disposal of asset-related activities shall be conducted in a manner that complies with these general Policy statements:

- 4.1. Disposal of real estate will be consistent with Council's economic, social and/or environmental objectives.
- 4.2. At all times, the disposal of land will be conducted in a manner that maximises returns whilst ensuring open and effective competition.
- 4.3. Generally, Council will dispose of real estate through adoption of the following practices: public tender; public auction; expressions of interest; trade-in; direct sale or transfer (see cl. 7 Disposal of Real Estate). Disposal methods will be determined at the discretion of Council.
- 4.4. Council shall strictly implement its Model Code of Conduct, Statement of Business Ethics and other relevant policies on matters relating to its disposal of real estate asset.
- 4.5. Commercial confidentiality will apply to negotiations for disposal of real estate asset transactions unless Council determines otherwise.
- 4.6. All Councillors and employees of Council are required to consistently adhere to this Policy and relevant Procedures. Appropriate remedial action may be taken for non-compliance.

5 DELEGATION

As per s. 377 (1) (h) of the Local Government Act 1993, Council must not delegate the function of “sale, exchange or surrender of any land or other property”.

6 UTILISING THE SERVICES OF AN AGENT FOR DISPOSAL OF COUNCIL ASSETS

Council will enlist all its real estate assets for sale with all licenced real estate agents in the Forbes Local Government Area (LGA). Additionally, Council will advertise all its real estate assets for sale on its own website. There is a standing invitation to all real estate agents to enter into conjunctive agreement for sales of Council’s real estate assets.

If the real estate agent introduces and has carriage of the closure then Council, as the landowner and Principal party of the conjunctive agreement, gives the real estate agent, as the secondary party, the right to sell the real estate and agrees to share the commission.

7 DISPOSAL OF REAL ESTATE

No real estate is to be disposed of without the approval of Council. The proposed disposal must be undertaken in compliance with this Policy and supported by a special report that covers the reasons for recommending disposal.

Council may resolve to dispose of real estate with a blanket or over-riding resolution for multiple lots such as for a land development estate where the General Manager is delegated to negotiate a sale price with an allowance that the sale price be no less than 10% below the identified independent market valuation.

Issues Council may be required to consider when disposing of real estate include:

- i. The number of known potential purchasers;
- ii. The original intention for the use of the land or asset when purchased, where relevant;
- iii. The current and possible preferred future use of the land or assets;
- iv. The existence of local purchasers;
- v. The opportunity to promote local economic growth and development;
- vi. The total estimated value of the sale;
- vii. Urgency of the sale; and
- viii. Compliance with statutory and other obligations.

This Policy applies to the disposal of all Council owned real estate only. It does not cover the sale of land for recovery of unpaid rates as this is not Council owned land.

7.1 Method of Disposal of Real Estate

The disposal method chosen must be appropriate to the situation and promote fair and effective competition to the greatest extent possible. Where practical, a competitive disposal method should be selected. Disposal methods authorised by Council are:

7.1.1 Public Tender

Tendering for the disposal of real estate may be conducted in accordance with the same key principles as Council's Conditions of Tendering Policy. In general, the process will be as follows:

- i. Preparation of tender;
- ii. Public advertisement of the sale;
- iii. Close and evaluate tenders with the utmost probity; and
- iv. Accept the highest tender, provided that it meets or exceeds the reserve price.

Should the reserve price not be attained by tendering, a sale can be effected by either:

- i. Revising the reserve price; or
- ii. Negotiating with the preferred tenderer.

7.1.2 Public Auction

Public auction maximises the opportunity for public participation in the disposal process and is the appropriate method when:

- i. There is a high public interest in the properties being offered;
- ii. Alternative disposal methods are unlikely to realise higher revenue; and
- iii. The costs associated with the auction can be justified in relation to the expected revenue from the sale.

The process for conducting the auction should normally be:

- i. Obtain competitive quotes on a commission basis from potential auctioneers; and
- ii. Select an auctioneer based upon:
 - a. The commission rates;
 - b. Whether the auctioneer is licensed; and
 - c. The past performance and/or industry reputation of the auctioneer.
- iii. Prior to the auction ensure the auctioneer is aware of the reserve price.

7.1.3 Sale at a pre-determined or negotiated price

This covers situations where Council is selling real estate that has been developed for the purpose of resale.

- i. The land and prices will be publicly advertised;
- ii. Offers to purchase will be received at any time in writing and may be required to be accompanied by a non-refundable deposit;

- iii. Offers lower than the advertised price will be considered by Council; and
- iv. Any decision to sell must be approved by resolution of Council.

7.1.4 Sale of Transfer to Other Agencies

There may be occasions when Council may consider selling or transferring real estate to a community or charity organisation that is currently the tenant of that property. The following factors must be considered in such cases:

- i. The revenue that could otherwise be realised through a sale or auction;
- ii. Savings in maintenance, insurances, etc. that may be made;
- iii. The costs of donation or disposal compared to the benefits;
- iv. The credibility and reputation of the charity or organisation; and
- v. Realisation of rate revenue.

The following processes must be followed:

- i. The cost of property transfer must be borne by the recipient;
- ii. All records of the process must be retained for audit purposes;
- iii. Council's contribution must be acknowledged by the recipient in line with Council's Community Funding Program.

7.2 Effecting the Disposal of Real Estate

In effecting the disposal of Council real estate, the following procedure will be followed.

7.2.1 Obtaining Approval

The decision to accept an offer to purchase a Council property must be approved by resolution of Council.

7.2.2 Valuation

Any Council real estate offered for disposal by whatever method shall first be assessed by a Registered Real Estate Valuer. The valuation provided shall become the reserve price for the property. The only exception to this requirement is situations where the price for lots has been fixed based on development costs and profit margins.

7.2.3 Property Transfer Costs

In general, property transfer and legal costs will be borne by the purchaser unless otherwise determined by Council resolution.

7.2.4 Informing Internal Interested Parties

It is the responsibility of the relevant Director or Manager to inform Council's Finance and Insurance Officers that a property has been disposed of, to ensure Council's asset register is updated and Council's insurers are advised.

7.2.5 Evaluation of Disposal Process

Each disposal of real estate transaction must be reviewed to see if it has achieved its desired outcome. In particular, the responsible Director or Manager should determine whether the disposal:

- i. Achieved value for money;
- ii. Was carried out in an open, fair and appropriate manner; and
- iii. Whether the valuation/s and cost of administering the disposal were accurate.

8 DOCUMENTATION OF ASSET DISPOSAL PROCESSES

Documentation detailing decisions made on asset disposal is to be archived in Council's records management system by the relevant Director or Manager. The finance personnel within the Corporate Services Department are to be informed by the relevant Director or Manager of the disposal of an asset and relevant details in order that the assets register can be updated and accounting treatments for disposed assets effected.

Where a Councillor or Council employee, or member of their immediate family, purchase an asset from Council, the General Manager is to countersign the documentation that specifies the price paid for the asset and the method used in determining the price paid.

9 SALES TO COUNCILLORS AND EMPLOYEES OF COUNCIL

Members of the public must be provided with the opportunity to compete for the purchase. However, it is recognised that on occasion there may be circumstances where sale to a Councillor or employee of Council in their capacity as a private citizen. In these instances, the General Manager is to document all decisions, and reasons for such decisions, in relation to the asset disposal.

10 CONFLICT OF INTEREST

Councillors and Council officers involved in the disposal of assets are responsible for disclosing any actual or perceived conflicts of interest that may arise in the performance of their duties. All perceived and actual conflicts of interest are to be referred to the General Manager.

The following steps are to be undertaken as part of any asset disposal process to minimise any potential conflicts of interest.

- i. Ensure that applicants are required to disclose any conflicts of interest known to them at the time of submission of their tender/expression of interest/direct offer etc.
- ii. Ensure that any conflicts of interest of Councillors are disclosed during the process of evaluating any tenders/expressions of interest/direct offers etc. lodged by applications.
- iii. Ensure that the requirements of the Local Government Act 1993 are met in relation to any decisions of Council concerning the process.

Further to this, Council should ensure that the assessment of tenders/expression of interest/direct offer etc. are undertaken by a panel of Council officers who otherwise have no involvement in the tender/expression of interest/direct offers etc. process and do not have a conflict of interest.

11 VARIATION

- 11.1 Council reserves the right to vary the terms and conditions of this policy subject to a report Council.

Revision History

Version	Adoption Date	Authorised by	Approved by	Revision Date
V1	19/4/2018	General Manager	Council	19/4/2020

Change History

Version	Change Details
V1	Initial Policy

Related Documents

Title

Local Government Act 1993
Model Code of Conduct Policy
Statement of Business Ethics
Conditions of Tendering Policy
Asset Disposal Policy and Procedure
Community Funding Program Policy