



DISPOSAL OF LAND AND ASSETS AND ACQUISITION OF LAND POLICY

1. PURPOSE

The purpose of this policy is to establish a framework of broad principles relating to the Disposal of Assets and Land including Unsolicited Requests from a third party to purchase land and the Acquisition of Land. This Policy incorporates Council's approach to recouping administrative costs that it incurs when it considers a request by a third party to purchase council land, in particular Roads, walkways and Community Land.

The existence of this policy will assist with ensuring a consistent, fair, transparent and accountable approach is maintained and all third-party applications are treated fairly and equitably.

This policy provides guidance for the Disposal of Land and Assets and the Acquisition of Land.

2. POLICY

2.1 Exclusions

The following matters are not intended to be covered by this policy because Council has other more relevant policies in place to manage these matters:

- (a) Land sold by Council for the non-payment of rates – this is managed by Council's Late Payment and Sale of Land for Non-Payment of Council Rates Policy.
- (b) Easement creation, alteration and extinguishment – this is managed by Council's Easements Management Policy.
- (c) Management or maintenance of Assets – these are covered by Council's Asset Management Plans.
- (d) Purchase of Assets, other than Land - this is managed by Council's Procurement Policy

2.2 Principles

Council must have regard to the following principles in its Disposal of Land and Assets and the Acquisition of Land:

- (a) Open and effective competition
- (b) Value for money considering:
 - i. Objectives for the sale at the outset of the process (eg to obtain best price, desired community objectives)
 - ii. Contribution to Council's long-term financial plans and strategic management plans
 - iii. Efficiency and effectiveness
 - iv. Costs of various Disposal Methods and Acquisition
 - v. Internal administration costs
 - vi. Risk exposure
 - vii. Value of any associated environmental benefits
- (c) Ethical behaviour and fair dealing – Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations
- (d) Probity, accountability, transparency and reporting
- (e) Compliance with all relevant legislation and other obligations
- (f) Opportunities to enhance local economic development and growth
- (g) Other relevant factors deemed appropriate by Council or the CEO.

2.3 Considerations Prior to Disposal of Land and Assets and Acquisition of Land

2.3.1 Decision to dispose of land

Any decision to dispose of Land and Assets or acquire Land will be made after considering (where applicable):

- (a) The usefulness of the Land or Asset
- (b) The intention for the use of the Land
- (c) The current market value of the Land or Asset
- (d) The total estimated value of the Disposal and Acquisition
- (e) The annual cost of maintenance
- (f) Any alternative future use of the Land including the inclusion of affordable housing
- (g) The number of known potential purchasers of the Land
- (h) Any duplication of the Land or Asset or the service provided by the Land or Asset
- (i) Any impact the Disposal or Acquisition of the Land or Asset may have on the community
- (j) Any cultural or historical significance of the Land or Asset
- (k) The positive and negative impacts the Disposal of the Land or

- Asset may have on the operations of the Council
- (l) The long-term plans and strategic objectives of the Council
 - (m) The remaining useful life, particularly of an Asset
 - (n) A benefit and risk analysis of the proposed Disposal
 - (o) The results of any community consultation process
 - (p) The opportunity to promote local economic growth and development
 - (q) Any restrictions on the proposed Disposal and Acquisition
 - (r) The content of any Community Land management plan
 - (s) Delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the Disposal or Acquisition
 - (t) Potential revenue from sale – impacted by topography and physical attributes including above and below ground infrastructure; and current property market
 - (u) Preferred development outcomes such as housing density and development design
 - (v) Compliance with statutory and other obligations
 - (w) Any potential land contamination or remediation costs
 - (x) Any other relevant policies of the Council.

2.3.2 Method of Disposal

The Council will (where appropriate) dispose of Assets or Land through one of the following methods:

- (a) Open market sale – advertisement for Disposal through the local paper and where appropriate, a paper circulating in the State, or by procuring the services of a licensed real estate agent and/or auctioneer.
- (b) Expressions of interest – seeking expressions of interest from buyers.
- (c) Selected tender – seeking tenders from a selected group of persons, companies, organisations, or other interested parties.
- (d) Open tender – openly seeking bids through advertisements, tenders, including public auction.
- (e) By negotiation – with owners of land adjoining the Land or others with a pre-existing interest in the Land or Asset, or where the Land or Asset is to be used by a purchaser (such as in the

case of an Unsolicited Request) whose purpose for the Land is consistent with the Council's strategic objectives.

- (f) Direct sale – advertisement for sale and the nature of the advertisement i.e. public notice, local paper etc.
- (g) Joint Venture (in the case of Land) – where Council may partner with a developer to achieve particular outcomes such as a greater return on investment, design outcomes or specific benefits to the community.
- (h) Trade-in, especially for plant and equipment replacement.
- (i) Auction or charity – such as in the case of second-hand office furniture and equipment, this can include an invitation for staff to purchase the furniture or equipment where Disposal costs are likely to exceed the amount offered by staff.
- (j) Other means as deemed appropriate by Council or the CEO (within his or her delegated authority).

2.4 Key principles for Disposal of Land, Roads and Community Land

2.4.1 Land

Council may resolve to dispose of land.

- (a) Pursuant to section 201(2)(b) of the *Local Government Act 1999*, where the land forms or formed a Road or part of a Road, the Council must ensure that the Land is closed under the *Roads (Opening and Closing) Act 1991* prior to its Disposal.
- (b) Where Land is classified as Community Land, the Council must:
 - i. Undertake public consultation in accordance with the Act and Council's Community Engagement (Public Consultation) Policy
 - ii. Ensure that the process for the revocation of the classification of Land as Community Land has been concluded prior to its Disposal
 - iii. Comply with all other requirements under the Act in respect of the Disposal of Community Land.

- (c) Where Council proposes to dispose of Land through the grant of a leasehold interest, the Council must have complied with its obligations, including its public consultation obligations, under section 202 of the Local Government Act.
- (d) The Council will not dispose of Land to any Council Member or employee of the Council who has been involved in any process related to a decision to dispose of the Land and/or the establishment of a reserve price.
- (e) If Land is to be auctioned or placed on the open market or disposed of by an expression of interest, then (unless the Council resolves otherwise) one independent valuation must be obtained to establish the reserve price for the Land. The independent valuation is made at the time of preparing a notice of revocation as part of the Minister's report.
- (f) If Land is to be disposed of via a select tender or direct sale, then (unless the Council resolves otherwise) at least one independent valuation must be obtained to ensure that an appropriate market value is obtained.
- (g) The Council will seek to dispose of Land at or above current market valuation by whichever method is likely to provide the Council with a maximum return, unless there are reasons for the Council to accept a lesser return which is consistent with the Council's overall strategic direction. These reasons must be documented in writing.
- (h) If the Disposal is not via the open market, the Disposal should be at or above the current market valuation (with due regard to all associated costs to achieve the transaction or such other amount as the Council resolves).
- (i) Council may consider imposing conditions on the sale of Land or through other suitable mechanisms in order to achieve desired outcomes such as affordable housing or particular design outcomes.

2.4.2 Roads (including walkways)

- (a) Walkways, bridges, pedestrian crossings and over/underpasses form integral links in the pedestrian network. It is

acknowledged that some of the existing walkways will also be part of the Drainage or Pedestrian Networks or form part of the Local Area Bicycle Plan. These walkways are required Assets and should be maintained to facilitate safe and convenient pedestrian access.

- (b) Roads including walkways that are not an integral part of these networks could be considered surplus to community requirements and Council may determine these to be available for purchase.
- (c) Council may consider expressions of interest from interested adjoining property owners to purchase a Road or walkway. These property owners should own Land that directly adjoins the Road or walkway.
- (d) If Council initiates the closure and Disposal of a Road or walkway, no administration costs are charged to the purchasers.
- (e) Council will not consider any walkway closure unless the total area involved can be sold to adjoining property owners where:
 - i. the result is an irregular shaped new allotment or with access to two street frontages.
 - ii. adjoining property owners that are proposing to purchase the land cannot reach agreement regarding the allocation of land to be disposed.

2.4.3 Community Land

- (a) Neighbourhoods are often characterised by their open space. Open space is an outstanding feature of our City and it is an asset that we want to manage well.
- (b) Our strategic approach to managing Community Land in the City will be consistent with relevant strategies and objectives of the Council that aim to guide the future provision, development and management of all open space in the City of Tea Tree Gully.
- (c) The legislative procedure to revoke a land's classification as Community Land is set out in section 194 of the *Local Government Act 1999*.
- (d) Before Council resolves to engage with the community

regarding the potential Disposal or Acquisition of Community Land the following assessment criteria will be used to determine whether Land should be considered for Disposal (and subsequent revocation) and the potential impact and benefits this would have on the local community:

- i. Ecological value – determined by size of Land; distance to core habitat; proportion of surrounding open space in close proximity to the site; extent of Roads and sealed surfaces surrounding the site.
 - ii. Trees and Vegetation – impact on existing trees and vegetation; significant trees are defined in the Planning Development & Infrastructure Act 2016 and Regulations and require development approval for removal or tree-damaging activity.
 - iii. Character and appeal – affected by the degree to which the Land is used, is landscaped and maintained, what facilities it has and whether it creates a sense of place for the community.
 - iv. Accessibility – all residents should have access to a local reserve located within 500 metres from their home.
 - v. Recreational value – whether it is formal or passive; value depends on the size of the Land, quality of grassed areas and whether the reserve has amenities such as playground, sporting infrastructure, lighting, pathways, landscaping, seating, toilets, picnic facilities and drinking fountains, etc and proximity to similar facilities.
 - vi. Cost of maintenance – indicated by the operational costs for horticultural and general maintenance.
 - vii. Contamination – any known contamination of a site proposed for sale or Disposal will be disclosed to potential purchasers or the site will be suitably remediated prior to sale or Disposal.
 - viii. Climate change – the degree to which the land may significantly impact on heat island effect.
- (e) Proceeds from the sale of Community Land will be reinvested back into the community as determined by the Council. This may include one or a combination of the following:
- i. Allocation of funding for neighbourhood streetscape improvements
 - ii. Upgrade of nearby reserves or the portion of land that is retained (in the case of a partial sale)
 - iii. Allocation of funding for citywide benefit

- iv. Other options determined by the Council.

2.4.4 Recovery of Administrative Costs (Land, Roads and Community Land)

- (a) Council's Fees and Charges register sets out the cost for inspection and consultation with other service authorities. These costs will be paid up front by an applicant and prior to the initial report being submitted to Council, or any relevant Committee of Council to partly offset Council's costs in processing the application. These costs are non-refundable unless otherwise resolved by Council.
- (b) If Council resolves to proceed with a revocation of Community Land, or similar, in response to a request from a third party all other associated costs including advertising costs, statutory and administration charges, survey, service relocation (e.g. stobie poles, water, sewer, gas mains, Telstra cables), fencing, valuation and conveyancing costs or other costs that the CEO deems appropriate to recover will be the responsibility of the applicant unless otherwise resolved by Council.
- (c) Payment of the prescribed amount above will not automatically be deemed to be a commitment from Council to dispose of any Land or Asset but merely a commitment to investigate and prepare a report to Council or any relevant Committee of Council to commence the process. Council may determine, after considering all the relevant facts, to not close or sell the Land, Road or walkway.
- (d) Prior to work commencing on any revocation process instigated by a third party under this policy a formal agreement will be entered into based on a standard agreement applying to all applications. The revocation process will not commence until an applicant executes the formal agreement accepting to pay all of the associated costs incurred by Council (e.g. advertising) and prior to Council proceeding to the next stage.

2.5 Assets – Other than Land, Roads and Community Land

2.5.1 Sale of Assets

- (a) The sale of Assets (including Major Plant and Equipment and

Minor Plant and Equipment) will be the responsibility of the relevant Council Officer who is responsible for those Assets.

- (b) Purchasers of Assets must agree in writing that before purchasing any Asset no warranty is given by the Council in respect of the suitability and condition of the Asset for the purchaser and that the Council will not be responsible for the Asset in any respect following the sale.

2.5.2 Documentation and Delegations

- (a) Documentation - To assist in demonstrating that its processes in relation to service provision, Disposal of Land and Assets and Acquisition of Land are cost effective, fair, transparent and accountable, and meet community needs, the reasons for entering into contracts other than those resulting from a tender process will be documented.
- (b) Delegations
 - i. Council will delegate the appropriate authority to the CEO to make decisions regarding the matters covered in this policy where the Disposal of Assets is estimated at less than \$1,000,000 (excl. GST).
 - ii. Council recognises that the community, local businesses and contractors will from time to time have an interest in the manner and approach adopted by Council for the Disposal and Acquisition of Land and Assets. Council may delegate the appropriate authority to the CEO to make decisions regarding the matters covered in this policy including liaising with interested parties regarding the Disposal of Land where a reserve price is set for Land by Council.
 - iii. Council or its officers with delegated authority will, when making decisions under this policy, act in accordance with the Council's budget, relevant policies, plans, industrial awards and agreements, code of conduct for council employees, resolutions, and all relevant statutory or common law requirements.
 - iv. Council acknowledges that the CEO may subdelegate matters related to this policy to employees or other persons employed or engaged by Council.
 - v. Council may also delegate matters covered by this policy to its committees or subsidiaries.

3. DEFINITIONS

For the purposes of this policy the following definitions apply:

Acquisition

This may include the purchase of land and the transfer of ownership of land either with or without incurring costs.

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

Community Land

Means any land that is defined as Community Land in accordance with the Local Government Act 1999.

Disposal

There are various methods available for Council to dispose of its Land and Assets. They may include: open market sale, expressions of interest, tender, auction, direct sale, by negotiation, trade in, exchange, donate or give away.

Land

Includes Community Land, Vacant Land, Operational Land, Road reserves, any legal interest in Land, all buildings (community and operational) on Land and any other Land related Assets.

Infrastructure, Property, Plant & Equipment

Items identified in the Financial Statements of Council's Annual Report, which includes Major and Minor Plant and Equipment

Major Plant and Equipment

Includes all major machinery and equipment owned by Council including all trucks, graders, other operating machinery and major plant items. It does not include Minor Plant and Equipment.

Minor Plant and Equipment

Includes all Minor Plant and Equipment owned by Council including all loose tools, store items, furniture, second hand items removed from Major Plant and Equipment (such as air conditioners, bricks and pavers) and surplus bulk items (such as sand and gravel).

Non-financial Asset

Includes physical assets owned by Council: Land, Buildings, Roads and Major and Minor Plant and Equipment.

Road

The Local Government Act 1999 defines road as a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes:

- A bridge, viaduct or subway
- An alley, laneway or walkway.

Unsolicited Request

Any request from an individual, company or group of investors to purchase land from Council or to offer land to Council where Council is not actively seeking Disposal or Acquisition of the land

4. LEGISLATIVE FRAMEWORK

4.1 Local Government Act 1999

4.1.1 Section 36

Section 36 of this Act provides for Council's general power and capacity to enter into contracts and arrangements. The following sections apply to this policy:

- (a) Section 36(1)(a)(i) of this Act provides that Council may enter into any kind of contract or arrangement.
- (b) Section 36(1)(c) of this Act provides that Council has the power to do anything necessary, expedient or incidental to performing or discharging its functions or duties or to achieving its objectives.

4.1.2 Section 49

Section 49 of this Act states:

- (a) Council must prepare and adopt a policy on contracts and tenders, including the sale or Disposal of Land or other Assets.
- (b) The policies must:
 - i. Identify circumstances where the council will call for tenders for the supply of goods, the provision of services or the carrying out of works, or the sale or Disposal of Land or other Assets
 - ii. Provide a fair and transparent process for call tenders and entering into contracts in those circumstances
 - iii. Provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

4.1.3 Section 49(a1)

Section 49(a1) of this Act requires Council to develop and maintain policies, practices and procedures directed towards:

- (a) Obtaining value in the expenditure of public money.
- (b) Providing for ethical and fair treatment of participants.
- (c) Ensuring probity, accountability and transparency in all disposal processes.

4.1.4 Section 193

Section 193 of this Act classifies all Local Government Land that is owned by Council as Community Land unless Council has excluded the land from the classification of “Community Land”.

4.1.5 Section 194

Under Section 194 of this Act, Council may revoke the Community Land classification.

4.1.6 Section 201(2)

Section 201(2) of this Act provides that Council may not sell or dispose of Community Land unless it has first revoked the land’s classification as Community Land.

4.2 Roads (Opening and Closing) Act 1991

This Act provides for the opening and closing of roads.

4.2.1 Section 12(3)(a)

Section 12(3)(a) of this Act allows Council to make in principle agreements for the exchange and transfer of Land subject to a proposed road closure with the owners of the Land adjoining that Land.

4.2.2 Section 12(3)(b)

Section 12(3)(b) states that Council will not make an in-principle agreement for the Disposal of Road or walkway unless Council first invites offers from the owners of adjoining Land that is the subject of the proposed Road or walkway closure.

4.3 Other references

Council's document including:

- a. Annual Report
- b. Long Term Financial Plan
- c. Annual Business Plan and Budget
- d. Asset Capitalisation Policy
- e. Community Engagement (Public Consultation) Policy
- f. Easements Management Policy
- g. Fees and Charges Register
- h. Late Payment and Sale of Land for Non-Payment of Council Rates Policy
- i. Open Space Policy
- j. Procurement Policy
- k. Code of Conduct for Council Members
- l. Code of Conduct for Council Employees
- m. Resilient East: Regional Climate Change Adaptation Plan
- n. Unsolicited Proposals Policy

External documents including:

- a. *Real Property Act 1886*
- b. *Land and Business (Sale and Conveyancing) Act 1994*
- c. *Real Property (Electronic Conveyancing) Amendment Act 2016*
- d. *Development Act 1993*
- e. *Planning, Development and Infrastructure Act 2016*
- f. *Retail and Commercial Leases Act 1995*
- g. *Residential Tenancies Act 1995*
- h. *Strata Titles Act 1988*
- i. *Crown Land Management Act 2009*
- j. *Community Titles Act 1996*
- k. *Land Acquisition Act 1969*

5. STRATEGIC PLAN/POLICY

5.1 Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
Community	
People feel a sense of belonging, inclusion and connection with the City and the community	This policy is aligned with these objectives as it assists with decision-making about the current and future need for community Assets and Land in our city, as well as the equipment and Assets needed to manage and maintain the city to a standard that will ensure our community is healthy and safe.
Our services are accessible to all and respond to changing community needs	
People can have a say in decisions that affect them and the key decisions of the Council	
Economy	
A local economy that is resilient and thrives, where businesses are supported to grow and prosper, provide local jobs and sustain our community and visitors and utilize technology to improve the liveability of our city	This policy is aligned with this objective as it recognises that Assets and Land are valuable resources both in an economic and in a social sense, and when disposing or acquiring these, there will be times when the community should have a say. It is also important for Council to hold Assets that are of value to the community and do not place an unjustified burden on the financial position of the Council.
Places	
Streets, paths, open spaces and parks are appealing, safe and accessible	This policy is aligned with these objectives as it considers current and future asset and land needs
Opportunities exist to express and experience art and culture	

Objective	Comments
<i>Neighbourhoods are easy to move around and are well connected with pedestrian and cycle paths that offer an alternative to cars</i>	that contribute to the, sustainability, liveability and uniqueness of the city.
<i>Infrastructure and community facilities are fit for purpose, constructed using sustainable practices and well maintained</i>	
Leadership	
<i>Leadership and advocacy is focused on the long term interests of the community</i>	This policy aligns with these objectives as it proposes a considered approach to the disposal of Council land and assets and acquisition of land including for current and future asset and land requirements that contribute to the, sustainability, liveability and uniqueness of the city.
<i>Planning considers current and future community needs</i>	
<i>Delivery of services is sustainable and adaptable</i>	
<i>Decision making is informed, based on evidence and is consistent</i>	
<i>Major strategic decisions are made after considering the views of the community</i>	

5.2 Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of customer care, learning & growth, future capability and sustainable operations. The key theme most relevant to this policy is sustainable operations, in ensuring that we make consistent, informed decisions which are evidence based.

6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio general manager and managed in accordance with Council's scheme of delegations.

Record number	D23/14054
Responsible Manager	Manager City Strategy Manager Finance & Rating Services
Other key internal stakeholders	General Manager City Operations General Manager Community Services General Manager Corporate Services General Manager Strategy & Finance Manager Procurement & Contract Management Manager Operations Support Services Manager Field Services Manager IT Solutions Manager Library Services Manager Recreation & Leisure Services Manager Technical & Engineering Services Manager Projects & Contract Delivery
Last reviewed	29/03/2023
Adoption reference	Audit and Risk Committee
Resolution number	8
Previous review dates	11/02/2020 (Renamed Disposal of Land and Assets and Acquisition of Land Policy) 28/02/17 14/08/12 (Merged policy: includes Recovery of Administrative Costs Associated with the Disposal of Council Land Policy - Roads -including Walkways – and Community Land), 10/08/10
Legal requirement	Section 49 of the <i>Local Government Act 1999</i> to have a policy on contracts and tenders including the sale or disposal of land or other assets
Due date next review	2027
Delegations	Yes