



POLICY NO.	CPPB1
POLICY TITLE	Policy for Disposal of Council Land
STATUS	Council
SERVICE	Council Properties and Buildings
DOCUMENT ID	586245

1. INTRODUCTION

1.1. Hunter's Hill Council (**Council**) is the owner of various parcels of land within the Hunter's Hill local government area. The Council will from time to time need to decide whether land that it owns is surplus to the current or future needs of the Council and the local community and whether or not to dispose of such land. This Policy should be considered by the Council when making a decision relating to the disposal of its land.

1.2. The Council is committed to carrying out its functions in a way that facilitates a local community that is strong, healthy and prosperous, and to that end this Policy seeks to ensure that the Council's land portfolio is managed so that land that is surplus to the current or future needs of the Council and the local community is identified and disposed of in a way that:

1.2.1. Is fair, ethical and without bias; and

1.2.2. Provides for probity, accountability and transparency in all disposal processes; and

1.2.3. Provides the best possible value for residents and ratepayers; and

1.2.4. Accords with the key themes in Council's Community Strategic Plan; and

1.2.5. Complies with all applicable laws.

2. Application of Policy and Definitions

2.1. This Policy applies to all land in respect of which the fee-simple is vested in the Council subject to the following provisions of this Policy.

2.2. This Policy applies when the Council is:

2.2.1. Identifying and determining whether land that it owns is surplus to the current or future needs of the Council and the local community;

2.2.2. Deciding whether or not to dispose of land that has been determined by the Council to be surplus to the current or future needs of the Council and the local community; and

2.2.3. Undertaking the process of disposing of land referred to in clause 2.2.2.

2.3. This Policy does not cover or apply to land that is to be sold by the Council for the non-payment of rates.

2.4. Land comprising of a public road or part of a public road in respect of which the fee-simple is vested in the Council cannot be disposed of unless and until it is closed under the provisions of the Roads Act 1993. This Policy does not cover the process for closing a public road or part of a public road.

2.5. Land that is classified as “community” under the LG Act in respect of which the fee-simple is vested in the Council cannot be disposed of unless and until it is reclassified as “operational”. This Policy does not cover the process for reclassification of “community” land as “operational”.

2.6. In this Policy:

2.6.1. **“independent valuation”** means a valuation obtained from a person appointed by the Council following compliance with the Council’s Procurement Policy who is:

2.6.1.1. a member of the Australian Valuers Institute (other than an associate or student member), or

2.6.1.2. a member of the Australian Property Institute (other than a student or provisional member), who has acquired membership in connection with his or her occupation as a valuer, or

2.6.1.3. a member of the Royal Institution of Chartered Surveyors who holds the designation “Chartered Valuer” or ‘Chartered Valuation Surveyor’.

2.6.2. “**LG Act**” means Local Government Act 1993 (NSW).

2.6.3. “**LG Regulation**” means the Local Government (General) Regulation 2021(NSW)

2.6.4. “**public notice**” means public notice given as referred to in section 705 of the LG Act that:

2.6.4.1. includes the terms of the proposed resolution and a description of the land concerned; and

2.6.4.2. specifies a period of not less than 28 days during which submissions may be made to the Council.

3. IDENTIFYING LAND WITH POTENTIAL FOR DISPOSAL

3.1. When identifying and determining whether land has potential for disposal, the Council will have regard to the following matters where they are relevant:

3.1.1. Whether the land is necessary to provide current or future services of the Council or meet operational needs;

3.1.2. Whether the land is currently used or required for use in the future for community or public recreation purposes;

3.1.3. Whether disposal of the land would have an unreasonable adverse effect on the amenity or facilities available to the local community;

3.1.4. Whether maintenance of the land is beyond Council’s reasonable financial capacity;

3.1.5. Whether there are statutory or other legal reasons that require the Council to maintain ownership of the land such as (but not limited to) actual or implied trusts that were established as a result of Council’s acquisition of the land;

- 3.1.6. Whether the land has cultural, natural or heritage value that should be maintained;
 - 3.1.7. Whether the land is contaminated and, if so, whether it is possible and appropriate for responsibility for ongoing management and remediation of the land to be transferred;
 - 3.1.8. The likely future use of the land if it is disposed;
 - 3.1.9. Whether disposal of the land would create an access issue for adjoining land holders;
and
 - 3.1.10. Whether the cost to progress the disposal of the land is higher than the estimated value of the land.
- 3.2. The list of matters in clause 3.1 is not exhaustive. Each parcel of land has its own circumstances that will need to be investigated and considered when making a determination as to whether the land has potential for disposal.
- 3.3. Before making a determination that land is surplus to the current or future needs of the Council and the local community and has potential for disposal, the Council must:
- 3.3.1. give public notice of a proposal to pass a resolution that would state that the land is surplus to the current or future needs of the Council and the local community and has potential for disposal; and
 - 3.3.2. consider any submissions made in response to the public notice given under clause 3.3.1.

4. DECISION TO DISPOSE OF LAND AND DISPOSAL METHODS

- 4.1. A decision to dispose of land can only be made by the Council passing a resolution. Section 377 of the LG Act does not permit the Council to delegate a decision to dispose of land to the General Manager of the Council or any other person or body.
- 4.2. Before passing a resolution to dispose of land, the Council must have complied with clauses 3.1 and 3.3 and determined by way of resolution that the land to be disposed of is surplus to the current or future needs of the Council and the local community and has potential for disposal.

4.3. When making a decision to dispose of land, the Council must specify in the resolution one of the following methods as the method of disposal that is to be used:

4.3.1. **The open market sale method** by which the land is:

4.3.1.1. advertised by the Council in the local paper and, where appropriate, a paper circulating in the State of NSW as being available for sale by way of public auction; or

4.3.1.2. listed by the Council with a licensed real estate agent (who is appointed following compliance with the Council's Procurement Policy) as being available for sale by way of public auction.

(Note: Land that fails to sell at public auction may be sold by private treaty).

4.3.2. **The open tendering method** by which tenders for disposal of the land are invited by public advertisement and the requirements for the open tendering method in Part 7 of the LG Regulation are complied with.

4.3.3. **The selective tendering method** by which invitations to tender for disposal of the land are made following a public advertisement asking for expressions of interest and the requirements for the selective tendering method in Part 7 of the LG Regulation are complied with.

4.3.4. **The direct negotiation method** by which the Council enters into negotiations with a person with a view to entering into a contract for disposal of land without first using one of the methods specified in clauses 4.3.1 to 4.3.3.

4.4. When selecting the method of disposal to be used, the Council will consider the following matters where relevant:

4.4.1. the number of known potential purchasers of the land;

4.4.2. the original intention for the use of the land;

4.4.3. the current and possible preferred future use of the land;

4.4.4. the opportunity to promote local economic growth and development; and

4.4.5. the estimated value of the land to be disposed.

4.5. As a general principle, the Council will use one of the methods specified in clauses 4.3.1 to 4.3.3 for the disposal of land and will avoid the direct negotiation method.

4.6. However, there may be circumstances where the direct negotiation method is the only or clearly the most appropriate method to proceed with the proposed disposal of land. Where one or more of the following criteria apply in respect of the proposed disposal of land, the Council may decide by resolution to proceed by way of the direct negotiation method:

4.6.1. Where the land comprises of a former public road that has been closed at the request of an adjoining land holder;

4.6.2. Where the potential purchaser owns land abutting the land to be disposed of and is the only person who could feasibly use the land and it is clear that the land would not be of any of material benefit any other person. For example, where the land is in a location or land use zone that make it too small for development or practical and profitable use.

4.6.3. Where the disposal of land is to a government or utility authority for the purpose of infrastructure provision;

4.6.4. Where one of the competitive processes identified in clauses 4.3.1 to 4.3.3 has been undertaken within the immediately preceding 12 months and failed to achieve the desired outcome;

4.6.5. Where Council is bound by a contractual obligation. For example, a tenant with a first right of refusal, where that tenancy has been entered into as a result of a competitive process;

4.6.6. Where it is proposed to dispose of land in exchange for other freehold land that is considered to be of strategic value to the Council;

4.6.7. Where the land that is of a value that is less than the anticipated cost of conducting a competitive process;

4.6.8. Where the potential purchaser is not-for-profit, and is a community service, charitable, sporting, recreational or government organisation that will use the land for the benefit to the general community, or to provide an active sporting or passive recreational facility; or

- 4.6.9. Where the proposed disposal and purchaser satisfy the uniqueness test as detailed in the NSW Government's Unsolicited Proposals – Guide for Submission and Assessment 2017.
- 4.7. If land is to be disposed of by the open market sale method, at least one independent valuation must be obtained by the Council to establish the reserve price for the land. The independent valuation must be made no more than 6 months prior to the proposed disposal.
- 4.8. If land is to be disposed of by the open tendering method, the selective tendering method or the direct negotiation method, a minimum of two independent valuations must be obtained to assist in ensuring that an appropriate value is obtained. The independent valuations must be made no more than 6 months prior to the proposed disposal.
- 4.9. 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.
- 4.10. If the disposal is not to be by way of one of the competitive processes identified in clauses 4.3.1 to 4.3.3, the disposal should be at or above the highest of the independent valuations obtained in accordance with clause 4.8 (with due regard to all associated costs to achieve the transaction or such other amount as the Council resolves).
- 4.11. The Council must not dispose of land to a Councillor or employee of the Council or to any person or body listed in clauses 4.11.1 and 4.11.2 unless the disposal is by way of a sale at public auction and the Councillor or employee of the Council has not been involved in any process related to a decision to dispose of the land and/or the establishment of a reserve price:
- 4.11.1. the spouse or de facto partner, relative (as defined in clause 4.4 of the Model Code of Conduct for Local Councils in NSW 2020), partner or employer of the Councillor or employee of the Council.
- 4.11.2. a company or other body of which the Councillor or employee of the Council or their nominee, partner or employer, is a shareholder or member.

4A.1. Where the potential purchaser owns land abutting the land to be disposed of:

4A.1.1 the valuation to determine sale price shall be carried out on an added value basis to the adjoining land. The before and after method of valuation shall be used to determine the enhancement value to the adjoining land and the difference shall be taken into account to determine the estimated value of the land to be disposed of to the potential purchaser that owns the land abutting the land to be disposed of.

4A.1.2 all of Council's disposal costs are to be met by the potential purchaser and shall become payable by the potential purchaser before Council incurs the disposal cost. For the purposes of this clause 4A, 'disposal costs' means valuation fees, transfer costs, legal fees and council officers time in dealing with the matter in line with the *Lease, Licence or Purchase of Council Property* section in Hunter's Hill Council Fees and Charges schedule current at the time of the disposal.

5. RECORDS

5.1. The grounds on which the Council selects a particular method of disposal must be stated in the decision to use that method and must be recorded in the minutes of the meeting where the resolution is passed.

6. EXEMPTIONS FROM THIS POLICY

6.1. This Policy contains general guidelines to be followed by the Council in relation to the disposal of land. There may be extenuating circumstances or emergencies where strictly following the requirements of this Policy will not necessarily deliver best outcome for the Council or achieve a satisfactory result.

6.2. Where Council decides by resolution (which states the reasons for the decision) that because of extenuating circumstances or an emergency that a satisfactory result would not be achieved by applying some or all of the provisions of this Policy, it may proceed to dispose of land without applying those provisions.

7. REVIEW OF POLICY

7.1. The Council must, within 12 months after each ordinary election, review this Policy and make such adjustments as it considers appropriate and as are consistent with the matters set out in clause 1.2.

7.2. Clause 7.1 does not prevent Council from revising or reviewing this Policy at any time (but not so as to affect any process that has already commenced).

REVIEW

This policy to be reviewed once per term of Council.

ADOPTED BY COUNCIL/EXECUTIVE:

DATE: 16 May 2022

RESOLUTION NO: 81/22

VERSION CONTROL TABLE

DATE	VERSION	RES. NO.	KEY CHANGES	AUTHOR
16 May 2022	1.0	81/22	Adopted by Council	Mitchell Murphy
17 October 2022	1.1	226/22	Insertion of new section (clause 4A.1 on page 8 before section 5).	Mitchell Murphy