

TENURE ARRANGEMENTS AND DISPOSAL OF COUNCIL PROPERTY

Intent: To establish general principles for issuing tenure arrangements and disposing of Council property in accordance with legislative requirements.

Scope: These policy principles will be applied in the allocation, use, management and disposal of Council property through the associated Administrative Instruction.

PROVISIONS

BACKGROUND

The objectives of this policy are:

- to establish the principles under which Council will consider issuing tenure arrangements or disposal;
- to achieve best value in Council's land dealings through highest and best use of Council property;
- to protect, conserve and manage natural and cultural heritage; and
- to ensure Council has open and accountable processes to consider.

DEFINITIONS

Council property is land that is owned or controlled by Council, it includes freehold land held by Council, trust land for which Council is trustee, local government controlled roads for which Council is the manager and land which is leased by Council, it does not include non-land based assets.

Trust land is a collective term which applies to reserves and deeds of grant in trust set aside under the provisions of the *Land Act 1994*.

POLICY STATEMENTS

Issuing tenure arrangements and disposing of Council property will be consistent with Council's strategic directions including the economic, social, cultural and/or environmental objectives as identified in Council's strategic plans and corporate plan.

When considering land dealings over Council property, Council will look for opportunities to:

- advance the strategic directions and objectives of Council's corporate plan; and
- enhance local amenity, the environment, economic development and sustainable growth.

The processes for issuing tenure arrangements and disposal of Council property will be open and transparent to ensure Council obtains the best outcomes and that potential users and purchasers are given equal opportunity to obtain tenure or purchase Council property.

Commercial confidentiality will apply to negotiations unless Council decides otherwise.

LEGISLATION

This policy complies with the requirements of the *Local Government Act 2009* and the *Local Government Regulation 2012* and is to be implemented in conjunction with the associated Administrative Instruction.

Local Government Regulation 2012:

- Part 3 of the *Local Government Regulation 2012* defines land as a 'valuable non-current asset'¹.
- A contract for disposal of a 'valuable non-current asset' is a 'valuable non-current asset contract'².
- Disposal³ of a 'valuable non-current asset' includes disposal of all or any part of an interest in the asset and includes the grant of a lease over land.
- Part 3 of the *Local Government Regulation 2012* also explains what a local government must do before it enters into a 'valuable non-current asset contract'⁴.

¹ section 224(7)

² section 224(5)

³ section 224(6)

⁴ section 227

The legislative requirements of the *Land Title Act 1994*, *Land Act 1994*, *Planning Act 2016*, *Native Title Act 1993 (Cth)* and *Residential Tenancies and Rooming Accommodation Act 2008* also need to be complied with.

PRINCIPLES FOR ISSUING TENURE OR DISPOSING OF COUNCIL PROPERTY

Before issuing tenure arrangements or disposing of Council property is considered, an assessment will be undertaken considering the impact on the 4 guiding principles below and whether possible should not adversely impact the delivery of Council's strategic objectives. Sustainability is inherent in the implementation of this policy. In the event the proposal may have an impact on the community, the proposal is to be preceded by community consultation.

Community

Council's property is critical to enabling and building vibrant, innovative and resilient communities, where participation in community life is activated and encouraged. Council's property is fundamental in delivering community events, festivals and cultural activities for our diverse natural and cultural heritage and therefore land used for such purposes will be retained where possible. Council's property is also necessary for the delivery of existing and future infrastructure, such as, transport infrastructure and networks for roads, rail, air and sea as well as pedestrian and cycle facilities including walking and cycle trails and also to provide the community with opportunities for recreation and leisure activities.

Economy

Council will make decisions regarding the issue of a tenure arrangement or disposal of Council property with the state of the local economy in mind and will endeavour to increase the region's capacity for long-term economic growth by supporting opportunities for local businesses and local employment.

Environment

In recognising the natural environment as an integral part of our region's identity, decisions to issue tenure or dispose of Council property should ensure that the natural environment is maintained and protected by conserving bio-diversity and the life forms within an ecosystem. The significance of trees on Council's property will be taken into consideration and these trees protected wherever possible as well as hill slope protection and maintaining the tropical feel of our region, balancing growth, urban density and suburban development and retaining visual amenity and landscapes. Tenure arrangements or disposal of Council property should not adversely impact the environment.

Governance

In striving for organisation excellence, Council will ensure it is open, accountable, ethical and financially responsible in all of its land dealings. In recognition of Council's leadership role in the community, Council will strive to represent the community's needs and expectations. The assessment to issue a tenure arrangement or dispose of Council property will consider the competing needs of the community and development of the region.

Before a tenure arrangement is issued or consideration is given to dispose of Council property, each property will be assessed for the highest and best use to determine the most appropriate use and tenure for such use or if it is surplus to Council's needs and appropriate to dispose of.

Exceptions exist under section 236 of the *Local Government Regulation 2012* and may be applied which allow the issue of a tenure arrangement or sale of Council property without a tender or expression of interest to:

- a government agency;
- a community organisation;
- renew the lease of land to the existing tenant of the land'
- an adjoining owner where there is not another adjoining owner who is interested in the area; or
- provide for a telecommunication tower;
- where the local government has decided by resolution prior to the disposal that the exception may apply.

Council is obliged to undertake a tender or expression of interest if an exception cannot be applied.

Council has resolve and delegated authority to the chief executive officer to give approval to apply one of the exceptions to issue a tenure arrangement or disposal of Council property in accordance with the parameters of this policy without a tender or expression of interest. Any deviation from this policy will require a Council resolution.

TENURE ARRANGEMENTS OVER COUNCIL PROPERTY

Council has a number of options for tenure over Council property. The different tenure arrangements are detailed in Council's 'administrative instruction for tenure arrangements and disposal of Council property' (reference #4457716) and will be subject to the following:

term	<p>The maximum term that may be offered for a tenure arrangement over Council property is 30 years, however, Council's preference is 5 or 10 year terms. Proponents requesting a term greater than 10 years shall provide justifiable reasons, i.e.</p> <ul style="list-style-type: none">• long term tenure is required to secure funding for investment into the property or installation of infrastructure on the property; or• applying for finance for significant improvements to the property.
options to renew / holding over	<p>Freehold leases may include options to renew and holding over clauses if appropriate.</p> <p>Under the provisions of the <i>Land Act 1994</i>, trustee leases over trust land cannot include options to renew or holding over clauses.</p> <p><i>*For clarity, holding over refers to a situation where, at the expiry of the lease, the lessee is able to remain in occupation on a month by month basis on the same terms and conditions as the expired lease until terminated as provided for in the lease.</i></p>
user financial responsibilities	<p>Relevant fees, rent, rates and charges vary between the individual tenure arrangements and are detailed in the parts to Council's 'administrative instruction for tenure arrangements and disposal of Council property' (reference #4454518).</p>
public liability insurance	<p>The level of public liability insurance will be stated in the tenure arrangement. Consideration should also be made regarding insurance coverage for volunteers.</p>
building insurance	<p>Council will determine if an existing building on Council property is covered by Council's building insurance, depending on the value of the building. If a building on Council property is leased, the lessee may decide to obtain its own building insurance if the building is considered to be of a lesser value and not covered by Council's building insurance. It is recommended that lessees insure the building to safeguard any at fault claims. Council may also request at fault building insurance from regular users of a facility.</p>
security bond / bank guarantee / rental bond	<p>A security bond or bank guarantee in favour of Council may be required for tenure arrangements as follows:</p> <ul style="list-style-type: none">• for commercial arrangements, a percentage of annual rent;• when structures are involved, the amount required will be determined by an engineer's require or suitably qualified person that assessed the cost involved to make good the area should removal of improvements become Council's responsibility; and• at the commencement of a residential tenancy, a rental bond will be required to be paid equal to a minimum of 4 weeks rent which is lodged with the Residential Tenancy Authority under the provisions of the <i>Residential Tenancies and Rooming Accommodation Act 2008</i>.
consultation	<p>Council may engage with the community to assist in determining appropriate use of Council property.</p>

DISPOSAL OF COUNCIL PROPERTY

Part 5 of the associated administrative instruction provides the:

- assessment tool to determine if an area of land is surplus to Council's requirements; and
- process for disposal of Council property.

Requests from landowners to purchase an area of Council property adjoining their property will also be subject to the above assessment. In these circumstances, if the disposal is supported, it is to occur at no cost to Council with the landowner meeting all associated costs, including but not limited to:

- Council's legal fees for preparation of a contract of sale and transfer documentation;
- valuation report to determine the appropriate purchase price;
- payment of purchase price;
- survey costs to amalgamate the subject area with the adjoining land parcel;
- development application to obtain planning approval for reconfiguration of a lot and/or material change of use;
- transfer duties; and
- Titles Office registration fees.

ASSOCIATED DOCUMENTS

Council's 'Administrative Instruction for tenure arrangements and disposal of Council property' (#4457716) provides clarity in the implementation this policy and consists of the following parts:

- part 1 use by not for profit community groups (reference #3720896)
- part 2 residential use (reference #3763327)
- part 3 commercial use, including primary production and government entities (reference #3763329)
- part 4 use for telecommunication purposes (reference #5181551)
- part 5 disposal of Council property (reference #5903415)

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This policy is to remain in force until otherwise determined by Council.

General Manager responsible for review:

Planning and Environment

ORIGINAL ADOPTION: 28/10/2004

CURRENT ADOPTION: 28/11/2018

DUE FOR REVISION: 28/11/2022

REVOKED/SUPERSEDED:



**John Andrejic
Chief Executive Officer**