



Title	Divestment of Land and Building Assets Policy
Related Documentation	Code of Conduct Statement of Business Ethics Procurement Policy Walkway Closure Policy Unsolicited Proposals Policy Code of Accounting Practice Asset Disposal Policy Urban Renewal and City Revitalisation Policy
Relevant Legislation	<i>Local Government Act 1993</i> <i>Local Government (General) Regulation 2005</i> <i>Roads Act 1993</i>
Responsible Officer	Executive Manager, City Revitalisation and Urban Renewal

**Policy details may change prior to review date due to legislative changes, therefore this document is uncontrolled when printed.**

## Objectives

The objectives of this Policy are:

- To ensure Council strategically leverages its land assets for the betterment of the broader community.
- To ensure the divestment of Council's surplus land and buildings are undertaken in accordance with the relevant legislation and Council's procedures.
- To provide a transparent and accountable process for the divestment of Council's surplus land and building assets.
- To provide Council the ability to conduct urban renewal activities to catalyse city transformation.

## Policy Statement

Council is committed to ensuring its community is supported with the required and appropriate facilities and services, now and into the future.

As our community grows and demographics shift, facilities and services need to evolve to meet the changing needs and expectations of the community. Our land and building assets must be regularly

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**Directorate:** City Futures

**Section:** City Revitalisation and Urban  
Renewal

**Record No:** CD0-23/648

**Adopted Date:** 08/08/2023

**Revised Date:** 08/08/2023

**Minute Number:** 196

**Review Date:** 30/09/2027

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reviewed to ensure they continue to meet the needs and expectations of the community and are leveraged for their optimum social and economic benefit.

This Policy provides the framework for the divestment of land and building assets, or part thereof, identified as surplus to Council's needs or that present an investment outcome that can be further leveraged for community benefit.

## Definitions

For the purposes of this policy:

- **Community land** – means Council owned land which is kept for use by the general public, such as a public park or community facility, as defined in the Local Government Act, 1993. The use and management of community land is to be regulated by a plan of management.
- **Land** – means all real property whether vacant or improved.
- **Non-marketable** – means a parcel of surplus land of a size, configuration, location, or development/use restriction which renders it unsuitable for development.
- **Operational land** – means Council owned land held as a temporary asset or as an investment, which facilitates the carrying out of Council functions which may not be open to the general public, such as Councils works depot or leased assets, as defined in the Local Government Act, 1993.
- **Surplus** – means 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.

## Scope

Council staff involved in any aspect of divestment of Council's assets must adhere to this policy.

This policy applies to the divestment of Council's land and/or building assets.

## Identification of Land and Buildings for Divestment

In determining whether a parcel of land or building asset is surplus, Council will consider if:

- It does not contribute to the delivery of the Council's services, strategic or corporate objectives. In this consideration, Council may have identified an alternative site or method of service delivery which is more cost effective and/or achieves improved community outcomes.
- It has no potential for strategic or regeneration/redevelopment purposes in the foreseeable future.
- It will not contribute to the provision of a sustainable pattern of development through a lack of being fit for purpose, cost of maintenance, poor accessibility or location, poor value for operational expenditure, and is not strategically required or similar reason.
- It will not significantly contribute to protecting the natural (including biodiversity), built or historic environment, or suitable protection measures are in place in perpetuity to preserve or improve these values.
- The land or building asset was specifically acquired for investment and is now recommended for divestment.

## Identification of Underutilised Land and Building

In determining whether a parcel of land or building asset is underutilised, Council will consider if:

- Part of the asset is vacant and is likely to remain vacant for the foreseeable future.
- The income being generated from the asset is consistently below that which could be achieved from:
  - Divestment of part or all of the site and investment of the income.
  - An alternative use.
  - Intensifying the existing use.
- Only part of the site is used for service delivery, and alternate opportunities for the delivery of the service are available and viable.
- It will not significantly contribute to protecting the natural (including biodiversity), built or historic environment, or suitable protection measures are in place in perpetuity to preserve or improve these values. As part of this consideration, Council may implement appropriate statutory measures (such as heritage listing of the property) and ensure that they have been put into effect prior to divestment.

### **Internal Due Diligence**

A preliminary (internal) due diligence will be performed on land and buildings identified as being surplus to Council needs prior to determining whether divestment should be considered and pursued by Council. Any consideration to divest land and building assets will be made after considering (where applicable):

- The usefulness of the land or building asset, including undertaking an asset management review and identifying any development opportunities (if any).
- The current market value of the land or building.
- The annual cost of maintenance.
- Any alternative future use of the land or building.
- Any duplication of the land or building, or the service provided by the land or building.
- Any impact the divestment of the land or building may have on the community (including environmental impact).
- Any financial impact of net revenue associated with the divestment of revenue earning land or buildings.
- The cost associated with the divestment.
- The potential return or revenue from undertaking the divestment.

### **Valuation process**

A formal market valuation of surplus land prepared by a valuer registered to value such a property is required to be commissioned prior to all divestments (with the exception of non-marketable land parcels).

A valuation must clearly indicate:

- A breakdown of the Land value and the Building value components of the valuation.
- The purpose of the valuation as “divestment”.
- 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 divestment & 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.

### Method of Divestment

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

- **Expression of Interest** – where land and/or building:
  - Involves unusual properties with capabilities for a variety of development types which would otherwise make valuation difficult.
  - Are under the legislated tender threshold.
  - Have limited interest.
- **Public Tender** – where the estimated returns exceed the legislative tendering threshold (including GST).
- **Public Auction** – public auction (via a recognised auction house or equivalent) should be utilised when:
  - There is public demand for the items.
  - Alternative divestment methods are unlikely to realise higher revenue; and
  - The costs associated with the auction can be justified in relation to the expected revenue from the sale.
- **Agreement** – where the ownership of land and/or building is to be transferred to a third party via an endorsed Planning Agreement, for a specific value and/or the provision of alternative land and/buildings to meet the needs of Council.

### Direct Negotiation

A non-competitive process of direct negotiation may be adopted for land (including non-marketable land). Council consideration of this divestment method will include the reasons why this sale process was chosen and the process should be clearly documented with the adoption of risk mitigation measures, which may include:

- Where the total cost of the public sale process will exceed the expected community benefit, for example, where the land is worth \$1,000 and the cost to market the land is \$5,000.
- Obtaining two valuations, if the land is valued in excess of \$50,000.

- 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.
- Where there is only one identifiable purchaser. For example, where a site is not large enough for development in its own right and is surrounded by public roads on all sides other than the adjoining owner. Where a site adjoins two owners such as laneways, each owner will be offered 50% in the first instance. If a land owner declines to purchase, it may be offered to the other owner.
- 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 public competition.
- Divestment of land where it will result in community benefit through improved service delivery or more efficient management of the land by another Government agency or not for profit organisation.
- Where a public marketing process which has been undertaken within the last 12 months in accordance with this policy has failed to achieve the desired outcome.
- In response to a proposal which achieves specific policy goals of Council.
- Where an unsolicited proposal has been received and assessed in accordance with Councils Unsolicited Proposal Policy as a unique proposal with clear demonstration of the achievement of specific strategic goals and objectives of Council.

### **Community Land**

Council cannot sell land that is classified as Community Land, under the provisions of the *Local Government Act, 1993*. If surplus land is classified as Community Land, then Council must:

- Reclassify the land from Community Land to Operational Land in accordance with the Local Government Act, 1993, including undertaking a Public Hearing to provide an opportunity for the community to have input into the process.
- Ensure the process has been completed prior to the divestment of the land.

### **Sale on Open Market**

Where land is capable of being sold on the open market and able to be developed independently of any other property, the sale shall be by competitive process involving public auction, private treaty or expression of interest unless a sale by direct negotiation is warranted. For a public auction, the reserve price will be based on a recommendation from an independent valuer.

### **Divestment by Auction**

Any auction involving the divestment of land and/or buildings must include a reserve which is set so as to adequately reflect the valuation.

### **Divestment by Real Estate Agents**

Real estate agents will be selected by expressions of interest called by Council which address criteria including remuneration, experience and marketing proposals.

Once an agent is selected any listing is to be:

- For sale at a price having regard to the valuation; and
- For a period of up to three (3) 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 and re assessed to be put back to market when deemed appropriate.

Should Council resolve to allow the property 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.

### **Divestment via a Planning Agreement**

Council may consider divestment (or transfer of ownership) of land and/or building to a third party via an endorsed Planning Agreement. This method must consider:

- The valuation of the land and/or building.
- The agreed provision of alternative land, assets, facilities and/or monetary contributions to offset the transfer.
- A Council considered and endorsed Planning Agreement.

### **Divestment of Non-Marketable Land**

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

### **Proceeds of Sale**

The net proceeds from all sales of Council real estate assets will be paid into the Development Reserve, unless:

- It is a road closure.
- The land or building has restrictions on the funds, such as assets purchased under the provisions of Section 7.11 and Section 7.12 of the *Environmental Planning and Assessment Act, 1979*.
- The ownership of the land or building has been transferred as part of an endorsed Planning Agreement.
- An alternative treatment of proceeds has been identified and agreed.

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.

### **Responsibility**

The divestment of any Council land or building asset requires the formal approval of Council.

## **END OF POLICY STATEMENT**