
Development and/or Disposal of Council Lands

Policy Number: POL16/256 • **Adopted:** 29/10/2009 • **Amended:** 26/03/2013, 20/12/2016 • **Minute Number:** MIN09.1486, MIN13.301, MIN16.1011 • **File:** 1457E • **Produced By:** Assets and Works Group • **Review Date:** 01/12/2020

1. PURPOSE

To clearly set out the procedures to be followed whenever Council considers an option to dispose of any land/property.

2. STATEMENT

This policy is based on Council Minute No. 1314 of 21st September, 2009.

- a. To ensure fairness, openness and transparency in decision-making.
- b. To allow public comment before any final decision is made to dispose of land/property.
- c. To ensure Council receives “best value” in any disposal process.
- d. To ensure the most appropriate method of disposal is identified.
- e. To ensure the public interest is uppermost and overrides any private interest of any party.
- f. To ensure that Council abides by the Code of Conduct and any ICAC and Department of Local Government Guidelines.

3. PROCESS/CHECKLIST

- a. Establish a Council Vision/Purpose for the land.
- b. Define the strategic objective(s) to be achieved and create a broad concept for its development.
- c. Ensure completion of a comprehensive Risk Assessment and Due Diligence before proceeding further. Refer to the Due Diligence for Land Transactions Policy POL16/144.
- d. Research the land holding –
 - Zoning/rezoning and potential/proposed uses. (obtain a Section 149(5) certificate)
 - Community or Operational classification.
 - History of purchase/acquisition (Section 94, compulsory acquisition, dedication, etc)

- Is the land properly (legally) classified correctly? Is there any TRUST over the land?
 - Other planning instruments and consideration.(eg, SEPP's, DCP, Policy, contamination, easements, other restrictions, access).
 - What property improvements exist?
 - Any tenancy issues?
 - Any road widening proposals?
- e. Consider feasibility of the “concept”, prepare Business Plan and cost/benefit analysis.
- f. Determine whether Council should proceed with DA and obtain DA consent.
- g. Revise and update the comprehensive Risk Assessment, before proceeding further.
- h. Engage Probity Advisor early in the process as required.
- i. Prepare a Probity Plan as required.
- j. Consider whether Public Private Partnership (PPP) guidelines/procedures are triggered and, if so, implement.
- k. Consult with the community, in accordance with an adopted Communication Plan.
- l. Commission property valuation report. (Two independent valuation reports for significant disposals)
- m. Prepare EOI documentation, including Assessment criteria and Evaluation Plan which details the criteria/factors which will be taken into account and which will form the basis of decisions.
- n. Seek Expressions of Interest (competitive process) if appropriate to ensure equity and fairness to all parties or proponents and include advice as to whether late or non-conforming responses will be considered.

Options for project delivery to include:

- BOOT – Build, Own, Operate, Transfer
- BOT – Build, Operate, Transfer
- BOO – Build, Own, Operate
- DBFO – Design, Build, Finance, Operate
- PFP – Privately Financed Projects
- Ground Lease

OR

- o. Direct negotiate only in exceptional circumstances and only where there is compelling and publicly-disclosed reasons for doing so – refer Attachment 1 “Checklist from ICAC – Direct Negotiation”. Note: this would include smaller parcels for Industrial and Residential purposes and the like.
- p. Auction, tender or private treaty.
- q. Prepare an Evaluation Report after close of Expressions of Interest.

4. OTHER PRINCIPLES

- a. Any meetings or other communications (eg, telephone, email) between Council officials and potential proponents are to be properly minuted and recorded and filed (TRIM), noting that confidentiality principles must be observed by all parties.
- b. Council (or Council officials) should not enter into (or give the impression that they are entering into) any contractual arrangements which purport to guarantee outcomes that are subject to a separate regulatory process.
- c. The focus of Council's preliminary assessment should be on planning considerations under Council's regulatory role, in assuring the best public/community interest following ESD principles.
- d. Statement of Business Ethics. This statement provides guidelines for all sectors of the community when conducting business with Council.
- e. Where considered advantageous consideration to be given to engagement of a third party with particular expertise to undertake discussions and negotiations.

5. IMPLEMENTATION

This policy is to be implemented by the Assets & Works Group – Business & Property Section however; it applies to all Shoalhaven City Council including the Executive Strategy & Communications, Economic Development and Shoalhaven Water.

6. REVIEW

This policy will be reviewed whenever new relevant guidelines are issued by the Department of Local Government or ICAC, but at least within 12 months of each Council election.

7. APPLICATION OF ESD PRINCIPLES

Application of this policy will ensure that ESD is considered in the preliminary assessment process and that any outcomes (development or disposal) have broad socio-economic benefit for the community.

Checklist for undertaking direct negotiations

- Using the general principles in Chapter 1 and the circumstances outlined in Chapter 2 of this publication, decide whether direct negotiations can be justified
- Verify that the project or proposal is consistent with the agency's overall strategic plan
- Check that there is an appropriate project or business case and that funding has been approved
- Ensure that the decision to enter into direct negotiations has been made or approved at a senior level within the agency
- Ensure that the decision to enter into direct negotiations and the reasons for it, are recorded and are publicly accessible
- Perform cost-benefit analysis or similar study to verify that direct negotiations will not sacrifice value for money
- Obtain conflict of interest declarations from persons associated with the project including staff, the proponent's employees and advisers
- Ensure that the contract entered into gives the agency the authority to intervene in the event of poor performance or unethical conduct
- Engage external assistance as necessary
- Prepare a probity plan
- Establish an agreed negotiation protocol
- Ensure that an auditable document trail is established
- Obtain an independent estimate of the price or financial consideration
- Establish project benchmarks for deliverable items
- Arrange for an 'open-book' relationship with the proponent
- Segregate duties
- Form a steering committee or similar oversight mechanism
- Supervise the project to ensure that the contract is adhered to
- Conduct a post-completion evaluation of the project to assess whether value for money has been obtained