

Policy

Title: **Probity Guidelines for the Consideration of Commercial Property Transactions**

Category: **Property Management**

Date Last Adopted: 7 March 2016

1. Objectives

To provide suitable guidelines for assessing all potential developments and/or disposal of Council owned land together with criteria to determine the appropriate method of sale. Also to ensure that in all of the Council's commercial property transactions, it adopts the probity principle and that best practice processes are followed by the Council.

2. Background

This policy has been developed as an amalgam of two former policies which were developed as a result of a request from the State Government for Council to list a number of Council owned properties on the State Government development site database and as a result of the Council's involvement in a number of expressions of interest to dispose of Council land respectively. Given the subject matter of the two former policies it was considered appropriate that they be combined into a single policy. In addition, the Council has been a party to commercial property transactions relating to major development assistance.

3. Policy

The Assessment of Council Owned Property for Potential Development and/or Disposal

- 1 The following criteria be adopted by the Council and its employees, where applicable, when assessing all potential developments on and/or disposal of Council owned land, where such initiatives are submitted to Council from an external party:
 - (i) Before a decision can be made on whether the proposal is suitable the following criteria are to be evaluated:

- (a) Benefits and costs to Council
Includes financial benefits or costs, ongoing maintenance and management, risk management issues and protection of property.
 - (b) Public benefit or costs
Is there a benefit to the public or community from the sale?
Is the land 'public land' as defined in Section 178 of the *Local Government Act 1993*?
 - (c) Community interest;
 - (d) Value and law of the land;
 - (e) Alternative uses;
 - (f) Land use controls; and
 - (g) Natural and cultural heritage issues.
- (ii) Once the Council has considered each of these issues and determined that a property should be sold or developed, a decision will then need to be made on the method of sale. Criteria should include all those issues considered to determine the sale as well as:
- (a) Economic conditions (for example, is the market currently competitive?);
 - (b) Number of likely interested purchasers; and
 - (c) Degree of control the Council wishes to have over the final development (for example, stratum title hold over portion of property).
- 2 Having regard to the above criteria, the Council can advise the proponent as to the manner in which the proposal shall proceed, namely expression of interest, public sale or exclusive rights.

Probity Guidelines

- 3 The Hobart City Council will observe probity best practice when disposing of Council owned real property.
- 4 Council business must be fair, open and demonstrate the highest levels of integrity consistent with the public interest.

5 Key Requirements:

(i) Fairness and Impartiality.

Potential proponents are to be treated equally and must have the same opportunity to access information and advice.

(ii) Use of a Competitive Process

Consistent with Council policy, a competitive process should be used at all times.

(iii) Consistency and Transparency of Process

Proponents are to be evaluated in a systematic manner against explicit predetermined evaluation criteria.

(iv) Security and Confidentiality

The processes adopted for receiving and managing proponent information are to ensure the security and confidentiality of intellectual property and proprietary information.

(v) Identification and Resolution of Conflicts of Interest

Any person involved in the disposal process is to declare and address any actual or perceived conflict of interest prior to undertaking any evaluation.

6 Where a decision is made, or is likely to be made, to deal directly with one proponent in the absence of an open and competitive process, the Council must have a business case prepared that includes:

(i) Social, economic and environmental costs and benefits of not going to the open market; and

(ii) Appointment of a probity advisor, to ensure in all other respects the decision is consistent with this policy and better practice.

Case for Engaging a Probity Auditor

7 For particularly large, sensitive or complex transactions, the Council has the option of appointing an external probity auditor to provide ongoing advice on probity issues throughout the process.

8 For the purposes of this policy, the phrase 'large, sensitive or complex transactions' may include one or more of the following:

(i) transactions of a high value (in excess of \$500,000);

- (ii) the matter is highly complex, unusual or contentious;
- (iii) the integrity of the project may be questioned;
- (iv) there has been a history of controversy or litigation with the property;
- (v) it is anticipated that a bid may be received from within the Council and there is a need to ensure that appropriate procedures and scrutiny are in place to maintain the integrity of the procurement process;
- (vi) the matter is politically sensitive or vulnerable to controversy;
- (vii) the nature of the market place makes bidder grievances more likely;
- (viii) where there is a high probability of conflict of interest, associated with the purchasing process or participants;
- (ix) to demonstrate probity;
- (x) to seek advice on a potential decision to depart from a competitive process;
- (xi) to save a process that is already tainted (e.g. when things are already going wrong); and
- (xii) to protect the intellectual property rights of bidders.

4. Legislation, Terminology and References

Responsible Officer:	Director Corporate Services
Policy first adopted by the Council:	27/1/2004
History	
Amended by Council	15/8/2005
Amended by Council	7/3/2016
Next Review Date:	March 2017