

Policy

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

Category: **Property Management**

Date Last Adopted: 24 August 2020

1. Objectives

- (a) to provide:
 - (i) suitable guidelines for assessing all potential developments and/or disposal of Council owned land; and
 - (ii) criteria to determine the appropriate method of sale; and
- (b) to ensure the Council adopts the probity principle and follows best practice procedures in all of its commercial property transactions.

2. Background

This policy has been developed as an amalgam of two former policies. These former policies were developed as a result of:

- (a) a request from the State Government for Council to list a number of Council owned properties on the State Government development site database; and
- (b) the Council's involvement in a number of expressions of interest to dispose of Council land.

It was decided it would be appropriate to combine these former policies given their similar subject matters and because the Council has been recently more involved in property transactions relating to major development assistance.

3. Policy

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

- (a) The following criteria be adopted by the Council when assessing all potential developments on, and/or disposal of, Council owned real property where such initiatives are submitted to the Council from an external party:
- (i) Before a decision can be made on whether the proposal is suitable the following criteria must be evaluated:
- A. Benefits and costs to Council, including:
- (1) financial benefits or costs;
 - (2) ongoing maintenance and management;
 - (3) risk management issues; and
 - (4) protection of property;
- B. Public benefit or costs, including consideration of:
- (1) Is there a benefit to the public or community from the sale?
 - (2) 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; and
- (ii) Once the Council has considered each of these issues and determined that the property should be sold or developed, a decision will then need to be made on the method of sale. The criteria for assessing the method of sale should include all of those noted above at item 3(a)(i) and:
- A Economic conditions (for example, whether the market is 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).

- (b) Having regard to the criteria noted above, the Council can advise the proponent about the manner in which the proposal will proceed.

Probity Principles

- (c) The Council will observe probity best practice when disposing of Council owned real property;
- (d) the business of Council in the context of this policy must be fair, open and demonstrate the highest levels of integrity consistent with the public interest;
- (e) 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; and
 - (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; and
- (f) Where a decision is made to deal directly with a proponent without an open and competitive process, the Council must have a business case prepared that includes the:
 - (i) social, economic and environmental costs and benefits of not going to the open market; and
 - (ii) appointment of a probity advisor - to ensure all other respects of the decision is consistent with this policy and better practice.

Case for Engaging a Probity Auditor

- (g) For large, sensitive or complex transactions, the Council may appoint an external probity auditor to provide ongoing advice on probity issues;
- (h) For the purposes of this policy, the phrase 'large, sensitive or complex transactions' may include one or more of the following:

- (i) transactions 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 is 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 likelihood of there being a conflict of interest associated with the purchasing process or the 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); or
- (xii) to protect the intellectual property rights of bidders.

4. Legislation, Terminology and References

Responsible Officer:	Director Thriving Capital
Policy first adopted by the Council:	27/01/2004
History	
Amended by Council	15/08/2005
Amended by Council	07/03/2016
Amended by Council	23/09/2019
Amended by Council	24/08/2020
Next Review Date:	Within 2 years of last review.
File Reference:	F16/65255