

F12 Disposal of Property Policy

Introduction

This policy is intended to provide guidelines for the disposal of Shire of Toodyay owned property deemed surplus to the Shire's requirements.

Application

The Shires Disposal of Property Policy sets the direction for disposition of all property, including the conditions relating to plant and vehicles trade-ins, machinery, furniture, equipment, miscellaneous items, abandoned vehicles, building/construction materials, livestock and land or buildings.

Policy Intent

To ensure full compliance with applicable legislative obligations and principles of transparency:

- Assets disposal decisions, including reasons for such action are to be recorded in the Shires assets registers and associated accounting records;
- Under no circumstances are items to be donated to staff.

For the purpose of clarity, the term "Property" and "Asset" are interchangeable to ensure alignment with the *Local Government Act 1995*. The following definitions, extracted from Section 3.58 of the *Local Government Act 1995* are also relevant:

- Disposal: includes to sell, lease or otherwise dispose of, whether absolutely or not; and
- Property: includes the whole or any part of the interest of a local government in property but does not include money.

Where assets have been identified as being surplus to the Shires requirements, due for replacement or is deemed appropriate for disposal through the relevant act, the following procedures will apply to the disposal of that asset.

- Section 3.58 of the *Local Government Act 1995* requires Council to dispose (sell, lease or otherwise dispose) of property assets either by public auction or public tender in accordance with the legislated requirements. Section 3.58 5(d) allows for certain dispositions to be exempted from these requirements through regulation.
- The disposition of which shall be an exempt disposition pursuant to Regulation 30(2) and (3) of the *Local Government [Functions and General] Regulations 1996*.

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1. Guidelines

Under Section 3.58 of *the Local Government Act 1995*, a local government can only dispose of property to:

- (a) The highest bidder at public action; or
- (b) The person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.

The Shire can dispose of property other than above if, before agreeing to dispose of the property:

- (a) It gives local public notice of the proposed disposition, describing the property concerned and giving details of the proposed disposition:
 - (i) describing the property concerned; and
 - (ii) the names of all other parties concerned; and
 - (iii) the consideration to be received by the local government for the disposition; and
 - (iv) the market value of the disposition
- (b) Inviting submissions to be made to the shire before a date not less than 2 weeks after the notice is first given;

and

- (c) It considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

This does not apply to:

- (a) A disposition of an interest in land under the *Land Administration Act 1997* Section 189 or 190; or
- (b) A disposition of property in the course of carrying on a trading undertaking as defined in section 3.59; or
- (c) Anything that the local government provides to a particular person, for a fee or otherwise, in the performance of a function that it has under any written law; or
- (d) Any other disposition that is excluded by regulations from the application of this section.

2. Authority to Dispose of Property

- (a) Decisions on the disposal of property (assets) may only be made in accordance with Delegated Authority detailed in the Shire's Delegated Authority Register or by resolution of Council.

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- (b) For major project work where disposal of property (assets) is likely to exceed the delegated authority limit, a Council resolution is required that details full financial and asset management implications associated with the disposal(s).
- (c) In instances where major projects requiring Council approval and include as part of the works disposal of existing assets, there is an obligation to disclose the written down value under financial implications of the Council report.

3. Plant, Machinery, Furniture, Equipment and Miscellaneous Items

The disposal of property (other than land or buildings) with a market value of less than \$20,000 is an exempt disposition under Regulation 30 of the Local Government Functions and General Regulations. Accordingly, the following methods of disposal may be used by the Shire:

- (a) Sale by public or private auction, including an online bidding system or portal system.
- (b) Trade-in for other property.
- (c) Donation or gifting of the property to local schools and community groups or not for profit organisations by Council Resolution.

The disposal of property (other than land) is an exempt disposition under Regulation 30 of the Local Government Functions and General Regulations if the entire consideration received by the local government for the disposition is used to purchase other property, and where the total consideration for the other property is not more, or worth more, than \$75 000.

At all times, the Shire will aim to maximise the value of any asset being disposed of.

Disposal of existing plant and equipment is based on the following considerations:

- (a) a condition rating applied to each asset;
- (b) an assumed economic life applied to each asset group;
- (c) a replacement date for each asset;
- (d) asset replacement cost.

It is the responsibility of the Assets and Services Business Unit to monitor all Plant, Machinery, Equipment and Miscellaneous Items to ensure that they are being utilised to provide maximum benefit to the Council. Any changes or usage that may have a detrimental effect to the council must be brought to the attention of Council.

Management practices to be imposed to even out usage between high and low usage vehicles.

4. Unsaleable Property (other than land or buildings) – Including Damaged and/or Contaminated Property

When all efforts fail to dispose of the property in accordance with the above guidelines, the Shire may resort to sale by private treaty if any unsolicited offers are received or the Shire may choose (by Council Resolution) to offer the property to a local community group or member at no cost or authorise its disposal by recycling or scrapping.

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5. Livestock and Other Animals

When the Shire is in a position to dispose of livestock or any other animals, the below methods of disposal may be used:

- (a) Donation/surrender to an appropriate rescue organisation.
- (b) Sale by public or private auction.

If neither of the above two options are successful, the Shire may choose to dispose of the property by private treaty if any unsolicited offers are received or the Shire may choose to offer the property to a local community group or member at no cost. If the above methods of disposal fail, the Shire may resort to the humane destruction of said livestock or animal.

At all times, the disposal of all livestock and other animals will be in accordance with the relevant acts, namely; *Dog Act 1976*, *Cat Act 2011* and *Local Government Miscellaneous Provisions Act 1960*.

6. Sale of Land

The direction provided by this policy applies to any sale of land or buildings owned by Council and does not apply to sale of land for the recovery of unpaid rates.

The Council will approve the sale of Council land or buildings by:

- (a) Offering the property for sale by tender; or
- (b) Appointment of a real estate agent to market the sale of the property by private treaty; or
- (c) Appointment of a real estate agent to conduct a public auction; or
- (d) A combination of the above.

Prior to the disposal of the property, a reserve figure or disposal price for the property to be offered for sale shall be determined in consultation with the appointed agent (where appropriate).

The reserve price shall be no less than a sworn valuation obtained from a Licensed Valuer, obtained not more than 6 months prior to the proposed disposition.

The deposit required to be paid if the property is sold by public auction or private treaty is \$10,000, on the fall of the hammer at auction or on the date of the acceptance of an offer to purchase, with the balance payable at settlement.

6.1 Public Auction

Where a property is offered for sale by public auction and fails to sell at the set reserve figure, the agent may be appointed to continue to market the property for a period of 90 days following the date of auction, to achieve a sale, providing that:

- (a) Any offer to purchase is in a form which may be accepted;

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- (b) The agent's commission is to be calculated on the sale price achieved or as otherwise agreed to;
- (c) The offer is for the amount equal to or higher than the reserve price set for the auction, unless otherwise agreed to by the CEO; and
- (d) The provisions of section 3.58 of the *Local Government Act 1995* have been satisfied.

6.2 Public Tender

If a property is to be sold by public tender the provisions of Section 3.58 (2)(b) of the Local Government Act apply. If the tender fails to secure an acceptable offer, the land may be sold by private treaty.

6.3 Private Treaty

Where a property is to be sold by private treaty without being first offered at public auction or public tender, the following provisions relating to giving public notification of the proposed disposition to Section 3.58 (3) of the *Local Government Act 1995* (Public Notice) will apply:

- (a) The offer to purchase must be in a form which may be accepted;
- (b) An offer may not be accepted if less than the agreed disposal price as set in accordance with this policy, or is a price acceptable to Council and has been advertised in accordance with Section 3.58; and
- (c) An amount of \$10,000 deposit is to be paid by the prospective purchaser upon acceptance of the offer to purchase made with the balance payable on the settlement date.

6.4 Unsolicited Offers

If Council receives an unsolicited offer for a Council Property, the CEO will determine based on Council's adopted strategies on land and buildings whether or not an offer should be considered. If yes, a sworn valuation will be obtained from an independent licensed Valuer. The CEO may make such other inquiries as she considers appropriate to ascertain the market value. If the valuation is higher than the proposed offer, the intending purchaser will be given the opportunity to increase the offer to meet the valuation.

The proposed disposition will then be put to Council for consideration where Council may:

- (a) Reject the offer;
- (b) Accept the offer subject to the provisions of Section 3.58, and advertise for public submissions;
- (c) Make a counteroffer, which would also be subject to Section 3.58, if accepted; or
- (d) Seek to dispose of the property by Auction or Public Tender and invite the proponent to participate.

6.5 Dealing with Stakeholders

Council properties may have other affected stakeholders or other persons who have an interest in the land. This may include:

- (a) Current tenants;
- (b) Potential future tenants where some substantive discussions have occurred; or
- (c) Adjacent landowners.

Any discussions with stakeholder/s should be documented, and where appropriate confirmed in writing. If stakeholder/s indicate a genuine interest in purchasing the property, they should be encouraged to make a submission to that effect or participate in a public process as the case may be.

Reference Information

Related Documents

Related Legislation	<i>Local Government Act 1995 (WA)</i> <i>Local Government (Functions and General) Regulations 1996</i>
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Associated Forms and Attachments

Document Control Information

Document Category	Finance
Document Title	Disposal of Property
Document ID	
Author (position title)	Manager Corporate & Community Services
Approved By	Council
Date of Approval (OCM)	18 September 2012
Date of Last Review	22 January 2019 27 October 2020
Date of Next Review	October 2022

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