



Contracts & Tenders: Sale of Land & other Assets

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Applicable Legislation:	<i>Section 49 Local Government Act 1999</i>
Relevant Policies:	<i>Internal Control Policy, Contracts and Tenders: Purchasing</i>
Related Procedures:	<i>Council's purchasing delegations</i>
Delegations:	<i>See Financial Delegations in Delegations Register</i>

CONTRACTS AND TENDERS: SALE OF LAND & OTHER ASSETS

1. PURPOSE

Kingston District Council's land, plant and equipment are community assets and thus Council is committed to ensuring a fair, transparent and accountable process in their sale or disposal. Council is also committed to ensuring that its methods of sale and disposal are cost effective, meet the needs of the community and represent best value for money.

This Policy addresses the key elements of the conduct of Council affairs in this area and the principles that will guide its decision-making process.

2. POWER TO MAKE THE POLICY

Section 49 of the Local Government Act 1999 requires Council to prepare and adopt policies on contracts and tenders including a policy on the sale or disposal of land or other assets.

3. PRINCIPLES

Council will ensure that its sale and disposal practices and decisions are consistent with its strategic, corporate and financial directions taking into consideration the following principles:

- equitable distribution of, and access to, quality physical assets within the District;
- recognition of the value of areas of native vegetation to biodiversity in the District and the need for areas to be available for this purpose;
- opportunities to enhance local economic development and growth;
- the benefits of quality physical asset management including better service delivery, optimising the utilisation of assets, higher return on investments, and creating opportunities to facilitate new activities;
- accountability and transparency;
- open and fair competition;
- compliance with statutory and other obligations;
- professional integrity and probity;
- commercial confidentiality;
- environmental sustainability; and
- risk management.

4. PROCESS

4.1 Likely Sale Circumstances

The following circumstances are indicative of likely scenarios where land or assets will become available for sale or disposal:

4.1.1 Land

- Surplus to Council requirements, as identified through the strategic planning process.
- Owner of abutting land approaches Council to purchase the property. The land is seemingly of no use to Council, but may benefit the ratepayer eg. unused laneway, irregular adjoining block, etc.
- The facility on Council land is not adequate, is under-utilised by the community or requires major improvements to bring it up to community expectations and there is no viable future use identified through public consultation.
- The facility on Council land is not cost effective, has no significant social value and is assessed as being a financial burden on the community provided that existing activities can be accommodated elsewhere.

4.1.2 Assets

- Regular scheduled updating of plant and equipment (eg. vehicles, machinery, office equipment).
- Surplus to Council needs (eg. office furniture, demountable buildings, office equipment).

4.2 Sale or Disposal Methods

Generally Council will sell or dispose of land and other assets through adoption of the following methods:

- trade-in on new items;
- direct sale by public advertisement;
- sale by public auction;
- sale by selected tender;
- sale by open tender;
- sale by direct approach to potential purchasers in specific circumstances such as:
 - prior ownership of the land or asset;
 - owners of land adjoining the parcel of land for sale;
 - direct relationship with an asset (eg. painting commissioned or painted by a relative);
 - prior contractual arrangement;
- other means as deemed appropriate by Council or the Chief Executive Officer.

4.2.1 Calling Tenders

Council's Code of Tendering is contained as Appendix 1 to the Purchasing Policy and applies to the sale and disposal of land and other assets through tender and any relevant procedures for the calling of expressions of interest.

4.2.2 Land Valuation

Prior to selling or disposing of land the Chief Executive Officer will seek a valuation of the land from a registered valuer for the purpose of setting a reserve price.

If the owner of abutting land seeks to purchase land from the Council valuations will be obtained by Council at the cost of the intending purchaser. Alternatively an exchange of land may be considered subject to consultation with all other owners of abutting land.

4.2.3 Selection Panel

A selection panel may be formed to consider offers made for the land or assets presented for sale.

4.3 Factors in Determining the Appropriate Method of Sale or Disposal

In determining the appropriate method of sale or disposal Council will consider factors including:

- the number of known potential purchasers of the land or assets;
- the original intention for the use of the land or asset when purchased;
- the original method and intent of Council obtaining ownership or custodianship of the asset (eg. a bequest, purchase from neighbours);
- the current and possible preferred future use of the land or asset;
- the opportunity to promote local economic growth and development;
- the total estimated value of the sale;
- delegation limits taking into consideration accountability, responsibility, operational efficiency and urgency of the sale;
- the level of public interest in the disposal; and
- compliance with statutory and other obligations.

4.4 Community Land

If the land proposed to be sold is Community Land as designated in Council's Community Land Register, Council will comply with the legislative procedure in Sections 193, 194 and 201 of the Local Government Act 1999 to effect its sale.

4.5 Public Road

If the land proposed to be sold forms a road or part of a road, Council will comply with the legislative procedure in Section 201 of the Local Government Act 1999 and the Roads (Opening and Closing) Act 1991 to effect its sale.

4.5 Documentation

To assist in demonstrating that its sale and disposal activities are cost effective, fair, transparent, accountable and meet community needs, Council will document the reasons for entering into contracts other than those resulting from a tender process.

4.6 Consultation

Council recognises its responsibilities to undertake public consultation as required by the Local Government Act 1999 and in accordance with its Public Consultation Policy.

Council also recognises the Enterprise Agreements, industrial awards, and other employee relations obligations. Where required, the Chief Executive Officer will consult with staff on decisions that will significantly impact on their employment with Council.

In addition, for sale of parcels of land not designated as Community Land but significant to the community, consultation will occur.

5. ADOPTION OF POLICY BY COUNCIL

This policy was adopted by Council at its meeting held on 21 July 2006 (resolution number 3709).

This policy was reviewed by Council at its meeting held on 20 July 2007 (resolution number 4308).

This policy was reviewed by Council at its meeting held on 29 April 2011 (resolution number 7209).

Review and Effectiveness of Policy

The effectiveness of this Policy shall be reviewed at least once every four years, being the term of the Council. The Chief Executive Officer of the Council will report to Council on the outcome of the evaluation and make recommendations for amendment, alternation or a substitution of a new policy.

Availability of the Policy

This Policy will be available for inspection at the Council's principal office during ordinary business hours. Copies will also be provided to interested members of the community upon request, and upon such payment of the fee set by Council.

APPENDIX 1**CODE OF TENDERING****1. Objectives**

The objectives of this Code are to provide guidelines for good practice in tendering, to set out the Council's expectations of tenderers, and to outline the steps that the Council will follow when tendering for goods, services or works.

2. Application of the Code of Tendering

This Code applies to all external tendering which the Council undertakes and the principles outlined in the Code are consistent with other national codes and standards.

3. Principles of Tendering

- The tender process aims to be fair to all parties.
- Best endeavours are used to demonstrate fairness to tenderers and potential tenderers.
- The Council provides detailed specifications to allow tenderers to bid for and price work accurately and tender documents clearly specify Council's required outcomes.
- Conflicts of interest are to be disclosed immediately and dealt with according to probity guidelines.
- The Council does not participate in, and actively discourages other parties from improper tendering practices such as collusion, misrepresentation, and disclosure of confidential information.
- The Council seeks to constrain the cost of tendering to both the Council and tenderers.

4. Tendering Process

- Any questions concerning the tender process are to be raised with the person(s) nominated in the tender documents.
- Tender documents specify lodgement requirements.
- The Council will respect the confidentiality of a respondent who discloses information in their tender submission that has commercial or intellectual property value and makes this known to Council.

5. Advertising Tenders

Open tenders will be advertised in appropriate newspapers indicating the purpose and nature of the contract or project and the date the tender closes.

Open tender information will generally also be available for download from the Kingston District Council web site at www.kingstondc.sa.gov.au.

6. Invitation to Tender

A copy of the Code of Tendering will be provided with all tender specifications.

- Council may attach standard Conditions of Contract for the project, works or services to the tender specifications and in some instances Special Conditions are also attached.
- Council offers the same tender documents to all respondents to an invitation to tender.
- Council will not request a tender deposit.
- Council may recall a tender at any time.

7. Tender Specifications

- Tender specifications will include the categories comprising the tender evaluation criteria based on best quality and value for money outcomes.
- Council may give additional information, written or verbal, to all respondents clarifying the meaning of the tender specifications.
- Tender documents will specify the Council's requirements as clearly and precisely as possible.

8. Registrations of Interest

- The Council may use a Registration of Interest (ROI) process before it invites tenders to assess the capacity of the respondents to undertake the work, project or development, and/or to seek feedback on draft specifications, and/or to refine specifications, and/or to shortlist respondents for a selected tender.
- A ROI process does not elicit tenders but may seek an indication of prices.
- Evaluation criteria relating to the purpose of the ROI will be included in each ROI.
- Council may invite selected tenders from some, all, or none of the registrants.
- Upon evaluation of the ROI, Council may determine not to invite selected tenders from any of the registrants, and Council may proceed to negotiate directly with one or more registrant(s), for the purposes of seeking to negotiate a suitable contract relating to the subject matter of the ROI.
- Respondents who are not invited to tender or negotiate with Council will be advised in writing.

9. Selected Tender

Council may undertake a selected tender offered to a limited number of consultants, contractors or suppliers. A selected tender is offered where it is known that there is a limited number who can provide the service, or in circumstances of urgency.

10. Use of Cooperatives

A purchase may proceed without going to tender where an existing contract is identified within an approved Purchasing Cooperative provided that this course of action is documented.

11. Tender Submissions and Non-Conforming Tenders

- Tenders received after the advertised closing date and time will not be accepted unless there are circumstances, which in the opinion of the Council, render it acceptable to do so.
- Tender documents submitted via email or facsimile will not be accepted.
- Any submission that does not conform to the tender conditions may be rejected as non-conforming.
- Errors substantially affecting the content of a tender may render it nonconforming.
- Canvassing of any member of Council whether directly or indirectly will render the tender invalid.
- A tender can be withdrawn by a tenderer prior to acceptance by the Council by the tenderer providing written notification of such withdrawal to the Council.
- Tender submissions are treated as confidential and are retained by the Council in accordance with its Records Management procedures.

12. Tender Evaluation

- All tenders received are held unopened in a locked tender box and as soon as practical after the closing date the tenders are opened in the presence of two Council officers, or one Council officer and one Elected member, authorised to do so.
- The tenders will be listed on a schedule and the schedule will be endorsed by the officers present.
- The schedule of tenders will be forwarded to the appropriate officer for evaluation and a report to be prepared for Council.
- Tenders will be evaluated according to the evaluation criteria as outlined in the tender specifications.
- Council may require tenderers to accept the Council's proposed Contract as part of the Conditions of Tender.

13. Negotiation of Contracts

Council may close a tender if there is no suitable tender submission and proceed to negotiate a suitable contract with preferred tenderer(s) or with any third party as determined by the Council.

The Council will not trade the price of one tenderer against that of another tenderer.

14. Award of Contract

The decision to award a contract may be made by the Council or its officers in line with delegated authority. The Council will notify unsuccessful tenderers promptly and in writing and may advise the reasons for the award of the contract.

15. Complaints Process

The Council will deal promptly with any complaints about the tendering process in accordance with its Internal Review of Council Decisions Policy.