

# Gladstone Regional Council

## Council Policy

<b>Title</b>	<b>LAND TRANSACTION POLICY</b>
<b>Policy Number</b>	<b>P-2023-02</b>
<b>Business Unit/s</b>	<b>STRATEGIC ASSET PERFORMANCE</b>
<b>Date of Adoption</b>	
<b>Resolution Number</b>	
<b>Review Date</b>	
<b>Date Repealed</b>	

### 1.0 PURPOSE:

This policy outlines how Gladstone Regional Council (Council) will manage its land transactions in accordance with legislative requirements to support consistent and sustainable asset management.

### 2.0 SCOPE:

This policy applies to:

- all acquisition of land by Council;
- disposal of Council-owned land or Council's interest in land;
- lease of land under the control of Council; and
- leasing of land by Council from third parties.

This policy excludes:

- disposal of assets other than land;
- sale of land or property pertaining to rate arrears;
- approved commercial activities on Council land;
- easements over private property and road reserves; and
- venue hire.

### 3.0 RELATED LEGISLATION:

- *Acquisition of Land Act 1967;*
- *Associations Incorporation Act 1981;*
- *Corporations Act 2001 (Commonwealth);*
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Commonwealth);*
- *Environmental Protection Act 1994;*
- *Human Rights Act 2019*
- *Land Act 1994;*
- *Land Title Act 1994;*
- *Land Protection (Pest & Stock Route Management) Act 2002;*
- *Land Valuation Act 2010;*
- *Local Government Act 2009;*

- *Local Government Regulation 2012;*
- *Local Law No. 1 (Administration) 2011;*
- *Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2011;*
- *Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011;*
- *Subordinate Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011;*
- *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011;*
- *Planning Act 2016;*
- *Residential Tenancies and Rooming Accommodation Act 2008;*
- *Valuation of Land Regulation 2003;*
- *Valuers Registration Act 1992;*
- *Valuers Registration Regulation 2003;*
- *Work Health and Safety Act 2011.*

#### 4.0 RELATED DOCUMENTS:

- Asset Disposal Corporate Standard
- Asset Management Policy;
- Council Standard Freehold Lease – Sporting Fields Template;
- Council Standard Trustee Lease – Sporting Fields Template;
- Department of Natural Resources and Mines Guidelines for Local Governments – compulsory acquisition of land
- Department of Natural Resources and Mines Prescribed Terms Framework;
- Financial Non-Current Asset Accounting Policy;
- Indigenous Land Use Agreements (ILUA);
- Investment Decision Framework Policy;
- Procurement Policy;
- Procurement Corporate Standard.

#### 5.0 DEFINITIONS:

To assist in the interpretation of this policy the following definitions apply:

**“Asset”** means an item that provides value to Council.

**“Acquisition”** means land or interest in land which are purchased or obtained.

**“Community Organisation”** means an entity that carries on activities for a public purpose or another entity whose primary object is not directed at making a profit and:

- it does not distribute its income and property among members; and
- it does not pay dividends to members.

**“Disposal”** means the sale or otherwise removal of land owned or the interest held in land.

**“Land”** includes land under the control of Council either as a trustee or as a registered owner in fee simple.

**“Lease”** means an interest in land or buildings that gives exclusive possession and is given by a landowner (lessor) to another person (lessee) for a fixed duration.

**“Incorporated”** means incorporated by law under the *Associations Incorporation Act 1981*, or the *Corporations Act 2001 (Commonwealth)*, or the *Aboriginal Councils and Associations Act 1976 (Commonwealth)*.

**“Market Value”** means the estimated amount, as determined by a Qualified Valuer, for which a property should exchange on the date of valuation in accordance with the International Valuation Standards Council definition of Market Value. It is assumed the amount excludes GST unless otherwise specified.

**“Outstanding Matter”** means unpaid rates or charges, outstanding invoices, grant funds received from Council that have not been adequately acquitted, or breach of any conditions of any other agreements with Council including previous lease agreements.

**“Qualified Valuer”** means a qualified valuer who is registered in accordance with the *Valuers Registration Act 1992* and the *Valuers Registration Regulation 2013*.

**“Secondary Use”** means the ability to utilise an underperforming real property beyond its primary function where secondary application does not prohibit or unduly interfere with the primary use function.

**“Transaction”** means the acquisition or disposal of land.

## 6.0 POLICY STATEMENT:

### 6.1 Principles

Council will manage its land assets smartly, effectively, and efficiently by:

- being consistent and transparent in land transactions;
- being a responsible land manager guided by Council’s strategic and operational needs;
- enhancing and protecting the environment and native title;
- improving social amenity and establishing community facilities having regard to Council’s investment decision framework;
- identifying opportunities for secondary use of land;
- encouraging resilient and strengthened community organisations;
- pursuing whole of life costings including optimising returns on investments; and
- where appropriate, complement, not compete, with the private market.

### 6.2 Acquisitions

Council may acquire land for a variety of purposes including statutory, public, investment, or development and will seek to obtain the highest form of land tenure. Land may be acquired in three ways:

1. mutual agreement;
2. resumption agreement under the *Acquisition of Land Act 1967*; or
3. resumption under the *Acquisition of Land Act 1967*.

Where land has been identified for acquisition, Council will negotiate a fair and reasonable price with the property owner. In circumstances where the land is of strategic importance or is significant for the local community and mutual agreement cannot be reached, Council will pursue resumption under the *Acquisition of Land Act 1967*.

### **6.3 Disposal**

Council has no obligation to make land available. Where land becomes available, Council may dispose of the land via sale, lease, licence, or permit to occupy.

Depending on the circumstances (i.e. nature of the land, community need, legal access restrictions, etc), the land will be offered via:

- written tender or auction;
- expression of interest to community organisations recorded in a register of interest;
- by invitation to an individual or community organisation; or
- the circumstances set out under section 236 of the *Local Government Regulation 2012*.

#### **6.3.1 Expressions of Interest**

Individuals or groups seeking to lease or purchase land from Council may register their interest by submitting an expression of interest application. All applications will be recorded in a register; however, such applications do not provide exclusivity to land.

#### **6.3.2 Leasing to Third Parties**

For the purposes of this section, references to leasing will include licences and permits to occupy.

Where possible, Council will register all leases. In circumstances where a lessee has initiated the lease, Council may seek to recover all reasonable expenses incurred by Council in the registration of the lease (i.e. survey plan costs). This may be recovered through an annual rental payment or invoice upon demand.

##### **6.3.2.1 Lease Term**

Council will offer a maximum lease term of up to ten (10) years determined on a case-by-case basis and considering:

- the proposed lessee's history;
- the proposed lessee's financial viability (i.e. ability to generate sufficient income, meet debt commitments, etc);
- current investment on the land (if applicable); and
- potential/future investment on the land.

By exception, Council may consider a lease term of up to thirty (30) years having regard to:

- the considerations identified above;

- proposed lessee's long term business strategy/plan;
- capital investment on the land; and
- the requirements of the *Planning Act 2016*.

#### **6.3.2.2 Lease Conditions**

All leases will clearly define ownership and control of assets, including (at a minimum):

- maintenance responsibilities;
- insurance responsibilities;
- costs borne by the lessee (i.e. outgoings);
- ownership of fixed improvements during lease term and at the expiry or termination of the lease;
- special terms (i.e. additions to premises, third party use of premises, etc).

#### **6.3.2.3 Leasing for Community Purposes**

Council supports community organisations by way of the provision of land to a wide range of community organisations through leasing arrangements. Land available to community organisations is a limited resource and one which must be managed diligently to ensure the best outcome for the community.

To be eligible for a community lease, the organisation must:

- be incorporated;
- be a community organisation;
- be based and have a membership base within the Gladstone Regional Council local government area;
- not have any outstanding matters before Council;
- offer membership to any member of the public without imposing conditions which Council considers unreasonable; and
- satisfy Council that it is a reputable organisation and has the funds or is capable of obtaining sufficient funds to manage and maintain the leased property to an acceptable standard.

#### **6.3.2.4 Leasing to Government Agencies**

Council recognises the integral role it plays in helping the community to access services and prepare and respond to an emergency situation. A lease may be granted to a government agency to allow a service to be provided or to help the agency to prepare for or deal with an emergency situation within the region.

#### **6.3.2.5 Leasing for Commercial and Other Purposes**

Leases may be granted for a commercial purpose. All leases of a commercial nature will be offered to the market in accordance with the requirements of the *Local Government Act 2009* and the *Local Government Regulation 2012*.

Returns on residential, commercial, or industrial land must achieve a minimum of the current market price.

All costs associated with commercial leases will be the responsibility of the lessee.

#### **6.3.2.6 Sale of Land**

All land sales will be transparent, equitable, and should achieve market value. The method of disposal will be in accordance with the *Local Government Regulation 2012*.

### **6.4 Leasing from Third Parties**

Council may be required to lease land from a third party for an identified operational or strategic need.

Prior to entering a lease agreement, as a minimum, Council will:

- inspect the land to assess:
  - appropriateness;
  - ability to meet the required purpose; and
  - risk;
- review market trends and conditions, including obtaining a market valuation;
- undertake whole of life costings;
- review lease conditions; and
- consider alternative options available.

### **7.0 ATTACHMENTS:**

Nil.

### **8.0 REVIEW MECHANISM:**

This policy will be reviewed when any of the following occur:

1. The related legislation or governing documents are amended or replaced; or
2. Other circumstances as determined by resolution of Council or the CEO; or
3. Five (5) years from date of adoption.

TABLE OF AMENDMENTS			
Document History	Date	Council Resolution No.	Notes (including the prior Policy No, precise of change/s, etc)
Originally Approved	19 November 2013	G/13/1795	
Amendment 1	16 June 2016	G/16/2823	Resolution Number CSC/16/0029 – Commercial Services Committee.
Amendment 2			Consolidation of P-2016-23 Corporate Property Policy and P-2017-35 Leasing of Land for Sport and Recreation Purposes Policy into a single policy. Other amendments to name, lease term, consolidation of sections/content, removed Review of Property Portfolio, Easements, Funding Strategy sections, etc.
Amendment 3			

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**LEISA DOWLING**  
**CHIEF EXECUTIVE OFFICER**