

SALE OF PUBLIC LAND

Information Sheet
21 April 2020

Introduction

The purpose of this information sheet is to provide guidance to councils on the process that must be followed when selling, exchanging or disposing of council owned public land.

As a general principle, decisions to sell, exchange or dispose of public land should be made in the best interests of the council and the community.

This information sheet does not cover the legislative requirements relating to the sale and disposal of land that is not public land, which is covered under section 177 of the *Local Government Act 1993* (the Act).

Power to deal with property

Under subsection 20(5) of the Act, a council is able to acquire, hold, dispose of and otherwise deal with property.

Furthermore, section 175 provides that a council may purchase or lease land for any purpose which it considers to be of benefit to the council or the community.

Legislative requirements

Section 178 of the Act requires a council to do certain things before selling, exchanging or disposing of public land owned by it.

In essence, the Act requires councils to notify the community regarding any proposal to sell public land and provide the community with an opportunity to have their views heard.

What is public land?

Section 177A of the Act provides that the following land owned by a council is public land:

- a public pier or public jetty;
- any land that provides health, recreation, amusement or sporting facilities for public use;
- any public park or garden;
- any land acquired under section 176 of the Act (land acquired by a council for prescribed purposes in accordance with the *Land Acquisition Act 1993*) for the purpose of establishing or extending public land;
- any land shown on a subdivision plan as public open space that is acquired by a council under the *Local Government (Building and Miscellaneous Provisions) Act 1993*;
- any other land that the council determines is public land; and
- any other prescribed land or class of land.

Under subsection 178(2), public land that is leased for any period by a council remains public land during that period.

Lease of public land for less than five years

Under section 179 of the Act, a council does not have to comply with the requirements of section 178 (sale, exchange and disposal of public land) if leasing public land for a period of up to five years.

Maintaining a public land register

Under subsection 177A(2) of the Act, the general manager of a council is to keep lists or maps of all public land within the municipal area and ensure that the lists/maps are available for public inspection at any time during normal business hours.

Deciding to sell public land – Open meeting and by absolute majority

Under subregulation 15(3)(c) of the *Local Government (Meeting Procedures) Regulations 2015* (the Regulations), a council must not close a meeting when it is considering proposals for the council to deal with public land under section 178 of the Act.

It is important that a council considers proposals relating to public land in open session so that the community has access to the relevant details associated with any proposal, including the decisions made by the council and the reasons behind those decisions.

As per subregulation 15(4) of the Regulations, the only instance in which a council may consider proposals to deal with public land in closed session is when it is considering a matter relating to actual or possible legal action taken by, or involving, the council.

Under subsection 178(3) of the Act, a resolution of a council to sell, lease, donate, exchange or otherwise dispose of public land is to be passed by an absolute majority¹.

Public notification of intent to sell public land and the public's right to object

Subsection 178(4) of the Act requires the general manager to notify the public of the council's intention to sell, lease, donate, exchange or otherwise dispose of public land.

In particular, the general manager is to:

- publish that intention on at least two separate occasions in a daily newspaper circulating in the municipal area;
- display a copy of the notice on any boundary of the public land that abuts a highway; and
- notify the public that objection to the proposed sale, lease, donation, exchange or disposal may be made to the general manager within 21 days of the date of the first publication.

Leading practice - Public notice of intent to sell public land

As leading practice, the public notice should be informative and enable the community to:

- clearly identify the land proposed for sale/exchange/disposal;
- understand the proposed sale/exchange/disposal process; and
- understand their right to object to the proposal and that any such objections will be duly considered by the council.

Furthermore, the public notice should include the following information:

- references to the relevant sections of the Act that the council is acting under (eg section 178 (sale, exchange and disposal of public land) and 178A (appeal));
- the specific location of the land (for example the street/property address and title details);
- a map/plan of the land;
- how the land/property is proposed to be sold, exchanged or disposed of;

1. 'absolute majority' – more than half the elected councillors, whether or not any of them are present at a council meeting'

- the timeframe for proposed sale/exchange/disposal of land;
- the timeframe for public objections and how such objections can be made; and
- how to contact the council for further information.

Considering public objections to proposed sale of public land

Subsection 178(4)(b) of the Act provides that a person may object to a council's intent to sell, lease, donate, exchange or otherwise dispose of public land.

Under subsection 178(6), a council must consider any such objections received and decide whether or not to take any action regarding the objection.

Furthermore, under subsection 178(6), within seven days of making a decision regarding an objection, a council must write to the objector to notify them of the council's decision as to whether any action will be taken.

This written notification must advise the person of the right to appeal against the council's decision under section 178A.

A person's right to appeal a council decision regarding an objection

Under section 178A of the Act, a person who lodged an objection regarding a council's intention to sell or exchange public land (under section 178) may appeal to the Resource Management and Planning Appeal Tribunal (RMPAT) against the council's decision regarding the objection made under subsection 178(6).

Such appeals must be made to RMPAT within 14 days after receiving written notification of the council's decision and must be in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993* (RMPAT Act).

Furthermore, an appeal under section 178A may only be made on the ground that the decision of the council is not in the public interest in that:

- the community may suffer undue hardship due to the loss of access to, and the use of, the public land; or
- there is no similar facility available to the users of that facility.

Possible outcomes of RMPAT appeal

Under section 178B of the Act, upon hearing an appeal against a decision of a council regarding a public objection to a council's intent to sell/dispose of public land, RMPAT may:

- confirm the council's decision; or
- set aside the council's decision; or
- set aside the council's decision and
 - substitute it for another decision; or
 - remit the matter to the council for reconsideration.

As per subsection 178A(5), a decision of RMPAT on hearing an appeal is final and section 25 of the RMPAT Act, which provides that a party to an appeal before RMPAT may appeal to the Supreme Court on a question of law, does not apply.

What if no public objections are made?

Under subsection 178(5) of the Act, if the general manager does not receive any public objections under subsection 178(4) and an appeal under section 178A is not made, then the council may sell, lease, donate, exchange or otherwise dispose of public land in accordance with its public notification of intent under subsection 178(4).

Instances in which a council must not decide to take action to sell, exchange and dispose of public land

Under subsection 178(7) of the Act, a council must not decide to take any action under section 178 if:

- any public objection regarding the sale of public land is being considered by the council;
- an appeal under section 178A has not yet been determined by RMPAT; or
- RMPAT has made a determination regarding an appeal under subsection 178B(b) or (c).

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