

Kaupapa Here Whiwhinga Whairawa me te Whakawāteatanga

Property Acquisition and Disposal Policy

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Person Responsible: Group Manager Corporate Services
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Executive Summary

The Council owns or administers properties that support the delivery of Council services including water supply, wastewater, roading, offices, parks and facilities and public spaces. Council also owns properties that contribute to the protection of, and access to, environmental, cultural and heritage sites of importance to the community.

This Policy sets out the Council's expectations for the future acquisition and disposal of properties to ensure that Council properties are providing the maximum benefit to the District and properties that do not serve a useful purpose or provide a financial benefit are properly disposed of.

Council's Role and Responsibility

The Council acknowledges the history of land ownership through confiscation, and the Crown settlement process in South Taranaki. Deeds of Settlements are now in place with Taranaki, Ngāruahine, Ngāti Ruanui and Ngaa Rauru Kiitahi Iwi. The processes outlined in the Deeds of Settlement in relation to Council owned or administered properties that are specifically included in the Deeds of Settlement take precedence over any processes outlined in this Policy.

The Council has multiple functions in property management. It manages properties to provide Council offices and public facilities, greenspace and recreation areas, public works such as water, wastewater and other infrastructure, and properties set aside for future public use.

The Council also administers Crown-owned reserves, some of which are leased and the returns invested for the development of reserves within the District.

Council property acquisition and disposal requires strategic oversight to ensure the best use is made of public funds.

Purpose of the Policy

The purpose of this Policy is to set out the Council's approach to the acquisition and disposal of property to ensure property transactions contribute to its vision, community outcomes, well-beings and priorities.

The Policy includes a robust process to ensure consistent decision making and diligent management of financial and legislative risks relating to the Council's property portfolio.

The Policy also provides guidance for staff on providing accurate, timely information, to enable good decision making.

Objectives

The objectives of this policy are to:

1. Provide a consistent approach to assessing whether property should be acquired or disposed of.
2. Ensure acquisitions and disposals support the achievement of the Council's vision, community outcomes, well-beings and priorities.
3. Support growth and enable the timely provision of infrastructure and services.
4. Ensure that the Council meets its legislative responsibilities.
5. Define the processes the Council will follow when acquiring or disposing of property.
6. Define how acquisitions will be funded and how funds from the disposal of properties will be allocated.
7. Define how opportunities to acquire property are prioritised.
8. Define when the Council will consider disposing of property.
9. Minimise the risks and costs associated with retaining properties that have no use or benefit to Council.

Legislation

The management, acquisition and disposal of Council owned and administered properties is governed by the following legislation and the requirements of these Acts have been considered in the development of this Policy and the related processes and procedures:

Building Act 2004

The Building Act governs the construction of buildings. There are several provisions in this Act that need to be considered in the disposal of property to ensure the Council complies with the vendor's warranties required as a part of any sale agreement.

Land Transfer Act 2017

The Land Transfer Act determines the manner, procedure and rules relating to the transfer of land.

Local Government Act 1974

Although largely repealed, some provisions of the Local Government Act 1974 still apply. These largely relate to the disposal of roads. There are several provisions regarding the stopping and disposal of different classifications of road and the appropriate consultation and notification processes must be followed.

Local Government Act 2002

Section 12 of the Local Government Act provides the Council with the powers to acquire and dispose of land for the benefit of the District and there are provisions within the Act on how consultation should be carried out. Section 189 provides the Council with the power to acquire land in accordance with the Public Works Act 1981.

Public Works Act 1981

A property acquired for a public work and no longer required for that, or any other, public work must, in most cases be offered back to the previous owner if they are still alive or to the person entitled under the will or intestacy of the previous owner. This is a requirement of section 40 of the Public Works Act 1981. This section is complex and there is considerable scope for litigation, so great care must be taken to follow the correct process for the disposal of any property acquired under the Public Works Act.

Reserves Act 1977

The Reserves Act governs the process to be followed when considering or undertaking the disposal of any reserve land. The process depends on the classification of a reserve (for example, recreation, local purpose, scenic). Because reserves have generally been provided to, vested in or created by the Council or the Crown for a community purpose, a higher level of community consultation is required when considering disposal and some special consultative provisions are provided for in the Act.

Resource Management Act 1991

The Resource Management Act provides a range of mechanisms for the protection of significant areas of land that should be considered in the first instance, prior to the Council considering the acquisition of land for reserve purposes. These include esplanade reserves and esplanade strips, heritage orders and financial contributions.

Policy

1.0 Principles

- 1.1 The following principles reflect the Council's approach to the acquisition and disposal of land and should be applied consistently in all acquisition and disposal decisions. The Council will:
- a. Make decisions on the acquisition and disposal of land that reflect its strategic plans and the priorities and well-being of our communities.
 - b. Exercise financial responsibility to get the best value for public money and seek to maximise the value of its land assets and minimise whole-of-life costs.
 - c. Operate within applicable statutes and regulations at all times to ensure statutory and regulatory compliance.
 - d. Recognise the special interests to relevant Iwi in the land and the importance of the inclusion of relevant Iwi in decision making.
 - e. Ensure the acquisition and disposal of Council property is managed transparently, subject to reasonable commercial confidentiality constraints.

2.0 Long Term Planning

- 2.1 In planning for land acquisition and disposal the Council is generally required to undertake public engagement through the preparation of Long Term Plans and Annual Plans. Preparation of these planning documents will identify strategic property requirements to meet future needs at a non-property specific level of detail.

3.0 Acquisitions Policy

- 3.1 It is the Council's preference that acquisitions are identified, planned and budgeted for in the Long Term Plan or Annual Plan.
- 3.2 When a need to acquire property is identified, the Council will also assess non-ownership alternatives and their consequences such as partnerships, joint ventures or leasing.
- 3.3 A full report to the Council, applying this Policy, will be required for the consideration of property acquisition. The assessment criteria and process to be used for acquisitions are attached as Appendix 1.
- 3.4 The process and assessment criteria will apply to any ad hoc opportunity presented to the Council to acquire a property, through either purchase, gifting, bequest, land swap or any other method.

4.0 Funding of Acquisitions

The Council may fund land or property acquisitions from the following sources:

- a. General Rates and Revenue
- b. Borrowings
- c. Property Reserves including proceeds from disposals

5.0 Disposals Policy

5.1 When a property is no longer required for its original or intended purpose:

- a. A review of all options for the future of that property, including alternative use or disposal, will be completed.
- b. The costs and benefits of retention or disposal will be fully explored.
- c. A report to the Senior Leadership Team, applying this Policy, will be required for the consideration of a change of use of any property. The assessment criteria and process to be used for a change of use are attached as Appendix 2.

5.2 All properties should be considered for disposal when:

- a. They are no longer required for their intended purpose; and
- b. They are not required or suitable for any alternative Council purpose; and
- c. They do not contribute to the Council's strategic vision and community outcomes or any growth strategy, structure plan, asset management plan or other plan; and
- d. The ongoing costs of the property are not sustainable; or
- e. Disposing of the property will be of financial benefit to the Council.

5.3 Stopped roads should be disposed of immediately following the road stopping process and a plan developed to dispose of existing stopped roads.

5.4 If the Council is approached with an ad hoc request to purchase a Council owned property:

- a. The same assessment criteria must be used as applied to planned disposals.
- b. Any decision must be made by Council resolution based on that assessment.
- c. Where a member of the public applies to the Council to purchase Council owned or administered property, and the property is not sold through an

open market process, all costs associated with the sale and purchase will be borne by the applicant.

- 5.5 A full report to the Council, applying this Policy, will be required for the consideration of all disposals of property. The assessment criteria and process to be used for disposals are attached as Appendix 2.
- 5.6 Where an agreement is in place with occupiers or lessees, the Council will adhere to the agreement over any processes outlined in this Policy.

6.0 Proceeds from Disposals

Proceeds from the disposal of Council property will be utilised in the following ways:

- 6.1 **Housing for the Elderly**
Sale proceeds will be used for the development of housing for the elderly or the purchase of property for that purpose after the repayment of any debt associated with the asset.
- 6.2 **Freehold Property**
 - a. Sale proceeds are to be paid into the respective Ward Property Reserve to be used for the purchase or development of properties within that Ward, after the repayment of any debt associated with the property.
 - b. To offset the project costs associated with the use of the surplus property.
- 6.3 **Reserve Land**
The use of proceeds from the sale of reserves is subject to the Reserves Act 1977. If the reserve is Crown owned, all or part of the proceeds may have to be paid back to the Crown. If proceeds are able to be retained, they must be used for the acquisition of new land for reserves or the development of reserves. Any proceeds from the sale of reserve land will be held in a District wide property reserve for those purposes.
- 6.4 **Endowment Land**
The Council must use the proceeds of the sale for a purpose that is consistent with the purpose of the endowment, after the repayment of any debt associated with the property. It may apply for ministerial approval to use the proceeds for a different purpose.

7.0 Consultation Policy

- 7.1 The Council will apply its Significance and Engagement Policy when determining the appropriate level of engagement on decisions to acquire or dispose of property.
- 7.2 Where appropriate the Council will consult with relevant Iwi and community or key stakeholders on specific acquisitions or disposals.
- 7.3 In some cases, such as disposal of reserves, endowments or land purchased for a specific purpose, the Council has additional legal obligations to inform specific parties, offer the land back, or undertake additional consultation when disposing of land. The Council will implement sound processes to ensure these obligations are met, including any obligations agreed as a part of any Iwi-Council Partnership Strategy or similar agreement.

8.0 Right of First Refusal

- 8.1 Following the discharge of any pre-existing statutory or other legal obligations by Council, relevant Iwi will be provided with the opportunity to purchase surplus property prior to it being sold via an open market process.
- 8.2 The right of first refusal applies to surplus property that has been assessed as suitable for sale via an open market process. Right of first refusal does not apply to strategic disposals or atypical properties.
- 8.3 The right of first refusal offer will be made to the relevant Iwi.
- 8.4 The relevant Iwi will determine if they have an interest in purchasing the property and which Iwi or hapū will proceed with the purchase.
- 8.5 Market value will be paid for surplus property sold via the right of first refusal.

9.0 Delegations

- 9.1 The Chief Executive has the power to negotiate and enter into contracts to acquire or dispose property:
 - a. Where a specific level of delegation is included in the Council resolution to purchase: or
 - b. Provided the terms of sale or purchase are conditional on ratification by the Council.

10.0 Release of Information Policy

The Council will release information relating to acquisition and disposal transactions on specific properties when it is no longer confidential in terms of the Local Government Official Information and Meetings Act 1987; and

The limitations of commercial sensitivity no longer apply.

11.0 Reporting

The Property Unit will report annually to the Council on the number of properties held for each activity or purpose and in particular, the number of properties that are identified as having no current Council purpose or where disposal would be of financial benefit to the Council. The report will also include a summary of sales or purchases completed during the previous financial year.

12.0 Definitions

Acquisition means the procurement of property including but not limited to, purchase, compulsory acquisition and land exchanges.

Disposal means the disposal of property including, but not limited to, sale, gift, vesting and land exchange.

Endowment land means land that has been transferred to the ownership of the Council through gift or endowment for a specific purpose.

Market value means the estimated amount for which a property should exchange between a willing buyer and a willing seller after proper marketing or a registered valuation.

Open market process means a competitive process that provides unrestricted access to all potential purchasers.

Reserve land means any land set aside by the Crown or a local authority for any public purpose and classified as a reserve.

Strategic disposal means a disposal approved by Council for a specific purpose and may include special conditions associated with disposal.

Strategic purchase means an acquisition planned and budgeted for in the Long Term Plan or Annual Plan.

Surplus Property means property that has been reviewed from a whole-of-organisation perspective and assessed as no longer required for operational, strategic or investment purposes and approved by the Council as ready for disposal.

13.0 Contacts

Property and Facilities Operations Manager
South Taranaki District Council
06 278 0555 or 0800 111 323

14.0 Review of Policy

This Policy shall be reviewed two years following adoption and every five (5) years thereafter, to ensure it is effective and efficient at achieving the objectives.

Appendix One

Assessment Criteria and Process for Acquisitions

The following criteria will be used to assess an opportunity to acquire land and decide whether it contributes to the objectives and principles of this policy.

Every acquisition will be considered on its own merits and no one of the criteria listed is necessarily of greater weight; nor is an acquisition required to meet every one of the criteria. The Council can decide to proceed with an acquisition if one or more of the below criteria are not met. Any criterion not met will be analysed in the decision-making report, and this will be considered along with any proposed mitigation when the Council considers whether or not to acquire the property.

a. Overall strategic fit of the acquisition

- i. The need for acquisition is in a growth strategy, structure plan, asset management plan or similar.
- ii. The proposed site improves functionality or access to existing Council-owned or administered land.
- iii. The acquisition provides a connection or improves safety and access to the coast, waterways, walkways, cycle tracks or other recreational connections.
- iv. The acquisition will protect ecological values, historic heritage, cultural value, geological value, or landscape values.
- v. There are demonstrable social and environmental benefits to the acquisition.
- vi. No other Council-owned or administered land could fulfil the need.
- vii. The acquisition will contribute to one or more of the community well-beings.

b. Costs and land value

- i. A valuation of the property has been obtained.
- ii. The cost of development for the intended purpose.
- iii. The whole-of-life costs of the acquisition have been considered.
- iv. An appropriate source of funding has been identified.
- v. The funding of the acquisition will be equitable for current and future generations.

c. Alternative ownership or acquisition options

- i. Opportunities for alternative ownership arrangements on the site such as joint ventures or leasing have been investigated.
- ii. Opportunities for alternative methods of acquisition other than purchase, such as endowment, vesting, land exchange or partnerships have been explored.
- iii. The consequences of any alternative ownership options have been identified.

d. Property Suitability

- i. Access to and functionality of the site for the intended purpose is achievable.
- ii. Services and infrastructure required for the intended purpose is accessible and cost effective.
- iii. Any zoning or designations on the site are appropriate for the intended use.
- iv. Any natural hazards on the site have been identified and will not prevent or impede the planned use of the site.
- v. The current use of the property does not prevent or impede the planned use of the site.

e. Restrictions and Impediments

- i. There are no encumbrances on the title that prevent or impede the planned use of the site such as easements, caveats, memorials on titles, or Māori settlement claims.
- ii. A check for compliance with building code, drainage, disconnection or decommissioning of services, seismic assessment or contamination does not reveal anything that will prevent or impede the planned use of the site.
- iii. There are no existing tenancies on the property that prevent or impede the planned use of the site.

f. Urgency / Time Constraints

- i. Is there a risk of the acquisition opportunity being lost or the property being rendered unsuitable for intended use.
- ii. Are any alternatives available? If the specific site is not purchased, will the Council be unable to fill the identified need?

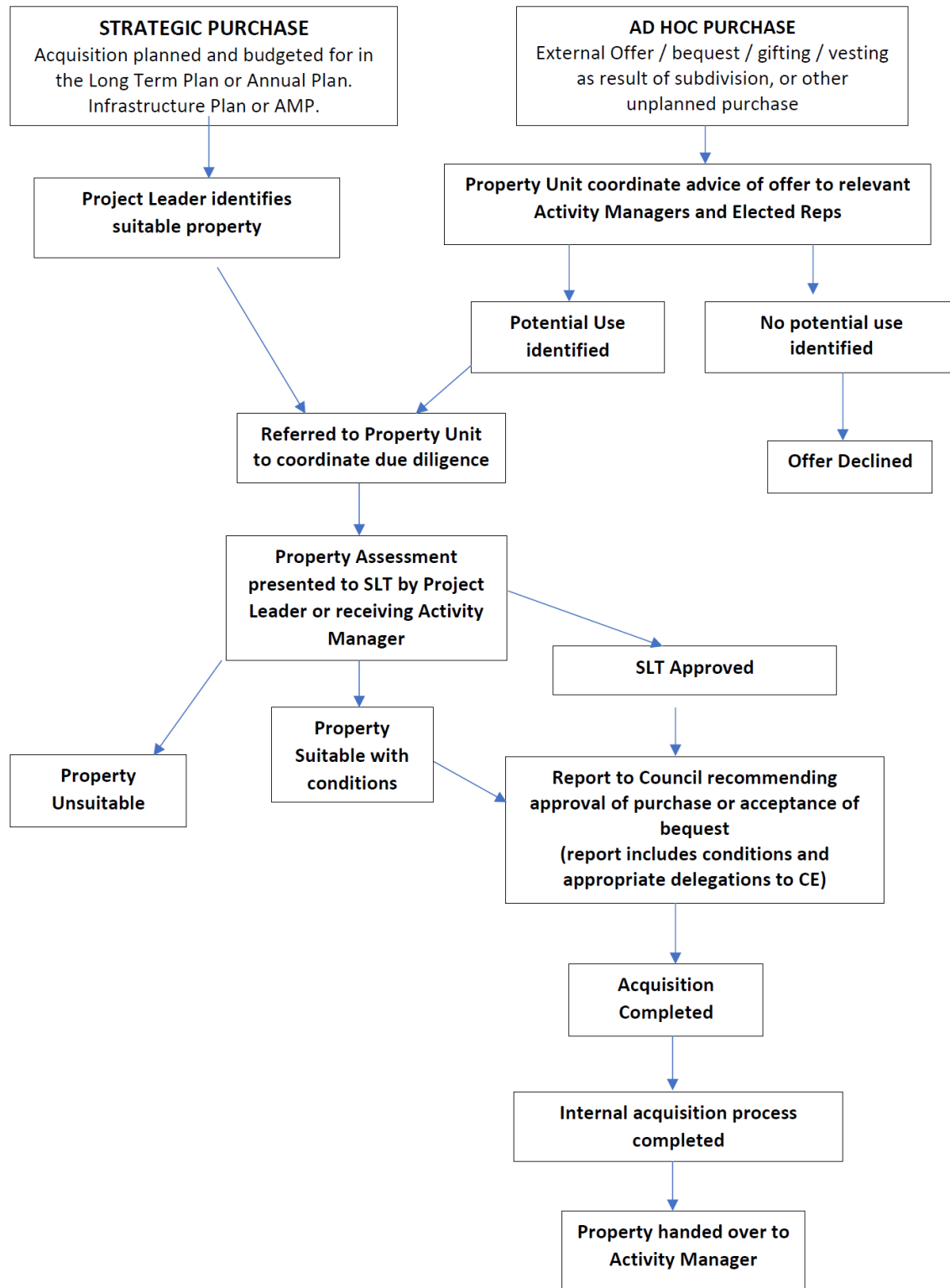
Methods of Acquisition

The Council may use the following methods to acquire properties.

Willing seller – willing buyer	Direct negotiation between the Council and the landowner. The terms of the sale are determined by negotiation.
Compulsory acquisition	The Council can acquire land for a public work through the Public Works Act 1981, with or without the agreement of the landowner and must comply with its obligations under this legislation. The landowner is compensated in accordance with the Act.
Gifting and bequeathing	A landowner may approach the Council to gift or bequeath land.

Vesting	Land can be vested in the Council as a reserve as a result of a subdivision, usually as a recreation or esplanade reserve.
Land exchange	Opportunities can arise for the mutually beneficial exchange of land through boundary adjustments or outright ‘swapping’ of land, usually as a result of public works acquisitions.
Private Public Partnerships	The Council can enter into agreements with the private sector to undertake capital works projects and this can include land acquisition. In these agreements the Council could work with and share risk with a private company to deliver better outcomes for the community.
First right of purchase agreement	The Council and the landowner enter into an agreement that the Council has the option to purchase the property prior to it being offered for sale on the open market. The agreement may be a simple exchange of letters or it may be an encumbrance recorded on the property title that sets out the terms and conditions under which the property will be offered to the Council to purchase.

ACQUISITION PROCESS



Appendix Two

Assessment Criteria and Process for Disposals

When a property is no longer required for its original or intended purpose a review of all options for the future of that property, including alternative use or disposal, will be completed.

Step 1. Decommissioning and Remediation

The Property Unit will oversee the decommissioning and reinstatement of the site to ensure the property is safe and fit for any future use or for disposal, with the cost of decommissioning and reinstatement to be funded by the Council activity that last used the property.

Step 2. Property handed over to Corporate Property Unit

Step 3. Options for Alternative Council Use

Options for use by another Council activity will be considered and assessed based on the following considerations:

- a. Alignment with the Council's strategic plans.
- b. Suitability for the proposed activity.
- c. The cost of development for alternative use.
- d. The whole of life costs for the proposed alternative use.
- e. The costs and benefits of retention versus disposal.

A proposal applying this policy must be submitted to the Senior Leadership Team for the consideration of a change of use of any property.

Step 4. Consideration for Disposal

The following criteria will be used to assess any proposal to dispose of a property and decide whether it contributes to the objectives and principles of this policy.

The criteria are a guide to decision making by the Council. Every proposed disposal will be considered on its own merits, and no one of the criteria listed is necessarily of greater weight, nor must a property disposal meet every one of the criteria.

The Council may decide to proceed with the disposal if one or more of the criteria are not met. Any criterion not met will be analysed in the decision-making report, and this will be taken into account when the Council decides whether or not to dispose of the property.

1. Market considerations

- a. Whether the property market is significantly depressed and will have an impact on the potential financial benefits of the sale.
- b. There are parties interested in purchasing the property.
- c. The financial benefits of disposal outweigh the costs and benefits of retention of the property for the existing or any other proposed use.

2. Restrictions and Impediments

- a. The Council is able to legally dispose of the land in the manner proposed.
- b. There are no existing tenancies on the property that may affect the future use or financial benefits from the sale.

3. Community Views

- a. Any known community interest or preferences for the particular site and its retention or disposal have been taken into account.

4. Cultural Heritage

- a. The property does not contribute to ecological, historic heritage, cultural, geological or landscape values.

5. Legislative Requirements

- a. The Council must comply with legislative requirements when disposing of land, such as the Reserves Act 1977, the Public Works Act 1981 and the Local Government Act 2002. These determine the public consultation process, who obtains the proceeds from disposing of land, rights to purchase once the Council decides it is surplus and how the proceeds from disposal can be spent.

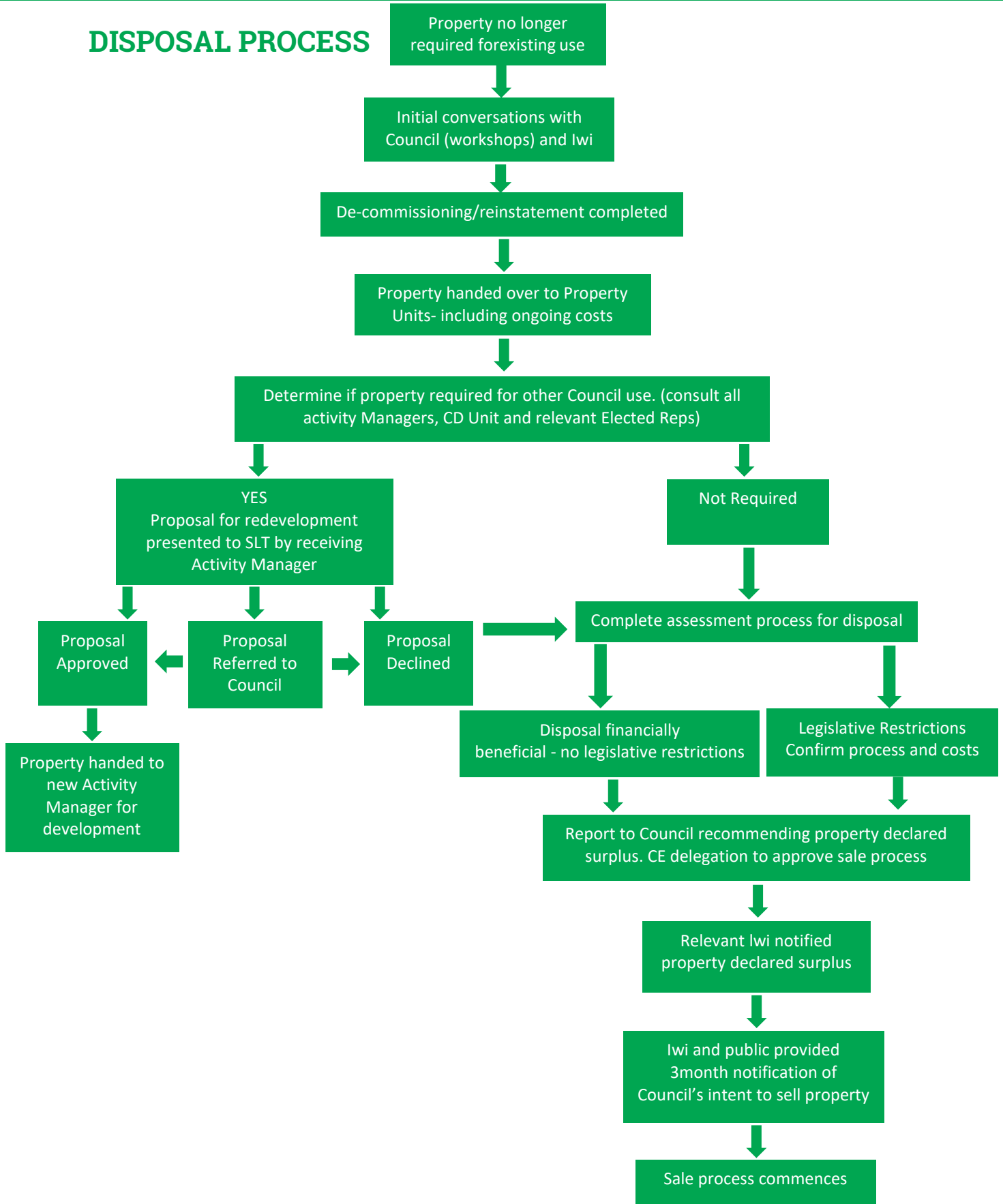
Methods of Disposal

The Council may use the following methods to dispose of properties.

Council owned freehold land	The Council may choose to sell a freehold property by tender, private contract, advertising with an asking price, auction or listing with a real estate agent.
Reserve Land	If the Council wishes to dispose of a reserve, it must first revoke the classification of the reserve. The process is detailed in the Reserves Act 1977 and includes a public consultation process and consultation with Iwi and the Department of Conservation. The method of disposal is linked to how the Council originally acquired the land – a reserve derived from the Crown will return to Crown ownership for disposal and the Council and the Crown will share the proceeds.

Land acquired for public works	If land bought for a specific public work is no longer required for that public work, any other public work, or an exchange, the Council can dispose of the land. However, it must first offer the land back to the original owners or their representatives.
Endowment land	If land endowed in the Council for a specific purpose is considered for disposal or use for a different purpose the Council must first obtain the approval of the Minister and comply with conditions in section 141 of the Local Government Act 2002
Gifted or bequeathed land	Before disposing of gifted or bequeathed land, the Council must seek the views of the original owners or their successors, where reasonably practical to do so.
Stopped roads	Following completion of the road stopping process under sections 319(1)(h) and 342 (1)(a) of the Local Government Act 1974, and the fulfilment of any obligations under section 40 of the Public Works Act 1981, the Council may negotiate the sale or transfer of the land to adjoining property owners.
Exchange of land	The Council may exchange land it owns for other land that fits better with its strategic land acquisition criteria. This mutually beneficial exchange of land could occur through boundary adjustments or swapping of land and is governed principally by the Reserves Act 1977 and the Public Works Act 1981.

DISPOSAL PROCESS





Te Kaunihera o Taranaki ki Te Tonga

South Taranaki
District Council

www.southtaranaki.com