

5. Implementation & Notification (Conservation Act Disposal)

Requirements	Who is accountable for carrying out the requirement	Why?/Consequence
Implement & notify the decision/outcome	Officer handling the case	To transfer title & take associated action.

5.1 IMPLEMENTATION

If a disposal offer is made and accepted, or a sale and purchase agreement is arranged through a land agent, and provided the terms and conditions of offer are met, then the title can be transferred to the person entitled.

The transfer of title is implemented, on sale, under the provisions of s.26 (6) & (7) Conservation Act 1987.

On transfer the land automatically ceases to be subject to the Conservation Act.

5.2 NOTIFICATION

Notification of disposal is given as follows:

- By publication of a notice in the Gazette under s.26(5) Conservation Act;
- Notice to local authorities – see best practice in the Processing Local Authority Rates SOP
- Notice to Finance for arranging an appropriation for loss in accordance with Cabinet Policy if applicable.

Released under the Official Information Act

STAGE 12B

MARKETING OF STEWARDSHIP AREA FOR SALE

1. **Scope**

This standard applies to a stewardship area available for disposal that is not able to be offered to an adjoining owner (see Stage 12A) and has been cleared of all statutory, contractual and Cabinet requirement and obligations.

2. **Parties Involved**

The parties involved in the marketing of property are:

- 2.1 The Department as vendor, specifically **DOC's delegate**
- 2.2 The real estate agent and/or auctioneer – the contractor to the Region.
- 2.3 Applicants and potential applicants.

3. **Approval to Method of Sale**

3.1 DOC delegate should, on the recommendation of the **SLMA**, approve the method of sale i.e. either public auction or public tender, or by public application at CMV.

3.2 In arranging the marketing of a property, **DOC's delegate** shall:

- Except as otherwise provided, ensure that the market price of the property is set by a registered valuer not more than three months prior to the date on which the property is first offered for sale.
- Arranging for **DOC's delegate** to give the selected real estate agent a written appointment to act as agent in the sale (s.62 Real Estate Agents Act 1963).
- Authorise or arrange authorisation for advertising by the real estate agent to the extent allowed by the budget for the disposal.
[This advertising budget should be in proportion to the total value of the property].
- Ensure that his/her dealings do not involve any misrepresentation about the land available for sale (Fair Trading Act 1986).

4. **Real Estate Agent & Agreement for Sale & Purchase**

The real estate agent marketing the property on behalf of the Department must be licensed under the Real Estate Agents Act 1976.

The agent will draw up the agreement for sale and purchase. The agreement should be signed by an **officer with delegated authority** under s.26 Conservation Act.

5. **Settlement**

DOC's delegate shall arrange settlement between the conveyancer representing the purchaser and DOC's solicitor.

6. **Records**

All records of the disposal shall be kept on file and in electronic form. Written notes of all discussions with prospective purchasers, both before and after completion of the sale shall be kept. An audit trail is needed in case anyone questions the integrity of the sale process.

7. **Advice**

The **advice** that is included in OLDDM-781524 is based on the experience of a professional property adviser dealing in disposals of land held by local government. There are many parallels with disposals of land by DOC. The advice shall be followed by the SLMA unless the merits of the case warrant a different approach. [NB Advice in that document was current at the date shown in it and has not been updated.]

8. **Overseas Buyer**

Acquisition of land by overseas persons is governed by the Overseas Investment Act 1973 and the Overseas Investment Regulations 1995 (under review at July 2004).

MARKETING A PROPERTY FOR SALE – PROCEDURAL GUIDELINES (November 1999)

1. Title

It is always preferable to sell with titles in place. If a separate title has not been issued the sale and purchase agreement will need to allow adequate time for the issue of title. Preferably make the agreement conditional on title issuing by a specified date.

2. Adding Value Prior to Sale

The Department is not authorised to spend money adding value to land for the purposes of sale. Only essential maintenance should be carried out until the point of transfer.

3. Real Estate Agency

A sole agency basis of listing will result in the agent committing the time and resources necessary to marketing the land available for sale.

It is essential to negotiate and sign a written agency agreement.¹ Always make a conscious decision as to how long a period of agency you will allow. Ensure the agency agreement provides for regular client reports detailing the marketing efforts that have been made, the names of prospective purchasers and the follow up that has been taken.

Commission rates must be agreed up front.

Never select an agent solely on the basis of lowest commission. The person managing the sale is more important than the profile of the agency. You should be satisfied that the person will do the best job and that you can work with them.

4. Method of Sale

The auction system is fraught with potential difficulties, especially if there is any political sensitivity about the asset being sold.

Tender is, subject to the agent's advice, the preferred method of sale, especially where the property has a degree of desirability. The tender process needs to be handled with

¹ The agreement might cover matters such as no warranties as to suitability etc., marginal strip requirements, acceptance procedures (if sale is to be by tender), deposit provisions, settlement and default procedures, apportionment of rent and outgoings, risk and insurance obligations, nominee provisions, commission/agency arrangements, schedule of tenancies/leases, and schedule of vendor's chattels.

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care. The intending purchasers need to be given some idea of the expected value of the property without under or over selling it.

For private treaty sales the asking price should be set that is as close as reasonable to current market value. You need to have a high degree of comfort about the valuation of the property (see below).

Property should be exposed to the wider market before negotiation is undertaken with an unsolicited applicant. Otherwise the sale price is less likely to be maximised. It is essential to generate competition between purchasers if the price is to be maximised.

5. Valuation

Ensure that the valuer is properly commissioned and given all relevant information so that s/he can value the property realistically. Ask the valuer to supply a range of values rather than a fixed single figure assessment.

You must allow the valuer to act in a professional manner but be prepared to challenge the valuation assumptions in the same manner as a purchaser would.

Copies of a valuation should only be made available to a purchaser if you do not want the sale price to exceed the valuation.

Generally, a valuation commissioned for another purpose should not be used when selling a property.

You may need to involve the valuer in advising on a negotiating strategy or in analysing offers.

6. Aiding Prospective Purchasers' Evaluation

Providing prospective purchasers with information will assist the sale process by reducing the buyer's risk and may also save the conservancy time in answering the same questions over and over.

Conservancy should make available a detailed information memorandum where the value of the property warrants the cost. This memorandum may include some or all of the following:

- Colour photographs of the property.
- A description of the land and building(s).
- Legal description, copies of title and any other legal documents.
- Easements for supply arrangements concerning electricity, gas, water, sewerage and telephone services.
- Land Information Memorandum (LIM).

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- A report on the zoning of the property and any RMA requirements, or Local Authority Requisitions.
- Tenancy Schedules and copies of leases (or where appropriate make true copies of all Lease Documents and have them available for inspection).
- Verification of rentable floor areas.
- A schedule of all outgoing rates applicable to the building together with a copy of the current year's outgoing rates or operating expense budget compared with actual costs.
- Details of the vendor's recent maintenance expenditure on the building.
- Statutory Valuation (e.g. for rating purposes).
- An environmental assessment report on the site (if deemed necessary).
- Status of rent reviews, leasing agreements and vacant space.
- Details of any outstanding rates, or other statutory obligations.
- Particulars of the payment status of all tenants (if available) together with an indication of tenants' present and likely future plans for occupation of the space.
- Details of any incentive payments or other accommodation afforded to any tenants as an inducement to enter any tenancy contract.
- Details of any parties interested in letting any part of the land or space that may be vacant.
- Plans, specifications and structural drawings and drawings for mechanical, air conditioning electrical, hydraulic and fire services (if available).
- Drawings and/or a schedule of tenancy works and internal partitioning owned by the tenant(s).
- An independent report from suitably qualified consultants on the structural and maintenance aspects of the building (optional).
- A list of vendor's plant, fixtures and chattels including in the sale.
- Disclaimers.

The person preparing the above information must be careful to avoid any misrepresentation (see s.14 Fair Trading Act 1963).

7. Advertising

Check the property file to ensure that anyone who has previously registered an interest is informed of the sale. Notify tenants and adjoining owners. Refer them to the agent if they are interested in purchase.

It is probably better to overspend on advertising and marketing the first time around than try to re-market a property. Once a property goes stale it is very hard to sell.

As a rule of thumb the property marketing budget can be up to about 1% of the value. Most real estate agents will design their own advertising material but the conservancy, as client, should direct this process.

Media advertising should be concentrated in the first part of a 4 to 5 week marketing period.

Post box flyers, and signs on the property (where appropriate), are also cost effective.

Targeting specific purchasers (where the agent considers it desirable) can be done through direct mail houses who maintain mailing lists of all business categories.

Local suburban papers might also accept a press release from the conservancy. Timing should be discussed with the real estate agent. It may not generate the kind of enquiry you want but it does reinforce the other marketing methods at no costs.

8. Agreement for Sale and Purchase

Every agreement should have a clear statement on the GST status of the transaction. Most tenanted commercial properties will be zero rated for GST. In the case of partly tenanted or vacant properties you should ensure that you recover the GST from the purchaser at least a few working days prior to the date on which the conservancy is accountable to Inland Revenue to pay GST on the transaction. [Check with the Cnys BSM.]

The deposit paid on the signing of an agreement has to cover at least the agent's commission and legal costs of sale. A deposit of around 10% of the purchase price is common. If the value of the property is very high, however, the amount of the deposit should adequately cover the selling costs and represent a sizeable stake that the purchaser will not readily walk away from.

The ancillary rights (if any) appurtenant to the land available for sale and the ancillary rights (if any) to which the land is subject (encumbrances) must be listed (s.2 Contracts Enforcement Act 1956).

The CRO should check the agreement drawn up by the land agent is in accordance with instructions before it is passed for signature to the officer with delegated authority to dispose of the land.

9. Offers

Outside the formal tender process, ensure that when you receive two offers on the same property at the same time you always treat the parties in an identical manner and offer them exactly the same opportunities to renegotiate. Tell them nothing about the other offer. The agent will usually invite both parties to make their "best offer" by a certain fixed time and date.

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If there is only one offer – and the property has been properly marketed but for whatever reason is not attracting offers – conservancy should seriously consider taking whatever offer it gets through the agent.

Often a conditional offer is received at a higher price than unconditional offers. It is essential to evaluate the price in the context of the likelihood of the sale proceeding. Accepting a conditional offer poses the risk of losing the genuine and unconditional purchaser, whereas turning them down always leaves open the possibility that a higher price could have been achieved.

Reference: Proceedings of Vision 2000: Local Authority Property Conference, Auckland. 3-5 November 1999. (Paper presented by Trevor Canty).