



Disposal Of Land And Assets Policy

Approved by	Council
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Related Policies:	Code of Conduct for Council Members & Council Employees Credit Card Procedures Financial Internal Controls Policy Community engagement & consultation Policy Budget Management Policy Fraud and Corruption Prevention Policy Procurement Policy Delegated Financial Process

1. INTRODUCTION

- 1.1. In compliance with Section 49 of the *Local Government Act 1999* (Act), Council should refer to this policy (Policy) when selling or disposing of Land or other assets.
- 1.2. This policy seeks to:
 - Define the methods by which Land and Assets are disposed of;
 - Demonstrate accountability and responsibility of Council to ratepayers;
 - Be fair and equitable to all parties involved;
 - Enable all processes to be monitored and recorded; and
 - Ensure that the best possible outcome is achieved for the Council.
- 1.3. Furthermore, Section 49 (a1) of the Act requires Council to develop and maintain policies, practices and procedures directed towards:
 - obtaining value in the expenditure of public money; and
 - providing for ethical and fair treatment of participants; and
 - ensuring probity, accountability and transparency in all disposal processes.
- 1.4. However, this Policy does not cover:
 - 1.4.1. the procurement activities of Council;

- 1.4.2. Land sold by Council as a result of the non-payment of rates; or
- 1.4.3. the disposal of Land or Assets which are not owned by Council e.g. abandoned vehicles.

2. DEFINITIONS

2.1. For the purpose of this Policy, the following definitions apply:

- 2.1.1. **Assets** - means any item that Council owns or that is recognised by Council's accounting system as an asset. This includes land, buildings, plant, machinery, equipment and all other physical objects. It does not include financial investments or finance related activities.
- 2.1.2. **Disposal** - there are various methods of disposal available for Council to dispose of its land and assets. They may include: open market sale, expressions of interest, tender, auction, direct sale, by negotiation, trade in, exchange or give away (scrap).
- 2.1.3. **Road** - The Local Government Act 1999 defines road as a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes:
 - A bridge, viaduct or subway
 - An alley, laneway or walkway
- 2.1.4. **Land** - includes assets that are community land, vacant land, operational land, road reserves, any legal, proprietary or equitable interest in land and includes any buildings (community or operational) or improvements upon such land.

3. POLICY PRINCIPLES

Council must have regard to the following principles in its sale/disposal of Land and Assets:

- 3.1 Prior to disposal, the delegated officer must ensure that no other Council department has a need for the asset. Items of historical or cultural significance should be given special regard and any dangerous goods disposed of only in an authorised and safe manner.
- 3.2 Encouraging of open and effective competition. Surplus assets or materials should be disposed of in a way that maximises returns whilst maximising open, transparent and effective competition.
- 3.3 Obtaining Value for Money. This is not restricted to price alone.

An assessment of value for money must include consideration of (where applicable):

- The contribution to Council's long term financial plan and strategic management plans;
- Any relevant direct and indirect benefits to Council, both tangible and intangible;
- Efficiency and effectiveness;
- The costs of various disposal methods;
- Internal administration costs;
- Risk exposure; and
- The value of any associated environmental benefits.

3.4 Ethical Behaviour and Fair Dealing

All Council staff and members is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations.

3.5 Probity, Accountability, transparency and Reporting.

The delegated officer responsible for the disposal of any Council asset and the relevant Manager must ensure that no conflict of interest occurs in or as a result of the asset disposal process.

3.6 Ensuring compliance with all relevant legislation, including the following:

- *Local Government Act 1999* (SA)
- *Real Property Act 1986* (SA)
- *Land and Business (Sale and Conveyancing) Act 1994* (SA)
- *Development Act 1993* (SA)
- *Retail and Commercial Leases Act 1995* (SA)
- *Residential Tenancies Act 1995* (SA)
- *Strata Titles Act 1988* (SA)
- *Crown Land Management Act 2009* (SA)
- *Community Titles Act 1986* (SA)
- *Roads (Opening and Closing) Act 1991* (SA)
- *Land Acquisition Act 1969* (SA)

4. FACTORS RELEVANT TO SALE OR DISPOSAL

4.1. Council will consider a variety of factors when considering whether to sell or dispose of Land or Assets including, but not limited to:

- the usefulness of the Land or Asset;
- the current market value of the Land or Asset;
- the annual cost of maintenance;
- any alternative future use of the Land or Asset;
- any duplication of the Land or Asset or the utility provided by the Land or Asset;

- any impact the disposal of the Land or Asset may have on the community;
- any cultural or historical significance of the Land or Asset;
- the positive and negative impacts the disposal of the Land or Asset may have on the operations of Council;
- the long term plans and strategic direction of Council;
- the remaining useful life of the Land or Asset;
- a benefit and risk analysis of each proposed sale or disposal;
- the content of any community land management plan;
- other relevant Council policies or procedures;
- the principles of economic contribution including any relevant policy and procedure adopted by the Office of the Industry Advocate and in force from time to time; and
- any other factor deemed relevant by Council in the circumstances.

5. SALE OR DISPOSAL OF LAND

- 5.1. Having regard to the Factors Relevant to Sale or Disposal, Council may resolve to sell or dispose of Land.
- 5.2. Where the Land forms or formed a road or part of a road, Council must ensure that the Land is closed in accordance with the provisions of the *Roads (Opening and Closing) Act 1991* (SA) prior to its sale or disposal.
- 5.3. Where Land is classified as community Land, Council must:
 - 5.3.1. undertake public consultation in accordance with the Act and Council's Public Consultation Policy;
 - 5.3.2. ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its sale or disposal; and
 - 5.3.3. comply with all other requirements under the Act in respect of the sale or disposal of community land.
- 5.4. Where Council disposes of Land through the grant of a leasehold interest, Council must ensure that it complies with its obligations under the Act.

5.5. Subject to paragraphs 5.1 to 5.4 above, Council will dispose of Land by adopting any or all of the following Methods of Land Disposal:

5.5.1. Open Market Sale

Council will:

- a) advertisement of the sale/disposal of the Land through a local newspaper and, if deemed appropriate by Council, a newspaper circulating throughout South Australia; or
- b) in accordance with the provisions of Council's Procurement Policy, procure the services of a licensed real estate agent and / or auction house to sell or dispose of the Land.

5.5.2. Expressions of Interest

Council will issue an open invitation to the market in respect of the sale or disposal of the Land to ascertain the availability of prospective purchasers. Council will then adopt a further Method of Land Disposal as appropriate.

5.5.3. Select Tender

Council will issue an invitation to select persons in respect of the sale or disposal of Land.

5.5.4. Open Tender

Council will issue an open invitation to the market in respect of the sale or disposal of the Asset.

5.5.5. Direct Negotiation

Council will enter into negotiations with:

- a) owners of adjoining Land;
- b) persons with a pre-existing interest in the Land; or
- c) purchasers who propose to use the Land for a purpose consistent with Council's strategic objectives for the Land or generally.

5.6. Council will select a Method of Land Disposal upon consideration of the following:

- 5.6.1. the number of known potential purchasers of the Land;
- 5.6.2. the original intention for the use of the Land;
- 5.6.3. the current and possible preferred future use of the Land;
- 5.6.4. the opportunity to promote local economic growth and development;
- 5.6.5. financial delegation limits;
- 5.6.6. accountability, responsibility, operation efficiency and the urgency of the sale or the disposal;
- 5.6.7. the total estimated value of the sale or disposal;
- 5.6.8. compliance with Council's statutory and other obligations; and
- 5.6.9. any other matters Council deems relevant in the circumstances.

5.7. Land that is to be sold or disposed by Open Market Sale, Expressions of Interest or Open Tender will be the subject of an independent valuation obtained no later than 6 months before the date of any contract for sale entered into in respect of the Land. The independent valuation will be the reserve price set for any public auction.

5.8. Land that is to be sold or disposed of by Select Tender or Direct Negotiation will be the subject of 2 independent valuations obtained no later than 6 months before the date of any contract for sale entered into in respect of the Land.

5.9. Council will endeavour to sell or dispose of Land at or above the current market valuation unless there are reasons for Council to accept a lesser price which are consistent with Council's overall strategic objectives for the Land or generally. In those circumstances, Council must record those reasons in writing.

5.10. Council will not sell or dispose of Land to any Elected Member or Employee who has been involved in any process related to a decision to sell or dispose of the Land and / or the establishment of any reserve price for the Land.

6. SALE OR DISPOSAL OF ASSETS

- 6.1. Having regard to assets other than land that the CEO is to determine the methodology for disposal.
- 6.2. The CEO will dispose of Assets by adopting any or all of the following Methods of Asset Disposal:

6.2.1. **Open Market Sale**

The CEO will:

- a) advertisement of the sale/disposal of the Asset through a local newspaper and, if deemed appropriate by Council, a newspaper circulating throughout South Australia; or
- b) in accordance with the provisions of Council's Procurement Policy, procure the services of a licensed auctioneer to sell or dispose of the Asset.

6.2.2. **Trade-in**

Trade-in involves including an asset owned by Council in the purchase of another asset, usually of similar characteristics, in order to achieve an efficient asset change-over transaction.

6.2.3. **Expressions of Interest**

The CEO will issue an open invitation to the market in respect of the sale or disposal of the Asset to ascertain the availability of prospective purchasers. Council will then adopt a further Method of Asset Disposal as appropriate.

6.2.4. **Select Tender**

Select Tender involves the selection of suppliers that will be invited to tender. Selection may be from a multi-use list, a list of potential suppliers that have previously responded to an expression of interest or a list of potential suppliers that have been granted a specific licence or comply with a legal requirement.

6.2.5. **Open Tender**

The CEO will issue an open invitation to the market in respect of the sale or disposal of the Asset in line with the Procurement Policy.

6.2.6. **Direct Negotiation**

The CEO will enter into negotiations with persons with a pre-existing interest in the Asset or where a prospective purchaser of the Asset proposes to use the Asset for a purpose consistent with Council's strategic objectives for the Asset or generally.

6.3. The CEO will adopt a Method of Asset Disposal upon consideration of the following:

6.3.1. the public demand and interest in the Asset;

6.3.2. the Method of Asset Disposal most likely to provide the highest return to Council;

- 6.3.3. the value of the Asset;
 - 6.3.4. the costs associated with each Method of Asset Disposal compared to the expected returns;
 - 6.3.5. compliance with statutory obligations; and
 - 6.3.6. any other factor that Council deems relevant.
- 6.4. The CEO will not sell or dispose of an Asset to any Elected Member or Employee unless that sale or disposal has occurred as a result of an Open Market Sale or Open Tender and the Elected Member of Employee (as the case may be) was the highest bidder.
 - 6.5. It must be a condition of any contract or agreement for the sale or disposal of an Asset that, to the extent permitted by law, Council:
 - 6.5.1. makes no warranties regarding the suitability, nature or condition of the Asset; and
 - 6.5.2. will accept no liability regarding the suitability, nature or condition of the Asset from the date of such sale or disposal.

7. RECORDS

- 7.1. Where a Method of Land or Asset Disposal (as the case may be) other than an Open Tender results in the sale or disposal of Land or Assets, Council must keep a written record of its reasons for adopting that Method of Land or Asset Disposal (as the case may be). Such records will be kept and maintained by Council in accordance with the Record Management Policy and / or Procedure (or equivalent) adopted by Council from time to time.

8. POLICY EXEMPTIONS

- 8.1. Council recognises that in the case of emergency or where a response is required without delay, the ordinary principles set out in this Policy may be inappropriate. Such cases include, but are not limited to:
 - 8.1.1. a state of emergency declared under the *Emergency Management Act 2004* (SA);
 - 8.1.2. an incident that requires the activation of Council's Disaster Recovery and / or Business Continuity Plan;
 - 8.1.3. an incident declared by the Chief Executive Officer (or their nominee) whereby the safety or security of any person or property associated with Council is threatened;

- 8.1.4. an external incident to which the Chief Executive Officer (or their nominee) has authorised the provision of urgent support; or
 - 8.1.5. any other instance or circumstances as determined by the Chief Executive Officer (or their nominee)
("Exempt Events").
- 8.2. The Administration is not required to adhere to this Policy in circumstances where an Exempt Event occurs or is expected to occur and may instead pursue alternative means of the sale or disposal of any given Land or Asset. In those circumstances, the Administration must keep a written record of the reasons that an event has been deemed to constitute an Exempt Event.
- 8.3. The Administration must notify Council where it has not adhered to this Policy as a result of the occurrence of an Exempt Event.

9. DELEGATION

- 9.1. An Employee requires the written approval of the Chief Executive Officer (or their nominee) to sell/dispose of Assets.
- 9.2. In the case of the sale/disposal of Land, the Chief Executive Officer must seek Council approval by way of formal resolution.

10. PRUDENTIAL REQUIREMENTS

- 10.1. Council will comply with its prudential management requirements as set out in the Act by compliance with this Policy, the Budget Management Policy, the Financial Internal Controls Policy, the Fraud & Corruption Prevention Policy and any other risk management processes, policies and procedures developed by Council and in force from time to time.

11. POLICY MAINTENANCE AND REVIEW

- 11.1. This Policy will be kept on Council's website.
- 11.2. Council will undertake a review and evaluation of the effectiveness of this Policy at least once every 2 years and following general Council elections, in accordance with the Council's strategic management and planning framework. Council may, in any event, conduct a review and evaluation of the effectiveness of this Policy at any time.

11.3. The Chief Executive Officer will report to the Elected Members on the outcome of any such review and will make recommendations for amendments, alterations or substitutions as may be required.

11.4. If this Policy is amended, altered or substituted in accordance with the above, it will not apply retrospectively to a Method of Land or Asset Disposal (as the case may be) already commenced or completed.

12. AVAILABILITY OF POLICY

This Policy will be made available for inspection at Council offices and persons may obtain a copy of this Policy upon payment of a fee fixed by Council.