

Trim Container:	FOL/17/1658
Trim Document Number:	DOC/20/44442
First Issued / Approved:	11/07/2017
Last Reviewed:	14/07/2020
	C140720/1955
Next Review:	13/07/2020
Responsible Officer:	Team Leader Governance
Date Placed on Webpage:	15/07/2020

1. PREAMBLE

This policy outlines the requirement for disposing of Council land and assets.

1.1 Background

In compliance with Section 49 of the Local Government Act 1999 (**Act**), Council should refer to this policy (**Policy**) when disposing of land and assets. In accordance with Section 49 of the Act this Policy will:

- identify circumstances where the Council will call for tenders for the sale or disposal of land or other assets;
- identify circumstances where the Council will dispose of land or other assets without calling tenders;
- provide a fair and transparent process for the sale or disposal of land or other assets; and
- provide for the recording of reasons for entering into contracts other than those resulting from a tender process.

1.2 Purpose

The Council is committed to providing best value to the community within the framework of fairness, transparency and accountability. Acknowledging that the community and business operators have a valid interest in the approach adopted by the Council in the disposal of land and other assets, Council will ensure that disposals are made in the best interests of the community and in accordance with Council’s Strategic Plan and legislative requirements.

1.3 Scope

This policy applies to the sale or disposal of land or other of assets whether it be by tender, contract or other agreement. This document outlines the requirements for the sale and disposal of land and assets owned by Council.

This policy does not cover land sold by Council for the non-payment of rates or disposal of goods that are not owned by Council, such as abandoned vehicles.

1.4 Definitions

Land means all land held by the Council, including community land and road reserves.

Assets means all items owned by Council, including but not limited to: vehicles, furniture, plant and equipment.

1.5 Strategic Reference

Culture: Being financially accountable

Culture: Supporting excellent, efficient operations

2. PRINCIPLES

2.1 Policy Principles

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

- obtaining value for money
- ethical behaviour and fair dealing
- encouragement of open and effective competition
- probity, accountability, transparency and reporting
- ensuring compliance with all relevant legislation.

2.2 Considerations prior to disposal

2.2.1 The Council must undertake public consultation in respect of its proposed disposals in accordance with the Act and its public consultation policies at all times.

2.2.2 Any decision to dispose of Land and Assets will be made after considering (where applicable):

- 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 service provided by the Land or Asset
- any impact the disposal of the Land or Asset may have on the community (including environmental impact)

- 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 the Council
- the long term plans and strategic direction of the Council
- the remaining useful life, particularly of an Asset
- a benefit and risk analysis of the proposed disposal
- the results of any community consultation process
- any restrictions on the proposed disposal
- the content of any community land management plan and any other relevant plans of Council.

2.3 Disposal of Land

2.3.1 The Council may resolve to dispose of Land.

2.3.2 A third party can request to purchase Council land, community land or road reserves.

2.3.3

Before council owned land can be considered for sale by Council, an up to date real estate valuation, by a licensed land valuer must be obtained and presented to Council.

After a preliminary assessment, if supported by Council staff, the applicant must pay all costs associated with the purchase of the land including but not limited to valuations, consultations, professional fees, legal fees (its own and Council's), surveys and surveyor's costs, land division costs, Lands Titles Office fees, stamp duty, Council administration costs, services relocation (if required) and land value. Adequate funds must be transferred to a suitable conveyancer trust fund to cover expected costs prior to the process commencing.

The application and full cost to purchase land is at the risk of the applicant and following completion of the process there is no guarantee that the application will be supported by Council. At any stage, if the application is not supported by council staff or Council, the applicant will be advised in writing and any unused funds held in trust refunded.

2.3.4 Where the Land forms or formed a road or part of a road, the Council must ensure that the Land is closed under the *Roads (Opening and Closing) Act 1991* (SA) prior to its disposal.

2.3.5

Where Land is classified as community land, the Council must:

- undertake public consultation in accordance with the Act and the Council's public consultation policy; and
- ensure that the process for the revocation of the classification

- of Land as community land has been concluded prior to its disposal; and
 - comply with all other requirements under the Act in respect of the disposal of community land.

- 2.3.6 Where the Council proposes to dispose of Land through the grant of a leasehold interest, the Council must have complied with its obligations under the Act, including its public consultation obligations under Section 202 of the Act.

- 2.3.7 Where Land is approved to be sold by way of open market sale, expressions of interest or tender, the Council will obtain at least 3 quotes from suitably qualified real estate agents. When selecting an agent, consideration will be given to:
 - the nominated sales person
 - the agency's experience in selling similar properties
 - the proposed sale method and anticipated selling price
 - fee proposal and associated selling costs

- 2.3.8 Selection of a suitable disposal method will include consideration of (where appropriate):
 - the number of known potential purchasers of the Land
 - the original intention for the use of the Land
 - the current and possible preferred future use of the Land
 - the opportunity to promote local economic growth and development
 - the total estimated value of the disposal.

- 2.3.9 The Council will, where appropriate, dispose of Land through one of the following methods:
 - *open market sale* - advertisement for disposal of the Land through the local paper and where appropriate, a paper circulating in the State, or by procuring the services of a licensed real estate agent and/or auctioneer. For clarity, open market sale includes the options of both direct negotiation and public auction.
 - *expressions of interest* - seeking expressions of interest for the Land
 - *select tender* - seeking tenders from a selected group of persons or companies
 - *open tender* - openly seeking bids through tenders, including public auction
 - *by limited negotiation* – with owners of land adjoining the Land or others with a pre-existing interest in the Land, or where the

Land is to be used by a purchaser whose purpose for the Land is consistent with the Council's strategic objectives for the Land.

- 2.3.10 The Council will not dispose of Land to any Council Member or employee of the Council who has been involved in any process related to a decision to dispose of the Land and/or the establishment of a reserve price.
- 2.3.11 The Council will seek to dispose of Land at or above current market valuation by whichever method is likely to provide the Council with a maximum return, unless there are reasons for the Council to accept a lesser return which is consistent with the Council's overall strategic direction. These reasons must be documented in writing.

2.4 Disposal of Assets

- 2.4.1 The sale of Assets will be the responsibility of the relevant Council Officer who is responsible for those Assets.
- 2.4.2 Selection of a suitable method will include consideration of:
- the public demand and interest in the Asset
 - the method most likely to return the highest revenue
 - the value of the Asset
 - the costs of the disposal method compared to the expected returns.
- 2.4.3 The Council will, where appropriate, dispose of Assets through one of the following methods:
- *trade-in* – trading in equipment to suppliers
 - *expressions of interest* – seeking expressions of interest
 - *select tender* – seeking tenders from a selected group of persons or companies
 - *open tender* – openly seeking bids through tenders
 - *public auction* – advertisement for auction through the local paper and, where appropriate, a paper circulating in the State, or procuring the services of an auctioneer.
- 2.4.4 Elected Members and employees of the Council will not be permitted to purchase Assets unless the purchase is via one of the above processes and the tender submitted or bid made is the highest.
- 2.4.5 Purchasers of Assets must be required to agree in writing before purchasing any Asset that no warranty is given by the Council in respect of the suitability and condition of the Asset for the purchaser and that the Council will not be responsible for the Asset in any respect following

the sale.

2.5 Guide for disposal methods

2.5.1 When disposing of Land and Assets, there are a number of disposal methods which can be used. The underlying principle is to balance the disposal costs with the expected return. Disposals that are low value or low complexity should be disposed through the more efficient processes of trade-ins, expressions of interest and negotiations. Land and Assets that are high value or high complexity should be disposed through the more stringent processes of a tender, public auction or open market sale.

2.5.2 The decision matrix provides a guide for when the different disposal methods should be used for the disposal of Land.

	Expression of Interest	Tender / Auction	Open Market Sale	Limited Negotiation
< \$1,000,000	X	X	X	X
> \$1,000,000	X	X	X	

2.5.3 The decision matrix provides a guide for when the different disposal methods should be used for the disposal of Assets.

	Trade-in	Expression of Interest	Tender	Public Auction
< \$5000	X	X		X
\$5,000 -	X		X	X
> \$50,000	X		X	X

2.6 Records

The Council must record reasons for utilising a specific disposal method and where it uses a disposal method other than a tendering process.

2.7 Exemptions from this policy

2.7.1 This Policy contains general guidelines to be followed by the Council in its disposal activities. There may be emergencies, or disposals in which a tender process will not necessarily deliver best outcome for the Council, and other market approaches may be more appropriate.

2.7.2 The Council may waive application of this Policy in relation to the disposal of Land, where an alternative process will deliver a better outcome. The Council must record its reasons in

writing for waiving application of this Policy.

- 2.7.3 The Chief Executive Officer may waive application of this Policy in relation to the disposal of Assets, where an alternative process will deliver a better outcome. Where this occurs, Council must be notified at its next meeting.

3. REFERENCES

3.1 Legislation

- *Local Government Act 1999*
- *Real Property Act 1886*
- *Land and Business (Sale and Conveyancing) Act 1994*
- *Law of Property Act 1936*
- *Development Act 1993*
- *Retail and Commercial Leases Act 1995*
- *Residential Tenancies Act 1995*
- *Strata Titles Act 1988*
- *Crown Land Management Act 2009*
- *Community Titles Act 1996*
- *Roads (Opening and Closing) Act 1991*
- *Land Acquisition Act 1969*
- *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010 (Cth)*

3.2 Other References

Procurement Policy