
Disposal of Land and other Assets policy

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1 Preamble

The City of Onkaparinga's population is growing, and the needs of our communities are evolving over time. This necessitates council critically assessing its facilities and land, including how they will be used, where they are needed most, and how they can best support residents.

Council's aim is to ensure our facilities are flexible, adaptable and fully utilised. Ageing and underutilised facilities may be repurposed, reutilised, returned to open space or disposed of. Any income generated will support the development of the facilities our communities need.

Rationalising council's assets can produce a range of different benefits, including, but not limited to, the following:

- Efficient management of council's assets and balance sheet, which is consistent with achieving the outcomes of the adopted Long Term Financial Plan (LTFP)
- Accelerate investment into existing local and broader community projects and works program, that may not have received funding in the near future through the usual prioritisation process
- Provide quality, fit for purpose facilities and open space where they are most needed and which the community will value
- Enhance amenity and the environment, through converting dusty, disused sites to another use
- Avoid ongoing maintenance, renewal and upgrade costs for under-utilised open space and buildings
- Generate rates revenue where none has been generated previously to reduce the overall rates burden on existing ratepayers
- Retire debt and improve council's overall financial position

2 Introduction

2.1 In compliance with Section 49 of the Local Government Act 1999 (**Act**), Council should refer to this policy (**Policy**) when disposing of Land and other Assets.

2.2 The purpose of this Policy seeks to:

2.2.1 define the methods by which Land and other Assets are disposed of;

2.2.2 demonstrate accountability and responsibility of Council to ratepayers;

2.2.3 be fair and equitable to all parties involved;

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- 2.2.4 enable all processes to be monitored and recorded;
 - 2.2.5 ensure that the best possible outcome is achieved for the Council and its communities;
 - 2.2.6 ensure that we are consistent with our strategic, corporate and financial directions including the Long Term Financial Plan and the Asset Rationalisation policy principles; and
 - 2.2.7 ensure compliance with legislative and common law responsibilities.
- 2.3 Furthermore, Section 49 (a1) of the Act requires Council to develop and maintain policies, practices and procedures directed towards:
- 2.3.1 obtaining value in the expenditure of public money; and
 - 2.3.2 providing for ethical and fair treatment of participants; and
 - 2.3.3 ensuring probity, accountability and transparency in all disposal processes.
- 2.4 However, this Policy does not cover:
- 2.4.1 Land sold by Council for the non-payment of rates; or
 - 2.4.2 disposal of goods which are not owned by the Council, such as abandoned vehicles; as these are dealt with in the Act.

3 Definitions

In this Policy, unless the contrary intention appears, these words have the following meanings:

- 3.1 **Act** means Local Government Act 1999
- 3.2 **Asset** means any physical item that the Council owns and that has at any time been treated pursuant to the Australian Accounting Standards as an 'asset' and includes Infrastructure, Major Plant and Equipment and Minor Plant and Equipment. It does not include financial investments or finance related activities.
- 3.3 **Land** includes community land, vacant land, operational land, open and legal public roads, any legal interest in land, and any other land-related assets, including all buildings (community and operational) on Land.
- 3.4 **Major Plant and Equipment** includes all major machinery and equipment owned by the Council. It includes all trucks, graders, other operating machinery and major plant items (for example an item above \$5000). It does not include Minor Plant and Equipment.
- 3.5 **Market Value** means the estimated amount of which an asset or liability should exchange on the valuation date between a willing buyer

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and a willing seller in an arm's length transaction, after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

- 3.6 **Minor Plant and Equipment** includes all minor plant and equipment owned by Council. It includes all loose tools, store items, furniture, second-hand items removed from Major Plant and Equipment (such as air conditioners, bricks, pavers, library books and exercise equipment) and surplus bulk items (such as sand and gravel) (for example an item of \$5000 or less).

NB: For any items less than \$5000 there will be no financial accounting treatment (refer to Accounting Policy – Property Plant, Equipment and Infrastructure).

4 Policy Principles

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

- 4.1 Encouragement of open and effective competition
- 4.2 Obtaining Value for Money
 - 4.2.1 This is not restricted to price alone.
 - 4.2.2 Where applicable, an assessment of value for money will include consideration of:
 - 4.2.2.1 the contribution to Council's Long-Term Financial Plan and strategic management plans;
 - 4.2.2.2 any relevant direct and indirect benefits to Council, both tangible and intangible;
 - 4.2.2.3 efficiency and effectiveness;
 - 4.2.2.4 the costs of various disposal methods;
 - 4.2.2.5 internal administration costs;
 - 4.2.2.6 risk exposure; and
 - 4.2.2.7 the value of any associated environmental benefits.
- 4.3 Ethical Behaviour and Fair Dealing

Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations.
- 4.4 Probity, Accountability, Transparency and Reporting

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4.5 Ensuring compliance with all relevant legislation

Including the following:

- 4.5.1 [Local Government Act 1999\(SA\)](#)
- 4.5.2 [Real Property Act 1886 \(SA\)](#)
- 4.5.3 [Land and Business \(Sale and Conveyancing\) Act 1994 \(SA\)](#)
- 4.5.4 [Planning, Development and Infrastructure Act 2016 \(SA\)](#)
- 4.5.5 [Retail and Commercial Leases Act 1995 \(SA\)](#)
- 4.5.6 [Residential Tenancies Act 1995 \(SA\)](#)
- 4.5.7 [Strata Titles Act 1988 \(SA\)](#)
- 4.5.8 [Crown Land Management Act 2009 \(SA\)](#)
- 4.5.9 [Community Titles Act 1996 \(SA\)](#)
- 4.5.10 [Roads \(Opening & Closing\) Act 1991\(SA\)](#)
- 4.5.11 [Land Acquisition Act 1969 \(SA\)](#)
- 4.5.12 [Foreign Acquisitions and Takeovers Act 1975 \(Cth\) \(FATA\)](#)
- 4.5.13 [Australia's Foreign Relations \(State and Territory Arrangements\) Act 2020 \(Cth\) \(AFRA\)](#)

5 Considerations Prior to Disposal of Land and other Assets

Where applicable, any decision to dispose of Land and other Assets will be made after considering:

- 5.1 the usefulness of the Land or Asset;
- 5.2 the current market value of the Land or Asset;
- 5.3 the annual cost of maintenance;
- 5.4 the topography of the land;
- 5.5 any alternative future use of the Land or Asset;
- 5.6 any duplication of the Land or Asset or the service provided by the Land or Asset;
- 5.7 any impact the disposal of the Land or Asset may have on the community;
- 5.8 any cultural or historical significance of the Land or Asset;

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- 5.9 the environmental and biodiversity values of the Land or Asset;
- 5.10 the positive and negative impacts the disposal of the Land or Asset may have on the operations of the Council;
- 5.11 the long term plans and strategic direction of the Council;
- 5.12 the remaining useful life, particularly of an Asset;
- 5.13 a benefit and risk analysis of the proposed disposal;
- 5.14 the results of any community consultation process;
- 5.15 any restrictions on the proposed disposal;
- 5.16 the content of any community land management plan;
- 5.17 any other relevant Council policies or strategies, including:
 - 5.17.1 the Long-Term Financial Plan
 - 5.17.2 the Asset Rationalisation policy principles (ARP); and
- 5.18 any applicable considerations and/or actions required under FATA and AFRA, if transacting with a 'private foreign person', 'foreign government investor' or 'foreign entity', as defined under these two Acts.

6 Disposal Methods

6.1 Land disposal

- 6.1.1 The Council may resolve to dispose of Land.
- 6.1.2 Where the Land forms a legal road or part of a legal road, the Council must ensure that the Land is closed under the *Roads (Opening & Closing) Act 1991 (SA)* prior to its disposal.
- 6.1.3 Where Land is classified as community land, the Council must:
 - 6.1.3.1 undertake public consultation in accordance with the Act and the Council's public consultation policy; and
 - 6.1.3.2 ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its disposal; and
 - 6.1.3.3 comply with all other requirements under the Act in respect of the disposal of community land.
- 6.1.4 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.

- 6.1.5 The Council will, where appropriate, dispose of Land through one of the following methods:
- 6.1.5.1 *open market sale* - advertisement for disposal of the Land by procuring the services of a licensed real estate agent and/or auctioneer (following compliance with the Council's Procurement Policy);
 - 6.1.5.2 *expressions of interest* - seeking expressions of interest for the Land;
 - 6.1.5.3 *select tender* - seeking tenders from a selected group of persons or companies;
 - 6.1.5.4 *open tender* - openly seeking bids through tenders, including public auction;
 - 6.1.5.5 *by negotiation* – with owners of land adjoining the Land or others with a pre-existing interest in the Land (such as easements or rights of way), 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, considerations may include:
 - *land that because of its small size, dimensions or irregular shape would not readily support a self contained development outcome*
 - *land that has no legal access*
 - *land to be developed by another level of Government.*
- 6.1.6 Selection of a suitable disposal method will include consideration of (where appropriate):
- 6.1.6.1 the number of known potential purchasers of the Land;
 - 6.1.6.2 the original intention for the use of the Land;
 - 6.1.6.3 the current and possible preferred future use of the Land;
 - 6.1.6.4 the opportunity to promote local economic growth and development;
 - 6.1.6.5 delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the disposal;
 - 6.1.6.6 the total estimated value of the disposal; and

- 6.1.6.7 compliance with statutory and other obligations.
- 6.1.7 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.
- 6.1.8 If Land is to be auctioned or placed on the open market or disposed of by an expression of interest, then (unless the Council resolves otherwise) one independent valuation must be obtained to establish the reserve price for the Land. The independent valuation must be made no more than 6 months prior to the proposed disposal.
- 6.1.9 If Land is to be disposed of via a select tender or direct sale, then (unless the Council resolves otherwise) one independent valuation must be obtained, however where considered necessary to ensure that an appropriate competitive sale price is obtained, then two independent valuations may be obtained (a land parcel capable of standing alone may fall into this category). The independent valuation must be made no more than 6 months prior to the proposed disposal.
- 6.1.10 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.
- 6.1.11 If the disposal is not to be on the open market, the disposal should be at or above the current market valuation (with due regard to all associated costs to achieve the transaction or such other amount as the Council resolves).
- 6.1.12 Land to be disposed of directly to an adjoining owner should (where possible) be amalgamated with an existing adjoining title.
- 6.1.13 Where Land can be disposed of as a stand-alone allotment, disposal to an adjoining owner should only be considered on the basis that the adjoining owner purchases the Land through an open market, competitive process and pays no less than the Market Value.
- 6.1.14 If an interest in land is to be granted via an easement then an independent valuation is to be sourced or 30% of the Valuer General's capital value to be taken over the relevant portion of land (whichever is the greater).

6.1.15 Unless Council resolves otherwise, all costs associated with any sale or disposal of land must be borne by the purchaser or realised within the purchase price.

6.2 **Assets disposal**

6.2.1 The sale of Assets (Infrastructure, Major Plant and Equipment and Minor Plant and Equipment) will be the responsibility of the relevant Council Officer who is responsible for those Assets.

6.2.2 The Council will, where appropriate, dispose of Assets through one of the following methods:

6.2.2.1 trade-in – trading in equipment to suppliers;

6.2.2.2 expressions of interest – seeking expressions of interest from buyers;

6.2.2.3 select tender – seeking tenders from a selected group of persons or companies;

6.2.2.4 open tender – openly seeking bids through tenders;

6.2.2.5 public auction – by procuring the services of an auctioneer (following compliance with the Council's Procurement Policy).

6.2.3 Selection of a suitable method will include consideration of (where appropriate):

6.2.3.1 the public demand and interest in the Asset;

6.2.3.2 the method most likely to return the highest revenue;

6.2.3.3 the value of the Asset and whether it is Major Plant and Equipment or Minor Plant and Equipment;

6.2.3.4 the costs of the disposal method compared to the expected returns; and

6.2.3.5 compliance with statutory and other obligations.

6.2.4 Preference will be given to community groups for Minor Plant and Equipment.

6.2.5 Elected Members and employees of the Council will not be permitted to purchase Assets unless the purchase is via an open tender process or a public auction, and the tender submitted or bid made is the highest.

6.2.6 Purchasers of Assets must be required to agree in writing that 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.

7 Consultation

Council will undertake public consultation in respect of its proposed disposals in accordance with the Act and its Public Consultation Policy.

8 Delegations

The power to dispose of Land in its entirety will only occur by way of a resolution of Council.

The power to dispose of an interest in Land through the grant of an easement or right of way has been delegated pursuant to section 201 of the Act.

Council or its officers with delegated authority will, when implementing decisions under this Policy, act in accordance with financial delegated authority, the Council's budget, relevant policies, strategies, plans, agreements and resolutions.

Council acknowledged that the Chief Executive Officer may sub-delegate some matters to staff or other persons employed or engaged by council.

9 Records

The Council must record reasons for utilising a specific disposal method.

10 Exemptions from this Policy

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. In certain circumstances, the Council may, after approval from its elected members, waive application of this Policy and pursue a method which will bring the best outcome for the Council. The Council must record its reasons in writing for waiving application of this Policy.

11 Further Information

11.1 This Policy will be kept on the Council's website for the public to view.

11.2 Council may revise or review this Policy at any time (but not so as to affect any process that has already commenced).

12 Document control

Author (to whom changes are to be recommended):			
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Approved by (document owner): Council endorsed 21 June 2022 Item 9.4			
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