

## DISPOSAL OF LAND & ASSETS POLICY

Type	Governance
Category	Corporate & Community
Responsible Officer	Manager Finance
First Issued / Adopted	22 May 2013
Review Period	2 Years
Last Reviewed	23 March 2016
Minutes Reference	OM70/16
Next Review Date	November 2018
Applicable Legislation	<p>Local Government Act 1999</p> <p>Independent Commissioner Against Corruption Act 2012</p> <p>Crown Land Management Act 2009</p> <p>Roads (Opening &amp; Closing) Act 1991</p> <p>Real Property Act 1886</p> <p>Land &amp; Business (Sale &amp; Conveyancing) Act 1994</p> <p>Development Act 1993</p> <p>Retail &amp; Commercial Leases Act 1995</p> <p>Residential Tenancies Act 1995</p> <p>Strata Titles Act 1988</p> <p>Community Titles Act 1996</p>
Related Documents	<p>Community Engagement Policy</p> <p>Code of Conduct for Council Employees</p> <p>Code of Conduct for Council Members</p>
Public Consultation Required	No
File Reference	605.84
Purpose	<p>To ensure a fair, transparent and accountable process is followed when disposing of land or other assets;</p> <p>To provide direction on the recommended practice and legislative requirements regarding the sale or disposal of land and other assets.</p>

### 1. INTRODUCTION

Council is committed to ensuring a fair, transparent and accountable process in the disposal of land and other assets and aims to ensure that its methods are cost effective, meet the needs of the community and represent value for money.

### 2. SCOPE

This policy has been prepared with reference to Section 49 (a1) of the Local Government Act 1999 (Act) which requires Council to develop and maintain policies, practices and procedures directed towards:

- Obtaining value in the expenditure of public money;
- Providing for ethical and fair treatment of participants; and
- Ensuring probity, accountability and transparency in the disposal of land and assets.

This policy is also consistent with Sections 201 and 202 of the Act.

This policy does not apply in the following circumstances:

- the disposal of land or assets that have some form of restriction or caveat;
- the sale of land for non-payment of rates;
- permits granted under section 221 or 222 of the Local Government Act 1999;
- open space permits;
- leases, licences, authorisations or permits with a term of 5 years or less;
- disposal of goods which have been identified as scrap;
- disposal of goods which are not owned by Council.

### 3. DEFINITIONS

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

**The Act** means Local Government Act 1999.

**Approach to market** is a general collective term that can be used to describe an invitation to suppliers to provide quotes, proposals, expressions or registrations of interest to tender.

**Asset** is any physical item that the Council owns and that has at any time been treated pursuant to the Australian Accounting Standards as an asset. It includes Major Plant and Equipment and Minor Plant and Equipment. It does not include financial investments or finance related activities, trees or land.

**Direct negotiation or sale** means entering into direct negotiations with a single selected provider for goods or services, without any prior approach to the market.

**Disposal** means a change in ownership (or effective control) of an asset, including land, from the Council to another, by the use of the methods of disposal as contained in this policy.

### 3. DEFINITIONS (Cont'd)

**Expression of interest** means the first stage of a two stage process, in which parties are invited to register interest for the procurement of goods or services.

**Land** includes community land, vacant land, operational land, road reserves, any legal interest in land, and any other land-related assets, including all buildings (community and operational) on Land.

**Lease, licence authorisation or permit** refers to types of agreements that may be entered into by Council with third parties for the right to use or occupy an area or facility which is owned by the Council or under its care, control or management. Such an arrangement may also be recorded in a contract or deed.

This includes a formal arrangement by lease for exclusive possession and a legal interest in the land and less formal arrangements of a licence issued for a specified short term period for multiple users of land and a permit issued for a casual use arrangement which includes permits under the Local Government Act 1934.

**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. It does not include Minor Plant and Equipment.

**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 and pavers) and surplus bulk items (such as sand and gravel).

**Open tendering** means undertaking a formal tendering process for a specific service in the open market.

**Open quotation** means inviting quotes with an approach to the open market.

**Probity** means a risk management approach to ensure that selection and decision-making processes will be found to be honest, fair, transparent and defensible if scrutinised. A process conducted with regard to proper standards of probity will achieve both accountability and transparency and provide parties to the process with fair and equitable treatment.

**Request documentation** includes request for quotes, request for tender and expression of interest.

**Request for quotes** means a process for inviting quotes to achieve a stated outcome.

**Request for tender** means a process in which an invitation to submit offers for clearly described goods or services is publicly advertised.

**Reserve** means an area of community land reserved or dedicated as a reserve or an area of land that has been designated by the Council as a reserve.

**Road** means a public or private street or thoroughfare to which public access is available as defined in the Local Government Act 1999.

### 3. DEFINITIONS (Cont'd)

**Select tender** means a process in which selected organisations or individuals are invited to submit a tender proposal for goods and services.

**Select quotation** means a process in which selected organisations or individuals are invited to submit price quotations for goods and services.

**Tender** means a proposal, bid or offer that is submitted in response to a Request for Tender. It is one of several different market-approach strategies.

**Value for money** means the relative benefits of different options to be measured by taking into account all the costs incurred in respect of the disposal, including any future expected savings in operations or maintenance costs, efficiency gains and the reduction of any losses being incurred or likely to be incurred.

### 4. POLICY PRINCIPLES

For the sale and disposal of land and other assets, the following principles will apply:

- Consistency with and relevance to Council's Strategic Management Plans, Annual Business Plan, Annual Budget and relevant Policies;
- Value for money (this is not restricted to price alone, but includes efficiency & effectiveness, cost of sale process, social and community benefit, etc.);
- Open and effective competition;
- Probity, accountability, transparency, ethical behaviour and fair dealing;
- Opportunities to enhance local economic development and growth;
- Compliance with statutory and other obligations;
- Commercial confidentiality.

### 5. CONSIDERATIONS PRIOR TO DISPOSAL OF LAND AND ASSETS

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

- risk factors – social, financial or environmental;
- the original intention for use of the land or asset at time of purchase;
- the current and future preferred use of the Land or Asset;
- the current market value;
- the annual cost of maintenance;
- any alternative future use;
- any duplication of the Land or Asset or the service provided by the Land or Asset;
- any impact the disposal may have on the community or impact on service levels;
- any cultural or historical significance;
- the positive and negative impacts on the operations of the Council;
- the remaining useful life;
- the results of any community consultation process;
- any restrictions on the proposed disposal;
- the content of any community land management plan;
- relevant policies of the Council;
- and any impact on the health of the environment.

**6. SALE OR DISPOSAL OF LAND OR BUILDINGS**

No sale or disposal of Council land or buildings may occur without the formal approval of Council at a properly convened meeting of the Council. Such approval will specify all aspects, procedures and outcomes to be observed during the sale process, and will specify the officer(s) to whom responsibility has been delegated to act on Council's behalf in that sale or disposal.

All documentation associated with the sale, transfer or disposal of Council land must be executed under seal by the Mayor (or Acting Mayor in the absence of the Mayor) and the Chief Executive Officer (or the person acting in that capacity in the absence of the Chief Executive Officer).

**6.1 Road or Road Reserve**

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 (SA) prior to its sale.

The affected land (the section of the road reserve to be closed) must be incorporated into an existing, adjoining title.

The landowner must agree to meet all costs associated with the closure of the section of road and subsequent transfer of the affected land (including, but not restricted to survey costs, valuation costs, conveyancing costs, lodgement fees and charges).

**6.2 Community Land**

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

- undertake public consultation in accordance with the Act and 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.

**7. LAND OR BUILDINGS – METHOD OF SALE OR DISPOSAL**

Council will sell or dispose of land and buildings through one of the following methods:

- Open market sale by Advertisement for Public Auction or direct sale;
- Expression of Interest;
- Tender/Quotation (open or select);
- By negotiation - with owners of adjoining property or others with a pre-existing interest in the Land or Buildings, or where the Land or Building is to be used by a purchaser whose purpose is consistent with the Council's strategic objectives;
- Lease, licence, authorisation or permit.

**7. LAND OR BUILDINGS – METHOD OF SALE OR DISPOSAL (Cont'd)**

In identifying the circumstances in which to apply these options, Council will consider a number of issues, including:

- The public demand and interest in the asset;
- The number of known potential purchasers;
- The existence of local purchasers;
- The total estimated value of the sale or disposal;
- The method most likely to return the highest revenue.

Reasons for utilising a specific disposal method must be documented except in relation to a lease, licence, authorisation or permit.

For Open Market sale by Public Auction, one independent valuation must be obtained to establish the reserve price, unless Council resolves otherwise. The independent valuation must be obtained no more than six (6) months prior to the decision to dispose.

For disposal by Direct Sale, Expression of Interest, Tender/Quotation or by Negotiation, a minimum of two (2) independent valuations must be obtained to establish the market price, unless Council resolves otherwise. The valuation must be made no more than six (6) months prior to the proposed disposal and/or date of agreement.

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, taking into account the Value for Money principle or there are valid reasons to accept a lesser return which is consistent with the Council's overall strategic direction. These reasons must be documented in writing.

Council will not dispose of land or buildings to any Council Member or employee who has been involved in any process related to a decision to dispose of the land or buildings and/or the establishment of a reserve price.

**8. SALE OR DISPOSAL OF OTHER ASSETS**

Assets referred to in this section include assets which will be replaced or upgraded on a periodic basis, have been identified as surplus to Council's operational requirements or are classified as obsolete:

- office furniture and equipment;
- computer and telecommunications equipment;
- minor plant and equipment (including, but not restricted to, hand mowers, chainsaws, line trimmers etc.);
- passenger vehicles, including utilities;
- major plant, machinery and equipment.

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.

### 8. SALE OR DISPOSAL OF OTHER ASSETS (Cont'd)

Where items of passenger vehicles and heavy plant, machinery & equipment have been identified as surplus to needs (not included in a replacement program), the disposal is to be approved by a formal resolution of Council prior to the disposal.

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.

### 9. OTHER ASSETS – METHOD OF SALE OR DISPOSAL

The Council will sell or dispose of other assets using one of the following methods:

- *trade-in* – trading in equipment to suppliers;
- *expressions of interest* – seeking expressions of interest from buyers;
- *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 (following compliance with the Council's Procurement Policy);
- *auction house* – use of established government or private auction houses which allow members of the public to bid on various items (eg State Government Vehicle Auctions);
- *disposal to waste* - dumping.

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

- 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 returns;
- Compliance with statutory and other obligations.

#### 9.1 Passenger Vehicles and Plant, Machinery & Equipment

In general, passenger vehicles and plant, machinery & equipment will be disposed of by direct trade-in, unless it can be clearly demonstrated that better value may be obtained by selection of another method of sale.

### 10. CONSULTATION

The Council must undertake public consultation in respect of its proposed disposals in accordance with the Act and its public consultation policies where required.

### 11. RECORDS

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

## **8. 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.

In the case of low valued assets or where there is a very limited market for the assets (e.g. the cost of preparation and processing exceeds the likely proceeds from the sale of the assets), the Chief Executive Officer may grant approval to waive application of all or part of this policy.

The Council must record its reasons in writing for waiving application of this policy.

## **9. FURTHER INFORMATION**

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: [www.pirie.sa.gov.au](http://www.pirie.sa.gov.au)

- Port Pirie Council Administration Centre, 115 Ellen Street, Port Pirie
- Crystal Brook Rural Office, Bowman Street, Crystal Brook.

Copies will be provided to interested parties upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.