

Policy Section:	6. Finance & Corporate Services
Policy Name:	Disposal of Land and Assets
Classification:	Public – Mandatory Policy
Adopted:	24 May 2022
Frequency of Review:	4 Yearly
Last Review:	May 2022
Next Review Due:	June 2026
Responsible Officer(s):	Manager Finance & Corporate Services
Policy and Code of Practice Manual File Ref:	CC10/2601
Council File Reference:	CR22/14016
Legislation Authority:	Local Government Act 1999
Related Policies and Codes:	Procurement Policy Fraud, Corruption, Misconduct and Maladministration Prevention Policy
Related Procedures:	

1. INTRODUCTION

- 1.1 In compliance with Section 49 of the Local Government Act 1999 (**Act**), Council should refer to this policy (**Policy**) when disposing of Land and Assets.
- 1.2 This Policy seeks to:
 - 1.2.1 define the methods by which Land and Assets are disposed of;
 - 1.2.2 demonstrate accountability and responsibility of Council to ratepayers;
 - 1.2.3 be fair and equitable to all parties involved;
 - 1.2.4 enable all processes to be monitored and recorded; and
 - 1.2.5 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:
 - 1.3.1 obtaining value in the expenditure of public money; and
 - 1.3.2 providing for ethical and fair treatment of participants; and
 - 1.3.3 ensuring probity, accountability and transparency in all disposal processes.

- 1.4 However, this Policy does not cover:
 - 1.4.1 Land sold by Council for the non-payment of rates; or
 - 1.4.2 disposal of goods which are not owned by the Council, such as abandoned vehicles as these are dealt with in the Act;
 - 1.4.3 Historic Assets, such as Gawler Cultural Heritage Collection items, statues and other commemorative items.

2. DEFINITIONS

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

- 2.1 **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 Major Plant and Equipment and Minor Plant and Equipment. It **does not include** financial investments or finance related activities, trees or Land.
- 2.2 **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.
- 2.3 **Major Plant and Equipment** includes all major machinery and equipment owned by the Council. It includes all vehicles, trucks, graders, other operating machinery and major plant items. It does not include Minor Plant and Equipment.
- 2.4 **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).
- 2.5 **Information Technology and Communication Equipment** includes all computers and communication devices (ipad, mobile phones etc), telephones and printers (including scanners) purchased by Council and excludes leased equipment.

3. POLICY PRINCIPLES

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

- 3.1 *Encouragement of open and effective competition*
- 3.2 *Obtaining Value for Money*
 - 3.2.1 This is not restricted to price alone. This would take into account other factors and quality of service etc.
 - 3.2.2 An assessment of value for money must include consideration of (where applicable):
 - 3.2.2.1 the contribution to Council's long term financial plan and strategic management plans;
 - 3.2.2.2 any relevant direct and indirect benefits to Council, both tangible and intangible;
 - 3.2.2.3 efficiency and effectiveness;
 - 3.2.2.4 the costs of various disposal methods;
 - 3.2.2.5 internal administration costs;
 - 3.2.2.6 risk exposure; and

3.2.2.7 the value of any associated environmental benefits.

3.3 *Ethical Behaviour and Fair Dealing*

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

3.4 *Probity, Accountability, Transparency and Reporting*

3.5 *Ensuring compliance with all relevant legislation*

Including the following:

3.5.1 [Local Government Act 1999](#) (SA)

3.5.2 [Real Property Act 1886](#) (SA)

3.5.3 [Land and Business \(Sale and Conveyancing\) Act 1994](#) (SA)

3.5.4 [Planning Development and Infrastructure Act 2016](#) (SA)

3.5.5 [Retail and Commercial Leases Act 1995](#) (SA)

3.5.6 [Residential Tenancies Act 1995](#) (SA)

3.5.7 [Strata Titles Act 1988](#) (SA)

3.5.8 [Crown Land Management Act 2009](#) (SA)

3.5.9 [Community Titles Act 1996](#) (SA)

3.5.10 [Roads \(Opening and Closing\) Act 1991](#) (SA)

3.5.11 [Land Acquisition Act 1969](#) (SA).

3.5.12 [Independent Commission Against Corruption Act 2012](#) (SA)

4. CONSIDERATIONS PRIOR TO DISPOSAL OF LAND AND ASSETS

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

- 4.1 the usefulness of the Land or Asset;
- 4.2 the current market value of the Land or Asset;
- 4.3 the annual cost of maintenance;
- 4.4 any alternative future use of the Land or Asset;
- 4.5 any duplication of the Land or Asset or the service provided by the Land or Asset;
- 4.6 any impact the disposal of the Land or Asset may have on the community;
- 4.7 any cultural or historical significance of the Land or Asset;
- 4.8 the positive and negative impacts the disposal of the Land or Asset may have on the operations of the Council;
- 4.9 the long term plans and strategic direction of the Council;
- 4.10 the remaining useful life, particularly of an Asset;
- 4.11 a benefit and risk analysis of the proposed disposal;
- 4.12 the results of any community consultation process;
- 4.13 any restrictions on the proposed disposal;
- 4.14 the content of any community land management plan; and
- 4.15 any other relevant policies of the Council, including:

- 4.15.1 its Service Range Policy and associated Service Level Policies; and
- 4.15.2 its Internal Financial Controls Policy and Prudential Management Policy.

5. DISPOSAL METHODS

5.1 Land disposal

- 5.1.1 The Council may resolve to dispose of Land.
- 5.1.2 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.
- 5.1.3 Where Land is classified as community land, the Council must:
 - 5.1.3.1 undertake public consultation in accordance with the Act and the Council's public consultation policy; and
 - 5.1.3.2 ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its disposal; and
 - 5.1.3.3 comply with all other requirements under the Act in respect of the disposal of community land.
- 5.1.4 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.
- 5.1.5 The Council will, where appropriate, dispose of Land through one of the following Open Market or Select market methods, either directly or through the use of a Real Estate Agent or other Professional:

Open Market Methods, to be advertised through signage, advertisements in newspapers (local, state or national) and websites;

 - 5.1.5.1 *Private Treaty* – Advertisement of the Land for sale inclusive of a purchase price or price range;
 - 5.1.5.2 *Expressions of Interest* – seeking expressions of interest of the Land;
 - 5.1.5.3 *Open Market Tender* – openly seeking bids through tender, including public auction;

Select Market Methods:

 - 5.1.5.4 *Select Tender* - seeking tenders from a selected group of persons or companies;
 - 5.1.5.5 *By 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.
- 5.1.6 Selection of a suitable disposal method will include consideration of (where appropriate):
 - 5.1.6.1 the number of known potential purchasers of the Land;
 - 5.1.6.2 the original intention for the use of the Land;
 - 5.1.6.3 the current and possible preferred future use of the Land;

- 5.1.6.4 the opportunity to promote local economic growth and development;
- 5.1.6.5 delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the disposal;
- 5.1.6.6 the total estimated value of the disposal; and
- 5.1.6.7 compliance with statutory and other obligations.
- 5.1.7 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.
- 5.1.8 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.
- 5.1.9 If Land is to be disposed of via a select tender or direct sale, then (unless the Council resolves otherwise) a minimum of two independent valuations must be obtained to ensure that an appropriate market value is obtained. The independent valuation must be made no more than 6 months prior to the proposed disposal.
- 5.1.10 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.
- 5.1.11 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).

5.2 Assets disposal

- 5.2.1 The sale of Assets (both Major Plant and Equipment and Minor Plant and Equipment) will be the responsibility of the relevant Council Officer who is responsible for those Assets.
- 5.2.2 The Council will, where appropriate, dispose of Assets through one of the following methods:
 - 5.2.2.1 *trade-in* – trading in equipment to suppliers;
 - 5.2.2.2 *expressions of interest* – seeking expressions of interest from buyers;
 - 5.2.2.3 *select tender* – seeking tenders from a selected group of persons or companies;
 - 5.2.2.4 *open tender* – openly seeking bids through tenders;
 - 5.2.2.5 *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).

- 5.2.2.6 *donation* – donation to registered charitable organisations where the use of a method/s above have been unsuccessful in achieving disposal.
 - 5.2.3 Selection of a suitable method will include consideration of (where appropriate):
 - 5.2.3.1 the public demand and interest in the Asset;
 - 5.2.3.2 the method most likely to return the highest revenue;
 - 5.2.3.3 the value of the Asset and whether it is Major Plant and Equipment or Minor Plant and Equipment;
 - 5.2.3.4 the costs of the disposal method compared to the expected returns; and
 - 5.2.3.5 compliance with statutory and other obligations.
 - 5.2.4 Council Members and employees of the Council will not be permitted to purchase Council Assets unless the purchase is via an open tender process, a public or an internal auction, and the tender submitted or bid made is the highest.
 - 5.2.5 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.
 - 5.2.6 That the proceeds from the sale of Major/Minor Plant & Equipment be allocated to the Plant Replacement Equity Reserve Fund.
 - 5.2.7 That the proceeds from the sale of Land assets be allocated to the Property Equity Reserve Fund or towards debt reduction.
- 5.3 **Minor Plant and Equipment: Register of Interest**
- The Council will maintain a register of interest from Council employees and the public for the purchase of Minor Plant and Equipment which have not been disposed of through any of the processes in clause 5.2 of this Policy. The register will indicate a registrant's items of interest and current contact details. If any item becomes available for disposal, a form confirming the availability of that Asset and seeking a bid for the Asset will be sent to those on the register.
- 5.3.1 The sale price will generally be the highest bid price. Reasons for not offering the item for sale to the highest bid price will be documented in the register.
 - 5.3.2 The names on the register will only be valid for one year at the expiration of which time they will be removed. It is the responsibility of the person interested in purchasing an item to maintain his/her registration of interest.
 - 5.3.3 The keeping of a register ensures that sales to staff members are transparent and gives the public the same opportunity to purchase such items.

6. CONSULTATION

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.

7. DELEGATIONS

The Council has delegated to the Chief Executive Officer the power in Section 133 of the Act to obtain funds.

The Chief Executive Officer has subdelegated to Managers the power in Section 133 of the Act to obtain funds.

All such delegations and subdelegations are subject to limitations set out in the instruments of delegation and subdelegation.

The subdelegate is not permitted to dispose of any asset that has a value in excess of \$50,000, and subject to the foregoing must only dispose of assets in accordance with the Council's relevant policies from time to time.

Delegates and / or subdelegates may not dispose of land (at any value) without a resolution of Council to dispose of the subject land.

The following monetary limitations (being the maximum value of any asset which the delegate or subdelegate may dispose) are placed upon delegations and subdelegations of the power in Section 133 of the Act to obtain funds:

- Chief Executive Officer: \$250,000
- Managers, executive level: \$50,000

An instrument of delegation or subdelegation approved by Council prevails where inconsistent with the above.

It is a further condition upon delegations and subdelegations that the power in Section 133 of the Act to obtain funds must be exercised in accordance with Council policy (including this Policy).

8. RECORDS

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

9. 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 council 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.

10. REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed a four yearly basis.

The Chief Executive Officer will report to Council on the outcome of the evaluation and if relevant make recommendations for amendments, alteration or substitution of a new Policy.

The Policy will not be altered or substituted so as to affect a process already commenced.

The Policy will be reviewed after each general election of Council.

11. FURTHER INFORMATION

Further information about this Policy can be obtained by:

Telephone: 8522 9211

Email: council@gawler.sa.gov.au

Appointment: Town of Gawler Administration Centre, 43 High Street, Gawler East.

Letter: PO Box 130, Gawler SA 5118

12. AVAILABILITY OF POLICY

The Policy is available to be downloaded, free of charge, from Council's website at www.gawler.sa.gov.au.

A printed copy may be purchased on request from the Council's Administration Centre.