

Disposal of Council Land and Other Assets Policy

Strategic Reference	Objective 3; A prosperous and sustainable district. Strategy 3.8; Ensure Council finances and assets are managed to support changing community needs in a sustainable and cost-effective manner.
File reference	AR20/9670
Responsibility	Infrastructure & Assets Department
Revision Number	5
Effective date	April 2012
Last revised date	June 2020
Minutes reference	128/20, 088/18, 046/17, 081/15, 145/12, 108/11
Next review date	June 2023
Applicable Legislation	Local Government Act 1999, sections 49 and 201
Related Policies	Community Engagement Policy
Related Documents	Community Land Management Plans

1. Purpose and scope

Consistent with the Local Government Act 1999 (the Act) this policy sets out the principles and processes which apply when Coorong District Council is disposing of land and other assets including major and minor plant and equipment. It applies to all Council actions for the disposal of physical items owned by Council.

This policy does not cover:

- land sold by Council for the non-payment of rates; or
- disposal of goods which are not owned, such as abandoned vehicles and their contents to which other procedures apply.

Section 49 (a1) of the Act requires Council to develop and maintain procurement policies, practices and procedures directed towards:

- a. Obtaining value in the expenditure of public money; and
- b. Providing for ethical and fair treatment of participants; and
- c. Ensuring probity, accountability and transparency in the procurement process

The same objectives apply to the disposal of assets. Consistent with section 49 (a1) of the Act this policy should be used as a guide, to enable Council officers to implement procedures, and day-to-day practices in disposing of Council assets.

Disposal of Council Land and Other Assets Policy

2. Definitions

For the purposes of this Policy:

“asset” means any physical item that Council owns and that has 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 or trees.

“asset disposal value” is the amount set by Council during the annual budget process above which particular disposal processes must apply. It is used to assess whether the policy relating to major plant and equipment or minor plant and equipment must be followed.

Persons related to a Council Member or Employee of Council:

- a) A member of the Council Member or employee of Council's family
- b) A family company of the Council Member or employee of Council
- c) A trustee of a family trust of the Council Member or employee of Council

Family; family company; family trust as defined in Schedule 3, Register of Interests Local Government Act 1999

“land” includes community land, vacant land, operational land, all buildings (community and operational), road reserves, any legal interest in land, and any other land-related assets.

“major plant/equipment” are assets other than land that are deemed to have a residual value (singularly or jointly) above the asset disposal value set by Council. This category includes trucks, graders, other operating machinery, motor vehicles and small plant items.

“minor plant/equipment” are assets that are deemed to have a residual value (singularly or jointly) below the asset disposal value set by Council. This category may include loose tools, store items, furniture, second hand items removed from other assets (such as air conditioners, bricks, pavers and exercise equipment).

3. Policy Objective

Council aims to achieve advantageous disposal outcomes and seeks to:

- a. ensure the best possible outcome is achieved for the Council
- b. define the methods by which Land and Assets are disposed of
- c. be fair and equitable to all parties involved;
- d. demonstrate probity, accountability, transparency and reporting;
- e. advancing and/or working within Council's economic, social and environmental policies and/or Agreements in accord with Council's Strategic Management Plan;
- f. ensure all processes are monitored and recorded
- g. appropriately manage risk; and
- h. promote compliance with all relevant legislation including:
 - Local Government Act 1999 (SA)
 - Real Property Act 1886 (SA)
 - Land and Business (Sale and Conveyancing) Act 1994 (SA)

Disposal of Council Land and Other Assets Policy

- 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 1996 (SA)
- Roads (Opening and Closing) Act 1991 (SA)
- Land Acquisition Act 1969 (SA)
- Planning, Development and Infrastructure Act 2016 (SA)

4. Responsibility

Council employees responsible for disposing of goods and services must comply with this policy.

5. Policy principles

The following principles are to be considered in all disposal activities:

a. Open and effective competition

Encouragement of open and effective competition. Fair and equitable consideration will be given to all prospective purchasers.

b. Value for money

This is not restricted to price alone. The value for money assessment must include consideration, as applicable, of:

- i the contribution to Council's Long Term Financial Plan and strategic management plans
- ii any relevant direct and indirect benefits to Council, both tangible and intangible;
- iii efficiency and effectiveness;
- iv the costs of various disposal methods;
- v internal administration costs;
- vi risk exposure; and
- vii the value of any associated environmental benefits.

c. Ethical behaviour and fair dealing

Council employees involved in disposal are to:

- i behave with impartiality, fairness, independence, openness, integrity, and professionalism in all discussions and negotiations
- ii provide all prospective purchasers with equal opportunity to make an offer;
- iii use straight forward and user-friendly documentation;
- iv adopt clear and easy to understand evaluation criteria and methodology;

Disposal of Council Land and Other Assets Policy

- v maintain consistent processes and feedback on decisions;
- vi offer access to a timely and effective complaints procedure; and
- vii ensure effective communication and provision of information to all prospective purchasers.
- viii confidentiality of all commercial information
- ix adherence to all legislation, policies, procedures and codes.

e. Environmental protection

Council promotes environmental protection through its disposal procedures. In undertaking any disposal activities Council will encourage environmentally responsible activities.

6. Considerations prior to Disposal of Land and Assets

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

- the usefulness of the asset;
- the current market value of the land or asset
- the remaining useful life, particularly of an 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 asset;
- any impact the sale or 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 sale or disposal of an asset may have on the operations of the Council;
- the long term plans and strategic direction of the Council (for example meeting the objectives of the Council's Strategic Management Plan, Long Term Financial Plan and Asset Management Plans);
- Council Policies on:
 - Council Services - Range and Levels;
 - Internal Financial Controls;
 - Prudential Management;
- a benefit and risk analysis of the proposed disposal;
- the results of any community engagement process;
- any restrictions on the proposed disposal (e.g. land held in trust); and
- the content of any community land management plan.

Council will receive and consider a report from the Chief Executive Officer prior to the sale of Council land or buildings. The report will include an assessment of relevant factors including those outlined above.

Council will seek to sell or dispose of land at or above current market valuation.

Disposal of Council Land and Other Assets Policy

7. Disposal methods

Assets (other than land or buildings) with an estimated residual value equal to or greater than the Council's "asset disposal value" will be classified as major plant/equipment for the purposes of this policy. They will be subject to the disposal methods and conditions described under clause 7.2 below.

Assets (other than land or buildings) with an estimated residual value lower than the Council's "asset disposal value" will be classified as minor plant/equipment for the purposes of this policy. They will be subject to the disposal methods and conditions described under clause 7.3 below.

The Council's "asset disposal value" at the commencement of this policy was \$2,500.

7.1 Land disposal method

Council will sell land and buildings which it determines to be surplus to Council's requirements by one of the following methods:

open market sale: – advertisement for sale through local paper, Council's website and social media, and where appropriate, a paper circulating in the State or by procuring the services of a licensed real estate agent and/or auctioneer (following compliance with Council's Procurement Policy);

expressions of interest – seeking expressions of interest for the sale or otherwise disposal of land;

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

open tender – openly seeking, through advertisement, tenders, or buyers for land;

public auction – by appointment of a suitably qualified auctioneer with an established reserve price;

direct sale – where the land is to be used by the purchaser where the land is to be used for a purpose which is consistent with Council's objectives for the land;

by negotiation – with owners of adjoining 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.

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 when purchased or otherwise granted ownership;
- the current and possible preferred future use of the land;
- any liability of encumbrances on the property
- the opportunity to promote local economic growth and development
- the total estimated value of the sale; and
- compliance with statutory and other obligations.

Disposal of Council Land and Other Assets Policy

The reasons for selecting the method of sale, including the reasons for entering into any contract for the sale of land other than by a tender process, will be documented in a resolution of Council.

7.1.1 Land disposal conditions

Council will seek to dispose of Land at or above current market valuation by whichever method is likely to provide Council with a maximum return, unless there are reasons for Council 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 to any Council Member, employee of the Council or persons related to a Council Member or employee who has been involved in any process of establishing a reserve price, or if they are in a position to have knowledge of the reserve price prior to the auction.

Council will not dispose of land to any Council Member, Council employee or person related to a Council Member or employee unless the sale is by public auction and an interest has been declared by the Council Member or employee prior to the setting of a reserve price.

If land is to be auctioned or placed on the open market or disposed of by expression of interest then (unless Council resolves otherwise) one independent valuation or sales appraisal must be sought to establish the reserve price for the land no more than six (6) months prior to the proposed disposal.

If the land is to be sold or disposed of via select tender or direct sale, then (unless Council resolves otherwise) a minimum of two independent valuations or sales appraisal must be sought to ensure that an appropriate market value is obtained. The independent valuation must be made no more than six (6) months prior to the proposed disposal.

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.

All costs associated with any sale or disposal of land must be borne by the purchaser or realised within the purchase price (unless Council resolves otherwise).

If the Council proposes to grant an easement (including a right-of-way) an independent valuation must be sourced (unless Council resolves otherwise).

If land is classified as community land, then pursuant to section 201(2)(a) of the Act, the Council can consider a recommendation for disposal only:

- i if the land is to be amalgamated with one or more other parcels of land and the amalgamated land is to be (or to continue to be) community land; or
- ii in any other case - after revocation of its classification as community land;

If land forms a road or part of a road then, pursuant to section 201(2)(b) of the Act, the Council can dispose of the land only after the road has been closed in accordance with the *Roads (Opening and Closing) Act 1991*.

Where land is classified as community land and in other circumstances where community consultation is required, such consultation must be completed in accordance with the Act

Disposal of Council Land and Other Assets Policy

and Council's Community Engagement Policy prior to Council determining its decision on disposal.

7.2 Major plant/equipment - disposal methods

The sale or disposal of major plant/equipment will be the responsibility of the relevant Departmental Director who is responsible for those assets or the Chief Executive Officer.

Council will, where appropriate, dispose of assets through one of the following methods:

trade in – trading in goods to equipment 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; or

public auction – procurement of a suitably qualified auctioneer with an established reserve price.

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 return; and
- compliance with statutory and other obligations.

7.2.1 Major plant/equipment disposal conditions

The reasons for selecting the method of sale, including the reasons for using anything other than a tender process, will be documented in Council's records management system.

Council Members, employees of the Council or persons related to a Council Member or employee of Council will not be permitted to purchase major plant/equipment unless the purchase is through public auction and they have not been involved in any process of establishing a reserve price, and are not in a position to have knowledge of the reserve price prior to the auction.

Purchasers of major assets must agree in writing that no warranty is given in respect of the suitability and condition of the item before purchasing any item of major plant/equipment and that Council will not be responsible, in any respect, for the Asset following the sale.

7.3 Minor plant/equipment - disposal method

The sale or disposal of minor plant/equipment will be the responsibility of the relevant Director responsible for the asset.

As appropriate, the following methods will be used for the sale or disposal of plant/equipment:

trade in – trading in goods to suppliers;

Disposal of Council Land and Other Assets Policy

public auction – sale of goods through public open process (for example for items grouped into lots such as IT equipment, phones, etc); or

expressions of interest – seeking expressions of interest from prospective purchasers through advertising

Selection of a suitable option will include consideration of:

- the public demand and interest in the minor plant/equipment;
- the method most likely to return the highest revenue;
- the value of the minor plant/equipment;
- the costs of the disposal method compared to the expected return; and
- compliance with statutory and other obligations.

7.3.1 Minor plant/equipment disposal conditions

The reasons for selecting the method of sale will be documented in Council's records management system.

Preference will be given to local community groups, followed by local sporting or recreation groups for the purchase of minor plant/equipment and will be advertised through Council's website and social media. Groups will submit a confidential bid for the minor plant and equipment. The successful purchaser will be the highest bid received.

Should no bids be received from community groups, or sporting or recreation groups, the general public will be invited to submit a confidential bid for the minor plant and equipment. The successful purchaser will be the highest bid received.

Council Members, employees of the Council or persons related to a Council Member or employee of Council will not be permitted to purchase minor plant/equipment unless no bids have been received from local community groups, sporting or recreation groups or the general public.

8. Sale of items which are not assets

Where Council determines to dispose of items which are not on Council's asset register and are not subject to any alternative statutory procedure,¹ this policy can be used as a guide by estimating the residual value and following disposal methods with the appropriate level of accountability and transparency.

9. Consultation

9.1 Land used for operational requirements

For land deemed to be surplus to requirements which is classified as operational land (and excluded from classification as community land) Council will determine on a case by case basis, and with reference to the Council's Community Engagement Policy, the extent and nature of any consultation that may be required.

¹ E.g. subject to the *Unclaimed Goods Act 1987*

Disposal of Council Land and Other Assets Policy

9.2 Land excluded from community land but not used for operational purposes

For land which has been excluded from the community land provisions pursuant to the Act, Council will determine appropriate consultation methods by way of a report. For example, consultation may take place on the disposal of land which does not have community land status but is currently used by the community or where there may be an expectation that land will be retained for the benefit of the community.

9.3 Community land

Any proposal to revoke the status of community land (with a view to potential sale of the land) must be the subject of public consultation in accordance with section 194 of the Act and Council's Community Engagement Policy.

9.4 Major plant/ equipment and minor plant/equipment

No specific consultation requirements are necessary for disposal of plant/equipment. However, some publicity will usually be necessary to ensure the success of disposal methods such as an auction, tender, or to invite expressions of interest, as outlined in this policy.

10. Delegations

Disposal of land will be delegated by a resolution of Council after consideration of a case-by-case basis, to apply to a single parcel (or assessment comprising of multiple parcels) of land or interest in land.

Any delegation of authority to dispose of land will be subject to conditions that the exercise of delegated power must be consistent with this policy. Therefore any proposal to dispose of land in a manner that would be inconsistent with this policy must be considered by a resolution of Council.

Documents which transfer the ownership of land must be signed jointly by the Principal Member of the Council and the Chief Executive Officer.

Council will, when implementing the decisions under this Policy, act in accordance with the Council's budget, relevant policies, plans, agreements and resolutions.

11. 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 website: www.coorong.sa.gov.au.

Coorong Civic Centre

95-101 Railway Terrace
Taillem Bend
Phone: 1300 785 277
Fax: 8572 3822

Meningie Information Hub

49 Princes Highway
Meningie

Tintinara Customer Service Centre

37 Becker Terrace
Tintinara

Copies will be provided to interested parties upon request. Email council@coorong.sa.gov.au. Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.