



Sale or Disposal of Land and Assets Policy

Classification:	Council Policy
Version Number:	2
Review Frequency:	Once during the term of Council
Last Reviewed:	February 2022
Review Due:	February 2025
Responsible Officer:	Chief Executive Officer
Applicable Legislation:	Local Government Act 1999 (Section 49) Other relevant legislation is listed at clause 5.5 Public Interest Disclosure Act 2018
Related Policies/Procedures:	<ul style="list-style-type: none"> • Delegations Register • Public Consultation Policy • Procurement Policy • Prudential Management Policy • Asset Accounting Policy • Risk Management Policy • LGA Procurement Guidelines • Internal Financial Controls Manual and Policy • Community Land Management Plan • Community Plan • Fraud, Corruption, Misconduct and Maladministration Prevention Policy • Public Interest Disclosure Policy and Procedure

1. PURPOSE:

The purpose of this policy is to:

- 1.1 establish a framework for the sale or disposal of Council land and assets;
- 1.2 define the methods by which land and assets are disposed of;
- 1.3 demonstrate accountability and responsibility of Council to ratepayers;
- 1.4 be fair and equitable to all parties involved;
- 1.5 enable all processes to be monitored and recorded; and
- 1.6 ensure that the best possible outcome is achieved for the Council.

2. LEGISLATIVE CONTEXT:

- 2.1 Section 49 of the Local Government Act 1999 requires Council to develop and maintain policies, practices and procedures directed towards:
 - 2.1.1 obtaining value in the expenditure of public money; and
 - 2.1.2 providing for ethical and fair treatment of participants; and
 - 2.1.3 ensuring probity, accountability and transparency in all disposal processes.
- 2.2 Other relevant legislation as listed at clause 5.5

3. SCOPE:

- 3.1 This policy applies to physical assets owned by Council including land, buildings, plant and equipment.
- 3.2 This policy does not cover:
 - 3.2.1 land sold by Council for the non-payment of rates;
 - 3.2.2 lease, licence, authorisation or permit arrangements;
 - 3.2.3 disposal of goods which are not owned by the Council, such as abandoned vehicles.

4. DEFINITIONS:

Asset	means any item that Council owns and that is recognised by the Australian Accounting Standards or any other Council policy as an asset. This includes land, buildings, plant, machinery, equipment and all other physical objects. It does not include financial investments or finance related activities.
Asset Disposal Value	Is the amount set by Council each time this policy is reviewed above which particular disposal process must apply. It is used to assess whether the policy relating to major plant and equipment or minor plant and equipment must be followed.
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, road reserves, any legal interest in land, and any other land-related assets, including all buildings on land.
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).
Persons Related to a Elected Member or Employee of Council	<ul style="list-style-type: none"> • A member of the elected member or employee of Council's family • A family company of the elected member or employee of Council • A trustee of a family trust of the elected member or employee of Council
The Act	refers to the Local Government Act 1999.

5. POLICY PRINCIPLES:

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

5.1 *Encouragement of open and effective competition*

- 5.1.1 Disposal of assets should be open and result in effective competition. Council must give fair and equitable consideration to all prospective purchasers.

5.2 *Obtaining value for money*

5.2.1 This is not restricted to price alone;

5.2.2 An assessment of value for money must include, where possible, consideration of:

- the contribution to Council's long term financial plan and strategic direction;
- any relevant direct and indirect benefits to Council, both tangible and intangible;
- efficiency and effectiveness
- the costs of various disposal methods;
- Council's internal administration costs;
- risk exposure; and
- the value of any associated environmental benefits.

5.3 *Ethical behaviour and fair dealing*

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

5.4 *Probity, accountability, transparency and reporting*

5.4.1 Council requires that all its employees be answerable for their plans and actions and for the outcomes. Any disposal shall be undertaken in a manner that ensures:

- Clearly established roles and responsibilities
- Appropriate record keeping and documentation
- Transparency of decisions made
- Adherence to all legislation
- The identification and management of actual or potential conflicts of interest, and
- The confidentiality of all commercial information.

5.5 *Ensuring compliance with all relevant legislation*

5.5.1 Including (but not limited to) the following:

- *Local Government Act 1999*
- *Real Property Act 1886*
- *Land and Business (Sale and Conveyancing) Act 1994*
- *Planning, Development and Infrastructure Act 2016*
- *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*
- *Local Government (General) Regulations 2013*
- *Independent Commissioner Against Corruption Act 2012*
- *Public Interest Disclosure Act 2018*

5.6 *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:**

6.1 Any decision to dispose of land and assets will be made after consideration to the following:

- the usefulness of the land or asset;
- the intention for the use of the land;
- the current market value of the land or asset;
- the total estimated value of the disposal;
- the annual cost of maintenance if retained;
- any alternative future use of the land or asset;
- any duplication of the land or asset or the service provided by the land or other asset;
- any opportunity to encourage consolidation of assets;
- any impact the disposal of the land or asset may have on the community;
- any cultural or historical significance of the land or asset;
- any public or private development opportunities for the land;
- 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;
- a benefit and risk analysis of the proposed disposal;
- the results of any community consultation process;
- any opportunity to promote local economic growth and development;
- any restrictions on the proposed disposal (e.g land held in trust);
- any potential land contamination or remediation costs;
- the content of any community land management plan; and
- any other relevant policies of the Council.

Council will receive and consider a report from the Relevant Director/ 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 the current market valuation.

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 9 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 10 below.

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

8. DISPOSAL OF LAND:

The Council may resolve to dispose of Land.

- 8.1 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.
- 8.2 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.
- 8.3 The Council will, where appropriate, dispose of land through one of the following methods:
- *open market sale (public auction)* - advertisement for disposal of the land through the local paper, Council 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 (in accordance with Council's Procurement Policy). Where a public auction fails to realise a sale, the Chief Executive Officer or delegate may dispose of the Land at the best available price, provided that the offer is at or above the reserve sale price of the Land
 - *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, through advertisement, tenders, or buyers for land;
 - *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.
- 8.4 Selection of a suitable disposal method will include consideration of the following:
- 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;
 - the opportunity to promote local economic growth and development;
 - any delegations;
 - any liability of encumbrances on the property;
 - any other procurement delegation (eg tender panels);
 - the total estimated value of the disposal; and
 - compliance with statutory and other obligations.
- 8.5 The Council will not dispose of land to any elected member or employee of the Council or persons related to a elected member or employee who has been involved in any process of establishing a reserve price, or if they are in a position to have known of the reserve price prior to the auction.
- 8.6 If land is to be disposed of, one (1) independent valuation or sales appraisal must be obtained to assist in the establishment the reserve price for the land and to ensure appropriate market value is obtained. The independent valuation must be made no more than six (6) months prior to the proposed disposal.
- 8.7 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.
- 8.8 Unless Council resolves otherwise, all costs associated with any sale or disposal of land or grant an easement, must be borne by the purchaser or realised within the purchase price.
- 8.9 Unless Council resolves otherwise, all costs associated with community land revocation or road closure process (unless process was initiated by Council not as a result of a request of the purchaser) must be borne by the purchaser.
- 8.10 No land will be disposed of without a Council resolution relating to the sale.
- 8.11 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:
- If 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;
 - If any other case- after revocation of its classification as community land;
- When 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 and Council's Public Consultation Policy prior to Council determining its decision on disposal.
- 8.12 Consultation
- 8.12.1 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 Councils Public Consultation Policy, the extent and nature of any consultation that may be required.

This provision excludes land which is held as community land which will automatically follow the provisions as set out in The Act.

8.12.2 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.

8.12.3 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 Public Consultation Policy.

9. DISPOSAL OF ASSETS – MAJOR PLANT/ EQUIPMENT

- 9.1 The sale or disposal of major plant/ equipment will be the responsibility of the relevant Director or the Chief Executive Officer.

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

1. *trade-in* – trading in equipment to suppliers;
2. *expressions of interest* – seeking expressions of interest from buyers;
3. *select tender* – seeking tenders from a selected group of persons or companies;
4. *open tender* – openly seeking bids through tenders;
5. *open market sale (public auction)* – advertisement for auction through the local paper, Council website and social media, and, where appropriate, a paper circulating in the State, or procuring the services of an auctioneer (following compliance with the Council's Procurement Policy) by appointment of a suitably qualified auctioneer with an established reserve price.

- 9.2 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 expected returns;
 - compliance with statutory and other obligations.

- 9.3 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.

Elected Members, employees of the Council or persons related to a Elected member or employee 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 the purchasing any item of major plant/ equipment and that Council will not be responsible, in any respect, for the Asset following the sale.

- 9.4 Consultation
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. DISPOSAL OF ASSETS – MINOR PLANT/ EQUIPMENT

- 10.1 The sale or disposal of minor plant/ equipment will be the responsibility of the relevant Director

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

1. *trade-in* – trading in equipment to suppliers
2. *select tender* – seeking tenders from selected group of persons, companies or community groups, which may include internal tenders from elected members and staff (if deemed appropriate by the Chief Executive Officer).
3. *Public online auction* – sale of goods through public open process (for example for items grouped into lots such as IT equipment, phones, etc) ;
4. *expressions of interest* – seeking expressions of interest from prospective purchasers through advertising; or
5. *donation* – items may be donated to a local community groups, sporting or recreation groups or the general public where the items has no realistic market, surplus to requirements, cost of disposal methods are excessive in relation to the value, and/ or a community benefit can be gained.
6. *Recycle or disposal to landfill* – where there is no value or damage renders the item unserviceable.

- 10.2 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 expected returns; and;
 - compliance with statutory and other obligations.

10.3 Minor plant/ equipment disposal conditions

The reasons for selecting the method of sale will be documented.

Where an item of minor plant/ equipment has no remaining useful life it may be disposed of utilising an appropriate environmental disposal method (e.g. waste transfer station).

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 local community groups, sporting / recreation groups or 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.

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

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

11. 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, this policy can be used as a guide by estimating the residual value and following disposal methods with appropriate level of accountability and transparency.

12. 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 waive application of this policy and pursue a method which will bring the best outcome for the Council. Any exemption will be at the discretion of the Council, or the Chief Executive Officer in accordance with any delegation and will be documented accordingly.

13. 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.

15. AVAILABILITY OF THE POLICY:

This policy will be available for inspection at the Council's principal office, 29 Holland Street Kingston SE, during ordinary business hours and on Council's website: www.kingstondc.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon such payment of the fee set by Council.