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DISPOSAL OF LAND AND ASSETS	
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Previous Council Reviews	07.06.17, 28.11.18, 01.10.19
Previous Audit Committee Reviews	09.06.17, , 09.11.18, 7.11.19

Applicable Legislation

<i>Local Government Act 1999</i>

Related Policies

Code of Conduct for Council Employees Financial Internal Control Policy Procurement Policy Prudential Management Policy Risk Management Policy
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Related Procedures

Plant Procedure (<i>Doc ID # 170020</i>)
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Reference Documents

Procurement Glossary Financial Delegations

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1. INTRODUCTION

This Disposal of Land and Assets Policy (the Policy) sets-out the principles and procedures to be followed by Roxby Council (the Council) when disposing of Land and Assets in compliance with Section 49 of the *Local Government Act 1999* (the Act).

This Policy seeks to:

- define the methods by which land and assets are disposed of;
- demonstrate accountability and responsibility of council to ratepayers;
- be fair and equitable to all parties involved;
- enable all processes to be monitored and recorded; and
- ensure that the best possible outcome is achieved for the council.

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

- obtaining value in the expenditure of public money; and
- providing for ethical and fair treatment of participants; and
- ensuring probity, accountability and transparency in all disposal processes.

However, this Policy does not cover:

- land sold by council for the non-payment of rates; or
- disposal of goods which are not owned by the council, such as abandoned vehicles, as these are dealt with in the act.

2. DEFINITIONS

The following definitions are in addition to those contained in the Procurement Glossary document.

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

Asset	includes Major Plant and Equipment and Minor Plant and Equipment
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.
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), information technology and communication items and surplus bulk items (such as sand and gravel).

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

This is not restricted to price alone.

An assessment of value for money must include consideration of (where applicable):

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

3.3. Probity, Ethical Behaviour and Fair Dealing

Council is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations, and use its best endeavours to deal with all respondents on the basis of mutual trust and respect.

Council will maintain the confidentiality of commercial information provided by purchases. Clauses dealing with the treatment of Confidential Information will be included in all relevant Agreements.

3.4. Accountability, Transparency and Reporting

Records detailing all aspects of the disposal process are to be maintained and appropriate documentation completed commensurate with the nature and complexity of the transaction.

3.5. Compliance with Legislation

Including the following:

- [Local Government Act 1999](#) (SA)
- [Real Property Act 1886](#) (SA)
- [Land and Business \(Sale and Conveyancing\) Act 1994](#) (SA)
- [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)

4. CONSIDERATIONS

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

- the usefulness of the Land or Asset;
- the current market value of the Land or 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 Land or Asset;
- any impact the 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 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, particularly of an Asset;
- a benefit and risk analysis of the proposed disposal;
- the results of any community consultation process;
- any restrictions on the proposed disposal;
- the content of any community land management plan; and
- any other relevant policies of the Council, including:
 - o Financial Internal Controls Policy,
 - o Prudential Management Policy; and
 - o its policy with respect to managing conflicts of interest.

5. DISPOSAL METHODS

5.1. Land Disposal

- The Council may resolve to dispose of Land.
- Where the land forms or has 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.
- Where Land is classified as community land, the Council must:
 - o undertake public consultation in accordance with the Act and the Council's public consultation policy; and
 - o ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its disposal; and
 - o comply with all other requirements under the Act in respect of the disposal of community land.
- 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.
- The Council will, where appropriate, dispose of Land through one of the following methods:
 - o open market sale - advertisement for disposal of the Land through the local paper 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 the Council's Procurement Policy);
 - o 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 bids through tenders, including public auction;
 - 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.
- 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;
 - the current and possible preferred future use of the Land;
 - the opportunity to promote local economic growth and development;
 - delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the disposal;
 - the total estimated value of the disposal; and
 - compliance with statutory and other obligations.
 - Any employee of Council is eligible to bid through one of the above prescribed methods, so long as any such bid is assessed on a competitive basis against any other bid, and if successful, Council discloses any involvement the employee may have had in any process related to a decision to dispose of the land and/or the establishment of a reserve price and/or any matter that should be disclosed in the public interest.
 - A potential conflict of interest could be seen to arise from the Chief Executive and/or Administrator being involved as a bidder in the disposal process. Any such conflict will be avoided by the Chief Executive and /or Administrator, by removing him/herself from any part of the disposal process in order to ensure that the disposal process is seen to be free from any conflict of interest.
 - 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.
 - 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.
 - 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.
 - 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 Asset Disposal

- The sale of Assets (both Major Plant and Equipment and Minor Plant and Equipment) is the responsibility of the relevant Council Officer who is responsible for those Assets.
- The Council will, where appropriate, dispose of Assets through 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);
 - donation - items that are capable of addressing a specific need or purpose for a non-for-profit Community organisation may be donated to such an organisation at the sole discretion of the Chief Executive in such cases, the receiving organisation will be deemed to be the Purchaser for the purpose of this Policy.
 - scrap or dump - assets that have come to the end of their useful life and hence of little commercial value may be disposed of by way of recycling or 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 and whether it is Major Plant and Equipment or Minor Plant and Equipment;
 - the costs of the disposal method compared to the expected returns; and
 - compliance with statutory and other obligations.
 - 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.
 - A Contractor who has undertaken work for the Council, either independently or on behalf of a contracting company, and such work has involved working with an Asset that is offered for sale or has provided access to confidential information about an Asset that is offered for sale, will be treated as an Employee for the purpose of this Policy.
 - Purchasers are required to agree in writing that no warranty is given by the Council in respect of the suitability and condition of the Asset and that the Council will not be responsible for the Asset in any respect following the sale.

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. RECORDS

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

8. EXEMPTIONS

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.

9. PUBLIC ACCESS TO POLICY

Section 132(1)(a) of the *Local Government Act 1999* states a Council must publish a document referred to in Schedule 5 on a website determined by the chief executive officer. Under s. 132(1)(b), a person is entitled, on payment of a fee fixed by the Council, to a copy of this Policy.

10. POLICY REVIEW

The effectiveness of this Policy will be reviewed every 3 (three) years within Council's Strategic Management Planning framework.

Amendments to the Policy will not affect disposal initiatives that have already involved formal approaches to the market - ie issuing of a Tender, notice of Auction, invitation for Expressions of Interest or equivalent documentation to potential buyers.

11. AVAILABILITY OF THE POLICY

This policy will be available for inspection at Council Office located at 6 Richardson Place during ordinary business hours and published on the Council's website www.roxbydowns.sa.gov.au. Copies will be provided to interested parties upon request.