
P O L I C Y D O C U M E N T

Policy Name	SALE AND DISPOSAL OF COUNCIL LAND AND OTHER ASSETS		
Policy No	S6		
Policy Reference	Governance		
File Reference	AS134		
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	Date Reviewed :	Refer Review and Evaluation	

POLICY INTENT

The purpose of this policy is to enable the timely sale, lease and/or disposal of land or other Councils assets.

Section 49 of the Local Government Act 1999 (Contracts and Tenders policies) (Refer Appendix 1) requires the Council to prepare a policy in relation to the sale or disposal of Council land and other assets.

This policy is intended to cover the sale or disposal of land or assets which are owned by the Council and have been declared as surplus to Council's requirements. Where applicable, all requirements contained with **Section 201 of the Local Government Act 1999 (Disposal and alienation of Local Government land)(Refer Appendix 2)** and the **Roads (Opening & Closing) Act 1991** must be complied with.

POLICY OBJECTIVES

The objectives of this policy are :

- to identify circumstances where the Council will call for tenders for the sale or disposal of land or other assets;
- to ensure Council's processes for calling of tenders for the sale or disposal of land or assets and entering into contracts in those circumstances that are fair and transparent; and
- to define those circumstances in which the Council will adopt sale or disposal methods other than by tender and ensure that adequate reasons are provided.

POLICY STATEMENTS

When considering options for the sale of assets, Council will be guided by Council's economic, social and environmental objectives; and the "key actions" of the City of Victor Harbor's "Strategic Directions 2006/2009" – Strategic Management Plan.

The process of the sale or disposal of Council land or other assets will be fair and transparent to ensure Council obtains the best outcomes and price.

Commercial confidentiality will apply between the Council and other parties to negotiations for sale or disposal of asset transactions, unless Council decides otherwise and subject to the requirements of any legislation or law.

This policy has been developed by the Council to ensure compliance with its statutory and other obligations.

In circumstances where there is a sale or disposal of land or other assets other than by a tender process, as may be considered and determined by Council on individual case merits, the reasons for entering into such contracts not as the result of a tender process will be recorded in writing, in accordance with **Section 49 (2) (c) of the Local Government Act 1999 (Tendering, Contracting and Procurement policies)**.

LEGISLATIVE AND CORPORATE REQUIREMENTS

This Policy is in accordance with the Council's obligations pursuant to Section 49 of the **Local Government Act 1999**.

Other major legislative requirements that may be relevant to the application of this policy, includes and may not be limited to the following:

- Real Property Act 1886;
- Land and Business (Sale and Conveyancing) Act 1994;
- Development Act 1993;
- Residential Tenancies Act 1995;
- Strata Titles Act 1988;
- Community Titles Act 1996;
- A New Tax System Goods and Services Tax Act 1999;
- Sale of Goods Act 1895;
- Roads (Opening and Closing) Act 1991; and
- Local Government Act 1999

This policy is to be implemented in conjunction with other relevant Council policies and strategies, and includes but may not be limited to the following:

- Public Consultation Policy (P8);
- Procurement Policy (P9);
- Risk Management Policy (R9);
- Internal Control Manual; and
- Community Land Management Plans.

LAND DISPOSAL PROCESS

The Council may resolve to sell or otherwise dispose of land.

Public Consultation will be undertaken in accordance with Councils **Public Consultation Policy (P8)** where the Land is classified as Community Land.

When disposing of land, Council will act in accordance with the requirements of the **Local Government Act 1999**.

Council will sell or dispose of Land in one of the following ways:

- direct sale by way of advertisement, by private treaty through an Agent or by public auction (where a public auction fails to realise a sale, the City Manager is the delegated authority to dispose of the Land at the best available price, provided that the offer is at or above the reserve sale price of the land);
- quotation – inviting bids for the sale of land;

- selected or open tender;
- by negotiation; or
- requests for expression of interest.

Council will seek to sell or dispose of the land at or above current market valuation, in a way, which maximises the return to Council.

If the sale of the land is not to be by an open market process, the sale price should be at or above current market valuation (with due regard to all associated costs to achieve the transaction or such other amount as Council resolves on the basis of the facts in a particular case), in which case the Council will obtain a valuation from an independent licensed valuer.

LEASEHOLD INTERESTS

The Council may resolve to sell or dispose of leasehold interest in land or grant a lease or license over land.

In considering the disposal of a leasehold interest, the options include :

- public tender;
- selected tender where public registrations or expressions of interest may be sought prior to a selected tender (should the tender not be awarded, negotiations may be entered into with the Council's identified options) or;
- by negotiation.

Existing Lease

Where the disposal of the leasehold interest is not to be on the open market, the rent should be at or above current market valuation (with due regard to all associated costs to achieve the transaction or such other amount as Council resolves).

Where Council has an interest in land and/or premises which are leased or licensed, the lease or license may be renewed to the existing lessee or licensee subject to the provisions of the lease/license and legislation where relevant.

New Lease

Where land and/or premises are vacant and Council proposes to lease or license the land and/or premises then the following applies:

- (a) if the land and/or premises is Community Land, then the Council must comply with the requirements of **Section 202 of the Local Government Act 1999 (Refer Appendix 3)** and the *Council's Public Consultation Policy (P8)* prior to granting of a lease or license;
- (b) if the land is not Community Land, the lease or license must comply with all relevant legislation and Council policies;
- (c) the terms of any lease or license should, in principle, be consistent with rentals and conditions prevailing in the market at the time; and
- (d) where Council resolves to lease or license land and/or premises to a third party at less than the current market value or on terms more favourable than generally prevailing in the open market, then the concessional benefit should be identified.

SALE OR DISPOSAL OF OTHER ASSETS

Where surplus Council assets become available for sale (other than for trade-in), the following limits shall apply to determine the method of disposal, except where the Council or City Manager decides that it is impractical to arrange auction or tender:

- Goods valued over \$2,500 : Auction or Formal Tender (Public, Selected or Negotiated)
Sale tenders may be awarded by the City Manager in consultation with the relevant Director.
- Goods valued under \$2,500 : Auction, advertisement or private negotiation where the sale price is at least the approximate market value.

Tender documents including the relevant agenda report and resolution of Council should be retained in the Tenders and Quotations file in the fireproof strongroom.

Tender Evaluation : The tender evaluation process will be in accordance with operational procedures appropriate to the form of tender.

Refer Attachment 4 - General Disposal Schedule for Local Government – regarding records and document retention as it relates to Tendering, contracting and procurement.

Disclaimer

No warranty will be provided for goods disposed of in this manner. A disclaimer will be required by Council at time of purchase.

CONSIDERATIONS

In identifying the circumstances in which to apply sale and disposal options, Council will consider, but not be limited to the following issues:

- the original intention for the use of the land or asset when purchased or acquired, where relevant;
- the current and possible preferred future use of land or assets;
- the total estimated value of the sale;
- delegation limits, taking into consideration accountability, responsibility, operational efficiency and urgency of the sale;
- community need and sensitivity; and
- compliance with statutory and other obligations.

INTERNAL CONTROLS

Appropriate practices and procedures of internal control will be maintained and shall comply with statutory and other obligations, for the sale and disposal activities. **(Refer Internal Control Manual).**

RISK MANAGEMENT

The Council will ensure that appropriate risk management practices and procedures are in place for its tendering, contacting and procurement activities including risk identification, assessment and implementation of controls.

Council Officers will be responsible for ensuring appropriate practices and procedures for internal control and risk management are adhered to during the sales and disposal activities.

DOCUMENTATION

To assist in demonstrating that its sale and disposal processes are fair, transparent, accountable and meet community needs, Council will document the reasons for the sales and disposal process.

Confidentiality provisions may bind some documentation and information. Should there be confidentiality provisions involved, these will be recorded as a formality.

COUNCIL ENDORSEMENT OF THE POLICY

Council adopted this policy on 10th August 2000, in the form of Competitive Tendering, Contracting and Disposal of Land and other Assets Policy (C3). This Policy, "Sale and Disposal of Council Land and other Assets", replaces certain aspects of the previous policy, see Review and Evaluation process.

REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed and evaluated annually within Council's strategic management planning framework. The City Manager will report to Council on the outcome of the evaluation, and make recommendations for amendments, alteration or substitution of a new Policy, if relevant.

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

Reviewed 9th July 2001.
Reviewed 27th May 2002.
Reviewed 28th July 2003.
Reviewed 15th June 2004.
Reviewed 14th November 2005.
Amended 23rd June 2008

This policy was amended in June 2008, separating Competitive Tendering, Contracting and Disposal of Land and Other Assets Policy into (1) Sale and Disposal of Council Land and other Assets and (2) Procurement Policy .

AVAILABILITY OF THE POLICY

The Policy is available for inspection at the Council Office and library during ordinary business hours, and on Council's website www.victor.sa.gov.au

Copies will be provided to interested parties upon request, for a fee.

References :

Local Government Act 1999
City of Victor Harbors "Strategic Directions 2006/2009" – Strategic Management Plan
Code of Conduct – Employees (C18)
Public Consultation Policy (P8)
Procurement (P9)
Risk Management Policy (R9)
City of Victor Harbor - Internal Control Manual
City of Victor Harbor – Contract documents

- *Contract Procedure Document*

- **Conditions of Tendering**
- **Tender Clause FOI**
- **Contracting Occupational Health Safety and Welfare Policy**

Community Land Management Plans

Real Property Act 1886

Land and Business (Sale and Conveyancing) Act 1994

Development Act 1993

Residential Tenancies Act 1995

Strata Titles Act 1988

Community Titles Act 1996

A New Tax System Goods and Services Tax Act 1999

Sale of Goods Act 1895

Roads (Opening and Closing) Act 1991

State Records Act – General Disposal Schedule 20 for Local Government

APPENDIX 1

Section 49 of the Local Government Act – Contracts and Tenders Policies

(1) A Council must prepare and adopt policies on contracts and tenders, including policies on the following :

- (a) the contracting out of services; and**

- (b) competitive tendering and the use of other measures to ensure that services are delivered cost-effectively; and**
- (c) the use of local goods and services; and**
- (d) the sale or disposal of land or other assets.**

(2) The policies must –

- (a) identify circumstances where the council will call for tenders for the supply of goods, the provision of services or the carrying out of the works, or the sale or disposal of land or other assets; and**
- (b) provide a fair and transparent process for calling tenders and entering into contracts in those circumstances; and**
- (c) provide for the recording of reasons for entering into contracts other than those resulting from a tender process.**

(3) A council may at any time alter a policy under this section, or substitute a new policy or policies (but not so as to affect any process that has already commenced).

(4) A person is entitled to inspect (without charge) a policy of a council under this section at the principal office of the council during ordinary office hours.

(5) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under this section.

APPENDIX 2

Section 201 – Sale or disposal of local government land

(1) A Council may sell or otherwise dispose of an interest in land –

- (a) vested in the council in fee simple; or**
- (b) vested in the council as lessee**

(2) However, a Council cannot dispose of community land or land forming a road or part of a road except as follows:

- (a) the council may dispose of community land after revocation of its classification as such;**
- (b) the council may dispose of land that formed a road or part of a road after the closure of the road under the Roads (Opening and Closing) Act 1991;**
- (c) the council may grant a lease, licence, authorisation or permit under this Act;**
- (d) the council may grant an easement (including right of way) over community land;**
- (e) the council may grant an easement (excluding a right of way over a road or part of a road).**

(3) If –

- (a) State Government financial assistance was given to the council to acquire community land; and**
- (b) the council has not resolved to use the proceeds of the sale or disposal of the land for the acquisition or development of other land for public or community use or for the provision of community facilities,**

the Minister may as a condition of approving revocation of its classification with a view to sale or other disposal require the council to pay to the Crown, or to apply for a purpose specified by the Minister, on the sale or disposal of the land, an amount not exceeding the amount that bears the same proportion to the sale price (in the case of a sale) or to the value of the land (in the case of another form of disposal) as the amount of State government financial bore to the purchase price (in the case of a purchase) or to the value of the land (in the case of another form of acquisition) at the time that the council acquired the land.

APPENDIX 3

Section 202 – Alienation of Community land by lease or licence

(1) A council may grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve).

- (2) **Before the council grants a lease or licence relating to community land, it must follow the relevant steps set out in its public consultation policy.**
- (3) **However, a council need not comply with the requirements of subsection (2) if-**
 - (a) **the grant of the lease or licence is authorised in an approved management plan for the land and the term of the proposed lease or licence is five years or less; or**
 - (b) **the regulations provide, in the circumstances of the case, for an exemption from compliance with a public consultation policy.**
- (4) **A lease or licence is to be granted or renewed for a term (not exceeding 21 years) stated in the lease or licence.**
- (5) **A lease or licence may provide for-**
 - (a) **the erection or removal of buildings and other structures for the purpose of activities conducted under the lease or licence;**
 - (b) **the exclusion, removal or regulation of persons, vehicles or animals from or on the land, and the imposition of admission or other charges;**
 - (c) **any other matter relevant to the use or maintenance of the land.**
- (6) **A lease or licence must be consistent with any relevant management plan.**
- (7) **This section operates to the provision of the Adelaide Park Lands Act 2005 in respect of the Adelaide Park Lands under that Act.**

APPENDIX 4

GENERAL DISPOSAL SCHEDULE 20 FOR LOCAL GOVERNMENT

Item Number	Function/Activity	Record description	Record examples	Minimum Disposal Action

7.81	Tendering	<i>The activities involved in receiving and assessing tenders. Includes proposals made in writing by one party to another to carry out at an inclusive price or uniform rate, an order for the supply or purchase of goods, or for the production of work.</i>		
7.81.1		<i>Register of all tenders</i>		PERMANENT
7.81.2		<i>Major successful tenders, specification documentation and schedule of tenders.</i> <i>In accordance with the CVH specifications/internal control manual/and policy greater than \$50,000</i>		PERMANENT
7.81.3		<i>Minor successful tenders, specification documents and schedule of tenders.</i> <i>In accordance with the CVH specifications/internal control manual/ and policy less than \$10,000</i>		TEMPORARY <i>Destroy 7 years after last action</i>
7.81.4		<i>Records relating to the routine administration of tendering process.</i>	<ul style="list-style-type: none"> • Advertisements • Invitation to tender • Requests • Responses • Registration of interest 	TEMPORARY <i>Destroy 2 years after last action</i>
7.81.5		<i>Records relating to unsuccessful tenders.</i> <i>Quotes: 2 years (see Acquisitions)</i>	<ul style="list-style-type: none"> • Reponses • Notifications of rejection 	TEMPORARY <i>Destroy 6 years after last action</i>
7.81.6		<i>Duplicate copies of received specifications and tenders.</i> <i>Note : Specifications should be filed with the contract document. See <u>FINANCIAL MANAGEMENT</u> – Contracting. If there is no contract document, files specifications with the successful tender.</i>		TEMPORARY <i>Destroy when reference ceases.</i>
6	Equipment (including plant) and stores	<i>The function of acquiring, supplying, maintaining, repairing and disposing of equipment, store and plant, stocked and used by the organisation. Items of equipment include instruments, implements, tools, machines, plant, furniture and furnishings.</i>		

		<i>Stores include chemicals, hardware, homeware items, medical supplies (including immunisation) and stationery.</i>		
6.1	Acquisition	<i>The process of gaining ownership or use of property or other items required for the conduct of business through purchase or requisitions.</i>		
6.2.1		<i>Register of equipment acquired.</i>		PERMANENT
6.2.2		<i>Records relating to the acquisition of equipment.</i>	<ul style="list-style-type: none"> • Successful quotes • Requisitions 	TEMPORARY <i>Destroy 6 years after last action</i>
6.2.3		<i>Duplicate records and records relating to unsuccessful quotations.</i>	<ul style="list-style-type: none"> • Duplicate orders • Unsuccessful quotes 	TEMPORARY <i>Destroy 2 years after last action</i>