

DISPOSAL OF LAND & ASSETS POLICY

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Policy/File Number	CO.197.1
Related Documents	Procurement Policy Internal Financial Controls Policy (to be developed) Risk Management Policy
Applicable Legislation	Local Government Act 1999 (s49) 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).

1. INTRODUCTION

- 1.1 In compliance with Section 49 of the Local Government Act 1999 (**Act**), the Fleurieu Regional Aquatic Centre Authority (**Authority**) 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 the Authority to its constituent Councils and 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 Authority.
- 1.3 Furthermore, Section 49 (a1) of the Act requires the Authority 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.

Disposal of Land & Assets Policy

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 Authority 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 plant and equipment owned by the Authority. It includes all 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 the Authority. It includes items such as loose tools, store items, furniture, minor pool equipment, and health and fitness equipment and appliances.

3. POLICY PRINCIPLES

The Authority 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.
 - 3.2.2 An assessment of value for money must include consideration of (where applicable):
 - 3.2.2.1 the contribution to the Authority's long term financial plan and strategic management plans;
 - 3.2.2.2 any relevant direct and indirect benefits to the Authority, 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*

The Authority is to behave with impartiality, fairness, independence, openness and integrity in all discussions and negotiations.
- 3.4 *Probity, Accountability, Transparency and Reporting*

Disposal of Land & Assets Policy

3.5 *Ensuring compliance with all relevant legislation*

Relevant legislation includes 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 [Development Act 1993](#) (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).

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 Authority;
- 4.9 the long term plans and strategic direction of the Authority;
- 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 (including the Authority Charter and the classification of the land (community / operational); and recognition and consideration of the original gifting of the land to the Authority);
- 4.14 the content of any community land management plan; and
- 4.15 any other relevant policies of the Authority, including its Internal Financial Controls Policy.

5. DISPOSAL METHODS

5.1 *Land disposal*

- 5.1.1 The Authority may resolve to dispose of Land.
- 5.1.2 Where Land is classified as community land, the Authority must:
 - 5.1.2.1 undertake public consultation in accordance with the Act and the Authority public consultation policy; and
 - 5.1.2.2 ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its disposal; and
 - 5.1.2.3 comply with all other requirements under the Act in respect of the disposal of community land.
- 5.1.3 Where the Authority proposes to dispose of Land through the grant of a leasehold interest, the Authority must have complied with its obligations under the Act, including its public consultation obligations under Section 202 of the Act.
- 5.1.4 The Authority will, where appropriate, dispose of Land through one of the following methods:
 - 5.1.4.1 *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 Authority's Procurement Policy);
 - 5.1.4.2 *expressions of interest* - seeking expressions of interest for the Land;
 - 5.1.4.3 *select tender* - seeking tenders from a selected group of persons or companies;
 - 5.1.4.4 *open tender* - openly seeking bids through tenders, including public auction;
 - 5.1.4.5 *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 Authority's strategic objectives for the Land.
- 5.1.5 Selection of a suitable disposal method will include consideration of (where appropriate):
 - 5.1.5.1 the number of known potential purchasers of the Land;
 - 5.1.5.2 the original intention for the use of the Land;
 - 5.1.5.3 the current and possible preferred future use of the Land;
 - 5.1.5.4 the opportunity to promote local economic growth and development;
 - 5.1.5.5 delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the disposal;
 - 5.1.5.6 the total estimated value of the disposal; and
 - 5.1.5.7 compliance with statutory and other obligations.
- 5.1.6 The Authority will not dispose of Land to any Authority Board Member or employee of the Authority who has been involved in any process related to a decision to dispose of the Land and/or the establishment of a reserve price.

Disposal of Land & Assets Policy

- 5.1.7 If Land is to be auctioned or placed on the open market or disposed of by an expression of interest, then (unless the Authority 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.
- 5.1.8 If Land is to be disposed of via a select tender or direct sale, then (unless the Authority 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.
- 5.1.9 The Authority will seek to dispose of Land at or above current market valuation by whichever method is likely to provide the Authority with a maximum return, unless there are reasons for the Authority to accept a lesser return which is consistent with the Authority's overall strategic direction. These reasons must be documented in writing.
- 5.1.10 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 Authority 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 Authority Officer who is responsible for those Assets.
- 5.2.2 The Authority 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 Authority's Procurement Policy).
- 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 Preference will be given to community groups for Minor Plant and Equipment.

Disposal of Land & Assets Policy

- 5.2.5 Authority Board Members and employees of the Authority 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.
- 5.2.6 Purchasers of Assets must be required to agree in writing that before purchasing any Asset that no warranty is given by the Authority in respect of the suitability and condition of the Asset for the purchaser and that the Authority will not be responsible for the Asset in any respect following the sale.

6. CONSULTATION

The Authority 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 Authority Executive Officer has the authority to implement this policy.

8. RECORDS

The Authority 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 Authority in its disposal activities. There may be emergencies, or disposals in which a tender process will not necessarily deliver best outcome for the Authority, and other market approaches may be more appropriate. In certain circumstances, the Authority may, after approval from its Board Members, waive application of this Policy and pursue a method which will bring the best outcome for the Authority. The Authority must record its reasons in writing for waiving application of this Policy.

10. AVAILABILITY OF THIS POLICY

This Policy will be available on the [Fleurieu Aquatic Centre Website](#).

11. REVIEW

This Disposal of Land & Assets Policy shall be reviewed by the Authority at a minimum within two (2) years of issued date.

SIGNED: _____

Date: ____/____/____

Date: ____/____/____

Document History

VERSION	DOCUMENT	ACTION	DATE
1.0	Approved version	FRAC Authority endorsement	16 December 2016