

# **DISPOSAL OF LAND AND ASSETS POLICY**

*Reviewed by the Audit Committee 26 October 2021  
Adopted by Council 25 January 2022*

public

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## 1. PREAMBLE

In compliance with Section 49 of the Local Government Act 1999 (Act), Council should refer to this policy (**Policy**) when disposing of Land and Assets.

## 2. PURPOSE

### 2.1. Policy Objectives

- This Policy seeks to comply with legislative responsibilities including:
  - demonstrating accountability and responsibility to ratepayers in relation to the administration of public funds and governance processes; and
  - define the philosophy of the disposal of Land and/or Assets to guide Administration in accordance with the Principles as provided within this policy document; and
  - ensuring probity, accountability and transparency in all disposal processes.
- 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 subject to separate legislative powers and duties pursuant to the Act.

## 3. SCOPE

This Policy applies to Land and Assets owned by the Council.

## 4. DEFINITIONS

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

**Administration** refers to the employees responsible for implementing the decisions of Council and managing the day-to-day responsibilities of running the organisation.

**Asset** means any physical item that the Council 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 or any Assets where cost and value cannot be measured reliably. The term 'Asset' also includes the meaning given to it under *Council's Accounting for Property, Plant, Equipment and Infrastructure Policy (APPEI Policy)*.

**Council** refers to the City of Mitcham.

**Council Member** means a person appointed or elected as a councillor of a council under the *Local Government Act 1999*.

**Direct Beneficiary** means an Elected Member or Employee who receives or purchases a surplus Council asset directly from the City of Mitcham without participating in a public auction or making the transaction through a third -party.

**Disposal of Land and Assets Procedure** is Council's document which sets out the methods and procedure for disposing of Land and/or Assets.

**Employee** means all Council staff, contractors, volunteers and all others who perform work on behalf of Council.

**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.

**Plant and Equipment** may include (but is not limited to) major and minor machinery, trucks, graders, other operating machinery, loose tools, store items, furniture, information technology equipment ( such as computers, keyboards, servers) second hand items such as but not limited to, air conditioners, bricks, pavers and surplus bulk items (such as sand and gravel).

**Procurement Policy** means the City of Mitcham public policy currently in force with respect to the purchasing and selling of goods and services and is [available on at this link](#)

## 5. PRINCIPLES

### 5.1. Disposing of Council Land and/or Assets

When disposing of Land and/or Assets, the following principles are to be considered (but not limited to);

- Ethical Behaviour and Fair Dealing in discussions and negotiations are paramount including; behaving with impartiality, fairness, independence, transparency; and integrity.
- Probity, Accountability, Transparency and Reporting in decision-making processes.
- Ensuring compliance with legislative obligations, including but not limited to:
  - Local Government Act 1999
  - Land and Business (Sale and Conveyancing) Act 1994 (SA)
  - Real Property Act 1886 (SA)
  - Development Act 1993 (SA)
  - Planning, Development, Property and Infrastructure Act 2016 (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).
- Ensuring compliance with other policy documents including (but not limited to);
  - City of Mitcham Procurement Policy
  - City of Mitcham Risk Management Policy
  - City of Mitcham Public Consultation Policy
  - City of Mitcham Financial Delegations
  - Prudential Management Policy
  - Internal financial control policies
- Ensuring compliance with the Council's strategic plans including (but not limited to);
  - Mitcham 2030 Strategic Management Plan;
  - Relevant Asset management plans; and
  - Waste management initiatives as adopted.
- Encouragement of open and efficient competition.
- Obtaining value for money – acknowledging that price is not to be considered in isolation as a determinative factor.
- Consideration of any future initiatives or circular economy strategies.

## 6. POLICY STATEMENT

The Local Government Act requires Council to develop and maintain policies, practices and procedures directed towards the sale or disposal of land or assets to

obtain value in the expenditure of public money and ensure probity, accountability and transparency in all disposal processes.

This Policy provides Council with the framework and direction when disposing Land and Assets.

When disposing of Land and/or Assets, the Council will endeavour to achieve good probity standards including fairness, impartiality, transparency, consistency, competitive processes, confidentiality, security and managing any conflicts of interest.

This Policy should be read in conjunction with Council's 'Accounting for Property, Plant, Equipment and Infrastructure Policy.

### **6.1 Council Considerations Prior to Disposal of Land and Assets**

The Council will endeavour to perform adequate checks in accordance with its Disposal of Land and Assets Procedure prior to making decisions to dispose of Land or Assets.

The Council will endeavour to refer and comply with its Disposal of Land and Assets Procedure when determining to dispose of Land and Assets but may resolve to make alternative arrangements in accordance with a full resolution of Council.

The Council will ensure that the disposal of Land or Assets is performed in manner which does not disclose confidential material, culturally significant material or other items that may be unintended for sale.

The Council's Disposal of Land and Assets Procedure will set out the circumstances in which Land and Assets can be disposed.

### **6.2 Disposal of Land and Assets Generally**

Council will seek to achieve best value for money for its ratepayers and take into account and consideration other tangible and intangible benefits to its community when disposing of Land and Assets.

The Council will determine whether land is surplus to requirements, while Administration will determine whether assets are surplus to requirements (having

considered financial delegations and authorisations, procurement policies and professional opinion) .

Administration will dispose assets when there is a commercial value (in accordance with the Procedure); the Council will determine how assets without commercial value will be disposed.

Other than under limited circumstances, Elected Members and Administration will not be a direct beneficiary of land or assets deemed surplus.

### 6.3 Liability

The Council will endeavour to ensure that its processes contained in its Disposal of Land and Assets Procedure eliminates, reduces or limits Council's exposure to risk and liabilities arising from the disposal of Land and Assets.

## 7. CONSULTATION

The Council will give consideration to its public consultation policy in respect of its proposed disposals in accordance with the Act.

## 8. RECORDS

The Council must keep accurate and timely records in relation to the disposal of assets and or land including 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 Council in its disposal activities. There may be emergencies, or disposals in which a tender process will not necessarily deliver best outcomes and other market approaches may be more appropriate as determined by a resolution of Council.

## 10. POLICY REVIEW

This Policy will be subject to review every four (4) years or sooner at the discretion of the relevant General Manager.

The CEO has delegated authority to endorse any amendments to the Policy that do not vary the intent of the Policy.

## 11. VERSION HISTORY

| VERSION | AUTHOR(S) POSITION             | CHANGES   | DATE             |
|---------|--------------------------------|---|------------------|
|         | Manager Performance & Strategy | Edits following Audit Committee and ELG Feedback. | 19 January 2022  |
|         | Team Leader Governance         | Council Resolution Item 9.3, 25 January 2022      | 18 February 2022 |
|         |                                |   |                  |

## 12. DOCUMENT CONTROL

|  |  |
|--|--|
| <b>Responsible Department</b>              | Finance, Property, Governance and Information Technology |
| <b>Delegations Contained within Policy</b> | NO   |

|   |   |                          |                        |
|---|---|--------------------------|------------------------|
| <b>Classification</b>                             | Equipment, Plant and Stores   |                          |                        |
| <b>Applicable legislation</b>                     | Local Government Act 1999<br>Land and Business (Sale and Conveyancing) Act 1994 (SA)<br>Real Property Act 1886 (SA)<br>Development Act 1993 (SA)<br>Planning, Development, Property and Infrastructure Act 2016 (SA)<br>Retail and Commercial Leases Act 1995 (SA)<br>Residential Tenancies Act 1995 (SA)<br>Strata Titles Act 1988 (SA)<br>Crown Land Management Act 2009 (SA)<br>Community Titles Act 1996 (SA)<br>Roads (Opening and Closing) Act 1991 (SA)<br>Land Acquisition Act 1969 (SA). |                          |                        |
| <b>Related Policies &amp; Corporate Documents</b> | Procurement Policy<br>Accounting for Property, Plant, Equipment and Infrastructure Policy (APPEI Policy)  |                          |                        |
| <b>Additional references</b>                      |   |                          |                        |
| <b>Endorsed by Council</b>                        | 25/01/2022  | <b>Item No:</b>          | 9.3                    |
| <b>Effective Date</b>                             | 25/01/2022  | <b>Next Review Date:</b> | 22/01/2026             |
| <b>Policy Set ID</b>                              |   | <b>Template Set ID:</b>  | 3345084<br>ECM 4603285 |

### 13. ANNEXURE A – DISPOSAL OF LAND AND ASSETS PROCEDURE



## ANNEXURE A

# Disposal of Land and Assets Procedure

*Reviewed by the Audit Committee 26 October 2021  
Adopted by Council 25 January 2022*

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## 1. PREAMBLE

In compliance with Section 49 of the Local Government Act 1999 (SA), the Council should refer to this procedure (**Procedure**) when disposing of Land and Assets.

## 2. PURPOSE

This Procedure supports the achieving of objectives outlined in the Council's Disposal of Land and Assets Policy.

## 3. SCOPE

This Procedure will ensure that a consistent, fair, equitable, transparent and accountable approach is implemented by Administration when dealing with the disposal of Land and Assets. This Procedure should be read in conjunction with Council's Corporate Services Administrative Policy entitled 'Accounting for Property, Plant, Equipment and Infrastructure'.

## 4. DEFINITIONS

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

**Administration** refers to the employees responsible for implementing the decisions of Council and managing the day-to-day responsibilities of running the organisation

**Asset** means any physical item that the Council 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 or any Assets where cost and value cannot be measured reliably. The term 'Asset' also includes the meaning given to it under Council's Accounting for Property, Plant, Equipment and Infrastructure Policy (APPEI Policy).

**Council** refers to the City of Mitcham.

**Council Member** means a person appointed or elected as a councillor of a council under the Local Government Act 1999 (also known as an Elected Member).

**Direct Beneficiary** means an Elected Member or Employee who receives or purchases a surplus Council asset directly from the City of Mitcham without participating in a public auction or making the transaction through a third -party

**Disposal of Land and Assets Policy** is Council's document which sets out the organisations policy objectives for disposing of Land and/or Assets.

**Employee** means all Council staff, contractors, volunteers and all others who perform work on behalf of Council.

**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.

**Plant and Equipment** may include (but is not limited to) major and minor machinery, trucks, graders, other operating machinery, loose tools, store items, furniture, information technology equipment ( such as computers, keyboards, servers) second hand items such as but not limited to, air conditioners, bricks, pavers and surplus bulk items (such as sand and gravel).

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**Procurement Policy** means the City of Mitcham public policy currently in force with respect to the purchasing and selling of goods and services.

## 5. PRINCIPLES

The Council will, when considering to dispose of Land and/or Assets, comply with the principles in its Disposal of Land and Assets Policy.

## 6. PROCEDURAL CONSIDERATIONS

### 6.1. General Considerations Prior to Disposal of Land and Assets

When disposing of Land and/or Assets generally, the following is to be considered prior to reaching a decision (but not limited to):

- community benefit;
- the asset or land's usefulness;
- the current market value of the Land or Asset;
- the annual cost of maintenance;
- environmental impact;
- 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;

### 6.2 Disposal of Land

- The Council will determine when land is surplus to requirements (regardless of whether a recommendation has been made by Administration).
- Elected Members and Staff will not be direct beneficiaries of land deemed surplus unless the Elected Member or Staff Member has been successful in securing the said land as a result of a open public auction.

- 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 given the circumstances, 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.
- Any unsolicited proposals (Land) will be submitted to council in accordance with Council's Procurement Policy.

### 6.3 Disposal of Assets

- Administration will determine whether assets are surplus to requirements (having considered financial delegations and authorisations, procurement policies and professional opinion) and dispose of when there is no commercial value.
- The Council will not dispose of Assets to any Council Member or employee of the Council except;
  - for the purchase of a council issued mobile phone upon cessation of office or employment (this fee will be calculated as the

difference between the purchase price minus accumulated depreciation.

- Where assets are made available for sale at an open public auction.
- Where the assets are made available for sale through an independent third party (e.g. when a fleet vehicle is returned per Motor Vehicle Policy).
- The Council may, where appropriate, dispose of Assets through one of the following methods and at all times, in compliance with its Disposal of Land and Assets Policy:
  - In the event the cost of undertaking a tender process or appointing an independent agent is not financially practicable, the assets may be:
    - Taken to a waste disposal facility;
    - Sold or donated to other entities operating in the local government sector or incorporated community/sporting groups (registered/operating in the council area).
  - 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).
  - or an alternative method in accordance with a full resolution of Council.
  - In considering any request, employees should keep in mind the following:
    - Community groups should receive equitable treatment to avoid possible claims of bias.
    - Due diligence should be undertaken to ensure the group is non-profit and that the intended use of the asset is non-commercial (ie not-profit)
    - Where the donation is seen as appropriate but there is a potential claim of bias the matter should be referred to the Chief Executive Officer.
    - The charity/community group must remove the asset themselves and at no cost to the council unless otherwise arranged with council.

### No Liability for Disposal of Asset

- Purchasers and receivers of Assets will be advised:
  - that Council does not give any warranty with respect to the suitability and condition of the Asset;
  - that Council is not responsible for any defects of the Asset;
  - that Council is not responsible in any way for the Asset following the sale; and
  - and that the purchaser of the Asset indemnifies and releases Council from all and any liabilities, loss or damage as a result of the disposal of the Asset.

### When Can an Asset Be Disposed?

- An Asset can be disposed of if (but not limited to):
  - service requirements no longer exist;
  - alternative solutions provide for improved services;
  - the Asset is superseded and fails to deliver the service it was intended to deliver or to acceptable Council standards;
  - the Asset's forecasted use in the foreseeable future is expected to be minimal or non-existent;
  - the Asset has not been used in the previous 6 months;
  - the Asset could potentially cause harm;
  - there are hazardous chemicals or materials present in the Asset;
  - repair costs exceed the current value of the Asset.or, in accordance with a full resolution of Council.

### Pre-disposal Checks

- Prior to the disposal of an Asset, the following checks must be completed to ensure the Asset does not contain:
  - Confidential documents, material, records, files (electronic or otherwise), papers and anything else deemed confidential by the Council;
  - Cultural or historically significant material that may have special regard to the Council;
  - additional items not intended for sale;
  - any documents on Council letterhead.
  - in relation to computer equipment –



- any software;
  - personal information files of employees or Council Members;
  - information files of third parties;
  - any files or software generally.
- as is practical as possible, all identifying marks of the City of Mitcham including logos.

## 7. PROCEDURE REVIEW

This Procedure will be subject to review every four (4) years or sooner at the discretion of the relevant General Manager.

The CEO has delegated authority to endorse any amendments to the Procedure that do not vary the intent of the Procedure.

## 8. RECORD KEEPING PROCEDURES

In accordance with the Council's Disposal of Land and Assets Policy, the Council will determine the the best method to record:

- All disposals of Land and Assets;
- Description of the Land and Assets disposed of;
- Resons for disposal;
- Method used for disposing of the Land and Assets; and
- Reasons for using a particular method of disposal.

However, the Council may resolve to record disposals of Land and Assets in an alternative way with an express resolution of Council.

## 9. EXMEPTIONS FROM THIS PROCEDURE

This Procedure sets out the processes and methods to be considered for disposal activities. The Council may pursue alternative methods to suit the best interests of the community and depart from this procedure in accordance with a full resolution of Council.

## 10. VERSION HISTORY

| VERSION | AUTHOR(S) POSITION             | CHANGES   | DATE             |
|---------|--------------------------------|---|------------------|
|         | Manager Performance & Strategy | Updates following Audit Committee review and ELG review | 19 January 2022  |
|         | Team Leader Governance         | Council Resolution Item 9.3, 25 January 2022            | 18 February 2022 |
|         |                                |   |                  |

## 11. DOCUMENT CONTROL

|   |                                   |
|---|-----------------------------------|
| <b>Responsible Department</b>                 | Property, Finance, IT, Governance |
| <b>Delegations Contained within Procedure</b> | YES                               |

|  |                      |                   |                        |
|--|----------------------|-------------------|------------------------|
| Classification                         | Financial Management |                   |                        |
| Applicable legislation                 | Local Government Act |                   |                        |
| Related Policies & Corporate Documents |                      |                   |                        |
| Additional references                  |                      |                   |                        |
| Endorsed by Council                    | 25/01/2022           | Item No:          | 9.3                    |
| Effective Date                         | 25/01/2022           | Next Review Date: | 25/01/2026             |
| Procedure Set ID                       |                      | Template Set ID:  | 3345084<br>ECM 4603285 |

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