

Acquisition & Disposal of Road Policy

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Responsible Division	Corporate – <i>Property and Procurement</i>
Related Documents	Unsolicited Proposal Policy Unsolicited Proposals Procedure Procurement Policy Lease and Licence Policy Disposal of Council Assets (excl. Land and Road) Policy Acquisition and Disposal of Land Policy
Applicable Legislation	<i>Local Government Act 1999 (SA)</i> <i>Real Property Act 1886 (SA)</i> <i>Land and Business (Sale and Conveyancing) Act 1994 (SA)</i> <i>Planning, Development and Infrastructure Act 2016 (SA)</i> <i>Crown Land Management Act 2009 (SA)</i> <i>Roads (Opening and Closing) Act 1991 (SA)</i> <i>Land Acquisition Act 1969 (SA).</i> <i>Freedom of Information Act 1991 (SA)</i> <i>Ombudsman Act 1972 (SA)</i> <i>Competition and Consumer Act 2010 (SA)</i>

Purpose

This Policy applies to all public Roads within the area of the Council, whether made or unmade. It includes all laneways, walkways and thoroughfares that are legally public Roads and that are vested in the Council pursuant to section 208 of the *Local Government Act 1999*.

This Policy also applies to the conversion of private Roads to public Roads pursuant to section 210 of the *Local Government Act 1999*.

The purpose of this Policy is to ensure that the acquisition or disposal of a Road by the Council is:

- equitable, open and transparent in the expenditure of public money;
- provides the maximum return (pecuniary or otherwise) for the benefit of the community;
- occurs in compliance with applicable legislative requirements; and
- ensures both probity and accountability.

Scope

This Policy seeks to:

- define the methods by which Road is acquired or disposed of;
- demonstrate accountability and responsibility on the part 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 and ratepayers.

Objectives

This Policy establishes the framework that supports sustainable decision-making processes. Any decision to acquire or dispose of Road will include an objective analysis of the strategic, legal, financial, environmental and community benefit when considering the acquisition or disposal of Road, with due regard to:

- delivering the highest standards of public value, community benefit and value for money;
- aligning with Council's strategic management plans and policies;
- ensuring an accountable and transparent process is in place when considering the acquisition or disposal of Road; and
- recognising that acquisition or disposal of Road has community/strategic or investment purposes.

Principles

Considering whether to retain or dispose of Road that no longer provides strategic or community value or supports the delivery of core services to the community or the future strategic direction and financial sustainability of the Council, will assist in ensuring council resources are used fairly, effectively and efficiently.

The process for acquisition or disposal will be fair and transparent and ensure that Council obtains the best outcome and value from the acquisition or disposal, with due regard to:

- the contribution to Council's long term financial plan and strategic management plans;
- any relevant direct and indirect benefits to Council and/or the community, both tangible and intangible;
- efficiency and effectiveness of process;
- the costs associated with the various acquisition or disposal methods;
- internal administrative costs;
- risk exposure;
- the result of any community engagement;
- Cultural or historical significance;
- the value of any associated environmental benefits; and
- the effect upon existing or future public access that may be gained or lost by the acquisition or disposal.

Definitions

Acquisition	means the acquisition of land as a public Road through a Road process order under the <i>Roads (Opening and Closing) Act 1991</i> or the deposit of a plan of division under section 223LF of the <i>Real Property Act 1886</i> .
Act	means the <i>Roads (Opening and Closing) Act 1991</i> and its regulations, as amended from time to time (unless otherwise defined).
CEO	means the Chief Executive Officer (including the CEO's delegate) or an acting Chief Executive Officer of the Alexandrina Council.
Community Land	means all land of Council classified as community land under Chapter 11 of the <i>Local Government Act 1999</i> .
Council	refers to the Alexandrina Council.
Direct	means without intervening factors or intermediaries.

Disposal	means the disposal of a Road closed under the Act.
Market Value	means is the estimated monetary worth of an asset on the open market at a particular time.
Road	means any public Road as defined under the <i>Local Government Act 1999</i> .
Road Closure	means any closure of a Road (in whole or in part) under the Act, including the narrowing of a Road reserve.
RPO	means a Road process order under the Act.
Unsolicited proposal	means a proposal received by the Council from a third party for the purchase of land comprising a Road where the Council has not requested an offer pursuant to its usual disposal or procurement process.

General Terms

Consultation

Acquisition of a Road must occur in accordance with the Act, which includes requirements for public notice of a proposal to be given.

The Council will undertake public consultation in respect of its proposed disposal of Road in accordance with the Act and Council's Public Consultation Policy and Procedure at all times.

If Road is dealt with as a consequence of an unsolicited proposal, it will be assessed in accordance with the Council's Unsolicited Proposals Policy first, before being dealt with under this Policy.

Assessment Process

This Policy is not the decision making tool as to whether to acquire or dispose of Road. This Policy forms the framework for assessing each proposal to acquire or dispose of Road against, on a case-by-case basis and on its own merits. The framework provided by the Policy ensures that the assessment process, from start to end, is well considered, inclusive, transparent and consistently assessed against robust selection criteria.

The assessment process for applying the framework includes numerous decision-making stages by the Council.

These stages can include:

- An initial 'in principal' resolution of the Council to pursue a potential acquisition or disposal of Road (based on assessment against the Policy).
- A comprehensive Report to Council per Road proposal, with an 'Information Pack' that describes in detail the merits of the proposal in alignment with the conditions and the criteria prescribed within this Policy.
- Community engagement, as required under the Roads (Opening and Closing) Act 1991.
- A further Report to Council with the outcomes from the community engagement process.
- Application to the Minister of the Roads (Opening and Closing) Act 1991.
- A further Report to Council with the determination of the Minister and final decision.

Costs

- A person who applies to Council to acquire land resulting from closure of a Road under the Act will, where the Council determines to progress the application, be responsible for the majority of cost of the process. This will include (but is not limited to) survey costs, public notification and Land Services SA costs. The cost of the survey work will be dependent on the complexity of the survey, while public notification and Land Services SA costs generally change annually.
- Each party will generally be responsible for its own costs for conveyancing and legal advice. If a prospective purchaser or seller chooses to engage its own valuer, they will be responsible for those costs.
- Council may need to commit significant resources investigating whether an application should proceed to a RPO. For this reason, a non-refundable fee, to be reviewed each year, may apply to each application.
- In applying for a Road closure, an applicant accepts that in the event that it withdraws its application, the applicant will be responsible for all costs already incurred or committed by Council.
- In applying for a Road closure, an applicant accepts that in the event that the Council rejects the application, the applicant will be responsible for all costs already incurred or committed by Council.
- In applying for a Road closure, an applicant accepts that in the event that the Minister rejects the application, the applicant will be responsible for all costs already incurred or committed by Council.

Delegation

As set out in Part 3, section 9 to section 24, the Act is prescriptive in relation to the statutory procedure for a RPO. Council will adhere to the procedure under the Act in regards to any RPO to open or close a Road.

A decision to acquire or dispose of Road will be made by resolution of Council unless, in the case of the Council acquiring Road through a land division or other development, the CEO considers there are good reasons for this to occur in accordance with the Council's schedule of delegations.

As there are no delegations for the acquisition and disposal of Roads by way of an RPO, any discussions between officers of Council and interested parties are for investigative purposes only and will not be legally binding in the absence of a resolution of Council.

Confidentiality

Proponents often desire confidentiality. However, the Act mandates public notification of proposed Road process orders. Proponents should also be aware that their interests may be subject to the *Freedom of Information Act 1991*, the *Ombudsman Act 1972* and the *Independent Commissioner Against Corruption Act 2012*.

Any resolutions of Council made in confidence in relation to the acquisition or disposal of Road, will be released to the public following settlement or final decision on the proposal.

Commitment to test the market

The disposal of Road will be administered using competitive processes in order to achieve value for money in a fair and transparent manner. The exception to this is where only one potential purchaser has been identified to acquire the Road.

Testing the market results in the demonstrable achievement of value for money and provides fair and equal opportunities.

Exemptions from this Policy & Recording Reasons

This policy contains general guidelines to be followed by the Council in its acquisition and disposal activities. There may be acquisitions or disposals in which methods listed in this policy will not necessarily deliver the best outcomes for the Council. Council must record its reasons in writing if it waives or deviates from this Policy and, makes the reasons available to the public.

If the Council enters into any contract for the acquisition or disposal of land comprising a Road that arises other than as a result of a tender process, reasons will be recorded for the decision.

Interaction with other legislation

Council will not commence a RPO if the Road to be opened or closed would affect land subject to:

- the *Aboriginal Heritage Act 1988*, unless the attributes that make the land subject to this Act will be better protected if a Road is closed;
- the *National Parks and Wildlife Act 1972*, unless a Road to be closed is to be added to land under this Act, or
- a South Australian Heritage Place or a State Heritage Area under the *Heritage Places Act 1993*, unless it would enhance the heritage attributes of the place or area.

Surveyor-General Requirements

Council will not commence a RPO if, in its opinion, it is unlikely that the Surveyor-General would recommend the confirmation of the RPO under section 23 of the Act. Circumstances include:

- any proposal to narrow the width of a Road reserve to less than 12 metres, except to deal with an existing minor encroachment of high value improvements onto the Road reserve,
- any proposal that would prevent legal or practical access to an existing land parcel,
- if it is probable that one or more of the Prescribed Public Authorities as defined in the *Roads (Opening and Closing) Regulations 2021* would oppose a RPO.

Grievances

Any grievances in relation to the Policy or its application should be forwarded in writing to the Chief Executive Officer, PO Box 21 Goolwa SA 5214 or to alex@alexandrina.sa.gov.au.

No Warranty

In selling a Road the subject of a Road closure under the Act to a purchaser, Council makes no warranty that it will be suitable for the purchaser's intended use. Gaining development approval to divide the land the subject of the Road closure, construct improvements or develop in any way is always at the purchaser's risk.

Availability of Policy

This Policy will be available for inspection on the Council's website www.alexandrina.sa.gov.au. Copies can also be provided upon payment of a fee in accordance with Council's Schedule of Fees and Charges (if applicable).

Roles and Responsibilities

Council

The role of the Council is:

- to resolve to proceed (or otherwise) with a Road acquisition or disposal in accordance with applicable legislation;
- to authorise the Mayor and CEO to sign and seal documentation required to facilitate transfers and any other dealings associated with the Road.

Chief Executive Officer

The role of the CEO is:

- to give effect to resolutions of the Council;
- to allocate resources to all preliminary negotiations, investigations and analysis of any proposed acquisition or disposal;
- to identify and report to Council regarding the alignment of an acquisition or disposal proposal with Council strategies and policies; and
- to review the performance of Council's road network and undertake appropriate actions to improve public value.

Administration

The role of Administration is:

- to undertake initial assessment of proposed acquisitions and disposals of Road with other internal stakeholders and in accordance with the objectives of this policy;
- to identify appropriate acquisition or disposal methods in accordance with Council policies;
- to prepare all supporting information to enable Council to make an informed decision and undertake duties in accordance within the authority delegated by Council to the CEO;
- to ensure reasons are documented in accordance with this Policy.

Advisers

Professional advisers may be appointed as required to assist in assessing the implications of a particular land proposal including expertise in legal, community, financial, technical, environmental and probity.

Acquisition of Road

Prior Considerations

The Council may resolve to acquire Road:

- by negotiated agreement with the owner of land over which a Road is to be opened;
- by the acceptance of Road set aside through the development approval process for subdivisions;
- by way of declaring a private Road to be a public Road in accordance with section 210 of the *Local Government Act 1999*;
- by compulsory acquisition in accordance with relevant legislation

Existing Legal Access

Council will generally not commence a RPO to open a Road over privately owned land to parcels that do not have direct access to a public Road in circumstances where the owners of those parcels already have legal access from a public Road by a right of way.

Where the owner of land already has existing legal access to a public Road, Council will generally not commence a RPO to open a second legal access to a public Road unless making the current legal access practical would entail the removal of native vegetation or impact on Aboriginal heritage.

Acquisition criteria

Any decision to acquire Road will only be made after considering, where applicable:

Criteria – Social / Environmental	Criteria - Financial / legislative
The usefulness of the Road for Council's strategic purposes	The estimated cost of acquisition
Any impact the acquisition of the Road may have on the community	The current market value of the Road
Ecological values of the Road, including future re-wilding / revegetation, trail, and public access opportunities	The annual cost of maintenance if acquired
Any known contamination on the Road	Any relevant guidelines, policies, statutory Acts and other obligations
The results of any community consultation processes	The long term plans and strategic direction of the Council
	The positive or negative impacts the acquisition of the Road may have on Council operations

SUMMARY – ACQUISITION OF ROAD

Obligations	Demonstrated value in the expenditure of public money Demonstrated ethical and fair treatment of participants Demonstrated probity, accountability and transparency
Consultation	In accordance with the Act and other applicable legislative requirements.
Costs	Generally: <ul style="list-style-type: none"> Council - own costs for conveyancing, market valuation, legal advice, survey costs, public notification and Land Services SA costs, plus determined value of the Road. Party - own costs for conveyancing, own valuation and legal advice.
Consent	Decision of Council (Resolution).
Confidentiality	Released as applicable for public consultation purposes or; following settlement / final decision.
Acquisition methods	Negotiated agreement Subdivisions or compulsory acquisition
Acquisition criteria	Assessed per Acquisition criteria
Acquisition directives	For no monetary value; or At or below current market value; or Compelling reasons to purchase at more than the market value of the Road, but which is consistent with Council's overall strategic direction.
Determination of Value	Independent Market Valuation at Council cost
Date of Valuation	No more than 6 months prior to the proposed acquisition (unless the Council resolves otherwise in writing).

Disposal of Road

Prior Considerations

The Council may resolve to dispose of Road:

- where the Road is occupied by significant private structures;
- where the Road is determined to be of no present or future value for Council;
- following an assessment against the criteria of the Unsolicited Proposals Policy (as applicable) and the disposal criteria of this Policy.

Protection of Biodiversity (Remnant Vegetation)

Only 2% of the land area of Alexandrina Council now has native vegetation. All remaining remnant native vegetation is important. An application to close an unmade Road containing native vegetation will only be considered if the land on the Road to be closed will be incorporated into a Heritage Agreement under the *Native Vegetation Act 1991* or will become subject to the *National Parks and Wildlife Act 1972*. An application to progress a RPO for an unmade Road containing nil or minimal native vegetation may also be declined if, in the opinion of Council, it has the potential to be developed as a future biodiversity corridor or for rewilding purposes.

Recreational Trail Values

Unmade public Roads are frequently an important component of recreational trails. Council will not generally commence a RPO if the unmade Road to which it refers is already part of a recreational trail or is identified as having the potential to form a component of a future recreational trail.

‘Little Scotland’ Lanes - Goolwa

The Little Scotland lanes are legally public Roads and date from the original 1856 survey. They represent a rare example of town planning in South Australia that facilitated pedestrian movements at a time when walking was the only form of movement available to most people. Because of their historical importance, closure and sale of these lanes will not be considered.

The same principals applied to ‘Little Scotland’ Laneways, will be applied to any other lanes within the Council district deemed of historical significance.

Waterfront Land

An application to close a Road will not be accepted in whole or in part, where the closure may unreasonably hinder or prevent legal or practical access to any waterfront (whether coast, lake or river).

No separate title

Council will only dispose of a Road by merger with an adjoining land parcel. It will not support the issuing of a separate title for the Road to be closed.

Fairness and Transparency

Where a Road is to be closed, all adjoining owners will be notified of the RPO, as required by the Act, and afforded the opportunity to express an interest in the land. Normally, the land in Roads closed through an RPO is only suitable for disposal by merger with one or more adjoining parcels.

Interaction with section 193 of the *Local Government Act 1999*

Unless the land in a RPO is to be incorporated into an existing parcel of Council's community land, or is land that Council intends to become community land, it will be recommended to the Members of Council that where a Road is to be closed the resultant land will be excluded from the classification of community land in accordance with section 193(4)(a) of the *Local Government Act 1999*.

Disposal criteria

Any decision to dispose of Road will only be made after considering, where applicable:

Criteria – Social / Environmental	Criteria - Financial / legislative
Any alternative future use of the Road that may have priority social benefits	The estimated net proceeds if the Road is disposed of
The reason why a Road is proposed to be closed	The opportunity to promote local economic growth and development
Cultural / historical significance of the Road	The current market value of the land in the Road to be closed
Any infrastructure located on the Road to be closed	How the net revenue from disposal may be used for the benefit of the community
Ecological values of the Road to be closed, including future re-wilding / revegetation opportunities	The reduction in annual cost of maintenance for Council
The results of any community consultation processes	Any other relevant guidelines and policies of the Council.
Any values related to the <i>Aboriginal Heritage Act 1988</i> that have been identified on the land	The positive or negative impacts the disposal of the Road may have on Council operations
Any other identified community benefit of retaining the Road	The long term plans and strategic direction of the Council
Ensuring that no property becomes land locked by the disposal of the Road	Compliance with statutory and other obligations

SUMMARY – DISPOSAL OF ROAD

Obligations	Demonstrated value in the expenditure of public money Demonstrated ethical and fair treatment of participants Demonstrated probity, accountability and transparency
Consultation	In accordance with the Act and any other applicable legislative requirements
Costs	<p>Generally:</p> <ul style="list-style-type: none"> • Council - own costs for conveyancing, independent valuation and legal advice. • Party - own costs for conveyancing and legal advice. • Party - process costs including survey costs, public notification and Land Services SA costs, plus determined value of the Road. <p>The Council may require a party to cover all Council's costs of an RPO where the RPO has been pursued by way of an application to the Council by that party</p>
Consent	Decision of Council (Resolution).
Confidentiality	Released as applicable for public consultation purposes or; following settlement / final decision.
Disposal methods	By merger with adjoining land
Disposal criteria	Assessed per Disposal criteria
Disposal directives	<p>At or above current market value for maximum return; or</p> <p>Compelling reasons to accept either less than the market value of the Road or an offer that is less than the highest offer for the Road, but which is consistent with the Council's overall strategic direction.</p>
Determination of Value	Independent Market Valuation at Council cost
Date of Valuation	No more than 6 months prior to the proposed disposal (unless the Council resolves otherwise in writing).