

Land & Buildings Disposal Policy



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Glossary of Terms

ENRD - Environmental and Natural Resources Directorate*

ANRD – Agriculture and Natural Resource Division*

ESP - Estates Strategy Panel

HP&H - Head of Property & Housing (or designated senior officer in the absence of a Head of Property & Housing Division)*

EXCO – Executive Council

ENRC – Environment & Natural Resource Committee*

ESH – Enterprise Saint Helena*

Significant Historic Buildings - All historic buildings (being those buildings or assets classified as grade I , II or 111 under the Crallen report, as updated or replaced,

Significant development Sites- Sites over 1 acre for development (including those sites where the predominant activity is the development of residential units)

CDA's - Comprehensive Development Areas, as defined in the Land Development Control Plan 2012-2022

**It should be noted that these officer and political structures may be subject to change and responsibility will transfer with any change to the new structure with equivalent responsibility.*

1.0 Introduction

This document sets out the St Helena Government's (SHG's) policy on the disposal of Crown Land and Buildings.

Investment in land ownership and development will play a key part in realising the vision for the economic and social development of St Helena. However, as the major landowner on St Helena, SHG recognises that this must be balanced in a way that meets with the island's targets for sustainable growth. Responsibility for all policies relating to Crown Land and Buildings lies with the Environment & Natural Resources Committee (ENRC) and Executive Council (EXCO). The Estates Strategy Panel (ESP) has responsibility for the oversight and review of the Estates Strategy and the Environment and Natural Resource Directorate (ENRD) has responsibility for appropriate application of Land & Buildings Disposal Policy and the Estates Strategy.

The intention of the policy is to:

- Set out the principles and procedures by which SHG will let and dispose of land and buildings.
- Implement a transparent and fair process for the disposal & letting of Crown Land and Buildings to support sustainable economic development.
- Make sites available for affordable residential development, whilst protecting the island's natural environment.
- Make Crown Land and Buildings available for private commercial development in a strategic manner consistent with sustainable use of St. Helena's natural resources.
- Protect and promote the productive use of agricultural land for sustainable food production and the food security of the island.
- Support sustainable development of the island by protecting the local environment, meeting the reasonable needs of the community and supporting economic development with positive social and environmental impact.

The Land & Buildings Disposal Policy shall take effect from 2016.

The Estates Strategy Panel shall be made up of the following principal members (or deputies) Director ENRD, Chief Executive Enterprise St Helena, Chief Secretary, Financial Secretary, Chairperson of ENRC and an independent lay person appointed by the Governor.

2.0 General Principles

The general principles for the marketing and disposal of Crown Land and Buildings which will be adopted are as follows:

- The Head of Property & Housing (HP&H), in accordance with the Estates Strategy, has an obligation to appropriately release Crown Land and surplus or redundant built assets onto the market, applying a duty of care to demonstrate value for money.
- The sale or letting of Crown Land or Buildings will not always be purely on the basis of highest market bid but will be determined by the assessment of bids against objective evaluation criteria. In the case of land or buildings regarded as significant (see Glossary) prior approval shall be obtained from EXCO, who shall have regard to both the Estates Strategy and the Sustainable Development Plan and where appropriate take into consideration any recommendation made by ESP .
- All transactions entered into must be in accordance with the Registered Lands Ordinance. SHG will act in an open and transparent manner, disclosing all relevant property information where known, except that of a commercial or confidential nature that must be respected.
- All relevant transactions must be in accordance with the Immigration Ordinance 2011, as far as it relates to land ownership.
- SHG does not support nor wish to encourage land banking. All leasehold transactions of residential or commercial development land will include clauses in the lease giving SHG the opportunity to terminate the lease in the event that the lessee seeks to trade the land before the development is completed or the site lays un-used for up to 3 years. In the event that SHG is required to use these provisions, SHG may seek reasonable compensation, depending on the circumstances, including any administrative costs involved.
- Sites which have been leased will be subject to conditions which will permit SHG to terminate the lease in respect of land which has been deemed abandoned (with compensation – land price not rent plus costs incurred to enhance land value less any remedial works to make the property re-marketable). In this case any site unoccupied, untended or unmaintained, or with no construction under progress for more than 3 years in the case of development land or 1 year for agricultural purposes will be deemed abandoned.
- Sites that have been leased and that remain undeveloped and that are deemed abandoned, may be subject to a derelict site charge and ultimately repossession if SHG chooses to develop such a mechanism in accordance with international practice.
- SHG will regulate the sale or lease of land for the purposes of owner occupation to one plot per applicant. Commercial development (which includes tourism accommodation and residential development which is not for owner occupation) will be subject to a maximum one acre allocation, without prior approval from EXCO.
- In the case of housing plots released onto the market by SHG, the single plot restriction will apply and any applicant or their spouse or life partner who already owns or leases residential

property will not take precedence over a first time applicant seeking a permanent residence in any tender.

All sales of £10K or over will be subject to satisfactory Due Diligence and Know Your Customer Checks.

The preferred method for disposal of Crown Land and Buildings for development will be on a leasehold basis. This does not preclude the transfer of land or buildings on a freehold basis, if deemed appropriate by HP&H or ESP or EXCO.

The general method of marketing will be by way of open market tender. SHG will prepare marketing details of the property. It will include indicative guide price /rental level, conditions precedent and any outline lease terms, closing dates and tender instructions based on the recommendation of the HP&H.

Nothing in the policy prohibits the variation of lease terms by negotiation. Any freehold transfer may include conditions precedent or restrictions on the title as deemed appropriate in accordance with relevant policies and procedures by the HP&H, Attorney General's Chambers or, *in the case of significant assets, by EXCO.*

In the case of plots/sites of less than one acre or insignificant buildings (i.e. not Grade 1, 11 & 111 listed buildings) HP&H has discretion to market and conclude negotiations in accordance with relevant processes and procedures. All transactions are to be approved by the Financial Secretary before completion.

Land for disposal/lease may be serviced or un-serviced. Prior to land being released onto the market, Crown Estates will have first consulted with the relevant agencies, departments and the utility company to confirm suitability of the land/plot for development.

Land will be sold or leased only after development permission has been applied for and granted. All applicants will be given up to 12 months, from the date terms are agreed, to make and obtain their planning application under this policy. This does not preclude the granting of option agreements or conditional contracts.

The Land and Development Control Policy (LDCP) requires that development permission will not be granted unless land is either:

- Already fully serviced including suitable vehicular and pedestrian access, capable of being provided with full utility services including vehicular and pedestrian access, in which case the terms of the development permission will ensure that they shall be so provided before the development is occupied, and
- where off-site services and access, including off-site works such as highway improvements, which are not to be provided wholly by SHG the developer will be required to enter into an agreement under Section 25 of the Land Planning and Development Control Ordinance 2013, (see Appendix 2) for the provision of the necessary works, such agreement to be a condition-precedent to the grant of development permission.

The operation of the Land & Buildings Disposals Policy will be consistent with the promotion and support of a competitive market in land. The general approach to agreeing price/ value should, where possible, be by reference to Market Value.

Nothing in this policy compels SHG to sell or lease any land. SHG reserves the right not to accept any single tender or bid, and is under no obligation to accept an application which is not deemed appropriate by the HP&H, and /or the ESP. SHG will endeavour, where possible, to assist Crown tenants to relocate if their lease is terminated by the landlord through no fault of their own. SHG will not reimburse nor indemnify any bidder or applicant for aborted costs in any negotiations or transfer.

2.1 Decision making process for development land & buildings.

The register of surplus assets will be updated at least every 12 months and presented to ENRC and EXCO. This will be the basis for all planned disposal.

Non-planned disposal and direct approaches other than single house plots will be referred to ESP prior to negotiations.

Matrix 1

Decision	HP&H	Fin Sec	ESP	Exco
Individual housing plot for owner occupier	X	X		
2-4 Residential plots total to single developer			X	
More than 4 Residential plots total to single developer				X
Residential or commercial development plot up to 1 acre outside CDA			X	
Residential or commercial development plot more than 1 acre outside CDA				X
Multiple development plots over 1 acre in total to single developer				X
Opening a new CDA for development				X
Sale of government building not of significant historic importance	X	X		
Sale of any significant historic government building				X

3.0 Land & Buildings disposal mechanisms.

The specific method of disposal will depend on the categorisation of the area of land under consideration (see below). However, the general principles as outlined in Section 2 should be observed including advertisement on the local and international market, as appropriate.

This section of the policy addresses the mechanisms to be followed where:

- SHG has identified land or buildings for release onto the market.
- An individual applies to acquire land or building which they have identified.
- A land transfer is requested/initiated by SHG.

- Agricultural and National Forest Lands are involved.
- Virgin or Barren Land is involved.
- SHG's Investment Portfolio is involved.

3.1 Land or Buildings released onto the market by SHG.

The HP&H will actively seek to identify sites for release, having regard to: the policies and practices of the Land Planning & Development Control Authority; Estates Strategy with reference to the current or foreseeable availability of essential services and the needs of Government Directorates in relation to land use and management.

In consultation with the ESP the HP&H shall maintain and update on a rolling basis a Register of plots of land, redundant and surplus buildings deemed suitable for release onto the market which shall be termed the Register of Surplus Lands and Buildings. This Register will be readily available to the public via the Property & Housing Division of ENRD and via the SHG website. The timing and method of any disposal will be at the recommendation of the HP&H in consultation with the ESP as part of the Register review.

3.1.1 Transfer of Land or Buildings to Enterprise St Helena.

Land or buildings may be transferred to Enterprise St Helena in accordance with the framework agreement to promote economic development. ESH may request for the transfer of SHG assets, identified on the Register of Surplus Land and Buildings. The decision for transfer will be in accordance with the decision making levels shown in Section 2.2, Matrix 1 for property sale.

3.1.2 Built assets.

Built assets (excluding significant historic buildings) that are deemed surplus and no longer required by SHG will be made available on a freehold or leasehold basis.

The freehold price, rental level or premium will be sought through an open market tender. In particular cases, if the adjacent owner makes a prior application to purchase or rent, the HP&H may with the consent of ESP enter into direct negotiations prior to openly marketing the building, but this does not give the adjacent owner any rights to a prior claim. This will apply where the adjacent owner may have a special interest.

3.1.3 Significant buildings.

In the case of significant buildings identified for disposal, in consultation with ESP, the HP&H will seek confirmation to begin marketing from EXCO. The HP&H will provide a marketing report and recommendation to include indicative pricing, rental terms, and any conditions precedent or title restrictions deemed appropriate.

On conclusion of the marketing process the ESP shall assess the tenders and recommend the preferred bidder to EXCO. The final terms of any transaction will be referred to EXCO for final approval.

3.1.4 Buildings, land (under one acre) and plots deemed suitable for development.

HP&H will seek to release land primarily for residential or economic development. The procedure for disposal will be in accordance with the principles set out within this policy.

In the case of land or buildings not classed as significant which are released for marketing and where bids have been received following an open market tender process, the HP&H shall assess the tenders. The HP&H has discretion to select preferred bids and complete transactions in collaboration with the Financial Secretary. In all other cases approval will be required from ESP prior to concluding transactions (See 2.2, Matrix 1).

In the case where a plot or building has been exposed to the market and no bids have been received or accepted, the HP&H will be free to remarket the plot or building at a later date. If an acceptable bid is received after 3 months from the closing date, the HP&H may then enter into direct negotiations with the bidder.

In particular cases if the adjacent owner makes a prior application to purchase or rent, the HP&H may, with the consent of ESP, enter into direct discussions / negotiations prior to openly marketing the land, but this does not give the adjacent owner any rights to a prior claim. This will apply where the adjacent owner may have a special interest.

Evaluation criteria for bids are set out in Appendix 1.

3.2 Land or Buildings Identified by Individuals.

None of the above precludes individuals expressing an interest in the purchase/lease of specific areas of Crown Land or Buildings. However, in the case of land or a building that is not already on the Register for disposal, HP&H reserves the right to determine whether the property will be disposed of at that particular time, by reference to the ESP.

In the case of an expression of interest received on a plot of land in excess of one acre, the HP&H shall refer to the ESP for approval to negotiate with the interested party.

If approved, the HP&H will be free to negotiate directly with the party expressing the interest in the asset. If terms (price and any conditions precedent) are agreed, the HP&H must obtain approval to conclude the transaction in accordance with the decision making matrix (Section 2.2). On completion of negotiations, if terms are deemed unacceptable, SHG reserves the right to advertise the land if it so chooses. A land transaction with an individual without Saint Helenian status in excess of two acres requires a Land Holding License under the Immigration Ordinance.

If SHG decides not to dispose of the identified land or building at that particular point in time, SHG may subsequently decide to release it onto the market. In such cases, the mechanism for the release of land onto the market will apply and the land or building will be advertised for lease/sale as described in this policy.

3.2.1 Land for construction of a single dwelling.

Individuals may express an interest in a single plot they have identified and consider suitable for the purpose of constructing an owner-occupied dwelling. This application may be on either a freehold or

leasehold basis (with the option to purchase the freehold of the property once the development is complete).

Bids for freehold or leasehold will be sought via negotiation and shall be assessed against prevailing market values by the HP&H. SHG are not obligated to sell/lease the plot if the terms are not deemed acceptable. Parties qualifying for affordable housing land are dealt with in accordance with procedures below.

To encourage completion of the dwelling, if the option is triggered within 3 years of lease commencement date, the option price will be the market value of the land at the commencement of the lease; otherwise the market value at the time of the sale will be applied.

The single plot restriction will apply in all residential application cases. All applicants must be legally entitled to hold an interest in the land. More than one plot could be purchased outside of the CDA's to facilitate business activity or similar wider benefit if this is in keeping with the location and conforms with planning requirements.

3.3 Affordable land for private owner -occupied provision.

SHG is committed to ensuring access to affordable housing for the local housing market. This is supported by the adopted Housing Strategy.

The Land & Buildings Disposal Policy supports this objective by restricting the sale of designated plots within the CDA's which are to be reserved for the provision of affordable housing to qualifying local residents (See 3.3.1) This will be achieved by the inclusion of planning conditions which will set aside a number of plots (approximately 20-30%) which should be serviced and made available to qualifying local residents for first time owner occupation (with a restriction that the land cannot be sold or traded for a minimum of 5 years and only to another *qualifying local resident*).

Otherwise where the HP&H has made a plot available on the market and received a bid from a qualifying local resident, the HP&H may lease the plot (rather than sell) at a discounted rate as follows.

Qualifying local resident on up to or including median income (as given by SHG) 50 % discount to the rent (based on market value).

Qualifying local resident on income up to 25% above or including median income would be eligible for up to 25 % discount to plot rent (based on market value)

Lease terms will be on SHG standard format of up to 20 years, with provision for review of rental level only at year 10 with an option to purchase on substantial completion of the dwelling (i.e. when the building is deemed to be weather tight). As a further concession the option price will be held at the original discounted value if exercised within the first 10 years of the lease, depending on the level of qualification criteria met. Thereby an applicant originally on median SHG income who by year 9 is earning 20% above median SHG income, would now qualify for a 20% discount on the option price which is based on the original market value of the land. If applied after 10 years the option price will be assessed based on the market value, (with appropriate discount) at the time of exercising the option.

Should a tenant wish to assign their leasehold interest in the land upon which they have built a dwelling, they are free to do so. Where the assignee (new tenant) is a qualifying local resident, the same rent and option price conditions will continue to apply based on the circumstances of the new tenant. If the new tenant does not qualify for discount, the rent will be adjusted to reflect the appropriate market rent *at the time of transfer*. If as a qualifying local resident the tenant purchases the land at a discount and then sells or transfers the property within 5 years to a non-qualifying resident, SHG will be eligible to claw back the discount based on the market value of the land on the date of transfer to the non-qualifier.

3.3.1 Qualifying local resident for affordable housing plots.

An applicant will be deemed to be a qualifying local resident if he or she fulfils the following requirements:

The applicant

- a) Does not own a habitable building and/or developable land on Saint Helena;
- b) Has not been subject to conviction and sentenced to a term of long term imprisonment during the five years prior to application;
- c) Has been a resident on St Helena for at least five years at any point in time
- d) Has been on St Helena for a year prior to the date of the application (maximum periods of absence 100 days within the twelve months immediately prior to application)

For the purpose of calculating length of residence on St Helena, and on the grounds that there is no right of abode on Ascension, any periods of residence on Ascension will be counted as if that period was spent on St Helena.

In addition, the total household income must not exceed 2 times the median income for a multiple owner occupier or 1 time the median income for a single owner occupier.

Any applicants for affordable housing must demonstrate evidence that they have the resources to build a house on the plot applied for in the allocated timeframe.

To retain qualification the applicant must remain resident on the island until completion of the development.

The aim of these measures is to support local residents on lower incomes who choose to remain on the island. Any qualifying resident who ceases to qualify based on residency or income will lose their right to subsidy after two years from the date of the change in their circumstances and will then be expected to pay a full market rent.

3.4 Government Landlord Housing (purchase by tenants).

An application by a qualifying GLH tenant will be considered by the Housing Officer, in line with Section 6 of the Housing Strategy Manual which seeks to support long-term residents purchasing their homes if this meets with a range of basic criteria.

3.5 Land transfers/exchange.

This policy does not preclude SHG and an individual undertaking a private land transfer, provided that such land transfer is in SHG's interests and is in accordance with the principles of the Estates Strategy. A land transfer may also involve a partial payment or receipt of payment in addition to the land transfer in order to obtain an equitable agreement.

The HP&H shall have authority to negotiate terms on behalf of SHG with guidance from ESP.

3.6 *Inward investors.*

Decision-making processes with regard to inward investment will be in accordance with the procedures set out in the General Principles. The CDA's are a primary resource on the island for both economic development and housing and an important asset to support affordable housing to secure access to housing for the local community. As such, any land sale in excess of one acre is automatically referred to Executive Council for a final decision. Any decision to open a CDA to development will be made by the Executive Council based on design and plot size specification. Any purchase of more than four housing plots from a single developer will be similarly referred to the Executive Council for a final decision, even if the total area is less than one acre.

3.7 *Agricultural and forestry Land and Buildings.*

This category covers Crown land identified by the Agriculture and Natural Resources Division (ANRD) specifically as productive arable, pasture and forestry land, which is to be protected against development.

An overarching policy aim is to increase agricultural productivity through more efficient and productive land use. Agriculture is a key sector for the island and SHG has given a commitment within the 2014 National Agriculture Policy to supporting and promoting sustainable agricultural production growth through ensuring that land is available. SHG will not release the freehold of agricultural and forestry land but will instead make land within this category available on a lease or licence basis only. An exception may be made in the case of very small agricultural plots that are enclosed by private land and to which no tenant has been attracted for a period of three years. This is to reduce the fragmentation of the agricultural estate and decrease the chance for invasive species to establish on underused land.

Where arable or pasture land falls vacant it will be the general practice to market the land by way of open market tender. However, the Head of ANRD may first seek expressions of interest for the land in question from other tenants provided they are deemed suitable on the basis of helping encourage agricultural business development and are meeting the tenancy requirements for their existing licence/lease.

In the case of more than one such neighbour being approached the Head of ANRD shall request business proposals from the parties to determine suitability for the licence/lease.

Arable land will be available on a license/ lease basis for a period of up to 20 years unless the tenant wishes to undertake major investment into the land and its services in which case a longer term of

the lease may be considered. The tenants will be offered options to renew, provided they have satisfied the initial terms of the license/lease requiring the tenant to commit to continued use and increased productivity of the land to support the island's food supplies as shown in a business plan.

Over recent years SHG has actively excised land from the forest estate that has been deemed to be unsuitable and unproductive for forestry purposes to enable some of this to be available for development, where this is possible. Forest land may be made available for uses which are consistent with agriculture and tourism development for the island and are compatible with forestry objectives and maintaining a forest cover. Such land may be made available on a lease basis, for a period of up to 20 years with the possibility of negotiating long-term leases depending on the specified use of the land. The tenant will be required to agree a management plan as a tenant's obligation under the terms of any lease.

Transactions for the excision of national forest land from the National Forest Estate where this is required, are covered by the Forest Ordinance.

As a further measure to support growth in the agricultural sector, SHG will not require a premium for the leasing/licencing of agricultural/forestry land but will instead employ a system of annual rents, as recommended by the Head of ANRD and or HP&H approved through the annual budgetary process.

3.8 Virgin land for all other purposes

Virgin land for all other purposes may be made available on a freehold or leasehold basis, (subject to the provision in Section 2 according to market demand. The freehold price, rental level or premium will be sought through a competitive process, tender or public auction. A leasehold interest can contain a provision for a single renewal, provided that the total potential maximum term is less than 150 years. Where development or change of use is intended, no transfer or lease will be concluded until the appropriate planning consent has been obtained. Any land sought in protected areas such as National Park or Nature Conservation Areas will be subject to internal consultation and rigorous land management and access conditions.

3.9 Investment portfolio.

Land and Buildings held within the SHG investment portfolio will be proactively managed by ENRD consistent with good estate management practice. Where premises fall vacant, they will be let on the open market (as per Section 2) with all new leases being agreed on commercial terms, which will include repairing obligations on the tenants and regular rent reviews.

In recognition of the need to promote investment and business growth, incentives (such as rent free periods) may be available at the commencement of a lease, as recommended by the HP&H via the ESP. Following a review of the development potential of individual assets it may be agreed to transfer certain assets to government owned enterprises such as Enterprise St Helena. In agreeing any lease the HP&H will ensure that the terms are such as to ensure that these buildings and land are conserved and enhanced. Significant historic buildings that are no longer occupationally required by SHG but are possibly suitable for retention on commercial basis to enhance the investment portfolio may be made available on a leasehold basis for up to 150 years, in recognition of the importance of conserving heritage.

Appendix 1 - Evaluation Criteria

Selling or leasing of Crown land is not purely based on highest bid. The following will be assessed:

Residential land/property development purchase/lease

- Whether the applicant is a qualifying local resident,
- The reason for making the application,
- The price,
- Whether the applicant has previously applied for land for residential development,
- Whether the applicant has already secured funding,
- When the applicant plans to start the development, and
- Whether the applicant already owns/leases land or property on the island.

Criteria for commercial land/property development purchase/lease:

- The reason for the application,
- The price,
- Whether the applicant has previously applied for land for commercial development,
- The proposed use of the land and whether there economic or employment benefits,
- Whether the applicant has already secured funding,
- How soon the applicant plans to start the development, and
- Whether the applicant already owns/leases land or property on the island.

Assessment Panel

- Head of Property & Building
- Crown Estates Officer
- Land Registry Officer
- Representative from Corporate Finance

Appendix 2

Extract from the Land Planning & Development Ordinance 2013 - Development Agreements

25. (1) *The Attorney General (acting on behalf of Her Majesty in right of Her Government of St Helena) may, if authorised to do so by the Governor in Council, enter into an agreement with any person as to the nature, scope, timing or any other aspect of any proposed development, and such an agreement may contain provisions to secure contributions (financial or otherwise) towards the cost of infrastructure or other development in the public interest.*

(2) *Notwithstanding any other provision of this Ordinance, where an agreement to which subsection (1) relates, provides that the Governor in Council will grant an application for development permission subject to compliance with the provisions of that agreement, the Chief Planning Officer shall, on receipt of an application complying with those provisions, forthwith refer the application to the Governor in Council and the Governor in Council shall grant development permission (and shall not impose any condition on such permission which is more onerous than, or inconsistent with, any condition contained in such agreement).*

(3) *The Governor in Council shall not authorise the Attorney General to enter into an agreement under this section unless the Authority has had an opportunity to comment on the matter and the Governor in Council has considered any comments made by the Authority.*