

AILG

Association of Irish Local Government
Aontas Rialtas Áitiúil na hÉireann

AILG Elected Members' Information Leaflets Section 183 Disposal of Council Lands

Leaflet **5**





Purpose of this leaflet

The purpose of this leaflet is to equip councillors with information regarding one of the key reserved functions of the elected member – the decision to approve or otherwise the sale of the councils own lands.

Process, scrutiny and transparency

The sale of Council lands is an important reserved function of elected members.

Although typically routine in character, it is a process which ensures transparency, propriety and, ultimately, democratic oversight of the disposal of council assets.

Land and related rights in Council possession are, in effect, held in trust for the public.

It is vital therefore that the transfer of such assets should be subject to process, scrutiny and record.

And while the operation of the reserved function proper is straightforward it imposes on Council officials the discipline to have reports and documentation in place including written consultation with planners, engineers, valuers and solicitors.

Such process, inter alia, fulfils the audit principle of “segregation of duties” whereby it requires more than one person to have visibility of the proposal before it proceeds to completion. Or, in vernacular words, Council land cannot be sold merely on the basis of a phone call from a purchaser to an official.

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The prevailing legislation is Section 183 of the Local Government Act 2001, thence the colloquial reference to the process as a “Section 183” although the Planning & Development Act 2000 has also an important impact.

Scope of process

The disposal of land embraces more than the transfer of real property. It may also include the disposal of way leaves and easements. It is used very frequently to complete the freehold transfer of a property on which the Council may have a lien but no ownership in a practical sense. Most often this means the final transfer to freehold of a house which has been purchased by its tenants or residents from the Council.

Outline of Governing Legislation

Summarised from Local Government Act 2001-2014

S.183 – (1)

(a) Notices shall be sent to the members of the local authority giving particulars of;

- (i) The land
- (ii) The name of the person from whom the land was previously acquired
- (iii) The person to whom the land is to be disposed
- (iv) The consideration (price)
- (v) Any conditions or agreements in relation to the sale

(b) At the first meeting not less than 10 days after the notices have been sent the local authority may pass a resolution specifying that the land NOT be disposed or that it be disposed in accordance with the resolution.

© If the local authority passes a resolution that the disposal NOT proceed then the transaction falls

(c) If the local authority does not pass a resolution relating to the transaction then it may go ahead;

(d) If the local authority passes a resolution with conditions then the transaction may proceed with those conditions.

(e) The transaction requires the consent of the Minister where the price being recommended is not the “best that is reasonably attainable.”

Step-by-step guide to process

The process may be summarised as follows:

- Council officials negotiate the transaction which will include advice from a valuer where there is a significant consideration involved.
- A notice will be circulated to the elected members setting out the key details.
- A report will be prepared for the Council meeting which will include inputs – as appropriate – from Council Departments such as Housing, Planning, Roads and Corporate Services.
- The Council will consider the transaction and has the following options in relation to its resolution on the transaction before it:

Council resolves that transaction proceeds
= transaction proceeds

Council resolves that disposal not proceed
= transaction does not proceed

Council does not pass any resolution
= transaction may proceed

Exceptions to the S.183 process:

The S.183 procedure does not apply in the following cases:

1. A lease or licence of less than 12 months
2. Certain housing transactions including:
 - (i) Sale of house under an affordable dwelling scheme
 - (ii) Sale of house to a Council tenant
3. Transfer of land to a water authority – this exemption is designed to facilitate the vesting of Council-owned water infrastructure in Irish Water.
4. Certain transactions under the Harbours Act.

Local authority no longer requires the land

S. 211 of the *Planning Act 2000* makes reference to the local authority no longer requiring the land for any of its functions as a justification for disposal. While not mandatory, officials, in preparing their reports for the elected members, will certify to this effect.

“Ransom strips”

S. 211 of the *Planning Act 2000* empowers the local authority to dispose of land to secure the “construction of ... of any structures appearing to it to be needed for the proper and sustainable development of its functional area.”

This provision arises where for example a developer requires access across a strip of land owned by the council (e.g. an abandoned road after realignment) to open up a housing estate. These transactions, occasionally controversial, are colloquially referred to as “ransom strips.”

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Consent of Minister not required

The consent of the Minister is not required except where the price being advised is not the best price available. (S.211 of the *Planning Act 2000*).

Possible Issues

It is possible for the Council to pass a resolution to stop the transaction and, in this case, the process would simply halt.

It is also possible for the Council not to pass any resolution and as the legislation is written on a default basis the transaction would, in theory, be able to proceed. However the purchaser's solicitor may raise an issue about the security of the title if the S.183 process has not received a positive resolution.

A third outcome is that the elected council is permitted under the law to add or vary conditions in relation to the transaction. Again questions might be raised as to the basis on which such conditions were attached when the transaction is passing through the council chamber given that qualified personnel such as valuers, engineers and planners would have already advised on what conditions, if any, were to be attached to the proposal before it was presented to the Council.

The provision regarding the consent of the Minister where the price available is not the best price available leaves some room for doubt as it is not certain who would determine that the price is not the best available.

However, as stated, there are rarely any issues with the disposal of land.

Modification regarding certain land sales to the Land Development Agency

Arising from the Land Development Agency Act 2021, the requirement for a decision by the elected council will not apply where the council is transferring land to the Agency and where the land is already zoned for housing and is located in a town with a population of 10,000 or more. All other transfers - including to the Agency - will require councillors' approval.



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Association of Irish Local Government

Office Unit 10,
Manor Mills,
Maynooth,
Co. Kildare
W23YT63

www.ailg.ie
info@ailg.ie
01 6106100

Disclaimer: Issued July 2021. While every care has been taken in the preparation of this information leaflet, the Association of Irish Local Government assumes no responsibility for and gives no guarantees concerning the accuracy, completeness or up to date nature of the information provided and accepts no liability arising from any errors or omissions. This commentary is intended to be a helpful summary of the process for introductory purposes. The legal texts should be consulted – with appropriate advice- before forming a definitive opinion on any question.



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