


COUNCIL POLICY

Sale, Exchange or Transfer of Council Land	Adopted By Council:	--/--/--	
	Date/s Revised:		
	Next Review Date:	02/21	
	Document No:	CP044	
	Directorate:	Organisational Performance & Community Services	
	Responsible Officer:	Manager, Financial Services	

CONTEXT

This policy applies to the sale, exchange or transfer of Council land, except where sections 181 or 191 of the *Local Government Act 1989* (the Act) apply. Section 181 of the Act refers to the sale of land in order to recover unpaid rates and charges, while section 191 deals with the transfer, exchange or lease of land without consideration, neither section of which is managed by way of this Council Policy CP044.

Council's annual budget does not provide for the sale or exchange of Council land, unless a formal Council resolution is passed. The last such transaction completed by Council was for the transfer of a parcel of land to the Point Lonsdale Surf Life Saving Club in the 2015/16 financial year. No further sale or exchange of Council Land is provided in Council's 2018/19 Budget (including the Strategic Resource Plan to 2021/22).

Council resolved at its 26 July 2018 Ordinary Council Meeting to publish a notice of intent to sell part of its freehold land, requesting that the Chief Executive Officer advertise the proposed sale by way of an expression of interest process, with written submissions invited and a future Council meeting to be determined and advised in writing. Following consideration of submissions at such meeting, Council may resolve to sell or not to sell the land.

It is important to note that any potential proceeds from the sale of land will not be used to 'prop up' existing operational expenditure. Instead, Council would only apply these funds to projects which generate additional revenue streams (invest-to-save projects and matching government grants) and/or reduce operating expenditure (again, this could result from invest-to-save projects, as well as the retiring of debt which would reduce interest expense).

PURPOSE

Council is obliged to manage its real estate so that municipal requirements are met. These requirements may change and properties need to be re-evaluated to establish their status. The purpose of this policy is to assist Council and officers in determining the procedures to be followed in the sale, transfer or exchange of Council Land, in compliance with legislation and in line with sound management practice.

POLICY

The policy principles that form the basis of this policy are:

- Council will dispose of Council land in a considered and responsible way, and in accordance with legislation and this policy;

- The current and future use of property, as well as the economic potential of disposal, should be considered by Council; and
- Where Council disposes of real estate, the sale should maximise the total economic return to the Council, except where there is a clearly demonstrated community benefit for selling the land at a lower amount.

1. Legislative requirements

This policy complies with the requirements of the *Local Government Act 1989* and the *Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land* (June 2009).

1.1 Relevant sections of the *Local Government Act 1989* (the Act)

Section 5(2)(d) A Council is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers.

Section 189 **Restriction on power to sell land**

In essence, section 189 requires all councils to:

- Consult ratepayers and residents on any proposal to sell or exchange land;
- Give ratepayers and residents an opportunity to have their views heard; and
- Have a current valuation for the land that is proposed for sale or exchange.

Specifically, section 189 of the Act provides that:

- (1) Except where section 181 or 191 applies, if a Council sells or exchanges any land it must comply with this section.
- (2) Before selling or exchanging the land the Council must –
 - (a) ensure that public notice of intention to do so is given at least 4 weeks prior to selling or exchanging the land; and
 - (b) obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the *Valuation of Land Act 1960* a valuation of the land which is made not more than 6 months prior to the sale or exchange.
- (3) A person has a right to make a submission under section 223 on the proposed sale or exchange.
- (4) Subsection (3) does not apply to the sale of land that formed part of a road that has been discontinued and which the Council has resolved to sell as the result of a Council exercising its powers under clause 3 of Schedule 10.

Section 223 **Right to make submission**

- (1) The following provisions apply if a person is given a right to make a submission to the Council under this section (whether under this or any other Act) –
 - (a) the Council must publish a public notice –
 - (i) specifying the matter in respect of which the right to make a submission applies;
 - (ii) containing the prescribed details in respect of that matter;
 - (iii) specifying the date by which submissions are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published;
 - (iv) stating that a person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in the submission, at a meeting to be heard in support of the submission;

- (b) if a request has been made under paragraph (a)(iv), the Council must –
 - (i) provide the person with the opportunity to be heard in support of the submission in accordance with the request at a meeting of the Council or of a committee determined by the Council;
 - (ii) fix the day, time and place of the meeting;
 - (iii) give reasonable notice of the day, time and place of the meeting to each person who made a request;
 - (c) if the committee determined under paragraph (b)(i) is not responsible for making the decision in respect of which the submissions have been made, the committee must provide a report on its proceedings, including a summary of hearings, to the Council or the special committee which is responsible for making the decision;
 - (d) the Council or special committee responsible for making the decision must –
 - (i) consider all the submissions made under this section and any report made under paragraph (c);
 - (ii) notify in writing, each person who has made a separate submission, and in the case of a submission made on behalf of a number of persons, one of those persons, of the decision and the reasons for that decision.
- (2) If a proposal by the Council involves the exercise of powers at the same time under more than one section giving a right to make a submission and written submissions are received under more than 1 of those sections the submission procedure may be carried out in respect of all the written submissions at the same time.
 - (3) Despite section 98, a Council may authorise the appropriate members of Council staff to carry out administrative procedures necessary to enable the Council to carry out its functions under this section.
 - (4) A member of a committee specified in subsection (1)(b)(i) is subject to section 79 as if that member were a member of a special committee.

1.2 Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land (June 2009)

This guideline was prepared jointly by Local Government Victoria and the Government Land Monitor, the Department of Environment, Land, Water and Planning (DELWP) to provide guidance for councils that are proposing to either sell, exchange or transfer land. It provides direction with respect to Council's power to deal with property, legal requirements, general principles and procedures for the sale of land. Some of these items are expanded upon in the sections that now follow.

2. Criteria for assessing and determining whether land should be made available for sale

All properties will be reviewed periodically for its municipal usefulness and particular attention paid to land not adequately used for municipal purposes. Properties that are designated as surplus may be sold, exchanged or reserved for exchange for other land that the municipality requires, after having assessed strategic planning implications and future needs.

In conducting an assessment of Council property, to determine whether a parcel(s) of land should be made available for sale, the following criteria will be used:

- (a) Identification of current and potential future usage;
- (b) Ability to contribute to positive social outcomes;
- (c) Facilitating investment and positive economic development outcomes;
- (d) Positive environmental outcomes; and
- (e) Favourable financial outcomes.

3. Preliminary report to Council with respect to a proposed sale of land

Prior to any sale of land and the statutory processes commencing, a report to Council is to be prepared by officers, outlining the following information as a minimum:

- Reason for recommended sale;
- Description of property;
- Current Council valuation and date of valuation;
- Council's book value of land;
- Locality map;
- Current use;
- History of Council ownership;
- Recommended method of sale;
- Recommended sale price range and justification if range is less than valuation;
- Any encumbrances;
- Timelines for sale; and
- Proposed purchaser, if applicable, or transferee where no sale price is involved

4. Disposal of land

Sale, exchange or transfer of land may be disposed of in the following manner:

- (a) Public competitive sale (auction or agent)
- (b) Private sale
- (c) Other sale

Generally, all sales, exchanges and transfers of land should occur at not less than the market value assessed by an independent Valuer engaged by Council. Where it is recommended that land is sold for less than the market value, the report to Council is to include an explanation of the circumstances, reasons or factors which led to the decision to accept a sale price that is less than market value.

4.1 Public competitive sale

After completing the relevant advertising process as required under the Act, once Council has resolved to sell land, the following procedures will apply:

- 4.1.1 At least two quotations to be obtained from licensed agents to act for Council.
- 4.1.2 Selection of an appropriate real estate agent to dispose of the property may be based on, but not limited by, the following criteria:
 - (a) type of property to be marketed;
 - (b) relevant experience;
 - (c) proposed commission;
 - (d) necessary licences.
- 4.1.3 The Chief Executive Officer, after consulting with Council, will determine whether sale is to be by auction, direct negotiation or expression of interest and whether any terms and conditions apply.
- 4.1.4 The Chief Executive Officer, after consulting with Council, will determine the reserve value, if sale is by auction or direct negotiation.

4.1.5 Where Council decides that land is to be sold by public auction, the sale of this land before auction must not be permitted. The date of the auction should be set, allowing four to six weeks for an effective advertising campaign, noting this period may need to be varied depending on the type of land. The advertising campaign should be conducted in a manner that adequately exposes the land to the market and the agent should be required to submit a summary to Council of the marketing campaign, enquiry rate and anticipated result, approximately two weeks before the auction.

4.1.6 Provided the reserve is met, the sale will proceed.

4.1.7 If the reserve is not met, then any offer or proposal to amend the reserve will be referred to the Chief Executive Officer for consideration and consultation with Council.

4.2 Private sale

There may be circumstances where it is more appropriate to sell or exchange land by private treaty. Generally, it will depend on the nature of land that is proposed for sale or exchange (e.g. rear laneways and rights-of-way, disused/closed roads and allotments in inappropriate subdivisions). A change in public land access needs to be balanced with the public/community benefit arising from the sale of such land.

Prospective purchasers of this type of land may include:

- Owners of adjacent properties;
- Developers;
- Community groups;
- State/Commonwealth Government; and
- Other parties with a particular interest in that land.

The Chief Executive Officer, after consulting with Council, is empowered to negotiate with prospective purchaser(s) and approve the final sale price with any terms or conditions of sale.

4.3 Other sale

If any sales fall outside the guidelines at 4.1 and 4.2 above, then Council approval will be required prior to acceptance of any offer to purchase.

4.4 Public notice

Council is required to give public notice and invite submissions, with respect to its intention to sell land. The purpose of the public notice is twofold:

- (1) To inform ratepayers and residents of the Council's intention to dispose of, exchange or transfer a public asset; and
- (2) To give an indication that the Council is genuinely open to the best offer for that land, either on a price or alternative use basis.

The public notice should be informative and enable ratepayers and residents to:

- Clearly identify the land that is proposed for sale, exchange or transfer;
- Understand the proposed sale, exchange or transfer process; and
- Understand the public consultation process.

In order to achieve the above outcomes, the public notice should include the following information:

- References to the relevant sections of the Act that the Council is acting under;
- The location of the property including, wherever possible, a map of plan of the land;
- How the property is to be sold or disposed of;
- The timeframe for the proposed sale, exchange or transfer of land;
- The prospective purchaser, if this is known;
- The commencement and end of the consultation period;
- How submissions can be made, including that persons making a submission can request to be heard in person; and
- Contact details at the Council, if further information is required.

5. Use of proceeds from the sale of land

Unless otherwise directed by Council, sale proceeds from land shall be assigned in accordance with the relevant key budget principles, as included in Council's long term financial plan and adopted budget. That is, any future proceeds from asset sales are directed to either:

- (a) Retiring debt; or
- (b) Investing in projects to generate additional revenue streams and/or reduce operating expenses; or
- (c) Attracting matching grant funds from other levels of government.

6. Disclosure of land sale, exchange or transfer in Council's annual report

All land sales for the financial year are to be disclosed in the Annual Report of Council.

The following process applies in recording property in Council's financial report:

- (a) Land is initially reported as a Non-current asset in Council's Balance Sheet;
- (b) Once Council resolves that a parcel(s) of land will be made available for sale, the relevant property is transferred from a Non-current to Current asset (assets held for sale) on the Balance Sheet; and
- (c) Upon sale, the asset is removed from Council's asset register and the profit/(loss) on sale is reported in the Comprehensive Income Statement.

CONTINUOUS IMPROVEMENT

This policy will be reviewed as a minimum in the first year of each Council term, and as required. This policy is subject to immediate review should any relevant changes in legislation occur.

OTHER REFERENCES

Local Government Act 1989

Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land (June 2009)

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