

Disposal of Property Deemed 'Excess and/or Inappropriate' Policy

Policy No. 09/18

PURPOSE	To determine the process and requirements for the disposal of Council property (land and buildings) deemed excess and inappropriate.
OBJECTIVES	<p>Council is obliged to manage its property holdings so that municipal requirements (and ultimately its goals and objectives) are met.</p> <p>These requirements may change and properties need to be periodically reassessed to confirm their on-going need and if necessary, consider their conversion into more appropriate or needed assets.</p> <p>The objective of this policy is to ensure that Council will carry out this property assessment appropriately, and where necessary dispose of Council Property in a considered and responsible way and in accordance with legislation and the guidelines outlined.</p>
SCOPE	This Policy applies to all Council property held in freehold title or vested in Council.
DEFINITIONS	<p>“Disposal” – means the sale by appropriate means of Council property.</p> <p>“Council Property” – means the extent to which a Council property satisfies the goals and objectives of Council in meeting its service delivery requirements.</p> <p>“Excess and Inappropriate” – refers to any Council property that having been assessed for its municipal purpose, is assessed as not satisfying the goals and objectives of Council in meeting its service delivery requirements.</p>
POLICY	<ol style="list-style-type: none"> 1. All Council property will be periodically reviewed for its municipal purpose and particular attention paid to land not adequately used or satisfying its municipal purpose. 2. Properties that are designated as excess and inappropriate may be sold, exchanged or reserved for exchange for other property that the municipality requires. 3. Proceeds from the sale of excess and inappropriate property shall be assigned in accordance with Council’s adopted long term financial plan.
PROCEDURE	<ol style="list-style-type: none"> 1. Legislation <p>The <i>Local Government Act 1989</i> (Section 189) provides the steps required to comply legally in the sale or exchange of land.</p> <ul style="list-style-type: none"> • Public notice to be given of Council’s intention to do so at least 4 weeks prior to the sale.

PROCEDURE (CONT'D)

1. Legislation (Cont'd)

- Obtain from a registered valuer a valuation of the sale which is dated not more than 6 months prior to the sale.
- To receive submissions under Sec 223 of the *Local Government Act 1989* within 28 days of advertising Notice of Intention.
- Submissions to be considered by Council prior to resolving to sell or exchange land.

Section 191 of the *Local Government Act 1989* enables Council to transfer, exchange or lease land for no consideration without having to comply with Section 189 provided the transaction is limited to the following parties:

- The Crown; or
- A Minister; or
- Any public body; or
- The trustees appointed under any Act to be held on trust for public or municipal purposes; or
- A public hospital within the meaning of the Health Services Act 1988 or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society.

Section 193 of the *Local Government Act 1989*, sets out the entrepreneurial powers of Council. The Minister for Local Government has broad powers to exempt Council from the application of any other provision of the *Local Government Act 1989*.

2. Guidelines

Local Government Best Practice Guidelines have been prepared jointly by Local Government Victoria and the Government Land Monitor and the Department of Planning and Community Development provides guidance for Councils that are proposing to either sell, exchange or transfer land.

3. Property review

All properties will be reviewed periodically for their municipal purpose and particular attention paid to ensure properties held meet current and future community and service needs and enables the delivery of good services.

The review will be undertaken initially by the Property and Valuations Unit and involve the various Council users of the property.

**PROCEDURE
(CONT'D)**

4. Delegate's Report to dispose of property less than \$50,000

Prior to any disposal of property and the statutory processes commencing, a delegate's report is to be prepared outlining the following:

- Description of property
- Current registered valuation
- Locality map
- Current use
- Current zoning
- If the site is contaminated
- Rationale for excess and inappropriateness
- History of Council ownership (if known)
- Recommended method of sale
- Recommended sale price and justification if range is less than registered valuation
- Any encumbrances
- Timelines for sale

5. Council report to dispose of property greater than \$50,000

Prior to any disposal of property greater than \$50,000 and the statutory processes commencing, a report to Council is to be prepared outlining the following:

- Description of property;
- Current registered valuation;
- Locality map;
- Current use;
- Current zoning;
- If the site is contaminated;
- Rationale for excess and inappropriateness;
- History of Council ownership (if known);
- Recommended method of sale;
- Recommended sale price and justification if range is less than registered valuation;
- Any encumbrances;
- Timelines for sale.

PROCEDURE (CONT'D)

6. Consultation Process

In essence, Section 189 of the *Local Government Act 1989* requires Council to:

- Consult ratepayers and residents on any proposal to sell or exchange land;
- Give ratepayers and residents an opportunity to have their views heard.

Section 189(2)(a) requires Council to give at least four (4) weeks public notice before the sale or exchange of land. Further Section 189(3) provides that a person has a right to make a submission under Section 223 on the proposed sale or exchange of land.

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

- Clearly identify the land that is proposed for sale-exchange;
- Understand the proposed sale/exchange process; and
- Under the public consultation process.

The Notice should be published in a local newspaper that is generally circulated in the area where the land is situated.

Whilst it is not a requirement of the *Local Government Act 1989*, Council Officers will notify all adjoining property owners of the proposed sale/exchange and advise them of their right to make a submission under Section 223.

7. Methods of Disposal

Subject to Council approval, disposal may proceed in the following manner:

- a) Sale by public auction;
- b) Sale by public tender;
- c) Sale by public registration or expression of interest;
- d) Sale/Exchange by private treaty;
- e) Exchange of land of equivalent value.

7a. Public Auction

Where Council has decided that land is to be sold by public auction, the sale of this land before auction must not be permitted.

**PROCEDURE
(CONT'D)**

7b. Public Tender

Where a Council has decided that land is to be sold by public tender, the sale of this land before the close of tenders must not be permitted.

7c. Sale by public registration or expression of interest

This method of sale is useful when Council wishes to expose land to the market without the assistance of an agent. It can be used as a public marketing process that is an alternative to an auction or tender.

This method of sale is also appropriate in circumstances where, in addition to selling the land, Council wishes to control the future use or development of the land.

Potential purchasers can be invited to provide details of a design concept or to make a commitment

7d. Sale/Exchange by private treaty

There may be circumstances where it may be more appropriate to sell/exchange land by private treaty. Generally, it will be:

- The nature of land that is proposed for sale/exchange; and
- How the proposed sale/exchange is initiated, e.g. often it is an external person who has initiated discussions with Council with regard to the sale/exchange of land,

that will determine if a sale/exchange by private treaty is appropriate.

Prospective purchasers of this type may include:

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

7e. Exchange of land of equivalent value

When proposing to exchange land by private treaty with a government agency or the private sector, the land should be exchanged at market value and where necessary, monetary adjustments should be made to establish equality of exchange. Where Council has decided to accept land on exchange with a lower value, the Council should disclose the reasons for doing so.

**PROCEDURE
(CONT'D)**

8. Contract documentation

All contracts documentation including (but not limited to) Real Estate Agent's Authority, Section 32 Statement, Contract of Sale and Transfer of Land are to be executed by the Chief Executive Officer (or delegate) under delegation.

9. Responsibility

The Property and Valuations Unit shall have the responsibility for periodically reviewing Council property for municipal purpose, identifying properties deemed excess and inappropriate and advising Council. The actions of the Unit shall include, but not be limited to the following:

- Initial review and identification of potential parcels;
- Referral of property to other Units for comments and advice;
- Obtaining any contamination or environmental reports;
- Applying for relevant planning requirements;
- Preparing Council reports;
- Requesting valuations;
- Placing statutory and other advertisements in newspapers;
- Engaging a real estate agent;
- Authorising preparation of vendor statements, contracts and other relevant documentation.

10. Use of Proceeds

Proceeds from the disposal of property considered excess and inappropriate shall be assigned in accordance with Council's adopted long term financial plan.

However, Council is required to comply with section 20 of the *Subdivision Act* 1988 when selling public open space. Section 20(2) requires Council to use the proceeds from the sale of any public open space to:

- Buy land for use for public recreation or public resort, as parklands or for similar purposes; or
- Improve land already set aside zoned or served (by the Council, the Crown a planning scheme or otherwise) for use for public recreation or public resort, as parklands or for similar purposes; or
- With the approval of the Minister administering the Local Government Act 1989, improve land (whether set aside on a plan or not) used for public recreation or public resort, as parklands or for similar purposes.

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RESPONSIBILITY	<p>Manager – Property and Valuations - for ensuring the Policy and procedures are implemented and maintained.</p> <p>Council – for considering and determining on any recommended sale of property.</p> <p>Team Leader – Property Strategy – for ensuring that the periodic review of Council property is undertaken.</p> <p>Shire Valuer – As requested, for determining any valuation on property under consideration for disposal as being excess and inappropriate.</p>
RELATED POLICIES	Local Government Best Practice Guideline for the Sale, Exchange & Transfer of Land.
RELATED LEGISLATION	<p>Local Government Act 1989 (specifically Sections 189, 191 and 193)</p> <p>Planning and Environment Act 1987</p> <p>Subdivisions Act 1988</p>
REFERENCES	Council Files
REVIEW	This Policy shall be subject to review within 12 months of the next general Council election to be held in November 2012.