

COUNCIL POLICY

Council Policy Title:	Sale and Exchange of Council Land
Council Policy ref. no:	4.3
Responsible Department:	Corporate and Community Services
Date of adoption/review:	24 July 2013

1. INTRODUCTION

Colac Otway Shire is obliged to manage its real estate so that municipal requirements are met. These requirements may change and properties need to be revaluated to establish their status.

The current and future use of property as well as the economic potential of disposal, should be considered by Council.

2. OBJECTIVES

Council will dispose of Council Land in a considered and responsible way and in accordance with legislation and the policy outlined.

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.

The policy has been prepared to assist Council and officers in determining the procedures to be followed in the sale, transfer or exchange of Council Land and in line with sound management practice.

3. LEGISLATIVE AND CORPORATE REQUIREMENTS

This policy complies with the requirements of the *Local Government Act 1989* and the "*Local Government Best Practice Guidelines for the Sale and Exchange of Land*".

The Best Practice Guideline was prepared jointly by Local Government Victoria and the Government Land Monitor, Department of Planning and Community Development to provide guidance for Councils that are proposing to either sell or exchange land.

The guideline is in two parts:

- The first sets out the legal obligations under sections 189 and 191 of the *Local Government Act 1989*; and
- The second part sets out general principles and best practice for the sale, exchange or transfer of land.

3.1 Legislative Requirements:

The *Local Government Act 1989* provides the steps required to comply legally in regard to the sale or exchange of Council owned land (sec 189) and in accordance with the State Government Department of Planning and Community Development Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land.

- Public notice to be given of Council's intention to do so at least 4 weeks prior to the sale or exchange.
- Obtain from a registered valuer a valuation of the property for sale or exchange, which is dated not more than 6 months prior to the sale.
- To receive submissions under section 223 of the *Local Government Act 1989* within 28 days of advertising a Notice of Intention.
- Submissions to be considered by Council prior to resolving to sell or exchange land.

3.2 General

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. This would be after an assessment of Strategic Planning implications and future needs.

3.3 Preliminary Report to Council to Sell Land

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

- 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

- Proposed purchaser and if company, details of company directors and/or trustees (private sale only)

A report would also be prepared for the transfer or donation of land where no sale price is involved.

3.4 Consultation Process - Advertising

All statutory advertisements must include a legal property description and a local name by which the property is known (if any) together with all other relevant details in relation to the sale eg. price, special conditions, statutory advertising will be placed with Council's regular print media outlets.

3.5 Methods of Disposal

Sale or exchange of land may proceed in the following manner:

- Public Competitive Sale (auction or agent)
- Private Sale
- Other Sales

Generally, all sales and exchanges of land should occur at not less than the market value assessed by a Valuer engaged by Council. Where it is recommended that land is sold for less than the market value, a report should be provided to Council, explaining the circumstances, reasons or factors which led to the decision to accept a sale price that is less than market value or land on exchange with a lower value.

3.6 Public Competitive Sale

After completing the relevant advertising process required under the *Local Government Act 1989* and Council resolved to sell, the following procedures should apply:

3.6.1 At least 2 quotations be obtained from licensed agents to act for Council.

3.6.2 Selection of an appropriate real estate agent to dispose of the property may be based on the following criteria but not limited to:

- (a) type of property to be marketed
- (b) relevant experience
- (c) proposed commission
- (d) necessary licences

3.6.3 The Chief Executive Officer, after consultation with Council, to determine whether sale by auction or direct negotiation or expression of interest and whether any terms and conditions apply.

3.6.4 The Chief Executive Officer, after consultation with Council, to determine reserve value if sale by auction or negotiated sale.

3.6.5 If reserve is met then sale proceeds.

3.6.6 If reserve is not met, then any offer or proposal to amend reserve be referred to the Chief Executive Officer for consideration.

3.7 Private Sale

- 3.7.1 The Chief Executive Officer, or an officer authorised by the Chief Executive Officer, be empowered to negotiate with prospective purchaser/s.
- 3.7.2 The Chief Executive Officer to approve final sale price and any terms or conditions of sale.

3.8 Other Sales

If any sales fall aside the guidelines above then Council approval will be required prior to acceptance of any offer to purchase.

3.9 Contracts of Sale

All Contracts of Sale are to be prepared by Council's legal advisors and tabled for Council signing and sealing.

3.10 Payment of Costs

Each party will bear their own costs in relation to a sale of land process. Council costs may include valuation fees, legal cost and real estate agent fees.

3.11 Authorisation

The Chief Executive Officer is authorised to negotiate and sign contracts of sale . In accordance with the Chief Executive Officer's Instrument of Delegation or as agreed by Council.

3.12 Annual Report

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

3.13 Expiration of Sale Offer

If a contract of sale has not been signed within a period of 6 months from date of Council resolution to sell, the offer lapses unless due to unforeseen circumstances and will be required to be referred back to Council for determination.

3.14 Responsibility

The Infrastructure Department (Assets) shall have the responsibility of identifying surplus properties and advising Council. The actions of the department shall include, but not be limited to the following:

- Identify potential saleable parcels of land.
- Refer property to other departments for comments and advice.
- Obtain toxic or environmental reports.
- Apply for relevant planning requirements.
- Prepare Council papers and reports.
- Request valuations.
- Place statutory and other advertisements in newspapers.
- Engage a real estate agent.
- Authorise preparation of vendor statements, contracts and documents.

3.15 Use of Proceeds

Unless otherwise directed by the Council, sale proceeds from land other than that reserved as Public Open Space shall be assigned in accordance with Council's adopted long term financial plan.

Proceeds from the sale of land reserved for Public Open Space must be assigned as directed in the *Local Government Act (1989)*, *Planning and Environment Act (1987)* and *Subdivision Act (1988)*.

4. Related Legislation, Guidelines, Specifications and Codes of Practice

- *Local Government Act 1989*, Sections 189, 191 and 223
- *Planning and Environment Act (1987)* and *Subdivision Act (1988)*.
- Council Tendering Policies
- Local Government Best Practice Guideline for the Sale and Exchange of Land

5. Implementation and Review

This policy will be implemented by staff at the Colac Otway Shire and will be reviewed on a periodic basis.

The policy is subject to immediate review should any relevant legislation changes occur.

ADOPTED/AMENDMENT OF POLICY

Policy Review Date	Reason for Amendment
27 May 2008	Adopted by Council
28 October 2009	Review
24 July 2013	Review