



Council Policy

4.3 ACQUISITION AND DISPOSAL OF COUNCIL PROPERTY

PURPOSE

The purpose of this policy is to provide:

- (a) a fair, compliant and transparent position with regards to the acquisition and disposal of Council owned property; and
- (b) criteria to determine if a property is considered to be surplus or worthy of purchase.

SCOPE

This policy applies to any Council owned property under consideration for disposal, change or sale.

This policy also applies to any property that Council is considering acquiring.

This policy does not apply to CROWN land or property managed by Council on behalf of the CROWN.

DEFINITIONS

Property - Real property commonly referred to land and may include a building or improvements on the land.

Land – The land as described in a Certificate of Title that has no improvements within its boundaries.

PAC – Property Advisory Committee: An internal advisory group consisting of representation from Council's Assets, Community Development, Economic Development, Recreation and Open Space, Planning and Strategic Property departments.

Acquisition – Purchase of property or land.

Disposal – Sale or transfer of Council owned land or property.

Valuation – A formal assessment performed by a Registered Valuer to establish value of property or land.

Certificate of Title - A record of interests and rights affecting land.

Real Assets – Land or property.

Best Value - A principle based approach that aims to ensure that services meet the needs of the community in terms of quality, competitiveness, efficiency, continuous improvement and accountability.

Contract - A written agreement documenting the acquisition or disposal of property that is enforceable by law.

Expressions of Interest (EOI) - An offer made by a strategic or financial buyer for the purchase of Council property.

Compulsory Acquisition – A statutory process that enables Council to acquire land or property without the willing consent of its owner or occupant for public purposes such as building or roads.

Proceeds of Sale - Any amount that Council receives from the sale or disposal of Council property.

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REFERENCES

The Local Government Act 2020

The Sale of Land Act 1962

The Transfer of Land Act 1958

The Land Acquisition and Compensation Act 1986

The Valuation of Land Act 1960

Department of Planning and Community Development, Local Government Best Practice Guidelines for Sale or Exchange of Land (June 2009)

STATEMENT OF POLICY

1. GENERAL PROVISIONS

- 1.1** Colac Otway Shire Council has a responsibility to manage property owned by Council so that it provides Best Value for its community.
- 1.2** The sale or exchange of Council owned property and the acquisition of property shall be subject to a fair, compliant and equitable process that:
- (a) Considers strategic, economic, social and environmental objectives, benefits and liabilities;
 - (b) Complies with legislative obligations;
 - (c) Involves consultation with relevant stakeholders;
 - (d) Considers submissions made to the consultative process
 - (e) Considers the fair allocation of any Proceeds of Sale;
 - (f) Secures the best financial and strategic social outcome; and
 - (g) Is transparent and open to scrutiny, while maintaining appropriate levels of commercial confidentiality.
- 1.3** The *Local Government Act 2020 (section 114)* outlines the legislative requirements with regard to the sale or exchange of Council owned land.

2. CONSULTATION

2.1 Legislative Requirements (Sale or Exchange)

The *Local Government 2020* and the *Department of Planning and Community Development, Local Government Best Practice Guidelines for Sale or Exchange of Land (June 2009)* require that:

- Council must publish notice of its intention to sell or exchange property (on Councils internet site and in any other prescribed by the regulations) at least 4 weeks prior to doing so;
- must undertake a community engagement process in accordance with its Community Engagement Policy and Operational Framework, at a minimum 'consult level', before selling or exchanging property (*Local Government Act 2020* section 114(2)(b));
- Submissions are considered by Council prior to resolving to sell or exchange land in accordance with its Community Engagement Policy;
- Council must obtain a valuation of land in accordance with section 114(2)(c) of the Act which is made not more than 6 months prior to sale or exchange.

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2.2 Acquisition and Compensation

A Council may purchase or compulsorily acquire any land which is, or may be required by the Council for or in connection with, or as incidental to, the performance of its functions or the exercise of its powers. Council must undertake a community engagement process in accordance with its Community Engagement Policy and Operational Framework at a minimum 'consult level'.

2.3 Other Consultation

2.3.1 Where no statutory requirement exists, but it is considered to be in Council's best interest to enter into additional community engagement, Council may, at its discretion, undertake an appropriate community engagement process.

2.3.2 Nothing in this policy precludes preliminary discussions taking place between Councilors and staff as to whether a property might be suitable for consideration for sale. The following details are required as a minimum for a preliminary discussion:

- (a) Address of the property;
- (b) Area of the property according to the Council records;
- (c) Land Use Zoning according to Council's records;
- (d) Book value according to Council's records;

For the purpose of preliminary discussions, Council will not incur the cost of a valuation by a certified Valuer.

2.4 Hearing of Submissions

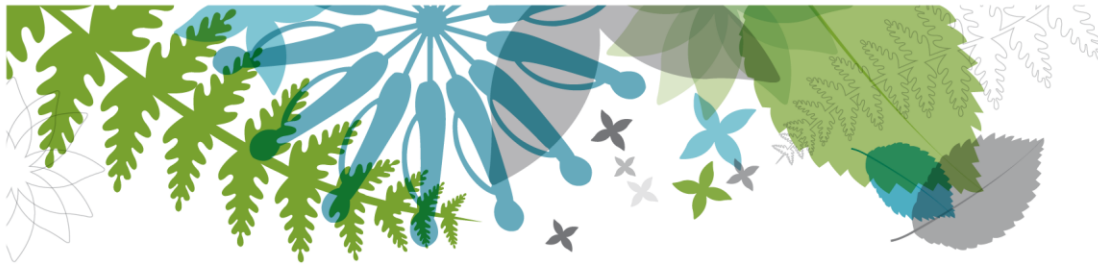
Council's Submissions Committee will consider and hear any submissions in relation to the sale, acquisition or exchange of property.

3. PERIODIC STRATEGIC REVIEW

3.1 All Council owned properties shall be reviewed every four years in order to determine their continuing strategic need and or potential for disposal.

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4. CRITERIA FOR DETERMINING DISPOSAL OR ACQUISITION OF PROPERTY

4.1 Criteria for Disposal

The following criteria shall be used to determine if property is surplus to Council's needs.

A property may be considered for disposal or exchange if:

- (a) The property is not required for provision of a Council service or operation, now or in the future;
- (b) The property is currently used for provision of a Council service or operation, and a suitable alternative exists that is economically viable (This may include purchase of another property, refurbishment of an existing Council owned property, construction a new facility or leasing of a non-Council owned property);
- (c) Disposal of the property will not inhibit or prevent the fulfilment of an identified strategic requirement of Council, now or in the future; and
- (d) The property is not required for recreational, environmental or community use with a demonstrated demand, now or in the future.

4.2 Criteria for Acquisition

A property may be considered for acquisition if:

- (e) property is required for provision of a Council service or operation, now or in the future, and no suitable, economically viable alternative exists; or
- (f) The property demonstrates a viable economic return to Council over time; or
- (g) The property can be set aside to fulfil a demonstrated strategic purpose in the future.

4.3 Compulsory Acquisition

As an 'acquiring authority' under the *Planning and Environment Act 1987*, and in accordance with section 112 of the *Local Government Act 2020*, Council may compulsorily acquire property.

A property will only be compulsorily acquired when:

- (h) It is for a public purpose;
- (i) All other reasonable options have been considered and explored;
- (j) The land is first reserved under the Council's planning scheme via a Public Acquisition Overlay; and
- (k) The process for compulsory acquisition as set out in the *Land Acquisition and Compensation Act 1986* (Vic) has been followed.

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5. CONSIDERATION OF PROPOSALS

5.1 Prior to formal consideration of a proposal to dispose of or acquire property, a comprehensive due diligence report is to be provided to Council outlining the following as a minimum:

- (a) Description of the property;
- (b) A Valuation by a certified Valuer;
- (c) A locality map;
- (d) Confirmation that the land is as described and survey issues such as encroachments (either on or from the land), access, encumbrances, etc. have been investigated and addressed. This will ensure that true property boundaries of the land and any rights and restrictions are accurately recorded in the title documents and / or any material discrepancies are disclosed in the sale contract.;
- (e) The current use/s;
- (f) The reason for proposed acquisition or disposal;
- (g) A copy of the Certificate of Title;
- (h) The recommended method of acquisition or disposal;
- (i) A recommendation as to the purchase or sale price range and associated legal and other costs (in confidence);
- (j) Allocation of any Proceeds of Sale;
- (k) Estimated timeframes; and
- (l) Any special conditions.

5.2 The report will satisfy the criteria set out at 4.1 and address the questions outlined below.

5.2.1 Regarding both Disposal and Acquisition:

- (a) Has the disposal or acquisition of the property been identified in a Council plan, strategy, study or master plan?
- (b) Has the proposal to acquire or dispose of property been referred to the Strategic Property Co-ordinator and the PAC for consideration and recommendations?
- (c) Is there a flood liability or drainage constraint on the property such as an LSIO (Land Subject to Inundation Overlay)?
- (d) What are the other planning constraints, controls and considerations, such as significant vegetation and cultural heritage?
- (e) Has the potent for contamination been investigated? (Where it is deemed that there is potential for contamination to be present, the responsible agency must engage a suitably qualified expert to undertake, at a minimum, a preliminary environmental site assessment, in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) to formalise and document the contamination status of the land).
- (f) Has the property been acquired as a result of unpaid municipal rates?
- (g) Have liabilities on the property been considered?
- (h) Are there other locations or options available to provide the same level of service, with similar or better economic, social or environmental benefit?
- (i) Has Native Title implications been considered?

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5.2.2 Acquisition Only:

- (a) What is the total, upfront and ongoing cost to Council for purchase and management, and how does this compare to any alternatives?

5.2.3 Disposal of Council Owned Property Only:

- (a) Has the property been gifted to Council for a specified purpose, for example as Public Open Space?

6. UNSOLICITED PROPOSALS TO PURCHASE COUNCIL PROPERTY

- 6.1** Unsolicited proposals to purchase Council property by an entity external to Council may be received and considered. If, after considering the criteria set out in section 4.1 herein, Council officers determine a sale or transfer of the subject property to be in the best interests of the community, a proposal shall be referred to Council for formal consideration.

7. PROCESS OF DISPOSAL

- 7.1** Property that has been determined to be surplus to the needs of Council, having satisfied the criteria at 4.1, may be sold or exchanged for other property.
- 7.2** Council will not seek to retain property once it has been declared to be surplus and will actively seek to sell or exchange the said property after a Resolution of Council is made.
- 7.3** Any decision declaring property to be surplus to the needs of Council shall be made at a Council meeting that is open to the public.

A Resolution of Council to dispose of property may include authorisation for the Chief Executive to proceed to:

- (a) Determine a preferred purchaser;
- (b) Undertake the statutory process including public advertising; and
- (c) In the event that Council receives no submissions after public advertising, provide for execution of sale contract, or other required documents.

If Council resolves to sell property, reports and/or valuations will remain confidential in any required Council report or resolution, resulting in the resolution only being released to the public. This will keep the valuation and any reserve price confidential to ensure that a competitive process is maintained.

7.4 Allocation of Proceeds of Sale

Council will identify and disclose where the proceeds of any proposed sale of property will be allocated. Council will include the allocation of any proceeds of sale within the resolution to sell Council property.

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8. METHODS OF DISPOSAL OR EXCHANGE

8.1 Sale or exchange of property may proceed in the following manner:

- (a) Public Competitive Sale (auction or agent);
- (b) Private sale; and
- (c) Other sale.

8.2 Public Competitive Sale (Auction or Private Sale)

After completing the statutory requirements under the *Local Government Act 2020*, and upon Council resolving to proceed to public competitive sale, the following procedures shall apply:

- (a) Two quotations obtained from licenced real estate agents to represent Council in relation to the proposed sale.
- (b) Selection of an appropriate estate agent to dispose of property may be based on the following:
 - Type of property to be marketed
 - Relevant experience
 - Proposed commission
- (c) All Council Officers involved in the proposed transaction must complete a Conflict of Interest Declaration and submit that declaration to Council's Governance Department at the earliest opportunity.
- (d) Selection of an appropriate solicitor to protect Council's interest in the sale, based on the following:
 - Relevant experience; and
 - Proposed legal costs and charges.

8.3 Private Sale (To preferred Purchaser)

After completing the statutory requirements under the *Local Government Act 2020*, and Council resolving to proceed to a private sale to a nominated purchaser, the following procedure shall apply:

- (a) All persons involved in the proposed transaction to complete Conflict of Interest Declarations.
- (b) Selection of an appropriate solicitor to conduct the sale agreement based on the following:
 - Relevant experience; and
 - Proposed legal costs and charges.

8.4 Other Sale

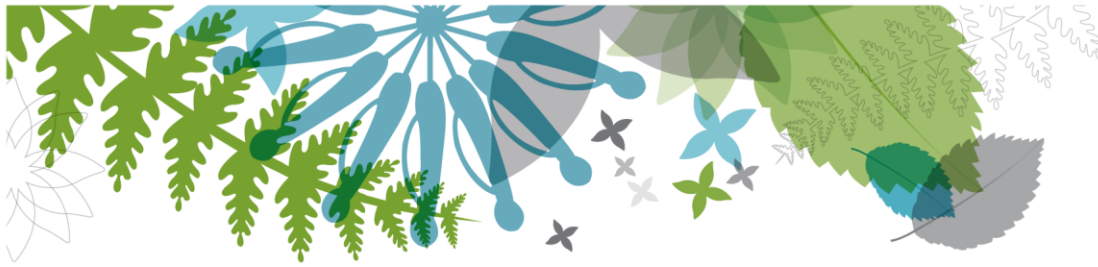
Council may conduct a sale of property by Invitation for Expressions of Interest seeking to achieve a desired outcome such as with a sale of land that has no ability to be improved. This process would be useful for properties that have an environmental restriction.

After completing the statutory requirements under the *Local Government Act 2020*, the following procedure shall apply:

- (a) All Council officers involved in the proposed transaction to complete Conflict of Interest Declarations.
- (b) Selection of an appropriate Solicitor to conduct the sale agreement based on the following:
 - Relevant experience; and
 - Proposed legal costs and charges.

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9. CONFIDENTIALITY

All information with regards to the disposal and acquisition of property can be made public, except in the following instances:

- (a) Valuation advice remains the property of the instructing agency (or agencies where joint instructions are issued) and must not be disclosed to any third party unless authorised by the agency(ies).
- (b) Any other document or information that discloses commercially sensitive information.

RELATED DOCUMENTS

Colac Otway Shire Community Engagement Policy and Operational Community Engagement

Framework Colac Otway Shire Procurement Policy.

Colac Otway Shire Planning Scheme.

DOCUMENT CONTROL

Policy owner	Strategic Property Coordinator	Division	Environment and Infrastructure
Adopted by council	24 June 2021	Policy Number	4.3
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