

8.2 PROPERTY ACQUISITION AND DISPOSAL POLICY

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Attachments: 1. Draft Property Holding, Acquisition and Disposal Policy

SUMMARY

The Acquisitions and Disposal Policy has been drafted to ensure property transactions are conducted in accordance with the highest standards of probity, relevant legislation and align with Council strategies and policies.

The Policy will provide criteria which will support integrity, impartiality, accountability and transparency in property transaction decisions and it will ensure Council is achieving its strategic goals in its property management decisions.

Recommendation

That Council endorse the Property Acquisition and Disposal Policy

BACKGROUND

Council does not have an existing policy that guides decision making and subsequent procedures for the purchase and disposal of property assets.

With anticipated growth in Mitchell Shire there will be a requirement to add to Council's existing services, and this will include additional property assets to support new and expanding services. This policy will assist Councilors and officers in appropriately selecting and securing the right properties for Council services.

Council has a large portfolio of property assets, many of which may be vacant, underutilised, or in some circumstances the property is no longer appropriate for the service provided due to increased demand or changes to service delivery models.

In these instances, Council will consider the long-term strategic use of property for service delivery. This Policy provides the organisation with clear direction regarding

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what to investigate and how to treat a property that has been flagged as underused, no longer fit for purpose and surplus to requirements.

ISSUES AND DISCUSSION

Council's property portfolio (excluding vacant land) is estimated to have a replacement value of approximately \$123M. As such, significant financial resources are tied up in and expended on this asset group.

Property is one particular asset class that a Council can buy and sell; unlike most infrastructure assets that have no market value or cannot easily be bought and sold on the open market, property can.

While property values do appreciate over time, the physical structures decline and eventually cost more and more money to maintain at a service level adequate to deliver community and Council services.

In these situations, Council can be faced with decisions to renovate and upgrade buildings, or potentially dispose of buildings to generate revenue to contribute to new building construction.

In some instances, properties have become too old, cannot be easily upgraded due to original construction techniques, or no longer meet regulatory requirements. No longer 'fit for purpose'. Rather than leave these buildings to remain unoccupied or underutilised and further deteriorate, they do present opportunity for sale to provide revenue to Council to contribute to new construction.

The first Acquisition and Disposal Policy attempts to capture key criteria for strategic assessment of future use and value of buildings; to assist with purchasing as well as retain or sell decisions.

CONSULTATION

The draft policy has been circulated to relevant council officers for comment and input. The draft presented to Council contains contributions from these senior Council Officers.

A copy of the draft has also been reviewed by an external consultant.

FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

The Policy purpose and objective is to assist and guide strategic decision making. It does not commit Council to any financial, resource or asset management investment.

Outcomes for Council stemming from the implementation of the policy will be reflected in the decisions made in the future; as the policy intent is the strategic long-term sustainability of Council, these impacts are likely to be positive benefits for the

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community in establishing a building portfolio that is modern, fit for purpose, and well utilised by Council residents.

By working to improve the building portfolio through transacting property when strategic opportunity is realised benefits will include;

- A reduction of buildings at or near end of useful life
- Lower operating and maintenance cost from a younger and more sustainably constructed building portfolio.
- More buildings that meet All Abilities requirements
- Improved spaces for Council services through more fit for purpose design (rather than retro-fitting)
- Less overall buildings, and strategically positioned buildings, with more usable space, which can accommodate multiple services (e.g. Greater Beveridge Community Centre)

POLICY AND LEGISLATIVE IMPLICATIONS

Council's ability to transact property is regulated by several State and Federal Acts including;

- *The Local Government Act 1989*
- *Land Act 1958*
- *Subdivision Act 1998*
- *Planning and Environment Act 1987*
- *Land Acquisition and Compensation Act 1986*
- *Property Law Act 195)*
- *Transfer of Land Act 195)*
- *Native Title Act 1993*
- *Environmental Protection Act 1970*

RISK IMPLICATIONS

Risk Ranking is determined using [ROHS201-G1- Corporate Risk Matrix](#). Risk is identified as Low, Medium, High or Very High.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Council building portfolio is not adequate to meet service needs	High	Building and property strategy guided by an Acquisition and Disposal policy	Part of the work to be completed through ICSIP and Building Asset Management Plan (AMP). May need a document

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Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
			that ties these two strategies together
Council’s expense on buildings increases due to aging assets	High	Assess buildings by condition, age, capacity and fit for purpose. If not meeting a service need, then flag for disposal in accordance with Acquisition and Disposal Policy	Existing Resources
Council’s need to retrofit all abilities access points increases council costs	Medium	Review building suitability for long term service delivery and cost to maintain building	Existing Resources ICSIP Building AMP
Council’s insurance increases due to the number of vacant properties, with higher excess thresholds in the event of a claim	High	Lease vacant buildings where possible or dispose of vacant buildings in accordance with Acquisition and Disposal Policy.	Lease and License Policy ICSIP Building AMP
Council fails to meet climate abatement targets due to aging building stock that cannot be upgraded	Medium	Council continues to address climate change strategies on buildings with long term use, and considers those without a strategic use for sale	Existing Resources
Community backlash because of poor quality facilities that are not fit for purpose	High	Community consultation with regard to service requirements	Existing Resources ICSIP Building AMP
Buildings no longer meeting capacity requirements as service demand increases	High	Community consultation with regard to service requirements	Existing Resources ICSIP Building AMP

PROPERTY ACQUISITION AND DISPOSAL POLICY (CONT.)

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

The Acquisition and Disposal Policy is provided to assist Council make long term strategic decisions taking account of the impact property can have, both positive and negative, on future sustainability.

Sustainability is negatively impacted should the cost to renew assets that are getting close to, or have past their useful life, increase beyond the amount Council can allocate to return property to good condition by way of renewal, and upgrades. The measure of sustainability is that Council can meet these costs over a 20-year horizon. At present this is unlikely to be the case for some buildings.

As property is also an appreciating asset, Council needs to consider the best purchase and sale points, to achieve best value for the organisation, while ensuring continuity of services for the community over time, through the appropriate supply of property.

Council does need to consider the cost of operating older style buildings which have high energy demands, especially around heating and cooling. Council is endeavoring to make positive contributions to the environment, and energy consumption is a major factor in climate change. The makeup of Council's property portfolio into the future will have some bearing on Council's ability to address its responsibilities with regard to climate change abatement.

CHARTER OF HUMAN RIGHTS IMPLICATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

CHILDREN AND YOUNG PEOPLE IMPLICATIONS

Council delivers a raft of services targeting children. It is important that Council remains ahead of any issues concerning property that may impact its ability to effectively and safely continue services to children.

OFFICER DECLARATION OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect interest in this matter.

CONCLUSION

The first Property Acquisition and Disposal Policy has been developed to assist Council with strategic decision making regarding its property portfolio.

As Council experiences growth and geographic shifts in service demand, and as services themselves transform because of technology innovations or other pressures, then Council must adapt ahead of time to ensure alignment of its building portfolio to community needs and expectations. This must be done without unduly risking Council's long-term sustainability through retention of inadequate, redundant or unfit for purpose properties.

This policy requires Council to perform property decision making and transactions with the utmost integrity, having regard for all legislative requirements that regulate

PROPERTY AQUISITION AND DISPOSAL POLICY (CONT.)

Council's ability to buy and sell property. It also provides decision making criteria to assist steering decisions toward long term strategic goals.

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

18 FEBRUARY 2019

8.2

PROPERTY AQUISITION AND DISPOSAL POLICY

Attachment No: 1

**Draft Property Holding, Acquisition and
Disposal Policy**

Property Holding, Acquisition and Disposal Policy

Policy Owner	Finance and Assets
Creation Date	February 2019

1. Purpose

The purpose of the Property Holding, Acquisitions and Disposal Policy (**the Policy**) is to;

- a. Ensure Council is achieving its strategic goals in its property management decisions applying the principles of net community benefit,
- b. Ensure that property is only purchased or retained where Council ownership:
 - i. Contributes directly to current or future service delivery outcomes expected by Council,
 - ii. Is central to the core business of Council as explained in Council strategies and policies, and
 - iii. Is financially beneficial to Council
- c. Promote the highest and best use of Council property by (where appropriate) providing the opportunity for the private and community sectors and other government agencies to unlock the value inherent in Council's property portfolio through commercial and community occupancy agreements.
- d. Ensure property transactions are conducted in accordance with the highest standards of probity, relevant legislation and align with Council strategies and policies
- e. Provide criteria which will support integrity, impartiality, accountability and transparency in property transaction decisions.

2. Scope

The policy applies to Council owned property, and specifically the purchase of new property and the sale or exchange (disposal) of Council owned property.

3. Decision Making Guidelines

The policy establishes the objectives and requirements for Council to adhere to when retaining, purchasing or disposing of property.

Council property can be used for community benefit innumerable times, but can only be acquired or disposed of once. Decisions about the acquisition, retention or disposal of Council property need to be made carefully to ensure community value is maximised and is in line with whole-of-Council strategic priorities.

Council will comply with all legislation and adhere to the Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land (2009), in its property dealings.

Council will consider the following guidelines to justify retention of its property holdings, and the consideration of acquisition and disposal opportunities:

- a. How the property contributes directly to Council's strategic planning objectives and/or service delivery outcomes. Consideration must be given to:

- i. Cost effectiveness based on reasonable investigations into potential alternative sites, arrangements and/or tenure options for service delivery.
 - ii. Utilisation, which requires Council to make reasonable endeavours to dispose or lease any property that is not currently used or is underutilised.
- b. A demonstrated linkage with strategic land use, infrastructure and service planning, including community economic and social benefits, and the cost of holding property to meet future community needs and the likelihood of future projects.
- c. The purchase or exchange of land has been identified and planned for the purpose of offsetting future community infrastructure costs in the short and long term.
- d. The net community benefit of Council property ownership to enable occupation by other government or community organisations where it's unfeasible for those organisations to acquire the property. Occupation of Council property by other organisations should be on the basis of market rental unless Council is satisfied that the social, environmental or community benefits justify a sub-market rental arrangement.
- e. Limited property investment opportunities where there may be some unique circumstances considered acceptable for property to be purchased or held by Council for an investment purpose beneficial to the community.

Council will endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of property decisions. In meeting this objective Council will ensure that property transactions provide the Best Value, both financial and non-financial, for the Council and the community.

Council will engage criteria detailed in this policy to apply a focus on 'facts of the matter' in relation to property transactions; to establish the strategic importance of property either to be purchased or considered for sale.

4. Policy Principles

All decisions and actions in relation to the acquisition or disposal of Council property will have due regard to the following fundamental principles;

- a. Council has a documented strategy for a property and it has a financial plan to realise strategic planning and/or service delivery outcomes from the property in a managed timeframe
- b. Council will retain existing property holdings where there is a clear and documented strategic planning objective and/or service requirement.
- c. Council will consider disposal of property where there is no clear strategic planning objective or documented service requirement for retention, or where service consolidation strategies and infrastructure planning create redundant assets.
- d. Council will add to its existing property portfolio where strategic planning objectives and/or current or projected service demand necessitates additional properties.

- e. Any land acquisition must be supported by a documented business case that defines the objective of the purchase, the timing to realise the objective, and demonstrates due diligence has been undertaken to understand any inherent risks.
- f. Council will not retain property for capital gain without undertaking detailed market research to ensure gains can foreseeably be realised within a defined timeframe, if Best Value can be achieved in the current market (in today's dollars).
- g. Property acquisition or disposal decisions by Council must be transparent, open to scrutiny, must provide full information and record the reasons behind decisions.
- h. All Council property transactions must comply with the provisions of the Local Government Act.
- i. Prior to the acquisition, disposal or lease of property, an adequate strategic assessment of the community value of the property and an appropriate level of due diligence must be conducted to ensure that Council is fully informed of the status and attributes of the property.
- j. The community must always be consulted with regard to proposals to dispose of Council property and have a right to be heard (as per section 223 LGA).
- k. The disposal of Council property should be conducted through a public process unless circumstances exist (e.g. sale to an adjoining owner) that justify a private sale process (e.g. sale or exchange of land by private treaty).
- l. Property acquisitions and disposals should apply the principal of net community benefit across social and financial measures. A legitimate reason for sale is to fund infrastructure. Acquisition could be for future profit or due to market immaturity. Any transaction must be supported by a documented business case that defines the objective, the timing to realise the objective, and demonstrates due diligence has been undertaken to understand any inherent risks.
- m. Acquisitions and disposals should occur at market value as determined by a certified formal valuation conducted by an accredited valuer engaged by Council. Exceptions to Council accepting market value can be made if there is strong justification and the process has been undertaken with full transparency.
- n. Council property should be appropriately zoned prior to disposal so that the property can be sold on the basis of its highest and best use, to achieve the optimum future development/use of the property and maximise the return for the community.
- o. Where appropriate an agent may be appointed by Council to manage the negotiation of a private property acquisition, to ensure due diligence, maintain Council anonymity (where required) and mitigate the risk of vendor price inflation and unreasonable transaction terms.

5. Definitions

Best Value: Best Value is defined by the Local Government Act Section 208

Crown Land: Land reserved or administered under the Crown Land (Reserves) Act 1978

Council Owned Property: Land and improvements which Council owns (custodian). Not Crown Land.

Community Value: Core social, cultural, economic and environmental principles and objectives upheld and maintained by Council on behalf of the community.

Discontinuance: Discontinuance of a road removes a road status from land and vests the land in Council.

Local Community: Residents of the Mitchell Shire Council area, and including people who live outside the Shire but operate business, services, or utilise services within the Mitchell Shire.

Local Government Act: The Act that establishes the legislative scheme that supports the system of local government in accordance with Part IIA of the Constitution Act 1975.

Market Value: Current market valuation of the land assessed by an accredited valuer engaged by Council

Core Council Services: Services Council provide that it is compelled to undertake under legislation (local laws, town planning, roads, etc.), or which provide universal benefit to all local community members such as waste collection, parks, and infrastructure maintenance.

Non Core Council Service: Services provided by Council that Council is not compelled to deliver through law. They are also services which may be provided by non Council service providers or the private sector. They are not delivered to all community members, but are available for the community to use. For example, kindergartens, gymnasiums, art galleries.

Property: Land and or buildings, including at strata (airspace and subterranean)

Public Land Value: Council owned land reserved, designated or used for a specific public purpose

Reserve: Land not designated on a title plan with few exceptions

Road: Includes streets, cul de sacs, passages, right of way, bridges and fords, culverts, curbing and the land and works forming a road.

6. Legislative Requirements

Council must have regard for, and conform to, applicable legislation in its property dealings. The following legislation will be followed by Council Officers when undertaking a property transaction.

Land purchases;

Local Government Act;

- Section 187(1) allows Council to purchase or compulsorily acquire land
- Section 191 allows Council to transfer (exchange or lease) land to certain agencies without giving public notice
- Section 192(1) allows Council to use land or part of land it has acquired for other purposes different from the original intended purpose if it is no longer required, not necessary, or desirable.

- Section 223 requires Council to seek public submissions in the event of actions described by Section 192

Land sales and exchanges;

Local Government Act:

- Section 189 sets out the restrictions and requirements to sell land
- Section 223 provides for community consultation and allows for submissions to be made and for submitters to be heard in person.
- Section 189(4) provides that section 223 does not apply where the land formed part of a road which has been discontinued.
- Sections 206 and 207 and schedule 10 clause 3, and schedule 11 clause 5 and 8 provides Council powers over roads, including discontinuance.
- Section 191 as described above.

Land Act 1958:

- The Act relates to the sale and occupation of Crown Land
- Section 400 of the Act provides Council the ability to declare a government road to be unused.

Subdivision Act 1998:

- Deals with freehold land with the legal status of road (Right of Way)
- Section 20(2) provides restrictions and obligations regarding the sale of land vested for open space.

Planning and Environment Act 1987:

- Provides for permitted uses of land through Council's planning scheme
- Provides for closure of a road (removes status of a road)

Land Acquisition and Compensation Act 1986

- Governs the compulsory acquisition of land

Property Law Act 1958:

- Sets out property sale processes and requirements, including conveyancing

Transfer of Land Act 1958:

- Establishes a register of titles and provides for the registration of interest in land, including sale, acquisitions and transfers.

Native Title Act 1993:

- Relevant where native title exists

Environmental Protection Act 1970

Sets out obligations for dealing with pollution/contamination of land

7. Valuation Requirements

Council must obtain certified formal valuations from accredited valuers when seeking to:

- a. Sell an interest in property;
- b. Purchase an interest in property;
- c. Address compensation claims or offers pursuant to the *Planning and Environment Act 1987* or the *Land Acquisition or Compensation Act 1986*.
- d. Grant or acquire a leasehold or licence interest in property.

All Council property transactions must be conducted with current valuation advice and within the period of currency of the certified formal valuation report. A review and update of valuation advice must be sought if a property transaction cannot be formerly contracted within the period of currency.

Prior to obtaining a certified formal valuation Council may seek an 'estimate of value' to inform its decision making with respect to a particular property transaction. An 'estimate of value' as opposed to a certified formal valuation, must not be used for the acquisition, disposal or lease of Council property.

Council may obtain a 'check' or second valuation to inform the valuation process, and provide further assurance that the primary valuation is sound and properly assessed. If a 'check' valuation is considered necessary, Council will commission both primary and 'check' valuations using identical instructions.

In seeking certified formal valuations Council must provide all relevant information regarding a proposed transaction including:

- a. Proposed terms and conditions,
- b. Planning, environmental or heritage assessment reports,
- c. Business assessment reports, and
- d. Hypothetical development analysis.

Valuation advice remains the property of Council and is to remain confidential.

Although Council is not bound by the opinion of the Valuer General Victoria (VGV), Council may arrange a valuation conference between valuers, convened by the VGV where there is a material difference of opinion or approach between a primary and 'check' valuation. Following the conference VGV will provide its valuation opinion for Council's consideration.

8. Property Acquisition Criteria

Council will address the following criteria to acquire property:

- Council will only acquire property to carry out Council functions, which may include strategic economic investment.
- The purpose for an acquisition of a property has been clearly defined and an adequate strategic assessment has been conducted demonstrating sufficient linkage to achieving a strategic goal or plan of Council.
- The property meets the requirements of a service to be provided and the property can meet future service demand.
- Where the property will provide fee for service, or shared services with non-Council providers, Council has undertaken appropriate assessments and determined that sufficient income or benefit can be generated to provide a return on investment within an acceptable timeframe.
- An analysis of "cost of ownership" has been undertaken to inform Council of future capital upgrade and renewal requirements, ongoing maintenance and operating costs and this fits reasonably within expected budget.
- Council has considered a lease of a property as a cost-effective alternative option to purchasing.
- Council has undertaken or is satisfied that the vendor has undertaken due diligence inspections and investigations into the property to ensure disclosure of any risks or threats relating to the property with regard to condition of buildings, any contamination of building or land (including sub-surface contamination), planning (zoning, planning provisions, approvals and agreements), title encumbrances,

public land values, cultural heritage, native title and traditional owner rights, and any identified risk or threat can be addressed in a timely and cost-effective way.

- The acquisition of property must be supported by a resolution of Council.

9. Property Disposal/Exchange Criteria

Council will address all of the following criteria in assessing the disposal of property:

- The property is not linked to, or foreseeably linked to, or integral to, the implementation of an existing and documented Council strategy.
- The property does not support an existing or future Council service.
- The property is not leased or licenced to an existing community group or Committee of Management to provide a Council supported community service.
- Non-core services are being provided from the property.
- The services provided from the property can be performed elsewhere, co-located, or consolidated with a nearby property.
- The property cannot adequately meet future service demand without significant additional investment.
- There will be no significant social impact on the community from disposal of the property.
- The property does not generate sufficient rental income taking account of life cycle costs and the value to Council if the property were sold.
- The property will attract an acceptable financial return for Council in the current market.
- The optimum development potential of the land is not matched to Council functions (e.g. mining).
- There is no legal or statutory impediment stopping the disposal of the property.
- The property owned by Council fits into categories including disused or closed roads, rear laneways or Rights of Way, and allotments in inappropriate subdivisions, where Council has no use or need for the land.
- The disposal of property must be supported by a resolution of Council.

10. Report to Council to buy or sell Property

Property transactions will be negotiated and executed in accordance with legislative requirements and Council's instruments of delegation. The decision to buy, sell or exchange property will be made by Council resolution.

The Council report will be supported by an appropriate strategic assessment and business case as deemed necessary to justify the property transaction, and a clear management recommendation to form the basis of the Council resolution.

The following supporting information will be provided to Council where a property has been proposed for acquisition or disposal;

Property Acquisitions	Property Disposal
A description of the property	A description of the property
A certified formal current market valuation and 'check' valuation as required	A certified formal current market valuation and 'check' valuation as required
Locality Map	Locality Map
Strategic assessment addressing future strategic use of the property and estimated annual costs	Current and previous use of the property & history of Council ownership
Documentation of due diligence findings including opportunities and risks	Strategic assessment and rationale for recommended property disposal
Community consultation and stakeholder engagement outcomes	Recommended method of sale
Recommended acquisition terms and conditions	Recommended sale price range and justification if sale price is less than valuation
	Any encumbrances to be noted
	Recommended disposal terms and conditions

11. Property Disposal Responsibilities

The Finance and Assets Department 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 properties
- Refer identified properties to other Council Departments for comments and advice in line with the principals of this policy.
- Obtain relevant due diligence reports (planning, environmental, cultural heritage etc)
- Apply for relevant planning restrictions and encumbrances
- Request valuations including 'estimates of value' and certified formal valuations
- Prepare Council reports
- Place required statutory advertisements seeking community feedback
- Engage surveyors, valuers, legal representatives, real estate agents and other external service providers to make ready property for sale.
- Authorise the preparation of vendor statements, contracts and documents.

In all our dealings Mitchell Shire Council employees will act in accordance with the Employee Code of Conduct and other Mitchell Shire Council relevant policies.

12. Key Stakeholders

- Ratepayers, residents and community groups of the Mitchell Shire Council
- Developers
- State and Federal Government Departments and their agents
- Utility Providers

13. Related Documents

- Council Plan
- Strategic Resource Plan
- Building Asset Management Plan
- Township Structure Plans
- Open Space Strategy
- Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land 2009
- Financial Reserves Policy

14. Review

This Policy will be reviewed 4 years from its date of adoption by Council.

Appendices

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

The guideline can be accessed at the below link

https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0028/48628/Local-Government-Best-Practice-Guideline-for-the-Sale-and-Exchange-of-Land.pdf

The Table of contents for the Local Government Best Practice Guideline, for Sale, Exchange and Transfer of Land is provided below for context as to what the guideline covers.

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