



Property Holding, Acquisition and Disposal Policy

Policy Owner	Finance and Assets
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Property Holding, Acquisition and Disposal Policy

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.

Property Holding, Acquisition and Disposal Policy

- 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.

Property Holding, Acquisition and Disposal Policy

- 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.

Property Holding, Acquisition and Disposal Policy

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.

Property Holding, Acquisition and Disposal Policy

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.

Property Holding, Acquisition and Disposal Policy

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.

Property Holding, Acquisition and Disposal Policy

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.
- The property to be disposed of is surplus to current and future needs.

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.

Property Holding, Acquisition and Disposal Policy

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.

Property Holding, Acquisition and Disposal Policy

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.

Table of Contents

Background	1
Power to deal with property	1
Legal Requirements: Sale of Land	1
Section 189.....	1
Public Notice.....	2
Purpose of Public Notice.....	2
Content of Public Notice.....	2
Conditional Contracts.....	3
Requirement for Genuine Public Notice.....	3
Right to make submissions.....	3
Requirement for a current valuation of land.....	4
Exemptions from the provisions of section 189.....	4
Effect of a breach of section 189.....	5
Sale of Land – Discontinued Roads.....	5
Sale of Land – Public Open Space.....	5
Legal Requirements: Transfer/Exchange of Land without consideration	6
Section 191.....	6
General Principles	7
Procedures for the Sale of Land	7
Preparation of land for sale.....	7
Appointment of consultants and real estate agents.....	8
Instructions for Valuers.....	9
Instructions for Real Estate Agents.....	9
Method of Sale.....	9
Sale by public auction.....	9
Sale by public tender.....	10
Sale by public registration or expression of interest.....	11
Sale/Exchange by private treaty.....	12
Exchange of land of equivalent value.....	13
Contaminated Land	13
Responsibility for contaminated land.....	13
General procedures.....	13
Options if a site is contaminated.....	14
Dealing with contaminated land – A Summary.....	15
Types of potentially contaminated land.....	15
Local Government Act 1989 – Sale/Exchange/Transfer of Land	17
Subdivision Act 1988 – Sale/Exchange of Public Open Space	21
Victorian Government Solicitor - Legal Advice	25