

Disposal or Sale of Council Assets and Land

Policy Endorsement:	Endorsement required by Council		
File Number:	A3629725	Authority:	Council
Directorate:	Corporate Services	Responsible Officers:	Manager Finance Manager Governance and Commercial Property
Policy Type:	Discretionary	Version Number:	01
1 st Adopted by Council:	11 April 2016	Last Adopted by Council:	11 April 2016 Minute No. 1310
Review Period	Every 3 Years	Next Review	April 2019

1. Purpose

The purpose of this policy is to:

- define the process for identifying and proceeding with the disposal or sale of Council owned assets and land;
- endorse the approach that the proceeds from any sale of Council assets should be directly used in the acquisition of new assets or the enhancement of existing assets; and that asset sale proceeds may not be utilised for recurrent/operational purposes.
- establish guidelines for the application of proceeds for the various classes of major assets; and
- provide a basis for Council consideration of setting aside funding for Affordable Housing.

2. Background

It is recognised that a municipality's standards and developments change or evolve over time and some assets may become redundant or surplus to Council's needs. Council will overtime, carry out a strategic review of its asset and property holdings and may make a determination that some assets are excess to Council's needs.

This policy is designed to provide a framework for the disposal and/or sale of Council assets. It is also designed to:

- endorse the approach that the proceeds from any sale of Council assets should be directly used in the acquisition of new assets or the enhancement of existing assets; and that asset sale proceeds may not be utilised for recurrent/operational purposes.
- establish guidelines for the application of proceeds for the various classes of major assets including the process required to be followed in determining whether assets are surplus to Council's requirements.

Greater Dandenong Policy

3. Scope

This policy applies to all fixed assets or property no longer required by Council for strategic or operational purposes and which have been identified for potential sale, transfer, exchange or disposal.

The policy includes reference to the following fixed assets:

- Land and buildings;
- Public open space;
- Plant and equipment.

4. Human Rights and Responsibilities Charter – Compatibility Statement

The Victorian Charter of Human Rights and Responsibilities has been considered in the preparation of this policy but is not relevant to its content.

5. References

- Council Plan
- Council's Annual Budget
- Asset Management Policy
- *Local Government Act 1989 (LGA)*
- *Planning and Environment Act 1987*
- *Subdivision Act 1988*
- Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land 2009 – Department of Planning and Community Development.

6. Definitions

In this policy the following definitions apply:

- **Asset** is a resource controlled by Council, from which it expects to derive economic benefits or use for service delivery to the community over a period extending beyond one financial year. The asset carrying value is the asset value (cost or valuation) less any accumulated depreciation and accumulated impairment loss.
- **Council owned land** includes vacant land, including discontinued roads, and any building and development thereon.

Greater Dandenong Policy

- **Open space reserve** is a reserve set aside for any funds received from the sale of public open space which includes any land set aside in a plan or land in a plan zoned or reserved under a planning scheme:
 - for public recreation or public resort; or
 - as parklands; or
 - for similar purposes
- as defined in the *Subdivision Act 1988*.
- **Plant and Equipment** includes major items of plant and equipment in excess of \$50,000 written down value.
 - **Right of Way (ROW)** means a road as defined in section 3 of the LGA.
 - **Road** means a road as defined in section 3 of the LGA. The term “road” includes, but is not limited to, a ROW, a street, a laneway or a footpath.

7. Council Policy – Assets (not including Land and Plant)

7.1 Sale Process

- 7.1.1 From time to time, Council will review its asset holdings and identify any surplus assets for consideration of sale.
- 7.1.2 In identifying any potential surplus Council owned assets, a report shall be presented to Council providing all relevant information regarding the asset identified for potential sale including environmental and planning issues and shall include a proposed process for undertaking both consultative and/or statutory processes under the *Local Government Act 1989*, including provisions for Council to hear submissions from the community related to the proposed sale.

7.2 Process of Sale

The proceeds from any sale of surplus Council assets are subject to the following guidelines:

- trading the equipment to suppliers; or
- obtaining expressions of interest from interested buyers; or
- selective tender from an identified group of buyers; or
- public tender – openly seeking buyers using the tender process; or
- public auction - advertisement for auction through the local paper and, where appropriate, a paper circulating in the State, or procuring the services of an auctioneer.

Greater Dandenong Policy

The selection process is to give consideration to:

- the method likely to return the higher value net of disposal costs; and
- the current written down value (book value) of the asset; and
- compliance with relevant statutory obligations.

The sale of each item of plant and equipment is to be subject to a minimum reserve price to be approved by the Manager infrastructure Services.

7.3 Application of Sale Proceeds

- 7.3.1 Council must apply the sale proceeds of a community asset to either the establishment of a new asset or major refurbishment of an existing asset.
- 7.3.2 Allocation of asset sale proceeds to an appropriate capital project can only occur via either an Annual Budget process or Mid-Year Budget process where the highest and best use of funds can be determined in reference to all potential capital projects.
- 7.3.3 Proceeds from the sale of assets must be received by Council prior to the expenditure allocation being determined.

8. Council Policy – Council Owned Land

8.1 Sale Process

All sales, exchanges and transfers of land are required to comply with the provisions of the LG Act 1989. Sales are to be conducted through a public process (i.e. public auction, public tender or by registration of expressions of interest) unless circumstances exist that justify an alternative method of sale, (for example the sale or exchange of land by private treaty).

Ideally all sales and exchanges of land should occur at not less than the market value assessed by Council's valuer.

Land will not be sold for less than the market value, unless there are some alternate community benefits derived by the sale of the land. Any proposal to sell the land at a reduced sale price must be reported to Council for consideration, providing commentary of the alternate benefits derived by a sale at a reduced sale price. Such benefits may include the achievement of planning and development goals, educational or medical benefits to the community, or some other strategic goal of Council.

The purchase price may be set at a lower amount, if it is considered that the benefits accruing to the community would not be reasonably obtained unless a lower price is charged. In this instance a resolution of Council to sell, transfer or exchange land at less than its market value is required.

Greater Dandenong Policy

Section 189 of the LG Act 1989 requires Council to do certain things prior to selling or exchanging land:

- to give at least four weeks public notice of an intention to sell or exchange land; and
- allow interested persons to make a submission under section 223 on the proposed sale or exchange.
- The intent of the legislation is to ensure that Council:
 - consults the community on any proposal to sell or exchange land; and
 - provides the community with the opportunity to have their views heard; and
 - obtains a current valuation for the land that is proposed for sale or exchange.

8.1.1 Sale of Land - Discontinued Roads

The sale of land that forms part of a road that has been discontinued is subject to the provisions of the LG Act except for public consultation under section 223. The public consultation process for road discontinuance is provided for under clause 3, Schedule 10 by way of a notice published in the Government Gazette.

Prior to considering the discontinuance and sale or transfer of roads or ROWs or the removal of reserve status and the subsequent sale, transfer or exchange of land, officers will consider if land is required for any of the following purposes:

- there is an ongoing need for the land to provide either vehicular or pedestrian access.
- the land has strategic value to Council or the community.
- the land provides recreational linkages or linked paths.
- the land increases public open space.
- the land is required for public works or flood mitigation.
- the land is generally required for a municipal purpose.

The benefits in discontinuing and selling or transferring a road or ROW or removing the status of a reserve and selling, transferring or exchanging land that is no longer required are:

- it provides an additional source of income is received from the sale and transfer of land.
- there will be a reduction in Council's financial liability in terms of the ongoing maintenance costs of unused and surplus land.
- there is the potential for increased rate revenue.
- there is improved security for unused portions of land.
- Council can formalise any illegal occupation of public land.

Greater Dandenong Policy

The general principles that Council will apply in considering selling or transferring a road or ROW are:

- Council discourages the unauthorised occupation of roads, ROWs and reserves and will take steps to remove such illegal occupation.
- Council will encourage the sale or transfer of such land that is not being used for pedestrian or vehicular access or is no longer required for a strategic or public use.
- Council will only sell or transfer such land holdings to abutting property owners, unless the land is able to be sold or transferred to a third party for the community's benefit.
- All abutting owners will be given an equal opportunity to purchase any land that abuts their property. Accordingly, officers will attempt to divide land equally. However, Council will acknowledge and give preferential allocation rights to abutting property owners who can demonstrate continuous exclusive occupation of the land for more than 15 years (i.e. occupation that would otherwise give rise to an adverse possession claim).
- Council will recover all costs incurred in the application of this policy.
- Council reserves the right to retain any portion of land if Council has title to such land if it is considered to be appropriate. This land may be retained to:
 - meet a strategic need or
 - protect Council's rights of ownership or
 - sell in the future in accordance with this policy.
- Council has the right to place an easement, covenant, or create an easement on, or over, the land parcel in order to protect existing rights or future requirements. If there is a requirement by service authorities to relocate any assets located within the land (e.g. drains, power lines, etc), then all costs will be borne by the purchaser.

In relation to the sale of roads, ROWs or minor reserves, if a property owner can demonstrate continuous exclusive occupation of the land for 15 years or longer and they have a right to claim the land by adverse possession, consideration may be given to discounting the purchase price by up to 25% of the current market value.

Direct Costs

All direct costs associated with the discontinuance and sale, transfer or exchange of roads, ROW's or minor reserves are to be borne by the purchaser, or shared by the purchasers. These costs include:

- legal fees (Council officers will use Council appointed legal contractors for any legal advice sought);
- surveyor's fees;
- land registry fee – Transfer of Land;

Greater Dandenong Policy

- Stamp duty;
- advertising costs;
- consolidation costs;
- planning permit application fees..

Council officers will endeavour to keep all costs borne by the purchaser(s) to a minimum and will seek to reduce costs if the portion of land is to be sold or transferred to a number of purchasers.

Relocation Costs

The relocation or replacement costs of any assets within roads, ROWs or minor reserves will be borne by the purchaser. These may include:

- relocation of fences
- service authority assets such as those belonging to water, gas or telecommunications organisations
- re-useable materials as determined by Council which may remain the property of Council
- replacement drainage or new storm water drainage.

GST

In accordance with the provisions of the *Goods and Services Tax Act 1999*, the sale, transfer or exchange of Council property, including the sale, transfer or exchange of discontinued ROWs, roads, minor or major Reserves or other land parcels will attract GST. Council will ensure that GST is added to the sale price or that the sale price is inclusive of GST.

Terms of Payment

The full purchase price will be paid to Council at the time of settlement, except at the discretion of the responsible officer. If purchasers of roads, ROW's and minor reserves meet the requirements of Council's Financial Hardship Policy, terms may be extended to allow equal payments over a three year period. In relation to term payments, an additional service charge will be applied to cover any administration costs. The transfer of land will not be passed onto the purchaser until the purchase price plus any costs or additional amounts are paid in full.

Terms payments associated with the sale of major reserves or other significant land parcels will be considered on a case by case basis and any deferment of payment will be considered in light of the market valuation.

Greater Dandenong Policy

8.1.2 Sale of Land – Public Open Space

In addition to the requirements under the LG Act, Council is required to comply with section 20 of the Subdivision Act 1988 when selling public open space.

The Subdivisions Act requires Council to apply 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 reserved (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 LG Act, improve land (whether set aside on a plan or not) used for public recreation or public resort, as parklands or for similar purposes.

9. Council Policy – Plant and Equipment

The sale or dispose of major plant and equipment is subject to the following guidelines:

- trading the equipment to suppliers; or
- obtaining expressions of interest from interested buyers; or
- selective tender from an identified group of buyers; or
- public tender – openly seeking buyers using the tender process; or
- public auction - advertisement for auction through the local paper and, where appropriate, a paper circulating in the State, or procuring the services of an auctioneer.

The selection process is to give consideration to:

- the method likely to return the higher value net of disposal costs; and
- the current written down value (book value) of the asset; and
- compliance with relevant statutory obligations.

The sale of each item of Plant and Equipment is to be subject to a minimum reserve price to be approved by the Manager infrastructure Services.

9. Proceeds of any Sale

The proceeds from any sale of surplus Council assets or land shall be allocated on the following basis:

Greater Dandenong Policy

9.1 Sale of Council owned Plant and Equipment

All sale proceeds are to be applied to the purchase of new plant and equipment.

9.2 Sale of Council Owned Land

All sale proceeds to be transferred into a Major Projects Reserve fund for Council consideration for allocation on future new asset creation / or major asset refurbishment. The proceeds allocated will be net of all expenditure including advertising, agent's fees, legal costs and other sale costs.

All reports on the sale of Council owned land must include a section on whether Council wishes to allocate a maximum of 10% of the sale proceeds into an Affordable Housing Fund dedicated to the development of future affordable housing projects. The Council resolution to sell land must include a resolution on the amount (if any) to be allocated to this fund.

9.3 Public Open Space

All proceeds from open space reserve sales are required to be used in accordance with the Subdivision and Planning Environment Act and must be allocated to the Council's Open Space Reserve.

10. Related Documents

This Policy will be implemented in conjunction with the following legislation:

- Under clause 3 of schedule 10 of the Local Government Act 1989, Council has the authority to discontinue a road or ROW, or part thereof, and sell it to a third party or retain it for municipal purposes.
- Under section 24A of the Subdivision Act 1988, Council has the authority to initiate procedures to remove and vest in itself all, or part, of a drainage reserve or sell it to a third party.
- Under section 189 of the Local Government Act 1989, Council has the authority to sell land to a third party. This may include discontinued roads and/or reserves and other Council properties.
- Under section 20 of the Subdivision Act 1988, Council may sell land set aside as public open space but must abide by the legislation in relation to the use of funds derived from the sale.

This policy will be implemented in line with Procedures – Sale or Transfer of Council Land.