

► DISPOSAL AND ACQUISITION OF LAND POLICY

POLICY NUMBER:	93 (C)
NAME OF POLICY:	DISPOSAL AND ACQUISITION OF LAND POLICY
DATE OF NEXT REVIEW:	December 2027
DATE APPROVED:	19 December 2023
RESPONSIBLE OFFICER:	Manager Facilities and Circular Economy
REFERENCES:	<i>Local Government Act 2020</i> <i>Local Government Act 1989</i> <i>Land Acquisition and Compensation Act 1986</i> <i>Victorian Government Land Transactions Policy 2022</i> <i>Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land (June 2009)</i> <i>Council Policy No. 79 (C) – Community Engagement Policy</i> Asset Plan 2022 Recreation and Open Space Strategy

This Policy has been developed to compliment applicable legislation and Government policy and guidelines relating to the Disposal and Acquisition of Land as well as Council policy and strategies.

INTRODUCTION

Hepburn Shire Council manages an extensive property portfolio. Council owned land is a valuable public asset, and it is essential that it is used to maximise the social, environmental, and economic benefits to the Hepburn Shire community.

Council responds to the needs of the community by selling surplus land and strategically acquiring additional properties. The Disposal and Acquisition of Land Policy provides a framework to guide decision making in relation to the sale and acquisition of land.

Under the *Local Government Act 2020* [LGA20], Council is able to acquire, hold, deal with or dispose of property (including land) for the purposes of performing its function and exercising its powers.

The purpose of this Policy is to ensure that Council:

- has a consistent, equitable and transparent process in relation to the disposal and acquisition of land;
- complies with best practice and legislative requirements when undertaking the sale or acquisition of land;
- strategically manages its property portfolio for the long-term best interests of the community, including the rationalisation of commitments for financial sustainability; and
- achieves best value (both financial and non-financial) in all of its land dealings.

SCOPE

This Policy applies to the way Council acquires and disposes of land within the Hepburn Shire. It is a general policy that outlines Council's principles and is intended as a framework that will assist Council in the process of acquiring and disposing of land. This Policy applies to all Council freehold land or land vested in Council.

This Policy does not apply to:

- roads, easements or sub-divisions;
- land sold by Council for non-payment of rates;
- land where Council is the appointed Committee of Management (CoM) under the *Crown Land (Reserves) Act 1978* except to the extent that Council may wish to

request/recommend the appointment or revocation of the appointment as the CoM of a Reserve.

POLICY

1. Disposal of Land

1.1. Land Disposal

The following criteria should be considered to determine if Council Land could be sold:

- Does not or will not support, facilitate or contribute to current or future service delivery outcomes as identified in the Council Plan.
- Does not contribute economic, environmental, strategic or community benefit to Hepburn Shire to justify its retention and, if sold, would contribute strategically or financially to other Council objectives.
- Has limited or no strategic value/significance to Council on a long-term basis.
- Is identified in a Council strategy, plan, budget, study, policy or planning scheme as being surplus to its requirements or not required to be owned by Council.

1.2. Disposal Principles

Council must comply with legislative obligations and apply the following principles for disposals:

- Ensure that the sale of Council Land provides the best result (both financial and non-financial) for Council and its community.
- Ensure Council Land is appropriately zoned prior to being offered for sale.
- Sell Council Land for the highest and best use of the land unless there is some derived community benefit not to.
- Not sell Council Land at a price which is less than the current market value assessed by a Qualified Independent Valuer, unless there is some derived community benefit that justifies the circumstances to sell the land at less than market value.

1.3. Property Land Assessment

To ascertain if Council Land is suitable for disposal, Council will undertake a property land assessment and consider the following:

- Legal issues including title details, verifying ownership and how the land was purchased by Council.
- No longer meets the community needs / no longer required (service, economic, strategic need/use) and/or review in the context of other assets fulfilling or capable of fulfilling this need/requirement.
- Planning and zoning requirements/status.
- Site specific information, including survey issues, land boundaries, site constraints and opportunities plus building asset condition and maintenance considerations (risks), environmental (including contamination).
- Conservation values including historical, cultural, heritage and Native Title considerations.
- Methods of sale.
- Other management options.

This assessment will be undertaken through a process of internal consultation within Council. The evaluation criteria and assessment will be clearly documented, and records must be kept and stored appropriately.

1.4. Process for Disposals

The following steps are required in accordance with the LGA20:

Step 1: Council Decision

Once a Property Land Assessment has been undertaken and it is determined that the Council Land can be proposed for sale, a Council Report will be prepared to recommend the land for sale and commence the statutory process for the sale of Council Land.

Step 2: Community Engagement

If the recommendation is supported, Council will undertake a community engagement process in accordance with its community engagement policy.

Step 3: Council Decision

Report on the outcomes of Step 2 to Council and make recommendation whether or not the land is to be sold or prospects for retention / considerations for alternate use.

Step 4: Community Information

Inform the community of the Council decision.

Step 5: Land Disposal (if proceeding)

Commence process for disposal of land following the statutory process for the sale of Council Land. Council may choose to publicise the successful sale after its completion.

1.5. Valuation of Land

An independent market valuation of Council Land will be carried out as part of the Land Assessment (see Section 1.3). It is a statutory requirement that a market valuation of Council Land will be carried out not more than six (6) months prior to the sale of the land and timing of the sale will determine if a new valuation is needed. The valuation will be used to set the sale / reserve price, taking into account the highest and best use of the Council Land and any conditions Council may place on the sale. Council Land will not be sold for less than market value unless there is some derived community benefit associated with the sale.

For land being sold to an adjoining owner, the valuation will be assessed on an added-value basis and the sale price will be consistent with the differences in values based on a before and after approach.

1.6. Method of Disposal

The sale of any Council Land should be conducted through a public process, i.e. auction / tender (open or selected) or Expression of Interest (EOI) unless circumstances warrant proceeding directly to sale by private treaty. A public notice of the intention to proceed with a proposed sale must be published at least four (4) weeks prior to the sale.

1.6.1. Auction / Tender

A licensed real estate agent must conduct the sale of Council Land by public auction or tender.

The reserve price for the sale of Council Land by public auction or tender must be set prior to the day of auction or close of tender and must not be less than the current market value of the Council Land as determined by a Valuer.

If the reserve price is not met at auction or close of tender, the real estate agent may negotiate with the highest bidder in an attempt to meet the reserve price. If negotiation with the highest bidder fails to meet the reserve price, the Council Land may remain on the market and sold by private treaty.

1.6.2. Expression of Interest (EOI)

An EOI method of sale may also be appropriate in the following (but not limited to) circumstances:

- For the sale of large or strategically located Council Land which has significant development potential or significant development barriers.
- Where, in addition to selling the land, Council wishes to control the future use or development of the land.
- Where Council is seeking to expose the land to the market to determine potential development options.
- Where Council is seeking to achieve a specific development outcome or policy objective in relation to the sale of the land.

Council may appoint a licensed real estate agent to conduct the EOI campaign. For large or complex transactions, Council should also engage a probity auditor to provide independent assurance that the EOI process is appropriate and is completed satisfactorily.

1.6.3. Private Treaty

There may be circumstances where it may be more appropriate to sell land by private treaty – which will depend on:

- the nature of the land that is proposed for sale;
- how the proposed sale is initiated;
- previous unsuccessful public methods of sale (if applicable).

Council should provide the reasons to the community why the private treaty method is the preferred method of sale, how the sale was initiated and the future use / development of the land.

Council will appoint a probity auditor to oversee the probity of the transaction.

1.7. Proceeds of Sale

Proceeds from the sale of all Council Land should be dispersed in accordance with Council's adopted annual budget, Council's adopted long term financial plan or any other resolution of Council.

If the land sold was public open space land, the proceeds will be allocated in accordance with Section 24A(8) *Subdivision Act 1988*.

2. Acquisition of Land

2.1. Land Acquisition

Council may purchase or compulsorily acquire¹ 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, i.e. for public purpose.

Council must ensure that where a land acquisition is proposed it can be demonstrated that the land is a required to support or facilitate the delivery of a current or future service to the Hepburn Shire community and must consider option to consolidate uses within existing facilities.

Funds to acquire land must be apportioned in the current financial year budget otherwise a Council Resolution is required to approve the financial expenditure for the acquisition of the land prior to purchase.

Records must be kept and stored appropriately of the process related to the purchase of property.

2.2. Acquisition of Land Assessment

To ensure an acquisition meets the strategic justification for Council ownership, a land assessment will be undertaken and consider the following:

- service, social, economic and strategic needs and uses;
- legal issues, including title details and verifying ownership;

¹ Compulsory Acquisition is only in accordance with the *Land Acquisition & Compensation Act 1986*

▶ DISPOSAL AND ACQUISITION OF LAND POLICY

- planning and zoning requirements;
- site specific information, including survey issues, land boundaries, site constraints and opportunities plus building asset condition and maintenance considerations (risks), environmental (including contamination);
- financial considerations and value;
- conservation values including historical, cultural, heritage and Native Title considerations;
- Council Strategies / Policies;
- methods of acquisition.
- consideration of whether need can be met elsewhere.

This assessment will be undertaken through a process of internal consultation within Council.

2.3. Method of Acquisition

2.3.1. General

Land may be acquired by Council via a public process (i.e. auction, EOI), by private negotiation / treaty or by Compulsory Acquisition.

Council should engage an independent real estate professional for property purchases.

2.3.2. Victorian Government – First Right of Refusal

Pursuant to the Victorian Government's Landholding Policy, upon declaring land surplus to agency requirements, the Department of Energy, Environment & Climate Action will give notice to Victorian government agencies, local government and the Commonwealth Government of any surplus land (First Right of Refusal).

This First Right of Refusal process provides municipalities in which surplus land is located the opportunity to express an interest to acquire the land for public or community purposes. All government agencies have 60 days from the date of notification in which to submit an expression of interest to acquire the surplus government land. If an

expression of interest is received, the parties are required to negotiate in good faith to attempt to agree on the terms of sale.

The landholding Minister may approve the sale of land for a community purpose at a price less than market value of the land as determined by the Valuer-General Victoria.

Council regularly receives updates to the First Right of Refusal land register from the Department of Treasury and Finance. Any surplus government land identified within the municipality will be assessed against the criteria outlined in 2.2 of this Policy to determine whether Council should submit an expression of interest to acquire the surplus government land.

2.3.3. Gifts of Land

Council will not automatically accept a gift or bequeathment of land. Before accepting or making a commitment to accept gifted land, Council must follow the processes outlined in this policy. A proposal of a gift of land or bequeathment must be referred to the Director Infrastructure & Delivery.

2.4. Market Valuation

When acquiring land, Council must obtain a Market Valuation as part of the Land Assessment (see Section 2.2) and this will determine the maximum price that Council will pay for the land, unless there is some significant community benefit associated with the purchase or other cost / time savings associated with the transaction.

Where the acquisition of land is strategically important, but the compulsory acquisition process is not used, or available, Council may consider a higher purchase price is warranted given the circumstances.

2.5. Statutory Requirements

All acquisitions of land must comply with the LGA20, Council's Community Engagement Policy, the *Land Acquisition and Compensation Act 1986*, the *Planning and Environment Act 1987* and the Best Practice Guidelines, where relevant.

DEFINITIONS

The following terms are referred to in the policy.

Term	Definition
Acquisition	the process of gaining ownership or control of land, or an interest in land through purchase, vesting, transfer or exchange
Best Practice Guidelines	Local Government Best Practice Guideline for Sale / Exchange of Land June 2009, as amended, prepared jointly by Local Government Victoria and the Government Land Monitor and the Department of Planning and Community Development
Committee of Management	when Council is the appointed Committee of Management to manage Crown Land under the <i>Crown Land (Reserves) Act 1978</i>
Council	Hepburn Shire Council
Council Land	Council owned or vested land, excluding where Council is the Committee of Management of Crown Land
LGA20	<i>Local Government Act 2020</i>
Valuer	means a person with suitable qualifications and experience as specified in the <i>Valuation of Land Act 1960</i>

FURTHER INFORMATION AND IMPLEMENTATION

Any enquiries about the Disposal and Acquisition of Land Policy should be directed to Council's Manager Facilities and Circular Economy.

This policy will be available on the Council website and at Council Hubs in Daylesford, Trentham, Clunes and Creswick.

REVIEW

The Disposal and Acquisition of Land Policy will be reviewed every four (4) years or sooner if required by legislation or organisational changes.

The officer responsible for the review of this policy is the Manager Facilities and Circular Economy.