

SALE, EXCHANGE AND ACQUISITION OF LAND POLICY

Policy Number:	3.3.5
Approved by	Council
Date Approved/Effective:	17 December 2019
Date of Next Review:	1 October 2020
Related Policies:	Nil
Applicable to Unit(s):	Whole Organisation
Responsible Officer:	Manager Business Development
Statutory Reference:	<i>Local Government Act 1989</i> <i>Land Acquisition and Compensation Act 1986</i> <i>Planning and Environment Act 1987</i> <i>Subdivision Act 1988</i> <i>Property Law Act 1958</i> <i>Transfer of Land Act 1958</i> <i>Sale of Land Act 1962</i> <i>Land Act 1958</i> <i>Road Management Act 2004</i> <i>Valuation of Land Act 1960</i>

OVERVIEW

To establish policy in relation to how Council deals with land transactions.

THE POLICY

This policy will outline principles to:

- Ensure compliance with legislative provisions and other obligations;
- Facilitate appropriate utilisation and development consistent with other Council policies, strategies and plans;
- Outline the elements to be included in operational guidelines and procedures;
- Reduce risk/liability for Council.

DEFINITIONS

Types of land transaction dealings concerned with this policy include:

- Sale;
- Exchange;
- Transfer;
- Purchase (by tender or private treaty);
- Compulsory acquisition.

RISK MANAGEMENT

This policy will facilitate the development of appropriate guidelines and procedures and therefore reduce Council's exposure to risk, including in the areas of:

- Public liability;
- Legal liability;

- Planning;
- Reputation.

Risk will also be reduced by identifying legislative requirements and adopting best practice methods related to land transactions.

LOCAL GOVERNMENT BEST PRACTICE GUIDELINES

The general principles provided for in the *Local Government Best Practice Guideline for the Sale, Exchange & Transfer of Land*, Department of Planning and Community Development, June 2009 should be adopted.

A summary of these guidelines is as follows:

- All transactions must comply with the provisions of the *Local Government Act 1989*. Sales must be conducted through a public process, unless circumstances exist that justify an alternate method of sale.
- Transactions should be in the best interests of the community and provide the best result (financial and non-financial) for Council and the community.
- All sales/transfers/exchanges should be at not less than market as, assessed by a valuer. In the circumstances that the transaction is at less than market value, an explanation of the circumstances, reasons or factors which led to the decision should be clearly documented.
- Land should be appropriately zoned (highest and best use / price).

EVALUATIONS OF LAND ASSET REQUIREMENTS

A regular land evaluation exercise should occur to identify unutilised Council land that is no longer required, or land that may be required in the future. The evaluation exercise should consider items such as:

- Current use, status and condition;
- Planning schemes, strategic plans, or other material that identifies land asset requirements;
- Whether land is required for community use (current or future);
- Environmental, cultural, social or other attributes;
- The level of public consultation to be undertaken (outside that required to comply with legislative provisions) appropriate when considering dealing with the land.

Remediation action plans should be progressively developed to deal with Council owned or controlled land that has been identified as contaminated. Various options are available to Council and these would need to be assessed having consideration of a variety of issues. Work to rehabilitate identified sites should be completed having regard to risk and the sites future potential for disposal. This would be done acknowledging other priorities which require Council to prioritise resources.

REPORTING TO COUNCIL

Land evaluation reports as referred to above should be completed with the recommended actions presented to Council on an annual basis or as required.

Land transactions will require a number of briefings or workshops and formal resolutions of Council. All guidelines and procedures related to land transactions will specify the frequency and

timing of Council briefings/workshops and Council Reports. Transactions will only be progressed following an authorisation of Council in the form of a Council resolution.

LEGISLATIVE REQUIREMENTS

Section 189 *Local Government Act 1989* – restriction on the power to sell or exchange land. Council must comply with s189 and can only be exempted with approval from the Minister for Local Government pursuant to s193.

Section 189(2)(b) *Local Government Act 1989* – a valuation must be obtained in accordance with s13DA(1) of the *Valuation of Land Act 1960*.

Section 20 *Subdivisions Act 1988* – prescribes how Council must treat the proceeds from the sale of Public Open Space.

Other legislative provisions may apply, and these should be identified by including specific instruction to Council's solicitor to this effect.

PROCEEDS FROM THE SALE OF LAND

Where land is sold, and it is not defined as Public Open Space, funds will be placed into an asset improvement reserve for use on any other initiative of Council. Funds from Public Open Space would be dealt with in accordance with the s20 of the *Subdivisions Act 1988* which in summary requires:

- Land to be purchased for a similar purpose;
- Existing Public Open Space to be improved.

PURCHASE AND ACQUISITION OF LAND

In order for Council to meet its various objectives and responsibilities, land may need to be acquired. Examples may include:

- Recreational activity;
- Community services;
- Operational purposes;
- Infrastructure requirements (drainage, roads, etc)

The legislative requirements for the purchase of land are prescribed in s187 of the *Local Government Act 1989* and the *Land Acquisition and Compensation Act 1986*.

Funds needed to facilitate the acquisition should be identified and allocated through the annual budget process. As part of the land evaluation process a current valuation should be obtained to ensure that budgets for the land acquisition are reliable and include provision for any cost escalation.

Acquisitions should generally occur at not more than market value, unless there is an explanation providing the reasons or factors to support offering such a purchase price.

The method of acquisition should also be considered in the early stages of a project requiring land to be acquired. As a general principle, Council should enter into discussions to explore the possibility of acquiring by negotiation. Any compulsory acquisition process should be initiated following a determination that circumstances justify acquisition by this method.

HUMAN RIGHTS

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.

Related Documents

Type:	Details:
Procedure:	Land Transactions Current West Sale Airport Land Sales Framework
Strategy:	Built Environment Strategy