



Maribyrnong  
CITY COUNCIL

## Property Sale, Transfer and Acquisition Policy 2018

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### REVISION RECORD

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## Introduction

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Council is the custodian of land on behalf, and for the benefit, of its community. This land includes property owned by Council, Crown Land where Council is the Committee of Management (CoM) and land leased or licensed by Council for identified purposes.

Council has a range of strategies to assist with the long term planning of community infrastructure needs, including the Community Infrastructure Plan and Open Space Strategy. Dependant on the land type and status, different legislation with specific requirements and terms can apply to property transactions. Therefore, each property matter must be dealt with in accordance with its specific legislative requirements.

## Purpose

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Council is responsible for the sustainable management of its assets and maximising the community benefit arising from its property use.

This policy has been developed to meet the following objectives:

- **Custodianship:** Ensure Council owned properties are appropriately planned for and utilised, having regard to the interests of local communities and the care of the assets.
- **Community Benefit:** Ensure Council owned properties are used to meet demonstrated community needs consistent with the Council Plan.
- **Consistency:** Guidance to Council and the broader community with regard to process for the sale, transfer and acquisition of Council owned property, in line with best practice.
- **Financial:** Ensure sound financial management and effective administration of Council owned properties.
- **Legal:** Ensure the legal sale, transfer and acquisition of Council owned properties.
- **Transparency:** A framework for the fair and transparent approaches for the sale of Council owned properties.

## Scope

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This policy applies to Council owned buildings and land across the municipality and the purchase of land that is identified as required for future service provision.

## Definitions

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**Adverse Possession:** Actual possession of land without permission (licence) of the owner.

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

**Council Managed Property:** Land which Council responsible for. This includes land owned or leased by Council and Crown land which Council is Committee of Management.

**Council Owned Property:** Land which Council owns. Not Crown Land.

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

**Market Value:** Valuation of the land by a valuer engaged by Council (not more than six months old).

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

**Reserve:** Land that has been designated a particular purpose (eg. Drainage reserve, recreation reserve).

**Revenge strips:** Revenge strips were narrow strips (1 metre or less) created around subdivisions (often abutting a road) with the sole purpose of preventing access to public roads and public services within that subdivision.

**Right of Way:** Type of road that was established on early plans of a subdivision to provide access to adjoining properties.

**Service Manager:** The relevant Council officer who manages the property. The Service manager is allocated based on the nature of the use of the property.

**Stratum:** Includes the land above ground level (airspace) and below ground level (subterranean).

**Vested in Council:** Land that has been transferred into Council's possession (eg. Right of way).

# Responsibilities

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Council's property portfolio is managed through a centre-led approach with key responsibilities outlined below for the Executive Management Team, Property Management Team and Service Managers.

Department	
Executive Management Team	<ul style="list-style-type: none"> <li>• Direct relevant teams across the organisation to create strategic policies, documents, masterplans and business cases involving future decision making relating to the sale, transfer and acquisition of property to meet current and future service needs and endorse the documentation created.</li> <li>• As required by Council's instruments of delegation, refer relevant matters to Council for consideration.</li> </ul>
Service Manager	<ul style="list-style-type: none"> <li>• Create strategic documentation and provide strategic advice regarding current and future community service needs.</li> <li>• Strategic documentation and advice provided to identify location, size and key features of property required to meet current and future service needs.</li> <li>• Create masterplans and business cases to objectively justify future decision making relating to the sale, transfer and acquisition of property.</li> </ul>
Property Management	<ul style="list-style-type: none"> <li>• Provision of strategic advice regarding property matters.</li> <li>• Develop policy, provide advice, guidance, template agreements and key terms relating to the sale, transfer and acquisition of property.</li> <li>• Management of process (including consultation) and transaction (including legal).</li> <li>• Advice regarding compliance with legislation.</li> <li>• Maintain records and data flow.</li> </ul>

## Delegated Responsibilities

Property transactions will be negotiated and executed in accordance with legislative requirements and Council's Instruments of Delegation. The decision to sell, transfer or acquire property will be made in accordance with Council's instruments of delegation.

# Policy

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## 1. Principles

Council is committed to managing its land holdings so that municipal benefit is maintained and recognises it has a responsibility to ensure this land is used, retained, maintained, and disposed of in a manner that best meets the interests of past, current and future residents of the municipality.

The management of Council's property holdings will be guided by the following principles:

### Principle 1

Council will aim to retain existing land holdings except where service consolidation strategies and community infrastructure planning identifies redundant assets. Any disposal of identified surplus land will be in accordance with the Property Sale, Transfer and Acquisition Policy as adopted by Council.

### Principle 2

Council will aim to add to its existing landholdings where current or projected service provision necessitates additional facilities.

### Principle 3

Council will not deal with land matters for the purposes of speculation.

### Principle 4

Council will progressively dispose of "rights of ways" which are no longer required through discussion / negotiation with abutting landowners (as provided for under Section 189 of the *Local Government Act 1989*).

### Principle 5

Council will follow the Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land (Department of Planning and Community Development 2009) and applicable legislation.

## 2. Strategy

All land sales, transfers and acquisitions will be guided by the Council Plan, Council Strategies and this Policy. Council Strategies, including the Community Infrastructure Plan, Open Space Strategy and other relevant strategies will identify the current use and future needs of Council managed properties.

## 3. Sale of Land

Land determined to be surplus may be sold, in accordance with legislation and this Policy.

In accordance with the Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land (the Best Practice Guideline), sales will be conducted through a public process (public auction, public tender or selected tender by Expression of Interest) unless circumstances exist that justify an alternative method of sale. The most appropriate sale process will be selected based on the site-specific issues and Council's objectives in relation to the sale.

### 3.1 Right of Way (ROW)

Council has power under the *Local Government Act 1989* to discontinue roads and rights of way where Council forms the view a road or right of way is no longer reasonably required for public use. Statutory notification and consultation processes are required to discontinue a road.

Following discontinuance, Council may sell the land (usually by private treaty) to adjoining land owners.

Council may decide to sell the land resulting from a discontinued right of way where:

- The amenity and neighbourhood character will be improved by the sale, and/or
- The sale will help to address any health and safety issues (such as dumped rubbish and illicit activity), and/or
- Where there is a maintenance or monitoring cost for Council, and/or
- The sale will not create a land locked parcel of land (unoccupied land) that remains vested in Council, and/or
- Vehicle access to property, including for construction/improvement purposes, will not be compromised. Convenient pedestrian access is not considered a determining factor, and/or
- Utility provider access or easement is not inhibited.

A location that has been considered for discontinuance and the process abandoned will not be reconsidered unless property ownership has changed.

The preferred approach is to offer half the land which is proposed to be sold to each abutting land owner, where there is evidence of long term occupation of a parcel of a ROW of 15 years or more, the first option to purchase will be offered to that occupier. The second and further options will be offered to abutting property owners.

### 3.2 Revenge Strips

Revenge strips were historically created to prevent vehicular access to property from roads and rights of way.

While revenge strips have not been created for many years, there are still cases where they must be removed, for example, to consolidate land. There is a mechanism under the *Subdivision Act 1988* for these revenge strips to vest in Council. They can then be sold with the relevant portion of the discontinued road.

Revenge strips may be sold to allow access to a property, particularly in the case of new developments and subdivisions. By the nature of location (ie. between Council managed land and private property), revenge strips will usually be sold by private treaty. Each proposal will be assessed on its merits and potential impact.

### 3.3 Public Open Space

Under Section 20(4) of the *Subdivision Act 1988*, Council must provide for replacement open space when selling open space.

Section 20(2) of the *Subdivision Act 1988*, requires councils to use the proceeds from the sale of any open space to:

- Buy land for use for public recreation, as parklands or for similar purposes, or
- Improve land already set aside (zoned or reserved) for use for public recreation, as parklands or for similar purposes, or
- With Ministerial approval, improve land (whether set aside or not) used for public recreation, as parklands or for similar purposes.

However, should Council wish to dispose of a reserve without replacing it, the reserve status may be removed through a planning permit process and application of Section 24A of the *Subdivision Act 1988*.

### 3.4 Stratum

Any proposal to sell land at strata (airspace and subterranean) or enter into a Section 173 Agreement under the *Planning and Environment Act 1987* will be assessed based on the site specific proposal and issues, including potential future requirements and obligations.

## 4. Transfer of Land

A land exchange by private treaty between Council and another party will be considered where there is an identified need in line with the Council Plan or a strategic document and significant community benefit can be obtained by the exchange.

Where properties to be exchanged do not have the equivalent market value, Council will consider financial exchange in addition to the property exchange.

## 5. Acquisition of Land

The acquisition of land for identified Council purposes will be guided by the Council Plan, Council Strategies and this Policy. In line with the principles, Council will only look to acquire land where current or future service provision need is identified. No speculative land acquisition will be considered by Council.

Council will not acquire land at a price which is greater than the current market value as determined by a certified valuer engaged by Council. If exceptional circumstances exist where a specific site acquisition would provide significant community benefit and the strategic location of the site is unique in allowing Council to perform its functions and meet its objectives, then the additional value provided by the site will be explained and quantified when Council is considering the acquisition.

In accordance with section 192 of the *Local Government Act 1989*, if Council acquires land for a particular purpose, it will only use the land or part of the land for another purpose if the land is no longer required by Council for the purpose it was originally acquired. A public consultation section 223 process will be undertaken for the proposed use of the land for another purpose.

## 6. Adverse Possession

Land registered in Council's name cannot be adversely possessed (under the *Limitations of Actions Act 1958*), including ROWs that are a public highway.

Adverse possession of land can occur when the adverse possessor 1) has possessed the land for more than 15 years, 2) can demonstrate they have taken possession (physical control and an intention to possess) and, 3) that Council no longer enjoys possession.

If the adverse possession claim is successful, the land can be transferred to the possessor by the Titles Office.

### 6.1 Removal of private assets from Council managed property

Where no agreement can be reached between Council and the existing occupier of Council owned land, for the purchase of land being occupied, Council will notify the occupier to remove all buildings and obstructions (fences, gates) on the land.

## 7. Community Consultation and Transparency

At a minimum Council will meet statutory notification and community consultation requirements, and in some instances will consult more comprehensively.

Council will provide public information regarding the outcome of property sales, transfers or acquisition that does not compromise commercial in confidence or privacy requirements.

## Related Legislation

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A number of laws and regulations govern Council owned land transactions:

- *Local Government Act 1989*: Section 189 sets out the restrictions and requirements to sell land (public notice, s223 consultation, value not more than 6 months old). Sections 206 and 207 and Schedule 10 Clause 3, and Schedule 11 Clauses 5 and 8 provides Council's powers over roads, including discontinuance.
- *Land Act 1958*: Law regarding the sale and occupation of Crown Land. Section 400 ability for Council 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) provide restrictions and obligations regarding the sale of open space.
- *Road Management Act 2004*
- *Planning and Environment Act 1987*: Provides for permitted uses of land through Council's planning scheme (zoning). Most encroachments or projections from buildings into the road space require planning permits.
- *Native Title Act 1993*: Relevant where native title exists
- *The Building Regulations 2006*: Division 2 – lists requirements for various projections or encroachments over Council owned property.
- *Limitation of Actions Act 1958 Section 7* Sets out limitations for adverse possession for Crown, Victrack, Water authorities and Council land.
- *Environment Protection Act 1970*: Sets out obligations for dealing with pollution/contamination of land.
- *Privacy and Data Protection Act 2014*.

## Related Documents

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- Council Plan
- Council Long Term Financial Strategy
- Lease and Licence Policy
- Community Infrastructure Plan
- Open Space Strategy
- Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land (Department of Planning and Community Development 2009)

## Review of Policy

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The Policy will be reviewed in 2022, or as legislation requires, or Council determines a need has arisen.