



South Gippsland Shire Council

## COUNCIL LAND OWNERSHIP POLICY

|                         |               |                  |  |
|-------------------------|---------------|------------------|--|
| Policy Number           | C34           | Directorate      | Sustainable Communities & Infrastructure |
| Council Agenda Item No. | E.6           | Department       | Sustainable Communities                  |
| Council Adoption Date   | 23 March 2016 | Primary Author   | Manager Sustainable Communities          |
| Revision Date           | 2019/20       | Secondary Author | Coordinator Property                     |

### POLICY OBJECTIVE

To provide the guiding principles when dealing with Council land on such matters as sale, exchange, purchase, and development, with the aim of:

- Providing transparent processes when selling, exchanging, purchasing and developing Council land.
- Reducing long term maintenance costs for land which has no immediate or long term strategic use.
- Facilitating better investment opportunities and economic growth.
- Reducing risk / liability for Council.
- Ensuring best value is achieved in land dealings.

Refer to **Attachment 1 – Guiding Principles for the Sale, Exchange, Purchase and Development of Land.**

### LEGISLATIVE PROVISIONS

| Act (or as amended)                      | Section or Clause  |
|--|--|
| Local Government Act 1989 (Vic)          | 186A, 187A, 189, 189(2)(b), 190, 191, 192, 193, 223, Clause 3, Schedule 10 |
| Land Acquisition & Compensation Act 1986 | All  |
| Planning and Environment Act 1987        | All  |
| Subdivision Act 1988                     | Sections 20, 24 and 35   |
| Property Law Act 1958                    | All  |
| Transfer of Land Act, 1958               | All  |
| Sale of Land Act, 1962                   | All  |
| Land Act 1958                            | All  |
| Road Management Act 2004                 | All  |
| Valuation of Land Act 1960               | 13DA(1A)   |

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## DEFINITIONS

- “Council”** means South Gippsland Shire Council or its predecessors.
- “Land”** means land for which Council:
1. is the registered proprietor;
  2. is entitled to be the registered proprietor; or
  3. is required to be the registered proprietor in order to facilitate its core business.
- “LGA”** means the Local Government Act, 1989
- “Public Open Space”** for the purposes of this Policy, Public Open Space is defined as land for which Council is the registered proprietor and which has been created as a Reserve on a Plan of Subdivision or is contained within a Public Park and Recreation Zone within the South Gippsland Planning Scheme.

## POLICY STATEMENT

As Council's Vision 2020 represents the aspirations of our diverse communities and articulates a vision of what South Gippsland should be like in the year 2020, this Policy will contribute to Council's Vision by providing appropriate guidelines when dealing with Council land and any associated sale, exchange, purchase and/or development to facilitate better investment opportunities and economic growth.

## RISK ASSESSMENT

In the absence of appropriate policies and procedures, Council exposes itself to risk in the areas of increased maintenance costs, public and legal liability, poor planning and reputation. Accordingly, this Policy will contribute to reducing risk by recognising legislative requirements, and referring to Victoria State Government Policies.

## IMPLEMENTATION STATEMENT

- This Policy will be made available on Council's website.
- This Policy will be reviewed on a 4 year cycle.



## ATTACHMENT 1

# Guiding Principles for the Sale, Exchange, Purchase and Development of Land

### 1. LAND EVALUATION

To determine whether or not Land is:

- a. surplus and can be sold or exchanged; and/or
- b. required to be purchased to facilitate a public purpose.

Council must conduct a land evaluation exercise to gain sufficient information on the manner and extent to which the Land contributes to Council achieving the objectives in its Vision and existing or proposed strategic initiatives.

The land evaluation exercise will consider, but is not limited to, such items as:

1. The current use, status and condition of the Land.
2. Council's planning scheme, strategic policies, strategies and plans that may govern the use of the land.
3. Is the land recognised in a community plan for the locality.
4. Can the Land contribute to an overall development which would facilitate positive economic and/or financial outcomes.
5. What is the environmental and social (cultural or otherwise) status of the Land.
6. What level of public consultation is required when dealing with the Land? For example, should public consultation be over and above that required by Sections 189 and 223 of the Local Government Act, 1989.

### 2. REPORTING TO COUNCIL

Once the land evaluation exercise has been completed, an initial report to Council must be prepared which clearly articulates the justification for dealing with the Land in the manner proposed and seek a resolution to proceed. Further reports to Council may be required subject to the nature of the project.

### 3. GUIDELINES FOR SALE / EXCHANGE OF LAND

The general principles for the sale and exchange of Land are summarised as follows:

- 3.1. All sales and exchange of Land must comply with the provision of the LGA.



Sales and exchange of Land must be conducted through a public process (i.e. public advertising for sale or 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<sup>1</sup>. Council is to explain to its community the circumstances which led to its decision to use an alternative method of sale in the interests of probity, public accountability and transparency.

- 3.2. Sales and exchange of Land should be in the best interest of the community and provide the best result, both financial and non-financial, for Council and the community.
- 3.3. Generally, all sales and exchange of Land should occur at not less than the market value assessed by a valuer engaged by Council. However, in the event that land is sold for less than the market value, an explanation must be provided as to the circumstances, reasons or factors which led to the decision to recommend accepting a sale price that is less than market value.
- 3.4. Prior to being offered for sale or exchange, the Land should be appropriately zoned. This will ensure that the ultimate use of the Land is determined by that zone and the highest possible sale price is achieved.

#### 4. **SPECIFIC LEGISLATIVE REQUIREMENTS FOR THE SALE OR EXCHANGE OF COUNCIL LAND**

- 4.1. Restriction on power to sell or exchange Land – Section 189 LGA

Council must comply with Section 189 of the LGA when selling or exchanging Land. Council can only be exempted from complying with Section 189 of the LGA with the approval of the Minister for Local Government pursuant to Section 193 of the LGA.

- 4.2. Valuation - Section 189(2)(b) LGA

Council must comply with Section 189(2)(b) of the LGA. This section requires that the valuation must be obtained from a valuer holding the qualifications and experience specified under Section 13DA(1) of the Valuation of Land Act 1960.

- 4.3. Public Open Space – Section 20 Subdivision Act 1988

Council must comply with Section 20 of the Subdivision Act 1988. Section 20 requires Council to use the proceeds from the sale of any Public Open Space to:

<sup>1</sup> An example of a private treaty sale is the sale of a discontinued road to an adjoining land owner, sale of land in an inappropriate subdivision, sale of land which is not suitable for sale by a public process due to access issues or constraints on Certificate of Title to the Land or local historical reasons.



1. Buy land for use for public recreation or public resort, as parklands or for similar purposes; or
2. Improve land already set aside, zoned or reserved (by the Council, the Crown, a planning scheme or otherwise) for the use for public recreation or public resort, as parklands or for similar purposes; or
3. 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.

## 5. PROCEEDS FROM THE SALE OF LAND

- 5.1. Where the Land is not within the definition of Public Open Space, the proceeds of sale will be placed into a strategic reserve for reinvestment into Land purchases and development for enhanced community facilities and infrastructure within the Shire.
- 5.2. Where the Land is public open space, then Council will comply with the provisions described at 4.3 above.

## 6. PURCHASE AND DEVELOPMENT OF LAND

From time to time, Council will be required to purchase and/or develop Land in order to accommodate a public purpose and in connection with the performance of its functions. Examples of public purposes are:

1. Drainage easements.
2. Road widening.
3. Recreational activity.
4. Community services.
5. Office purposes.
6. Infrastructure generally.

Council will allocate funds for purchase and/or development through its annual budget process, capital works program, or strategic reserve. Certain funds/accounts are available only for specific purposes.

A summary of the general principles for the purchase of Land for development are as follows:

- 6.1. All purchases must comply with the provisions of the LGA and where relevant, the *Land Acquisition and Compensation Act, 1986* and *Planning and Environment Act, 1989*.



- 6.2. Purchases must be in the best interest of the community and provide the best result, both financial and non-financial, for Council and the community.
- 6.3. Recognise Council's right of first refusal over Government land within its Shire<sup>2</sup> and the opportunity this right presents to facilitate an identified public purpose.
- 6.4. Generally, all purchases should occur at not more than the market value assessed by a valuer engaged by Council. However, in the event that land is purchased for more than the market value, an explanation must be provided into the circumstances, reasons or factors which led to the decision to recommend offering a purchase price that is more than market value.
- 6.5. Prior to purchasing Land an investigation into the suitability of the Land for the purpose for which the Land is being bought will be conducted and in particular, an enquiry into the history of the prior uses of the Land in order to identify any potential contamination issues.
- 6.6. Once the Land has been purchased and, if necessary, the Land should be appropriately zoned for the purpose for which it was purchased (ie. a public zone).

## 7. LEGISLATIVE REQUIREMENTS FOR THE PURCHASE OF LAND

- 7.1. The legislative requirement for the purchase of Land is provided at Section 187 of the LGA, 1989. The *Land Acquisition and Compensation Act*, 1986 may also apply.
- 7.2. Although Council is not bound by State Government procedures for the purchase, compulsory acquisition and sale of its Land, reference can be made to the Victoria Government Land Monitor Policy for the Purchase, Compulsory Acquisition and Sale of Land which provides useful information when purchasing land for government purposes.

This Policy can be accessed from:

[http://www.dse.vic.gov.au/\\_data/assets/pdf\\_file/0020/104096/Policy\\_and\\_Instructions\\_for\\_the\\_Purchase\\_Compulsory\\_Acquisition\\_and\\_Sale\\_of\\_Land.pdf](http://www.dse.vic.gov.au/_data/assets/pdf_file/0020/104096/Policy_and_Instructions_for_the_Purchase_Compulsory_Acquisition_and_Sale_of_Land.pdf).

<sup>2</sup> Refer to clause 4.3 of the Victoria Government Land Monitor Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land (August 2000).