



Sale or Exchange of Council Land Policy

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1. PURPOSE

1.1 The purpose of this policy is to:

- Establish the principles to be applied to the sale of Council-owned land to ensure it is subject to a fair and transparent process in accordance with relevant legislation; and
- Provides criteria to determine if land is considered surplus.

2. SCOPE

2.1 This policy applies to all land no longer required by Council for strategic or operational purposes and therefore has been identified as surplus and for potential sale.

2.2 This policy covers Council-owned land, buildings and public open space. It does not apply to Crown Land controlled and / or managed by Council on behalf of the Crown.

3. POLICY STATEMENT

3.1 The sale of Council-owned land will be subject to a fair and transparent process. All sales of land assets will:

- be consistent with Council's economic, social and environmental objectives;
- be undertaken in compliance with legislative and other obligations;
- occur only after consultation with all affected stakeholders and relevant sections of the community, taking into account all relevant comments and representations;
- be undertaken with the intention of securing the best possible financial and/or other outcomes for the community;
- be undertaken through a fair and equitable process; and
- be open to public scrutiny while maintaining appropriate levels of commercial confidentiality.

3.2 This policy is to be read in conjunction with the State Government Department of Planning and Community Development Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land.

4. PROCEDURES

5. General Provisions

- 5.1 Golden Plains Shire Council has a responsibility to manage its real estate assets so that municipal requirements are met, whilst considering the opportunity or holding costs associated with land assets. These requirements may change over time and Council's land assets schedule should be continually reviewed to ensure that land is being held for a specific purpose, or identified as land that may be suitable for disposal.
- 5.2 The current and future use of property, as well as the economic potential of disposal, will be considered by Council.
- 5.3 This policy has been prepared to assist Council and officers in establishing the principles to be applied and outline the procedures to be followed with regard to the sale of Council Land.
- 5.4 The sale or exchange of Council-owned land will be subject to a fair and transparent process. All sales or exchanges will:
- be considered in the strategic context of Council's economic, social and environmental objectives;
 - be undertaken in a considered and responsible way and in compliance with legislative and other obligations;
 - occur only after consultation with identified stakeholders and relevant sections of the community, taking into account all relevant comments and representations;
 - be undertaken with the intention of securing the best balance of possible financial and /or other outcomes for the community; and
 - be open to public scrutiny while maintaining appropriate levels of commercial confidentiality.

6. Compliance

- 6.1 The *Local Government Act 1989* sets out the legislative requirements for the sale or exchange of Council-owned land.
- 6.2 Council also seeks to adhere to the State Government Department of Planning and Community Development Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land.
- 6.3 Council may, at its discretion, elect to undertake a public notice procedure and hearing of submissions in relation to any sales or exchanges that would otherwise be covered under Section 191 of the *Local Government Act 1989*.

7. Property Review and Designation

- 7.1 All properties will be reviewed periodically for municipal usefulness, with particular attention paid to land not currently or adequately used for municipal purposes.

8. Criteria – Surplus land

8.1 To assist to determine if land is considered surplus, the following criteria will be considered:

Existing use / potential future use

- Is the property used for a purpose associated with a service provision by Council?
- Does the property have future operational, community or recreational needs? If yes identify the use and timeframe? (5/10/20 years)
- Is the land identified in a plan or study? i.e. Bannockburn Urban Design Framework, Bruces Creek Master Plan, Gheringhap Structure Plan

Restrictions on Use

Are there reasons Council own the property for example:

- Covenant restriction on title;
- Legal agreement restricting sale;
- Gifted to Council for a specific purpose;
- Contamination;
- Given to Council as Public Open Space contribution and zoned Public Open Space;
- Flood liability; or
- Acquired from unpaid rates.

Conservation Value

- Does the property have cultural, natural or heritage value that should be maintained?

Financial considerations

- Is there a cost to Council to maintain the site?
- Is the property a financial liability?
- Is there a benefit to utilise the revenue from the sale for other needs i.e. upgrading infrastructure on another site or purchasing a more suitable site?

Location

- Is there a better location to provide the service?
- Is the property in a growth area and may be required in the future to

accommodate this growth?

- Is the proximity of the property close to other services i.e. town center which gives the property high value / potential for the future?

8.2 Properties that are designated as surplus may be sold, exchanged or reserved for exchange for other land that the municipality requires.

8.3 Council will not seek to retain surplus property, but will actively seek to sell, exchange or reserve such property in order to provide maximum social and economic benefit for the community.

8.4 The decision that property is surplus to Council's identified or expected service needs should be made at a Council meeting that is open to the public.

8.5 Council will undertake consultation in accordance with Section 10 prior to the Council meeting at which land may be considered to be surplus.

9. Preliminary Report to Council to Sell Land

9.1 Prior to any sale or exchange of land process commencing, including public notice or other consultation, a report is to be provided to Council outlining the following:

- Description of property;
- Current market valuation and date of valuation;
- Locality map;
- Current use;
- Reason for recommended sale;
- History of Council ownership including a Certificate of Title;
- Recommended method of disposal (refer to sections 11 to 14);
- Recommended sale price range and justification if range is less than valuation;
- Any specific terms or conditions;
- Any encumbrances;
- Timelines for sale; and
- Authorisation for relevant officers to proceed with:
 - Determining a preferred purchaser;
 - Undertaking the statutory process including public advertising; and
 - Execution of sale documentation, in the event that no submissions are received.

- 9.2 If submissions arise, the matter will proceed in accordance with the requirements of the Act and a decision may require formal resolution by Council.
- 9.3 If the report prepared by officers recommends that the property is to be sold, the report will be considered at a meeting that is closed to the public to keep the valuation and reserve price commercial in confidence.
- 9.4 If Council resolves to sell the property, the report will remain a confidential matter and only the Council resolution should be released to the public, with the exception of the valuation or reserve price with these and other financial details to remain confidential.
- 9.5 If Council resolves to not sell the property, it may consider whether the report should remain confidential or be brought into the open in full.
- 9.6 If the property has not previously been determined to be surplus to Council's needs through Council resolution at a meeting open to the public and Council is approached by a prospective purchaser, then a report shall also be prepared for Council to consider the status of the property at a meeting open to the public. In this case, consultation should occur in accordance with section 10 prior to preparation of the report unless the matter is deemed to be urgent by the Chief Executive Officer.
- 9.7 The report relating to the determination that land is surplus must be considered before a report to sell the property can be considered.

10. Consultation Process

- 10.1 Consultation under this policy will be undertaken with the objective of raising community awareness that Council is considering the future use of the property. The consultation process may include public notice via website or newspapers, as well as consideration of direct notice to previous users, community groups and neighbouring landowners.
- 10.2 Consultation under of this policy will be undertaken with the objectives of providing an open and transparent process for the community about the sale process and to meet Council's legislative obligations, rather than focus on the future of the land.
- 10.3 All statutory advertisements must include a legal property description and a local name by which the property is known (if any) together with all other relevant details in relation to the sale e.g. price, special conditions. Statutory advertising will be placed with Council's regular print media outlets.

11. Methods of Disposal

- 11.1 Sale or exchange of land may proceed in the following manner:
- Public Competitive Sale (Auction or Agent)
 - Private Sale
 - Other Sales

12. Public Competitive Sale

12.1 After completing the public notice and submission requirements under the Local Government Act 1989 and Council resolving to sell, the following procedures should apply:

- At least two quotations be obtained from licensed agents to act for Council
- Selection of an appropriate real estate agent to dispose of the property may be based on the following criteria but not limited to:
 - type of property to be marketed
 - relevant experience
 - proposed commission
 - necessary licences
- Unless directed otherwise through Council resolution, the process of sale will be:
 - By Expression of Interest where Council:
 - has determined a preferred use or function for the land;
 - is seeking the best offer to achieve that desired outcome; and
 - may be willing to accept an offer that does not necessarily represent maximum financial return to Council.
 - By auction where Council:
 - has not determined a preferred use or function for the land; and
 - intends to accept an offer that represents maximum financial return.
 - By direct negotiation where an Expression of Interest or Auction process has been pursued but not resulted in an accepted offer.
- If reserve is met then sale proceeds.

13. Private Sale

- 13.1 Unless directed otherwise through Council resolution, the process of sale will be by private sale where a public authority, public agency or similar public body has expressed interest in the acquisition of Council property for a community use or community benefit.
- 13.2 The Chief Executive Officer, or an officer authorised by the Chief Executive Officer, is empowered to negotiate with prospective purchaser/s where Council has determined a private sale method.
- 13.3 The Chief Executive Officer to approve final sale price and any terms or conditions of sale in accordance with any formal resolution by Council.
- 13.4 Sections 7, 8 and 9 shall be satisfied prior to the Chief Executive Officer determining to sell a property through private sale.

14. Other Sales

- 14.1 If any sales fall outside the guidelines above then Council approval will be required prior to acceptance of any offer to purchase.

15. Contracts of Sale

- 15.1 All Contracts of Sale are to be prepared by Council's legal advisors and signed by the Chief Executive Officer under delegation.

16. Payment of Costs

- 16.1 Each party will bear their own costs in relation to a sale of land process. Council costs may include valuation fees, legal costs and real estate agent fees.

17. Authorisation

- 17.1 The Chief Executive Officer is authorised to negotiate and sign contracts of sale in accordance with the Chief Executive Officer's Instrument of Delegation or as resolved by Council.

18. Expiration of Sale Offer

- 18.1 An offer to sell land by Council will have been deemed to have lapsed under the following conditions:
- If a written offer to purchase the property has not been received within a period of twelve months from date of Council resolution to sell, or
 - If a contract of sale has not been signed by a purchaser within a period of six months from date of a written acceptance of an offer by the Chief Executive Officer on behalf of Council.
- 18.2 In the event that the offer to sell lapses, the matter will be referred back to Council for further consideration.

19. Use of Proceeds

- 19.1 Unless otherwise resolved by the Council, sale proceeds from land other than that reserved as Public Open Space shall be assigned to the Accumulated Unallocated Cash Reserve.
- 19.2 Proceeds from the sale of land reserved for Public Open Space must be assigned as directed in the *Local Government Act 1989*, *Planning and Environment Act 1987* and *Subdivision Act 1988*. In the event that there are no obligations under these pieces of legislation, then the proceeds will be assigned to the Accumulated Unallocated Cash Reserve.

20. SUPPORTING INFORMATION

- 20.1 Relevant sections from the *Local Government Act 1989* applicable to this policy:
- s.189 Restriction on power to sell land
 - s.191 Transfer, exchange or lease of land without consideration
- 20.2 The Department of Planning and Community Development, Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land (June 2009).

21. RESPONSIBILITIES

21.1 Compliance, monitoring and review:

The policy owner is responsible for ensuring the policy:

- aligns with relevant legislation, government policy and Council's requirements/strategies/values;
- is implemented and monitored (i.e. the policy is followed, reflects the changing policy environment, and emerging issues are identified); and
- is reviewed to evaluate its continuing effectiveness (e.g. achieving its purpose, remains relevant/current).

21.2 Reporting:

The policy owner is responsible for reporting, where required by the policy.

21.3 Records Management:

Council must maintain all records relevant to administering this policy in accordance with the *Public Records Act 1973*.

22. DEFINITIONS OF TERMS OR ABBREVIATIONS USED

Term	Definition
Asset	<i>Means 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.</i>
Council	<i>Golden Plains Shire Council</i>
Councillors	<i>Means the individuals holding the office of a member of Golden Plains Shire Council</i>
Council-owned land	<i>Land owned by Council, including vacant land, discontinued roads, and any building and development thereon.</i>
Market valuation	<i>A valuation not more than six months old obtained from a person who holds the qualifications or experience specified under the Valuation of Land Act 1960.</i>

23. RELATED LEGISLATION AND DOCUMENTS

23.1 Legislation

The Local Government Act 1989

The Sale of Land Act 1962,

The Transfer of Land Act 1958

The Land Acquisition and Compensation Act 1986

The Valuation of Land Act 1960

23.2 Strategic Documents, Policies or Procedures

Department of Planning and Community Development, Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land (June 2009)

Local Government Inspectorate Examination Report - Golden Plains Shire Council (February 2019)

24. HUMAN RIGHTS STATEMENT OF COMPATABILITY

24.1 It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights and Responsibilities Act 2006 (Vic).

25. POLICY OWNER


25.1 The Corporate Governance and Risk Coordinator is the policy owner.

25.2 The policy owner is the individual who is given the responsibility to review, edit and maintain this policy and associated procedure. The policy owner is also the point of contact for any questions regarding this policy.

26. FEEDBACK

- 26.1 You may provide feedback about this document by emailing enquiries@gplains.vic.gov.au

27. DOCUMENT INFORMATION

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NOTES:	<p>Policy documents are amended from time to time, therefore you should not rely on a printed copy being the current version. Please consult Council's Policy page on the Golden Plains Shire Council website to ensure that the version you are using is up to date. Available at:</p> <p>https://www.goldenplains.vic.gov.au/residents/my-council/about-council/council-policies</p>