

# Disposal of Council Property



<b>Council Policy Number</b>	<b>182</b>
Date adopted	21 April 2021
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## 1. Preamble

Campaspe Shire Council (Council) owns and manages a large number of properties for and on behalf of the community. Over time property may become excess to requirements due to changing community need and service requirements. Council has adopted Policy 118, Asset Rationalisation which directs the responsible management of assets required for service delivery and community benefit. Property which is identified under Policy 118 as excess to requirements can be decommissioned and offered for disposal.

This Policy, for the disposal of Council property, provides direction for officers on the disposal method and process for properties in accordance with the requirements of the *Local Government Act 2020*.

## 2. Purpose

To ensure the transparent disposal of Council property in accordance with the *Local Government Act 2020*.

## 3. Definitions

<u>Word</u>	<u>Definition</u>
Allotment	A plot or parcel as described in a certificate of title.
Community Organisation	Means a body or organisation that: <ol style="list-style-type: none"> <li>Operates exclusively for charitable, civil or other social purposes; and</li> <li>Does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation.</li> </ol>
Consideration	Remuneration or exchange in trade to acquire property.
Consolidation	The act of combining separate allotments into a single title.
Decommissioned	Assets surplus to, unsuitable for or no longer required to support service delivery.
Disposal	The act of transfer of ownership, eg by sale, of vacant or developed land.
Marketing	The process of attracting interest from potential purchasers.
Property	Assets of Council being vacant or improved land.
Purchaser	Person, company or organisation, legal entity.
Subdivision	An area of land divided into separate allotments.
Title	Legal certificate of title with unique identifier depicting ownership of land.

## 4. Policy Statement

### 4.1. Principles

When identifying properties for disposal, the Administration will have regard to:

- a. Properties that do not provide, or are not required to provide, a service of Council.
- b. Properties that are beyond Council's reasonable financial capacity to maintain or renew.
- c. Properties that are delivering a service which demonstrates a declining or finite need in the future.
- d. Properties that are inadequate to meet current or future service demand and/or which fail to meet compliance or the amenity to provide an acceptable level of service.
- e. Properties that can be decommissioned when an alternative property is identified for service delivery that increases the level of use of an alternative property such as a multi-use facility, either Council, Government or privately owned through a partnership agreement.

Refer to Policy 118, Asset Rationalisation, for further guidance when identifying properties for disposal.

Service Managers are responsible for identifying and decommissioning the Council service attached to the property under their control. Decommissioned properties must be transferred to the Property Manager after completion of the decommissioning of associated Council service.

### 4.2. Methods of Disposal

Council has a number of options when disposing of property. Determining the form of disposal will vary on the nature, type, location and marketability of an individual property. Legislative requirements for disposal of property are found in the *Local Government Act 2020*.

Methods of disposal include:

- a. Sale by public registration or expression of interest
- b. Sale by public auction
- c. Sale by public tender
- d. Sale/exchange by private treaty
- e. Exchange of property of equivalent value

In general, disposal of property will seek to achieve the best financial return possible for Council. However, there may be circumstances when disposal at a consideration other than the market valuation may be more beneficial. This will generally relate to sales of property to not-for-profit organisations and small parcels of land to neighbouring land owners.

Criteria to sell to by private treaty in these situations are:

- a. Direct negotiation with community (not-for-profit) organisations:
  - i. The organisation's purpose must demonstrate a community benefit.
  - ii. The community benefit must be justifiable and supported by objective evidence.
  - iii. The use must not adversely impact on private, commercial or Council activity.
  - iv. The community organisation will have a level of historical use and/or association with the property and relevance to the surrounding community.
  - v. The community organisation, (including not-for-profits) must not turn over in excess of \$750,000 per annum including GST.
- b. Direct Negotiation with adjoining land owners:
  - i. The allotment is in an inappropriate subdivision/location allowing for consolidation or boundary realignment with the purchaser's own title.
  - ii. The allotment is in a location or planning zone making it too small for development or practical and profitable use.

- iii. The allotment is small in area or in a condition that neither provides or might attract interest of any other potential purchasers.

#### 4.3. Property Disposal Process

There are a number of steps involved in the disposal of Council property as summarised below.

a. Gain Council endorsement to dispose of property

The recommendation to dispose of property will be presented in a report seeking endorsement by Council. The report will:

- i. Outline the details of the property,
- ii. Summarise the history and how the property came to be acquired (if known),
- iii. Detail why the property is no longer required for a current or future Council service and
- iv. Recommended a method of disposal.

b. Obtain a Valuation

The monetary or market value of a property must be obtained through a Licensed Valuer in line with the conditions below.

- i. A valuation of the property from a person who holds qualifications or experience specified under section 13DA(2) of the *Valuation of Land Act 1960*; and
- ii. The valuation must not be more than 6 months old prior to the sale or exchange.

c. Identify a purchaser

The method used in attracting offers to identify a purchaser will be recommended by officers giving full consideration to the specific circumstances of the property. Consideration must be based on fair, transparent and equitable circumstances for all and any interested parties should have an opportunity to acquire the property without prejudicing or jeopardising the interest of other individuals or parties. The method selected must maximise the financial and community benefit for rate payers.

Methods that are available to identify a purchaser in offering a property for sale are:

- i. Sale by public registration or expression of interest;
- ii. Sale by public auction;
- iii. Sale by public tender;
- iv. Sale/exchange by private treaty; and
- v. Exchange of property of equivalent value.

Marketing land to identify a purchaser may include newspaper and other media advertising, signage on the property, direct correspondence with interested parties and adjoining property owners and the engagement of real estate agents.

d. Give notice to the community of the intention to dispose of property

Council must consult with the public on the sale of property in accordance with Section 114, Clause 2 (a) and (b) of the *Local Government Act 2020*:

Before selling or exchanging land, Council must:

- i. At least 4 weeks prior to selling or exchanging the land, publish notice of intention to do so-
- ii. On Council's Internet site; and in any other manner prescribed by the regulations; and
- iii. Undertake a community engagement process in accordance with its Community Engagement Policy.

Notice of intention to sell or exchange property must include the following information:

- i. Details of the property including the lot and or address, title information, and plan depicting the land;
- ii. Information on how submissions can be made and specifying the date by which submissions are to be submitted;
- iii. Being a date which is not less than 28 days after the date on which the public notice is published; and
- iv. Information that a person making a submission is entitled to request in their submission that the person wishes to appear in person, or to be represented by a person specified in the submission, at a meeting to be heard in support of the submission.

Once the statutory advertising for a proposed disposal has commenced with the publication of an advertisement on a property, a person must not canvas or make any contact with or approach any Councillor or Council staff member with the exception of the nominated contact officer in the advertisement or his or her delegate, to advocate their position or interest or make counter offers on the property.

e. Consider Submissions (if any)

A person making a submission is entitled to request in the submission that they wish to appear in person or be represented by a person specified in the submission, at a meeting to be heard in support of the submission at a meeting of Council, or of a committee determined by Council.

If a submission has been made in accordance with the policy and Council's Community Engagement Policy 59 Council will:

- i. Provide the person with the opportunity to be heard in support of their submission at a meeting of Council, or a committee determined by Council;
- ii. Fix the day and time and place of a meeting;
- iii. Give reasonable notice of the day, place and time of the meeting to each person who made a request;
- iv. Review and consider all submissions; and
- v. Notify each person who made a submission of the Council decision.

f. Complete the Disposal

Subject to any outcome after consideration of submissions (if any) under Section 4.3.e. above, officers will:

- i. Action all tasks to complete the disposal of the property in accordance with Council Resolution;
- ii. Ensure all statutory regulations and responsibilities are met prior to completion in regards to all or any other Act which may inform or impose encumbrances, limitations or restrictions on the land; and
- iii. Provide all documentation and relevant information for the Chief Executive Officer to execute the contract of sale.

#### 4.4. Other Considerations

This policy aims to capture the overarching principles, methods and processes pertaining to the disposal of Council properties. However it is recognised that the disposal of properties will need to consider individual characteristics that may include but are not necessarily limited to:

- Utilities (domestic water, gas, electricity, phone etc)
- Raw Water
- Financial support for a defined period based on deferred costs

- a. In the case of a sale/exchange to a not-for-profit organisation, the sale may include the consideration of the transfer of permanent raw water assets to the entity under the following circumstances when:-
  - i. there is a service currently being delivered from the property that is dependant on raw water
  - ii. Council determines that the service is of such value that it should continue
  - iii. the service is not impacting on the viability or to the detriment of other Council approved services
  - iv. the service is not contravening any other policy position of Council
  - v. the total amount of raw water assets to be considered are equal to or less than the annual amount of water being used by the service

The sale of temporary water assets to fund operations of a not-for-profit group is not an appropriate rationale to consider raw water in the property disposal process.

## 5. Exclusions

- a. Disposal of Property that is subject to transfer, exchange or lease without consideration in accordance with Section 116 of the *Local Government Act 2020* is excluded from all steps cited above in the Disposal of Property Process with the exception of clause 4.3.a. Gain Council endorsement to dispose of land and 4.3.f. Complete the Disposal.
- b. Disposal of property that has received a compliance exemption from the Minister under section 177 of the *Local Government Act 2020*.
- c. Disposal of property relating to the discontinuance of a public road. The disposal of land formerly used for public roads is dealt with in accordance with specific provisions of the *Local Government Act 1989*. Council Policy 69 Road Closures describes the process for this activity.
- d. Industrial Land which has been specifically developed by Council for the purposes of encouraging and supporting economic development and growth. Disposal of this form of industrial land is to be conducted in line with Policy 30 Industrial Land Sale with the exceptions of clause 4.3.a. through to 4.3.f.

## 6. Human Rights

This policy has considered and complies with the Human Rights and Responsibilities contained in the Victorian Charter of *Human Rights and Responsibilities Act 2006*.

## 7. Related Legislation

*Local Government Act 2020*

*Local Government Act 1989*

*Land Act 1958*

*Transfer of Lands Act 1958*

*Sale of Land Act 1962*

*Valuation of Land Act 1960*

*Environment Protection Act 1970*

*Planning and Environment Act 1987*

*Subdivision Act 1988*

## 8. Related Policies, Procedures and Strategies

Referrals include, but not limited to:

Council Policy 118 - Asset Rationalisation

Council Policy 91 - Sustainable Asset Management

Policy 155 – Campaspe Service Planning

Policy 157 – Places of Assembly/Community Facilities

Policy 69 – Road Closures

Policy 107 – Public Open Space Provision

Policy 30 – Industrial Land Sale

Policy 45 – Competitive Neutrality

Policy 59 – Community Engagement

Policy 179 – Public Transparency

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

## 9. Attachments

NIL

### Review Period

3 years

### Responsible officer

Property Manager

### Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter the policy, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

### Approval History

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Chief Executive Officer: .....



Date: ..... 29/4/2021