

Sale or Exchange of Council Land	Document No:	SCS-013
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Responsible Officer:	General Manager Governance and Infrastructure	
Authorising Officer:	Chief Executive Officer	

1. Purpose

The purpose of this policy is to establish the principles to be applied, and outline the procedures to be followed, in implementing the sale or exchange of Council Land.

It also provides criteria to determine if land is considered surplus.

2. Scope

This policy covers all land owned by Council. It does not apply to Crown Land controlled and / or managed by Council on behalf of the Crown.

3. Application

These guidelines apply to Council, its employees and contracted service providers.

4. Definitions

Not applicable.

5. Policy

Surf Coast Shire 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.

The current and future use of property, as well as the economic potential of disposal, will be considered by Council.

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.

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

- a) be considered in the strategic context of Council's economic, social and environmental objectives;
- b) be undertaken in a considered and responsible way and in compliance with legislative and other obligations;
- c) occur only after consultation with identified stakeholders and relevant sections of the community, taking into account all relevant comments and representations;
- d) be undertaken with the intention of securing the best balance of possible financial and /or other outcomes for the community; and
- e) be open to public scrutiny while maintaining appropriate levels of commercial confidentiality.

5.1 Legislation

The *Local Government Act 1989* sets out the legislative requirements for the sale or exchange of Council owned land.

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.

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*.

5.2 Property Review and Designation

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

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

5.2.1 Criteria – Surplus land

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. Eastern Reserve Master Plan, Growing Winchelsea 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
- 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. cbd which gives the property high value / potential for the future?

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

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.

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.

Council will undertake consultation in accordance with Section 5.4 prior to the Council meeting at which land may be considered to be surplus.

5.3 Preliminary Report to Council to Sell Land

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:

- 5.3.1 Description of property;
- 5.3.2 Current Council valuation and date of valuation;
- 5.3.3 Locality map;
- 5.3.4 Current use;
- 5.3.5 Reason for recommended sale;
- 5.3.6 History of Council ownership including a Certificate of Title;
- 5.3.7 Recommended method of disposal (refer to sections 5.5 to 5.8);
- 5.3.8 Recommended sale price range and justification if range is less than valuation;
- 5.3.9 Any specific terms or conditions;
- 5.3.9 Any encumbrances; and
- 5.3.10 Timelines for sale.
- 5.3.11 Authorisation for relevant officers to proceed with:
 - (i) Determining a preferred purchaser;
 - (ii) Undertaking the statutory process including public advertising; and
 - (iii) Execution of sale documentation, in the event that no submissions are received.

If submissions arise from step 5.3.11 (ii) above, the matter will proceed in accordance with the requirements of the Act and a decision may require formal resolution by Council.

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.

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.

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.

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 (refer to section 5.2) 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 5.4 prior to preparation of the report unless the matter is deemed to be urgent by the Chief Executive officer.

The report relating to the determination that land is surplus (as per Section 5.2) must be considered before a report to sell the property (as per Section 5.3) can be considered. These reports may occur at the same meeting or a prior meeting.

5.4 Consultation Process

Consultation under Section 5.2 of 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.

Consultation under Section 5.3 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.

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.

5.5 Methods of Disposal

Sale or exchange of land may proceed in the following manner:

- 5.5.1 Public Competitive Sale (Auction or Agent)
- 5.5.2 Private Sale
- 5.5.3 Other Sales

5.6 Public Competitive Sale

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

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

5.7 Private Sale

- 5.7.1 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.
- 5.7.2 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.5.7.3 The Chief Executive Officer to approve final sale price and any terms or conditions of sale.

5.7.4 Sections 5.2 and 5.3 shall be satisfied prior to the Chief Executive Officer determining to sell a property through private sale.

5.8 Other Sales

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

5.9 Contracts of Sale

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

5.10 Payment of Costs

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.

5.11 Authorisation

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.

5.12 Expiration of Sale Offer

An offer to sell land by Council will have been deemed to have lapsed under the following conditions:

- (a) 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
- (b) 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.

In the event that the offer to sell lapses, the matter will be referred back to Council for further consideration.

5.14 Use of Proceeds

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.

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.

5.15 Related Legislation, Guidelines, Specifications and Codes of Practice

Local Government Act 1989, Sections 189 & 191; Part 2 Section 89:2.
Planning and Environment Act (1987) and Subdivision Act (1988).
Department of Planning and Community Development, Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land (June 2009).

5.16 Implementation and Review

This policy will be implemented by Council management and will be presented to the Audit Committee for periodic review.

The policy is subject to immediate review should any relevant legislation changes occur.

6. Records

Records shall be retained for at least the period shown below.

Record	Retention/Disposal Responsibility	Retention Period	Location
Legal Documents	Governance and Risk	Term of legal arrangements Ongoing	Relevant Trim File Legal documents register & storage

7. Attachments

Not applicable.

8. References

Local Government Act 1989 – S.189

Local Government Best Practice Guidelines for the Sale, Exchange or Transfer of Land – June 2009