

# SCS-013 Sale Exchange or Transfer of Council Land Policy

TRIM Reference: D21/208188 Due for Review: 27 March 2023  
Responsible Officer: Manager Governance

## 1. Purpose

- 1.1 This policy contributes to the Council's strategic and effective management of its land relevant to Council's functions, objectives and the needs of the community.
- 1.2 This policy provides the Council with:
  - a. A framework to consider the sale, exchange or transfer of land it owns; and
  - b. The mechanism to sell, exchange or transfer land owned by Council.

## 2. Policy Principles

- 2.1 All sales, exchanges and transfers of land must comply with the provisions of the *Local Government Act 2020* and/or the *Local Government Act 1989*.
- 2.2 Sales, exchanges and transfers of land should be conducted through a public process unless otherwise provided for in this policy.
- 2.3 Sales, exchanges and transfers of land should be in the best interests of the municipal community and provide the best value, both financial and/or non-financial, for the benefit and wellbeing of the municipal community.

## 3. Scope

- 3.1 This policy applies to all land owned by Council.
- 3.2 This policy does not apply to Crown Land controlled and/or managed by Council, or land leased or licensed to Council.
- 3.3 This policy applies to Council, its employees and contracted service providers.

## 4. Policy

- 4.1 The Council has a responsibility to manage land owned by Council so that it provides best value to the community.
- 4.2 The sale, exchange or transfer of Council land will be conducted in accordance with this policy.
- 4.3 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 feedback received as a result;
  - d. Be undertaken with the intention of securing the best balance of financial and /or other outcomes for the community; and
  - e. Be conducted transparently.

## 5 Sale, exchange or transfer of Council Land for consideration

- 5.1 Unless otherwise provided for in this policy, before selling, exchanging or transferring land Council must:
- a. Obtain a valuation for the land that is proposed for sale, exchange or transfer;
  - b. At least four weeks prior to selling or exchanging the land, publish notice of intention to do so:
    - i. On Council's website; and
    - ii. In a paper in circulation in the local community.
  - c. Undertake a community engagement process in accordance with its Community Engagement Policy and ensure ratepayers and residents have an opportunity to have their views on the proposed sale, exchange or transfer of land heard.
- 5.2 A failure to comply with 5.1 herein will render the contract for the sale or exchange of land void.
- 5.3 Council may sell, exchange or transfer Council land for less than market value if the outcome of the sale, exchange or transfer:
- a. Aligns with Council's objectives; and
  - b. Provides the best value for the benefit and wellbeing of the municipal community.

## 6 Transfer or exchange of land without consideration

- 6.1 Council may transfer or exchange land for no consideration.
- 6.2 Council is not required to comply with clause 5.1 herein if it transfers or exchanges land for no consideration to the following parties:
- a. The Crown;
  - b. A Minister;
  - c. Any public body; or
  - d. The trustees appointed under any Act to be held on trust for public or municipal purposes; or
  - e. A public hospital within the meaning of the *Health Services Act 1988* or other hospital carried on by an association or society otherwise than for profit or gain to the members of the association or society.
- 6.3 Council must comply with clause 5.1 if it proposes to transfer, exchange or lease land for no consideration to a party not listed in 6.2 above.

## 7 Discontinued Roads

- 7.1 Council may sell, transfer or exchange land that formed part of a Council road that has been discontinued.
- 7.2 If Council wishes to sell land from a discontinued road, it must:
- a. Obtain a valuation for the land that is proposed for sale, exchange or transfer;
  - b. At least four weeks prior to selling or exchanging the land, publish notice of intention to do so:
    - i. On Council's website; and
    - ii. In a paper in circulation in the local community.
  - c. Invite submissions from the community to be heard in accordance with section 223 of the *Local Government Act 1989*.

## 8 Public Open Space

- 8.1 Council may sell, exchange or transfer land that is public open space.
- 8.2 The value of the public open space land disposed of by Council must be used by Council to:

- a. Buy land for use for public recreation or public resort, as parklands or for similar purposes; or
- b. Improve land already set aside, zoned or reserved (by the council, the Crown, a planning scheme or otherwise) for use for public recreation or public resort, as parklands or for similar purposes; or
- c. With the approval of the Minister administering the *Local Government Act 1989*, improve land (whether set aside on a plan or not) used for public recreation or public resort, as parklands or for similar purposes.

8.3 The value of the public open space land may be:

- a. The net proceeds of sale; or
- b. Where the land is exchanged for other land or transferred to a party not listed in clause 7.2 herein, the value of the land minus the costs of transfer.

## **9 Requirement for a current valuation of land**

- 9.1 Before Council sells or exchanges land, Council must obtain a valuation from a person who holds qualifications or experience specified under section 13DA(2) of the *Valuation of Land Act 1960*.
- 9.2 A valuation must not be more than six months old prior to the proposed decision of Council to sell, exchange or transfer Council land.

## **10 How land will be sold, transferred or exchanged**

- 10.1 The Sale of land, once approved by Council, can proceed by:
  - a. Public auction;
  - b. Public tender;
  - c. Public registration or expression of interest; or
  - d. Private treaty.
- 10.2 The sale, exchange or transfer of land by private treaty shall be exchanged at market value determined in accordance with clause 11 herein, unless otherwise provide for in this policy.
- 10.3 For exchanges of Council land:
  - a. If Council exchanges its land for land of a lesser value, the difference between the value of the Council land and the land received by Council shall be payable to Council; or
  - b. If Council exchanges its land for land of a greater value, the difference between the value of the Council land and the land being received by Council shall be payable by Council.
- 10.4 A Real Estate Agent may be engaged to conduct the sale, exchange or transfer of land. The Council will engage any Real Estate Agent in accordance with its Procurement Policy.

## **11 Authorisation**

The Chief Executive Officer is authorised to negotiate and execute contracts to sell, exchange or transfer Council land in accordance with the Chief Executive Officer's Instrument of Delegation or as resolved by Council.

## **12 Use of Proceeds**

- 12.1 Except for the value of Public Open Space Council Land, proceeds from the sale, exchange or transfer of Council land will be allocated to the Accumulated Unallocated Cash Reserve.

12.2 The cash-equivalent of the value of Public Open Space Council land must be allocated to the Public Open Space reserve and used as set out in clause 8.2 herein.

### 13 Property register

13.1 Council will maintain a property register listing all Council owned land.

13.2 At least once during a Council term, the Council will review the register of Council owned land to determine that the use of Council land aligns with Council strategy, legislation, and community needs and expectations.

### 14 Legislation

*The Local Government Act 2020* and the *Local Government Act 1989* outlines the legislative requirements for the sale, exchange or transfer of Council land. Council and Council Officers will follow the State Government's *Best Practice Guidelines for Sale or Exchange of Land* in selling, transferring or exchanging Council land.

### 15 Records

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

Record	Retention/disposal responsibility	Retention Period	Location
Legal documents	Governance	Term of legal arrangements Ongoing	Relevant Trim File Legal documents register & storage

### 16 Definitions

Best Practice Guidelines	<i>Local Government Best Practice Guidelines for Sale/Exchange of Land June 2009</i> , prepared jointly by Local Government Victoria and the Government Land Monitor and the Department of Planning and Community Development. The Guidelines provide guidance to Local Government on the sale, exchange or transfer of Council land and should be followed.
Council	Surf Coast Shire Council
Council Land	Council owned or vested land excluding where Council is the Committee of Management (CoM) of Crown land
Crown land	Crown land means land which is or is deemed to be unalienated land of the Crown and includes— a) land of the Crown reserved permanently or temporarily by or under an Act; and b) land of the Crown occupied by a person under a lease licence or other right
Exchange	Transfer of a parcel of land with another parcel of equivalent size
Real Estate Agent	A Real Estate Agent licenced under the Estate Agents Act 1980 Victoria

### 17 Related Procedure

Sale or Exchange of Council Land Procedure

## 18 References

Department of Planning and Community Development

*Local Government Act 2020*

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

*Planning and Environment Act 1987*

*Subdivision Act 1988*

*Valuation of Land Act 1960*

## Document History

Version	Document History	Approved by – Date
1	<i>Amended</i>	<i>Council Resolution – 27 March 2018</i>