

## Management report to Council

Agenda item 6.3

### Proposed (Amended) Sale and Acquisition of Land Policy

Council

Presenter: Roger Teale, General Manager Infrastructure and Design

25 October 2022

#### Purpose and background

1. The purpose of this report is to seek Council approval to adopt the amended Sale and Acquisition of Land Policy (SALP) see Attachment 2.
2. Council adopted the SALP in June 2019 to guide decision making in relation to the disposal and acquisition of Council owned land.
3. A review has been undertaken to update the SALP to remove procedural matters and reflect legislative changes in the *Local Government Act 2020* (the Act).
4. The reviewed SALP is in Attachment 2.

#### Key issues

5. It is important that Council not only strategically manages its property portfolio for the long term best interests of the City of Melbourne community, but that its decisions in relation to the use and occupancy of Council property are soundly based, transparent and legally compliant. This includes taking up the opportunity to sell surplus Council Land as well as exchanging or acquiring additional land.
6. The amended SALP will ensure Council:
  - 6.1. has a consistent, equitable and transparent process in relation to the disposal and acquisition of land
  - 6.2. complies with best practice and legislative requirements when undertaking the sale or acquisition of land
  - 6.3. strategically manages its property portfolio for the long term best interests of the community
  - 6.4. achieves best value (both financial and non-financial) in all of its land dealings.
7. The amended SALP requires updating to ensure that the framework for making property decisions meets current legislative requirements.
8. The amended SALP applies to the acquisition and disposal of all land with the exception of road reserves and minor reserves that will be managed in accordance with the Road Discontinuance and Sale Policy.
9. The sale and acquisition of Council land must undergo a community engagement process in accordance with Council's Community Engagement Policy and will, at a minimum, meet the statutory requirements of the *Local Government Act 2020* (Act).
10. A decision by Council is required for specific approval to commence the statutory process to sell or acquire land. A resolution of Council is required for a final decision on the proposed Sale or Acquisition of Land following community engagement.

#### Recommendation from management

11. That Council:
  - 11.1. adopts the Sale and Acquisition of Land Policy (new Policy) (Attachment 2 of the report from management)
  - 11.2. revokes the previous Sale and Acquisition of Land Policy adopted by Council on 4 June 2019
  - 11.3. authorises the Director City Property to make any further minor editorial changes to the new Policy prior to publication.

#### Attachments:

1. Supporting Attachment (Page 2 of 8)
2. Sale of Land Policy updated July 2022 (Page 3 of 8)

## Supporting Attachment

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### Legal

1. Where the Council proposes to sell land, it must comply with the Act.
2. Pursuant to section 114(2) of the Act and before selling the land, the Council must:
  - 2.1 at least 4 weeks prior to the sale, publish notice of intention to do so on the Council's Internet site and in any manner prescribed by Regulations under the Act
  - 2.2 undertake a community engagement process in accordance with its community engagement policy
  - 2.3 obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the *Valuation of Land Act 1960* a valuation of the land which is made not more than 6 months prior to the sale.

### Finance

3. Generally, Council land should not be sold at a price which is less than the current market value assessed by a certified practicing valuer engaged by Council, unless Council can justify the circumstances to sell the land at less than market value.
4. Council should not purchase land at a price that is greater than the current market value unless Council can provide the circumstances, reasons or factors which justify a higher purchase price.

### Conflict of interest

5. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

### Health and Safety

6. In developing this proposal, no Occupational Health and Safety issues or opportunities have been identified.

### Stakeholder consultation

7. Before deciding on the sale of Council land or acquiring land, a formal statutory process pursuant to section 114 of the Act must be carried out, which includes undertaking a community engagement process to ensure a deliberative and targeted community participation.

### Relation to Council policy

8. This report has been prepared in accordance with the Sale and Acquisition of Land Policy.

### Environmental sustainability

9. In developing this proposal, no environmental sustainability issues or opportunities have been identified.

# CORPORATE POLICY

## SALE AND ACQUISITION OF LAND POLICY

Policy owner: Director City Property  
 Date this policy was last reviewed: (Insert date of endorsement)  
 Next review scheduled: (Insert date that is 5 years after the date of endorsement)

### 1. PURPOSE

The purpose of this Policy is to ensure that Council:

- has a consistent, equitable and transparent process in relation to the Sale and Acquisition of land
- complies with best practice and legislative requirements when undertaking the Sale or Acquisition of land
- strategically manages its property portfolio for the long term best interests of the community
- achieves best value (both financial and non-financial) in all of its land dealings.

### 2. SCOPE

This Policy considers the way Council acquires and disposes of land within the City of Melbourne municipality. It is a general policy that outlines Council's principles and is intended as a framework that will assist Council in the acquisition and disposal of land.

### 3. DEFINITIONS

The terms '**acquisition**' or '**acquire**' means the process of gaining ownership or control of land, or an interest in land through purchase, vesting, transfer or exchange.

'**Best Practice Guidelines**' means Local Government Best Practice Guideline for Sale / Exchange of Land June 2009, as amended, prepared jointly by Local Government Victoria and the Government Land Monitor and the Department of Planning and Community Development. The Guidelines provide guidance to Council on the sale, exchange or transfer of Council Land and should be followed.

'**Council**' means the Melbourne City Council.

'**Council Land**' means Council owned or vested land, excluding where Council is the Committee of Management of Crown land.

'**Delegate**' means a member of the Council staff occupying a position to which the powers, duties and functions of the Council to negotiate and execute the necessary documents to implement resolutions of Council to acquire or sell land have been delegated or sub-delegated.

'**EOI**' means an expression of interest. It is the method of sale to identify parties who may be interested in, and capable of, delivering an outcome on a parcel of land. The purpose of an expression of interest method of sale is to determine whether the market has an interest in developing or purchasing a particular parcel of land. Expressions of interest are usually not binding on either party.

'**LGA**' means the *Local Government Act 2020* as amended from time to time.

'**Valuer**' means a person with suitable qualifications and experience as specified in the *Valuation of Land Act 1960*.



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## 4. APPLICATION

This Policy applies to all Council Land held in freehold title or vested in Council.

This Policy does not apply to:

- roads, rights of way, reserves, revenue strips, hiatus and private roads – which is governed by Council's Road Discontinuance and Sale Policy, as amended from time to time
- the creation, alteration and extinguishment of easements
- marinas, berths and docks
- land sold by Council for the non-payment of rates

## 5. POLICY

Under the LGA, Council is able to acquire, hold, deal with or dispose of property (including land) for the purposes of performing its function and exercising its powers.

### 5.1 Retention of Land Principles

The sale of Council Land is a significant decision and all Council Land is to be retained except where the Council Land meets the following principles:

- Does not or will not support, facilitate or contribute to current or future service delivery outcomes as identified in the Council Plan.
- Has a net realisable value for another purpose which is significantly greater than the cost of re-establishing the service on another site.
- If sold will facilitate and / or promote investment and positive economic development outcomes.
- Does not contribute economic, environmental or community benefit to the municipality to justify its retention.
- Has no strategic significance to Council on a long term basis.
- Is identified in a Council strategy, plan, budget, study, policy or planning scheme as being surplus to its requirements or not required to be owned by Council.

### 5.2 Sale of Land Principles

Council must comply with legislative obligations for all sales of land and should:

- Not sell Council Land at a price which is less than the current market value assessed by a Valuer, unless there is some derived community benefit that justifies the circumstances to sell the land at less than market value.
- Ensure Council Land is appropriately zoned prior to being offered for sale.
- Sell Council Land for the highest and best use of the land unless there is some derived community benefit not to.
- Ensure that the sale of Council Land is in the best interests of the community and provides the best result (both financial and non-financial) for Council and its community.

To ascertain whether or not Council Land meets the principles for retention or may be suitable for sale, a property land assessment will be carried out. The assessment must consider the following:

- the six retention principles outlined in clause 5.1 above
- service, economic and strategic needs and uses
- no net loss of public open space



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- legal issues including title details, verifying ownership and how the land was purchased by Council
- survey issues including land boundaries
- planning and zoning requirements
- environmental considerations including contamination
- conservation values including historical, cultural, heritage and Native Title considerations
- site constraints and opportunities
- building asset condition and maintenance considerations
- risk considerations
- financial considerations
- preferred method of sale
- long term lease options.

## 5.3 Council Resolution

Where the land assessment has been undertaken and it is determined that the Council Land is not required for retention, it can be set aside for a proposed sale.

A decision by Council is required for specific approval to commence the statutory process to affect the sale of Council Land. A final decision on the proposed sale after the completion of the statutory process will be a decision of Council.

## 5.4 Method of Sale

The sale of any Council Land should be conducted through a public process, i.e. auction / tender (open or selected) or EOI unless circumstances warrant proceeding directly to sale by private treaty.

### 5.4.1 Auction / Tender

A licensed real estate agent must conduct the sale of Council Land by public auction or tender. The reserve price for the sale of Council Land by public auction or tender must be set prior to the day of auction or close of tender and must not be less than the current market value of the Council Land as determined by a Valuer.

If the reserve price is not met at auction or close of tender, the real estate agent may negotiate with the highest bidder in an attempt to meet the reserve price. If negotiation with the highest bidder fails to meet the reserve price, the Council Land may remain on the market and sold by private treaty. In the case of sale by auction / tender, the public notice of the proposed sale must be given prior to the auction / tender.

An EOI method of sale may also be appropriate in the following (but not limited to) circumstances:

- For the sale of large or strategically located Council Land which has significant development potential or significant development barriers.
- Where, in addition to selling the land, Council wishes to control the future use or development of the land.
- Where Council is seeking to expose the land to the market to determine potential development options.
- Where Council is seeking to achieve a specific development outcome or policy objective in relation to the sale of the land.



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Prior to the sale of Council Land which is undertaken by an EOI, Council must obtain the current market value of the Council Land as determined by a Valuer. Council may appoint a licensed real estate agent to conduct the EOI campaign. For large or complex transactions, Council should also engage a probity auditor to provide independent assurance that the EOI process is appropriate and is completed satisfactorily.

In the case of sale by EOI, the public notice of the proposed sale will generally occur after the EOI has identified the preferred purchaser.

There may be circumstances where it may be more appropriate to sell land by private treaty – which will depend on:

- the nature of the land that is proposed for sale
- how the proposed sale is initiated
- previous unsuccessful public methods of sale (if applicable).

Council should provide the reasons to the community why the private treaty method is the preferred method of sale, how the sale was initiated and the future use / development of the land.

It may also be necessary to appoint a probity auditor to oversee the probity of the transaction. The sale price of Council Land sold by private treaty should not be less than the market value as determined by Council's Valuer, unless a price below market value is supported by Council's Valuer and Council's Delegate having regard to prevailing market conditions, derived community benefit and any other relevant considerations at the time of sale.

## 5.5 Statutory Requirements for Sale of Council Land

### 5.5.1 Community engagement

All sales and exchanges of Council Land must comply with the provisions of the LGA, Council's Community Engagement Policy and should comply with the Best Practice Guidelines.

The results of the community engagement will be reported to Council for a decision whether the Council Land will be sold, retained or considered for some other alternative use. Following a decision the community will be informed of the decision.

A market valuation of Council Land will be carried out not more than six months prior to the sale of the land. The valuation will be used to set the sale / reserve price, taking into account the highest and best use of the Council Land and any conditions Council may place on the sale. Council Land will not be sold for less than market value unless there is some derived community benefit associated with the sale.

For land being sold to an adjoining owner, the valuation will be assessed on an added-value basis and the sale price will be consistent with the differences in values based on a before and after approach.

## 5.6 Sale of Land Proceeds

Proceeds from the sale of all Council Land should be dispersed in accordance with Council's adopted annual budget, Council's adopted long term financial plan or any other resolution of Council except in the case of public open space land where funds will be allocated to Council's Open Space Fund in accordance with section 24A (8) *Subdivision Act 1988*.



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## 5.7 Policy - Acquisition of Land

### 5.8 Acquisition of Land Assessment Review

Council must ensure that where a land acquisition is proposed it can be demonstrated that the land is required to support or facilitate the delivery of a current or future service to the City of Melbourne community.

To ensure an acquisition meets the strategic justification for Council ownership, a land assessment will be undertaken to ensure the land meets the goals of the Council Plan.

This land assessment review should consider:

- service, economic and strategic needs and uses
- legal issues including title details and verifying ownership
- survey issues including land boundaries
- planning and zoning requirements
- environmental considerations including contamination
- conservation values including historical, cultural, heritage and Native Title considerations
- site constraints and opportunities
- building asset condition and maintenance considerations
- risk considerations
- financial considerations and value
- Council Strategies / Policies (e.g. Open Space Strategy).

Land may be Acquired by Council via a public process (i.e. auction, EOI), by private negotiation / treaty or by compulsory Acquisition.

When acquiring land, Council must obtain a Valuation from a Valuer to determine the market value of the land. Generally, Council will not acquire land at a price which is greater than the current market value as assessed by a Valuer, unless there is some significant community benefit associated with the purchase and where the purchase price is supported by Council's Valuer and Council's Delegate.

Where the acquisition of land is strategically important but the compulsory acquisition process is not used, or available, Council may consider a higher purchase price is warranted given the circumstances.

### 5.9 Statutory Requirements for Acquisition of land

All acquisitions of land must comply with the LGA, Council's Community Engagement Policy, the *Land Acquisition and Compensation Act 1986* (LACA), the *Planning and Environment Act 1987* and the Best Practice Guidelines, where relevant.

## 6. RESPONSIBILITIES

Ongoing review and updates to this policy is the responsibility of the Property and Leasing Manager.

## 7. REFERENCES

### 7.1 Related policies and procedures

- Sale and Acquisition of Land Procedures as amended from time to time
- Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land



# CORPORATE POLICY

- Asset Management Strategy 2015-25
- Property Strategy
- Roads and Reserve Discontinuance and Sale Policy
- Community Engagement Policy

## **7.2 Related Legislation and Regulations**

- *Local Government Act 2020*
- *Planning and Environment Act 1987*
- *Subdivision Act 1988*
- *Transfer of Land Act 1958*



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