



Municipal Association of Victoria

Submission

Select Committee on Public Land Development

Inquiry into the sale and development of public land and open space

September 2007

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This document has been prepared by the MAV executive. MAV members were provided with a draft for comment.

The MAV is the statutory peak body for local government in Victoria, representing all 79 municipalities.

While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

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1. Introduction

The Municipal Association of Victoria (MAV) welcomes the opportunity to provide a submission to the Select Committee on Public Land Development: Inquiry into the sale and development of public land and open space.

In preparing this submission, the MAV sought input from member councils to identify the key issues for councils affected by the sale and development of public land and open space.

The submission makes a number of recommendations and raises a number of issues that the MAV believe ought to be considered by the Select Committee on Public Land Development in its recommendations to the State Government.

The sale and development of public land and open space can both help and hinder the ability of local government to fulfil its obligations to the community. The role of local government in delivering a comprehensive range of place based services relies heavily on a diverse property portfolio of both buildings and open space, often held jointly and used for multiple purposes.

The MAV was established in 1879 to promote the efficient carrying out of municipal government throughout the state of Victoria and to watch over and protect the interests, rights and privileges of municipal corporations. The Association was incorporated by an Act of Parliament in 1907, and is the official voice for Victoria's 79 municipal councils.

Councils are area-based, representative governments with a legislative and electoral mandate to manage local issues and plan for the community's needs.

Local government is responsible for implementing many diverse programs, policies and regulations set by State and Federal Government. Councils must respond to local community needs and have powers to set their own regulations and local-laws.

Councils spend around \$4.5 billion annually to provide more than 100 different services and are responsible for \$40 billion worth of assets and infrastructure including roads, bridges, town halls, recreation and leisure facilities, drains, libraries and parks.

2. Submission Information

2.1 Assessment of surplus status

Public land and open space should be regarded first and foremost as a community asset. The retention of public assets for community benefit is often desirable. Unsystematic and non strategic disposal of public land and open space can preclude ongoing community access and use. The government, as the custodian of this land, has an opportunity to better coordinate the potential disposal of public land and open space with other spheres of government so as to maximise the community benefit of these long-term assets.

The current process for determining whether public land and open space is surplus to government requirements is internal to State government agencies and does not

establish whether the asset is surplus to *community* requirements. The decision appears heavily biased toward the potential contribution to service delivery by a single government agency. There is currently no formal opportunity for adequate local government or community input to the decision making process.

Both local government and the community should have adequate opportunity to influence the decision about whether a particular asset is surplus to community requirements, irrespective of the level of government responsible for a particular service, and whether that asset should be made available for sale and subsequent development.

Recommendation 1: Councils should be given a formal opportunity for input prior to the State government deciding that assets are surplus.

2.2 The value of public land as a community asset

Current government policy does not lead to land transactions that necessarily provide the best results government, primarily due to the requirement that 'land must not be sold for less than the market value'. Community assets cannot be measured in financial terms alone. Current practice is to assess market value in purely economic terms which does not consider contribution to environmental, social or community benefit, current or future.

This approach is inconsistent with a 'triple bottom line' approach to assessing the value of land and the objectives of A Fairer Victoria, 2007. Such an approach would include an assessment of social and environmental benefit and potential of the land in the context of current and future community needs, as well as its economic value.

Before an area of public land is approved for sale or alienation for private development, an assessment must be made to determine whether the land may provide a long term strategic purpose that would support an existing or likely community need, such as for aged care or child care, as community needs change over time. This assessment needs to be undertaken across Government departments and involve other levels of government for land flagged for disposal at the State government level. This process could also be a reciprocal process between state and local government.

Increasingly councils are integrating a number of services into 'community hubs' and fostering more intensive use of shared facilities, including open space. This approach is being encouraged and can include both state and local service responsibilities. As council areas develop, intensify and gentrify, and household structures change, demands on public land and community assets increase.

Recommendation 2: Where land is no longer required by a single agency, a full assessment should be undertaken (across departments and with councils), to determine current and potential social and environmental value, in addition to its economic value.

2.3 Opportunities to progress other State policies and objectives

A 'whole of Government approach' to asset utilisation is desirable and consistent with a number of key government policies, such as *A Fairer Victoria*.

A policy that focuses on obtaining market prices for land declared surplus to requirements, at a point in time, may fail to properly consider other state policies and objectives and longer term trends and needs.

Public land that is surplus to the direct requirements of a particular State agency may be used to progress other State policies and objectives, a number of agencies objectives, or integrated state and local objectives.

This approach would look across levels of government and enable integrated assessment of community value (social, environmental and economic) and potential value, irrespective of the level of government responsible for delivery of a particular service.

Melbourne 2030 is a good example of a state policy that has implications across government, where state owned land may be able to be used to contribute to a number of state and local service and community outcomes in an integrated development. For example, policies that could be progressed using surplus public land relevant to *Melbourne 2030* include:

- affordable housing
- public open space to service increased residential densities, particularly in activity centres
- green wedge protection and enhancement
- biodiversity conservation
- community hubs

Recommendation 3: Where land is no longer required by a single agency, a full assessment of its strategic, longer term value needs to be undertaken (across departments and with councils) to determine whether it can be used to implement whole of government policies such as *Melbourne 2030* and *A Fairer Victoria*.

2.4 Local government implementation of *Melbourne 2030*

The local government sector plays a key role in *Melbourne 2030* implementation.

Implementation initiatives carried out by councils have included contribution of assets or air rights towards community objectives and the acquisition of land. In some instances, initiatives have been hampered by the inability of councils to get access to the required land - the consolidation of sites in and around activity centres is one such example.

This highlights an opportunity for State support and ongoing funding mechanisms to assist local government to implement State policy.

Assistance could include giving councils access to public land and open space or a State government grants program to assist councils purchase private land for *Melbourne 2030* or other state policy implementation. The grants program could be funded through revenue from disposal of State-owned land.

Consideration could also be given to a trust or other model enabling capital gains from land banking to be retained and reinvested, and the capital base used to leverage outcomes across government and agencies. There is no direct mechanism for councils to share in the private value generated through the change of use / rezoning of land.

There may also be opportunities for State government to establish partnerships with local government to use public land to demonstrate positive outcomes of *Melbourne 2030*.

Recommendation 4: The State government should consider funding models that provide ongoing financial support to assist councils assemble land to implement state policy such as *Melbourne 2030*.

2.5 Community reaction to sale and alienation of public land and open space

The community places a high value on public land - particularly open space - and the alienation, sale and development of public land often evokes a strong negative reaction from community members. This can also apply to the sale of private land that has been publicly accessible.

As a consequence, the current process required to transfer or sell public land from one government entity to another can lead to high levels of community anxiety and concern, even where the land will remain in public use.

The current requirement that all offers of sale be accepted or rejected within 30 days does not provide sufficient time for councils to undertake community consultation and assess whether the land on offer should remain in public ownership, through council purchase, in the long-term interests of the local community, particularly if the council has had no forewarning of a possible land sale.

There is little regard to the lead time necessary for councils to: undertake their own investigations in relation to the asset and its existing condition; assess the community benefit that will be derived from the purchase of the asset; and go through a formal reporting process though a council meeting cycle before a decision to pursue purchase can be made.

Councils should be provided with early notice of the State government's intention to sell public land or open space.

In the Victorian Guide to Regulation (4.22 Victorian Guide to Regulation, Feb '05), the statutory period for submissions is 28 days, however government policy is to allow 60 days, recognising that more time is often required to enable informed input by affected stakeholders.

A similar minimum period of 60 days to accept or reject a land sale offer should be provided to councils to enable them to make an informed decision about a complex property matter.

Recommendation 5: Councils should be provided with early notice of the State government's intention to sell public land or open space, and be given a minimum of 60 days to accept or reject a land sale offer.

2.6 Sale of public land and open space to local government

Under the provisions of the Local Government Act 1989, councils can transfer, sell or lease land to the Crown without needing to provide public notice. This legislation acts as an enabler to allow surplus council land to be transferred to the State. Similar enabling processes for council purchase, lease or transfer of State land have considerable merit to ensure the best use of public land.

According to government policy, where parcels of land are declared surplus to requirements by a government department or statutory authority, the relevant council may be offered the option to purchase the land at full market value.

In circumstances where land has a continuing community benefit, the practice of charging councils full market value is not necessarily in the public interest. Often the existing uses of the land will continue, despite changed public ownership i.e. State to local ownership. Communities have little regard as to whether public land is owned by State or local government - the level of government that owns it is unimportant.

The cost of purchasing such land can be prohibitive for councils and the practice can increase the cost of a community project, sometimes to the point where it ceases to be viable. The timing of disposal does not always align with current community needs and future needs must be identified and provided for.

Councils should be given access to public land without having to pay market value. Local government should not face significant financial costs for preventing the loss of existing public open space, or for preventing public land from moving into private ownership and being developed where other community or environmental needs could be more appropriate.

More flexible financial and management arrangements are required to enable the retention and ongoing community use of existing public land and open space. This should include the flexibility to transfer assets from one level of government to another – particularly where alternative adaptive uses are supported by the community. This could include an examination of the process of transferring council land to the State Government to ensure it operates as efficiently and effectively as possible.

Partnership arrangements between State and local government, such as long term (nominal) lease arrangements and committee of management mechanisms, could be established to ensure public land is retained for long-term community benefit.

Where State-owned land is transferred to local government (or vice versa) for an agreed continuing community benefit, then the land should be transferred on a nominal basis. This could occur within the current legislative framework, but would require a change in government policy.

Such transactions should be undertaken with appropriate accountability and integrity.

Recommendation 6: Where State-owned land is transferred to local government for an agreed on-going community benefit, any cost should recognise the community benefit associated with public ownership of land. Alternative models should be

examined to identify the most appropriate form of land transfer.

2.7 Maintenance of public land

Local government has a long history of maintaining public land that it does not own and that provides a public benefit, particularly open space that is used for passive recreation. For reserved crown land, this is usually under an arrangement where council is appointed as committee of management over the land. Under these circumstances, the land remains in the ownership of the crown. In other instances, the arrangement is more informal.

In some cases, councils find themselves in a situation where they are being offered for sale land that they have maintained for many years at no charge to the government entity that is disposing of the land. This can also apply to other community assets.

The value of past maintenance and upgrades to State-owned land or assets should be taken into consideration when determining the cost to council if the land or assets are transferred from State to local government.

Responsibility for the ongoing maintenance of land or other asset must also be agreed at the time of transfer.

Recommendation 7: Where State-owned land is transferred to local government, the value of past maintenance and upgrades by local government should be taken into consideration when the land / asset is valued, and the ongoing costs of its maintenance as a community asset acknowledged.

2.8 Sale of other public assets to local government

There are instances where local government must purchase State-owned community assets in order to retain them for community use and often these facilities were built and financed in the first instance by the local community.

Historically, buildings such as community halls, court houses and civic centres have been built and financed by local communities. Over time the ownership and operation of many of these assets has transferred to the State government, committees of management and councils. Local communities still retain strong links to these assets and lobby councils to intervene where they believe assets are not being maintained or utilised effectively for community purposes. A transfer of ownership is often necessary to enable councils to manage and develop these assets for maximum community benefit.

Under current State government policy, local government is required to purchase these State-owned community assets in order to retain them for community use. Local government must then use local funds to repurchase an asset originally paid for by that local community which often transferred to the State at little or no cost.

It is important that State and local government work together to change current policies and processes so that public assets can be developed and utilised in the most cost efficient and effective way to meet diverse and future community needs.

The MAV calls for:

- A clear position that publicly owned assets are not constrained by bureaucratic structures and levels of government
- Mechanisms where a transfer of assets between levels of government can occur without a transfer of funds, thus saving costs to the community
- Cost sharing of community infrastructure rather than cost shifting to local communities

This approach can apply equally to the sale of public land and open space.

The MAV has called for the State government to change this practice, and to work with local government to develop a fair and sustainable process for retention of community assets for community purposes, particularly in instances where councils express a willingness to develop and manage these assets (or vice versa).

Recommendation 8: State government and local government jointly develop a fair and sustainable process for the retention and ongoing maintenance of community assets for community purposes.

2.9 Sale of public land to local government for development

In some instances, a council may seek to develop public land that it has purchased from the State government.

Where land is developed for a wholly commercial purpose, the practice of charging full market value for the land would seem to be reasonable.

Where the development will result in a continuing net community benefit, the land should be transferred at no cost or for a nominal sum.

Recommendation 9: Where State-owned (local government) land is transferred to local government (State Government) and developed for an agreed net community benefit, the land should be transferred for a nominal sum.

2.10 Future development of public land

The decision to develop land does not always occur at the time it is purchased or transferred.

In instances where land has been transferred between levels of government at no cost or reduced cost and the responsible government makes a decision, in the future, to develop that land, it is reasonable that any windfall profits from the increase in land value associated with that development, be shared between the council and State Government.

Recommendation 10: Where land is transferred between governments at no or reduced cost and the responsible government makes a future decision to develop the land for wholly commercial purposes, any windfall profits from the commercial use of the land could be shared between the council and State government.

3. Conclusion

The MAV recognises that both state and local government policy objectives rely, to some extent, on the strategic, coordinated and optimal use of public land and open space.

The MAV welcomes the inquiry into the sale and development of public land and open space and the opportunity to make a submission. The inquiry is appreciated.

The MAV hopes that the recommendations and issues raised by the MAV will be considered by the Select committee in its report to the State Government.

4. Recommendations - summary

1. Councils should be given a formal opportunity for input prior to the State government deciding that assets are surplus.
2. Where land is no longer required by a single agency, a full assessment should be undertaken (across departments and with councils), to determine current and potential social and environmental value, in addition to its economic value.
3. Where land is no longer required by a single agency, a full assessment of its strategic, longer term value needs to be undertaken (across departments and with councils) to determine whether it can be used to implement whole of government policies such as Melbourne 2030 and A Fairer Victoria.
4. The State government should consider funding models that provide ongoing financial support to assist councils assemble land to implement state policy such as Melbourne 2030.
5. Councils should be provided with early notice of the State government's intention to sell public land or open space, and be given a minimum of 60 days to accept or reject a land sale offer.
6. Where State-owned land is transferred to local government for an agreed on-going community benefit, any cost should recognise the community benefit associated with public ownership of land. Alternative models should be examined to identify the most appropriate form of land transfer.
7. Where State-owned land is transferred to local government, the value of past maintenance and upgrades by local government should be taken into consideration when the land / asset is valued, and the ongoing costs of its maintenance as a community asset acknowledged.
8. State government and local government jointly develop a fair and sustainable process for the retention and ongoing maintenance of community assets for community purposes.
9. Where State-owned (local government) land is transferred to local government (State Government) and developed for an agreed net community benefit, the land should be transferred for a nominal sum.
10. Where land is transferred between governments at no or reduced cost and the responsible government makes a future decision to develop the land for wholly commercial purposes, any windfall profits from the commercial use of the land could be shared between the council and State government.