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LAND ACQUISITION AND DISPOSAL

Strategic Outcome:	CL. Our Civic Leadership
Policy type	Strategic
Date of Adoption:	15 May 2024 Minute Number: 137/24
Date for Review:	17 May 2028
Responsible Officer:	Deputy Chief Executive Officer
Document Control:	New policy
Delivery Program Link:	CL.5 Manage people, assets, resources and risks responsibility to support the Council's ongoing viability and maximise value for money for ratepayers

1. POLICY STATEMENT

Berrigan Shire Council will from time to time acquire or dispose of land or its interest in land, including road reserves.

It is important all acquisition and disposal of Council land is open, transparent and in the best interest of the Council and the community.

2. PURPOSE

The policy aims to:

- Ensure Council has open and accountable processes to consider the acquisition and disposal of land or its interest in land.
- Ensure best value is achieved in Council land dealings.
- Establish the criteria under which Council will consider acquisition and disposal of land or its interest in land.

3. SCOPE

This policy applies to all acquisition and disposal of Council lands or its interests in land including easements over private property.

4. OBJECTIVE



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This policy is developed to assist the Council with the Delivery Program Objective:

CL.5 Manage people, assets, resources and risks responsibility to support the Council's ongoing viability and maximise value for money for ratepayers.

5. POLICY IMPLEMENTATION

5.1 General principle

Council (as custodian of public assets) acquires and disposes of all property interests in open market format to ensure due probity of process and optimal financial return (and minimal risk).

All dealings in Council land can only be achieved through a resolution of Council.

5.2 Land acquisition

Section 186 of the *Local Government Act 1993* prescribes for what purposes Council can acquire land.

Properties are to be identified taking into consideration the purpose for which they need to be acquired, the strategic nature of such properties and the value that such properties have to the community.

Where properties are listed for sale on the open market, Council officers shall negotiate the terms of purchase with either the vendor or the vendor's agent.

Where properties are not listed on the open market, council officers will arrange a valuation report as a basis for negotiation and the valuation report shall be attached to the report submitted to Council, as required. In the event of a formal valuation being obtained, this shall be used as a guide in any negotiations and subsequent report to Council.

For all land and easement acquisitions for properties not listed on the open market, the acquisition must be undertaken in strict accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. Authority to compulsorily acquire land is granted under the *Roads Act 1993* or the *Local Government Act 1993*.

Any negotiations are to be conducted on the basis that a formal offer cannot be made until Council has considered a report authorising purchase of the property.

At the time of acquisition, Council must resolve the classification of the land to be either Operational or Community land.

5.3 Land disposal

5.3.1 Assessment



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Land and buildings are to be tested against a number of criteria to determine whether the property is retained and developed for community use or developed or sold to realise its commercial potential.

The seven (7) criteria contained in the assessment are:

1. Statutory influences (restrictions or limitations) – are there statutory reasons for the Council ownership of the property? This will extend to actual or implied trusts that have been established as a result of Council's acquisition of the land.
2. Existing usage – Is the land used or likely to be used to meet operational, community or recreational needs?
3. Potential future use – is the land or road likely to be required for Council's operational needs.
4. Spatial distribution – are there adequate-like facilities and opportunity to meet future needs in the area and serving the local community?
5. Conservation value – does the land or road have cultural, natural or heritage value that should be maintained?
6. Site constraints and opportunities – in addition to conservation value are there other site constraints which may extend to [but not restricted to] flood liability, land slip, mine subsidence or other physical impairment?
7. Maintenance issues – what maintenance requirement does Council have for the land?

Should the proposed sale be impacted by any of these matters, it should not proceed unless it can be demonstrated that there is a public and/or economic benefit to the sale or the contract conditions can be structured to ensure that the issue is addressed.

5.3.2 Process

Where land (including surplus areas of public road) is capable of being sold on the open market and able to be developed independently of any other property, **the sale shall be by competitive process involving public auction, private treaty, tender or expression of interest** unless circumstances warrant sale by Direct Negotiation (as set in clause 5.4.1).

For public auction, the Chief Executive Officer will set the reserve price based on a recommendation of an independent valuer.

5.4 **Direct negotiation**

5.4.1 Conditions for direct negotiation

Council can dispose of land by Direct Negotiation under the following circumstances:

1. Where the total cost of the public sale process will exceed the expected community benefit. For example, where the land is worth \$1,000 and the cost to market the land is \$5,000.



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2. Where there is only one identifiable purchaser. For example, where a site is not large enough for development in its own right (including a portion of road reserve) and is surrounded by public roads on all sides other than the adjoining owner. Where a site adjoins two owners such as laneways, they will each be offered 50%.
3. Where Council is bound by a contractual obligation. For example, a tenant with a first right of refusal, where that tenancy has been entered into as a result of public competition.
4. Disposal of land to a government or utility authority for the purpose of infrastructure provision.
5. Where a public marketing process which has been undertaken within the last 12 months in accordance with this policy has failed to achieve the desired outcome.
6. In response to a proposal which achieves specific policy goals of Council.

This exclusion aims to allow Council to respond to an approach for the development of a unique project. Any such proposal must comprise a concept plan and description of the project and clear demonstration of the achievement of specific policy and strategic goals and objectives of Council, e.g., a land-swap transaction.

The report to Council covering these sales will identify the reasons why this sale process was chosen.

5.4.2 Valuation

Where Council proposes to sell land by direct negotiation, the Council will obtain an independent valuation to establish the market value, considering the highest and best use of the site and any conditions Council may place on the sale.

For land being sold to an adjoining owner, the valuation shall be carried out on an added-value basis and the sale price shall be consistent with the difference in values on a before-and- after basis.

Council recognises that valuation advice is not an exact science, and it is reasonable that a sale price of up to 10% variation from that valuation may be achieved. However, where the negotiated outcome results in a sale price more than 10% less than the assessed market value, it shall be acknowledged in the report to Council giving reason why that variation shall be adopted.

5.5 **Covenants and restrictions**

Restrictions should not be imposed or agreed in relation to Council land unless there is a net tangible benefit to Council or the public and provided the restriction does not unreasonably impact service delivery or the future use or development potential of the land.

The beneficiary of the restriction must compensate Council for any diminution in the market value of the land arising from the restriction, as assessed by Council's independent valuer. All costs associated



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with the restriction including valuer costs should normally be paid for by the person benefitting from the restriction.

5.6 Easements

5.6.1 Easements over Council land

An easement should not normally be granted over Council land unless there is a net tangible benefit to Council or the public and provided the easement does not unreasonably limit service delivery or the future use or development potential of the land.

The person or entity benefitting from the easement should pay full market value for the easement as assessed by Council's independent valuer. All costs associated with the easement including valuer costs should normally be paid for by the person benefitting from the easement.

If the land is classified as community land, easements may not be granted other than for public utilities or if expressly authorised in a Plan of Management

5.6.2 Easements over private land

Council supports the extinguishment of easements it has over private properties when the benefits of the easements are no longer required.

Where Council no longer requires an existing easement(s), such easement(s) can be extinguished provided the landowner pays Council at least an amount determined by a registered Valuer.

If the extinguishment is owner initiated then an application fee together with a deposit to cover the legal, valuation and Council administrative costs as determined annually by Council are to be borne by the owner.

If the extinguishment is Council-initiated then legal and valuation costs are to be borne by Council.

6. RELATED LEGISLATION, POLICIES AND STRATEGIES

6.1 Legislation

- *Local Government Act 1993*
- *Roads Act 1993*
- *Real Property Act 1900*
- *Land Acquisition (Just Terms Compensation) Act 1991*
- Local Government (General) Regulation 2021
- Tendering Guidelines for NSW Local Government (2009)
- Guidelines for the Compulsory Acquisition of Land by Councils (2006)



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6.2 Council policies and guidelines

- Governance Policy
- Code of Conduct
- Procurement and Disposal Policy
- Tender Policy
- Leasing and Licencing Council Property Policy

7. RECORDS MANAGEMENT

All Records must be kept in accordance with Council's Records Management Policy (currently under development) and destroyed as per the General Retention and Disposal Authority: Local Government Records (GA39).

8. REVIEW AND EVALUATION

This policy (procedure) will be evaluated and reviewed at least once every four (4) years as per Council's Governance Policy (currently under development) or as required.

9. DOCUMENT AVAILABILITY

A number of legislative instruments require Councils to have the policy available for inspection at Council's principal office (i.e. Policies made under Part 3, of the Local Government Act 1993). Each document should therefore state the ways in which the policy is available including any relevant fees and charges for access to such policy. An example of the required statement is provided below:

This policy will be available for inspection at Council's principal office during ordinary business hours as per the requirements of section 18 (c) of the *Government Information (Public Access) Act 2009* and section 167 of the *Local Government Act 1993*.

Access to the policy in digital format is free and is available on Council's website <https://www.berriganshire.nsw.gov.au/>

Printed copies of the document are available at Council's principal office (address noted below) and are subject to Council's Fees and Charges.

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10. VERSION CONTROL

Version Number	Date	Summary	Responsible Officer
1.0	15 May 2024	New Policy document	Deputy Chief Executive Officer

APPENDICES