



**BYRON
SHIRE
COUNCIL**

Policy

Land Acquisition and Disposal

2024

Information about this document

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Resolution No	16-442
Document Owner	Director Infrastructure Services
Document Development Officer	Legal Counsel
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Document History

Doc No.	Date Amended	Details/Comments eg Resolution No.
E2016/29999		Draft Policy
E2016/93366		Council Resolution 16-442 stipulated that Council adopt the draft Policy and place it on public exhibition for a minimum period of 28 days. As there were no submissions received, resolution 16-442 determined that the draft Policy be adopted and incorporated into Council's Corporate Documents Register.
E2018/82267	11/10/2018	Amended to remove track changes and minor formatting
E2019/10540	23/01/2019	Reviewed for currency, endorsed by ET. Minor change to update title year
E2022/97155	01/03/2023	Draft for endorsement by Executive Team: Updated due to related legislation
	27/04/2023	Draft for Council as endorsed by Executive Team: Updated due to related legislation
	30/01/2024	Placed on public exhibition following resolution 23-141. No amendments made to draft presented to Council on 27/04/2023 (other than update to Policy year in title)
	28/02/2024	Finalised per resolution 23-141 following no submissions from public

Further Document Information and Relationships

Related Legislation	Local Government Act 1993 Valuation of Land Act 1916 Real Property Act 1900 Land Acquisition (Just Terms Compensation) Act 1991 Roads Act 1993 Environment Planning and assessment Act 1979 Office Local Government, Land Acquisition Information Guide, December 2014 Department of Finance, Services and Innovation Circular - DFSI-2019-03 - Revised Property Acquisition Standards 22-18 Updated statutory forms under the Land Acquisition (Just Terms Compensation) Act 1991 to take effect from 8 June 2022
Related Policies	Asset Management Policy
Related Standards, Procedures, Statements, documents	

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.

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1. Introduction

1.1 Background

Council may acquire and dispose of land. Whether buying or selling real property, Council has various legal obligations. This policy provides the framework for a transparent process for Council's land dealings.

1.2 Objectives

The main objective of this policy is to ensure that Byron Shire Council has an open and accountable framework for the acquisition and disposal of land.

1.3 Scope

This policy applies to all acquisition and disposal of Council lands, easements, and includes interests in land.

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.

2. Relevant Legislation and Guidelines

Council's dealings in land are more regulated than if Council was a private land owner.

Some of the legislation and policies regulating Council's land dealings includes:

- *Local Government Act 1993 (LG Act)*
- *Valuation of Land Act 1916*
- *Real Property Act 1900*
- *Land Acquisition (Just Terms Compensation) Act 1991 (LAJTC Act)*
- *Roads Act 1993*
- *Environmental Planning and Assessment Act 1979*
- Independent Commission Against Corruption, *Guidelines for managing risks in direct negotiation*, May 2006
- Office Local Government, *Land Acquisition Information Guide*, December 2014
- Department of Finance, Services and Innovation Circular - DFSI-2019-03 - Revised Property Acquisition Standards
- 22-18 Updated statutory forms under the Land Acquisition (Just Terms Compensation) Act 1991 to take effect from 8 June 2022

3. Land Acquisitions

3.1 General

Council can only acquire land:

- for the purpose of exercising its functions;
- subject to classifying the land under the LG Act;

- via an elected Council resolution authorising the acquisition; and
- if acquiring land compulsorily, with Ministerial consent.

3.2 Methods of Acquisition

Acquisition by Agreement and Value

Acquisition by agreement is always Council's preferred process to acquire land or an interest in land.

Subject to any legal requirements for an agreed acquisition, if Council identifies land or interests in land that is required to facilitate functions of Council, but the land is not available for public sale, Council may approach the landowner to try and negotiate the purchase.

Where a property Council wants to acquire is not listed on the open market, Council will obtain a valuation report as a basis for negotiation.

Council will work with the relevant landowner to reach an agreement satisfactory to both parties.

Acquisition by Compulsory Process

If agreement to the acquisition of land or an interest in land cannot be made with the landowner, Council may compulsorily acquire land or an interest in the land.

The process for compulsory acquisition is highly regulated under the LAJTC Act and various NSW Government policies, including the *Land Acquisition Information Guide* (December 2014), and Revised Property Acquisition Standards as issued by the Office of Local Government. There are also new updated statutory forms under the *Land Acquisition (Just Terms Compensation) Act 1991* that took effect 8 June 2022.

These rules deal with issues like the time for negotiation and compensation.

4. Land Disposals

4.1 Disposal Criteria

In deciding to sell land, Council will consider the following matters that are relevant to the proposed sale:

- Whether Council can lawfully sell the land;
- Existing usage;
- Potential future use;
- The likely sale price;
- The cost of retaining the land; and
- The public interest

4.2 Disposal method

Where Council wants to sell land (including surplus areas of public road) the sale shall be by competitive process via Council's preferred method – be it public auction, tender or expression of interest – unless the circumstances warrant sale by direct negotiation.

Council may dispose of land by direct negotiation under the following circumstances:

- Where the sale cost will be more than the sale price.
- Where there is only one identifiable purchaser.
- Where Council is bound by a contractual obligation.
- Where the proposed purchaser is a government agency.
- Where a public marketing process to sell the land has previously occurred but failed to secure an acceptable sale.
- In response to a proposal which achieves specific policy goals of Council.
- Any other extenuating circumstance.

Where land is being sold by direct negotiation, a probity plan will be developed to cover the following matters:

- a) obtaining best value for money;
- b) demonstrating accountability and transparency;
- c) dealing with conflict of interest;
- d) providing a fair chance for all to participate;
- e) where Council sells property subject to a development application, that application will be assessed independently and submitted to either the Independent Hearing and Assessment Panel or the Joint Regional Planning Panel.

4.3 Valuations

Where Council proposes to sell land by direct negotiation and the estimated value of the land is greater than \$1m, Council will obtain either:

- a) two independent valuations where the site has no special value to an adjoining owner and the market value based on the highest and best use can be established by analysis of direct comparative sales data; or
- b) one valuation undertaken jointly by two consultant valuers or a consultant valuer and land economist, quantity surveyor or retail specialist where the sale has a special value either to an adjoining owner or where the purchaser is acquiring the land for a specific purpose for which direct comparable sales data is not available.

For all other Council land proposed to be sold other than by public auction, Council will obtain a valuation from an independent valuer to establish the market value, taking into account 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 not unreasonable 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.

4.4 Closed roads

The *Roads Act 1993* regulates the closing and sale of Council roads.

An application for the full or part closure and disposal of a road may be initiated by Council or by an individual. In the latter case, Council is still responsible for following the *Roads Act 1993* requirements for road closure.

If preliminary investigations find that it is a formed road then Council may proceed with the road closure process.

Notification identifying the road proposed to be closed is sent to adjoining land owners, notifiable authorities and advertised in a local newspaper and a 28 day submission period is given.

If the road is unformed then on closing, the title may revert to the Crown, who would then negotiate the transfer of that land with the applicant.

Council may acquire land for the purposes of road widening and road reconstruction as per the *Roads Act 1993*. Land swap agreements may also be negotiated, and these should be treated in the same way as a land acquisition and/or sale by Council. The Council resolution which authorises the land swap must include justification for the land swap and details of the outcome of due diligence investigations, and an independent valuation where appropriate.

For individual-initiated closures and disposals, a formal request needs to be made in writing by the applicant – addressed to the General Manager. All costs associated with the disposal of the land, including Council's reasonable legal costs, will be borne by the purchaser.

For closure of classified roads, the approval of the Roads and Maritime Services must be obtained prior to the matter being referred to Council for consideration.