

ACQUISITION/RESUMPTION OF LAND OR EASEMENT RIGHTS OVER LAND NOT UNDER COUNCIL'S CONTROL POLICY (ADMINISTRATIVE POLICY)

1. Scope:

This policy applies to the acquiring or resuming of land not owned or managed by Rockhampton Regional Council.

2. Purpose:

To:

- Guide the decision making process in obtaining land or gaining easement rights over land not under Council's control; and
- Provide a framework for employees involved in proposing the acquisition/resumption of land or easements for Council's consideration.

3. Related Documents:

Primary

Nil

Secondary

Acquisition of Land Act 1967

Judicial Review Act 1991

Land Act 1994

Acquisition/Resumption of Land or Easement Rights Over Land Work Instruction

Financial Delegations Policy

Guidelines for Local Governments – compulsory acquisition of land

Notice of Intention to Resume

4. Definitions:

To assist in interpretation, the following definitions apply:

Acquisition by Agreement	To acquire land or easement rights by mutual agreement between the property owner and Council without utilising powers under the <i>Acquisition of Land Act 1967</i> .
Act	<i>Acquisition of Land Act 1967</i>
CEO	<i>Chief Executive Officer</i> A person who holds an appointment under section 194 of the <i>Local Government Act 2009</i> . This includes a person acting in

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	this position.
Council	Rockhampton Regional Council
Easement	A right to use a part of land in accordance with an easement schedule of rights and obligations.
Employee	<i>Local government employee:</i> (a) the chief executive officer; or (b) a person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
GM	General Manager
Land	Land, or any estate or interest in land that is held in fee simple, including fee simple in trust under the <i>Land Act 1994</i> , but does not include a freeholding lease under that Act.
Owner	Individual or entity in possession of title for land, building or other item.
Resumption under the Act	Compulsory acquisition or land or easement rights under the <i>Acquisition of Land Act 1967</i> .
Resumption Agreement	As per section 15(1) of the <i>Acquisition of Land Act 1967</i> .
State Guidelines	Department of Natural Resources and Mines Policy No. GLP/2013/676 'Guidelines for Local Governments – compulsory acquisition of land'.

5. Policy Statement:

Council may be required to obtain land for public use to facilitate construction of roads, drainage, water, sewerage or parks.

Council may also be required to gain access rights for construction and/or maintenance purposes over land that is privately owned. An easement is to facilitate construction and/or maintenance of assets that will be retained within land not owned by Council, but gives Council the right to enter the easement for access to or to carry out construction and/or maintenance work on the assets within the easement.

When, for any purpose, it is not necessary for Council to take the whole estate in any land, but it is sufficient for such purpose to take an easement, the provisions of this policy apply as if the easement were land.

5.1 Obtaining Land or Easement Rights Not Under Control of Council

To obtain land or easement rights over land not under the Council's control, there are three options available.

The method utilised is decided by the relevant GM/Deputy CEO and will be dictated by the circumstances.

5.1.2 Option 1 - Resumption Under the Act:

Proceedings undertaken in accordance with the *Act*.

- Provides certainty and efficiency of process.
- Provides a standard formal process with clearly defined steps and timeframes.

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- Whilst allowing for compensation to be settled by negotiation, defers to the Land Court for settlement when agreement on compensation cannot be realised.

5.1.2 Option 2 - Resumption Agreement Under the Act:

An agreement reached with the owner of the land in accordance with s15 of the *Act*.

- Provides certainty and efficiency of process.
- Provides a standard formal process with clearly defined steps and timeframes.
- Whilst allowing for compensation to be settled by negotiation, defers to the Land Court for settlement when agreement on compensation cannot be realised.
- Gives interested parties a sense of retaining a level of control over their land and the process.

5.1.3 Option 3 - Acquisition by Agreement:

Proceedings having no involvement with the *Act*.

- In some circumstances can progress quicker than proceedings under the *Act*, but is dependent on the interested parties attitude.
- Allows for acquisition of land or easement rights without the payment of compensation, in some circumstances, or for agreement to be reached on the payment of compensation at the time of acquisition.
- Gives interested parties a sense of retaining a level of control over their land and the process.

Acquisition by agreement may sound more appealing, but finalisation of this process requires sign-off by the land owner, which in some instances will not be forthcoming. Experience has shown that even with the best intentions, obtaining land or easement rights by agreement can be costly, time consuming and can easily fail to deliver on the required outcomes.

Actions under the Act have the potential to be lengthy processes requiring strict compliance with legislation and can only be utilised where there is a genuine public benefit. However, under some circumstances, can be more time efficient than acquisition by agreement.

In determining the most suitable option, reference should be made to the State Guidelines - Guidelines for Local Governments – compulsory acquisition of land, specifically:

- Chapter 3.0 – Community Consultation and Negotiation; and
- Chapter 4.0 – Commencing the Compulsory Acquisition Process.

5.2 Initiation of Action

A GM/Deputy CEO may decide to pursue a resumption or agreement under the Act or an acquisition by agreement when one of the following needs has been identified as:

- Part of the design and construction for a roadworks, water, sewerage or drainage project adopted in the annual budget or infrastructure forward planning process;

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- A result of advice received that a road or Council asset is constructed on private property; or
- A result of the adverse effects of upstream development.

5.2.1 Council Resolution

Depending on the circumstances, a Council resolution may or may not be required before taking action to acquire land. Section 7(1) of the Act requires Council to propose to take land, hence in all instances when the Act is utilised, a Council resolution is required.

	Council Resolution Required	
	Project identified in budget	Project not identified in budget
Resumption under the Act	Yes	Yes
Resumption Agreement	Yes	Yes
Acquisition by Agreement	No*	Yes

All negotiations are confidential, therefore reports to Council must be confidential.

If a report is being presented to Council, generally no official contact should be made with the owner until after Council resolves to proceed with the action.

*When processing a property 'acquisition by agreement' associated with a project identified in Council's budget, an information report must be provided to the next appropriate Council committee meeting.

5.3 Road Boundary Fencing

Council will meet the cost of removal of an existing fence on the existing boundary over the area affected and replacing the fence on the new road boundary, reusing the recovered materials.

Where the recovered materials are unsuitable to reuse, Council will replace the various components to ensure a sound and secure fence is placed on the new road boundary.

If the existing fence is erected off the true road boundary, Council may only be liable for that section of fence required to secure the property from the acquired land.

If no road boundary fence exists, Council will not be liable for any boundary fencing.

5.4 Compensation

When land or easement rights are obtained, it is recognised that in some circumstances, because the work being undertaken by Council enhances the value of the balance land, the owner will not always be entitled to nor require compensation.

In cases where compensation is payable, owners will be encouraged to nominate the compensation amount consequent upon the dedication of land from their property.

If land is being obtained via acquisition by agreement, Council may offer to share its valuation report with the owner/s which will save the owner/s the added cost of obtaining their own valuation. In some instances the valuation may be more than the purchase price/compensation amount payable by Council.

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The CEO or relevant GM/Deputy CEO has the authority to settle all claims for compensation; noting compensation exceeding the GM/Deputy CEO's financial delegation must be settled by the CEO.

Where the owner has nominated an amount less than the valuation, Council may accept the nominated amount where it is satisfied that the claimant has obtained appropriate independent advice.

Council recognises that monetary compensation may be of limited value to the owner in some cases and will endeavour to meet the reasonable requests of owners, i.e. relocation of plants within the subject land.

6. Review Timelines:

This policy will be reviewed when any of the following occur:

- 6.1. The related information is amended or replaced; or
- 6.2. Other circumstances as determined from time to time by the CEO.

7. Responsibilities:

Sponsor	Chief Executive Officer
Business Owner	Deputy Chief Executive Officer
Policy Owner	Manager Corporate and Technology Services
Policy Quality Control	Corporate Improvement and Strategy

**EVAN PARDON
CHIEF EXECUTIVE OFFICER**

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