

ACQUISITION OF LAND OR EASEMENT RIGHTS POLICY

ADMINISTRATIVE POLICY



1 Scope

This policy applies to the acquiring of land or easement rights by Rockhampton Regional Council for infrastructure projects.

2 Purpose

The purpose of this policy is to:

- (a) Guide the decision-making process in acquiring land or easement rights over land for infrastructure projects; and
- (b) Provide a framework for employees involved in proposing the acquisition of land or easements.

3 Related Documents

3.1 Primary

Nil

3.2 Secondary

Acquisition of Land Act 1967

Judicial Review Act 1991

Human Rights Act 2019

Land Act 1994

Land Title Act 1994

Local Government Act 2009

Financial Delegations Policy

Guideline (a guide for local government) – Compulsory Acquisition of Land under the *Acquisition of Land Act 1967* GLP/2013/676 – State Government Guideline

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>Act</i> .
Act	<i>Acquisition of Land Act 1967</i> .
Affected Person	A party who is entitled to claim compensation for the acquisition of land under either: (a) The <i>Act</i> ; or (b) The <i>Local Government Act 2009</i> .

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CEO	Chief Executive Officer A person who holds an appointment under section 194 of the <i>Local Government Act 2009</i> . This includes a person acting in this position.
Compulsory Acquisition under the Act	Compulsory acquisition of land or easement rights under section 9 of the Act.
Council	Rockhampton Regional Council.
Delegated Officer	An employee appointed to a position delegated the relevant power under the Act.
Easement	A right to use a part of land in accordance with an easement schedule of rights and obligations.
Employee	Local government employee: (a) The CEO; or (b) A person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
GM	General Manager An employee appointed to a position with a corporate band 2 delegated in line with the Delegation and Authorisation Policy and detailed in the Delegations Corporate Register.
Infrastructure Projects	Projects for which Council may acquire land under section 5 of the Act.
Land	As defined in the Act, 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	Person recorded in the freehold land register as the registered owner of the lot under the <i>Land Title Act 1994</i> .
Resumption Agreement under the Act	Acquisition of land or easement rights under section 15 of the Act.
State Guidelines	Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development's Guideline (a guide for local government) – Compulsory Acquisition of Land under the <i>Acquisition of Land Act 1967</i> GLP/2013/676.

5 Policy Statement

Council may acquire land to facilitate infrastructure projects such as construction of roads, drainage, water, sewerage or parks.

Council may also gain access rights for construction and/or maintenance purposes over land that is privately owned by acquiring an easement. An easement facilitates construction and/or maintenance of assets that is retained within land not owned by Council and 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.

5.1 Acquisition of Land or Easement Rights

To acquire land or easement rights over land, there are three options available.

The method utilised is decided by the relevant GM and is dictated by the circumstances.

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.

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If the infrastructure project requires Council to acquire land or easement rights over multiple properties, it may be more time efficient to proceed with Option 1, compulsory acquisition under the Act, to provide certainty for the delivery of the project.

In determining the most suitable option, reference must be made to the State Guidelines.

5.1.1 Option 1 – Compulsory Acquisition Under the Act

Compulsory acquisition proceedings undertaken in accordance with the Act:

- (a) Has the potential to be a lengthy process requiring strict legislative compliance, however in some circumstances, can provide more certainty and efficiency than acquisition by agreement.
- (b) Provides a standard formal process with clearly defined steps and timeframes.
- (c) Requires approval from the Minister responsible for the administration of the Act to finalise the acquisition.
- (d) Allows for compensation to be settled by negotiation after the acquisition and either party can defer to the Land Court for settlement when agreement on compensation cannot be reached.

The State Guidelines must be followed for compulsory acquisitions.

Compulsory acquisitions should not be used unless:

- (a) Acquisition by agreement has been rejected by the GM as being unsuitable;
- (b) It can be shown that the property need is site specific and essential; or
- (c) Council has been unsuccessful in gaining agreement with the owner.

5.1.2 Option 2 – Resumption Agreement Under the Act

Resumption by agreement under the Act is only available if Option 1 is enacted first. After a notice of intention to resume has been served on the affected persons in accordance with the Act, an agreement on compensation is able to be reached with the affected persons in accordance with s15 of the Act prior to the acquisition. This option:

- (a) Provides certainty and efficiency of process and compensation payable.
- (b) Provides a standard formal process with clearly defined steps and timeframes.
- (c) Gives the affected persons a sense of retaining a level of control over their land interests and the process.
- (d) Has no requirement to apply to the Minister responsible for the administration of the Act to finalise the acquisition.

5.1.3 Option 3 – Acquisition by Agreement

Acquisition by agreement has no involvement with the Act:

- (a) In some circumstances can progress quicker than proceedings under the Act but is dependent on the owner's willingness to agree.
- (b) Allows for acquisition of land or easement rights to occur by agreement, with the amount payable agreed in advance and payable on settlement.
- (c) Gives owner's 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 is dependent on the owner signing the acquisition agreement. If an acquisition agreement is not reached, the GM may consider Option 1 – Compulsory Acquisition under the Act.

5.2 Initiation of Action

A GM can decide which option to pursue for the acquisition of land or easement for an infrastructure project.

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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.

Option	Council Resolution Required	
	Project identified in budget	Project not identified in budget
1 - Compulsory Acquisition under the Act	Yes	Yes
2 - Resumption Agreement under the Act	Yes	Yes
3 - Acquisition by Agreement	No*	Yes

All negotiations are confidential, therefore reports to Council must be confidential, with the exception of the report to Council initiating Option 1 – Compulsory Acquisition Under the Act.

*When Option 3 – Acquisition by Agreement is utilised for a project identified in Council's budget, an information bulletin report must be provided to Council following the finalisation of the acquisition by the project manager.

5.3 Boundary Fencing

When the acquisition of land results in a new property boundary, Council meets the cost of relocating fencing to the newly created boundary reusing recovered materials where possible.

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

If the existing fence is erected off alignment of the 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 is not liable for any boundary fencing.

5.4 Compensation

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

If land is being obtained via Option 3 - Acquisition by Agreement, Council may offer to share its valuation report with the owner.

If land is being obtained via Option 1 or 2, the delegated officer under section 12(5A) of the Act has the authority to settle all claims for compensation; within the delegated officer's financial delegation. For Option 3, the delegated officer with the responsibility for the project must have the appropriate financial delegation to settle the purchase price.

Where the affected person has nominated an amount less than the valuation, the CEO or relevant GM may accept the nominated amount where it is satisfied that the affected person has obtained appropriate independent advice.

Council recognises that monetary compensation may be of limited value to the affected person in some cases. Council endeavors to meet the reasonable requests of affected persons, i.e. relocation of plants within the subject land.

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6 Review Timelines

This policy is reviewed when any of the following occur:

- (a) The related information is amended or replaced; or
- (b) Other circumstances as determined from time to time by the Council.

7 Document Management

Sponsor	Chief Executive Officer
Business Owner	General Manager Organisational Services
Policy Owner	Manager Corporate and Technology Services
Policy Quality Control	Legal and Governance



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