

Program: Ethical Standards, Audit & Risk
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Scope

Mackay Regional Council (MRC) has the authority to acquire Land or an easement for public purposes under the *Acquisition of Land Act 1967* (Qld) (ALA). This Policy provides for the accurate and efficient management by Council of the acquisition process under the ALA.

This Policy facilitates the construction and maintenance of infrastructure projects such as roads, footpaths, drainage, water and sewerage, where MRC may need to obtain tenure over Land for public use or gain rights in the form of an easement over Land that is privately owned.

This Policy applies to all Employees.

Objective

The objective of this Policy is to:

1. ensure that MRC complies with proper legislative and judicial process when acquiring Land or an easement under the ALA; and
2. ensure that MRC acts in a manner supported by the Department of Natural Resources and Mines Policy GLP/2013/676 'Guidelines for Local Governments – compulsory acquisition of land.

Policy Statement

This Policy provides guidance on the factors that MRC must consider when determining to acquire land as a local government, by either Resumption Agreement or by compulsory acquisition, to comply with the ALA and allow for procedural fairness.

MRC considers that to the extent this policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

This Policy must read in conjunction with its associated Corporate Standard 122.01 - Acquisition of Land for Council Purpose, the ALA and the State Guidelines.

This process to remain in force until otherwise determined
by Mackay Regional Council

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1.0 Principles

Acquisition of land will be consistent with MRC's strategic directions including its economic, social, cultural and/or environmental objectives.

- When considering acquiring land, MRC will look for opportunities to:
- advance the strategic directions and objectives of MRC's Corporate Plan; and
- enhance local amenity, the environment, economic development and sustainable growth.

The process for the acquisition of land will be open and transparent to ensure MRC obtains the best outcome and price.

1.1 Context

Land or an easement required for a purpose set out in the ALA can be taken by MRC under the ALA in one of two ways:

Option1: By voluntary agreement called a "Resumption Agreement" under Part 2 Division 3.

MRC's preference is to negotiate a "Resumption Agreement" with the Affected Person/s as an alternative to a compulsory acquisition; or

Option 2: By compulsory acquisition under Part 2 Division 2.

Whilst allowing for compensation to be settled by negotiation, when agreement on compensation cannot be reached the Affected Person can refer the matter of compensation to the Land Court.

The method utilised will be dictated by the risk, circumstances such as urgency and the consequences of the project along with the Affected Person's position towards the proposed Land requirements.

Section 6 of the ALA provides if taking an easement will suffice, MRC must only take an easement.

Actions under the ALA have the potential to be lengthy processes which require strict compliance with legislation and can only be utilised where there is a genuine public benefit. However, in some circumstances, these methods are more efficient than acquisition by agreement.

In deciding which method to utilise, it must be noted that the State Guidelines indicate at Item 4.1:

'Prior to commencement of the compulsory acquisition process, constructing authorities should use all reasonable endeavours to negotiate agreement to acquire the interest and demonstrate that they have stood in the marketplace to acquire by agreement. Compulsory acquisition should not be used unless acquisition by agreement has been rejected as being unsuitable, or has been unsuccessful in gaining

agreement and it can be shown that the property need is site specific and essential'.

However, Item 5 of the State Guidelines indicates that the compulsory acquisition process can be undertaken immediately if negotiations with Interested Parties are not practical due to time constraints for the provision of public services/public infrastructure.

1.2 Resumption Agreement

- a) Provides certainty and efficiency of process;
- b) Provides a standard formal government process with clearly defined steps and timeframes;
- c) Whilst allowing for compensation to be settled by negotiation, defers to the Land Court when agreement on compensation cannot be realised; and
- d) Gives Affected Persons a sense of retaining a level of control over their Land and the process.

Acquisition by Resumption Agreement may sound more appealing than compulsory acquisition, but finalisation of this process requires sign-off by the Landowner, which in some instances will not be forthcoming as originally agreed. Experience has shown that even with the best of intentions, obtaining Land by agreement or by compulsory acquisition can be costly, time consuming and can easily fail to deliver on the required time and cost outcomes.

MRC's standard treatment of acquisitions provides an independent valuation as part of initial acquisition offers and affords the Landowner the option of acquiring alternative valuation assessments from a registered valuer of their choosing. If the only issue in dispute is compensation, following comparison of valuations significant separation of valuations exist that cannot be resolved by negotiation and/or a period of four (4) months has expired since the exchange of valuations, MRC's policy position will be that the acquisition will be progressed by compulsory acquisition following resolution by Council. This is because compensation is not a valid objection to the taking of Land or an easement.

1.3 Compulsory Acquisition

- a) Provides certainty and efficiency of process;
- b) Provides a standard formal government process with clearly defined steps;
- c) Provides a process for addressing objections raised by the Affected Person; and
- d) Whilst allowing for compensation to be settled by negotiation, defers to the Land Court when agreement on compensation cannot be realised.

2.0 Definitions

To assist in interpretation the following definitions shall apply:

Affected Person for Land the subject of a Resumption Agreement is each person who to Council's knowledge:

- a. will be entitled to claim compensation under the ALA in respect of the taking of the Land; or
- b. is a mortgagee of the Land.

ALA means the *Acquisition of Land Act 1967* (Qld).

Council shall mean all elected representatives of Council including the of MRC.

Employee shall mean all persons employed at MRC on a permanent, temporary, volunteer or casual basis and may include persons engaged under a contract of service..

Interested Parties generally refers to the property owner, but may include lessors, mortgagors and other parties that have an interest in the Land subject of the dealing.

Land means land or any estate or interest in land that is held in fee simple, including fee simple in trust under the *Land Act 1994* (Qld), but does not include a freeholding lease under the *Land Act 1994* (Qld).

MRC shall mean the Mackay Regional Council.

Resumption Agreement is an agreement between MRC and one or more Affected Persons for MRC to take Land or an easement under the ALA.

State Guidelines refers to Department of Natural Resources and Mines Policy GLP/2013/676 'Guidelines for Local Governments – compulsory acquisition of land'.

3.0 Review of Policy

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

- the related documents are amended or replaced; or
- other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this Policy is to be reviewed at intervals of no more than three (3) years.

4.0 Reference

Legislative references

- *Acquisition of Land Act 1967*
- *Judicial Review Act 1991*
- *Local Government Act 2009*
- *Planning Act 2016*

Related documents

- MRC Corporate Standard 098.1 – Acquisition of Land for Council Purposes
- Department of Natural Resources and Mines Policy GLP/2013/676 ‘Guidelines for Local Governments – compulsory acquisition of land’.

5.0 Attachments

1. MRC Corporate Standard 098.1 Acquisition of Land for Council Purposes

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New		Adopted by Council	23.8.23

Program	Office of Mayor and CEO
Date of Endorsement	23 August 2023
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1.0 Scope

This Standard applies to acquiring land or an easement for public purposes under the *Acquisition of Land Act 1967* (ALA) and to all Mackay Regional Council (MRC) Employees.

2.0 Objective

To provide a clear process and best practice for facilitating acquisitions by MRC under the ALA.

3.0 Reference

Legislative references

- *Acquisition of Land Act 1967*
- *Judicial Review Act 1991*
- *Local Government Act 2009*
- *Planning Act 2016*

Related documents

- Department of Natural Resources and Mines Energy Policy GLP/2013/676 'Guidelines for Local Governments – compulsory acquisition of land'.
- MRC Policy 098 – Acquisition of Land for Council Purposes.

4.0 Definitions

To assist in interpretation the following definitions shall apply:

Affected Person for land the subject of a Resumption Agreement is each person who to Council's knowledge:

- will be entitled to claim compensation under the ALA in respect of the taking of the land; or
- is a mortgagee of the land.

ALA shall mean the *Acquisition of Land Act 1967*.

Council shall mean all elected representatives, including the Mayor of Mackay Regional Council.

Employee shall mean all persons employed at MRC on a permanent, temporary, volunteer or casual basis and may include persons engaged under a contract of service.

Interested Parties generally refers to the property owner, but may include lessors, mortgagors and other parties that have an interest in the Land subject of the dealing.

Land shall mean land or any estate or interest in land that is held in fee simple, including fee simple in trust under the *Land Act 1994*, but does not include a freeholding lease under the *Land Act 1994*.

MRC shall mean the Mackay Regional Council.

Notice of Intention to Resume shall mean the notice prescribed by section 7 of the ALA.

Resumption Agreement is an agreement between Mackay Regional Council and one or more Affected Persons for Mackay Regional Council to take land or an easement under the ALA.

State Guidelines refers to Department of Natural Resources and Mines Policy GLP/2013/676 'Guidelines for Local Governments – compulsory acquisition of land'.

5.0 Standard Statement

This standard is intended to fulfil the following objectives:

- a) Ensure best practice is followed and the taking of Land/easements complies with the ALA and natural justice to minimise the risks of legal challenges; and
- b) Identify the Legal Services Unit and Executive Officer as having primary responsibility for the coordination and management of the acquisition process under the ALA.

This Corporate Standard must be read in conjunction with its associated MRC Council Policy 122 – Acquisition of Land for Council Purposes.

5.1 Initiation of Action

Ordinarily, an Employee will identify that tenure is required over certain land in the following circumstances:

- a) As part of the design and construction for a roadworks, footpath, water, sewerage or drainage project adopted in the annual budget or infrastructure forward planning process;
- b) As a result of advice received that a road or MRC asset or infrastructure is constructed on private property; or
- c) As a result of the adverse effects of upstream development.

Prior to an Employee pursuing a compulsory acquisition under the ALA on behalf of Council, the Employee's manager must notify the Legal Counsel of the proposed compulsory acquisition and consult with Legal Counsel about the application of this Corporate Standard.

Where a proposed Resumption Agreement relates to land required for a project that does not have a specific budget allocation, a report to and resolution by Council is required prior to the commencement of negotiations with the Affected Person.

Before progressing a compulsory acquisition under the ALA on behalf of MRC, an Employee must obtain a resolution by Council to approve the preparation and service of a Notice of Intention to Resume.

Therefore, depending on the circumstances, a resolution by Council may required before an Employee can take action to acquire land. This is shown in the below diagram:

	Resolution by Council required	
	Project identified in budget	Project not identified in budget
Compulsory Acquisition	Yes	Yes
Resumption Agreement	No	Yes

5.2 Report to Council Meeting

a) *Acquisition by Agreement*

Where it is identified that a resolution of Council is required for the Resumption Agreement (see clause 5.1), It is ideal and recommended for the report to address the matters identified below in subsection c).

MRC recognises that some projects such as minor road realignments or the dedication of easements over existing infrastructure do not lend themselves to the thorough addressing of some of the matters identified below in subsection c).

b) *Compulsory Acquisition*

MRC recognises that certain decisions made by it under the ALA may be subject to review under the *Judicial Review Act 1991*.

A judicial review challenge may be successful if Council takes into account an irrelevant consideration or fails to take into account a relevant consideration when deciding whether or not to take land. Therefore, it is important that where relevant, the matters identified below in subsection c) be addressed in the report submitted to a Council meeting seeking a resolution to commence compulsory acquisition under the ALA.

c) Matters identified in the State Guidelines that should be addressed in the report to the Council meeting (if appropriate):

Item and Reference Number in the State Guidelines	
2	POLICY MATTERS
2.1	<u>Assessment and identification of service need</u> Identify the service need or intended purpose for which the interest in land is necessary and how it links with the broader community and other government services. This will include ensuring that: - The public service/public infrastructure is necessary; - The selected site is the most appropriate; and - The broader Government objectives are all considered (i.e., issues concerning vegetation, water, cultural heritage and planning matters). COMMENT: MRC should be able to demonstrate why the service need cannot practically be met by other means (e.g., expansion of a nearby facility).
2.2	<u>Desired outcomes of a compulsory acquisition process</u> It is desirable that MRC confirm that the interest proposed to be acquired: - Is suitable for the efficient delivery of public services/public infrastructure; - Is compatible with the planning requirements of MRC and the State; and - Maximises and balances the social, economic and environmental benefits to the community and the State.
3	SITE SELECTION
3.1	<u>Site selection criteria</u> Consideration should be given to physical site requirements (e.g. area, topography, proximity and availability of services, public transport and regional and local planning compatibility). The site selected should avoid or minimise impacts on natural, historic and indigenous values. The following should be assessed: - Vegetation Management: whether there are any vegetation issues under the <i>Vegetation Management Act 1999</i>; - Water: whether there are issues under the <i>Water Act 2000</i> as the proposed use may require an ongoing water supply authorised under the <i>Water Act 2000</i>. - Native Title: whether there are any native title issues. - Constraints: any site constraints should be addressed. - Natural, historic and indigenous values should be considered.

	COMMENT: The site selection process is often raised by Interested Parties who are aggrieved by a Council decision. MRC should ensure their site selection process is well considered, objective and properly documented.
3.2	<u>Identifying suitable options and selected preferred site</u> Depending on the particular project, MRC should consider whether a detailed assessment is required to identify and assess site options before selecting the preferred site. The following may be relevant to the assessment process: - Identify candidate sites (Note: in some cases such as road widening there may only be one candidate property); - Consider MRC planning scheme, strategic plans and development control plans which incorporate growth implications, transport networks, residential development and vegetation and water implications; - Statutory authority consultation and advice (e.g., consult with relevant Government agencies regarding suitability of the site or their possible future requirements from the site); - Consideration of legislation, planning policies, native title issues, cultural heritage, historical heritage, environmental, vegetation and contamination issues; - Engineering/architectural advice on the suitability of the site; - Assessment of any existing infrastructure on candidate sites and continued requirement for the existing infrastructure; - Identify any legal interests in the candidate sites including: ▪ whether they are under the control of MRC or other government agencies; and ▪ any mineral resource interests affecting the candidate sites. - whether there is appropriate/alternative land available on the open market for sale; - indicative valuations for site options; and - any other information necessary to inform the evaluation of the candidate sites.
3.3	<u>Consider Resource Interests</u> MRC must consider resource interests granted under various legislation. If a resource interest is identified, MRC should: - Use best endeavours to consult with resource interest holders including as part of an environmental assessment; - Undertake an assessment of potential negative impacts on any resource interest holder; - Assess whether there are any potential conflicts or incompatibility between the proposed purpose for which the land is to be acquired and the resource interest; and - Liaise with Geological Survey of Queensland about possible impacts for all resource tenures and potential incompatibility.

	COMMENT: Assessing whether the resource activity is compatible with the purpose for the acquisition will depend on the individual circumstances the land is to be utilised for and therefore it will be up to Council to consider the potential risk of conflict associated with each project.
4	COMMUNITY CONSULTATION AND NEGOTIATION
4.1	<u>Negotiation</u> Compulsory acquisition should not be used unless acquisition by agreement has been rejected as being unsuitable or has been unsuccessful in gaining agreement and it can be shown that the property need is site specific and essential. COMMENT: Prior to commencing compulsory acquisition, MRC should use all reasonable endeavours to negotiate an agreement to acquire the interest and demonstrate that it has stood in the marketplace to acquire by agreement.
4.2	<u>Community Consultation</u> All stakeholders should be identified and necessary consultation should occur within the community about the project, land requirements and planning and environmental issues. COMMENT: It is highly recommended that there is early communications with and updates provided to the local Member of Parliament.
5	COMMENCING THE COMPULSORY ACQUISITION PROCESS
	Obtain appropriate finance approvals and ensure sufficient funding for the works and compensation is available. COMMENT: If negotiations with Interested Parties are unsuccessful or negotiations are not a practical option due to time constraints, and Council is authorised to resume the land for the intended purpose, compulsory acquisition can commence.
6	NOTICE OF INTENTION TO RESUME Natural Justice / Procedural Fairness
	A 'background information document' explains the reasons for the compulsory acquisition and should contain the land description, purpose for which it is being acquired, the benefit to the community/public, any alternative land investigated and reasons why the land is preferred. COMMENT: The background information document will be included with the Notice of Intention to Resume. A land acquisitions guide has been prepared which assists Affected Persons understand the process.

- 5.2.1 All negotiations are of a confidential nature and therefore all reports to Council meetings are to be presented in closed sessions.
- 5.2.2 If a report is to be presented to a Council meeting, generally no official contact should be made with Interested Parties until after Council resolves to proceed with the actions.

5.3 Compensation

- 5.3.1 Employees have the authority to settle a claim for compensation in accordance with an appropriate delegation.
- 5.3.2 MRC recognises that monetary compensation may be of limited value to Interested Parties in some cases and will endeavour to meet reasonable requests i.e., relocation of plants within the subject land.

5.4 Proper Procedure

Legal Counsel will be responsible for:

- a) ensuring that the resumption agreement or compulsory acquisition process is accurate and reflects proper legislative and judicial process when acquiring land or an easement under the ALA;
- b) preparing formal documentation to allow the Council to exercise their delegated powers under the ALA; and
- c) monitoring compliance with statutory timeframes and processes for each acquisition.

6.0 Communication

Legal Counsel will provide a monthly report to Director of Engineering and Commercial Infrastructure and Director of Development Services outlining the status of any current acquisition matters.

7.0 Review of Standard

This corporate standard will be reviewed when any of the following occur:

1. When any related policy documents are amended or replaced.
2. Other circumstances as determined from time to time.

Notwithstanding the above, this Corporate Standard is to be reviewed at intervals of no more than three (3) years.

Version Control:

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1	New		Adopted by Council	23.8.23