

# ACQUIRING LAND AND EASEMENTS FOR INFRASTRUCTURE PROJECTS POLICY (COMMUNITY POLICY)

## 1. Scope

The Acquiring Land and Easements for Infrastructure Projects Policy (this 'Policy') facilitates the construction and maintenance of infrastructure projects such as roads, drainage, water and sewerage, Council 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.

## 2. Purpose

The purpose of this Policy is to:

1. Provide a Council endorsed framework to enable staff to pursue the acquisition or resumption of land or easements and present such opportunities to Council; and
2. To confirm Council's commitment:
  - a) To ensuring best practice is followed and the taking of land/easements complies with the *Acquisition of Land Act 1967* and natural justice to minimise the risks of legal challenges;
  - b) Legal compliance and statutory process; and
  - c) To act in a manner supported by the Department of Natural Resources, Mines & Energy's 'Guidelines for Local Governments – compulsory acquisition of land'.

## 3. References (legislation/related documents)

### Legislative references

*Acquisition of Land Act 1967*  
*Judicial Review Act 1991*

### Related documents

Acquiring Land and Easements for Infrastructure Projects Procedure  
Department of Natural Resources, Mines & Energy Policy No GLP/2013/676 'Guidelines for Local Governments – compulsory acquisition of land'

## 4. Definitions

To assist in interpretation, the following definitions shall apply:

Acquisition by Agreement	To acquire land or an easement by mutual agreement between the property owner and Council without utilising powers under the Act.
Council	Livingstone Shire Council.
Easement	A right for Council to use an area of land that it does not own, for

	a specified purpose in accordance with a schedule of rights and obligations.
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	Has the same meaning as land in the Act and for the purposes of this policy, also includes easements.
NRM	Department of Natural Resources, Mines & Energy.
Resumption	Compulsory acquisition under the Act.
Resumption Agreement	Has the same meaning as resumption agreement in s 15(1) of the Act.
State Guidelines	NRM Policy No GLP/2013/676 'Guidelines for Local Governments – compulsory acquisition of land'.
the Act	<i>Acquisition of Land Act 1967.</i>

## 5. Policy Statement

There are three options available for Council to obtain land for infrastructure projects.

Option 1	Resumption	Compulsory acquisition proceedings are undertaken in accordance with pt 2 div 2 of the Act.
Option 2	Resumption Agreement	An agreement is reached pursuant to pt 2 div 3 of the Act.
Option 3	Acquisition by Agreement	An agreement is reached with the owner of the land without Council utilising its powers under the Act.

The method utilised will be dictated by the risk, circumstances such as urgency and the consequences of the project along with the landowner's attitude towards the proposed land requirements.

### Resumption

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

### 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 for settlement 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 Agreement

- a) In some circumstances, acquisition by agreement can progress quicker than proceedings under the Act but this is dependent on the attitude and cooperation of the interested parties; and

- b) 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 as originally agreed. Experience has shown that even with the best of intentions, obtaining land by agreement can be costly, time consuming and can easily fail to deliver on the required time and cost outcomes.

Actions under the Act 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.

## 5.1 Initiation of Action

Generally a Council Officer will identify that tenure is required over certain land in the following circumstances:

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

### 5.1.1 Resolution of Council

Depending on the circumstances, a resolution of Council may or may not be required before Council Officers can take 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 resolution from a meeting of the Council must be made.

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

## 5.1.2 Report to Council Meeting

### a) Resumption and Resumption Agreement

Council recognises that certain decisions made by it under the Act 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 sub-s c) be addressed in the report submitted to a Council Meeting seeking a resolution to commence action under the Act.

### b) Acquisition by Agreement

It is ideal for the report to address the matters identified below in sub-s c), however because this process is not governed by strict legislative requirements and only proceeds with agreement of the interested parties, it is not always necessary.

Council 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 sub-s c).

### 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
<b>2. POLICY MATTERS</b>
<u>2.1 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: <ul style="list-style-type: none"><li>- The public service/public infrastructure is necessary;</li><li>- The selected site is the most appropriate; and</li><li>- The broader Government objectives are all considered (ie issues concerning vegetation, water, cultural heritage and planning matters).</li></ul> COMMENT: Council should be able to demonstrate why the service need cannot practically be met by other means (e.g. expansion of a nearby facility).
<u>2.2 Desired outcomes of a compulsory acquisition process</u> It is desirable that Council confirm that the interest proposed to be acquired: <ul style="list-style-type: none"><li>- Is suitable for the efficient delivery of public services/public infrastructure;</li><li>- Is compatible with the planning requirements of Council and the State; and</li><li>- Maximises and balances the social, economic and environmental benefits to the community and the State.</li></ul>
<b>3. SITE SELECTION</b>
<u>3.1 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: <ul style="list-style-type: none"><li>- Vegetation Management: whether there are any vegetation issues under the <i>Vegetation Management Act 1999</i>;</li></ul>

- Water: whether there are issues under the *Water Act 2000* as the proposed use may require an ongoing water supply authorised under the *Water Act 2000*.
- 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. Council should ensure their site selection process is well considered, objective and properly documented.

### 3.2 Identifying suitable options and selected preferred site

Depending on the particular project, Council 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 Council 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 Council or other government agencies; and
  - any mineral resource interests affecting the candidate sites.
- Is there appropriate/alternative land available on the open market for sale?;
- Obtain indicative valuations for site options;
- Obtain any other information necessary to inform the evaluation of the candidate sites.

### 3.3 Consider resource interests

Council must consider resource interests granted under various legislation. If a resource interest is identified, Council 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 Negotiation

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, Council should use all reasonable endeavours to negotiate agreement to acquire the interest and demonstrate that it has stood in the marketplace to acquire by agreement.

#### 4.3 Community Consultation

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 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.

**5.1.3** All negotiations are of a confidential nature and therefore all reports to Council Meetings are to be presented in a closed session.

**5.1.4** 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 action.

#### **5.2 General Items**

In cases where an action results in a new property boundary, the following applies:

- a) Council will meet the cost of relocating fencing to the newly created boundary reusing recovered materials;
- b) Where recovered materials are unsuitable for reuse, Council will replace the various components to ensure a sound and secure fence is placed on the new boundary;
- c) If the existing fence is erected off the true boundary, Council will only relocate the section of fence required to secure the property from the acquired land;
- d) Relocation of fencing will occur when associated construction works are undertaken; and
- e) If no boundary fence exists, Council will not be liable for any boundary fencing.

#### **5.3 Compensation**

**5.3.1** Council officers have the authority to settle all claims for compensation in accordance with an appropriate delegation and Appendix A of this policy;

**5.3.2** Where interested parties seeks an amount of compensation less than the amount identified in Council's valuation, Council will offer the full amount identified in its valuation; and

**5.3.3** Council recognises that monetary compensation may be of limited value to interested parties in some cases and will endeavor to meet reasonable requests i.e. relocation of plants within the subject land.

## 6. Changes to this Policy

This Policy is to remain in force until any of the following occur:

- 1) The related information is amended/replaced; or
- 2) Other circumstances as determined from time to time by the Council.

## 7. Repeals/Amendments

This Policy repeals Livingstone Shire Council Policy titled 'Acquiring Land and Easements for Infrastructure Projects Policy (v2.1)'.

Version	Date	Action
1	13/01/2015	Adopted
2	10/02/2015	Amended Policy Adopted
2.1	23/08/2018	Administrative Amendments – reflect organisational restructure and update of Chief Executive Officer
3	21/05/2019	Amended Policy Adopted – update to definitions and wording

**CHRIS MURDOCH**  
**CHIEF EXECUTIVE OFFICER**

## **APPENDIX A**

1. The information on this page is commercially sensitive and could compromise Council's negotiations with interested parties.
2. This page shall only be issued to the Chief Executive Officer, Councillors, Executive Directors of Council and Council Officers who have a direct involvement in the acquisition of land.
3. The content of this page is to remain confidential and under no circumstances is the information to be divulged to interested parties, members of the community or the public in general.

In the absence of a specific limit approved by Council resolution, Council approves the following limits for Officers to negotiate compensation for the acquisition of land to successfully complete an action that avoids Land Court.

### **CLAIMS**

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### **VALUATIONS**

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