

19.1 RESUMPTION OF EASEMENT FOR OPEN SPACE AND PATHWAY PURPOSES - SCHOOL OF ARTS ROAD, REDLAND BAY**Objective Reference:****Authorising Officer:** Louise Rusan, General Manager Community & Customer Services**Responsible Officer:** Graham Simpson, Group Manager Environment & Regulation**Report Author:** Damien Jolley, Senior Property Officer**Attachments:** 1. Site Map and Easement Plan - School of Arts Road Redland Bay

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Act 2012*, the information to be received, discussed or considered in relation to this agenda item is:

- (h) other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.

PURPOSE

That Council consider and resolve that objections raised by the owners of the subject land to the resumption of an easement are not valid reasons for the discontinuation of the resumption proceedings for an easement for recreation purposes.

BACKGROUND

For a number of years, the property owners of 228-236 School of Arts Road, Redland Bay (Lot 3 RP225885) have been allowing the public to cross part of their land as part of a pedestrian/cycle pathway that extends along the eastern foreshore in this locality for several hundred metres.

The approval to continue this activity has previously been granted by the owners via a Permit to Occupy agreement however this agreement can be cancelled at any time. This is the only property in the foreshore area not in Council ownership or control.

On 17 November 2010, Council resolved:

1. To proceed to negotiate the purchase of the Open Space zoned land of 228-236 School of Arts Road, Redland Bay (Lot 3 RP225885), as shown on Attachment A, at fair market value for the purposes of enabling Council to construct a shared-use path link (part of the Moreton Bay Cycleway);
2. To proceed to compulsory acquisition of the desired land under the *Acquisition of Land Act 1967* for Open Space (Park Purposes), in the event that negotiations to purchase part of 228-236 School of Arts Road, Redland Bay (Lot 3 RP225885) are unsuccessful;
3. That the Chief Executive Officer be delegated authority under Section 257(1)(b) of the *Local Government Act 2009* to negotiate the purchase price and sign the relevant documentation incidental to the contract of sale or acquisition; and
4. That a budget allocation be made in 2011/12 to fund the land acquisition.

Following this resolution, negotiations were conducted with the property owners to purchase the subject land. Negotiations were not successful however, the property owners agreed, by way of a written agreement with Council, to allow Council to use the subject area for bikeway/pedestrian access and recreation purposes.

This agreement continued for a number of years before it was recommended to formalise this agreement by taking an easement for recreation purposes over the subject area of the existing pathway and adjoining land to the foreshore.

An easement gives Council the right to use the land for the purpose it is acquired and minimises compensation that would be payable to the owner. As a consequence it was necessary for Council to rescind its resolution of 17 November 2010 and resolve to resume an easement for recreation purposes over the subject land.

On 12 May 2017 Council served a Notice of Intention to resume an easement for recreation purposes as shown on the attached plan ARS6-14.

On 5 June 2017, the owners through solicitors Paxton-Hall objected to the resumption on a number of grounds and subsequently attended a resumption hearing in support of their claims and were heard by Council's delegate on 29 June 2017.

The grounds were then reported to Council to decide whether to proceed or not proceed with the resumption and on 4 October 2017 Council resolved:

1. To rescind its resolution of 17 November 2010 to compulsorily acquire the Open Space zoned land of 228-236 School of Arts Road, Redland Bay (the Subject Land);
2. To continue with resumption proceedings to resume an easement for recreation purposes over part of the Subject Land in accordance with the *Acquisition of Land Act 1967* (Qld);
3. That the objections raised by the owner of the Subject Land to the resumption are not valid reasons for the discontinuation of the resumption proceedings;
4. To delegate to the Chief Executive Officer under s.257(1)(b) of the *Local Government Act 2009*, the power to negotiate, make, vary and discharge all documents relevant to effecting this decision; and
5. To keep this report and attachments confidential until such time as the resumption is finalised.

ISSUES

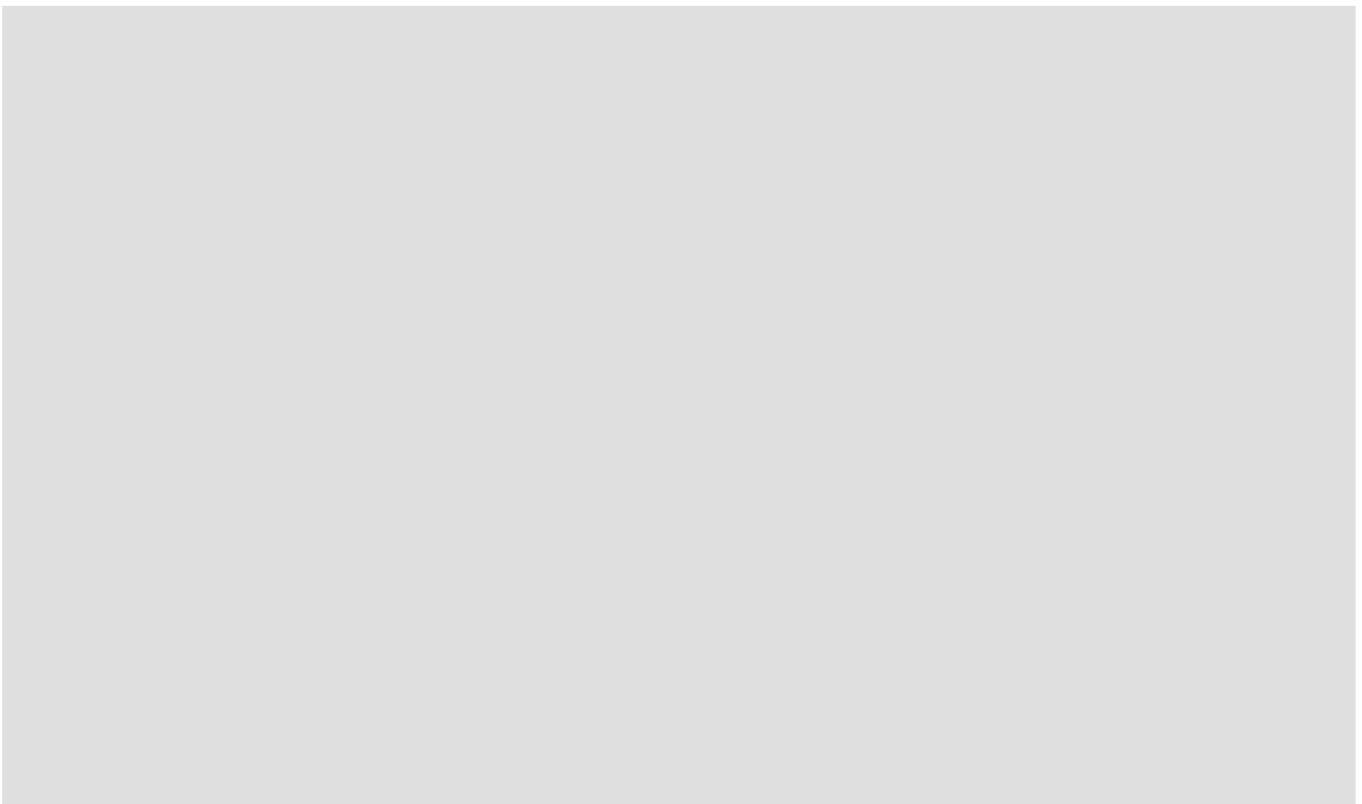
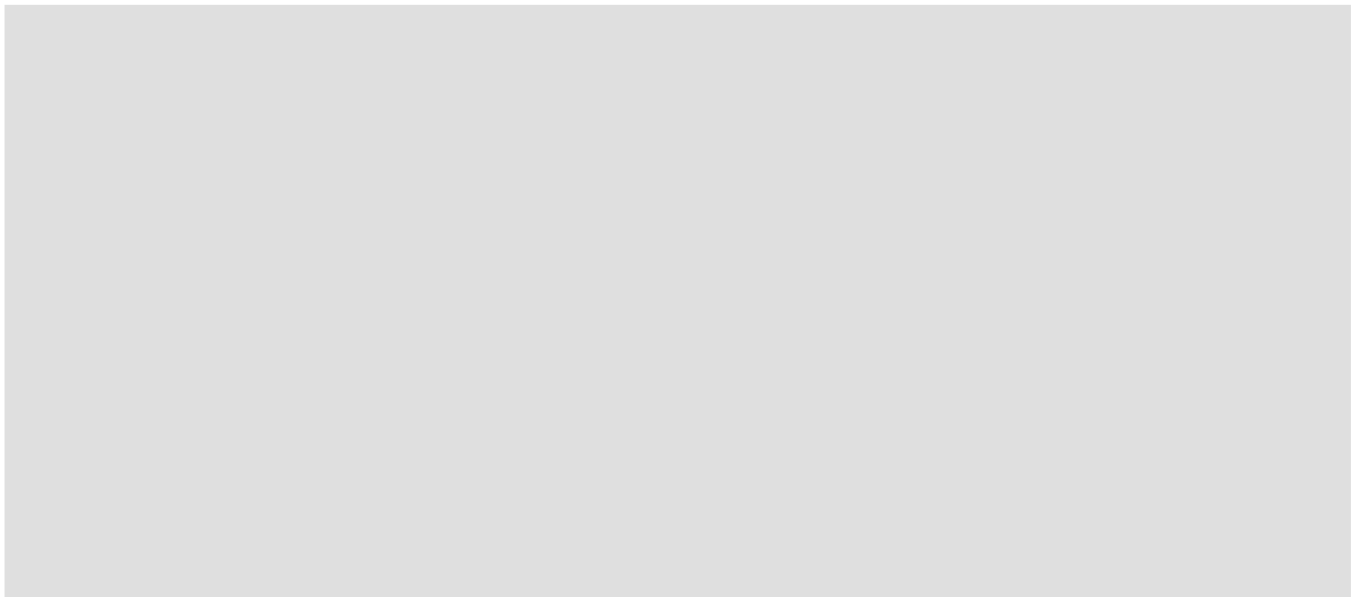
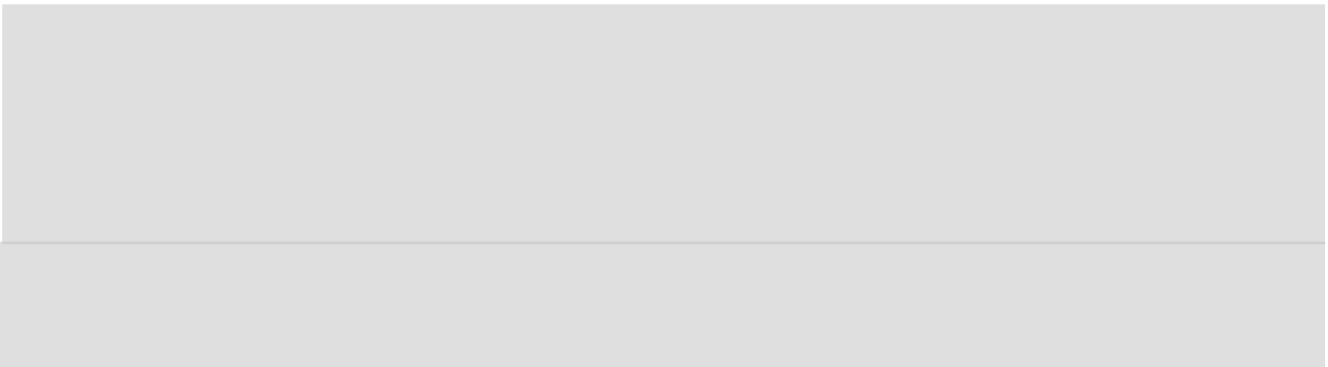
On 23 February 2018 an amended Notice of Intention to Resume (NIR) was given to the owners in accordance with the resolution of 4 October 2017.

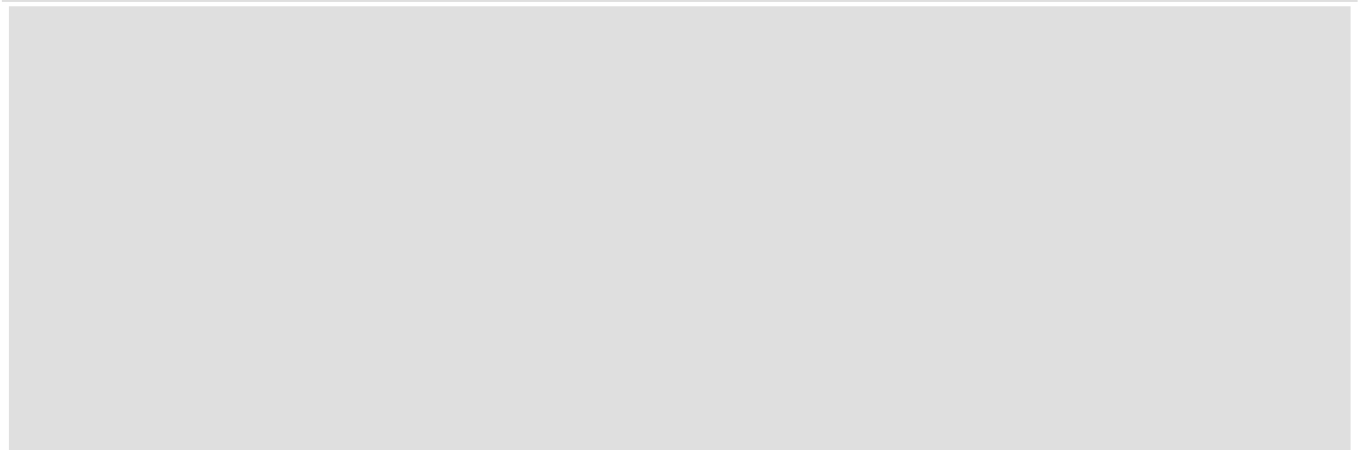
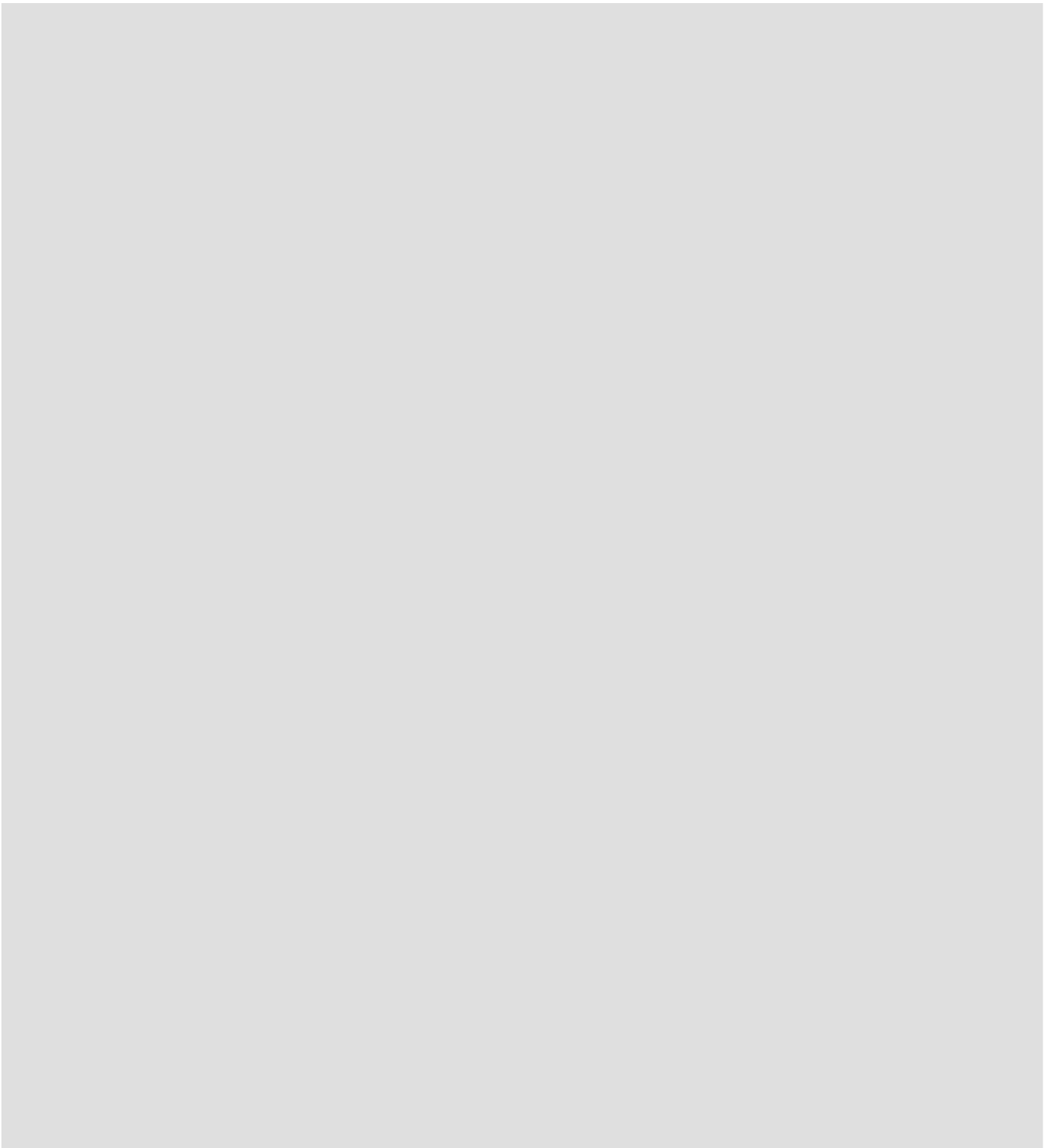
The amended NIR was necessary to reflect changes to the original NIR as a result of clarification and inclusion of items as a result of consideration of the objections raised by the owner.

The reasons for the acquisition of the easement were summarised in the amended NIR as follows:

- The land is located at the end of School of Arts Road, and adjoins foreshore open space land adjacent to Moreton Bay (bounded by Conservation Zone sub category CN2, nature based recreation, zoned land to the north and unconstructed road reserve and Open Space zoned land to the south).
- The land is zoned Low Density residential and Open Space. There are shared-use paths to the north and south of the land. The Open Space zoned land is currently used by the public for thoroughfare through the foreshore parkland network for pedestrian and cycling purposes.
- The easement which is being acquired - a portion of the Open Space zoned land - will allow Redland City Council to complete a missing link of Council's cycleway trunk network and the regionally significant Moreton Bay Cycleway. This path will be constructed generally above

the residual level of 2.4 RL (maximum storm tide level) contour on the area of the land depicted on the plan.





STRATEGIC IMPLICATIONS

Legislative Requirements

Council has powers under provisions of *Acquisition of Land Action 1967* to resume the subject easement.

Risk Management

The easement is required to remove the risk that public access won't be maintained for this portion of the foreshore, keeping intact full public access along the foreshore for recreational purposes.

Financial

People

There are no implications on human resource policies.

Environmental

Acquisition of the proposed easement will assist in protecting environmental attributes along the foreshore but is incidental to the resumption.

Social

The acquisition of the proposed easement will protect community access to the site for recreation purposes.

Alignment with Council's Policy and Plans

This proposal is consistent with planning issues identified in Council's Planning Scheme, Open Space Strategy and other planning documents and reports for this area.

CONSULTATION

Previous consultation has been undertaken with the Local Councillor, City Infrastructure, City Operations, City Planning and Assessment, Financial Services and General Counsel.

OPTIONS**Option One**

That Council resolves as follows:

1. That the objections raised by the owner of the Subject Land to the resumption are not valid reasons for the discontinuation of the resumption proceedings;
2. to continue with resumption proceedings to resume an easement for recreation purposes over part of the Subject Land in accordance with the *Acquisition of Land Act 1967*;
3. to delegate to the Chief Executive Officer under s.257(1)(b) of *Local Government Act 2009*, the power to negotiate, make, vary and discharge all documents relevant to effecting this decision; and
4. to keep this report and attachments confidential until such time as the resumption is finalised.

Option Two

That Council resolves to discontinue resumption proceedings.

OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. That the objections raised by the owners of the Subject Land to the resumption are not valid reasons for the discontinuation of the resumption proceedings;
2. to continue with resumption proceedings to resume an easement for recreation purposes over part of the Subject Land in accordance with the *Acquisition of Land Act 1967*;
3. to delegate to the Chief Executive Officer under s.257(1)(b) of *Local Government Act 2009*, the power to negotiate, make, vary and discharge all documents relevant to effecting this decision; and
4. to keep this report and attachments confidential until such time as the resumption is finalised.

CONFIDENTIAL: Attachment 1 - Site Map of 228-236 School Of Arts Road, Redland Bay



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