

19.7 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. Map of 228-236 School of Arts Road
2. Survey Plan for Easement SP296091

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 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 considers and resolves 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 purpose 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 park 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 (NIR) 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 *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.

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 CN2 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 2.4 RL contour on the area of the land depicted on the plan.

On 19 March 2018, the owners through solicitors Paxton-Hall objected to the amended NIR and subsequently attended a resumption hearing in support of their claims and were heard by Council's delegate on 8 May 2018.

The grounds were then reported to Council to decide whether to proceed or not proceed with the resumption and on 25 July 2018 Council resolved:

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.

ISSUES

Council has 12 months from the date of a NIR to make application to the Minister to take the land.

The original NIR was issued on 12 May 2017 however legal advice has now been received that the subsequent issuing of the amended NIR, on 23 February 2018, did not restart the clock to make application to the Minister.

Accordingly for the resumption to proceed a new NIR was issued on 31 August 2018 which provided new objection rights.

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 will not be maintained for this portion of the foreshore, keeping intact full public access along the foreshore for recreational purposes.

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

Position Title	Consultation Date	Comments/Actions
Divisional Councillor	22.11.2018	Resumption supported
Group Manager City Infrastructure	22.11.2018	Resumption supported
General Counsel	22.11.2018	Resumption supported
Group Manager Environment and Regulation	22.11.2018	Resumption supported
Principal Engineer City Infrastructure	22.11.2018	Resumption supported

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 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.

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



Original information compiled from RP70843 and RP184489
in the Department of Natural Resources, Mines and Energy.

Peg placed at all new corners
unless otherwise shown.

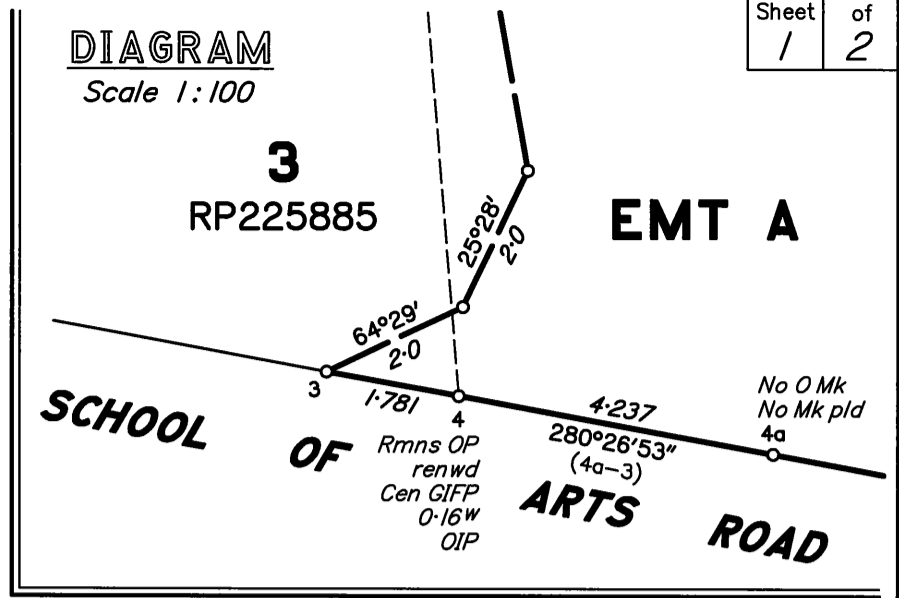
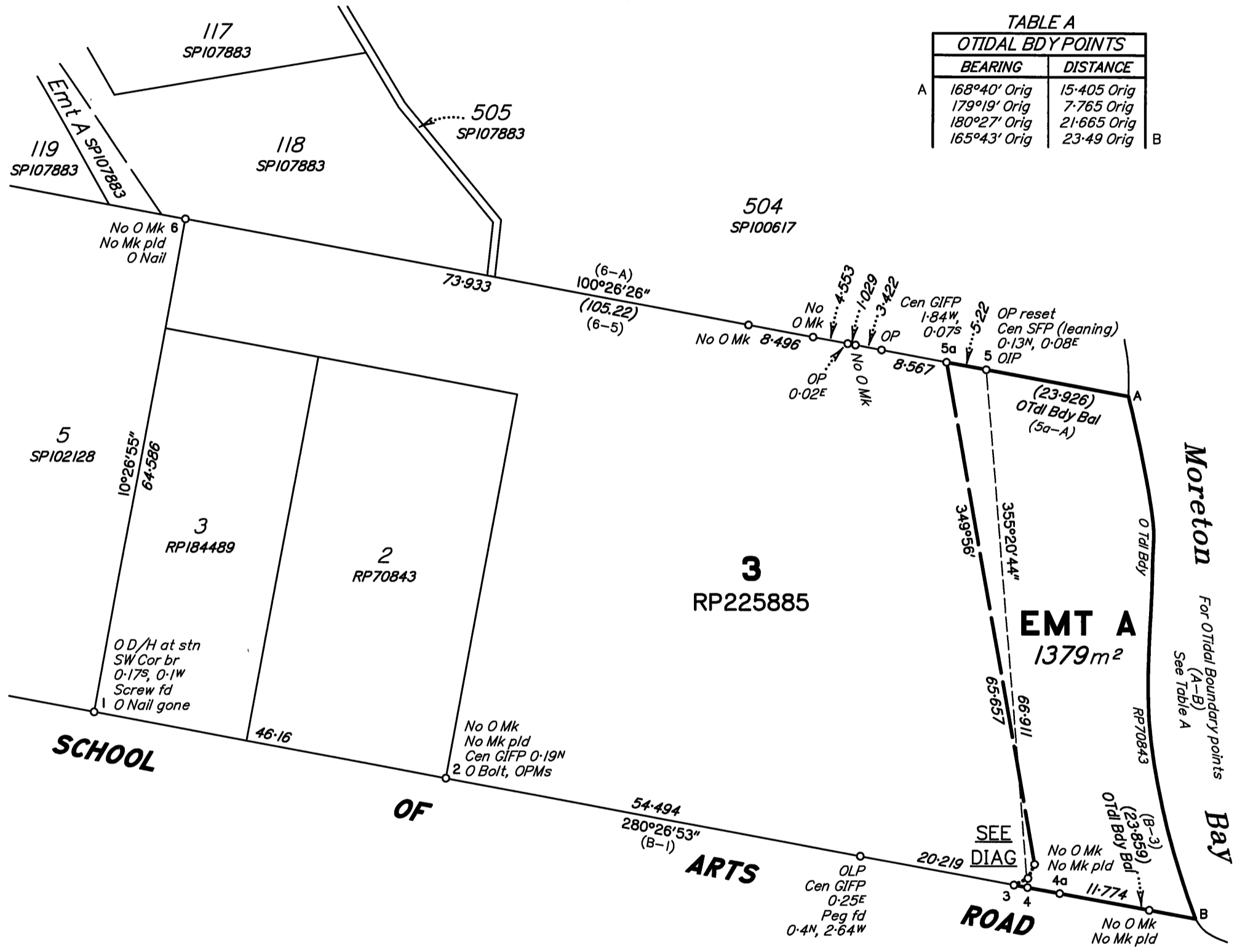


TABLE A
OTIDAL BDY POINTS

	BEARING	DISTANCE
A	168°40' Orig	15.405 Orig
	179°19' Orig	7.765 Orig
	180°27' Orig	21.665 Orig
B	165°43' Orig	23.49 Orig

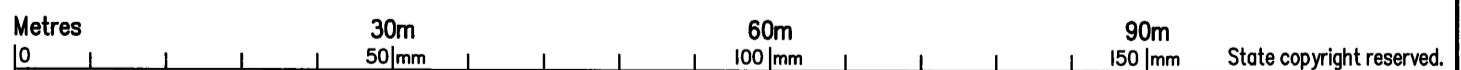


REFERENCE MARKS

STN	TO	ORIGIN	BEARING	DIST
1	Screw fd in kerb		192°25'	4.185
1	O Nail in kerb gone	4/DP226350	253°42'30"	12.058
2	O Bolt	4/RP70843	190°26'55"	1.006
4	OIP	2/DP234659	318°03'50"	5.201
5	OIP	13/RP184489	280°26'25"	2.103
6	O Nail in M/H	4/SPI02128	133°44'45"	2.275

PERMANENT MARKS

PM	ORIGIN	BEARING	DIST	NO	TYPE
2-OPM	7/SPI02128	107°13'15"	19.849	106921	
2-OPM	3/DP226350	182°36'50"	184.214	119519	



PLAN OF

EASEMENT A in Lot 3 on RP225885

LOCAL GOVERNMENT: REDLAND C.C.

LOCALITY: REDLAND BAY

Meridian: DP234659

Survey Records: NO

Scale: 1:600

Format: STANDARD



SP296091

I, Aaron James HICK, hereby certify that the land comprised in this plan was surveyed by me personally, and that the plan is accurate, that the said survey was performed in accordance with the Survey and Mapping Infrastructure Act 2003 and Surveyors Act 2003 and associated Regulations and Standards and that the said survey was completed on 20/03/2018.

11/05/2018
Date

**WARNING : Folded or Mutilated Plans will not be accepted.
Plans may be rolled.
Information may not be placed in the outer margins.**

BD18064

(Dealing No.)

5. Lodged by

(Include address, phone number, reference, and Lodger Code)

1. Certificate of Registered Owners or Lessees.

I/We

(Names in full)

* as Registered Owners of this land agree to this plan and dedicate the Public Use Land as shown hereon in accordance with Section 50 of the Land Title Act 1994.

* as Lessees of this land agree to this plan.

Signature of *Registered Owners *Lessees

* Rule out whichever is inapplicable

2. Planning Body Approval.

*
hereby approves this plan in accordance with the :
%

Dated this day of

..... #

..... #

* Insert the name of the Planning Body.

Insert designation of signatory or delegation

% Insert applicable approving legislation.

3. Plans with Community Management Statement :

CMS Number :

Name :

4. References :

Dept File :
Local Govt :
Surveyor : 5743

6. Existing		Created		
Title Reference	Description	New Lots	Road	Secondary Interests
17301132	Lot 3 on RP225885	-	-	Emt A

NIR 718019260 is fully satisfied

REINSTATEMENT REPORT

- Search used includes: RP70843, RP184489, RP225885, IS179173, SP102128, DP226350, DP234659 & IS260264.
- Both boundaries intersected have been reinstated using original monuments and/or reference marks and agree with original dimensions within cadastral tolerances.
- Connection 4-5 as shown on IS260264 (351°20'44") appears incorrect. Amended to 355°20'44" hereon.
- The Moreton Bay physical feature boundary is compiled from original information as shown on RP70843.

Date of Development Approval:

9. Building Format Plans only.

I certify that :
* As far as it is practical to determine, no part of the building shown on this plan encroaches onto adjoining lots or road;
* Part of the building shown on this plan encroaches onto adjoining * lots and road

.....
Cadastral Surveyor/Director* Date
*delete words not required

10. Lodgement Fees :

Survey Deposit	\$
Lodgement	\$
.....New Titles	\$
Photocopy	\$
Postage	\$
TOTAL	\$

11. Insert Plan Number **SP296091**

Lots	Orig

7. Orig Grant Allocation :

8. Passed & Endorsed :

By :
Date :
Signed :
Designation :