

**RESUMPTION OF EASEMENT FOR OPEN SPACE AND PATHWAY PURPOSES –
SCHOOL OF ARTS ROAD, REDLAND BAY**

Objective Reference: A124337
Reports and Attachments (Archives)

Attachments:

[Map of 228-236 School of Arts Road Redland Bay](#)
[Proposed Easement Plan for 228-236 School of Arts Road Redland Bay](#)

Authorising Officer: Louise Rusan
General Manager Customer and Community Services

Responsible Officer: Graham Simpson
Group Manager Environment and Regulation

Report Author: Graham Simpson
Group Manager Environment and Regulation

PURPOSE

That Council resolve to resume an easement for recreation purposes from a property situated at 228-236 School of Arts Road, Redland Bay described as part of Lot 3 RP225885.

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 17th November 2010, Council resolved to:

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 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 until recently when it was decided 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 will be necessary for Council to rescind its resolution of 17th November 2010 and resolve to resume an easement for recreation purposes over the subject land.

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

In accordance with the provisions of the *Acquisition of Land Act 1967*, Council is only permitted to resume an interest in land for the purposes of carrying out its responsibilities as per the *Local Government Act 2009*. The purpose for this resumption is for recreation.

In accordance with s.6 of the *Acquisition of Land Act 1967*, Council should take an easement if an easement is adequate for Council purposes. Section 89 of the *Land Titles Act 1994* permits an easement to be registered for a right of way for the public only if use of the easement is limited to pedestrians, cyclists and vehicles reasonably necessary for works and maintenance on the easement.

Accordingly, as an easement will permit Council to achieve the outcome of allowing the public to utilise the area for recreation purposes by providing right of way along the foreshore, fee simple resumption was not considered necessary and consequently an easement was considered to be the most appropriate legal option.

ISSUES

The reasons for the acquisition of the easement were summarised in the notice of resumption as follows:

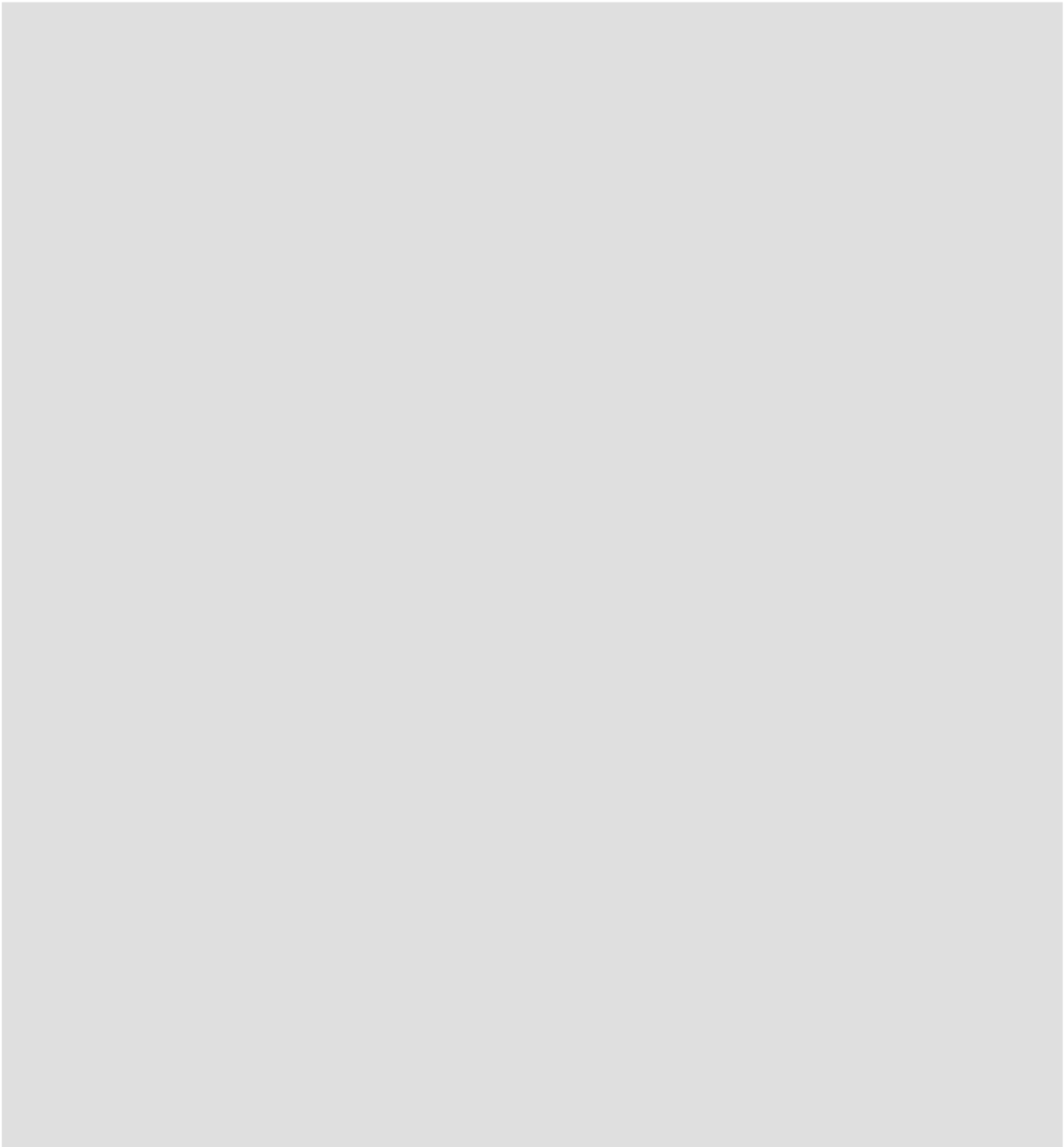
- The land is located at the end of School of Arts Road, and adjoins foreshore open space land adjacent to Moreton Bay (bounded by CN2 zoned land to the north and unconstructed road reserve and Open Space zoned land to the south).
- The land is zoned low density residential and open space. There are 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.

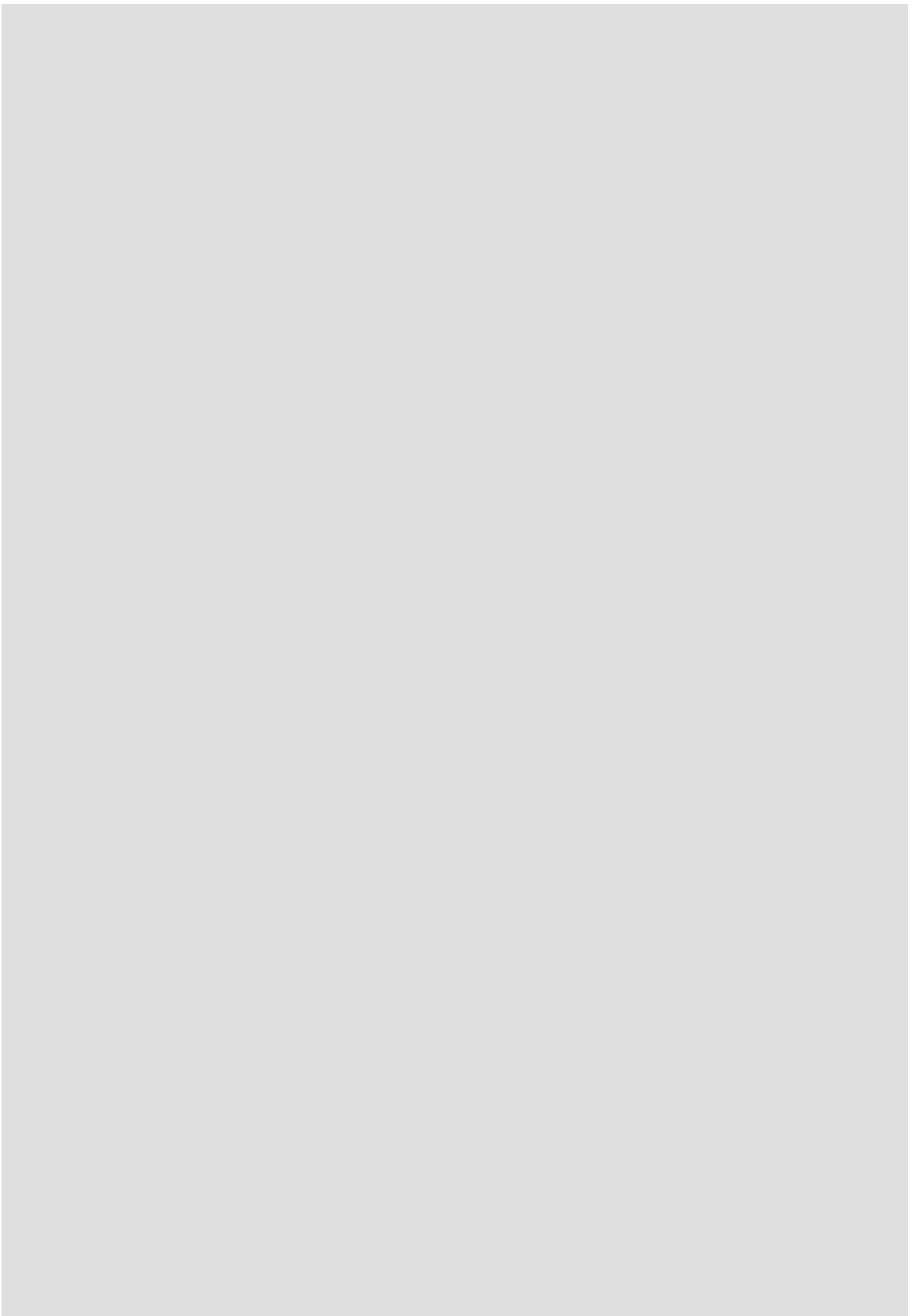
- The easement which is being acquired - a portion of the open space zoned land - will allow Redland City Council to complete a missing link of Council's cycleway trunk network and the regionally significant Moreton Bay Cycleway. This path will be constructed generally above the 2.4 RL contour on the area of the land depicted on the plan.

The *Acquisition of Land Act 1967* allows the owner to object against the resumption (on grounds other than compensation issues) and be heard in person by an appointed delegate of Council.

The grounds for objection are then reported to Council to decide whether to proceed or not proceed with the resumption.

OBJECTION





STRATEGIC IMPLICATIONS

Legislative Requirements

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

Risk Management

Risk management issues have been addressed through Council's Risk Management Policy.

Financial

Funds will be the subject of a Budget Review submission.

People

No implications identified.

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

Consultation has been undertaken with the Local Councillor, City Infrastructure, City Spaces, City Planning and Assessment, Financial Services and General Counsel.

OPTIONS

Option One

That Council resolves:

1. To rescind its resolution of 17th 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.

Option Two

That Council resolve to discontinue resumption proceedings.

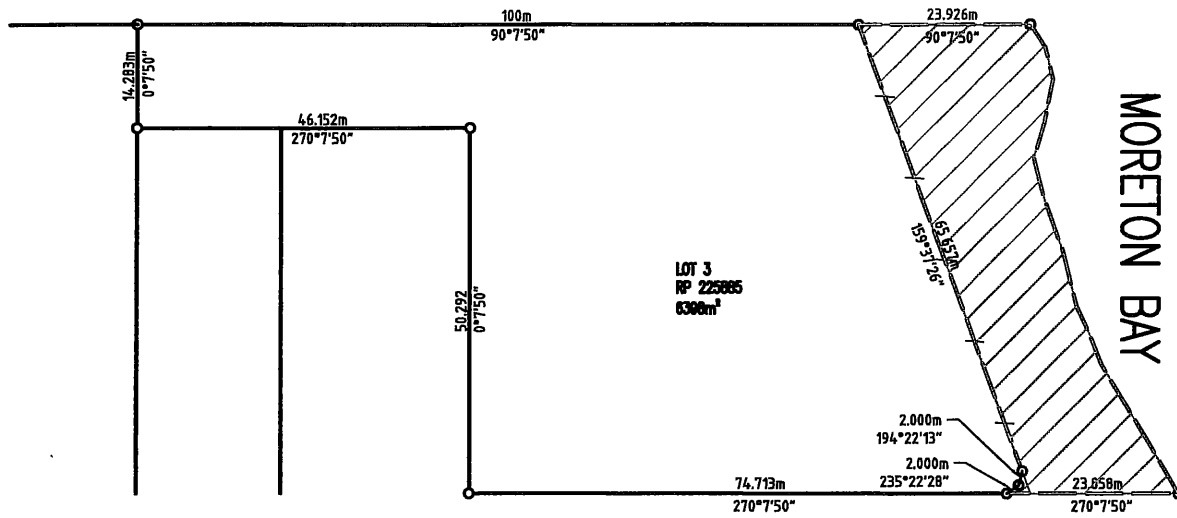
OFFICER'S RECOMMENDATION

That Council resolves:

1. To rescind its resolution of 17th 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.

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





SCHOOL OF ARTS ROAD

DETAIL
Scale 1:100

LOT 3
 RP225885
 PARISH OF REDLAND
 TOTAL AREA = 6398m²
 ACQUIRED AREA = 1222m² (APPROX.)
 PROPOSED AREA = 5176m² (APPROX.)
 OWNER: JULIANA ELIZABETH HOSSACK
 KENNETH FRANCIS HOSSACK
 228-236 SCHOOL OF ARTS ROAD
 REDLAND BAY QLD 4165

PRELIMINARY
 NOT FOR CONSTRUCTION OR TENDER

NOTE: ALL DIMENSIONS AND AREAS ARE APPROXIMATE ONLY AND ARE SUBJECT TO SURVEY CONFIRMATION.

DATE:	16.02.17
DRAWN:	NB
CHECKED:	JM



PROPOSED LAND ACQUISITION
 LOT 3 RP225885 PARISH OF REDLAND
 228-236 SCHOOL OF ARTS ROAD

DRAWING NO.	AA
ARS6-14	
A	