

19.3 ACQUIRE LAND FOR RECREATION AND OPEN SPACE (PARK) PURPOSES

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. Locality map
2. Land required
3. Pathway

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

To obtain a portion of land, located at 228-236 School of Arts Road, Redland Bay, being part of Lot 3 RP225885 (the Land) to be used for the purposes of open space and recreation.

BACKGROUND

A pedestrian/cycle pathway extends through the eastern foreshore of Redland Bay. The Land is the only privately owned property remaining along its extent. Until recently the owners have allowed the public to use the pathway without appropriate tenure being established.

Council has attempted to acquire the land, over a protracted period, including commencement of a formal resumption process in accordance with the *Acquisition of Land Act 1967* (ALA).

Following a Council Resolution on 12 December 2018, an application was made to the Minister of the Department of Natural Resources, Mines and Energy (DNRME) to resume an easement over the land, under Section 9 of the ALA. DNRME sought additional information to support the taking of the Land by easement instead of freehold. Despite Council's efforts to provide DNRME with justification for taking of an easement rather than freehold, the application was rejected; this was on the basis that, in the view of DNRME, an easement is not the correct tenure for land that may be used for recreation, rather than just for access.

Council officers have continued to engage with the Land owners in an attempt to negotiate the purchase by agreement but have not been able to agree on a price at fair market value.

ISSUES

The owners have recently fenced off their property, thereby preventing public access to a continuous pedestrian/cycle pathway along the foreshore. This action has already been the subject of community enquiries seeking the re-opening of the pathway.

As mentioned above, Council officers have continued to negotiate for a freehold purchase agreement and avoid further protraction in acquiring the Land by resumption. However, the owner's asking price (on the Land only) has not changed and still remains more than twice Council's independent market valuation [REDACTED]. The owners will also seek expenses in relation to the

original easement resumption proposal as well as any additional costs incurred through later dealings – total claim (Land and expenses) currently around [REDACTED]

For the Land to be taken in freehold a new resolution is required as the current resolution only allowed for access to the Land through an easement. Taking the Land in freehold will also satisfy the requirements of DNRME, should a further application to resume the Land be required.

STRATEGIC IMPLICATIONS

Legislative Requirements

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

Risk Management

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

Financial

Additional funds for the difference between acquisition by easement and acquisition for freehold (based on Council's valuation) have been budgeted within the existing budget of the City Infrastructure Group if settlement is completed within 20/21 financial year. However, under the ALA, a claimant has up to three years to lodge from the date of Proclamation (yet to occur). Therefore, part or all of the funding may need to be moved into following years depending on the process.

People

There are no implications on human resource policies.

Environmental

Acquisition of the land will assist in protecting environmental attributes along the foreshore. However this is secondary to the main purpose of the resumption – pedestrian pathway.

Social

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

Human Rights

There are no human rights implications associated with this report.

Alignment with Council's Policy and Plans

This proposal is consistent with planning issues identified in Council's Planning Scheme (Redland City Plan 2018), Open Space Strategy and other planning documents and reports for this area.

CONSULTATION

Consulted	Consultation Date	Comments/Actions
City Infrastructure Asset Engineer	13 February 2020	Planning advice
Service Manager Legal Services	ongoing	Tenure advice
Strategic Property Manager	April 2020	Tenure advice
Cr Mark Edwards – Division 5	1 July 2020	Advice on status

OPTIONS

Option One

That Council resolves as follows:

1. To rescind the resolution of 12 December 2018 to resume the Land by Easement.
2. In the event that a satisfactory negotiated outcome for the acquisition of the Land by agreement is not achieved by 30 September 2020, proceedings will commence under the *Acquisition of Land Act 1967* to resume the land for the purposes of open space and recreation.
3. To delegate authority to the Chief Executive Officer under Section 257(1)(b) of the *Local Government Act 2009* to negotiate, make, vary and discharge all documents relevant to effecting this decision.
4. That this report and attachments remain confidential until such time as the acquisition is finalised, subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.

Option Two

That Council resolves to not acquire the land for the purposes of open space and recreation.

OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. To rescind the resolution of 12 December 2018 to resume the Land by Easement.
2. In the event that a satisfactory negotiated outcome for the acquisition of the Land by agreement is not achieved by 30 September 2020, proceedings will commence under the *Acquisition of Land Act 1967* to resume the land for the purposes of open space and recreation.
3. To delegate authority to the Chief Executive Officer under Section 257(1)(b) of the *Local Government Act 2009* to negotiate, make, vary and discharge all documents relevant to effecting this decision.
4. That this report and attachments remain confidential until such time as the acquisition is finalised, subject to maintaining the confidentiality of legally privileged, private and commercial in confidence information.



Attachment 1 - Locality map

Redemap Portal Map

Legend

Current Lot

Scale @ A4:
1:1,145

Date:
26/03/2020




No warranty given in relation to the data (including accuracy, reliability, completeness or suitability) and no liability accepted (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used on breach of the privacy laws. External contributors to data listed at www.nrm.qld.gov.au/products or www.redland.qld.gov.au.



Attachment 2 - land required

Redemap Portal Map

Legend

 Current Lot

 land required

Scale @ A4:
1:1,145







Date:
26/03/2020



No warranty given in relation to the data (including accuracy, reliability, completeness or suitability) and no liability accepted (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used on breach of the privacy laws. External contributors to data listed at www.nrm.qld.gov.au/products and www.redland.qld.gov.au.

Redemap Portal Map

Legend

-  Current Lot
- Council Land**
 -  Access Restriction Strip
 -  Freehold
 -  Permit to Occupy
 -  Reserve Trustee
 -  State Lease

Informal path

Scale @ A4:
1:2,000

Date:
26/03/2020



No warranty given in relation to the data (including accuracy, reliability, completeness or suitability) and no liability accepted (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used on breach of the privacy laws. External contributors to data listed at www.nrm.qld.gov.au/products or www.redland.qld.gov.au.