

Guidelines for Local Governments – compulsory acquisition of land

**Application to the Minister for the compulsory acquisition of
land under the *Acquisition of Land Act 1967***

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While the Guidelines specifically refer to Local Government any constructing authority can utilise this document when making an application for the acquisition of land/easement to the Minister for Natural Resources and Mines under sections 9 (1) and 15(C) of the Acquisition of Land Act 1967 (ALA).

These Guidelines do NOT apply to acquisitions for the purposes of the following Acts:

- State Development and Public Works Organisation Act 1971;
- Transport Infrastructure Act 1994; and
- Transport Planning and Coordination Act 1994.

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Version History

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Approval

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1 Background

The Minister for Natural Resources and Mines (Minister) is the minister responsible for the administration of the *Acquisition of Land Act 1967* (ALA).

Where a local government, as a constructing authority under the ALA, makes an application for the taking of land under the ALA, the application is made to the Minister.

The Department of Natural Resources and Mines (Department) is the department responsible for processing applications made to the Minister.

1.1 Purpose of the Guidelines

The purpose of these Guidelines is to outline:

- the legal requirements under the ALA for properly made applications to the Minister; and
- the Department's recommended position in relation to certain matters,

with a view to ensuring, as far as possible, that best practice is followed in relation to the procedural steps for the compulsory acquisition of land.

Note that wherever 'land' is referred to in these Guidelines it is also intended to refer to an easement.

In certain limited cases set out in section 15D, a local government as a constructing authority may take land under a resumption agreement where all affected persons have signed a resumption agreement. In these cases there is no need to apply to the Minister or for referral to the Governor in Council.

Because of comparatively recent provisions contained in section 15D, an application to the Minister under section 15C is rarely made. However, this guideline also provides information relating to the process under section 15C for application to the Minister and taking by the Governor in Council under a resumption agreement.

The Minister wishes to ensure that all takings of land comply with the requirements of the ALA and natural justice to ensure that any legal challenges are kept to a minimum.

The *Judicial Review Act 1991* (JR Act) sets out a process for seeking a review of decisions to which the JR Act applies - that is, decisions of an administrative character made under an enactment.¹

The decision of a local government to apply to the Minister under s.9 of the ALA for land to be taken is a decision to which the JR Act applies and therefore could be the subject of a legal challenge under the JR Act. The decision of the Minister under section 9(5) and section 9(7) as well as the decision of the Governor in Council under section 9(6) of the ALA are also decisions to which the JR Act applies.

A person who is aggrieved by either of these decisions (eg. a landowner affected by a proposed resumption) could seek to challenge the decision by seeking review under the JR Act. One of the likely grounds of review is that there has been a breach of the rules of natural justice (also known as procedural fairness) during the compulsory acquisition process. Another possible ground of review is that procedures that were required by law to be observed in relation to the making of the decision were not observed - that is, that there has been a failure to comply with the ALA.

¹ Section 5 of the Judicial Review Act 1991



1.2 What is a "local government" for the purposes of these Guidelines

Section 2 of the ALA provides that a constructing authority means "a local government".

"Local government" is not defined in the ALA, however, the Acts Interpretation Act 1954 provides that:

local government means –

- a) the Brisbane City Council; or
- b) a local government established under the Local Government Act 2009.

Section 5 of the ALA provides that land may be taken under and subject to the ALA, where the constructing authority is a local government -

- for any purpose set out in the schedule to the ALA which the local government may lawfully carry out; or
- for any purpose, including any function of local government, which the local government is authorised or required by a provision of an Act other than the ALA to carry out.

These Guidelines apply to local governments as constructing authorities under the ALA.

1.3 Ways in which Land may be acquired

Relevant land may be acquired in any one of 3 ways:

- Through agreement with landholders where the price can be agreed outside of the ALA
- resumption of land under section 9 the ALA
- a resumption agreement under section 15 of the ALA

1.4 Application process flowchart

A flowchart for the Acquisition of Land is included at Schedule 1. The flowchart should be read in conjunction with the body of these guidelines.

2 Recommended matters for consideration by the Local Government

The matters set out below are not legal requirements under the ALA or other legislation in relation to the compulsory acquisition of land. Each local government will likely have its own policies and procedures to follow in relation to identifying land requirements for various projects or works.

However, the Department has identified a number of considerations that, as a matter of risk management, should be addressed by local governments when the local government is proposing to compulsorily acquire land or an interest in land.

As outlined in these guidelines, a person who is aggrieved by the decision to compulsorily acquire land could seek to challenge the decision by seeking review under the JR Act. Two of the potential grounds for review are:

- taking an irrelevant consideration into account in the exercise of a power; and
- failing to take a relevant consideration into account in the exercise of a power.²

² Section 23(a) and (b) of the Judicial Review Act 1991



If a local government takes into account an irrelevant consideration or fails to take into account a relevant consideration when deciding whether or not to take land, there is a risk of a successful judicial review challenge that the decision was improperly made. For these reasons, it is important to properly consider and document the decision to select a particular site and then to commence a compulsory acquisition process for the site.

2.1 Assessment and identification of service need

Local governments should ideally identify the service need or intended purpose for which obtaining an interest in land for the provision of public services/public infrastructure is necessary and how the provision of this service links with the broader community and other government services.

The local government should be able to demonstrate why the service need cannot practically be met by other means, e.g. expansion of a nearby facility. Addressing this issue is relevant to showing that the purpose of the acquisition is valid (whether under the ALA or other legislation) and appropriate in the circumstances.

Prior to arriving at a decision to compulsorily acquire an interest in land, local authorities should consider undertaking a detailed assessment to ensure that:

- the public service/public infrastructure is necessary;
- the selected site is the most appropriate;
- that broader Government objectives are all considered (i.e. issues concerning vegetation, water, cultural heritage and planning matters).

2.2 Desired outcomes of a compulsory acquisition process

When it is proposed to resume land (or an interest in land) for the provision of public services/public infrastructure, it is desirable that the local government confirm that the interest proposed to be acquired:

- is suitable for the efficient delivery of public services/public infrastructure;
- is compatible with the planning requirements of State and local authorities; and
- maximises and balances the social, economic and environmental benefits to the community and State.

3 Site selection process

A local government's process for selecting the site to be acquired for particular works is often an issue raised by aggrieved landowners or interest holders. In particular, landowners often object to the proposed resumption on the grounds that the site selected is not appropriate for the relevant works or that there is a more appropriate site for the particular works.

It is recommended that local governments ensure that their site selection process is well-considered and objective, and ultimately that the process is well documented.

3.1 Site selection criteria

Local governments may wish to consider developing formal "site selection criteria" to allow the identification and assessment of potential sites for the intended purpose. Criteria could include physical site requirements e.g. area, topography, proximity and availability of services, public transport, and regional and local planning compatibility.



The Department also recommends that local governments consider adopting a policy that the site selected "avoids or minimises impacts on natural, historic and indigenous values (unless the purpose of the acquisition is to protect such values)." For example, when undertaking a detailed assessment constructing authorities should consider the following:

- Vegetation Management: whether there are any vegetation issues under the Vegetation Management Act 1999;
- Water: whether there are issues under the Water Act 2000 as the proposed use of the subject land may require an ongoing water supply authorised under that Act;
- Native Title: whether there are any native title issues.
- Resource Interest: whether the taking of the land is compatible with any resource interests granted over the land. (See 3.3 Consider Resource Interests below)

It is further recommended that local governments identify information about sites relevant to the selection criteria and any constraints affecting the sites. Information concerning natural, historic and indigenous values can be obtained in writing from the Department of Aboriginal and Torres Strait Islander Partnerships, Department of Environment and Heritage Protection, Department of Natural Resources and Mines and the relevant division of the local government.

3.2 Identifying suitable options and selecting preferred site

The local government should consider whether, depending on the circumstances of the case, it should undertake a detailed assessment to identify and assess site options before selecting the preferred site.

The following matters 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 local authority planning schemes, 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. Department of Transport and Main Roads, other 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 the local government or other government agencies.
 - any mineral resource interests affecting the candidate site. (See 3.3 Consider Resource Interests)
- 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 against any site selection criteria.
- Evaluate sites against selection criteria with impacts on natural, historic and indigenous values.

3.3 Consider Resource Interests

The local government as the constructing authority needs to particularly consider resource interests granted under the following resources legislation:

- the Geothermal Energy Act 2010
- the Greenhouse Gas Storage Act 2009
- the Mineral Resources Act 1989
- the Petroleum Act 1923
- the Petroleum and Gas (Production and Safety) Act 2004

It will be necessary for the local government as the constructing authority to:

- serve any resource interest holder who would be entitled to claim compensation; including compensation for injurious affection for the taking of any easement;³
- ensure that the interest of all resource interest holders are dealt with if the holder is an affected person under any resumption agreement under section 15 of the ALA;
- assess whether there are any potential incompatibility and conflicts between the proposed purpose for which the land is to be acquired and the resource interest. Should incompatibility or a conflict arise and there is a need for the resource interest to be extinguished by resumption pursuant to the provisions of the ALA and the relevant resources legislation, this interest will then be converted into a right to claim compensation. Regard should be given to the relevant resources legislation.

It is recommended that the local government as the constructing authority:

1. undertake a search for any resource interest that may exist in the land by undertaking a search within or from the website of the Department of Natural Resources and Mines;⁴
2. use best endeavours to consult with resource interest holders including as part of an environmental assessment;
3. undertake an assessment of potential negative impacts on any resource interest holder;
4. 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;
5. liaise with Geological Survey Queensland (GSQ) of Department of Natural Resources and Mines for further consideration about possible impacts for all resource tenures for all land and easement acquisitions and also in relation to potential incompatibility.

Local governments as constructing authorities usually undertake a large amount of investigation and environmental assessment work prior to commencing the compulsory acquisition of land or easement process. In appropriate cases, a local government will be able to demonstrate to the Department that their investigative work and consultation have enabled the local government to conclude that a particular resource interest holder will not be able to claim compensation given the nature of their particular rights and the work proposed to be undertaken by the local government. If a local government can reasonably form such a view, based on evidence, then it is open to the local government not to serve a NIR on the particular resource holder.

³ This includes to use best endeavours to serve all minority interest holders in a resources tenement; and not just the principal holder.

⁴ A Local area mining permit report is available through www.business.qld.gov.au/industry/mining. If more detailed mapping or information is required relating to the geographic features for the query area, visit the interactive resource and tenure maps service or go to www.business.qld.gov.au/industry/mining. Information with a public report with the registered address for service is available through <https://www.business.qld.gov.au/industry/mining/mining-online-services/mining-permit-search>



This approach could only be taken in appropriate cases.

It is difficult to give a definitive view of when such an approach would be appropriate as each case will turn on its particular facts.

If a local government as a constructing authority proposes not to serve a resource interest holder with a NIR, then the local government is required to produce evidence that the local government considers, on the balance of probabilities, a particular resource interest holder could not claim compensation if the proposed compulsory acquisition of land or an easement proceeded.

It is recommended that local governments as constructing authorities raise this process on a case by case basis with the Department prior to proceeding with the NIR stage of a compulsory acquisition process so that the Department and the local government agree beforehand that this approach is appropriate for the particular case.

Should incompatibility arise and there is a need for the resource interest to be extinguished by resumption pursuant to the provisions of the ALA, this interest will then be converted into a right to claim compensation.

Although it is envisaged the majority of resource interests (particularly resource exploration permits and petroleum and gas tenures) will not need to be extinguished by compulsory acquisition, it is important to take these interests into account as legitimate interests in the land.

Assessing whether 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 the local government as the constructing authority to consider the potential risk of conflict associated with each project.

4 Community Consultation and Negotiation

4.1 Negotiation

Prior to the 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.

The following is specifically noted in relation to settling the terms of a negotiated easement where the Local Government is a public utility provider.

4.1.1 Creation of easement over freehold land

A public utility easement in gross may be created by a constructing authority. A Form 9 (Land Registry Forms, Department of Natural Resources and Mines) is executed with a view to the grant of the easement accompanied by a Form 20 which will contain the terms and conditions of the grant.

4.2 Community Infrastructure Designation

If it is proposed to designate land for community infrastructure under the Sustainable Planning Act 2009 then it is recommended that the process to designate land for community infrastructure is completed prior to proceeding with any resumption process.



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. 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

Should negotiations with landowners and other interest holders be unsuccessful or negotiations not be a practical option due to time constraints for the provision of public services/public infrastructure the following process applies:

- Obtain appropriate finance approvals and ensure sufficient funding for the works and compensation for the compulsory acquisition is available.
- Obtain approvals for commencing the compulsory acquisition process.
- The required approval is a Council Resolution obtained at a meeting of the Council.
- Notices of Intention to Resume (NIR) pursuant to section 7 of the ALA should be prepared and served on all parties with an interest in the land.

Things to consider before commencing compulsory acquisition:

- Is the local government authorised to resume the land / interest in land for the intended purpose (see s.5 of the ALA)?
- Are delegations in place for people issuing Notices of Intention to Resume (NIRs), hearing objections and preparing objection hearing reports and making application to the Minister?

6 Notice of Intention to Resume

6.1 Preparation

Prepare the Notice of Intention to Resume (NIR) in accordance with s.7(3) of ALA.

6.1.1 Legal requirements of the ALA

The ALA sets out that the NIR must include:

- The purpose for which the land is required(s7(3)(a))
- The description of the land(s7(3)(b))
- In the case of an easement; the rights and obligations to be conferred and imposed by the easement(s7(3)(c))
- A statement outlining the recipients rights and limitation regarding objection (s7(3)(d-e)).
- A statement that the constructing authority is willing to negotiate to acquire by agreement. (s7(3)(f))
- Include details of the recipients rights in relation to claiming compensation (s7(3)(g))
- Include information about how, under s20(2A), a contract, licence, agreement or other arrangement entered into in relation to the land after the NIR is served may be dealt with in assessing compensation to be paid under the ALA (s7(3)(h)).

6.1.2 Natural Justice /Procedural Fairness

The department recommends that the following material should also be included with the NIR:

- A "background information document" to explain the reasons for the acquisition. The background information document should contain the land's description, purpose for which it is being acquired, the benefit to the community/public, any alternative land investigated and reasoning why the land is preferred.
- Advice about the availability of documents relating to the resumption. For example but not limited to:
 - the real property description and address sufficient to readily identify every piece of land considered by the State as a viable alternative site to the subject land;
 - all relevant selection criteria documents in existence for choice of location of sites for the particular purpose specified in the Notice of Intention to Resume;
 - any relevant reports to the local government detailing investigations of potential sites for acquisition for the relevant purpose.

6.2 Service

Serve notice to all persons entitled to claim compensation under the ALA and the mortgagees (s7(2)).

Note: There are different requirements for notices if the land is common property under the Building Units and Group Titles Act 1980 or the Body Corporate and Community Management Act 1997. See s.7(2A) for common property exception.

A copy of the NIR is to be lodged with the Titles Office (if the NIR relates to land under the Land Title Act 1994) (s7(4)).

7 Dealing with objections

When dealing with objections and to satisfy natural justice and procedural fairness the local government is required to provide the objector/s with a copy of the objection report and any new reports or material for comment within fourteen (14) days. Following this the local government is to consider the grounds of objection, any matters arising out of the hearing and the report and make its decision to either:

- dismiss the objection/s and proceed with the resumption.
- amend the NIR, or
- discontinue the acquisition.

Council's consideration of the objections and decision whether to proceed should be documented in the minutes of council's meeting. This documentation will form part of the application to the Minister.

Things to consider:

- If a delegate of the local government as the constructing authority heard the objector, was there a sufficient degree of independence and impartiality in the exercise or performance by the delegate of this function? Was consideration given to appointing an independent lawyer or appropriately qualified third party?
- Was the objector/s provided with a copy of the objection report and any new reports or material and given fourteen (14) days to provide comment?

8 Prepare an application to the Minister under s.9 of the ALA

8.1 Matters to be addressed when preparing application to the Minister

8.1.1 Legal requirements of the ALA

The ALA sets out that the application must contain the following material:

- a copy of the notice of intention to resume (NIR) and of any further notice amending the same (s9(3));
- where the land is not described in the NIR as a separate lot or parcel registered in the Land Registry - a copy of a plan of survey of the land certified as accurate by a cadastral surveyor or a plan sufficient to substantially identify the land (s9(3)); The department's preference is for a copy of the plan of survey to be provided as this negates the need to publish an amending notice at a future date;
- a list of the names and addresses last known to the constructing authority of all persons who to the knowledge of the constructing authority are entitled pursuant to section 18 to claim compensation (s9(3));
- a statement as to those of the persons mentioned in paragraph (c) who have not been served with the notice of intention to resume and, a further statement setting out in relation to every such person, the manner in which such service was attempted and the reasons for failure to effect it (s9(3));
- a statement whether or not any person objected in terms of the notice of intention to resume and, in the case of such an objection or objections, the name or names of the objector or objectors, a copy of every objection, and a report by the constructing authority thereon (s9(3));
- Any additional information the Local Government is aware of which may assist the Minister to make a decision in relation to the proposed acquisition (s9(4)).

8.1.2 Matters the Minister must consider - s.9(5) of the ALA

Section 9(5) of the ALA provides that the Minister must consider every application and accompanying material to ensure that:

- the land to be taken may be taken and should be taken for the purpose for which it is proposed to be taken; and
- the constructing authority has taken reasonable steps to comply with sections 7 (Notice of Intention to Resume) and 8 (Dealing with objections) of the ALA; and
- if the notice of intention to resume has not been served on the owner as defined in section 7(6) of the ALA, that the failure to do so was due to circumstances beyond the control of the constructing authority.

The Department recommends that the local government also consider these matters before making the application to the Minister. By reviewing these issues, the local government will be helping to ensure that the application to the Minister is properly made and that it is open to the Minister to decide to proceed with the taking of the land under the ALA.

8.1.3 Other matters relevant to the application to the Minister

The local government must also consider the following issues before making the application to the Minister:

- Was the NIR prepared and served in accordance with the requirements of s.7 of the ALA?
- Has the local government particularly considered resource interests granted under legislation such as the Mineral Resources Act 1989? (See 3.3 Consider Resource Interests)
- Has the application to the Minister under s.9 of the ALA been made by the local government within 12 months of the date of the NIR (see s.9(2) of the ALA)?

8.2 Apply to the Minister

The application to the Minister under s.9 must be made within 12 months of the date of the NIR

If the NIR has been amended at any time before the application to the Minister the application should include all relevant information in relation to the amendments made to the NIR and details of due process following the service of any amended NIR.

The Minister may require the local government to furnish any further information as the Minister deems necessary with respect to the application.

The preferred format for applications is using the Department's recommended [application form](#).

Send completed applications including all required attachments to:

Acquisitions
Operations Support - Land
acquisition@dnrm.qld.gov.au
Level 15, 61 Mary Street, Brisbane
PO Box 15216
CITY EAST QLD 4002

8.3 Multi-Parcel Purpose

Where multiple parcels are required to be acquired to fulfil the intended purpose it is the Departments preferred procedure to receive and process all related applications together.

8.4 Application Approval

After consideration by the Minister, the Governor in Council has power to declare that land is taken.

For relatively straightforward resumptions, it is not necessary to obtain a declaration by the Governor in Council. These matters are where there have been no objections to the notice of intention to resume and if the land is taken for a multi-parcel purpose then for every other parcel of land required to be taken to carry out the multi-parcel purpose:

- This other land has also been taken under the Acquisition Act; or
- This other land is the subject of a resumption agreement; or
- This other land is the subject of a notice of intention to resume for which the objection period has ended and no objections were received.

In these matters under section 9(7) the Minister may declare the land is taken, without referral to the Governor in Council.

9 Resumption Agreements

Section 15 of the ALA applies where the local government as the constructing authority and the relevant interest holder agree on the taking of the land. These agreements are called 'resumption agreements'.

In certain cases set out in section 15D, a local government as a constructing authority may take land under a resumption agreement where all affected persons have signed a resumption agreement. In these cases there is no need to apply to the Minister or for referral to the Governor in Council.

Because of the comparatively recent provisions contained in section 15D, an application to the Minister under section 15C is rarely made. However, the following provides information relating to the process under section 15C for application to the Minister and taking by the Governor in Council under a resumption agreement.

Section 15C of the ALA provides for the process for the constructing authority to apply to the Minister for the taking of land.

Sections 7, 8 and 9 of the ALA do not apply to the taking of land under s.15C or s15D of the ALA.

Section 15C(2) of the ALA requires that when the local government applies to the Minister to take land under s.15C:

- the application under s.15C must be made within 12 months after the date of the agreement;
- the application must be accompanied by the resumption agreement; and
- where the land to be taken is not identified in the resumption agreement as mentioned in s.7(3)(b)(i) of the ALA (ie. as a separate lot or parcel in a plan of survey), the application must be accompanied by a copy of a plan of survey of the land to be taken as certified as accurate by a cadastral surveyor or a plan sufficient to substantially identify the land.

Under s.15C(3) of the ALA, the Minister may require the constructing authority to give, within a time specified by the Minister, further information with respect to the application.

Section 15C(4) of the ALA provides that the Minister must consider the following to ensure that the land to be taken may be taken and should be taken for the purpose for which it is proposed to be taken:

- every application made under this section, including the agreement and any copy of the plan of survey, or a plan sufficient to substantially identify the land, accompanying the application;
- any particulars and information given about the application under subsection 15C(3) of the ALA.

The local government should be aware of the Minister's obligations under s.15C(4) of the ALA and ensure that it provides all relevant information in the application under s.15C to enable the Minister to be satisfied of these issues.



10 Seek Legal Advice

If the local government identifies that any matter in these guidelines may not have been attended to in accordance with the ALA, the Department recommends that the local government seek legal advice.

It is important to clarify whether a failure to attend to these matters amounts to an irregularity in the resumption process. If so, proceeding with the application to the Minister in light of the irregularity may give rise to a successful legal challenge. For example, if the resumption proceeds without correcting the irregularity, the resumption could be challenged on the grounds that the resumption was invalid because:

- procedures that were required by law to be observed in relation to the making of the decision were not observed (s.20(2)(b) of the JR Act); or
- that the decision was not authorised by the enactment under which it was purported to be made (s.20(2)(d) of the JR Act).

11 Effect of gazette resumption notice

11.1 Procedure after publication of gazette resumption notice

After the gazette resumption notice is published in accordance with s.9(6) or s9(7) of the ALA, the estate and interest of every person entitled to the whole or any part of the land taken is converted into a right to claim compensation under the ALA (see s.12(5) of the ALA).

Under s.12(7) of the ALA, the local government must serve a copy of the gazette resumption notice on every person who to its knowledge is entitled pursuant to s.18 of the ALA to claim compensation or is a mortgagee of the land.

The Department will not be involved in any compensation negotiations with the affected parties. It is the responsibility of the relevant local government to deal with compensation claims.

Under s.24 of the ALA, a claimant for compensation may refer his or her claim to the Land Court at any time after delivering a claim for compensation to the local government in accordance with s.19 of the ALA.

The local government (as constructing authority) may only refer the claim to the Land Court after the expiry of a period of 3 months after the publication of the gazette resumption notice.

Attachment 1: FLOWCHART

Process for the compulsory acquisition of land/easement under the Acquisition of Land Act 1967 by constructing authorities.

ALA Acquisition of Land Act 1967
NIR Notice of Intention to Resume

Need for Acquisition

- Identify service need or intended purpose for which land to be acquired.
- Consider alternative methods for providing service or purpose prior to deciding to acquire.

If Acquisition is required

Site Selection

- Develop site selection criteria:
- Identify sites;
 - Consider planning schemes, strategic plans etc;
 - Consult with relevant government authorities re plans for site;
 - Consider legislation, policy, native title, heritage, environment, vegetation, resource interests;
 - Identify all planning and environmental approvals required;

If site is considered appropriate

Community Consultation

Consult widely with community about project, land requirements, and planning and environmental issues.

Negotiation

- Determine land requirements.
- Identify all interest holders.
- Attempt to negotiate acquisition of land with interest holders.

If negotiations are unsuccessful

Commence Compulsory Acquisition Process

- Obtain approvals for commencing the compulsory acquisition process
- Prepare NIR in accordance with s.7(3) of ALA - There is a minimum 30 day objection period.
- Serve NIRs to all persons entitled to claim compensation under the ALA and the mortgagees.
- File a copy of the NIR with the Land Registry.

Dealing with objections

- If objection received and a hearing is requested, delegate to hear objection and prepare objection report.
- The objector should be given two (2) weeks to comment.

Consider whether to proceed

- Consider the grounds of objection, the delegate's report and any further comments received from the objector and then decide whether to amend the NIR, discontinue or continue the resumption.
- Seek legal advice before making application to the Minister if issues are identified in relation to any of the considerations.

If a decision is made to proceed

Apply to the Minister for Natural Resources and Mines

- Within 12 months of the date of NIR, make application to the Minister to take the land/easement.
- Application to comply with s.9(3) or 15C of the ALA.
- Provide any further information requested by the Minister

Note: For section 15D agreements no application to the Minister is required

DRNM Actions

Approval

- If no objections are received, the applications can be considered & if approved by the Minister (approx 1 week timeframe from approval by the Minister and gazettal of the notice.)
- If objections are received, the matter is forwarded to the Minister for consideration and referral to the Governor in Council for approval (Approx 4 weeks from time the Minister considers the application to the time of approval by the Governor in Council and gazettal)

If the application is approved

Gazettal of Resumption Notice

- The land is taken as at the date of publication in the Government gazette.

Gazette Notices forwarded by DNRM to the applicant

Continuing Action by Constructing Authority

- Lodge a copy of the resumption notice with a copy of the survey plan (if appropriate) in the Land Registry (S12(2A))
- Serve Notice on all persons entitled to claim compensation and invite them to serve a claim (s.18 & s.19 of the ALA) or is a mortgagee of the land (S12(7) of the ALA). The claimant has three (3) years to serve the claim, s.19(3) of the ALA.

Negotiation

- Upon being served with a claim, the claim will be assessed. If claim not admitted, negotiations will be undertaken.

Referral to Land Court

- Should negotiations be unsuccessful, either party may refer the matter to the Land Court for determination of the compensation payable (s24 of the ALA).

Settlement

- Following agreement being reached or the determination by the Land Court of the quantum of compensation, arrangements for settlement will be made.

Application under section 9 of the Acquisition of Land Act 1967

In accordance with Section 9 of the *Acquisition of Land Act 1967*(ALA), application is hereby made to the Minister for Natural Resources and Mines for the taking of land described in section 1.

Constructing Authority
Project Title
DNRM File Reference
Contact Name

Applicants Ref
Email

Related Files
Phone

Section 1: Interest to be acquired								
Type	Description	Current Description	Purpose	Title Ref	Tenure*	Parish	Area	
	Registered Owner Address NIR Served Local Government		Service Date		Service Method			

* Land falling within s.12(4) will become USL upon the taking. An in principle offer from State Land Asset Management (SLAM) to issue a deed is required before the application under s.9 can be progressed.

Section 2: Encumbrances and Resource Interests						Eg. Mortgages, Easements, leases, resource interests
Type	Description	Effected by the acquisition	Benefitting party	Address	NIR Served	

Section 3: Parties served with NIR				Do not repeat NIR's already identified in sections 1 and 2
Name	Interest Type	Address	NIR Served	

Section 4: Parties NOT served with NIR				section 9(3)(d) of the ALA
Name	Interest Type	Reason notice was not served.	Manner of effecting substitute service	

Section 5: Objection Details			
Proceed to the next section	Date Received	Objection Hearing	Delegate
No objection was received.	An objection was received. The requirements of s.8 of the ALA were complied with. A draft copy of the objection report was provided to the objector with 14 days to comment. The constructing authority has considered all objections lodged, the grounds thereof, any matters arising out of the hearing and the report and decided that the land is required to be taken for the intended purpose.		
Objector			

Application under section 9 of the Acquisition of Land Act 1967

The following checklists have been prepared to assist constructing authorities in meeting all requirements of the ALA. It does not profess to be exhaustive.

<p>The Notice of Intention to Resume (NIR)</p> <p><u>The NIR document satisfies s.7 of the ALA</u></p> <p>Purpose of taking matches section 1 Interest to be taken is substantially described Interest to be taken matches section 1 of this application Easement rights and obligations included if applicable A minimum of 30 days was given to make objections NIR Served Objections Due Objection rights and limitations were specified Hearing rights were stated Willingness to negotiate was stated Background Statement was provided Advice of availability of documentation relevant to the resumption was provided Details of claim for compensation were provided A statement relating to s20(2A) was provided</p>	<p align="right"><small>Complete the following checklist relating to the Notice of Intention to Resume.</small></p> <p><u>Service of the NIR satisfies s.7 of the ALA</u></p> <p>The NIR was served on all persons who to the knowledge of the constructing authority are entitled pursuant to section 18 of the ALA to claim compensation (if No; provide details at section 4) If the NIR was not served on the owner as defined in section 7(6) of the ALA, the failure to do so was due to circumstances beyond the control of the constructing authority. A copy was lodged with the Titles Office</p>
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<p>Resource Interests</p> <p>A search of the relevant resource interest register was conducted No resource interest exists</p>	<p align="right"><small>Complete the following checklist relating to resource interests</small></p> <p>A resource interest(s) exists on the subject land An assessment was undertaken of the compatibility of the resource interest with the intended purpose Each of the resource interest holders Should be served with notice The resource interest holders were served with notice</p> <p align="right">Should not be served with notice (provide explanation below)</p>
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<p>Negotiation and Consultation</p> <p>The constructing authority has used reasonable endeavours to negotiate an agreement The constructing authority has consulted with the local Member of Parliament about the proposed acquisition</p>	<p align="right"><small>Complete the following checklist relating to the negotiation and consultation.</small></p>
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<p>Application</p> <p>Is made within 12 months of the date of the NIR (s.9(3)) NIR Served Application Date The constructing authority is authorised to take land for the intended purpose Act Establishing as a constructing authority Upon gazettal the land is to The land to be taken may be taken and should be taken for the purpose for which it is proposed to be taken The constructing authority has complied with sections 7 and 8 of the ALA</p>	<p align="right"><small>Complete the following checklist relating to this application to the Minister.</small></p>
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<p>Attachments</p> <p>copy of plan/s of survey certified as accurate by a cadastral surveyor (partial takes only) (s.9(4)(b)) copy of the relevant NIR (s.9(4)(a)) copy of any notice amending the NIR (s.9(4)(a)) copy of any advertisements etc published as substitute notice (from section 4)</p> <p>Applications without objections: extract copy of the constructing authority's resolution to acquire by compulsory acquisition.</p>	<p align="right"><small>The following attachments are included and form part of this application:</small></p> <p>Applications with objections copy of every objection (s.9(4)(e)) copy of report by the constructing authority on the objection (s.9(4)(e)) extract copy of the constructing authority's resolution to dismiss the objection and acquire by compulsory acquisition. This resolution should include evidence that the constructing authority considered all objections lodged, the grounds thereof, as well as matters arising out of the hearing and the objection report.</p>
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<p>Timeframe</p> <p align="center">Priority Reason for priority and Gazettal is requested by requested timeframe</p>	<p align="right"><small>Complete the following section relating to the timeframe and priority of this application</small></p>
<p><small>Requested gazettal dates cannot be guaranteed. To avoid delays applications should address all requirements of the ALA and be made as early as possible. It should be noted that where Governor in Council approval is required an additional 3 or more weeks is required for gazettal.</small></p>	

<p>Declaration</p> <p>All provisions of the Acquisition of Land Act 1967 have been complied with. Upon the taking of the land described in the section 1, application is hereby made that such land</p> <p>Authorised Officer</p>	<p>Send completed applications including all required attachments to: Government Land Acquisitions Operations Support acquisitions@dnrm.qld.gov.au Level 15, 61 Mary Street, Brisbane PO Box 15216 CITY EAST QLD 4002</p>
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Processing [DNRM Office Use Only]							
	Constructing Authority			File Ref		Related Files	
	Project Title						
	Applying for approval by	Delegated Officer	Minister s.9(7)	Governor in Council s.9(6)	Governor in Council s.15C		
	Received	Ready	MECS created	MECS Finalised	Governor in Council	Gazettal	
Date							
Officer							