

Taking of an Easement

Who is Unitywater?

Northern SEQ Distributor-Retailer Authority (Unitywater) is a statutory authority that services Moreton Bay, Sunshine Coast and Noosa local authority areas. Unitywater is governed by an independent board. Councils do not have control or direction over day-to-day operations.

Unitywater was established under the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009 (DR Act)*.

Why would Unitywater need to acquire an easement over my land?

Most of Unitywater's infrastructure lies in roads.

However, from time-to-time to meet its community responsibilities, Unitywater may need to take an easement over land.

What is an easement?

An easement gives someone else (e.g. Unitywater) the right to use land for a specific purpose even though they are not the landowner.

Current and future owners of the land will be bound by the terms and conditions set out in the easement document, which explains Unitywater's rights and obligations and any restrictions that apply to anyone with an interest in the land.

It allows Unitywater (or an authorised third party) to take all actions required to construct, operate and maintain infrastructure in the easement.

How does Unitywater acquire an easement?

Unitywater may acquire an easement through negotiation with the owner or by compulsory acquisition, which is also known as resumption.

It is always Unitywater's strong preference to acquire an easement by agreement.

An easement may be acquired in one of three ways:

- by grant of an easement (outside the *Acquisition of Land Act 1967 (ALA)* process);
- where the landowner consents to the taking of the easement, through a Resumption Agreement under section 15 of the ALA; or
- by compulsory acquisition in accordance with the process in the ALA.

Does Unitywater have the right to take an easement over my land?

Under the ALA, only a constructing authority has the power to resume an easement.

Section 53AY of the DR Act provides that the ALA applies to Unitywater as if it were a constructing authority. Accordingly Unitywater may take an easement over land under the ALA.

Will Unitywater advise me of their plans?

Unitywater will contact you and provide you with information of its proposed project and how your land may be affected.

Negotiated acquisition

If Unitywater has identified that it requires an easement over part of your land for a project it will use all reasonable endeavours to negotiate an agreement with you outside the ALA.

If an agreement is reached Unitywater will prepare all of the necessary documents to grant an easement in favour of Unitywater.

Resumption Agreement

If you agree to the taking of the easement, you can enter into a Resumption Agreement under section 15 of the ALA with Unitywater.

You can agree to the amount of compensation at the time of entering the agreement or compensation can be determined at a later date in accordance with the ALA (see further information below).

Should I seek legal advice?

Unitywater recommends you seek legal advice to assist you in your negotiations. Unitywater will pay the reasonable costs for your legal advice relating to the proposed acquisition. Unitywater normally pays your legal representative directly so you are not out of pocket.

What happens if I don't reach an agreement with Unitywater?

If Unitywater has been unsuccessful in obtaining your agreement and it has identified that the easement is needed for the project, it may serve you and all other affected persons with an interest in the land with a written Notice of Intention to Resume (NIR).

What information will be included in the NIR?

Section 7 of the ALA sets out what information must be included in the NIR, including, but not limited to, the purpose for which the easement is taken, a description of the land, the process for objections and rights in relation to claiming compensation.

The NIR must also state the rights and obligations to be conferred and imposed by the easement.

Can I object?

An affected person may object to the proposed taking of an easement. For example, you may feel that the project is better located elsewhere. The ALA states that your grounds of objection cannot relate to an issue of compensation.

Your objection must:

- be in writing;
- made within the time specified in the NIR (not less than 30 days from the issue of the NIR);
- state your grounds for objection, including supporting details; and
- state whether you want to appear at a hearing so that you can explain more fully the grounds of your objection.

You may appear in person at the hearing and/or be represented by counsel, a solicitor or agent. Any costs incurred for objecting will be your responsibility.

How will my objection be dealt with?

Your objection will be considered by an authorised delegate of Unitywater. He or she will consider the grounds of your objection and decide whether to:

- proceed with the acquisition;
- amend the easement area; or
- not proceed with the acquisition.

How is the easement taken?

The Minister responsible for administering the ALA will consider an application by Unitywater to take an easement over the land. The Minister will consider any objections to the compulsory acquisition. The Minister may then recommend to the Governor in Council that the easement be taken. If the recommendation is approved a taking of easement notice will be published in the Queensland Government Gazette. The easement will vest in Unitywater. The taking of an easement does not extinguish any interest in the land existing immediately before the easement is taken.

Can I claim compensation?

A person whose estate and interest in the land is injuriously affected by the easement can claim compensation.

How do I claim compensation?

We will send you a compensation claim form with a copy of the taking of easement notice. You must lodge your claim for compensation within 3 years of the date the taking of easement notice is published.

Professional Advice

We recommend you obtain professional advice from a solicitor and valuer (and other relevant experts) when preparing your claim.

Reasonable fees for professional advice obtained to prepare your claim for compensation will be reimbursed as part of your compensation payment. A number of factors will be considered in determining whether costs are reasonable.

How is compensation assessed?

Compensation is assessed in accordance with the ALA.

Compensation will take into account any loss of value to your land as a result of the easement.

In addition, you may also be entitled to claim compensation for disturbance costs incurred as a result of the taking of the easement.

When is compensation paid?

Unitywater will make an offer of compensation once it has received your claim for compensation.

Note: this information is not a substitute for obtaining independent legal, valuation or other professional advice.

If you are satisfied with the offer, settlement will be arranged.

If compensation is not agreed, Unitywater will seek to meet with you to negotiate a settlement.

If negotiation fails to resolve differences, either party can refer the matter to the Land Court for the determination of compensation.

Can I obtain an advance payment against compensation?

In accordance with the ALA, you can request an advance against compensation equal to Unitywater's assessment of compensation after you have lodged a claim for compensation. You cannot lodge a claim for compensation until after the easement has been taken.

Payment of an advance does not in any way affect your right to negotiate additional compensation, or to have the matter independently determined by the Land Court should we fail to reach a negotiated settlement.

Throughout this process, Unitywater Property Officers will act as referral and co-ordination points.

What happens if I have a mortgage?

The mortgagee is entitled to be paid the compensation (to the extent of the amount owing) unless the mortgagee agrees otherwise. Unitywater is obliged to give every mortgagee an NIR and the mortgagee has the same rights to make an objection to the resumption as you. You remain responsible for any of your contractual obligations to the mortgagee.

What about my title?

Unitywater will arrange for the Registrar of Titles to register the easement over the land.

What about GST?

Compensation payments made as a result of a resumption under the ALA do not attract GST.

Can I build over/adjacent to Unitywater infrastructure?

You must always obtain Unitywater's written permission prior to building over/adjacent to Unitywater's infrastructure.

Find
out
more

Some aspects of the resumption process can be complex. If you have any questions telephone Unitywater.



Unitywater
Property and Land



Tel: 1300 086 489



PO Box 953
Caboolture Qld 4510

For further information on Unitywater please visit our website at www.unitywater.com.au.

or Visit the Department of Natural Resources and Mines website at www.dnrm.qld.gov.au/land/accessing-using-land/land-resumption