

Council accessing land for materials

Factsheet

Section 143 of the *Local Government Act 2009* (LGA) provides for councils to enter land and remove materials. This section can be used by councils to:

- Respond to immediate and emergent issues, such as to gather material to fix or remedy damage caused by natural events, and
- Undertake business-as-usual activities. Business as usual activities are those which local governments are required to perform as part of its responsibilities, for example, repair of roads or the making safe of buildings.

Relevant circumstances

The LGA states that this provision can be used when the local government has no other reasonably practicable way of obtaining the materials. Council must determine whether it would be reasonably practical to obtain the material from another source on a case-by-case basis.

Factors that may be considered in this decision include demonstrable differences in cost, time and logistics between sourcing the material from the relevant land and alternative locations.

Other considerations

Materials

Materials that can be removed are those which the local government requires to perform its responsibilities. For example, soil to fill slippage, quarry rock to repair roads, timber for construction of local government infrastructure.

Material cannot be searched for, or removed, if it is within 50 metres of any structure or works on the land (including a house, bridge, dam or wharf).

Relevant land

The LGA states that only relevant land can be accessed. This land must be located in the local government area of the council wishing to obtain the material but cannot be:

- The site of, or curtilage around, a home or other structure; or
- A court, lawn, park, planted walk or avenue or yard; or
- Under cultivation (including a garden, nursery or plantation, for example); or

- A state forest or timber reserve under the Forestry Act; or
- A protected area under the *Nature Conservation Act 1992*; or
- The wet tropics area under the *Wet Tropics World Heritage Protection and Management Act 1993*

However, the land outside the local government area can be accessed where Ministerial approval is given (under Section 9(4)(b)(i) of the LGA) or for the purposes of a joint local government project where the land is in the other local government's area.

Land without *Forestry Act 1959* sales permits

Should the criteria of section 143 of the LGA be met, there is no requirement for the land being accessed to be the subject of a *Forestry Act 1959* sales permit.

Land where native title exists

Land where native title has been determined is not considered protected land and access to the land to obtain the materials under section 143 can occur, provided there is no other reasonably practicable way of obtaining the materials.

Timing and access

The local government must give a reasonable entry notice to the owner and occupier of the land prior to accessing the land. A reasonable entry notice is a notice that:

- informs the owner or occupier of the property of:
 - who is to enter the property
 - the reason for entering the property
 - the days and times when the property is to be entered; and
- is given to the owner or occupier of the relevant land within a reasonable period prior to entry.

What is considered a reasonable period will depend on the circumstances, including the urgency of the requirement to access materials. This is a new amendment to the LGA, removing the requirement to provide 7 days notice.

Where there is an occupier on the property, on entry the local government officer must inform them of the reason for entering, advise they are able to enter the property without the permission of the occupier and present their identify card for inspection.

Compensation for removal of materials

The owner of the land is entitled to compensation for the taking of material under section 147 of the LGA. The compensation amount is to be agreed to between the owner of the land and

the local government. Should an agreement on the amount not be able to be reached, the amount can be decided by the courts.