



**PROJECT PLANNING TO SECURE THE
CORRIDOR
RECENT LAND COURT CASES**

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AGENDA

- **Project planning to secure the corridor**
 - when and how long with it take?
 - site selection
 - land requirements
 - land acquisition
 - vacant possession

- **Recent Land Court cases**
 - a decision on costs
 - a decision on valuation methodology

WHEN?

1

When should you think about land acquisition?

2

Implications of land choice for project

3

Property officers can assist planning team / engineers

4

You may also benefit from legal advice

HOW LONG WILL IT TAKE?

- ▶ Depends on:
 - » number of properties required for a project
 - » tenure of land
 - » complexity of the properties and whether part takes
 - » key stakeholders
 - » capacity to process acquisitions
- ▶ Consider the steps of acquisition:



PROCESS BEFORE SITE SELECTION

Identify particular project (including scope and parameters)

Undertake a needs analysis for the project

Determine project timeline

Obtain a preliminary funding commitment to investigate the project


TIPS FOR COMMUNITY CONSULTATION

- ▶ Consult widely with the community about the proposed project, land requirements and any planning and environmental issues




PROCESS DURING SITE SELECTION

Undertake a site selection analysis to identify list of possible suitable sites



Consider positive and negative attributes of the alignment / each proposed site



Shortlist preferred sites



Use multi-criteria analysis to determine preferred option

IDENTIFYING LAND REQUIREMENTS

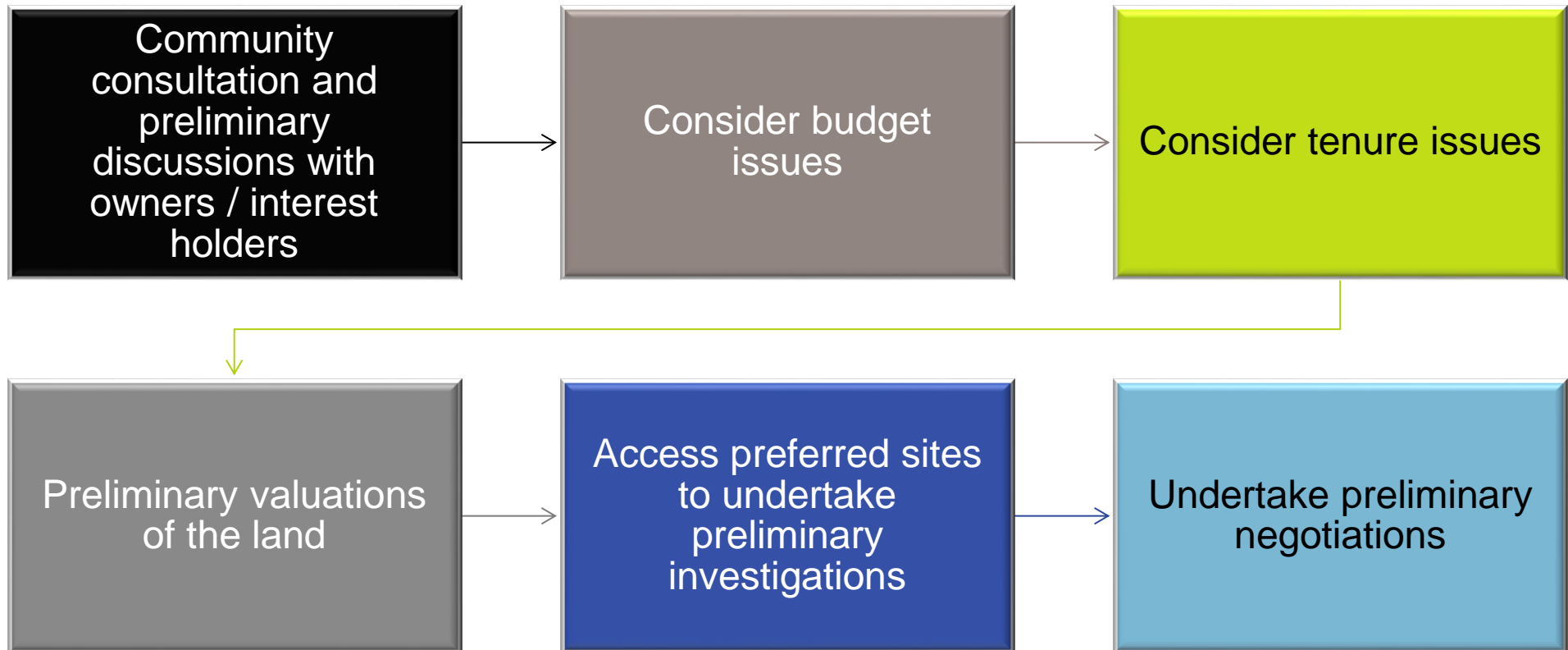
- ▶ There are five types of interest that can be acquired:
 - » fee simple
 - » easement
 - » volumetric fee simple
 - » volumetric easement
 - » lesser interest in land (if you already own the land)
- ▶ State land has different considerations

HOW MUCH LAND CAN BE ACQUIRED?

- ▶ Where land is being compulsorily acquired, the constructing authority can only acquire the land that is required for a project
- ▶ The relevant Minister must ultimately decide that land:
 - » may and should be acquired for the purpose for which it is proposed to be resumed



NON STATUTORY STEPS



LAND ACQUISITION BY...

Agreement

Compulsory
process



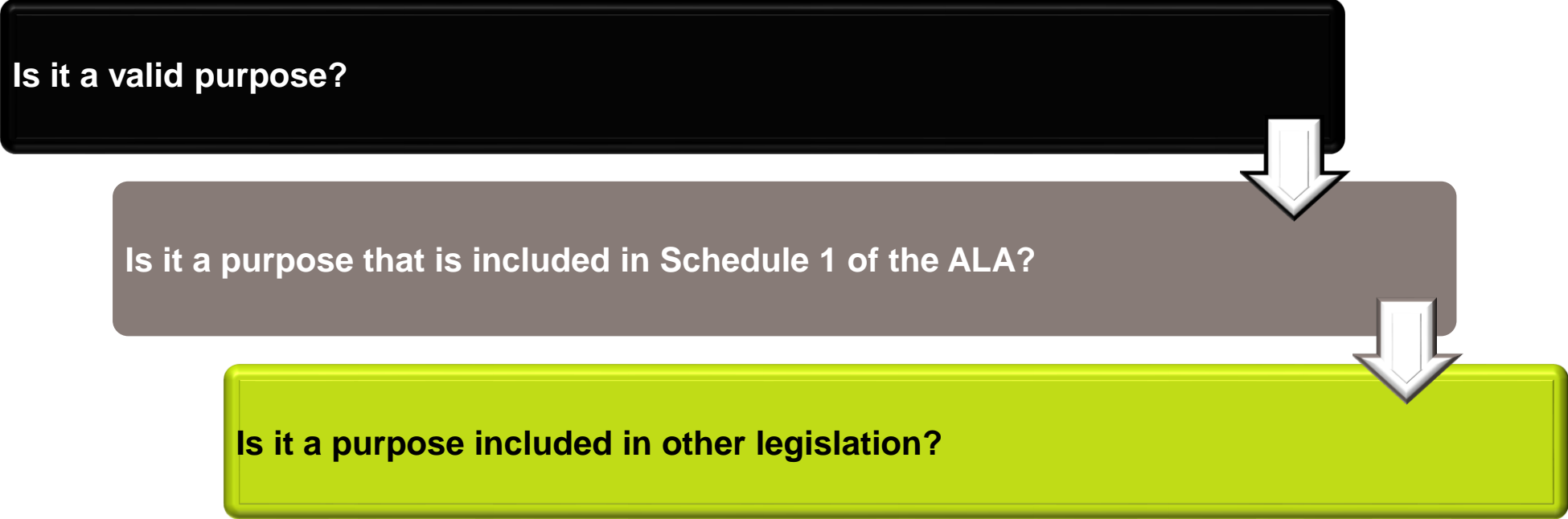
POWER TO TAKE LAND

- ▶ *Acquisition of Land Act 1967 (ALA)*
 - » for freehold land
 - » contains power and process for taking land and easements
- ▶ Section 5(1) – land may be taken for a purpose in **Schedule 1** or a purpose stated in a provision of **another Act**
- ▶ Section 5(2) – the power to take land includes the power to take for a purpose **incidental** to the primary purpose



PRIMARY PURPOSE

Is it a valid purpose?



Is it a purpose that is included in Schedule 1 of the ALA?

Is it a purpose included in other legislation?

INCIDENTAL PURPOSE

Acquiring land for
incidental purpose



Examples:

- construction compound
- additional land under section 13(1) or (2) of the ALA

RESUMPTION AGREEMENT – SECTION 15

Resumption agreement must:

- ✓ be in writing
- ✓ be signed by each "affected person" who is a party to the agreement
- ✓ state the purpose for which the land is to be taken, a description of the land and for an easement, the rights and obligations of the easement

NOTICE OF INTENTION TO RESUME – SECTION 7

Must serve a notice of intention to resume (**NIR**) on every person who, to the knowledge of the constructing authority, will be entitled to claim compensation under the ALA in respect of the taking of land or is a mortgagee of the land

NOTICE OF INTENTION TO RESUME

NIR valid for 12 months

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graph TD; A[NIR valid for 12 months] --> B[If no application to Minister within 12 months, NIR deemed to be discontinued]; B --> C[NIRs must be served personally or by post];
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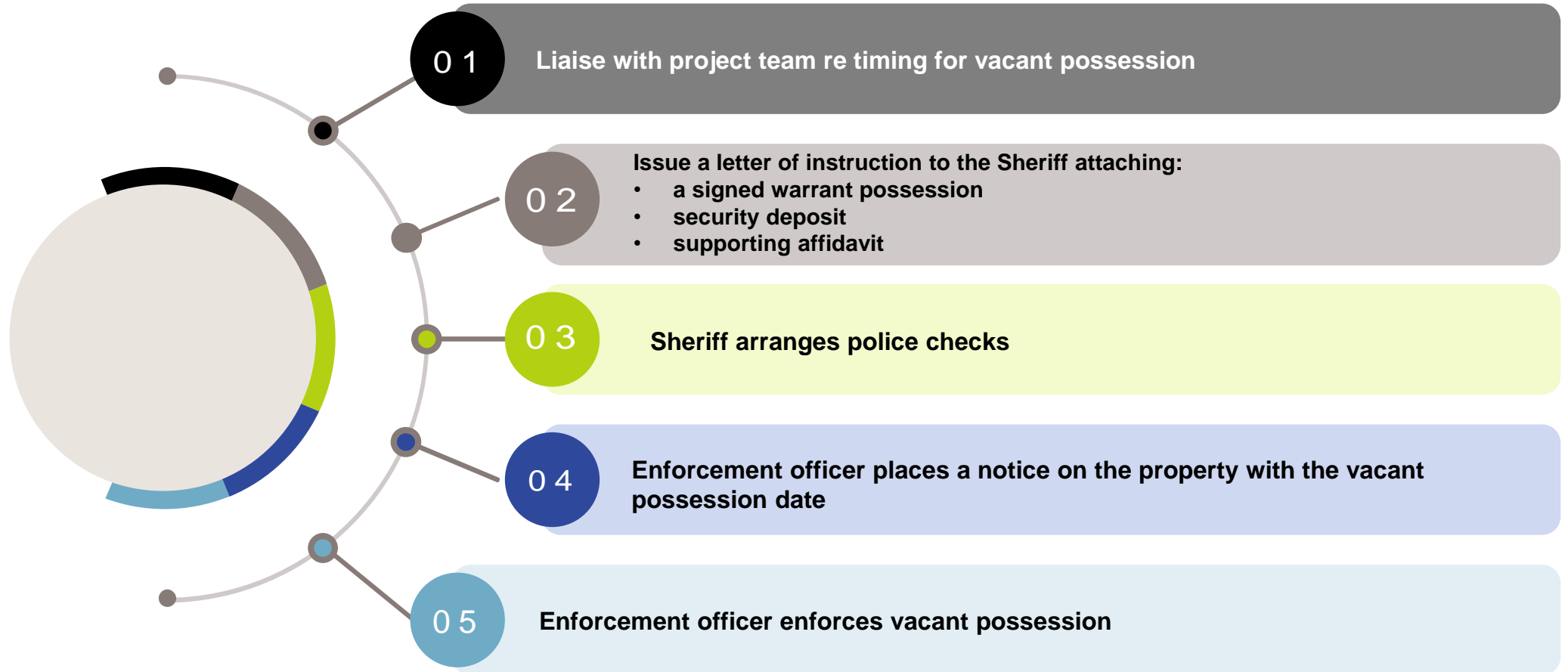
NIRs must be served personally or by post

VACANT POSSESSION



*Land is not useful until it is
vacant*

WARRANT OF POSSESSION PROCESS



**RECENT LAND
COURT CASES**



CREES V REDLAND CITY COUNCIL [2022] QLC 9

- ▶ Application for costs.
- ▶ Applicant withdraw proceedings on day one of hearing after filing no evidence.
- ▶ Council submitted that it was in a special position because it was funded by rate payers and so should get its costs.
- ▶ Court referred to decision of *Western Downs Regional Council v Geldard (No 2)* [2020] QLAC 2:
 - » The fact that the appellant is funded by its ratepayers should not be a consideration in the exercise of our discretion
- ▶ NB: Council was awarded costs in any event.



AURIZON PROPERTY PTY LTD V DTMR [2022] QLC 22

- ▶ Valuation methodology
- ▶ Hypothetical development v comparable sales
- ▶ Can a comparable sale have a different use?





**Thanks for
listening**

Questions?

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