

Land Acquisition Information Guide

Government bodies perform a range of functions for public purposes, such as developing or upgrading infrastructure. At times, they need to acquire privately owned land to perform these functions.

Such bodies may acquire the whole of a property, part of a property, or an interest in a property, such as a lease for a construction site or a right to run power, sewer or water lines. The body acquiring the land is commonly called the “acquiring authority”.

In general, when an acquiring authority acquires privately owned land, it will need to comply with the *Land Acquisition (Just Terms Compensation) Act 1991*. This Act sets out the steps that must be undertaken by acquiring authorities to acquire land and the matters to be considered in determining the amount of compensation to be paid to a land owner.

This guide provides information about the land acquisition process, including general guidance about the rights and responsibilities of acquiring authorities and land owners, and the role of the Valuer General. The guide is not intended to provide legal advice, and land owners may wish to obtain their own legal advice.

Some acquiring authorities, such as Roads and Maritime Services, may have their own detailed guides for land acquisitions. This information guide does not replace those specific guides or other more detailed information provided to land owners by acquiring authorities.

Land owners are welcome to approach acquiring authorities to obtain further assistance and information on the land acquisition process.

More detailed information on the role of the Valuer General in the land acquisition process may be obtained by going to:

<http://www.valuergeneral.nsw.gov.au>

Who acquires privately owned land?

In NSW, acquiring authorities, including government agencies, some state owned corporations, and local councils, have powers to acquire privately owned land for public purposes.

The powers of acquiring authorities to acquire land are contained in legislation specific to those authorities. However, in general, the process for acquiring land will need to comply with the *Land Acquisition (Just Terms Compensation) Act 1991* (“the Act”).

The acquiring authority manages the acquisition process, including any negotiations with the land owner.

How is privately owned land acquired?

Under the Act, land can be acquired in two ways:

1. through agreement between the acquiring authority and the land owner, or
2. compulsorily.

A key difference between the two types of acquisition is that when land is compulsorily acquired the Valuer General must determine the amount of compensation to be paid to the land owner. The Valuer General is an independent statutory official and does not represent either the acquiring authority or the land owner. When land is acquired by agreement, the acquiring authority and the land owner agree the amount of compensation, and the Valuer General is not involved.

Whether land is acquired by agreement or compulsorily, the matters to be considered in determining compensation for the land owner are the same (except in cases of hardship). Further information on how compensation is determined is set out later in this guide.

1. Acquisition through agreement

The Act encourages acquisition of land by agreement between the acquiring authority and the land owner. Most land is acquired in this way.

The acquiring authority will normally approach the land owner to discuss the purchase of the land and arrange for a registered valuer to advise the authority on the value of the land. Land owners are also welcome to obtain their own independent advice, including the services of a registered valuer to carry out a valuation of the land.

When acquiring land by agreement, the acquiring authority will try to meet the land owner at least once. The meeting will usually be with the owner registered on the land title.

Where it is not possible or practicable to meet the land owner (e.g. where the land owner is overseas for an extended period of time), the acquiring authority will seek to meet someone nominated by the land owner to be a representative.

The parties may agree to hold a meeting in a different way (e.g. telephone), or not to have a meeting at all.

When the acquiring authority and the land owner agree on the amount of compensation, the process for transferring ownership of the land will be similar to an open market transaction – contracts for sale of land will be exchanged, a date for settlement agreed, and the property transferred into the name of the acquiring authority and compensation paid on settlement.

2. Compulsory acquisition

While acquiring authorities aim to acquire land by agreement with the land owner, this is not always possible or practicable. When this happens, the acquiring authority may need to acquire the land compulsorily.

Start of compulsory acquisition

Compulsory acquisition starts when the acquiring authority notifies the land owner in writing that it intends to acquire the land compulsorily. This is done through a *proposed acquisition notice*.

The proposed acquisition notice is sent to all parties who have an interest in the land, including those who are registered on the land title or are lawfully occupying the land.

The proposed acquisition notice advises when the land will be compulsorily acquired. This is normally between 90 and 120 days after the notice has been provided to the land owner.

The acquiring authority will also provide information about other matters including when the land owner needs to vacate the property once it has been compulsorily acquired, how compensation for the land owner will be determined, and when compensation will be paid. Further information on these matters is provided later in this guide.

While the proposed acquisition notice starts the compulsory acquisition process, the acquiring authority and land owner can still try to agree on the amount of compensation to be paid. However, if the parties are unable to agree within the notice period, the land will generally be compulsorily acquired, and the Valuer General will then determine the amount of compensation payable.

When an acquiring authority provides a land owner with a proposed acquisition notice, the authority must also notify the Valuer General and the Registrar General of the proposed acquisition.

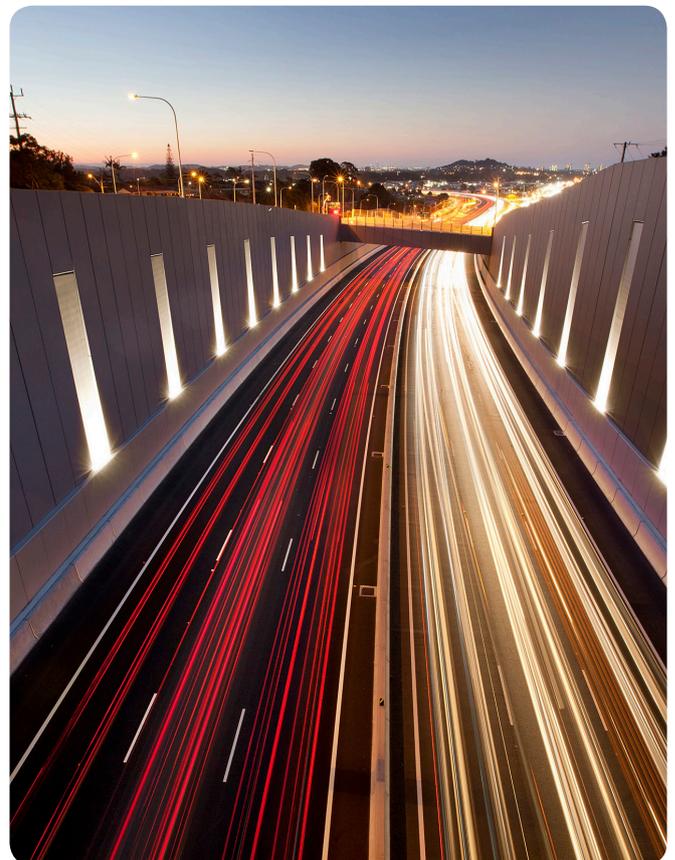


Photo: Banora Point

Among other things, the Registrar General administers the title registry for Torrens title land, including registration of land dealings and plans of subdivision, and management of title searches.

Land owner's claim for compensation

Within 60 days of receiving a proposed acquisition notice, a land owner can make a claim for compensation by filling out and lodging an approved claim for compensation form with the acquiring authority. The acquiring authority will enclose a copy of this form with the proposed acquisition notice.

A land owner who is entitled to compensation does not need to make a claim in order to receive compensation. However, making such a claim will help to ensure that the Valuer General is informed about any particular issues or concerns of the land owner when the Valuer General is determining the amount of compensation payable.

The land owner is also welcome to raise any other issues or questions with the acquiring authority to help the land owner prepare for the acquisition.

Completion of compulsory acquisition and vacation of property

When the acquiring authority publishes an *acquisition notice* in the Government Gazette, the authority becomes the owner of the land from the date of the notice. The acquisition notice will normally be published between 90 and 120 days after the proposed acquisition notice was sent. The Government Gazette can be accessed at:

<http://www.legislation.nsw.gov.au>

When the acquiring authority starts the acquisition process, it will advise the land owner of the terms and conditions under which he or she may continue to occupy the land after it has been compulsorily acquired. In general:

- A former owner who was lawfully occupying land immediately before it was compulsorily acquired and is entitled to compensation may continue to occupy the land until compensation is paid.
- If a building on the acquired land is the former owner's principal place of residence or place of business, the former owner can continue to occupy the building for three months even though compensation has been paid

to the former owner during that period. If compensation has not been paid before the three month period ends, the former owner may continue to occupy the building until compensation is paid.

Determination and payment of compensation

Once the acquisition notice is published in the Government Gazette, the Valuer General independently determines the amount of compensation that the acquiring authority must offer the former owner.

Within 30 days of the publication of the acquisition notice:

- the Valuer General must inform the acquiring authority of its determination of the amount of compensation to be offered to the former owner, and
- the acquiring authority must provide the former owner a *compensation notice*, which formally advises the former owner of the acquisition and offers the amount of compensation determined by the Valuer General.

Sometimes, the determination of compensation may be particularly complex. In such cases, the Minister responsible for the authority may agree to extend the 30 day timeframe by up to 60 days.

If the former owner accepts the compensation offer, the authority will pay the amount within 28 days of receiving the former owner's acceptance. The compensation notice will advise the former owner of the documents or forms that need to be completed and returned to the authority before compensation is paid.

Interest is payable by the acquiring authority on the amount of compensation from the date the land is acquired until payment is made.

Appeal

Former land owners who do not want to accept the compensation offer may lodge an appeal with the NSW Land and Environment Court.

An appeal must be lodged within 90 days of receiving the compensation notice from the acquiring authority. If the objection is lodged late, the Court will only hear the appeal if there is good cause for it being late.

Further information about the process for lodging an appeal, including the form that needs to be completed, is available at:

<http://www.leg.justice.nsw.gov.au>

How is compensation determined?

The Act lists the matters to be considered in determining compensation, including the market value of the land acquired and certain costs that the former owner may have incurred as part of the acquisition process. These matters are set out fully in Appendix A, and will also be outlined in the claim for compensation form that comes with the proposed acquisition notice.

The acquiring authority will usually cover costs that the former owner has reasonably incurred as part of the acquisition process. These costs include fees for professional valuation and legal advice. The acquiring authority may provide further advice to the land owner on what are reasonably incurred costs.

Acquiring authorities may seek further information from the land owner to support the costs claimed. If the acquiring authority is not satisfied that the costs have been reasonably incurred, it may only agree to pay a portion of those costs.

When seeking independent advice about the acquisition, it is important for land owners to consider carefully what services are being provided and the costs of those services. Land owners may discuss these matters with the acquiring authority before purchasing such services.

The compensation principles stated above apply to many acquisitions under the Act. However, where the land is acquired under the hardship provisions of the Act, compensation is calculated on a different basis. This is explained in the following section.

Compensation is generally not payable where the acquiring authority only acquires rights to land below the surface of land.

Hardship

Before an acquiring authority starts an acquisition of privately owned land, the land can sometimes have already been designated for a public purpose. Designation can occur either by written notice from the acquiring authority or by an environmental planning instrument. All environmental planning instruments can be viewed at:

<http://www.legislation.nsw.gov.au>

For various reasons, there may be a period of time between the designation of the land and the start of acquisition. Under the Act's hardship provisions, a land owner can request an acquiring authority to buy all or some of the owner's land before the acquiring authority needs the land.

In order for an acquiring authority to acquire land under the hardship provisions, the land owner must demonstrate that:

- it has become necessary to sell the property without delay for pressing personal, domestic or social reasons, or to avoid a substantial loss in income, and
- the owner is unable to sell the land at its market value because the land has been designated for future acquisition.

Where land is acquired under the hardship provisions, the compensation is generally based on the market value of the land as if the public purpose designation had not been made.

Unlike other acquisitions under the Act, additional costs are generally not included in the compensation payment. This is because the owner's request to have his or her land acquired is taken as a willingness to accept the normal costs associated with selling a property.

More information

@ land@finance.nsw.gov.au

Land Acquisition Information Guide

- Appendix A

The main provisions of the Act relating to the calculation of compensation are set out below. Owners should use these provisions as a general guide only. The Courts have developed case law on the meaning of these provisions. In some circumstances, other legislation can also be relevant. Owners may wish to obtain legal advice as to the precise legal effect of these provisions and their entitlement to compensation.

General compensation provisions

54 Entitlement to just compensation

1. The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.
2. If the compensation that is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

55 Relevant matters to be considered in determining amount of compensation

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- a) the market value of the land on the date of its acquisition,
- b) any special value of the land to the person on the date of its acquisition,
- c) any loss attributable to severance,
- d) any loss attributable to disturbance,
- e) solatium,
- f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

56 Market value

1. In this Act:

market value of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and
- b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and
- c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

2. When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

57 Special value

In this Act:

special value of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person's use of the land.

58 Loss attributable to severance

In this Act:

loss attributable to severance of land means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

59 Loss attributable to disturbance

In this Act:

loss attributable to disturbance of land means any of the following:

- a) legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land,
- b) valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land,
- c) financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs),
- d) stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired),
- e) financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage),
- f) any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

60 Solatium

1. In this Act:

solatium means compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

2. The maximum amount of compensation in respect of solatium is:
 - a) except as provided by paragraph (b) —\$15,000, or

- b) such higher amount as may be notified by the Minister by notice published in the Gazette.

Note: The maximum amount notified under section 60(2)(b) is currently \$26,260.

3. In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:
 - a) the interest in the land of the person entitled to compensation, and
 - b) the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely), and
 - c) the inconvenience likely to be suffered by the person because of his or her removal from the land, and
 - d) the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.
4. Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.
5. Only one payment of compensation in respect of solatium is payable for land in separate occupation.
6. However, if more than one family resides on the same land, a separate payment may be made in respect of each family if:
 - a) the family resides in a separate dwelling-house, or
 - b) the Minister responsible for the authority of the State approves of the payment.
7. If separate payments of compensation are made, the maximum amount under subsection (2) applies to each payment, and not to the total payments.

61 Special provision relating to market value assessed on potential of land

If the market value of land is assessed on the basis that the land had potential to be used for a purpose other than that for which it is currently used, compensation is not payable in respect of:

- a) any financial advantage that would necessarily have been forgone in realising that potential, and
- b) any financial loss that would necessarily have been incurred in realising that potential.

Compensation for hardship acquisitions

26 Compensation for acquisition under this Division

The special value of land, any loss attributable to severance or disturbance and solatium (as referred to in Part 3) need not be taken into account in connection with an acquisition of land under this Division, despite anything to the contrary in that Part.

Compensation for acquisitions below the surface

62 Special provision relating to acquisition of easements or rights, tunnels etc

1. If the land compulsorily acquired under this Act consists only of an easement, or right to use land, under the surface for the construction and maintenance of works (such as a tunnel, pipe or conduit for the conveyance of water, sewage or electrical cables), compensation is not payable except for actual damage done in the construction of the work or caused by the work.
2. If land under the surface is compulsorily acquired under this Act for the purpose of constructing a tunnel, compensation is not payable (subject to subsection (1)) unless:
 - a) the surface of the overlying soil is disturbed, or
 - b) the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or

c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

3. If the land compulsorily acquired under this Act consists of or includes an easement or right to use the surface of any land for the construction and maintenance of works (such as canals, drainage, stormwater channels, electrical cables, openings or ventilators), the easement or right is (unless the acquisition notice otherwise provides) taken to include a power, from time to time, to enter the land for the purpose of inspection and for carrying out of any additions, renewals or repairs. Compensation under this Part is payable accordingly.