



LAND ACQUISITION GUIDE

WOLLONDILLY SHIRE COUNCIL

Local Councils have a range of roles and responsibilities in their communities, including the provision of facilities and the supply of public services. Councils will sometimes be required to 'acquire' land to achieve its roles and responsibilities.

Council may need to acquire privately owned land or an interest in the land for a variety of public interest purposes, such as developing or upgrading public infrastructure. Council 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, road widening, public car park and storm water infrastructure for examples. 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 should seek their own legal advice.

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 the power to acquire privately owned land for public purposes.

Local Councils can only acquire land if it has the power to do so under an Act. Currently, the only Acts under which a Council can compulsorily acquire land are the *Local Government Act 1993* and the *Roads Act 1993*. The process for acquiring land will need to comply with *the Land Acquisition (Just Terms Compensation) Act 1993* ("the Act").

HOW IS PRIVATELY OWNED LAND ACQUIRED?

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

1. Private agreement; or
2. Compulsory process.

A key difference between the two types of acquisition is that when land is compulsory 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 land owner agree on the amount of compensation and the Valuer General is not involved.

Whether land is acquired by agreement or compulsory acquisition, the factors to be considered in determining compensation for the land owner are the same.

WHAT HAPPENS IF YOU ARE AFFECTED BY PROPERTY ACQUISITION?

If your property is identified for proposed acquisition, a representative from Council will contact you to arrange a meeting to discuss the process in more detail. You will also be sent an Introductory Letter, which will formally notify you of the proposal to acquire your property. This letter will include information about the acquisition process.

HOW THE FORMAL ACQUISITION PROCESS STARTS

You will receive an Opening Letter that marks the start of the negotiation period. In accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, there is a minimum six-month period to reach agreement on compensation.

The Opening Letter

- Provides you with the name and contact details of your Personal Manager from Council.
- Explains that Council will arrange for an independent Valuer to inspect your property (if required) and carry out a valuation at a time that's convenient for you.
- Recommends that you engage your own independent Valuer and informs you that reasonable valuation fees will be paid by Council on settlement.
- Explains that Council will submit a formal offer to acquire your property.
- Advises that you are entitled to get legal advice about the acquisition, and that reasonable legal fees will be paid by Council on settlement.

Your own independent advice

It is recommended that you get your own advice from an independent Valuer and a lawyer. A lawyer can help you understand your legal rights and reach an agreement with the acquiring authority on any compensation you may be entitled to.

Foreign residents who own property

The federal government imposes a tax on foreign residents who own Australian property. If you are a foreign resident whose residential property is being acquired, this may impact you. For more information, ask your lawyer or visit the Australia Tax Office website, ato.gov.au.

HOW YOUR PROPERTY IS VALUED

During the acquisition process, Council will instruct an independent Valuer to inspect your property. The Valuer will determine the market value of your property. Market Value is the amount that would have been paid for the property if it had been sold on the open market, if the proposed project or public purpose did not exist. It considers:

- the size of your property
- the location
- the quality of improvements
- zoning
- recent sales in the area
- pest and building inspections

COMPENSATION

You may be eligible for the following types of compensation:

1. Market value of your property

Market Value is the amount that would have been paid for the property if it had been sold on the open market, if the proposed project or public purpose did not exist.

2. Special value

Special value applies when a property has a financial value on top of the market value.

3. Severance

Compensation for severance is only applicable if part of your property is being acquired. It generally applies when an acquisition severs part of a property and as a result, the remaining property may incur a reduction to its market value.

4. Disturbance

Compensation for disturbance may include any or all of the following:

- Reasonable legal costs
- Reasonable valuation fees
- Reasonable relocation fees
- Reasonable stamp duty costs in connection with buying a new property for relocation
- Reasonable financial costs in connection with the discharge of a mortgage and the execution of a new mortgage
- Other reasonable financial costs related to the actual use of the property as a result of the property acquisition

5. Disadvantage resulting from relocation

Compensation for disadvantage resulting from relocation considers:

- Your interest in the property
- The length of time you have lived in the property (and in particular whether you are living in the property temporarily or indefinitely)
- The inconvenience likely to occur
- The period after the acquisition that you have been – or will be – allowed to remain in possession of the property.

6. An increase or decrease in the value of other property

This compensation only applies when a part of your property is being acquired. It considers any change in the value of other property that adjoins or is severed from the property being acquired. The compensation will be adjusted if the change in value is caused by the public purpose that the property was acquired for; for example, building a road or upgrading an intersection.

AGREEMENT

Negotiation and agreement on compensation

Once you have your own **valuation report**, Council can organise an exchange of reports between the Valuers. Council will organise to meet with you and both Valuers to discuss the valuations and try to reach an agreement on your compensation. This may involve one or more meetings where each Valuer will present the evidence that they based their valuation on. The meetings can be informal and may be held in person or by phone.

Letter of Offer

Once your valuation and Council's valuation have been completed, Council will issue a 'Letter of Offer'. The letter will include details about any compensation you are eligible for, including the market value of your property.

The offer will be based on information from Council's **valuation report** and the discussions.

Once an agreement has been reached

If you accept the offer, Council will start the conveyancing process. This will be similar to a property sale in the open market except that Council's lawyer prepares the contracts.

Relocation support

Once an agreement is reached, you will be able to discuss the date of settlement, which is normally the date you need to vacate the property. Your Personal Manager can provide you with tailored support and guidance for relocating to a new home. Council will also inspect the property on the date of settlement. This is to make sure it is vacant, has been left in an appropriate condition and all possessions have been removed.

IF AGREEMENT CANNOT BE REACHED

After negotiations, if an agreement is unable to be reached between Council and the landowner, the property may be compulsory acquired under the Act. This process involves working with the Valuer General.

Compulsory Acquisition

Following a period of negotiation (a minimum of six months from the Opening Letter), the first official step in the compulsory acquisition process is for Council to issue a **Proposed Acquisition Notice (PAN)** to the property owner.

This notice will state Council's intention to compulsory acquire the property after a certain time. The period of usually 90 days, however a shorter timeframe can be agreed to by the owner or be approved by the appropriate Minister in certain circumstances.

Property owners will need to complete a Section 39 Claim for Compensation form and include all information you would like the Valuer General to consider when determining the compensation. Owners are required to complete the form within 60 days of receiving the PAN.

Negotiations can continue until the Acquisition Notice is published in the Government Gazette.

What happens next?

If negotiation cannot be reached within the 90 day notice period, Council will arrange for an **Acquisition Notice** to be published in the NSW Government Gazette. This is referred to as the property being 'gazetted'.

- Gazettal usually happens within 120 days of issuing the PAN.
- Council, as the acquiring authority, officially owns the property from the date the Acquisition Notice is published in the NSW Government Gazette.
- Your legal interests in the property are converted to an entitlement of compensation.

If your entire property is acquired, you will be entitled to stay in the property for up to three months (without paying rent) to give you time to find a new home, unless Council needs it to be vacated earlier.

Who determines the compensation payable?

The Valuer General determines the amount of compensation. The Valuer General is appointed by the NSW Governor, is independent of both State and Local Government and does not act for the property owner or the acquiring authority.

The Valuer General

The Valuer General will:

- Carry out their own valuation in line with the Act
- Share all information being considered for the **valuation report** with the parties involved – this includes information provided to the Valuer General by the resident and the acquiring authority and information sourced directly by the Valuer General.
- Issue you with a **Preliminary Valuation Report** showing the amount of compensation and how it was determined
- Speak to you and the acquiring authority and seek further information.
- Issue a determination of compensation including their independent valuation of the property to you and the acquiring agency.

Council will issue you with a **compensation notice**, which includes the compensation amount determined by the Valuer General.

For more information about the Valuer General, visit valuergeneral.nsw.gov.au.

Accepting the compensation notice

If you agree with the **compensation notice**, you will need to complete a **Deed of Release and Indemnity** and return it to Council.

The compensation will be paid within 28 days of receiving the Deed of Release and Indemnity and any other required documents.

If you don't accept the determination

If you disagree with the **compensation notice**, you are entitled to lodge an objection with the NSW Land and Environment Court.

The objection must be lodged within 90 days of the **compensation notice** being issued to ensure the Court will hear the objection and determine the amount of compensation to be paid. As the applicant, you must also give the acquiring agency notice that you began proceedings in the NSW Land and Environment Court.

Advance payments while the Court proceedings are under way

If you have received a **compensation notice** from Council as the acquiring authority, you will be paid 90 per cent of the amount of compensation offered in that notice within 28 days after Council has been notified of the NSW Land and Environment Court proceedings. However, accepting the advance payment does not mean you are accepting the offer of compensation.

The acquiring authority will also pay interest on the advance for the period from the day the Acquisition Notice was published in the NSW Government Gazette to the date the advance is paid.

If you don't accept the advance, the advance and interest will instead be deposited into a trust account pending the NSW Land and Environment Court's decision.

The NSW Land and Environment Court

The Court will hear evidence from you and the acquiring authority about your entitlement to compensation claims.

As part of the mediation process, the NSW Land and Environment Court will formally encourage you and the acquiring authority to meet ahead of the hearing to try and resolve the compensation without requiring a full hearing.

For more information about the NSW Land and Environment Court, visit- www.lec.justice.nsw.gov.au

PARTIAL ACQUISITION OF PROPERTY

Sometimes only part of a property will need to be acquired. In this situation, Council will provide you with a plan of the required partial acquisition. It will also include the proposed new boundary as a result of the partial acquisition and identify the likely dimensions and area of the part of the property that's needed.

How partial property acquisition is valued

The most common way a partial property acquisition is valued is by using a 'before and after' method where:

- The value of the total property, as unaffected by the project proposal, known as the 'before valuation' is determined.
- The value of the remaining property assuming the acquisition has occurred, is also determined. This is known as the 'after valuation'.
- The difference between the 'before' and 'after' valuations is the compensation payable by the acquiring authority.

Property adjustments

When part of a property is acquired, Council will discuss what property adjustments are required as a result of the acquisition. Eg: changes to driveways or fencing.

COUNCIL'S CORPORATE PROPERTY POLICY

Wollondilly Shire Council has adopted a 'Corporate Property Policy' to ensure that the process for acquiring land within the Wollondilly Local Government Area is transparent and consistent. A copy of the Policy can be found on Council's website:-

<https://www.wollondilly.nsw.gov.au/council/access-to-information/council-registers/>