

Appendix E

RTA Land Acquisition Policy

Land Acquisitions



Roads and Traffic Authority

New South Wales

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Policy Statement

LAND ACQUISITIONS

The Road and Traffic Authority (RTA) is responsible for providing a safe and efficient road transport system in NSW.

Often it is necessary to acquire land to upgrade existing roads or construct new roads.

This document is a general guide to the procedures that are followed when the RTA acquires land and while it provides a comprehensive overview of the essential elements of the RTA's acquisition policy is not intended as a complete statement on the subject.

Throughout this document the term "affected" means affected by the acquisition or proposed acquisition of land. Payment of compensation only takes place where land is acquired.

Owners of property, that is affected by the acquisition of land required for roadworks, are generally aware of roads proposals either through enquiries made when purchasing the property, from proposals shown on Local Planning Schemes or through the RTA's community consultation for new projects.

(New road proposals are made public as soon as possible. It should be noted that the RTA is not required to acquire more land than is necessary for roadworks).

The Roads Act 1993 authorises the RTA to acquire land and payment for land is assessed in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991.

The Roads Act 1993 and other legislation allows the RTA to enter land to carry out investigations. Consideration of those powers is outside the scope of this document.

One objective of the Land Acquisition (Just Terms Compensation) Act 1991, referred to throughout this document as the Act, is to encourage the acquisition of land by negotiated purchase in preference to compulsory process. The RTA fully supports this objective.

The RTA generally purchases property as an owner initiated acquisition either under the "hardship" provisions of the Act or its "preferred option" policy (explained on page 2) or as an RTA initiated acquisition in preparation for immediate roadworks. When agreement is reached the purchase is completed by contract and transfer takes place similar to a sale in the open market, however it should be noted that the RTA's solicitor will prepare contracts.

Owner Initiated Acquisition under the provisions of the Act

Owners may experience difficulty in selling their property if part or the whole is designated for acquisition for roadworks. If an owner is unsuccessful in attempting to sell a designated property and is experiencing hardship, then a written application can be made to the RTA requesting acquisition under the “hardship” provisions of the Act. To be eligible for consideration for “hardship” acquisition a property must be designated for acquisition within the meaning of the Act. Land is designated for acquisition if:

- (a) the RTA has, in connection with an application for development consent or building approval, given written notice that the land has been designated for road and future acquisition by the RTA ; or
- (b) the land is reserved for a public purpose (road) indicated in an environmental planning instrument and the RTA is specified as the body responsible for acquiring the property.

To meet the Act’s criteria for “hardship” acquisition an owner must demonstrate that it has become necessary to sell for pressing personal, domestic or social reasons or to avoid a loss in income and that attempts to sell the property have been unsuccessful because of the designation for acquisition by the RTA. If an owner meets the hardship criteria to the RTA’s satisfaction, the RTA will agree to purchase the property and in effect becomes the purchaser that cannot be found in the market place. While it is the RTA’s preference to complete hardship acquisitions by negotiated agreement, the compulsory process is also available to the land owner if preferred.

The RTA’s basis of assessing payment in hardship matters is market value unaffected by road proposals. No other payments in addition to the unaffected market value are made as the owner’s willingness to sell the property in the market place is taken as a preparedness to accept the normal costs associated with selling a property. It should be noted that in most circumstances an owner will not be responsible for a sales commission that would otherwise be payable if the property had been successfully marketed and sold through a real estate agent.

Owner Initiated Acquisition under the “Preferred Option” Policy

In the process of considering the location of a new road the RTA may examine several possible routes and a preferred option may be selected from those routes for further environmental impact study. As a result of community consultation the location of the preferred option will become known. This public knowledge could frustrate attempts by owners to sell properties potentially affected by the taking of land. Properties potentially affected by a preferred option proposal are not designated land

because the actual route has not been finalised. Consequently the owners of such properties are not eligible for consideration to have their property acquired under the owner initiated acquisition provisions of the Act. The RTA is however prepared to consider the acquisition of such property outside the provisions of the Act.

The RTA will consider a request for acquisition if an owner can demonstrate hardship using the criteria specified in the Act. The acquisition will be at the discretion of the RTA and subject to the availability of funds with each party being responsible for all their own costs. The basis of the purchase price will be the assessment of market value unaffected by the road proposal.

Where an acquisition is proceeding on this basis, compulsory acquisition is not an option. Where an agreement cannot be reached on the purchase price, the following procedure is available:

- The offer is withdrawn
- The owner to choose a valuer from a panel of independent valuers nominated by the Australian Property Institute and referred to the owner by the RTA for selection. In this way the valuer chosen is mutually acceptable to both the owner and the RTA.
- The selected valuer will act as an independent expert and will be commissioned by the RTA to carry out a valuation of the subject property.
- Each party is to be responsible for the payment of 50% of the valuation fee.
- The owner or the RTA may make written submissions to the valuer within the first seven (7) calendar days after the valuer is instructed.
- The independent expert's determination will be binding on both parties if the owner wishes to proceed.
- No further valuations will be obtained and the offer to acquire at the determined value will remain open for a period of three (3) months, after which time the offer will lapse.

If the offer lapses and a subsequent decision is made to proceed with the preferred option and the property remains affected, the RTA will recommence negotiations to acquire that part of the property required for roadworks when road construction is imminent.

Programmed Acquisition (RTA initiated)

When land is required for road construction the RTA will initiate acquisition by way of a letter to owners of property affected by the taking of land. The letter will advise the owner that a valuer representing the RTA will make arrangements to inspect the

property and carry out a valuation for the purpose of submitting a formal offer for the owner's consideration. The letter invites land owners to submit an asking price, if that is desired, and also advises, that if the owner engages a registered valuer to value the property, the RTA will reimburse fees to the maximum amount specified in the letter.

Reimbursement of valuation fees is subject to the conditions contained in Appendix "A". The valuation report is to be in accordance with the "Basic Content of Valuation Reports" contained in Appendix "B". It is expected that the valuer will act as an expert and not an advocate.

Division 3 of Part 4 of the Act, in particular Section 55, details the relevant matters to be considered when assessing payment and can be summarised as follows:

- Market Value. (unaffected by road proposals)
- Special Value.
- Severance.
- Disturbance.
- Solatium, and
- Any increase or decrease in the value of adjoining or severed land.

For a fuller understanding, refer to Sections 55 - 62 of the Act which are reproduced in Appendix "C". The heads of compensation to be considered are the same whether the acquisition is a negotiated purchase or is completed by compulsory process.

Following assessment, the RTA will submit written conditions of acquisition to owners for their consideration. One of those conditions will specify the maximum amount that the RTA is prepared to reimburse in respect to conveyancing costs. If the conditions of acquisition are acceptable, the matter will proceed to exchange of contracts and settlement. If the RTA's offer is not acceptable, it is suggested that the services of a registered valuer be engaged to carry out an assessment on the owner's behalf. If there is a difference between valuations, negotiations will take place in an attempt to resolve the matter. Every effort will be made to negotiate a mutually acceptable agreement.

Depending on the RTA's requirements it may be necessary to acquire the whole of a property or only part of a property. The terms "total" or "partial" are used to describe these situations.

Total Acquisition

There are additional considerations peculiar to total acquisitions:

It is strongly recommended to the property owner, that no commitment be made to purchase a replacement property until contracts are exchanged on the sale to the RTA.

If a deposit on a replacement property is required, the RTA will make an advance payment of up to 10% of the value of the property being acquired by the RTA. The advance payment will be made at the time of or after the exchange of contracts and will be subject to conditions required by the RTA's solicitor.

The market value of the property will be assessed having regard to the prime cost items and inclusions at the time of inspection. If it is the owner's intention to retain any item, it is necessary to indicate to the valuer at the time of inspection that an item is to be excluded so that a correct assessment can be made. Requests made after the valuation inspection may be refused or the valuation reduced by the value of the item.

The property must be left in a clean and tidy condition. In accordance with standard real estate transactions, vacant possession will be required on the date of settlement. The RTA will carry out an inspection on the date of settlement to ensure compliance and that all inclusions are intact.

Swimming pools should be clean on the day of settlement and should comply with any relevant statutory or Council requirements including fencing and signage.

Partial Acquisition

If only part of a property is required by the RTA, the letter opening negotiations will include a plan showing the new road boundary and the area and dimensions of that part of the property to be acquired.

The method of assessing the amount to be paid for the land is the "Before and After" method which requires two valuations to be carried out. The first valuation is of the property unaffected by road proposals. The second valuation, as at the same date, is of the residue land on the basis that the new road construction has been completed and the road in use. The difference between the two valuations is the payment for the land to be acquired.

The RTA will, at its own cost prior to or during roadworks, adjust services and public utilities as required, relocate fencing and reinstate access to the new road boundary. It should be noted that fencing will be relocated to the new road boundary to a standard similar to that existing. If considered necessary, the RTA will prepare a plan detailing property adjustments for consideration by the land owner and if acceptable that plan may form part of the contract for sale.

On occasion, the RTA may acquire the whole of a property if the effect of roadworks on the residue land is considered to warrant total acquisition. This applies if the owner purchased the property prior to the RTA formally indicating that the property is to be affected by the acquisition of land, or if the already affected property is to be further adversely affected by the acquisition of additional land. All relevant elements of compensation within section 55 of the Act will be considered.

Where an owner purchased the property in knowledge of the RTA's requirement, the RTA may acquire only that part required for road. If an owner purchased in knowledge of a road affectation and has requested the RTA to acquire the whole property the RTA may agree to total acquisition. However, if a decision is made to acquire the whole property compensation will be limited to market value unaffected by road proposals together with reasonable conveyancing and valuation costs. If an agreement cannot be reached on conditions of total acquisition, the RTA may elect to proceed with only the acquisition of the land required for road.

Entry for Roadworks

Once an acquisition has been settled, entry for roadworks can take place. On occasion, the RTA's road construction program requires entry prior to completion of the acquisition and in such matters the RTA relies on the owner's cooperation. If required and the owner is agreeable, the RTA may arrange formal right of entry on exchange of contracts or, entry by way of lease.

If an agreement cannot be reached to ensure the RTA's timely entry onto the required land for roadworks, the Minister may approve the issue of a written Proposed Acquisition Notice to compulsorily acquire the land.

COMPULSORY ACQUISITION

Compulsory Acquisition is a statutory process under the Act available to the RTA to acquire land. It also provides the means for resolving disputes about the amount of compensation payable if an agreement cannot be reached in a negotiated purchase. Generally the process is as follows:

The RTA seeks the Minister's approval to compulsorily acquire land.

- If the Minister approves, the RTA issues a Proposed Acquisition Notice to each party with a known legal or equitable interest in the land, (eg a registered proprietor, mortgagee, lessee, trustee) or with a right or privilege over the land, or in connection with it (eg, easement beneficiary, occupant, licensee, etc). The Notice advises of the RTA's intention to acquire the land after 90 days. However, a shorter period can be agreed by the owner and RTA, or can be approved by the Minister. A Proposed Acquisition Notice is accompanied by a Compensation Claim Form.
- The issue of a Proposed Acquisition Notice is recorded on the relevant Title registers at the Land Titles Office.

- During the 90 day (or shortened) period after the issue of the Proposed Acquisition Notice, negotiations may continue in an effort to purchase the land.
- During the 90 day (or shortened) period after the issue of the Proposed Acquisition Notice, the RTA seeks the Governor's approval to compulsorily acquire the land.
- If contracts for purchase have not been exchanged within the minimum Notice period and if the Governor approves, an Acquisition Notice is published in the Government Gazette within 120 days of the issue of the Proposed Acquisition Notice unless a longer period is agreed to in writing by the owner and the RTA.
- An extract of the Acquisition Notice is also published in a local newspaper.
- The RTA owns the land from the date of publication of the Acquisition Notice in the Gazette. The former owner's legal and equitable interests in the land are converted to an entitlement to compensation.

Advance Payment

Following the publication of the Acquisition Notice the RTA advises affected owners of the acquisition. It is generally prepared to offer to pay 90% of the RTA's purchase offer, in return for vacant possession of the land.

Terms of Continued Occupation

The RTA is entitled to charge rent for the land from the date of notification in the Gazette until possession is obtained. The terms of rental are, in the absence of an agreement, such reasonable terms as the RTA may determine. Unpaid rent may be deducted from compensation payable. Parties entitled to compensation are paid statutory interest on the amount of compensation such interest being calculated from the date of gazettal up until the date of payment.

Compensation

Each recipient of a Proposed Acquisition Notice is entitled to lodge a claim for compensation with the RTA. Also, anyone else who considers that they are entitled to compensation but did not receive a Proposed Acquisition Notice may lodge a claim. Claims must be on the prescribed form. Compensation is not paid until a properly completed claim has been lodged. If agreed, compensation may comprise land or works in whole or part settlement of a claim.

The Valuer General determines the amount of compensation (including legal and valuation costs) to be offered by the RTA in a Compensation Notice.

A Compensation Notice is issued within 30 days after notification of the compulsory acquisition in the Gazette. This Notice is issued whether or not a claim for compensation has been lodged. However, the Minister may approve delay in the issue of a Compensation Notice by up to an extra 60 days. In the case of competing claims the RTA may not issue a Compensation Notice until entitlement is resolved.

If the amount of compensation is accepted, and the necessary settlement papers and claim form are returned to the RTA properly completed, the RTA will pay the compensation within 28 days of receipt of those papers. Interest is paid on the compensation from the date of acquisition to the date of payment.

If the amount of compensation is not accepted, the claimant may lodge an objection with the Land and Environment Court. The objection should be lodged within 90 days of receiving the Compensation Notice. This ensures that the Court will hear the objection and determine the amount of compensation to be paid. Within 28 days after it is given notice of the institution of proceedings, the RTA will pay the claimant 90% of the compensation offered in the Compensation Notice as an advance on account of compensation, if that is acceptable to the claimant. Interest is also paid on the advance for the period from gazettal to the date that the advance is made. If it is not accepted, the advance and interest will be deposited into a trust account pending the Court decision.

If, within 90 days of a Compensation Notice issuing, the amount offered in that Notice has not been accepted and an objection has not been lodged with the Land and Environment Court, the offer is deemed to have been accepted. The RTA then deposits the amount offered plus interest into the trust account where it is held until it is accepted or until an objection is lodged with the Court. Money earned by the trust account deposit becomes part of the compensation.

If compensation is in the trust account six years after the date of acquisition and a claim has not been received, the compensation is paid to the State Treasurer and held in the Treasury until paid to an entitled claimant. Interest is not paid on the compensation for the time that it is held in the Treasury.

Occupation

People in lawful occupation of land compulsorily acquired and to whom compensation is payable are entitled to remain in occupation as tenants of the RTA until:

- (a) the compensation is paid; or
- (b) an advance payment of not less than 90% of the amount offered in the Compensation Notice is paid; or

- (c) not less than 90% of the amount offered in the Compensation Notice is deposited into the trust account due to a deemed acceptance, Court action, or competing claims;

whichever occurs first.

Furthermore, people lawfully occupying any building which is their principal place of residence or place of business are entitled to remain in occupation as tenants of the RTA for three months after it is compulsorily acquired, regardless of whether any of the abovementioned payments have been made. However, the Minister may shorten that period.

The terms of occupancy, including rent, in the absence of an agreement with the claimant are determined by the RTA on reasonable terms and any unpaid rent can be offset against any compensation payable by the RTA.

Once the RTA is entitled to vacant possession, it may request the Sheriff to deliver possession of the land to the RTA. The Sheriff's costs may be recovered as a debt or deducted from any compensation payable.

APPENDIX “A”

REIMBURSEMENT OF VALUATION FEES – CONDITIONS OF PAYMENT

The purpose of the reimbursement of valuation fees is to provide the owner with the opportunity to obtain an independent valuation report from a Registered Valuer. The role of the Valuer is to provide a valuation report as to the owner’s entitlement to compensation in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. In some cases the valuation will form the owners claim to the Roads and Traffic Authority (RTA) and in other cases the valuation report may act to verify that the compensation offered by the RTA is fair and reasonable. The Valuer is to act as an expert not as an advocate for the owner. The valuation must comply with professional standards.

The RTA is prepared to reimburse a fee incurred in obtaining a valuation report up to the maximum amount specified in the letter opening negotiations and subject to the following conditions:-

1. The Valuer engaged must be registered to carry out valuations for that particular type of property and preferably be a current member of the Australian Property Institute.
2. The Valuation Report shall be in accordance with Appendix “B” Basic Contents of Valuation Reports. The Valuer should be prepared to support the valuation in discussions with the RTA’s Valuers.
3. A copy of the report in its final form signed by the valuer is to be supplied with and in support of the asking price.
4. Reimbursement will take place upon settlement of the acquisition, however the RTA will, under direction from the land owner, make a payment of 50% of the fee directly to the valuer following the valuation report being made available to the RTA.

Owners are advised to ensure that the Valuer is prepared to provide the valuation in accordance with the conditions outlined above and is also prepared to accept a fee to the maximum amount specified in the letter opening negotiations.

In the event that it is considered necessary to engage some other consultants such as Accountants, Town Planners, Surveyors, etc., prior approval in writing must be obtained if it is intended to seek reimbursement of these fees from the RTA.

APPENDIX 'B'

BASIC CONTENT OF VALUATION REPORTS

1. Evidence that the valuation was undertaken by the valuer who signed the report and disclosed his/her registration number together with a statement that he/she is registered to value the subject class of property.
2. Date of valuation and date of inspection.
3. Areas/dimensions and legal particulars of the land. Any legal constraints which would restrict development should be noted.
4. A description of the improvements.
5. A site plan showing position of improvements in relation to boundaries.
6. A floor plan showing accurate areas, date and the north point.
7. Specific list of inclusions
8. An outline of permitted land use under current relevant environmental planning instrument and/or local government codes.
9. A description of the class of land valued and the current or potential use of the land together with its location.
10. Details of the sales/rental information relied upon to arrive at the valuation, together with analysis and calculations.
11. Photographs of sales evidence.
12. Valuation rationale
13. Assessment of all individual Heads of Compensation as detailed in Land Acquisition (Just Terms Compensation) Act 1991.
14. The rental value of the property

APPENDIX “C”

EXTRACT FROM THE LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Relevant matters to be considered in determining amount of compensation.

55

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.

Market value

56. (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.

Special value

57. 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.

Loss attributable to severance

58. 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.

Loss attributable to disturbance

59. 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.

Solatium

60. (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; *(see note at end of Extract)* or
 - (b) such higher amount as may be notified by the Minister by notice published in the Gazette.
- (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.

Special provision relating to market value assessed on potential of land

61. 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.

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

62. (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.

Note in respect to Solatium

In accordance with Section 60(2)(b) the maximum amount of Solatium was increased to \$16,821 effective from the 1 July 1998. There may be further increases in the maximum amount of Solatium from time to time and it is suggested that you speak with the RTA's Property Acquisition staff for the latest information.