



Guide to acquisition of land for public purposes by the State

As Queensland's population continues to grow, the need to provide services and community facilities such as schools and hospitals also grows. Such growth makes it necessary for the State to have the power to acquire land for public purposes in order to meet community expectations.

Constructing authorities are established through separate pieces of legislation in accordance with the *Acquisition of Land Act 1967*. Several authorities (e.g. Energex) have the power to acquire land for public purposes related to their business.

As the constructing authority for various Queensland Government agencies, the Department of Natural Resources and Water (NRW) has the power to acquire land for public purposes in order to meet community expectations.

Legislative provisions

Legislation that provides for implementing and managing the acquisition (sometimes referred to as resumption) of land are the:

- *Acquisition of Land Act 1967* for the acquisition of freehold land
- *Land Act 1994* (and various other Acts) for the acquisition of state leasehold land.

The purposes for which land can be acquired are identified in the second schedule to the *Acquisition of Land Act 1967*.

Methods of acquisition

Land acquisition can occur either by agreement or through a compulsorily process.

(a) Agreement

To begin this process, NRW contacts the relevant landholder(s) to express the State's interest in acquiring their land for a public purpose.

If an agreement can be reached between the landholder and the constructing authority regarding the acquisition and the level of payment, the purchase can take place as soon as the necessary transfer documents are completed.

Alternatively, the acquisition could proceed by way of an agreement in accordance with Section 15 of the *Acquisition of Land Act 1967*.

This leads to the publication of a gazette notice in the Government Gazette, which authorises the transfer of the ownership of the subject land to the relevant constructing authority.

(b) Compulsorily

If an agreement between the landholder and the constructing authority cannot be reached, an acquisition may occur compulsorily.

To begin this process a 'Notice of Intention to Resume' will be forwarded to the landholder (and mortgagee etc. if applicable). The notice will include:

- the location and area of the land to be acquired
- a date (not less than 30 days later) by which a written objection may be lodged by the landholder—this statement must set out the grounds on which the objection is being made (the grounds stated must not relate to the level of compensation)
- a time and place where the landholder can meet with the constructing authority to discuss the grounds of their objection.

Following the hearing date, and after considering all points of the objection (if applicable), a final decision will be made by the constructing authority.

Depending on the circumstances, the decision could be to discontinue, amend or proceed without change. If the objection is over-ruled, Governor in Council approval will be sought.

Note: There is no right of appeal against the decision when it is published in a gazette notice, as the final decision is made by the Governor in Council. A copy of the gazette notice will be forwarded to all relevant parties. At the date of the gazette notice, ownership of the subject land will transfer to the constructing authority.

Compensation

From the date the land is acquired (i.e. the date of publication of the gazette notice), any person with an estate or interest in the land (e.g. title, easement etc.) may lodge a compensation claim with the constructing authority.

Note: If no claim is lodged, no compensation will be paid.



A registered valuer will assess the amount of compensation payable at the date of the acquisition, which should ultimately not financially disadvantage or advantage the claimant in any way. The amount of compensation will be based on:

- the market value of the land and any fixed improvements (note: furniture and chattels do not form part of the acquisition)
- any severance of the land from other land owned by the claimant
- any injurious affection caused to other land held by the claimant.

The constructing authority will then negotiate with the claimant regarding the final amount of compensation to be paid for the acquisition. If an agreement cannot be reached, the constructing authority or the claimant may refer the matter to the Land Court or Land Appeal Court for hearing and determination.

Note: Claimants who refer the matter to the Land Court are usually responsible for their own costs associated with the court hearing. However, the court also has the discretion to award costs against the claimant, or against the constructing authority, depending on the amount of compensation eventually determined.

Following lodgement of the written claim for compensation, the claimant can also apply in writing for an advance against the compensation to be paid by the constructing authority.

Note: The advance can be any amount but cannot exceed the amount offered as or the estimate of the constructing authority assessment.

Any rates, land tax or rent outstanding as at the date the land was acquired must be paid by the dispossessed landholder or deducted from the landholder's compensation.

Vacating the land

The constructing authority can take possession of the land at any time following publication of the gazette notice. If the landholder refuses to vacate the land from that date, the constructing authority may arrange to take physical possession of the land, with the costs to be met by the person refusing to vacate the land.

Alternatively, after the date the gazette notice is published, a dispossessed landholder may, where practicable, arrange to continue to occupy and use the land for a set period of time following the acquisition, on the condition that the landholder agrees to terms and conditions of occupancy.

Further information

Further information regarding the acquisition or resumption of land by the State is available on the NRW website at <www.nrw.qld.gov.au> or by writing to:

State Land Asset Management
Department of Natural Resources and Water
Locked Bag 40
Coorparoo Delivery Centre QLD 4151

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For further information phone 13 13 04