

# Early Acquisition Policy

2015

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# 1. Policy Statement

Planning for transport infrastructure is often undertaken well in advance of construction. However, land is generally not acquired (by negotiation or resumption) until construction is imminent. Land may be acquired earlier than needed if owners of land affected by transport planning can demonstrate that they will suffer hardship if acquisition is delayed.

The Department of Transport and Main Roads (TMR) Early Acquisition Policy provides an integrated approach for management of early acquisition applications. The policy is based on the premise that TMR will accept early acquisitions when planning has advanced to a stage where the project has a preferred alignment and the land requirement has been identified (or exceptional circumstances exist) and the applicant is experiencing genuine hardship (refer Sections 4 and 5). All accepted claims are subject to TMR and the landowner mutually agreeing to a market value of the property, subject to the principles of compensation. The value of the property will be negotiated on the basis of the price that would have been realised had the planning not been announced.

TMR recommends that land owners obtain independent legal advice. TMR will advise property owners of their rights, entitlements and obligations in accordance with the Early Acquisition Policy.

This policy covers all transport planning (including departmental planning for roads, rail, bus, light rail and cycling infrastructure).

## 2. Objective

To ensure TMR's decisions for the early acquisition of land on hardship grounds are consistent and fair; and to enable property owners to be aware of the requirements and criteria by which their application will be considered.

## 3. Rationale

The Queensland Government's responsibility to provide a better and safer transport network sometimes means that privately owned land may be acquired for future transport infrastructure requirements. The *Transport Planning and Co-ordination Act 1994* gives TMR the authority to acquire land by agreement or resumption and the *Acquisition of Land Act 1967* sets out the statutory provisions for the resumption of land. Under this process, land is usually acquired when construction is imminent and the actual land requirement for the project is known.

Often there is considerable time between the release of a planning proposal and the acquisition of property required for construction of the project. Land is generally acquired no more than one or two years prior to the commencement of construction unless hardship has been demonstrated or the purchase offers an advantage to TMR, commercial or otherwise.

Forward planning of future transport infrastructure projects may affect some property owners well before construction. Affected property owners may apply for consideration for an early purchase of their property under the TMR Early Acquisition Policy.

## 4. Applicability

This policy applies to all early acquisition claims from owners of Queensland property where there is a known land requirement as a result of TMR transport infrastructure planning. Specifically, this policy will apply where:

- 4.1. the freehold property owner(s) are experiencing genuine hardship (as defined in Section 5); and
- 4.2. the applicant(s) own(s) the whole of the freehold interest in the affected property; and
- 4.3. either:
  - a) TMR has advised the property owner of a land requirement consisting of a part or whole of the property in order to construct and/or operate transport infrastructure now or in the future; or
  - b) the planning has advanced to a stage where the project has a preferred alignment and the land requirement has been identified with a high degree of certainty (or exceptional circumstances exist).

For the purposes of this policy, the term “property” means a freehold parcel of land identified by a lot on plan number, or a number of parcels that are contiguous and used for the same purpose, or are used in conjunction with one another.

For the purposes of this policy, TMR is understood to have a requirement over the whole or part of a property if the property is a lot or part of a lot described on a registered survey plan identified as being part of a single corridor. This would mean that a firm decision has been made that a particular corridor is required for transport purposes, as opposed to the identification of an area of interest or more than one corridor being under investigation as options.

TMR retains the discretion to purchase only that part of a property required for a transport purpose.

This policy does not apply in the following circumstances:

- 4.4. a property owner(s) suffer(s) loss or discomfort as a result of the planning, construction, or operation of transport infrastructure where there is no land requirement for their property. Loss or discomfort is not the subject of remedy under this policy; or
- 4.5. TMR is negotiating to purchase the property on the open market to achieve some commercial or other advantage for TMR; or
- 4.6. there is voluntary negotiation for purchase of property immediately prior to the issue of Notices of Intention to Resume under the *Acquisition of Land Act 1967*; or
- 4.7. the property owner(s) had, or reasonably ought to have had, knowledge of the relevant land requirement at the time of purchase of the property (unless there are extenuating circumstances) as it is reasonable to expect purchasers to exercise due diligence on property acquisition.

## 5. Early Acquisition Criteria

A property owner is deemed to be eligible for early acquisition only if:

- 5.1. the property owner has attempted to sell, rent or lease the property at a fair market value and can demonstrate that this has been prevented due to the TMR requirement; or
- 5.2. the property owner is unable to use the property as collateral for a loan due to the identification of TMR's requirement over the property or the notification of the TMR requirement has impaired the value of the property as collateral for an existing loan; or
- 5.3. the property owner's development application under the *Planning Act 2016* has been, or is likely to be, refused because of the TMR requirement; or
- 5.4. the property owner must sell the property without delay due to pressing personal, domestic or social reasons, or other special circumstances (for example, serious illness or employment transfer) and is unlikely to be able to do so because of the TMR requirement.

If a property owner does not meet any of the above criteria for early acquisition, TMR may negotiate early acquisition of a property if:

- 5.5. an application for development approval under the *Planning Act 2016* has been conditioned such that the proposed development is now considered unviable due to transport infrastructure planning; or
- 5.6. the property owner has an existing development approval under the *Planning Act 2016* but the development is now considered unviable due to, or is significantly impacted by, transport infrastructure planning; or
- 5.7. land has been subdivided and set aside to meet conditions raised by TMR, such as through a development application, and the applicant can demonstrate a genuine reason for TMR to acquire this land prior to project acquisition through resumption or agreement.

## 6. Termination

TMR reserves the right to terminate negotiations for early acquisition by giving written notice to the property owner prior to the parties entering into a binding contract of sale, if:

- 6.1. the alignment of the transport project has changed and will no longer affect the property, or
- 6.2. the project is not going to proceed.

TMR may elect to withdraw from negotiations if the parties do not reach agreement. TMR may subsequently commence its resumption requirement at a later date through the formal resumption process under the provisions of the *Acquisition of Land Act 1967*.

## 7. References

- *Acquisition of Land Act 1967*
- *Financial Accountability Act 2009*
- *Information Privacy Act 2009*
- *Planning Act 2016*
- *Transport Infrastructure Act 1994*
- *Transport Planning and Co-ordination Act 1994*

# Appendix – Explanatory Notes

The Department of Transport and Main Roads (TMR) Early Acquisition Policy provides an integrated approach for the management of early acquisition applications.

These non-binding explanatory notes are intended to help both members of the public as well as departmental officers interpret and apply the policy.

## Overview

TMR is responsible for planning the transport network across the State of Queensland. Within this overarching responsibility, TMR is accountable to the people of Queensland for how it manages and spends funds. TMR has a policy to not acquire properties significantly prior to construction as the cost of early acquisition reduces the capability of the organisation to deliver on its current program. Conversely, TMR acknowledges that it is not reasonable to create undue hardship on individuals through the department's planning activity. The Early Acquisition Policy states how TMR balances these interests.

These explanatory notes provide information to guide members of the public to determine if they are eligible for early acquisition. They also assist departmental officers in applying a consistent approach to reviewing each claim.

The policy sets out the terms for early acquisition and TMR will be looking for clear justification that the applicant meets the criteria for early acquisition.

## Representation

It is not a requirement of the Early Acquisition Policy that you obtain legal representation. If you are unsure of your rights with respect to a claim then TMR recommends that you obtain independent legal advice.

## Definitions

The following definition has been provided to help clarify what is meant by certain terms.

### Identification of a land requirement

TMR performs a broad range of planning. Initially this planning is exploring options and impacts. Until planning reaches the point of certainty then no land requirement exists.

A land requirement must be identified in departmentally approved planning for transport infrastructure. A member of the public may find out about this requirement through various mechanisms. Some examples of this include:

1. Property Search

A member of the public may request a property search (for a fee) for any property in Queensland. This property search certificate may indicate that TMR has a requirement for the property.

2. Development Application (DA)

A DA may condition or refuse a proposed development, identifying a whole or partial land requirement by TMR.

3. Written notification

TMR may formally write to property owners to advise them that their property is affected by approved departmental planning.

## **Applicability**

The following section provides some guidance with respect to how to interpret the Applicability requirements. Please note that it is mandatory that a claim meets the first two terms in the policy (4.1 & 4.2), and meets either term 4.3a or term 4.3b in the policy.

### **Term 4.3a**

Term 4.3a relates to advice provided from TMR, either in one of the forms identified above, or through some other departmental communication.

### **Term 4.3b**

Term 4.3b relates to planning that has advanced to the stage where it is requiring final approval from senior management. This information will only be available to department officers. Any application under this term will be less likely to proceed as it requires a high degree of confidence from senior management that the planning will be approved.

## **Early Acquisition Criteria**

The following section provides some guidance with respect to the criteria and how they may be met.

### **Criteria**

Please note that it is sufficient to meet any one of the criteria.

### **Term 5.1 – Sale of the property**

TMR is looking for evidence that a genuine attempt has been made to sell, rent or lease the property at a fair market value and that the property owner has been unsuccessful in doing so because of the TMR requirement. There is a measure of subjectivity in this criterion, but departmental officers will be looking for evidence that a legitimate campaign has been employed to market the property, and that it has been marketed for a duration that is appropriate to the type and locality of the property.

An example of this may be that evidence can be provided that the property has been advertised through an REIQ accredited real estate agent, or a professional private sales process and that it has been on the market for a period of time approximately equivalent to the average time that it is taking for properties of this type to sell in the locality. Most real estate agents have access to this type of information, as do other professional parties. Please note that a letter from a Real Estate Agent indicating that the property will be difficult to sell is not sufficient.

A number of factors may prevent the sale, rental or lease of a property. If an unreasonable price is being sought, then this may prevent the transaction, even if a TMR requirement has been identified. A statement from the relevant agent, confirming that the failure to sell, rent or lease is due to the identification of a TMR requirement will be required. TMR reserves the right to seek clarification with respect to any such statement.

### **Term 5.2 – Loan collateral**

TMR is looking for evidence that a loan has been refused due to TMR requirements on the property being used as collateral for the loan. If possible, this evidence should be provided in writing from two reputable lending agencies. Please note that a letter indicating that a loan is unlikely due to the TMR requirement is not sufficient. TMR needs to confirm that genuine hardship has occurred. TMR reserves the right to confirm this condition with the relevant lending agencies.



### **Term 5.3 – A Development Application has been refused**

This criterion requires evidence that a development application has been refused under the Planning Act mainly due to the TMR requirement.

Alternatively a claim may be considered if an applicant can demonstrate that a development application is significantly advanced, and the departmental officer is satisfied that this planning will be refused by TMR through the development assessment process.

### **Term 5.4 – Pressing personal or other reasons**

A claim may be submitted if the property owner has an urgent, personal need to sell the property, and is unlikely to be able to do this due to the TMR requirements for the property. It is the applicant's responsibility to provide evidence that the urgency is genuine.

In cases of medical urgency, a letter from a doctor will need to address the following points:

- the nature of the medical condition; and
- whether the condition has been triggered or exacerbated by the TMR requirement; and
- why the sale is urgent, and how it will alleviate the medical condition; and
- any further information that the doctor wishes to be considered.

If the application is based on medical urgency, please clearly identify your consent for TMR to seek clarification, with respect to any such information, from the doctor.

## **Exceptional criteria**

There are exceptional criteria that may be considered by TMR with respect to an early acquisition claim. These criteria do not automatically warrant early acquisition, and will require negotiation with departmental officers to assess their viability.

### **Term 5.5 – Conditioned Development Applications**

An application for consideration under the Early Acquisition process can be submitted if a property owner considers that a development application has been approved but conditioned in such a way that the proposed development has become unviable. If the departmental officer is satisfied that the relevant conditions placed on the development application are mainly due to TMR requirements, and that these conditions have left the applicant in a position where they cannot proceed with the development, the claim may be referred for senior management consideration.

### **Term 5.6 – Previously approved development**

An application for consideration under the Early Acquisition process can be submitted if a property owner has previously obtained approval through the development assessment process, and this proposed development has now been impacted mainly due to transport infrastructure planning. If the departmental officer is satisfied that TMR would, if the same application was resubmitted, place conditions that leave the applicant in a position where they cannot proceed with the development, the claim may be referred for senior management consideration.

### **Term 5.7 – Land that has been set aside**

An application for consideration under the Early Acquisition process can be submitted if a property owner has set aside land through subdivision to comply with conditions requested by TMR. If the departmental officer is satisfied that the land has been set aside in line with TMR requirements the claim may be referred for senior management consideration.

## **Termination**

The termination clause allows TMR to withdraw from an approved early acquisition negotiation if the parties do not reach agreement. This is usually only employed as a last resort, where the parties have reached an impasse in their respective positions.