



Compulsory Acquisition – what happens when the Government wants your property!

With NSW's population expected to increase to more than 10 million over the next decade, the State Government will need to acquire more land to build the schools, hospitals, roads and public transport to meet the needs of this growing population. As some of this will land be owned by private individuals or companies, knowing your rights and understanding the compulsory acquisition process is essential to ensuring the best outcome in what is effectively a "mandatory sale" to the Government.

What is Compulsory Acquisition?

When the Government makes a decision to build a project, such as a new road or hospital, it instructs the relevant agency to investigate where that project might best be located, or what might be the best route. Extensive consultation is also carried out within the community to find out its views on where and how a project might be built. Once a preferred design, route or location has been developed, the Government is able to identify properties that may need to be acquired if the project proceeds.

Compulsory acquisition is a statutory process under the *Land Acquisition (Just Terms Compensation) Act 1991*. The Act sets out the process that Government must follow when its necessary for it to acquire property using a compulsory process. In NSW, state and local government organisations can compulsorily acquire property for public projects under the Act. This includes state-owned agencies such as Sydney Water, and Roads and Maritime Services. The Act also provides the means for resolving disputes about the amount of compensation that is payable to a land owner whose property is compulsorily acquired.

How will I know if my property is affected?

Once your property has been marked for acquisition by the relevant government agency (Acquiring Agency) a Personal Manager will be assigned to you as your primary point of contact throughout the acquisition process. The Personal Manager will arrange a face-to-face meeting between you and the agency's appointed Acquisition Manager to discuss the next steps in the acquisition process. You will also be sent an Opening Letter, which will formally notify you that your property is required for the Agency's project.

Can I Contest the Government's Decision to Acquire my Property?

It's very rare that the courts can prevent the Government from acquiring a property under the Act given the powers within it that allow the Government to acquire land compulsorily. In a recent NSW Supreme Court case a property owner was initially successful in stopping a NSW government agency from compulsorily acquiring their land in Sydney's Inner West for the West Connex Road Project. The Roads and Maritime Services (RMS) had wanted to acquire a property in Rozelle as part of a plan to turn a disused rail yard into a 10 hectare park and the provisions of the Roads Act enabled it to acquire land adjacent to – or in the vicinity of – a road project. While the property was next to the old rail yard, the Court found that the RMS future plans for the property were "ill defined" and "may never be realised"



and accordingly the Court overruled their proposed acquisition of the property. This decision however was overturned on appeal with the NSW Court of Appeal holding that the RMS had “no need to identify the specific use with precision”.

How does the formal acquisition process start?

The Opening Letter sent to you by the Acquiring Agency will:

- Provide you with the name and contact details of your Personal Manager who will provide support and assist you to navigate the acquisition process, as well as manage your relocation, if required.
- Provide you with the name and contact details of your Acquisition Manager who will be responsible for carrying out the actual property purchase and be available to answer any technical questions about the process.
- Advise you that the Acquiring Agency will instruct an independent valuer to inspect the property and carry out a valuation at a time that’s convenient.
- Explain that, on the basis of this valuation and following discussions with you, the Acquiring Agency will submit a formal offer to purchase your property.
- Recommend that you engage a qualified independent valuer to value your property, and advise that the fees for this service will be reimbursed by the Acquiring Agency on settlement as long as they are reasonable.
- Advise that you are entitled to get legal advice about the acquisition, and that these fees will be reimbursed by the Acquiring Agency on settlement as long as they are reasonable.

The Act provides that an impacted owner must be given at least 6 months to reach a compensation agreement with the Government after the Opening Letter has been sent but this period can be shortened by agreement

Acquisition by agreement

Approximately 80% of all properties required by government agencies are acquired by agreement with the property owner. The amount of compensation paid for the property is generally negotiated following the Acquiring Agency’s appointed valuer inspecting and valuing your property. This valuer will consider a number of factors when undertaking their valuation including:

- The size of the property, its location, quality of improvements and zoning.
- recent sales in the area and other market conditions.
- the rental value of the property; and
- any pest or building inspection that has been carried out to assess the building’s condition.

This information is used to prepare a valuation report which is submitted to your Acquisition Manager for review. It’s recommended and indeed prudent for you to obtain your own independent valuation in support of your claim about the value of the property. You will generally be reimbursed for the cost of your valuer’s fees provided these fees have been agreed upon with the Acquiring Agency prior to you engaging your valuer.

Once a copy of your valuation report is provided to your Acquisition Manager, they will arrange for the valuation reports to be exchanged between the two valuers. Any differences between the two valuations will then be addressed in negotiations between the valuers to determine if a professional agreement can be reached. This may involve one or more valuation conferences at which each valuer will present the information on which they based their valuation.



The aim is to reach a mutually acceptable agreement with you, your valuer, your Acquisition Manager and the Government valuer.

Your Acquisition Manager will then prepare a Letter of Offer, which will contain the total compensation the Acquiring Agency is offering for the purchase of your property. This will include payment for the agreed fees of your own valuer and an amount to cover your legal fees in addition to the compensation amount being offered for your property. If you accept the offer and conditions of purchase, you and the Government will proceed to a conveyancing process, in a similar way to the process of a property sale in the open market. The primary difference is that the Acquiring Agency's lawyer will prepare the sale contracts which will specify a date to vacate the property, which is normally on settlement.

What if we can't reach agreement?

If you and the Acquiring Agency cannot reach agreement on the compensation payable to purchase the property, the property can then be acquired compulsorily under the *Land Acquisition (Just Terms Compensation) Act 1991*. In this case the Governor of NSW will appoint the Valuer General to carry a valuation of the property in accordance with the Act and the Valuer General's policy.

The Valuer General will:

- meet with you or your representative to discuss the valuation and address any issues or concerns.
- share all information considered for the valuation report with you and the Acquiring Agency.
- issue you with a preliminary report showing the amount of compensation and how it was determined. You will have 15 days to provide feedback.
- speak to you and the Acquiring Agency and ask for any information either of you may wish to submit to substantiate your claim; and
- issue a determination of compensation certificate along with its independent valuation of the property to both you and the Acquiring Agency.

The amount of compensation determined by the Valuer General is then the amount the Acquiring Agency is required to pay if you agree with the determination. This amount may be higher, lower or the same as the Acquiring Agency's original offer. If you agree with the Valuer General's determination, a Deed of Release and Indemnity is entered into with the Acquiring Agency which provides that the compensation amount is paid within 28 days of the date of this Deed. Interest will also be paid on the compensation amount from the date of acquisition to the date of payment.

If you disagree with the amount of compensation determined by the Valuer General, you are entitled to lodge an objection with the NSW Land and Environment Court (LEC). The objection must be lodged within 90 days of the compensation notice being issued by the Valuer General. The LEC will then hear your objection, taking evidence from you and the Acquiring Agency regarding your claims of entitlement to compensation and then determine the amount of compensation to be paid.

As it may take some time before the matter comes before the LEC, if you agree to an advance payment then the Government, will pay 90 per cent of the compensation offered in the Valuer General's compensation notice. This will happen within 28 days of the compensation notice being issued. The Government will also pay interest on the advance for the period from the date of the publication of the Acquisition Notice in the Government Gazette to the date that payment of the advance is made. If you do not accept the advance, the advance and interest will instead be deposited into a trust account pending the Court decision.



It's important to note that in LEC proceedings, the Acquiring Agency is not bound by its original statutory offer of compensation made prior to the proceedings and therefore may seek to pay a lower amount. However, the statutory offer will remain open for acceptance by you until the LEC determines the proceedings. As an applicant to the LEC for compensation in respect of a compulsory acquisition you are also usually entitled to recover your costs of the proceedings, provided that you've acted reasonably in pursuing the proceedings and have not conducted them in a manner which gives rise to unnecessary delay or expense.

Finding out that your property or part of it needs to be acquired by the Government can come as a shock and it's often a confusing and challenging time. Getting expert legal and valuation advice from experienced professionals is an absolute prerequisite to protecting your interests.

At Bateman Battersby we have extensive experience in advising and acting for clients in matters relating to the Compulsory Acquisition of property. If you need advice about any matter concerning this issue or require a referral to a valuer experienced in this field please contact our [accredited property specialists John Bateman](#) or [Michael Battersby](#) on (02) 4731 5899 or email us at property@batemanbattersby.com.au for further information or assistance.