

What is a hardship acquisition?

Land acquisition is an important part of the state infrastructure planning process. An acquiring authority may designate land for future acquisition for a public purpose, even though it may not need the land for some time.

If you are the owner of that land, you can apply for early acquisition under section 23 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* (the **Act**).

To apply for early acquisition, you must be able to show that you would suffer hardship if the acquisition of your land is delayed.

How to show hardship

To show hardship, you must be able to meet one element from each of the two categories below.

1. Because of the designation for acquisition over your land, you are:
 - unable to sell your land, or
 - unable to sell your land at the market value.
2. It is necessary for you to sell all or any part of your land without delay because of any one of the following reasons:
 - a pressing personal reason,
 - a pressing domestic reason,
 - a pressing social reason,
 - to avoid the loss of income, or
 - to avoid substantial reduction in income.

Hardship requirements if the owner is a corporation

If the owner is a corporation, then the corporations must be able to meet one element from each of the two categories below to demonstrate hardship.

1. Because of the designation for acquisition over the land, the corporation is:
 - unable to sell the land, or
 - unable to sell the land at the market value.
 2. It is necessary for the corporation to sell all or any part of the land without delay because of any one of the following reasons:
 - a pressing personal reason,
 - a pressing domestic reason, or
 - a pressing social reasonof an individual who holds at least 20% of shares in the corporation
- Or
- to avoid the loss of income, or
 - to avoid substantial reduction in income
- of an individual who holds at least 20% of shares in the corporation.

How to make an application for hardship acquisition

To apply for acquisition of your land you must:

1. Complete the Notice Requiring Acquisition of Land form available on the [Property Acquisition website](#).
2. Provide supporting information from each of the following:
 - (a) Information about the environmental planning instrument that your land is **designated** under, or a notice in writing from an acquiring authority that your land has been designated for acquisition for a public purpose.
 - (b) Proof of title or other information to demonstrate that you **own** the land or are entitled to exercise a power of sale over the land.
 - (c) Proof that you are **unable to sell** the land because of the designation.
 - (d) Any documentation that supports your claim for a **pressing personal, domestic or social reason** or to **avoid a loss or reduction in income**.
3. Send your completed application to the relevant acquiring authority.

Who can apply for a hardship acquisition?

When making an application for hardship acquisition, you must be able to show that you are the owner of the land.

An owner is someone who:

- owns the freehold title to the land, or
- has become entitled to exercise a power of sale over the land

but is not:

- a public company, or subsidiary of a public company, including if the public company is a charity.

A public company is defined in the *Corporations Act 2001* (Cth).

Where there is more than one owner, all owners must sign the Notice Requiring Acquisition of Land form. Only one owner needs to demonstrate they are suffering hardship.

How to show you are unable to sell your land

Evidence to demonstrate you are unable to sell your land because of the designation may include:

- An opinion in writing from a licensed real estate agent to explain why a sales campaign would be inappropriate. (For example, because the designation limits potential purchasers. Or because the designation prevents successful sale as the only realistic purchaser under the circumstances is the acquiring authority.)
- A receipt or notice from a licensed real estate agent or appropriate website that shows a marketing campaign to sell your land was unable to attract a potential purchaser as a result of the designation.

How to show you are unable to sell your land at market value

Evidence to demonstrate you are unable to sell your land at market value because of the designation may include:

- Copies of offers of sale which are less than the market value of the property, and a property valuation report from a registered valuer.
- If no offers have been made, a notice or letter from a licensed real estate agent or appropriate website that shows this.

What reasons to sell your land without delay will be considered

Examples of reasons that show you need to sell your land without delay include that you:

- need to move interstate for work reasons
- are relocating to a retirement facility
- need to relocate for other family or personal reasons, including medical reasons
- have a business at the land that has been affected
- are experiencing financial difficulties which mean you need to sell the land.

How to demonstrate you need to sell your land

Examples of evidence to support the pressing personal, domestic, social or financial reason you need to sell your land may include:

- a written statement from you that describes the reason you must sell your land without delay
- an opinion from a treating doctor or other medical professional
- if you need to sell the land to avoid a loss or substantial reduction in income, information which sets out these circumstances, including how the sale of the land will provide (or contribute to) a solution
- a copy of financial statements, a letter from your accountant, or a copy of relevant income tax returns.

Land is acquired within 90 days

If you can demonstrate hardship, the Notice Requiring Acquisition of Land form is approved by the acquiring authority and your land is acquired.

The acquiring authority has 90 days to acquire your land after accepting the hardship application.

You can agree to a longer time with the acquiring authority.

The acquiring authority can remove the designation on your land

Before the 90 day period has expired, the acquiring authority can remove the designation on your land.

If this happens, the acquiring authority does not have to acquire your land.

The acquiring authority can remove the designation by giving you written notice that your land is no longer designated for future acquisition.

Applying for a review of a hardship decision

You can seek an independent review of your hardship application if:

- the acquiring authority rejects your application for hardship
- the acquiring authority has not responded to your application for hardship within 90 days

You have 28 days after this happens to apply for a review.

Please send your application to the Department of Planning, Industry and Environment.

What to include with your application for review

Please include the following documents with your application:

- a copy of your Notice Requiring Acquisition of Land form sent to the acquiring authority
- a copy of the decision from the acquiring authority
- any other information or related correspondence between you and the acquiring authority, and
- any other relevant information you would like to provide.

You will get confirmation that your application for review has been received.

What happens when you apply for a review?

An independent reviewer will be appointed by the Department of Planning, Industry and Environment to assess your eligibility for hardship.

The independent reviewer may determine that:

- You are eligible for hardship, and so the decision of the acquiring authority is overturned. The acquiring authority must then acquire your land within 90 days.

Or

- You are not eligible for hardship, and so the decision of the acquiring authority is confirmed. The acquiring authority does not need to acquire your land early.

The decision of the reviewer is final.

Where to send your application

Please send your application via email to the Department of Planning, Industry and Environment.

Email: hardship@planning.nsw.gov.au

How compensation is assessed

Compensation under the Act is required to be on just terms and will include payment for market value of your property.

Depending on your individual circumstances, the following types of compensation may not be paid:

- any special value of the land,
- any loss attributable to severance or disturbance, and/or
- disadvantage resulting from relocation.

Acquiring authorities must look at your individual circumstances when making a decision on the amount of compensation to be paid.

If the acquiring authority determines that any one of these types of compensation is not to be paid, it must explain to you why it is fair and reasonable in the circumstances.

Any offer of compensation must specify the amounts being awarded for each type of compensation.

The [Property Acquisition website](#) has more information on the types of compensation available.

Role of the Valuer General

If you are unable to agree on the amount of compensation with the acquiring authority, the Valuer General will determine the compensation payable.

The [Valuer General's website](#) has more information on the role of the Valuer General.

A copy of the Claim for Compensation form is available on the [Property Acquisition website](#).

Contact us

For more information, please contact the Centre for Property Acquisition on:

Tel: 1300 029 146

Email: info@propertyacquisition.nsw.gov.au

Do you need an interpreter?

Please call TIS National on 131 450 and ask for the Centre for Property Acquisition.



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