



LAND ACQUISITION HARDSHIP POLICY

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LAND ACQUISITION HARDSHIP POLICY

DIVISION: Customer and Corporate Strategy

BRANCH: Finance and Property Services

CATEGORY: 2

PART 1 – INTRODUCTION

1. BACKGROUND

1.1 With the growth of the Camden Local Government Area, this policy has been developed to ensure that the process for determining owner-initiated acquisitions (Hardship Claims) is transparent, consistent and impartial.

2. OBJECTIVE

2.1 This policy outlines the statutory requirements and processes Council staff should follow to ensure that the assessment of Hardship Claims is transparent, consistent and impartial.

2.2 This policy outlines the requirements that a landowner must meet to submit a Hardship Claim to Council.

2.3 To undertake processes that provide equitable, effective and efficient management that fulfills the accountability and transparency requirements of the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) when determining Hardship Claims.

2.4 That any Hardship Claim received will be determined on the merit of the claim and, if proven, will be required to be acquired.

3. SCOPE

3.1 This policy applies to all Hardship Claims, as defined in this policy.

4. DEFINITIONS

In this policy, a number of terms from the Act are used. Those terms and their meanings are as follows:

4.1 **Authority** means:

- (a) a Minister of the Crown, or
- (b) a statutory body representing the Crown, or
- (c) a council or county council or a joint organisation within the meaning of the *Local Government Act 1993*, or
- (d) any other authority authorised to acquire land by compulsory process.

4.2 **Hardship** means that:

- (a) the owner is unable to sell the land, or is unable to sell the land at its Market Value, because of the designation of the land for acquisition for a public purpose, and
- (b) it has become necessary for the owner to sell all or any part of the land without delay:
 - i. for pressing personal, domestic or social reasons, or
 - ii. in order to avoid the loss of (or a substantial reduction in) the owner's income.

If the owner is a corporation, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

- (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or
- (b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

4.3 **Hardship Claim** means an application made by an owner of land that is designated for acquisition by Council for a public purpose and the owner considers that he or she will suffer hardship if there is any delay in the acquisition.

4.4 **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 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.

4.5 **Owner** means a person who has the fee simple estate in the land or a person who has become entitled to exercise a power of sale of the land.

4.6 **Property Acquisition** is where the property is bought by agreement or compulsory acquired under the *Land Acquisition (Just Terms Compensation) Act 1991*.

4.7 **Valuer General** means the independent statutory officer appointed by the Governor of New South Wales. The Valuer General is required to independently determine the amount of compensation to be paid by the acquiring agency to the property owner when an agreement can't be reached.

PART 2 - POLICY STATEMENT

5. LAND DESIGNATED FOR ACQUISITION FOR A PUBLIC PURPOSE

- 5.1 Land is designated for acquisition for a public purpose if:
- (a) Council has, in connection with an application for development consent or building approval, given the local authority or other person dealing with the application written notice that the land has been designated by Council for future acquisition for a public purpose, or
 - (b) The land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 3.14(1)(c) of the *Environmental Planning and Assessment Act 1979* and the instrument (or some other environmental planning instrument) specifies the Council as the authority required to acquire the land.

6. OWNER-INITIATED ACQUISITION IN CASES OF HARDSHIP

- 6.1 Council will consider a Hardship Claim if an owner can demonstrate that he or she will suffer hardship if there is any delay in the acquisition of the land in accordance with the requirements of the *Act*.
- 6.2 Council is not required to acquire the land unless it is of the opinion that the owner will suffer hardship if there is any delay in the acquisition of the land under the *Act*.
- 6.3 Each party will be responsible for their own costs incurred during the process outlined in this policy (e.g. valuation fees, legal fees etc.).
- 6.4 Council cannot provide advice in relation to an owner's situation or Hardship Claim. The owner should obtain independent legal and financial advice prior to submitting a Hardship Claim to Council.
- 6.5 The owner must provide supporting documentation with their Hardship Claim. These are outlined in Council's 'Land Acquisition Hardship Claim Information Guide', along with the procedures for managing hardship claims, which is available on Council's website www.camden.nsw.gov.au.
- 6.6 Council may request that the owner provide further information to support their claim. Failure to supply the information will not enable a suitable assessment of the Hardship Claim.
- 6.7 If Council officers are not satisfied that there is enough evidence to form an opinion of hardship, the owner will be advised that the claim cannot be assessed.

7. REPORTING

- 7.1 In accordance with section 377(1) of the *Local Government Act 1993*, the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property requires that the decision be made by Council.
- 7.2 Following assessment of the Hardship Claim by Council officers, a report will be made to Council for a determination of the claim.

8. ADDITIONAL CONSIDERATIONS – SUCCESSFUL HARDSHIP CLAIMS

8.1 Fixtures & Fittings

- (a) The owner must advise Council, prior to a valuation, if there are any items in, on or at the property that is considered fixtures or fittings that the owner intends to retain.
- (b) The market value of the property will be assessed having regard to the prime cost items and inclusions at the time of inspection.

8.2 Contents & Personal Items

- (a) Council is under no obligation to purchase any contents and personal items within the property, such as furniture, televisions, whitegoods, vehicles and any other moveable items.
- (b) It is at Council's sole discretion to purchase such items following a request by the owner. Such a request must be made prior to a valuation being undertaken.

8.3 Monies Owing

Council will not pay any money owing with respect to the property, including, but not limited to, Council rates, land tax, fees or any other items.

8.4 Inspections

- (a) Council will require access to undertake inspections of the property. These inspections will be kept to a minimum however there are several Council officers and agents of Council that will need to inspect the property.
- (b) These inspections may take place at any time from lodgement of the Hardship Claim until acquisition of the property.

8.5 Valuations

- (a) Council will instruct an independent licensed valuer to determine the market value of the property.
- (b) In the instance where the property is deemed to hold a market value over \$1.5 million, Council may engage two independent licensed valuers to determine market value.

8.6 Condition of Property

- (a) The property must be maintained throughout the acquisition by the owner. Upon acquisition, the owner must ensure that:
 - i. The property is left in a clean and tidy condition, and
 - ii. Swimming pools are clean and comply with any relevant statutory or Council requirements including fencing and signage, and

- iii. Any inclusions that form part of the sale must be intact and in proper working order, unless there has been disclosure of this to Council prior to any agreement of sale is reached.

8.7 Occupying the Property

- (a) In the instance that Council does not require the acquired property for the public purpose immediately upon completion of the acquisition, Council may, at its discretion, consider a lease to the former owner at market rental.
- (b) Unless the owner submits to Council a written request to lease the property within 30 days after acquisition occurs, vacant possession must be given on settlement.

8.8 Easements

- (a) Where the public purpose can be achieved via the grant of an easement or a right in favour of Council, Council may, in its discretion, decide to negotiate the terms of the easement or right with the owner.

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RELEVANT LEGISLATIVE INSTRUMENTS: *Land Acquisition (Just Terms Compensation) Act 1991*
Local Government Act 1993
Real Property Act 1900
Conveyancing Act 1919
Roads Act 1993
Environmental Planning and Assessment Act 1979

RELATED POLICIES, PLANS AND PROCEDURES: N/A

RESPONSIBLE DIRECTOR: Customer and Corporate Strategy

APPROVAL: Council

HISTORY:

Version	Approved by	Changes made	Date	EDMS Number
1	Council	New	24/09/2019	19/303662