

Property acquisition – Your property, your rights

The Queensland Government's responsibility to provide a better and safer transport network sometimes means that privately owned land must be acquired for transport infrastructure purposes.

This is a guide to the process for the compulsory acquisition (resumption) of interests in land and outlines rights and entitlements as set out in the *Acquisition of Land Act 1967* (the Act). Some aspects of the resumption process can be complex. The Department of Transport and Main Roads' Property Officers will be pleased to assist if you have further queries on resumption matters.

If your property is affected by proposed works which may require the resumption of part or the whole of your property, staff from Transport and Main Roads will contact you. They will provide you with a plan showing the approximate location and area of the land required, together with background information on the project.

Process

The steps identified here are a general framework that applies to most resumptions, but some steps may not apply to each case.

- Initial contact advising of project impacts
- Supply of Notice of Intention to Resume and background information
- Objection procedure
- Application to the Minister to take the land
- Taking of Land Notice published in the Queensland Government Gazette
- Assessment by independent property valuers
- Compensation claim/offer
- Compensation negotiations
- Advance payment (if required)
- Settlement
- Title correction

Your questions answered

Can I object?

Yes, you can object to the resumption of land. The Notice of Intention to Resume will outline the procedure to follow if you wish to object. Your objection must:

- be in writing
- be made within the time specified in the Notice of Intention to Resume
- state your grounds for objection, with supporting details (the Act states that matters relating to the amount of compensation to be paid are not grounds for objection)
- state whether you also wish to be heard in support of your objection (you may appear at the objection hearing and/or be represented by a solicitor or other agent).

If you engage a consultant to help you object, these fees are your responsibility and will not be paid by the department.

Will my objection be considered?

Yes, all objections will be considered by an authorised delegate of the constructing authority who is usually a senior member of the project team or regional office. Following consideration of your objection a decision will be made to either:

- proceed with the resumption
- proceed to resume an amended area
- proceed with an amended project without resumption from the subject property.

What happens next and how is the land taken?

If after due consideration of all objections, the constructing authority is of the opinion that the land is still required for the proposed purpose, the constructing authority may apply to the Minister that the land be taken. The Minister will examine all applications (together with accompanying statements and documents). If the Minister is satisfied that the proposed resumption should proceed he/she will apply to the Executive Council to have a Taking of Land Notice published in the Queensland Government Gazette. The taking of land is effective on the day of publication of the notice in the gazette and your interest in the land is extinguished and converted into a right to claim compensation.

What happens if I don't wish to object?

If you choose not to object to the resumption, you may sign an Agreement to the Taking of Land. Signing an Agreement to the Taking of Land does not affect your rights to claim compensation and, in some circumstances, will shorten the resumption process.

Alternatively, you may choose not to object to the resumption and not sign an agreement, in which case no action will be required by you. If you do not object to the resumption, the resumption process for the project will continue to proceed in accordance with the time frames stated in the Notice of Intention to Resume.

How long will the resumption process take?

As a guide, the resumption process normally takes approximately four to six months from the time a Notice of Intention to Resume is issued. However, this time frame will depend on things such as the number of objections and the time taken to gain approvals.

Can I claim compensation?

You can claim compensation if you have a legal interest in the land taken (for example, if you are the owner, lessee or licensee). Under the Act, a claim for compensation must be served on the department within three years from the day the Taking of Land Notice is published in the gazette.

How do I claim?

If you have a registered interest in the land, you will receive a copy of the Taking of Land Notice and a compensation claim form for completion and return to the department as directed. You may wish to engage a registered valuer and/or solicitor to assist you in preparing and lodging your claim. Reasonable valuation and legal fees incurred in the preparation and lodgement of your claim will be reimbursed as part of the overall settlement of compensation.

How is compensation assessed?

Following the publication of the Taking of Land Notice in the gazette, a departmental Property Officer will be assigned to your case and will make contact with you. Next, your Property Officer will have the property independently valued and will again contact you to discuss compensation.

Assessment is based on the market value of the property (or your interest in the property) at the date of the Taking of Land Notice in accordance with the Act.

In addition to market value, you may also be eligible to claim compensation for disturbances caused by the resumption such as:

- stamp duty payable on the purchase of a replacement property of equal value
- reasonable conveyancing fees associated with the purchase of another property of equal value
- reasonable costs associated with the relocation of your business, including loss of profits
- a reasonable allowance to cover the cost of relocation of personal effects, including furniture
- reasonable charges associated with the re-establishment of your mortgage of equal value to that existing at the date of resumption
- the cost of telephone reconnection and postal redirection
- other costs reasonably incurred in relocating to a comparable property.

To find out more about claiming compensation for disturbance issues, please contact your departmental Property Officer or call the toll free number.

What about GST?

Compensation payments made as a result of the resumption of property do not attract GST.

When is compensation paid?

An offer of compensation will be made, usually after you have made a claim. The offer amount is formulated following careful consideration of all information available. If you are satisfied with the offer, settlement will be arranged. If you choose not to accept the offer, your departmental Property Officer will arrange a conference with you with a view to resolving differences in an open and conciliatory manner. If agreement on compensation cannot be reached, either party can refer the matter to the Land Court for an independent determination.

Can I obtain an advance payment against compensation?

Yes. Following publication of the Taking of Land Notice and after your claim has been lodged in accordance with the Act, you can apply for a payment of an advance against compensation at any time. Payment of an advance does not in any way affect your right to negotiate additional compensation or to have the matter independently determined by the Land Court should we fail to reach a negotiated settlement.

What consultants should I engage?

When it comes to negotiating compensation, it is recommended that you engage a valuer and legal assistance. In this regard, reasonable fees incurred will be refunded in the overall settlement package. In some cases additional specialist consultants may need to be engaged. You should discuss the matter with your departmental Property Officer prior to engaging a specialist consultant.

What if I have a mortgage?

The mortgagee is entitled to be paid the compensation (to the extent of the amount owing) unless the mortgagee advises otherwise.

What happens to my title?

If the department has resumed part of your land based on an approximate area, it will be surveyed at a later date. Once surveyed, the area of the resumed land could slightly increase or decrease compared with the resumption plan, however it must remain substantially the same size and shape.

The department will attend to the correction of the title for the balance of your land, to reflect the new boundary, at no cost to you.

Contact

For further information, please use our toll free number **1800 806 414***. To find out more about a particular project or to locate your local regional office, visit the department's website at **www.tmr.qld.gov.au**

This fact sheet is intended to give you general information about the resumption process. You may wish to seek professional legal advice in your particular case.

**Free call from anywhere in Australia, call charges apply for mobile phones and payphones. Check with your service provider for call costs.*