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## **NEW GUIDELINES FOR THE COMPULSORY ACQUISITION OF LAND BY COUNCILS**

The Department has revised the *Guidelines for the compulsory acquisition of land by councils*. The new Guidelines replace the version published in 1997.

The revised Guidelines provide general information to councils explaining the process of land acquisitions under the *Local Government Act 1993* and the *Roads Act 1993*, as well as guidance on how to make applications that contain all the required information.

In the past, some compulsory land acquisitions were delayed because councils had difficulty providing the information necessary for the Minister to make a decision about whether a compulsory acquisition could proceed. In those cases, the Department was required to obtain from councils the necessary information to enable a proper assessment of applications.

In order to reduce these delays, the Department has prepared a new compulsory acquisition application form and checklist of information. These two documents are now contained in the Guidelines.

These documents will help councils provide the Department with complete applications for consideration in the first instance. The new checklist and application form are under Annexures 1 and 2 of the Guidelines.

The checklist and application form should be printed, completed and forwarded to the Department with the council's application.

**It is important for council staff to become familiar with and use the checklist and application form. From 1 September 2006, the Department will no longer accept incomplete applications and they will be returned. If the council wishes to proceed, it will be required to provide all the necessary details.**

The Guidelines are now available for viewing and downloading at [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).



**Garry Payne  
Director General**



# Guidelines for the Compulsory Acquisition of Land by Councils

Department of Local Government

June 2006

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## Preface

Local councils have broad roles and responsibilities in their communities, including the provision of facilities and the supply of public services.

It is recognised that a council will sometimes need to get or 'acquire' land to achieve its role and responsibilities as its community's needs change.

A council may want to acquire land (or an interest in land) for a variety of public interest purposes, for example, the widening of roads, increased community park areas, or the expansion of sewerage stations.

There are several different ways in which a council can acquire land.

The most common way by which a council acquires land is by using the provisions of the *Land Acquisition (Just Terms Compensation Act) 1991*. Under this Act, a council can compulsorily acquire land either -

- with the land owner's consent; or
- without the landowner's consent.

A council can also acquire land (or an interest in land) by private agreement. These agreements fall outside of the terms of the *Land Acquisition (Just Terms Compensation Act) Act 1991*. When choosing the private agreement option for land acquisition, council should seek and be guided by its own legal advice.

The Guidelines for the Compulsory Acquisition of Land by Councils is designed to assist councils in acquiring land by compulsory process. It is not meant to be a complete guide to acquisition, but it does cover frequently asked questions and issues.

These guidelines do not cover all issues that a council might face when compulsorily acquiring land, and do not give legal advice. Council should seek its own legal advice on any issues of concern.

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# 1 About Compulsory Acquisitions

## 1.1 What is the meaning of 'land'?

The *Land Acquisition (Just Terms Compensation) Act 1991* defines 'land' as any interest in land. This includes a legal or equitable estate or interest in the land, or an easement, right, charge, power or privilege over, or in connection with, the land (section 4).

A council does not have to acquire the physical land in order to be given power over that land. The most common interest of this kind is an easement over the land.

## 1.2 What does the *Land Acquisition (Just Terms Compensation) Act 1991* do?

The *Land Acquisition (Just Terms Compensation) Act 1991* outlines a process through which councils can acquire land. It does not give compulsory acquisition powers to councils. It only provides councils with a way to use compulsory powers found in other Acts (section 7).

## 1.3 When does the *Land Acquisition (Just Terms Compensation) Act 1991* apply?

The Act applies to the acquisition of land by a State authority (including a council) which is allowed (under another Act) to acquire the land by compulsory process. It applies in relation to acquisition by private agreement or compulsory process, either with or without consent (section 5).

Section 38 of the Act states that even if all the parties to an acquisition agree on all matters (including compensation), the council must still take into account the compensation provisions of the Act. This makes sure that when bargaining with ratepayers, the council's offer and approach is fair and balanced.

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#### **1.4 When doesn't the *Land Acquisition (Just Terms Compensation) Act 1991* apply?**

The Act does not apply where land is –

- advertised by the owner or real estate agent for public sale; or
- the owner offers or otherwise indicates that the land is available for sale (section 5).

#### **1.5 How does a council decide to acquire land?**

Any council decision to acquire land must be made by a resolution of the council at a council meeting. Evidence of this resolution must be provided in the application to the Minister for Local Government for the acquisition of the land. The resolution must be contained in the formal/adopted minutes of the council. Copies of agendas, reports or draft minutes will not be accepted.

All applications to the Minister are through the Department of Local Government.

#### **1.6 Who decides to acquire the land?**

A council's power to acquire land is 'non-delegable'. This means that only the council, not its staff or individual councillors, can decide to compulsorily acquire land (section 377 of the *Local Government Act 1993*).

#### **1.7 When can a council acquire land?**

A council is not allowed to acquire land unless it has power to do so under an Act. If the purpose of the acquisition falls within that power, the council can acquire the land either by agreement or by compulsory process. Currently, the only Acts under which a council can compulsory acquire land are the *Local Government Act 1993* and the *Roads Act 1993*.

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### **1.8 When can a council acquire land under the *Local Government Act 1993*?**

Councils can't acquire land for any reason they choose. Section 186 of the *Local Government Act 1993* requires a council to only acquire land for the purpose of exercising any of its functions. Council's functions under the *Local Government Act 1993* are broad and are dealt with in Chapter 5 of that Act.

Unless a proposed acquisition is for a council function, the council has no power to acquire the land.

### **1.9 When can a council acquire land under the *Roads Act 1993*?**

Section 177 of the *Roads Act 1993* allows a council (as a 'roads authority') to acquire land for any of the purposes of that Act, including road widening (section 203). Acquisition of land for the purpose of a public road does not automatically result in that land becoming a public road. If a council intends the land to become a dedicated road, it may need to dedicate the land as a public road by notice in the Government Gazette, or achieve the dedication by some other means (section 10).

### **1.10 How does a council acquire land?**

Councils must have the legislative power to acquire land or an interest in the land. Once the council has established that it has the power, it can resolve to proceed with acquiring the land either by –

- private agreement; or
- compulsory process (with or without land/interest owner's consent)

Section 187 of the *Local Government Act 1993* states that if a council is using its powers under that Act to acquire land, the acquisition must occur in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

Section 178 of the *Roads Act 1993* has similar acquisition provisions with respect to roads.

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### **1.11 What is the effect of compulsory acquisition?**

Section 20 of the *Land Acquisition (Just Terms Compensation) Act* 1991 provides that gazettal of an acquisition notice gives council a fee simple or freehold interest in the land. It also frees or discharges the land from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contract in, over or in connection with the land. In effect, the council will obtain a clear title to the land.

However, the *Land Acquisition (Just Terms Compensation) Act* 1991 provides that any express provision of an Act that authorises compulsory acquisition of land can keep certain rights in the land, notwithstanding section 20. For example, 186(3) of the *Local Government Act* 1993 states that land classified as 'community land' under that Act will not be discharged from trusts, estates, dedications or other burdens affecting the land once compulsorily acquired.

Section 41 of the *Roads Act* 1993 states that a public road ceases to be a public road once it is compulsorily acquired.

### **1.12 Can an acquisition be challenged?**

Once land has been compulsorily acquired, the validity of that acquisition is not generally affected by a failure to comply with the requirements of the *Land Acquisition (Just Terms Compensation) Act* 1991.

This does not mean that the validity of a compulsory acquisition cannot be challenged. For example, if the Minister's or the Governor's approval was obtained by misrepresenting the purpose of the acquisition, a court could set the acquisition aside, see: *Gaffney v Camden Council* (1997) 96 LGERA 157. This scenario might also amount to 'good cause' for the Governor to rescind a notice (section 31 of the *Land Acquisition (Just Terms Compensation) Act* 1991).

Acquisition notices could also be challenged on other legal or jurisdictional grounds. Councils should ensure that their processes are in accordance with both the letter and the spirit of the law.

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### 1.13 Acquisition by private agreement

Where a council resolves to acquire land by private agreement, it does not need to follow the same processes that apply to compulsory acquisitions. However, council will still be subject to the compensation provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* (section 38). The compensation provisions will not apply to land available for public sale.

### 1.14 Owner-initiated acquisitions

Under section 23 of the *Land Acquisition (Just Terms Compensation) Act 1991* a landowner who suffers hardship may require authority of the council or other State agency to acquire their land. To require this, the land must first be designated for acquisition by the council or State agency.

An application for this type of acquisition requires specific information to be provided to the Minister (through the Department of Local Government) before it can be approved. The information required is outlined in Part 3 of these Guidelines.

### 1.15 Acquisition by consent

The *Land Acquisition (Just Terms Compensation) Act 1991* provides for compulsory acquisition 'by consent' (section 30). In other words, parties can agree to council compulsorily acquiring the land rather than council acquiring the land by private agreement. Annexure 3 provides a copy of the Department of Commerce's "Section 30 Agreement".

For land acquired by consent, all relevant matters must be agreed upon between the council and the landowner. This includes the amount of compensation or (at the least) the specific method of calculating the compensation. An 'agreement to agree' is not enough. This means it is not enough to say that the parties agree to the amount of compensation to be determined by the State Valuation Office.

Where all matters are agreed on and council has the Governor's consent to publish an acquisition notice, it can publish that notice without having to go through notification processes in the *Land Acquisition (Just Terms Compensation) Act 1991* (section 30(2)).

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### **1.16 What if council cannot locate the land/interest owner?**

When council can not locate the land/interest owner, and –

- native title is not in issue; and
- the land will not be acquired for re-sale

the council must satisfy the Minister and the Governor that adequate steps have been taken to find the owner before the compulsory acquisition can be approved.

The following administrative requirements must be satisfied before council's application for acquisition can be progressed –

- publication of notice in a local paper; and
- erection of a notice on a board or other structure in a conspicuous place on the land proposed to be acquired; and
- Australia-wide white pages search for surname of owner; or
- (*if a title search indicates that the owner is likely to be deceased*) publication of the notice in the public notices section of a nationally circulated newspaper.

Requirements on the format, fixing and publishing of the notice are the same as those specified under clause 401 of the *Local Government (General) Regulation 2005*.

### **1.17 Can council acquire land for the purpose of re-sale or exchange?**

No. Unless it is related to a council function, council cannot compulsorily acquire land for the purpose of re-sale or exchange. If the purpose of the acquisition is for re-sale or exchange, council must provide clear evidence so as to satisfy the Minister for Local Government that the acquisition is for a function that falls within council's powers under the law.

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### **1.18 Can a council acquire land (or an interest in it) to act as an agent or to resolve a dispute between other parties?**

No. Council is not allowed to use its compulsory acquisition powers simply to act as an agent between two other parties for the transfer of land (or an interest in it) between those parties. This action is not considered as falling within the scope of local government functions.

Paul needs access to his land on a shared block but can't agree with his neighbour on the terms of a right of way. Paul becomes frustrated and approaches council seeking a solution. Can the council resolve to compulsorily acquire land from his neighbour to sell to Paul so that he can have legal access to his land?

No. This is not an appropriate use of the council's acquisition power.

If a council wants to compulsorily acquire land that will be transferred to some other person or body, it must satisfy the Minister for Local Government that transferring the land will meet a community or public need (a 'local government purpose') rather than an individual or private need. The acquisition must be for the wider public, not just one individual or a limited group of individuals.

### **1.19 Can a council ever sell a part of the land it acquired?**

When a council acquires land for a council function but does not use all of the land, it might be appropriate to transfer the residue to a third party or back to the owner as a form of compensation. Section 188 of the *Local Government Act* 1993 and section 179 of the *Roads Act* 1993 deal with this.

Acquiring land for the re-sale of some or all of that land at a future date is not permitted without the landowner's approval. This requirement protects the landowner's opportunity to sell, subdivide and develop their own property for private gain.

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See Part 2 of the Guidelines for information on the re-sale or transfer to a third party of (acquired) Crown land affected by native title rights or interests.

***Note:** Councils cannot use their compulsory acquisition powers for any purpose other than a local government or roads purpose. Having the landowner's consent will not mean that the council can compulsorily acquire land for anything other than a local government or roads purpose.*

### **1.20 Can a council acquire an interest (in land) that did not previously exist?**

Yes. Section 32 of the *Land Acquisition (Just Terms Compensation) Act 1991* states that councils can acquire an interest in land where the interest did not previously exist (for example, an easement over the land).

### **1.21 Can a council acquire Crown land?**

Yes. If a council wants to compulsorily acquire Crown land, it must check whether native title rights and interests are likely to have been extinguished. Council must obtain the consent of the State agency with control of the Crown land before applying to the Minister for Local Government for acquisition.

### **1.22 Can a council acquire native title rights and interests?**

Yes. A council can acquire native title rights and interests in relation to land in the same way that other interests in the land may be acquired. Native title rights and interests will only apply to Crown land.

The *Native Title Act 1993 (Cth)* and the *Native Title (New South Wales) Act 1994* recognise and protect native title. Those Acts ensure that native title holders are given the same procedural and other rights as any other owners of land. Procedures relating to native title and Crown land are set out in Part 2 of the Guidelines.

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### **1.23 Who owns any minerals in the (acquired) land?**

A council using its compulsory acquisition powers under the *Local Government Act 1993* or the *Roads Act 1993* is generally entitled to all minerals in the land acquired. This includes –

- minerals that are expressly reserved as Crown minerals; and
- minerals that are owned by persons other than the Crown; and
- minerals that need to be dug or carried away for public works (for instance, gravel for road works).

This does not include –

- minerals that are expressly excepted in the acquisition notice.

However, the Governor may (by notice published in the gazette) remove council's rights to minerals in the land and give it to another person.

When making an acquisition application, a council must decide whether it wants to acquire the mines or minerals in the land. A council may decide –

- that it doesn't want any of the mines or minerals in the land; or
- that it only wants some of the mines and minerals in the land (if so, the mines and minerals the council wants must be specified in the application); or
- that it wants all of the mines and minerals in the land.

The council should decide what it wants to do about mines and minerals before it applies for approval to compulsorily acquire the land. The council's decision must be clearly stated in its application.

If a council decides to acquire some or all mines or minerals in land they want to acquire, it must be prepared to compensate the owner of the minerals.

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### 1.24 Can a council acquire land from itself?

Yes. A council can compulsorily acquire public or council owned land from itself under section 7B of the *Land Acquisition (Just Terms Compensation) Act 1991*.

### 1.25 Why would a council compulsorily acquire its own land?

Compulsory acquisition can be an alternative way of extinguishing interests in the land that are no longer active. Except in limited circumstances, section 20 of the *Land Acquisition (Just Terms Compensation) Act 1991* operates to eliminate all burdens and encumbrances on or over the land acquired.

Sue works in the property division of a council and comes across a small parcel of land burdened with various easements. After research, she discovers that the easements are no longer needed.

To reduce delays and costs in removing the easements from title, Sue suggests that council compulsorily acquire the land from itself so that the easements are eliminated (section 20). Council agrees that it would be easier to compulsorily acquire the land than to arrange for each of the easements to be revoked, and resolves to compulsorily acquire the land from itself.

**Note:** *When applying for approval to acquire the land from itself, council must provide evidence of the consent of the beneficiaries of the easements to this action.*

### 1.26 Does it matter if council's land is classified as 'community land'?

The *Local Government Act 1993* requires all public land to be classified as either 'community land' or 'operational land' (sections 25 and 26).

Section 186(3) of the *Local Government Act 1993* states that compulsory acquisition of land that is classified as 'community land' does not discharge the land from any trusts, estates, dedications or other burdens affecting the land.

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This means that if the land was community land before its acquisition, it will remain community land after acquisition. This is despite the provision in section 20 of the *Land Acquisition (Just Terms Compensation) Act 1991* which otherwise eliminates all trusts, estates, dedications and other burdens affecting the land. This prevents councils from using section 20 to reclassify community land as operational land.

A council can only compulsorily acquire community land from itself under the *Roads Act 1993* in limited circumstances. Section 47F of the *Local Government Act 1993* sets out the limited circumstances in which community land can be dedicated as a public road under the *Roads Act 1993*.

### **1.27 What if the acquired land is classified as a 'public road'?**

Section 41 of the *Roads Act 1993* states that a public road that is compulsorily acquired ceases to be a public road after its acquisition. Compulsory acquisition should not be regarded as an alternative method of closing public roads. Except in limited circumstances, proposals to close roads are required to follow the procedures set out in Division 1, Part 4 of the *Roads Act 1993*, including public consultation.

Examples of 'limited circumstances' include where council proposes to widen, realign or alter the position of a public road so as to exchange the unneeded parts (of that road) in compensation for other land acquired for road purposes. To give this land in compensation, council must have the landowner's consent (section 44).

Where the public road to be acquired is a Crown road, council must contact the Department of Lands (as owner of Crown roads) before applying to the Department of Local Government for its compulsory acquisition. Applications for this type of compulsory acquisition will not be processed unless evidence is provided of the Department of Lands consent to the acquisition.

Council should also obtain the prior approval of the Department of Lands where the public road to be acquired is unformed. This is because this land would normally revert to the Crown as Crown land on notice of closure of the road under section 38(2) of the *Roads Act 1993*.

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### **1.28 Does a council need to classify land once it is acquired?**

Yes. The *Local Government Act* 1993 requires all public land to be classified as either 'community land' or 'operational land' (sections 25 and 26).

Section 31 of that Act states that (with some exceptions) a council may, before acquisition or within 3 months after it has acquired the land, resolve that the particular land be classified as 'operational land' or 'community land'.

If a council wants to classify the land as 'operational' by resolution, it must give public notice of its proposed resolution (section 34).

***Note:** Classification, including public notification processes under section 34, must be completed within 3 months of the acquisition of the land. This means that where land is being compulsorily acquired, the process must be completed within 3 months of the gazettal of the 'acquisition notice'.*

### **1.29 What (acquired) land cannot be classified as 'operational'?**

Section 31(3) of the *Local Government Act* 1993 sets out circumstances where land cannot be classified as operational. These are –

- where the land was compulsorily acquired under the *Local Government Act* 1993 and was community land immediately before its acquisition; or
- the resolution would be inconsistent with any other Act, the terms of any trust applying to the land or the terms of any instrument executed by the donor or the transferor of the land.

Section 31(3) does not apply to land –

- that is acquired for the purpose of a road; or
- that forms part of a former public road.

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## 2 Crown land and native title

***The Native Title Unit of the Department of Lands can be contacted on telephone 02 9228 6666 if you require further information.***

***The National Native Title Tribunal can be contacted on 1800 640 501.***

### 2.1 Who 'owns' Crown land?

Section 4(5) of the *Land Acquisition (Just Terms Compensation) Act 1991* provides that the 'owner' of land includes a holder of native title rights and interests. This means that the State of New South Wales (as generally represented by the Department of Lands) can't be seen as the only owner of Crown land.

### 2.2 What is native title?

Native title is the rights and interests of Aboriginal and Torres Strait Islander peoples in land and water according to their traditional laws and customs recognised under Australian law. Native title will usually only affect Crown land.

The *Native Title Act 1993 (Cth)* and the *Native Title (New South Wales) Act 1994* recognise and protect native title. The purpose of these Acts is to make sure that native title holders have the same procedural and other rights as other owners of land or interests in land.

### 2.3 Can native title interests be compulsorily acquired?

Yes. Section 7A of the *Land Acquisition (Just Terms Compensation) Act 1991* states that an acquiring authority (like a council) can compulsorily acquire native title rights and interests in the same way as other interests in the land.

### 2.4 Will compulsory acquisition extinguish native title?

Yes. The valid compulsory acquisition of land will generally extinguish native title. All compulsory acquisition applications for Crown land must address the issue of native title.

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## **2.5 Establishing that native title has been extinguished before acquisition**

Native title can't be extinguished except in accordance with the *Native Title Act* 1993. If a council wants to show that native title is likely to have been extinguished, it should –

- obtain a firm opinion to that effect from its legal adviser; or
- obtain an opinion to that effect from the Department of Lands detailing the grounds upon which it is based.

## **2.6 What if native title has not been extinguished?**

A proposed acquisition can still go ahead even if a council can't show that native title has been extinguished. The proposed acquisition must still be for a local government or roads purpose.

If a council wants to acquire land affected by native title it must undertake a special search under the *Native Title Act* 1993.

As part of this, council must obtain a formal search of the Register of Native Title Claims and the National Native Title Register from the National Native Title Tribunal, to check whether there are any registered native title interests in the land. A printout from the Tribunal's website is insufficient.

If the search reveals a registered native title claimant or holder, the council must give a proposed acquisition notice to that claimant or holder as well as to other owners identified under section 12 of the *Land Acquisition (Just Terms Compensation) Act* 1991.

The Native Title Tribunal is located at Level 25, 25 Bligh Street, Sydney NSW 2000 and can be contacted on telephone 1800 640 501.

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## **2.7 What is the ‘right to negotiate’ regime?**

The ‘right to negotiate’ regime allows a registered native title claimant or holder a right to negotiate with a council in compulsory acquisitions.

For further information about this process, please contact the Native Title Unit of the Department of Lands on 02 9228 6666.

Councils should complete the right to negotiate process before they apply to the Minister and/or Governor for approval to compulsorily acquire land.

## **2.8 Compulsory acquisition with the native title holder’s or claimant’s consent**

Section 29(4) of the *Land Acquisition (Just Terms Compensation) Act 1991* says that the pre-acquisition procedures (including the giving of a proposed acquisition notice, etc) do not apply to the compulsory acquisition of Crown land if the owners of the land have agreed on –

- all relevant matters concerning the compulsory acquisition; and
- the compensation (if any) to be paid for the acquisition.

Remember, it’s not enough for parties to ‘agree to agree’.

## **2.9 Who must a ‘proposed acquisition notice’ (section 11) be given to?**

A council must give a proposed acquisition notice and compensation claim form to the Department of Lands or other Government agency involved, as well as to other ‘owners’ specified in section 12 of the *Land Acquisition (Just Terms Compensation) Act 1991*. Copies of the approved forms for proposed acquisition notices and compensation claim forms are available from the Department of Commerce website, [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm).

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## **2.10 Will pre-acquisition procedures apply?**

Yes. Pre-acquisition procedures will still apply even though there may be agreement with the relevant Crown agency, unless the council can establish that –

- native title does not exist in respect of the Crown land involved; or
- the native title holder of the land has given their agreement as an ‘owner’ under section 29 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

In order to avoid pre-acquisition procedures where native title is likely to exist, agreement between the following is necessary –

- the registered native title holder; or
- the person or body for whom there is an approved determination under native title legislation identifying that they hold native title; and
- all other ‘owners’ of the land.

## **2.11 Pre-acquisition procedures when native title is not extinguished**

Pre-acquisition procedures are set out in the *Land Acquisition (Just Terms Compensation) Act 1991*. These procedures start with the giving of a proposed acquisition notice to owners of the land as specified in section 12 of that Act.

If the search of the Native Title Registers show that there are no native title claims or determinations (and no native title holder is identified), council is required to give general notification to native title bodies in accordance with the Native Title (Notices) Determination 1998.

The Native Title (Notices) Determination 1998 requires councils to give the proposed acquisition notice by post to the New South Wales Aboriginal Land Council and to any registered native title claimant.

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If it is unlikely that native title has been extinguished, the notice given should be in the form shown in Annexure 4.

Councils are responsible for complying with native title and other legislation, including the giving of notices, when compulsorily acquiring land. You should rely on your own legal advice to make sure that the proposed land acquisition will be valid.

## **2.12 Pre-acquisition procedures when native title is extinguished**

If native title doesn't affect a parcel of land or it is extinguished, pre-acquisition procedures will be the same as the pre-acquisition procedures where the land is privately owned.

## **2.13 Compulsory acquisition of Crown land for re-sale**

Crown land cannot be acquired for the purpose of re-sale without the approval of the native title holder unless –

- the proposed acquisition is for a local government or roads purpose; and
- native title has been extinguished; or
- the land being acquired forms part of, or adjoins or lies in the vicinity of, other land being acquired at the same time for a purpose other than the purpose of re-sale; or
- 'diligent inquiry' has been made; or
- subdivision P of the *Native Title Act* 1993 (right to negotiate) has been followed.

The above conditions apply even if the Department of Lands or other agency agrees to the acquisition. This is because they are not considered to be the only 'owner' of Crown land.

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## **3 Making an application**

### **3.1 General information**

All compulsory acquisition applications are made to the Minister through the Director-General of the Department of Local Government. Applications must include the information and documentation specified in these Guidelines.

There are special application forms for approval of the Minister and/or the Governor for the compulsory acquisition of land. Once an application has been submitted, the Department will only respond to queries from parties to the acquisition. Where possible, inquiries from council should be made by the contact person identified by council in the application form (Annexure 2).

Approvals 'in principle' will not be provided.

The Minister for Commerce has prescribed the approved forms that councils must use for purposes under the *Land Acquisition (Just Terms Compensation) Act* 1991. These forms are available from the Department of Commerce website, [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm), and were originally Gazetted on 26 June 1992.

Other forms necessary for your compulsory acquisition application are provided in Annexures 2–4.

### **3.2 Where do I send council's compulsory acquisition application?**

The compulsory acquisition application, including all supporting documentation, must be sent to –

Director-General  
Department of Local Government  
Locked Bag 3015  
NOWRA NSW 2541.

The processing of applications will be delayed if all relevant information is not included.

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### **3.3 Can I send my application under council's seal?**

Yes. Original applications under seal will be accepted only if accompanied by the relevant council report and the relevant part of the official council minutes where it resolved to compulsorily acquire the land. The date of the resolution and/or application under seal must also be provided.

### **3.4 Urgent applications – requests for a reduction in the notice period**

Section 13 (1) of the *Land Acquisition (Just Terms Compensation) Act 1991* requires proposed acquisition notices to be given at least 90 days before the land can be compulsorily acquired (by gazettal of the acquisition notice).

The 90-day period can be reduced by written agreement between the council and the landowner(s). If this occurs, the approval of the Minister is not required.

The council can also seek the Minister's approval to reduce the notice period. The consent of the landowner(s) is not required in this case. However, where practical, council should provide information on the attitude of the landowner(s) to any reduction in the notice period.

To gain Ministerial approval to reduce the notice period, council must show that the matter is urgent, or that other circumstances make it impractical for council to give a longer period of notice.

It is not enough for a council to say that the matter has been going for a long time and should be finalised quickly. The Minister must be satisfied that there is some real urgency in the acquisition. An example of a situation of urgency may be where the acquisition will depend upon Commonwealth funding that will be withdrawn if not used within a specified period.

Where native title might exist over Crown land, the minimum reduction in the notice period that can be approved is 60 days.

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In applying for a reduction in the notice period, the timeline sought should be clearly identified by the council. Written indication as to whether the State Valuation Office is able to conduct the valuation in the timeline sought is also required.

If a council wants to finalise a matter quickly, it should make sure that all relevant information is included in its application.

### **3.5 What if my application includes acquisitions under different legislation?**

Sometimes a compulsory acquisition proposal will include parcels of land acquired under different legislation. For example, council may apply to acquire a parcel of land under the *Local Government Act 1993* for its 'works depot'. As part of the same proposal, council may also be seeking to acquire part of a connected road reserve using its powers under the *Roads Act 1993*.

Council will need to submit separate applications to the Department of Local Government when applying for the compulsory acquisition of connected parcels of land under different enabling legislation (for the one acquisition proposal). Applications should cross-reference the other.

### **3.6 Information required for all compulsory acquisitions**

- 3.6.1 A copy of the relevant part of the minutes of the council meeting where council approved both the land being compulsorily acquired and making the acquisition application to the Minister and/or the Governor.
- 3.6.2 A copy of the report making the recommendation for the proposed compulsory acquisition.
- 3.6.3 A clear statement of the purpose for which the land is being acquired. For example, it is not enough to indicate that the purpose is to make it 'operational land'.
- 3.6.4 A clear statement indicating which legislation the application is being made under (eg *Local Government Act 1993* or *Roads Act 1993*).

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3.6.5 A written survey description of the land or easement to be acquired. For example: 'Lot 1 DP 1085644' or 'Easement over Lot 7 DP 12345 as shown in DP 891011'.

These are just examples, they will not always be detailed enough for the application to proceed. For example, more information would be required when council wishes to acquire part of a lot. It is council's responsibility to make sure that the description of the land/interest will satisfy the requirements for registration with the Land and Property Information Division of the Department of Lands. Council should seek its own advice on what is a sufficient survey.

3.6.6 Two copies of a registered deposited plan or acquisition plan clearly showing (by coloured edging or some other means) the land or interest proposed to be acquired. The copies should be in A4 size (not smaller or larger).

3.6.7 The name and address of the landowner(s). This includes information on all owners of the land and/or an interest in the land, including mortgagees, lease/license/permit holders etc.

3.6.8 Confirmation on what the council wants to do with the mines and minerals in the land. See section 190 of the *Local Government Act 1993* and/or section 180 of the *Roads Act 1993*.

3.6.9 A statement of the council's reasons for acquiring the land by compulsory process instead of by agreement, including a statement as to action taken by the council to acquire the land by agreement.

3.6.10 Copies of any submissions received by the council from the landowner, together with the council's comments on such submissions.

3.6.11 Evidence of council's negotiations with any party with a registered interest in the land, including a copy of any submissions received from those parties, and the council's comments on those submissions.

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### **3.7 Additional information required for land acquired for re-sale**

Section 188 of the *Local Government Act 1993*

*If the land does not form part of, or adjoin or lie in the vicinity of other land being acquired at the same time for a purpose other than the purpose of re-sale*

- 3.7.1 A copy of the landowner's written approval of the compulsory acquisition for the stated purpose; or
- 3.7.2 Evidence that council undertook 'diligent inquiry' to identify the owner.
- 3.7.3 *(If applicable)* Evidence that council undertook the 'right to negotiate' process.

*If the land forms part of, or adjoins or lies in the vicinity of other land being acquired at the same time for a purpose other than the purpose of re-sale*

- 3.7.4 An explanation as to how the acquisition is ancillary or related to the acquisition of the other land being acquired.

### **3.8 Additional information required for Crown land acquisitions**

- 3.8.1 A copy of the agreement to the acquisition of the Department of Lands or other State agency.
- 3.8.2 A statement on whether council wants the application to proceed on the basis of native title being extinguished, or not.

*If native title is extinguished*

- 3.8.3 A copy of a firm legal opinion or an opinion from the Department of Lands that native title is extinguished.

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*If native title is not extinguished*

- 3.8.4 A formal copy of the results of the search of the Native Title Register obtained from the Native Title Tribunal.

*If the acquisition is for re-sale of the land*

- 3.8.5 Evidence that council completed the right to negotiate process and advice as to whether there is any native title party in terms of the Act; or
- 3.8.6 A copy of the written approval of the landowners (including any native title holders) consent to the compulsory acquisition for the stated purpose; or
- 3.8.7 Information as to the 'diligent inquiry' made to identify any other owners, including native title holders.
- 3.8.8 Other information as required.

**3.9 Additional information required for owner-initiated acquisitions**

- 3.9.1 A copy of the owner's request that the land be acquired; and
- 3.9.2 A statement that the council is satisfied that the request has been submitted by all owners of the land within the definition of 'owner' in section 4 of the *Land Acquisition (Just Terms Compensation) Act 1991*; and
- 3.9.3 *(If applicable)* a copy of the relevant provisions of the council's local environmental planning instrument under which the landowner has requested council to acquire the land.
- 3.9.4 A copy of the owner's agreement to acquisition, including compensation payable.

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*If the application is being made under the hardship provisions of the Land Acquisition (Just Terms Compensation) Act 1991*

- 3.9.5 (If applicable) evidence that the land has been identified in an environmental planning instrument (such as an LEP) as being reserved for acquisition for an authorised purpose.
- 3.9.6 A statement that the council is satisfied that the owner will suffer hardship (as defined in sections 23 and 24).

Owners of land who suffer 'hardship' may require a council to compulsorily acquire land designated for acquisition under a council's planning instrument. In order to do this, the owner must give notice to the council in the form approved by the Minister for Commerce, available from [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm).

**3.10 Additional information required to reduce the minimum notice period**

- 3.10.1 Written indication of the reduced period desired.
- 3.10.2 Information substantiating the urgency of the matter.
- 3.10.3 Details of other circumstances making it impracticable to give a longer period of notice.

**3.11 Additional information required for applications under section 203 of the Roads Act 1993**

- 3.11.1 A copy of the gazetted road widening order (including date of the gazettal); and
- 3.11.2 The Department's file number in relation to the approval of the Minister to the road widening plan on which the order is based (sections 22 and 24 of the Roads Act 1993).

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## 4 Approval processes

### 4.1 What must council do once it decides to compulsory acquire land?

After making a valid council resolution, the council must obtain the consent of the Minister for Local Government and/or the Governor to compulsorily acquire any land or any interest in the land.

Council must apply to the Department for consent even if it believes that the Minister's consent is not required for the specific acquisition. This is because all compulsory acquisitions will require the consent of the Governor to effect the acquisition (through gazettal). All applications for the Governor's consent are made through the Minister, via the Department of Local Government.

In practice, councils will seek both the Minister's and the Governor's approval as part of the same administrative process. Even if a council does not need the Minister's approval to give a proposed acquisition notice, it must still apply to the Minister for his or her recommendation to the Governor to approve publication of the acquisition notice in the Government Gazette.

This means that if a council is going to use its compulsory acquisition powers, it must approach the Minister for Local Government either to approve the giving of a proposed acquisition notice, or to make a recommendation to the Governor to publish an acquisition notice, or both. There are no exceptions to this requirement.

All applications to the Minister for compulsory acquisition should be directed to the Department of Local Government.

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#### **4.2 What is the difference between the Minister for Local Government's consent and the Governor's consent?**

The Minister's consent is required before council can issue a 'proposed acquisition notice'. The Governor's consent is required for council to issue an 'acquisition notice'. Not all acquisitions require a 'proposed acquisition notice' to be issued. So the consent of the Minister will not always be necessary. But all acquisitions require an 'acquisition notice' to be issued, so the consent of the Governor will always be required.

Council must clearly demonstrate in its application to the Department of Local Government that the Minister's approval is not required for an acquisition.

#### **4.3 What notification procedures must a council follow once acquisition is approved?**

Before a council can compulsorily acquire land, it must give the owners of the land written notice of its intention to do so (section 11 of the *Land Acquisition (Just Terms Compensation) Act 1991*). The proposed acquisition notice (section 11) needs to be given to people or bodies –

- with a registered interest in the land; and
- in lawful occupation of the land; and
- with, to the knowledge of the council, an interest in the land.

Where a council is going to acquire an existing interest in land, notice need only be given to the owners of that interest, rather than the owners of the land itself.

When acquiring Crown land, council must notify any holders of native title rights or interests in the land in accordance with the *Native Title Act 1993* (Cth) and the *Native Title (New South Wales) Act 1994*.

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By law, the notice must contain the following information –

- name of the State authority proposing to acquire the land (eg, council);
- description sufficient to identify the land;
- period within which the land will be compulsorily acquired;
- compensation claim prescribed form available from [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land +Acquistion.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land +Acquistion.htm).

Advice to landowners that compensation claims must be lodged with the council within 60 days of the notice.

#### **4.4 What if the owner of the land cannot be identified?**

When council can not locate the land/interest owner, and –

- native title is not in issue; and
- the land will not be acquired for re-sale

the council must satisfy the Minister and the Governor that adequate steps have been taken to find the owner before the compulsory acquisition can be approved.

The following administrative requirements must be satisfied before council's application for acquisition can be progressed –

- publication of notice in a local paper; and
- erection of a notice on a board or other structure in a conspicuous place on the land proposed to be acquired; and
- Australia-wide white pages search for surname of owner; or
- *(if a title search indicates that the owner is likely to be deceased)* publication of the notice in the public notices section of a nationally circulated newspaper.

Requirements on the format, fixing and publishing of the notice are the same as those specified under clause 401 of the *Local Government (General) Regulation 2005*.

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#### **4.5 What if the owner of the land cannot be identified and acquisition is for re-sale?**

Section 188(1) of the *Local Government Act* 1993 and section 179 of the *Roads Act* 1993 state that if the landowner cannot be found or identified, then the council cannot compulsorily acquire the land. The exception to this is when the land forms part of, adjoins or lies in the vicinity of, other land acquired at the same time (for a purpose other than re-sale).

Section 188(2) of the *Local Government Act* 1993 states that where a council intends to re-sell or otherwise transfer land to a third party and the owner cannot be found, then the owner's approval is not required if –

- the council has undergone the 'diligent inquiry' process; and
- at least 6 months have elapsed since the last inquiry was made.

The *Local Government (General) Regulation* 2005 defines 'diligent inquiry' (clause 401) and outlines the steps that a council must take.

Diligent inquiry involves the searching of specified registers; fixing a notice to the land; publishing a notice in both a newspaper circulating in the district and a newspaper circulating generally in New South Wales; and giving notice to representatives of persons who may hold native title.

Diligent inquiry only applies where the identity of the current landowner is unknown and the purpose of the compulsory acquisition is re-sale. It won't apply if a council knows the identity of, but can't locate, a landowner.

#### **4.6 What are the pre-acquisition procedures?**

Pre-acquisition procedures are the actions council is required to take before land can be compulsorily acquired. These actions are outlined in Division 1 of the *Land Acquisition (Just Terms Compensation) Act* 1991. Council must make sure that it completes the actions outlined in the Act.

Pre-acquisition procedures only commence after consent from the Minister of Local Government or the Governor has been received (but before Gazettal).

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#### **4.7 Do pre-acquisition procedures apply to owner-initiated acquisitions?**

*Division 1 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 does not apply.*

No. Pre-acquisition procedures do not apply where a landowner has requested or required the Council to acquire their land in cases of hardship (section 25(3) of the *Land Acquisition (Just Terms Compensation) Act 1991*).

The Minister for Local Government's approval is not required for owner-initiated acquisitions, but the consent of the Governor will be. Note the documentation required to establish 'hardship', outlined in these Guidelines.

#### **4.8 Do pre-acquisition procedures apply to Crown land acquisitions?**

*Division 1 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 does not apply.*

Yes, unless the owners of the land (including any native title holder) have agreed on relevant matters concerning the compulsory acquisition and the compensation (if any) to be paid for the acquisition (section 29 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

The Minister for Local Government's approval is not required for owner-initiated acquisitions as described above, but the consent of the Governor will be.

**Note:** *It is only possible to avoid the pre-acquisition procedures in respect to Crown land by virtue of section 29 of the Land Acquisition (Just Terms Compensation) Act.*

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#### **4.9 Do pre-acquisition procedures apply to acquisitions by agreement?**

*Division 1 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 does not apply.*

No, but only where the council and the owner(s) of the land have agreed in writing to the land being compulsorily acquired, and the owners have agreed in writing on all relevant matters concerning the compulsory acquisition and the compensation to be paid (section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

The Minister for Local Government's approval is not required for owner-initiated acquisitions as described above, but the consent of the Governor will be.

#### **4.10 Do pre-acquisition procedures apply to acquisitions where there is a Road Widening Order?**

*Division 1 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 does not apply.*

No. Pre-acquisition procedures do not apply to Orders relating to land required for road widening purposes that have been gazetted by the Council (in accordance with a road widening plan approved by the Minister for Local Government under Division 2 of Part 3 of the *Roads Act 1993*).

The Minister for Local Government's approval is not required for owner-initiated acquisitions as described above, but the consent of the Governor will be.

#### **4.11 What is a 'proposed acquisition notice' (section 11)?**

A proposed acquisition notice lets interested parties know that the council is going to compulsorily acquire the land or an interest in the land. Proposed acquisition notices must be issued to all owners of the land (section 11 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

A copy of the prescribed form of the proposed acquisition notice is available from the Department of Commerce website, [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm).

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#### **4.12 Issuing ‘proposed acquisition notices’ (section 11)**

A proposed acquisition notice cannot be validly given to an owner without the consent of the Minister for Local Government and/or the Governor (section 187(2) of the *Local Government Act* 1993; section 178(2) of the *Roads Act* 1993).

A council must serve a proposed acquisition notice on the owner(s) of the land, including any holder of native title when compulsorily acquiring land (sections 11 and 12 of the *Land Acquisition (Just Terms Compensation) Act* 1991).

#### **4.13 Who else needs to be notified?**

Sections 17 and 18 of the *Land Acquisition (Just Terms Compensation) Act* 1991 require a council to notify the Registrar-General and the Valuer-General of the proposed acquisition notice (or any amending or withdrawal notice) as soon as practicable after it has been given.

#### **4.14 How long is the notification period?**

The period of notice required before land or an interest in land is compulsorily acquired is 90–120 days. This means that a proposed acquisition notice must be given at least 90 days before an acquisition notice is published, but within 120 days.

A council can reduce the minimum 90-day period either by written agreement between the council and the landowner(s), or with the approval of the Minister. For such approval, the Minister must be satisfied that it is impractical for a council to give a longer period of notice.

#### **4.15 What happens if the ‘proposed acquisition notice’ (section 11) is issued but council does not gazette the acquisition notice in time?**

If a proposed acquisition notice is issued to the landowner(s) but council fails to gazette the acquisition notice within 120 days, the compulsory acquisition will lapse. This means that council has not compulsorily acquired the land.

The consent of the Minister for Local Government will be required before council can validly issue another notice within 12 months of that first notice being granted.

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#### **4.16 Withdrawing ‘proposed acquisition notices’ (section 11)**

A council can withdraw a proposed acquisition notice at any time by further notice. Councils need to be aware that there may still be a claim for compensation where a proposed acquisition notice is given to the owners of land and then withdrawn.

Compensation for interest in land compulsorily acquired will be determined by the Valuer-General. You may provide details of any matters that should be taken into account when determining the amount payable, including;

- the market value of the land on the date of acquisition;
- any special value;
- any loss attributable to severance, disturbance or other matters.

#### **4.17 Issuing subsequent ‘proposed acquisition notices’ (section 11)**

Where a council withdraws a notice but later wishes to carry out the proposed acquisition, it will have to begin the pre-acquisition process and/or seek approval of the Minister and/or Governor again.

However, further notice may not be given within 12 months of the first notice unless the Minister is satisfied that further notice within that period is justified.

Council issued a proposed acquisition notice but didn’t complete the compulsory acquisition process within 120 days. The council officer dealing with the compulsory acquisition left the council before finalising the matter.

Six months later, a new council officer noticed that the compulsory acquisition process was not complete and issued another proposed acquisition notice for the land. This notice was issued without the Minister’s consent. Is the second proposed acquisition notice valid?

No. If council wanted to validly issue a second proposed acquisition notice within 12 months of the first, it should have obtained the Minister’s consent to do so.

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#### **4.18 What is the difference between a ‘proposed acquisition notice’ (section 11) and an ‘acquisition notice’ (section 19)?**

An ‘acquisition notice’ is different to a ‘proposed acquisition’ notice. The purpose of a proposed acquisition notice is for a council to notify a landowner that the council intends to compulsorily acquire their land. The purpose of an acquisition notice is to publicly declare that the landowner’s land has been acquired by compulsory process.

The publication of an acquisition notice in the New South Wales Government Gazette brings the land described in the notice into council’s ownership. This publication is sometimes called ‘gazetting’ or a ‘gazettal’.

#### **4.19 Does council need the approval of the Minister and/or Governor to publish a ‘proposed acquisition notice’ (section 11) or an ‘acquisition notice’ (section 19)?**

Yes. Every time a council uses its acquisition powers under the *Roads Act 1993* or the *Local Government Act 1993*, even where a council doesn’t need to go through the pre-acquisition procedures, it must obtain the prior approval of the Governor in order to publish an acquisition notice (section 19 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

Councils do not apply directly to the Governor for approval to gazette an acquisition notice (to compulsorily acquire land). Councils must apply to the Minister for Local Government requesting that the Minister recommend to the Governor that approval be granted for the acquisition. Applications to the Minister are made through the Director-General of the Department of Local Government.

#### **4.20 Can a ‘proposed acquisition notice’ (section 11) be altered or rescinded (invalidated)?**

Yes. A council can change a proposed acquisition notice to correct clerical errors or obvious mistakes by a issuing a further notice (section 16 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

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#### **4.21 Can an ‘acquisition notice’ (section 19) be altered or rescinded (invalidated)?**

Yes, but only with consent. Under section 31 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the Governor can rescind an acquisition notice (in whole or in part) by a further notice published in the gazette.

Rescission (invalidating a notice) is only possible in limited circumstances. The Minister must first certify that it is necessary to rescind the notice to correct a clerical error or obvious mistake, or for another good cause, or because the owners of the land have agreed to the rescission.

The effect of the rescission notice is to give ownership of the land back to the original landowner (or the owner the council acquired the land from).

Rescission reverses the effect of section 20 of the *Land Acquisition (Just Terms Compensation) Act 1991* and the land is once again subject to all the encumbrances which were cleared by the original acquisition notice. So any easements that were on the land, for example, will affect the land again.

If a council rescinds an acquisition notice, it may still be subject to claims for compensation under Part 4 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

#### **4.22 What if a ‘resumption application’ has been lodged with the Department of Lands?**

A ‘resumption application’ is an application that a council makes to the Registrar-General of the Lands and Property Division of the Department of Lands to be registered as the proprietor of the land.

If a ‘resumption application’ has already been lodged with the Registrar General under section 31A(2) of the *Real Property Act 1900*, a rescission notice cannot rescind or invalidate the acquisition notice with respect to that land.

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## **4.23 Summary of the approval process – who does what?’**

### **Application by the council**

- Council should satisfy itself that it has power to acquire the land and determine which legislative provision applies.
- Council should make reasonable efforts to acquire the land by agreement.
- If acquiring the land by compulsory process, it should do so by resolution at a council meeting. The resolution should also authorise making necessary applications to the Minister and/or the Governor.
- Before submitting an application, council should ensure that all relevant information and documentation referred to these Guidelines is provided.
- The application should be sent directly to the Director-General of the Department of Local Government.

### **Assessment by the Minister and the Department of Local Government**

- The council’s application is examined by the Department to establish that the acquisition is in accordance with the relevant legislation.
- The Department submits a report on the application to the Minister.

*Where the pre-acquisition procedures under the Land Acquisition (Just Terms Compensation) Act apply*

The Minister will decide whether to –

- approve of the council giving a proposed acquisition notice; and
- recommend that the Governor approve council publishing an acquisition notice.

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*Where the pre-acquisition procedures under the Land Acquisition (Just Terms Compensation) Act do not apply*

- The Minister will decide whether to recommend that the Governor approve council publishing an acquisition notice.
- If the Minister approves of the council giving a proposed acquisition notice and/or recommends the application for the approval of the Governor, the Minister will arrange for an acquisition notice (which is prepared by the Department) to be submitted to the Governor at the next available meeting of the Executive Council for determination.
- The Governor and the Executive Council will determine the application and advise the Minister of their decision.
- The Minister will notify the Department of the Governor's decision.
- The Department will notify council of the Minister's and the Governor's decision once the necessary documentation is returned from the Governor's Office.

*If acquisition is approved*

- The Department will forward to council the approved acquisition notice for council to publish in accordance with section 19 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

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### **Where the pre-acquisition procedures apply – council’s post-approval actions**

- After receiving acquisition approval, council gives the proposed acquisition notice together with a ‘claim for compensation’ form to the landowner(s) without delay (section 12 of the *Land Acquisition (Just Terms Compensation) Act 1991*). The prescribed claim for compensation form is available from the Department of Commerce website, [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm).
- In the case of Crown land where native title has not been extinguished, the council must also give the proposed acquisition notice to the persons or bodies, as provided in the form available from the Department of Commerce website, [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm).
- Council has a statutory obligation to give the Registrar-General and the Valuer-General a proposed acquisition notice whenever the compulsory acquisition process is commenced (section 17 and 18 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

### **Where pre-acquisition procedures do not apply – council’s post-approval actions**

- After receiving approval, council’s general manager or public officer (section 683 of the *Local Government Act 1993*) should complete the acquisition notice approved by the Governor by signing and dating it immediately before publication.
- Council must publish the acquisition notice as soon as possible in the ‘Private Advertisements’ section of the Government Gazette.
- If practical, a copy of the acquisition notice should be published in at least one newspaper circulating in the district in which the land is located (see section 19(2) of the *Land Acquisition (Just Terms Compensation) Act 1991*).
- Council should determine how the acquired land will be classified before gazettal of the acquisition notice.

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## Publication of the acquisition notice

- The acquisition notice must be signed and dated by council's general manager or public officer and published by council in the 'Private Advertisements' section of the Government Gazette within the specified period.
- Unless the notification period has been reduced, the 'acquisition notice' must be gazetted between 90 and 120 days after giving the 'proposed acquisition notice'. Otherwise, the proposed acquisition notice shall be taken as withdrawn and another notice cannot be given within 12 months without the Minister's consent. (sections 13(1); 13(2); 14(1) and 14(2) of the *Land Acquisition (Just Terms Compensation) Act 1991*).

**Note:** *The original acquisition notice, which is endorsed (stamped) on the back of the notice by the Clerk of the Executive Council, should be retained in the council's records as evidence of the Governor's approval. The Government Gazette (Department of Commerce) may ask for evidence of the Governor's approval. If such evidence can't be provided, the Gazette may refuse to publish the acquisition Notice. See 'Department of Local Government Circular 05/40' available from [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au).*

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## **Effect of the acquisition notice**

Section 20 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

- On the date of publication of the acquisition notice in the Government Gazette, the land described in the notice is, by force of the Act, owned by the council free from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land (other than easements which are specifically excepted by reference in the notice).
- If the land was formerly 'community land' owned or managed by the council, the acquisition will not discharge it from any trusts, estates, interests, dedications, conditions, restrictions, dedications, restrictions or covenants that affected the land or any part of the land immediately before acquisition (section 186(3) of the *Local Government Act 1993*).
- Notice of the publication of the acquisition notice and an offer of compensation (as assessed by the Valuer-General) must be given to the former landowner(s) within 30 days of publication of the notice (section 42 of the *Land Acquisition (Just Terms Compensation) Act 1991*). The prescribed compensation notice form is available from the Department of Commerce website, [www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm](http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Land+Acquisition.htm).

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# Annexure 1

# Annexure 1

## Checklist of information required for Compulsory Acquisition applications

**Important Note:** Refer to Part 4 of the Guidelines to identify the items relevant to your application. Delete any items not relevant to your application. Items in bold are required for all compulsory acquisition applications. Remember that 'landowner(s)' includes any holders of native title, or any holder/beneficiaries of any interest in the land (eg, mortgages, permits, licenses, leases or easements).

- Statement identifying the legislative provision(s) that council relies on to allow the acquisition**
- Application form for Minister/Governor approval (Annexure 2)**
- Approved council minutes (with date of council's resolution)**
- Report recommending compulsory acquisition of the land**
- 'Purpose of acquisition' statement**
- Written survey description of the land or interest to be acquired**
- 2 copies of marked deposited plan or acquisition plan (A4 size)**
- Landowner(s) name and address**
- 'Mines and minerals' statement**
- Copy of the landowner(s) request for acquisition
- Copy of the landowner(s) agreement to acquisition, including compensation payable
- Copy of the relevant provisions of the council's local environmental planning instrument(s) under which the landowner has requested 'owner-initiated acquisition'
- Statement that council is satisfied that the owner-initiated request has been submitted by all landowners
- Statement that the council is satisfied that the owner will suffer hardship (section 23 and 24 of the *Land Acquisition (Just Terms Compensation) Act 1991*)
- Reasons for acquiring the land or an interest in the land by compulsory process instead of by agreement

- Statement on council's actions to acquire the land or an interest in the land by agreement
- Copies of any landowner(s) submissions
- Council's comments on landowner(s) submissions
- Landowner(s) written approval of acquisition for the stated purpose
- Evidence of 'diligent inquiry' to identify landowner(s)
- Statement on why any resale proposal is ancillary to the purpose of the acquisition
- Indication of compensation payable
- Request (including reasons) for a reduction in the notice period
- Copy of the road widening order, including date of gazettal and Department's file number re the approved road widening plan for section 203 *Roads Act 1993* applications
- (*If public road*) Indication of why council is not proceeding under the road closure provisions of the *Roads Act 1993*
- (*If public road*) Information on public consultation processes
- (*If public road*) Indication of consultation with Utilities authorities occupying the road or road reserve
- (*If Crown road or unformed council road*) Copy of agreement to the acquisition from Department of Lands/ other relevant agency
- (*If Crown land*) Copy of agreement to the acquisition from Department of Lands/other relevant agency, including any compensation payable
- (*If acquisition is for re-sale*) Indication of any intervening council activity, such as prior subdivision approval by the council
- Statement on whether application is proceeding on the basis of native title being extinguished, or not
- (*If acquisition is for re-sale*) Evidence of 'diligent inquiry' to identify native title holders or evidence of completed 'right to negotiate' process

- Copy of legal opinion supporting native title being extinguished or copy of opinion from the Department of Lands supporting native title being extinguished
- Native Title Register search results
- Advice as to whether there is any native title party in terms of the *Native Title Act* 1993 (after two months from notices being given)
- Copy of any agreement given to the determining body under section 27 of the *Native Title Act* 1993
- Copy of a determination made under Subdivision P of the *Native Title Act* 1993 permitting compulsory acquisition (including any conditions)
- Evidence that the non-claimant native title application is unopposed (section 67(4) of the *Native Title Act* 1993)

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## Annexure 2

# Annexure 2

## Application for the Compulsory Acquisition of Land

(Section 39 of the *Land Acquisition (Just Terms Compensation) Act 1991*)

(Department of Local Government to Complete)

Application linked to

It is your responsibility to ensure that documents required (as outlined in the *Guidelines for the Compulsory Acquisition of Land by Councils*, June 2006) are submitted with the application(s).

**The processing of applications will only proceed once all of the required information is received by the Department of Local Government.**

### 1. Details of Council

1.1 Name of council: .....

1.2 Address: .....

.....

1.3 Phone: .....

1.4 Contact person/position: .....

### 2. Council's Resolution to Acquire Land

2.1 Date of resolution: .....

2.2 Does the resolution authorise acquisition by compulsory process? Yes/No

2.3 Does the resolution authorise making an application to the Minister/Governor? Yes/No

2.4 Copy of the official minutes recording the resolution provided? Yes/No  
(attach)

2.5 Copy of the report recommending compulsory acquisition provided? Yes/No  
(attach)

(If No to 2.2, 2.3, 2.4 or 2.5 the application cannot proceed)

**3. Legislative Provisions Allowing Acquisition**

1.1 Name of Act: .....

1.2 Relevant sections: .....

1.3 If under *Roads Act*, road widening order and plan obtained? Yes/No  
(attach copy(s))

**4. Purpose of the Acquisition**

(Clear statement of the 'public purpose' for which the land is being acquired)

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

**5. Land to be Acquired**

5.1 Description of the land [no part lot numbers]

Lot:..... DP:.....

Lot:..... DP:.....

Lot:..... DP:.....

Lot:..... DP:.....

Lot:..... DP:.....

(Attach 2 copies of the marked registered plan in A4 size)

- 5.2 Date & formal copy of title search provided? Yes/No  
(attach copy)
- 5.3 Is the land to be acquired a public road? Yes/No  
(If No, go to 5.5)
- (If Yes, reason for not proceeding under the road closure provisions of the *Roads Act 1993*)
- .....
- .....
- .....
- .....
- .....
- (If Yes, description of public consultation conducted)
- .....
- .....
- .....
- .....
- .....
- (If Yes, description of consultation with any Utility authorities occupying the road or road reserve)
- .....
- .....
- .....
- .....
- .....
- 5.4 Is the land to be acquired a Crown road or an unformed council road? Yes/No  
(If No, go to 5.7)  
(If Yes, go to 5.6)
- 5.5 Is the land to be acquired Crown Land? Yes/No  
(If No, go to 5.7)
- 5.6 Department of Lands/Crown Agency consent to council acquiring the land? Yes/No  
(attach copy)
- 5.7 Any easements/leases/other interests affecting the land? Yes/No

5.8 Is the interest to continue after acquisition? Yes/No  
(Description of easements to remain after acquisition)

.....  
.....  
.....  
.....  
.....

5.9 Are minerals included in the acquisition? Yes/No  
(If Yes, description of minerals to be acquired)

.....  
.....  
.....  
.....  
.....

5.10 Is the acquisition ancillary to another acquisition? Yes/No  
(attach statement)

**6. Landowners**

6.1 Name(s) of landowner(s):

.....  
.....  
.....  
.....

6.2 Address of landowner(s):

.....  
.....  
.....  
.....

- 6.3 Who owns what (land or interest in the land)?
- Land:..... Owner:.....
- 6.4 History of contact with the land/interest owner(s) provided? Yes/No  
**(attach copy(s))**
- 6.5 Is the acquisition owner-initiated? Yes/No  
 (If No, go to 6.8)
- 6.6 Is owner-initiated request submitted by all owners? Yes/No  
**(attach statement)**  
 (If Yes, go to 6.7)
- 6.7 Has council made 'diligent inquiries' to identify all land owners? Yes/No  
**(attach copy(s))**  
*(If No, application can not proceed unless 'due diligence' requirements also complied with)*
- 6.8 Has 'hardship' been established? Yes/No  
**(attach copies of all supporting documents)**
- 6.9 Does the land or land interest owner(s) consent to acquisition? Yes/No  
**(attach copy)**
- 6.10 Has council tried to acquire the land by agreement? Yes/No  
**(attach statement)**
- 6.11 Representations received from land or land interest owner(s)? Yes/No  
**(attach copy(s))**
- 6.12 Has council responded to the representations received? Yes/No  
**(attach copy(s))**

## 7. Native Title

- 7.1 Date & formal copy of Native Title Register search provided? Yes/No  
**(attach)**
- 7.2 Does council claim that native title has been extinguished? Yes/No

7.3 If Yes, legal or Department of Lands opinion obtained? Yes/No  
(attach copy)  
*(If the legal or Department of Lands opinion on the extinguishment of native title is not provided, the application cannot proceed)*

7.4 If No, are all relevant notification requirements completed? Yes/No  
(attach copy(s))  
*(See Part 3 and Annexure 1 of the Guidelines for the Compulsory Acquisition of Land by Councils, April 2006)*

**8. Compensation Payable (Acquisitions by Agreement)**

8.1 Estimate of compensation payable: .....

**9. Re-sale**

9.1 Does council intend to sell the land once the land is acquired? Yes/No  
(If No, go to 8)

9.2 Any intervening activities by council (such as subdivision)? Yes/No  
(attach statement)

9.3 Is the land to be re-sold Crown Land? Yes/No  
(If No, go to 9.5)

9.4 Consent received from Department of Lands/other Agency for re-sale? Yes/No  
(attach)

9.5 Diligent inquiry process or 'right to negotiate' regime undertaken to identify native title holders? Yes/No  
(attach)  
(If No, application cannot proceed)

9.6 Date of fixing notice to the land: .....

9.7 Date/name of newspaper containing public notice of the intention to compulsory acquire land  
(attach copy):  
.....  
.....

**10. Reduction of Notice Requirements**

10.1 Is council applying for a reduction in the notice period (s.13)? Yes/No  
(If No, go to 11)

10.2 Period of reduction requested (in days): .....

10.3 State Valuation Office confirms that the valuation can be done in time? Yes/No  
(attach)

10.4 Reasons for notice reduction: .....  
.....  
.....  
.....  
.....  
.....  
.....

**11. Urgent Processing of Application**

11.1 Is council applying for urgent processing? Yes/No  
(If No, go to 12)

11.2 Reasons: .....  
.....  
.....  
.....

**12. Certification**

I certify that the information provided is to the best of my knowledge, true and correct.

Name: .....

Signature: .....

Date: .....

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## Annexure 3

## **Annexure 3**

### **Department of Commerce**

#### **SECTION 30 AGREEMENT**

When agreement has been reached you may be required to complete the following Section 30 Agreement

**LAND ACQUISITION (JUST TERMS COMPENSATION) ACT, 1991**

**SECTION 30 AGREEMENT**

**DEED OF AGREEMENT FOR COMPULSORY ACQUISITION OF EASEMENT,**

**RELEASE AND INDEMNITY**

1. The \*\*\*\*\* (Council) and the Owner (described in Schedule 1) agree pursuant to Section 30(1) of the Land Acquisition (Just Terms Compensation) Act 1991 (the Act) that the Council will acquire from the Owner by process subject to Section 30(2) of the Act the easement (described in Schedule 2)
  
2. The Council and the Owner agree that
  - i) the total compensation to be paid by the Council to the Owner for the acquisition of the easement (described in Schedule 2) shall be the amount of \$.....
  
  - ii) the compensation of \$ ..... shall be paid by the Council to the Owner within 30 days of the publication of the Acquisition Notice in the Government Gazette and on production by the Owner to the Council of the documents described within Schedule 3.
  
  - iii) the compensation amount set out in paragraph (ii) is inclusive of the liability (if any) of the Owner for GST, and the Owner is not entitled to any reimbursement of or to recover any amount of GST on the transaction from the Council.
  
3. The Owner warrants that:
  - i) the affected Land is wholly owned by the Owner;
  
  - ii) any other persons having any legal or equitable interest in the affected Land and the nature and extent of such interests are disclosed in Schedule 3.



## **SCHEDULE 1**

\*\*\*\*owner\*\*\*\*

## **SCHEDULE 2**

### **Description of Interests to be Acquired and Subject Land**

\* DP = Deposited Plan at Land and Property Information

<b>Interest to be Acquired</b>	<b>Subject Land</b>	<b>Interest in Subject Land</b>
<b>Easement rights for Council easement for water pipeline over that part of the site shown as '(E) PROPOSED EASEMENT FOR WATER PIPELINE VARIABLE WIDTH' in DP***** (SB****)</b>	Lot 11 DP*****	Registered Proprietor
	Lot 12 DP*****	Registered Proprietor
	Lot 2 DP*****	Registered Proprietor

---

**Rights to be Acquired:-**

---

Easement for Water Pipeline

FULL AND FREE right for the Body having the benefit of this easement (being a public or local authority) and every person authorised by it from time to time and at all times to pass and convey water in any quantities through the servient tenement TOGETHER WITH the right to use for the purpose of the easement any line of pipes (including works ancillary thereto) already laid within the servient tenement for the purposes of the passage and conveyance of such water or any pipe or pipes in replacement, substitution or duplication therefor and where no such line of pipes exists to lay place and maintain a line of pipes of sufficient internal diameter beneath the surface of the servient tenement and to lay place and maintain upon the surface of the servient tenement any works ancillary to the said line of pipes AND TOGETHER WITH the right for the Body having the benefit of this easement (being a public or local authority) and every person authorised by it with any tools, implements, or machinery, necessary for the purposes, to enter upon the servient tenement and to remain there for any reasonable time for the purposes of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipeline or any part thereof (including works ancillary thereto) AND for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary PROVIDED THAT the Body having the benefit of this easement (being a public or local authority) and every person authorised by it will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

---

### **SCHEDULE 3**

#### **Documents to be produced under Paragraph 2. ii)**

- (a) If the transaction is a taxable supply by the Owner, a tax invoice that complies with the requirements of the GST legislation and the Commissioner of Taxation's rulings and determinations (including, without limitation, the Owner's ABN);
- (b) If the transaction is not a taxable supply by the Owner, a document quoting the Owner's ABN or a completed "Statement by a supplier" Form as published by the Australian Taxation Office;

#### **Interests to be disclosed under Paragraph 3. ii)**

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## Annexure 4

## Annexure 4

### Approved Forms — Native Title (Notices) Determination 1998

**Notice of a proposed compulsory acquisition and statement regarding the conferral of rights and interests in relation to land and/or waters so acquired on the**  
(insert name of Council)

.....  
*Native Title Act 1993 (Cth) – Sections 24MD(1),(6A) & (7) and 26(1)(c)(iii)(A);*

*Land Acquisition (Just Terms Compensation) Act 1991 (NSW);*

*Native Title (Notices) Determination 1998 (Cth) and*

*Native Title (New South Wales) Act 1994, s.103*

*Native Title (New South Wales) Act 1994, Section 103*

#### **Description of the Area that may be affected by the Compulsory Acquisition**

The (insert name of Council) .....pursuant to (delete non-applicable) section 186 of the *Local Government Act 1993* or section 177 of the *Roads Act 1993*, and the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* ('the LAJTC Act'), intends to acquire by compulsory process for the purpose[s] of  
[insert purpose exactly as stated in the Acquisition Notice]

..... land (and/or waters) at (insert general location)  
described in Schedule 1 hereunder.

#### **Statement for the purpose of s.26(1)(c)(iii)(A) of the Native Title Act 1993 (Cth)**

The purpose of the acquisition is to confer rights or interests in relation to the land (and/or waters) described on the (insert name of Council) ....., being the government party for the purposes of section 26 of the *Native Title Act 1993 (Cth)*.

**Period within which the land (and/or waters) will be Compulsorily Acquired.**

The compulsory acquisition will occur by Acquisition Notice published in the NSW Government Gazette under section 19 of the LAJTC Act declaring the land to be acquired by compulsory process. That notice will appear in the Government Gazette not less than 90 days after the giving of this Notice (Or that notice will appear in the Government Gazette not less than ..... days after the giving of this Notice, being the period approved under section 13(2)(b) of the LAJTC Act by the Minister for Local Government). The compulsory acquisition will have effect from the date of publication of the Acquisition Notice in the Government Gazette and will continue to have effect thereafter.

**Compensation**

The Acquisition Notice may affect native title rights and interests (if any) in the land [and/or waters] as provided in section 24MD(2)(c) of the *Native Title Act* 1993 (Cth) and compensation may be payable for any such rights and interests so affected.

The Acquisition Notice will vest the (and/or waters) in the (insert name of Council) .....free of all interests. Section 55 of the LAJTC Act states that regard must be had to the following matters in determining the amount of compensation –

- (a) the market value of the land on the date of its acquisition;
- (b) any special value of the land to the person on the date of its acquisition;
- (c) any loss attributable to severance;
- (d) any loss attributable to disturbance;
- (e) solatium; and
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the purpose for which the land was acquired.

If compensation under the LAJTC Act is not on just terms, the holder of any native title rights and interests is entitled to compensation for the acquisition in accordance with Division 5, Part 2 of the *Native Title Act* 1993 (Cth).

**Claim for Compensation Form**

A Claim for Compensation form is enclosed. Any owner who wishes to claim compensation for the acquisition is requested to lodge with (insert name of Council)

..... a claim for compensation within ..... days

(period must be not less than 60 days: s.15(e) LAJTC Act) after the date of this Notice.

For further information contact –

Name of Council .....

Address .....

.....

.....

Contact person .....

Telephone .....

Facsimile .....

**Schedule 1**

(Insert description of land and/or waters and map if relevant)