



# Guideline—compulsory acquisition of Crown land

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*Acquisition of Crown land under the Land Acquisition  
(Just Terms Compensation) Act 1991*

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## Overview

The *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms) is a statutory process for empowered authorities to acquire any interest in land for a public purpose. Section 11 of Just Terms provides for a Proposed Acquisition Notice (PAN) to be issued to parties who have a statutory right to be notified and a right to claim compensation when land is being compulsorily acquired. The Department of Planning, Industry & Environment, Crown Lands (the department) is responsible for the state's interest in land administered under the *Crown Land Management Act 2016*.

These guidelines do not apply to:

- an entity that is not an authority without acquisition powers
- the sale of Crown land in accordance with the *Crown Land Management Act 2016*
- vesting of land between Government entities.

## Assistance

For assistance please contact the Department of Planning, Industry & Environment – Customer & Systems

Phone 1300 886 235 or email [cl.acquisitions@crowmland.nsw.gov.au](mailto:cl.acquisitions@crowmland.nsw.gov.au)

## Crown land

The department administers Crown land on behalf of the State of New South Wales in accordance with the *Crown Land Management Act 2016*. This legislation came into force in 2018 and improves the way Crown land is managed now and into the future. It ensures decision making around Crown land encompasses environmental, social, cultural heritage and economic considerations and facilitates enhanced community engagement.

When Crown land is made subject to a proposed compulsory acquisition, the department's role is to represent the registered owner's interest in that land.

Due to the potential for multiple interests in Crown land beyond that of the registered owner, the acquiring authority must conduct detailed assessment and investigation of all interests as part of the pre-acquisition procedures of a compulsory acquisition. Potential interest holders in Crown land may include the following; Native Title holders, Aboriginal Land Councils, Crown Land Managers, Local Land Services, beneficiaries of easements and tenure holders.

Just Terms prescribes the method and statutory time frames for notification of all interest holders of proposed acquisitions.

## Indigenous land rights and interests

Under both the *NSW Aboriginal Land Rights Act 1983* and the *Commonwealth Native Title Act 1993*, Aboriginal peoples may make claims over NSW Crown land. No acquisition of Crown land can progress until any Aboriginal land claim (ALC) or native title claim over the land are reconciled with the proposed acquisition.

The *Native Title Act 1993* is Commonwealth legislation and any claims made under that Act are assessed and determined by the National Native Title Tribunal (NNTT). Native title determinations primarily deal with whether indigenous rights and interests in Crown land exist or have been extinguished and involve extensive investigation and assessment. If native title is deemed to exist in an area, claims can be made over parts of that land.

ALCs are determined by the NSW minister responsible for the *Crown Land Management Act 2016*, and decisions are made based on whether the claim meets the criteria specified in the *NSW Aboriginal Land Rights Act 1983*. If an ALC is lodged over Crown land subject to a proposed acquisition at any time prior to gazettal, the acquisition is to be deferred pending finalisation or withdrawal of that claim.

## Compulsory acquisition of Crown land framework

It is the department's preference for any acquisition of Crown land to be undertaken by compulsory process, that is, by the issue of a PAN in accordance with Section 11 of Just Terms to all potential interest holders. The department will consider proposals to reach agreements on altered PAN notice periods or agreement to compensation on a case by case basis.

A step by step guide to the compulsory acquisition process for Crown land using the provisions of Section 11 of Just Terms is outlined below.

### Step 1 - Authority's pre-acquisition procedures

Pre-acquisition procedures of Just Terms requires the authority to be satisfied that all interests in the land have been identified. The department can assist in providing certain information from its data bases on some of the current users of Crown land however the authority should rely on its own enquiries to make sure it meets the requirements of the legislation.

The department requires the authority to demonstrate consideration of interests in Crown land before it will process the proposed acquisition of the Crown's interest.

### **Aboriginal Land Claims**

Generally, the department will not process or provide comment on a proposed acquisition where land is subject to an existing undetermined Aboriginal Land Claim (ALC). When a claim is identified authorities should seek to contact the lodging Aboriginal Land Council (LALC) in the first instance.

The authority should make its own enquiries with the Office of the Registrar, Aboriginal Land Rights Act 1983 to establish if the land is subject to an Aboriginal Land Claim.

<https://www.oralra.nsw.gov.au/> .

**Note** - During the acquisition process, the authority should periodically check with the Office of the Registrar, *Aboriginal Land Rights Act 1983* that no new claims have been lodged during the acquisition process.

Written correspondence from the claimant land council confirming the withdrawal of the land claim must be provided to the department with the notification form for compulsory acquisition of Crown land.

Enquiries for land that is subject to a current incomplete ALC will be returned to the authority unprocessed.

### **Native title Claims**

Pre-acquisition procedures will require the authority to identify where Crown land is affected by Native Title Claims, Native Title Determinations & Indigenous Land Use Agreements. A geospatial search report from the National Native Title Tribunal (NNTT) is useful to identify these interests.

[http://www.nntt.gov.au/assistance/Geospatial/Pages/Geospatial\\_Searches.aspx](http://www.nntt.gov.au/assistance/Geospatial/Pages/Geospatial_Searches.aspx)

The report should be provided to the department as supporting documentation to the notification form.

**Note** - During the acquisition process, the authority should periodically check the NNTT that no new claims or agreements have been registered during the acquisition process.

### **Native title rights**

All Crown land is considered to be subject to Native title rights unless a determination of Native title has been made by the Federal Court.

As part of pre-acquisition procedures and to inform their process, the authority must establish the Native title status of the land through a historic and current status review. Evidence of this status review is to be provided with the authority's notification form.

Further information on Native title is available on the department's website.

<https://www.industry.nsw.gov.au/lands/what-we-do/our-work/native-title#:~:text=Native%20title,to%20be%20recognised%20and%20protected.>

## Step 2 – Notification and supporting information

A compulsory acquisition notification form must be completed in full and provided to the department together with supporting documentation for review. This is done via the web-based notification form accessed via the Compulsory Acquisition page of the Crown Lands website.

The complete notification package must include:

- Completed form;
- A detailed site plan, diagram or survey showing the location of the proposal;
- A detailed description of the proposal sufficient to understand its full extent and likely impacts;
- Agents Authority to Act (if applicable)
- Results of recent search of Office of the Registrar, *Aboriginal Land Rights Act 1983* showing that land is not affected by ALC (if applicable)
- Evidence of the concurrence to the acquisition and withdrawal of an ALC from the lodging Land Council (if applicable)
- Geospatial Search Report from National Native Title Tribunal
- Ownership Status Report

## Step 3 – Department’s response to proposed acquisition

Upon receipt of a complete notification package from an authority, the department will record and acknowledge the notification and issue an invoice for the department’s administration fee. The fee must be paid within seven days of the invoice being received. The department will not progress a notification further until payment is made.

Payment of the administration fee will trigger the initial assessment of the information contained within the notification package by the department. Where appropriate, the department will provide to the acquiring authority within 6-8 weeks a letter of “no objection” to the receipt of a PAN in accordance with section 11 of Just Terms.

## Step 4 – Proposed Acquisition Notice under Sec. 11

Once the authority is satisfied that it has concluded its pre-acquisition procedures and has the appropriate approval under the relevant enabling Act to continue with the acquisition, the authority must provide a Proposed Acquisition Notice (PAN) to the department for its interest in the land together with a notice to any and all other identified interest holders as per the requirements of Just Terms.

The PAN is to be accompanied by a claim for compensation form under section 39 of Just Terms. The department will complete the claim for compensation form for the registered owner’s interest in the land and return the completed form within 60 days.

## Step 5 - Notification in Government Gazette

The publication of an acquisition notice in the NSW Government Gazette brings the land described in the notice into the ownership of the authority. The gazettal can be undertaken by the authority no less than 90 days but within 120 days from the date of issue of the PAN. The authority must advise the department in writing of its intention to lodge a notification 10 working days prior to gazettal.

## Step 6 – Compensation determination or agreement

### Compensation by agreement

The acquiring authority can make an offer of compensation to the department for the registered owner's interest. The offer must be supported by a recent valuation report compiled by an Australian Property Institute Certified Practising Valuer.

The authority is encouraged to contact the department in the first instance should it wish to consider compensation by agreement. Negotiation of compensation should commence prior to the issue of the PAN and can continue up to the date of gazettal.

The overarching object of Just Terms is to guarantee that when land is compulsorily acquired, the amount of compensation will be not less than the market value of the land. The department does not hold delegation to accept compensation that is less than market value for compulsorily acquired Crown land.

The total amount of compensation becomes due at the date of acquisition and must be paid to the department within 28 days of the acquisition being notified in the Government Gazette. Statutory interest will start to accrue after notification of the acquisition in the Government Gazette.

Should an agreement for compensation be reached, upon request the department can provide a tax invoice for payment at the date of the gazettal.

The authority is required to negotiate with all interest holders independently. Should an agreement not be reached with any one of the interest holders, compensation for the acquisition of all interests will be determined by the Valuer General.

### Compensation by determination

Should the authority wish to have the value of compensation made by determination, they can engage the Office of Valuer General. The Valuer General will engage a registered valuer to provide a total of compensation in accordance with Section 55 of Just Terms or Treasury Directions for transfers of realty between government agencies.

The total amount of compensation becomes due at the date of acquisition and must be paid to the department within 28 days of the acquisition being notified in the Government Gazette. Statutory interest will start to accrue after notification of the acquisition in the Government Gazette.

When the determination is made by the Valuer General, the authority should seek to make payment to the department based on the Valuer General's Letter of Determination.

Tax invoices for compensation owed to the Crown cannot be issued by the department without prior arrangement and provision of the Valuer General's Letter of Determination.

## Step 7 – Compensation – Payment and Statutory Interest

The total amount of compensation becomes due at the date of gazettal and must be paid to the department within 28 days of the acquisition being notified in the Government Gazette. Statutory interest will start to accrue after notification of the acquisition in the Government Gazette.

Statutory interest forms part of the compensation provisions of Just Terms. Payment of statutory interest when it accrues is mandatory to comply with Just Terms. In certain circumstances relating to the department's system/data/staff/processing discrepancies, agreement to a waiver or reduction in statutory interest will be considered in line with Annexure B of the departments Financial Concessions Policy (IND-O-254). Before the department can consider a waiver of Statutory Interest, the amount of determined or agreed compensation must be paid in full.

## PAN timeframes

The acquisition must be gazetted between 90-120 days of the PAN being issued unless otherwise agreed. The PAN is considered withdrawn if the land is not gazetted within 120 days of the notice. Shorter or extended notice periods are available by negotiation.

Should an alteration to the PAN period be desired, all other PAN recipients must first agree before the request is made to the department.

## Completion of an Acquisition Notification

The department considers an acquisition notification to be completed under the following circumstances:

1. Gazettal of the acquisition and payment in full of compensation and statutory interest (if applicable)
2. Lodgement of an ALC over the Crown land
3. Failure to provide the department with a PAN within 12 months of the notification form being received
4. Failure to gazette the acquisition in the required/agreed time frame post issue of the PAN.

If the land becomes subject to an ALC or the authorities does not issue a PAN within 12 months of the department's acknowledgement, the account associated with the proposed acquisition will be closed and the administration fee will be forfeited.

### Access to Crown land

The department acknowledges that the acquiring authority may require access to Crown land for the purposes of investigation prior to the completion of the acquisition process. Entry to, or use of Crown land will require the authority to obtain a tenure or written consent from the department. Further information on application for a tenure can be found on the department website: [www.industry.nsw.gov.au/lands/what-we-do/fees-and-forms/forms](http://www.industry.nsw.gov.au/lands/what-we-do/fees-and-forms/forms)

## Definitions

Keywords used in these guideline are defined as below. Just Terms Act provides definitions in section 4, and where a contradiction exists, the Act will prevail.

**Table 1: Definitions**

Word	Meaning
Administration Fee	The department's fee for processing the registered owner's interest after notification of a proposed acquisition, as per Schedule 1 of the Crown Land Regulations 2018 <a href="http://classic.austlii.edu.au/au/legis/nsw/consol_reg/clmr2018290/sch1.html">http://classic.austlii.edu.au/au/legis/nsw/consol_reg/clmr2018290/sch1.html</a>
Compulsory Acquisition	A statutory process under section 11 of the <i>Land Acquisition Just Terms Compensation Act 1991</i>
Due Diligence	A comprehensive appraisal of Crown land undertaken to establish entities or persons who may hold an interest in Crown land in accordance with a statute. .
Just Terms	The <i>Land Acquisition (Just Terms Compensation) Act 1991</i>

Gazette	The official Government Gazette is the permanent public record of official notices issued by the NSW Government
Gazettal	The action of a notification appearing in the Government Gazette
Indigenous Rights	A term used to reflect the rights of indigenous peoples under the <i>Native Title Act 1993</i> and the <i>Aboriginal Land Rights Act 1983</i>
PAN	Proposed Acquisition Notice is a notice of intention to acquire land by compulsory process and forms part of section 11 of Just Terms
Proposed Acquisition	Land that is the subject of a compulsory acquisition which is yet to be notified in the Government Gazette
Tenure	Occupation of Crown land usually in the form of a lease or licence.
Valuation	Defined by the Australian Property Institute as "an established, ethical and evidence-based process for assessing the monetary value of an asset at a specified date, that is legally defensible and undertaken by a qualified, professional Valuer."

## Related Documents

- Compulsory Acquisition of Crown land Notification form  
<https://www.industry.nsw.gov.au/lands/access/compulsory-acquisition/notification-of-proposed-compulsory-acquisition-of-crown-land>
- *Land Acquisition (Just Terms Compensation) Act 1991* Claim for Compensation for compulsory acquisition of land form  
[https://www.valuergeneral.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/219219/Claim\\_for\\_Compensation\\_form\\_Section\\_39.pdf](https://www.valuergeneral.nsw.gov.au/__data/assets/pdf_file/0006/219219/Claim_for_Compensation_form_Section_39.pdf)
- Financial Concessions Policy (IND-O-254).  
[https://www.industry.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/172471/IND-O-254-Crown-land-financial-concessions-policy.pdf](https://www.industry.nsw.gov.au/__data/assets/pdf_file/0004/172471/IND-O-254-Crown-land-financial-concessions-policy.pdf)

Transactions involving Crown land may also be affected by and/or require compliance with other Legislation including but not limited to:

- *Land Acquisitions (Just Terms Compensation) Act 1991*  
<https://www.legislation.nsw.gov.au/#/view/act/1991/22>
- *Aboriginal Land Rights Act 1983* <https://www.legislation.nsw.gov.au/#/view/act/1983/42>
- *Native Title Act 1993* <https://www.legislation.gov.au/Details/C2012C00273>
- *Conveyancing Act 1919* <https://www.legislation.nsw.gov.au/#/view/act/1919/6>
- *Real Property Act 1900* <https://www.legislation.nsw.gov.au/#/view/act/1900/25>
- *Valuation of Land Act 1916* <https://www.legislation.nsw.gov.au/#/view/act/1916/2>
- *Property NSW Act 2006* <https://www.legislation.nsw.gov.au/#/view/act/2006/40>
- *Local Government Act 1993*  
[http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/lga1993182/](http://www5.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/)
- *Crown Land Management Act 2016* <https://www.legislation.nsw.gov.au/#/view/act/2016/58>
- Crown Land Management Regulations 2018  
<https://www.legislation.nsw.gov.au/#/view/regulation/2018/88>
- *Local Land Services Act 2016* <https://www.legislation.nsw.gov.au/#/view/act/2013/51/full>