



This guideline explains the circumstances and process by which Roads and Maritime Services may, in its absolute discretion, purchase residential properties not within the construction footprint of a road project, or otherwise required for the project, in circumstances where a land owner is able to demonstrate exceptional hardship.

This guide is applicable until withdrawn or replaced by Roads and Maritime, and does not constitute legal advice.

Introduction

During development and design of road projects, Roads and Maritime seeks to minimise the impact of the construction and operation on properties in the vicinity of the road or road works. Thorough environmental assessments are carried out as part of the development and approval of a road project. Roads and Maritime often consults with property owners neighbouring the project, as appropriate, at various stages of developing the project, as well as more broadly for State significant road projects, to address concerns they may have about potential impacts. This can result in changes to the design of the project to avoid or minimise impacts, including specific or targeted mitigation measures.

In almost all cases, impacts on properties are temporary, or can be appropriately managed through mitigation measures in the design or as part of the conditions of approval of a project. These measures may include improvements such as noise insulation of homes (for example installing double glazing windows, or noise walls) and landscaping for visual screening.

Property owners who are concerned about potential impacts of a road project should contact the relevant project team to discuss their concerns. Contact details for projects can be found in project newsletters or by searching for the project on the Roads and Maritime website.

Exceptional hardship

In some exceptional circumstances, mitigation measures may not provide a solution to a landowner's hardship circumstances that are further impacted by a road project. In these cases an owner may request Roads and Maritime purchase their residential property.

This document outlines some of the matters that Roads and Maritime may consider in determining a request to purchase a residential property that is within the vicinity of a road project, but not within the construction footprint. Each owner and property will have particular, individual circumstances, and this guide is not an exhaustive list of matters that may or may not be considered. Roads and Maritime will, in all circumstances, consider whether it has appropriate funding available to proceed with a purchase.

The exceptional hardship land purchase process responds to residential property owner(s), in the vicinity of a road project, who have a serious and pressing need to sell their property due to exceptional personal circumstances, but are unable to do so because of a negative impact on their property as a result of the road project. The owner's exceptional personal circumstances must be demonstrated, and must be capable of constituting real and disproportionate hardship (further explained below). In such circumstances, Roads and Maritime may make an offer to purchase the property, in its absolute discretion, following a request from the owner(s).

Where Roads and Maritime agrees to make an offer, the purchase price is based on the market value of the property, disregarding the road proposal. The terms of an offer will include that Roads and Maritime is responsible for its costs associated with the purchase, and the property owner must pay their costs of the sale. For example, these costs could include conveyancing and mortgage discharge fees.

Real and disproportionate hardship

The owner must demonstrate, to the reasonable satisfaction of Roads and Maritime, that they suffer or will suffer exceptional hardship as a result of the road project that is:

- **real**, in the sense that it is serious, genuine and immediate and is supported by relevant evidence. An unsubstantiated perception or concern about possible future impacts is not sufficient as these concerns are addressed through the project mitigation controls identified through the environmental assessment process
- **disproportionate**, in the sense that the particular hardship is significantly greater than any adverse impacts that may be experienced or would be anticipated to be experienced by most other owners in the vicinity of the project.

In considering whether an owner suffers hardship and whether the hardship is sufficiently real and disproportionate to justify the decision to purchase, Roads and Maritime may consider:

- the nature of the circumstances that are claimed to constitute hardship, their uniqueness, duration and their extent, and the steps that the owner has taken to improve the hardship
- the personal circumstances of the owner and/or members of the owner's family living at the property, including physical or mental health factors (including age and mobility needs). Relevant medical evidence would assist in supporting the application
- any urgent and compelling need to sell (for example, in order to move into residential aged care). Relevant documentary evidence should be included with the application
- severe physical impact on the amenability and liveability of the property either generally or because of the particular attributes of the owner or the owner's family.

Environmental impacts from the project (such as noise or visual impact), which are considered as part of the standard project environmental assessment process and development of the road project, would not generally constitute real and disproportionate hardship.

Eligibility

A property owner who is experiencing real and disproportionate hardship may request Roads and Maritime to purchase their property.

As the land is not within the construction footprint or otherwise required for the project, a decision to purchase the property is at Roads and Maritime's absolute discretion.

To determine eligibility, Roads and Maritime will first consider whether the request meets certain preliminary criteria. Where these criteria are not demonstrated, Roads and Maritime may decide to not further consider the application.

An application for this process should demonstrate how it complies with all of the following 'preliminary' requirements (**preliminary criteria**):

- the property must be a private residential property
- the property must be in the vicinity of the road project

- the property must not be identified for future land acquisition or be the subject of a completed partial acquisition
- the owner must be a person and not a corporate entity or trust, but may be a body corporate owner of private residential property (such as an owners corporation of a strata or neighbourhood scheme) and all owners of a property must sign the request for purchase
- the property must be available for public sale and the owner must have made a reasonable attempt to sell the property and been unsuccessful as a result of the road proposal
- at the time of purchase of the property, the owner was not aware, or could not reasonably have been aware, of the proposed road project or the particular impacts of that project
- the application can be made up to 12 months after completion of the road or road work
- the owner must be willing to agree to Roads and Maritime conditions regarding the purchase and resale of the property.

If an application does not address the above preliminary criteria, Roads and Maritime may determine not to proceed further with the application. Where an application, in the view of Roads and Maritime, adequately addresses the preliminary criteria, Roads and Maritime will then consider the unique circumstances of the matter.

If Roads and Maritime is satisfied that exceptional hardship circumstances exist and adequate funding is available, it may choose to offer to purchase the property. However, Roads and Maritime is under no obligation to do so. Where Roads and Maritime does make an offer, it effectively becomes the buyer of the property that the owner cannot find in the open market.

Premature applications

Environmental assessments, approvals and the detailed design process of any road project seek to minimise impacts on properties. Owners are generally advised to wait for the outcomes of these assessments before making an application for purchase.

However, if the owner's exceptional hardship circumstances relate to a serious and pressing need to sell the property, regardless of the environmental impact, then Roads and Maritime may, at its discretion, consider the application before the outcome of such environmental assessments.

When applications are made before the effectiveness of proposed mitigation measures relevant to the owner's property have been assessed or the measures implemented, Roads and Maritime may determine not to consider the application until the effectiveness of such measures can be assessed.

Applications and assessment process

The owner must make a written request for the purchase of their property. The request should include details of their particular exceptional hardship circumstances and demonstrate how they meet the preliminary criteria (see below). The application, where appropriate, should include any supporting information and evidence. To ensure Roads and Maritime can fully consider an application, it must address all requirements in detail and include supporting information.

Applications are to be lodged with:

**The Exceptional Hardship Coordinator
Infrastructure Property Section
Roads and Maritime Services
PO Box 973 Parramatta NSW 2124**

Once received, Roads and Maritime will review an application and its supporting documents and may request further information if required. However, Roads and Maritime may determine not to consider requests for purchase where the applications are incomplete, premature or do not satisfy the preliminary criteria, as detailed under the heading 'Eligibility'.

Applications which satisfy the preliminary criteria may be referred to the Exceptional Hardship Land Purchase Committee. The Committee, which will have an independent chair, will review each application referred to it, and make a recommendation to the Chief Executive of Roads and Maritime. The Chief Executive will make a final decision as to whether or not to make an offer to purchase a property.

Applicants will be advised of Roads and Maritime's determination and it does not propose to review these decisions once made.

An owner may withdraw a request for Roads and Maritime to purchase the property at any time, and is free to sell the property on the open market, if preferred.

Purchase process and resale conditions

Subject to the approval process above, the purchase of the property will be completed by a contract and transfer similar to an open market sale. The exceptional hardship land purchase process does not fall within the *Land Acquisition (Just Terms Compensation) Act 1991*. The purchase price for the property will be determined by an assessment of the market value of the property, disregarding the road proposal.

Roads and Maritime will appoint a valuer to value the property and will subsequently make a written offer to the owners which will include a summary of the non-negotiable purchase conditions. The non-negotiable conditions of the contract will include:

- authority for Roads and Maritime to resell the property. This may include authority to resell the property during the period between exchange of contracts and settlement whilst the existing owner remains in ownership of the property. This may involve an extended settlement period to accommodate the resale process and would require the owner to allow potential pre-scheduled buyer inspections of the property to facilitate the re-sale process
- prohibit the vendor or any person or legal entity connected with the vendor from repurchasing the same property when it is on-sold
- require the vendor to provide a current land survey of the property and a full Section 149 Certificate (parts 2 & 5). An allowance will be nominated to reimburse these items.

Roads and Maritime may require the inclusion of additional conditions as appropriate and reasonable, given the circumstances of the owner or the property.

If the owner accepts the offer, contract documents will be prepared by Roads and Maritime's solicitor and issued to the owner. Each party will be responsible for their own costs of the sale, and the owner will not be entitled to claim payment for any other expenses or compensation for the purchase.

Owner's request for valuation review

If the owner does not agree with the offer made they may request a further valuation, within three months of the date of the letter of offer. When a request for a further valuation is received in writing, the existing sale offer will be withdrawn. A request for a further valuation will follow the process below:

- (i) The owner chooses a valuer from a panel of independent expert valuers nominated by the Australian Property Institute and who has been referred to the owner by Roads and Maritime. In this way the valuer chosen is mutually acceptable to both the owner and Roads and Maritime.

- (ii) The selected valuer acts as an independent expert and is commissioned by Roads and Maritime to carry out a valuation of the property.
- (iii) The owner and Roads and Maritime are each responsible for payment of 50 per cent of the independent expert's fee.
- (iv) The owner and Roads and Maritime may make written submissions to the independent expert about any matter they consider relevant to the value of the property, within the first seven calendar days after the independent expert is commissioned.
- (v) Roads and Maritime will make a formal offer to the owner in the amount of the independent expert's decision which will be binding on both parties if the owner wishes to proceed with the purchase.
- (vi) No further valuations will be obtained and the offer to purchase at the value determined by the independent expert will remain open for a period of three months from the date of the new offer. After three months the offer will lapse.

Privacy statement:

Your personal and health information collected in your application to Roads and Maritime Services to purchase your property will be held by Roads and Maritime Services. You may contact Roads and Maritime at **The Exceptional Hardship Coordinator, Infrastructure Property Section, Roads and Maritime Services, PO Box 973 Parramatta NSW 2124** to request access to and/or correction of this information.

Your personal and health information is being collected and will be retained and used for the purpose of assessing your application. Providing this information is voluntary but Roads and Maritime may not be able to progress your application unless you do so.

Your personal and health information held by Roads and Maritime may be disclosed in order to assess your application or to verify it, and to the Independent Chair of the Exceptional Hardship Land Purchase Committee. Otherwise Roads and Maritime will not disclose your personal or health information without your consent unless authorised by law.

Further information

If you would like to discuss any aspect of the Exceptional Hardship Land Purchase Process please contact Roads and Maritime on telephone number (02) 8849 2905.

Property owners who are concerned about potential impacts from roads or road works should contact the relevant project team in the first instance to obtain further information. Contact details for projects can be found on project newsletters in your local area or by searching for the project on the Roads and Maritime website.

If you don't have any contact details for a particular road project, you may contact Roads and Maritime by phone on telephone number 13 22 13 (select 1) and quote the name of the relevant road project. An operator will transfer you to the respective project team.