

Connecting
our communities

Land Acquisition

A guide to the land acquisition process



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Introduction

What is land acquisition and why is it necessary?

VicRoads is responsible for providing a safe and efficient road network as part of the broader transport network in Victoria. To continue to improve our transport system by updating existing roads or constructing new ones, it is often necessary to acquire land. It is becoming increasingly important that we update our roads to accommodate for Victoria's growing population. As VicRoads is committed to increasing the efficiency of our roads and reducing serious injuries and loss of lives on Victoria's roads, it is necessary to widen roads, upgrade intersections and improve the general safety features of our roads. In order to build these projects, we may need to acquire land, some of which may be owned by individuals or businesses. We understand that finding out your land needs to be acquired and developed is intrusive and confronting. This guide has been made to help you navigate this process, however, it should not be relied on in place of seeking your own legal advice and referring to applicable legislation. The VicRoads Acquisition and Compensation Team is here to assist you through the process and answer any questions that you may have.

How does VicRoads decide on the land it needs?

Before VicRoads decides it needs to acquire land, detailed investigations are undertaken to ensure that it is the appropriate option for the road network. VicRoads relies on community feedback, stakeholder input, crash statistics and other data before starting a project. Once we determine the design, location and type of project the land required will be identified for acquisition and the land owner and/or occupier will be contacted.

Compulsory acquisition of land is undertaken by VicRoads in accordance with the Land Acquisition and Compensation Act 1986. It can usually only occur once your land has been reserved for a public purpose in the relevant Planning Scheme, also known as a Public Acquisition Overlay (PAO) or the project area is designated under the MTPFA (if this is the case we will discuss this further with you). A Public Acquisition Overlay reserves land for a public purpose and indicates that your land has been designated for compulsory acquisition. The Public Acquisition Overlay may also restrict the use and development of your land.

The Planning Scheme amendment process is overseen by the Minister of Planning, independent of VicRoads. You will be notified if your land is being reserved for a public purpose and will be given an opportunity to express your views. If you are unsure if your land is currently reserved for public purpose you can find out by visiting the planning scheme website <http://planning-schemes.delwp.vic.gov.au> and viewing your area's planning overlay map. There may be other circumstances where VicRoads may acquire land without a reservation.





Chapter 1: Notices

Notice of Intention to Acquire

Once planning for a project has concluded and all relevant approvals have been obtained, VicRoads will again contact you before a letter is sent to you with a *Notice of Intention to Acquire*. The purpose of this notice is to let you know that VicRoads intends to acquire your land or part of your land for the project. The letter will also enclose the following:

- a statement outlining your rights and what you need to do next
- a plan identifying the area of your land we require

If you would prefer that we acquire your land by agreement rather than waiting for us to take the next step in the compulsory acquisition process, we may be able to reach agreement on the amount of compensation at this stage of the process. You will not be disadvantaged by reaching agreement with VicRoads, as you are entitled to the same elements of compensation as you would under the compulsory acquisition process.

In the notice, there will be questions for you to respond to via email or post. Your responses to these questions will assist VicRoads in assessing the amount of compensation you are entitled to. If VicRoads does not have all the relevant information, we may not be able to include some elements of compensation in our initial offer.

You are entitled to get advice from a solicitor to assist you in answering the questions in the notice and ensure that you are aware of your rights regarding VicRoads' intention to acquire your land.

Notice of Acquisition

If you have not reached agreement with VicRoads regarding the acquisition of the land within the timeframe required for delivery of the project,

we may proceed to a *Notice of Acquisition*, published in the Victorian Government Gazette. Publication of this notice means that the land has vested with VicRoads and you are no longer the legal owner of the land. The *Notice of Acquisition* protects your right to receive compensation, while also allowing us to take possession of your land so that the project can commence without delay.

When will VicRoads take possession?

VicRoads will indicate the likely possession date when we give you the *Notice of Intention to Acquire*. We will update you if this date changes. The possession process often occurs before negotiations about compensation are finalised. However, you can receive an advance of the compensation we offer you (refer to Chapter 2) while we work with you regarding the terms by which we will possess your land. We will try to give you as much notice as possible of when possession will be taken. However, VicRoads is permitted to take possession of the acquired land:

- not before 3 months after the date of acquisition if the property is the primary place of residence or business;
- after 7 days if the property is not the primary place of residence or business.

VicRoads will reinstate any fencing you have on the acquired land on your new property boundary (if required) once possession has been taken. VicRoads will consult with you in this regard, and also discuss any other necessary arrangements.

We will do our best to come up with arrangements that suit you. Once we take possession you will no longer be able to access the land without permission from VicRoads. It is therefore necessary for you to vacate the acquired land and remove any personal items before possession is taken.

Chapter 2: Assessing compensation under the *Land Acquisition and Compensation Act 1986*

If we acquire your land, you will be compensated in accordance with the *Land Acquisition and Compensation Act 1986*. This Act outlines the process for assessing compensation.

How is compensation assessed?

The assessment of compensation under the Land Acquisition and Compensation Act 1986 will have regard to the following:

- your responses to the 5 questions contained in the Notice of Intention to Acquire (NOITA)
- market value (including severance)
- special value
- loss attributable to disturbance
- professional expenses

Market value

The compensation payable to you for market value is designed to reflect what the market would be willing to pay for your land on the date of acquisition based on the highest and best use of the land. For example, if you use your land for farming purposes but, at the date of acquisition, it is able to achieve a higher value if developed for residential purposes, the assessment of compensation will be based on a highest and best use of residential development.

Where only part of your land is acquired, the compensation payable to you for market value will be based the difference between the value of your land before the acquisition and the value of your land after the acquisition. It will therefore include not only the market value of the acquired land, but also any impacts VicRoads' project has on the value of the balance of your land (due to severance, enhancement or depreciation).

All assessments of compensation payable for market value under the *Land Acquisition and Compensation Act 1986* must be undertaken by an independent certified valuer. VicRoads will not itself undertake any assessment of the market value or engage a valuer itself but rather utilise the VGV (Valuer-General Victoria) that will undertake their assessment independent of VicRoads.

Please note: Where previous compensation has been paid under the *Planning and Environment Act 1987* (see Chapter 3), the compensation payable for market

value will be adjusted in accordance with the *Land Acquisition and Compensation Act 1986*. If these circumstances apply to you, VicRoads will discuss how this works when we meet with you prior to the acquisition.

Special value

In rare cases, compensation may be payable for special value. Special value occurs where there is a unique value to a landowner that is not reflected in the assessment of compensation payable for market value. For example, a disabled person who has wheelchair ramps and handrails in their property may be entitled to special value as this feature of the property has a unique value to them which may not be of value to other purchasers in the general market.

Loss attributable to disturbance

You may also be entitled to financial loss actually incurred as a natural, direct and reasonable consequence of the acquisition of your land. It is important to note that this entitlement only arises if the financial loss incurred has not been provided for in the assessment of the compensation payable for market value. Any claim made must also be consistent with the highest and best use of the land. In other words, using the earlier example, financial loss incurred in replacing cattle yards will not be compensable if the land is assessed on a highest and best use of residential development.

Professional expenses

As noted above, if you receive a *Notice of Intention to Acquire*, you may wish to obtain advice from a solicitor regarding your rights in relation to VicRoads' intention to acquire your land and to assist you through the acquisition process. You are also entitled to engage a valuer (and other professional advisors) as is necessary in order to assess your entitlement to compensation.

Any engagement of professional advisors is a matter between you and your advisors. It is therefore important that you understand the terms of their engagement.

You are entitled to be compensated for any professional expenses necessarily incurred as a consequence of the acquisition. VicRoads will assess your entitlement to compensation for professional expenses upon receipt of a claim. VicRoads will not pay invoices from your professional advisors directly.

When will I receive an offer of compensation?

VicRoads will send you a letter outlining its offer of compensation to you within 2 weeks of acquisition unless this timeframe is extended in consultation with you.

What is included with the offer?

VicRoads' offer of compensation will tell you the total amount of the offer, how it is comprised and the conditions of the offer.

If VicRoads' offer includes an allowance for market value, this allowance will be based on an independent assessment of the compensation payable for market value obtained by VicRoads through Valuer-General Victoria and you will receive a Certificate of Valuation with the offer.

You will also receive the following documents with the offer:

- a statement of your rights and obligations
- a blank form for you to use to respond to the offer

When will I receive the compensation?

After you receive the offer of compensation you may request an advance. VicRoads will pay you an advance of the compensation offered within 30 days of receiving a written request. An advance of the compensation offered does not prejudice your right to continue to negotiate with VicRoads about the amount of compensation you are entitled to.

Response to Offer

The next step in the process is for you to respond to the offer using the form that is enclosed with VicRoads' offer. You have 3 months from the date you receive VicRoads' offer to do this. However, we can agree to extend this timeframe if you need more time to consider VicRoads' offer and prepare your response.

You are entitled to seek your own independent assessment of the compensation payable for market value from a licensed valuer if you do not agree with the valuation VicRoads has relied upon. Alternatively, you may simply wish to check whether the amount of compensation you are being offered for market value is acceptable to you before you decide how to respond to VicRoads' offer.

There are three ways to respond to VicRoads' offer of compensation:

1. accept the offer in full
2. accept part of the offer and claim compensation
3. reject the offer in full and claim compensation

If you select the first option, VicRoads will instruct its solicitors to attend to final settlement which will bring the compensation process to its conclusion.

However, if you select the second or third option, the compensation process will continue. If you submit a claim for compensation, you must state not only the total amount of compensation you are seeking, but also specify the amount you are seeking for each item of that claim. You must also include an explanation of the basis of the claim and provide copies of any supporting material (for example, tax invoices for professional expenses) you rely upon in making your claim to enable VicRoads to assess it.

Further, if you reject VicRoads' allowance for market value and make a claim, your claim must be supported by a Certificate of Valuation from an independent certified valuer who has undertaken an assessment of the compensation payable for market value in accordance with the *Land Acquisition and Compensation Act 1986*.

VicRoads reply to your response to offer

The next step is for VicRoads to consider your claim (response to offer). If you have made a claim for market value, VicRoads may suggest that a conference be arranged between the valuers in an effort to resolve the differences between their respective assessments.

Once VicRoads has considered your claim, we will provide you with a letter which either accepts the claim, restates our earlier offer of compensation or outlines a revised offer. If the letter accepts the claim, VicRoads will instruct its solicitors to attend to final settlement which will bring the compensation process to its conclusion.

However, if VicRoads makes a revised offer, the compensation process will continue and further negotiations will take place. While this occurs, you are entitled to seek a further advance of any additional compensation offered.

What happens if we cannot reach agreement?

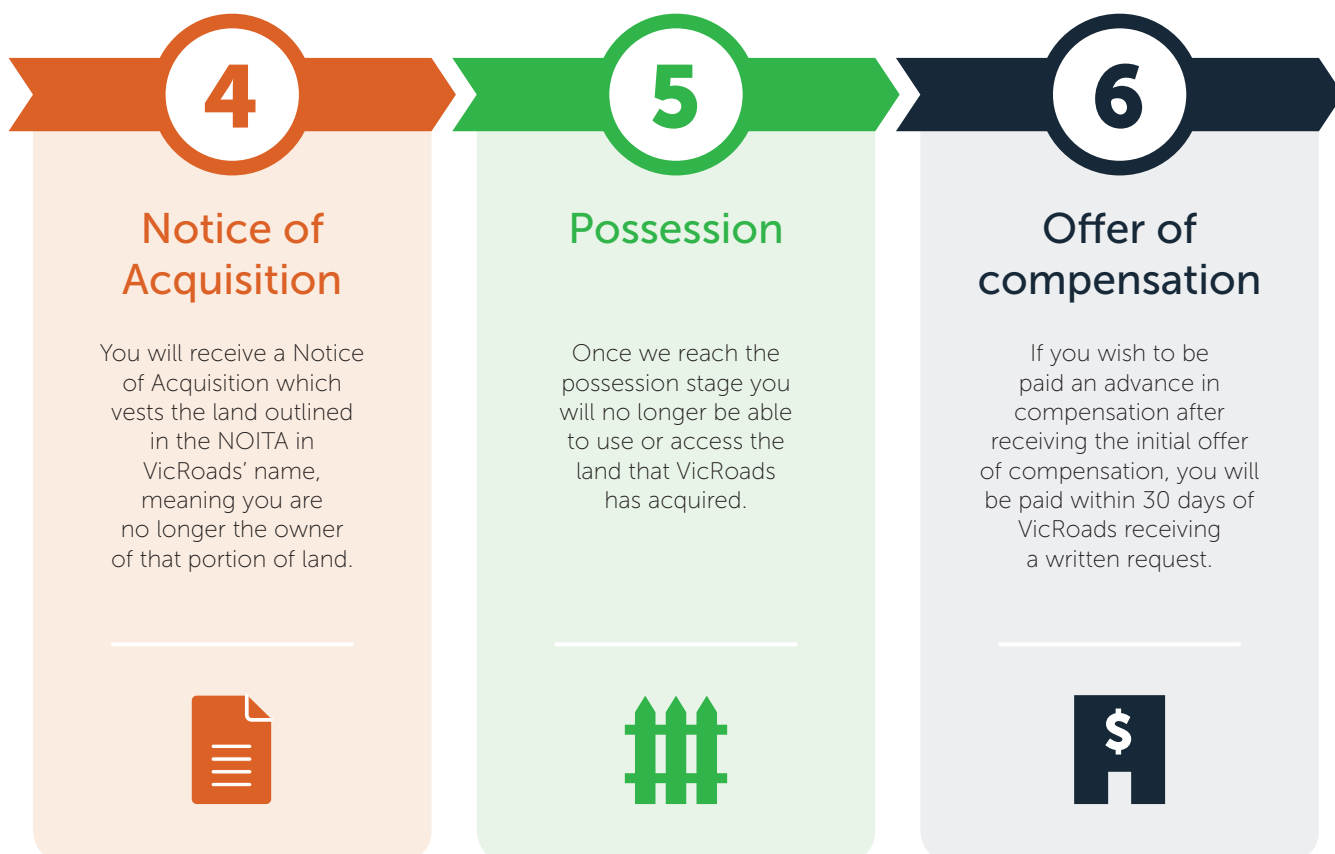
If your claim cannot be resolved after further negotiations, you or VicRoads may refer the matter to the Victorian Civil and Administrative Appeals Tribunal (VCAT) or the Supreme Court for determination.



Compulsory Land Acquisition Process

Compulsory Land Acquisition Process









Chapter 3: Compensation under the Planning and Environment Act

You may be entitled to claim compensation prior to VicRoads acquiring all or part of your land in some situations under the *Planning and Environment Act 1987*.

Right to compensation

If you are an owner or occupier of land you may have a right to claim compensation from VicRoads if you suffer a financial loss as the *natural, direct and reasonable* consequence of any of the following:

- The land (or part of it) being reserved in a Public Acquisition Overlay (PAO);
- The land being shown as reserved in a proposed amendment to a town planning scheme;
- A declaration being made pursuant to section 113 of the *Planning and Environment Act 1987* that the land is proposed to be reserved; or
- Access to the land being restricted by the closure of a road
- If the project area is designated under the MTPFA.

There are primarily two situations which trigger your ability to make a claim:

- Upon the sale of the land that is impacted by one of the above circumstances (**Loss on Sale Compensation**); or
- Upon the refusal of a permit to use or develop the land due to your land being required for a public purpose (**Financial Loss Compensation**).

Loss on sale compensation

If you wish to submit a claim for Loss on Sale Compensation, you must:

- be the owner at the time the right to compensation arose (when the overlay was created);
- have purchased the land prior to any public knowledge that the land may be required for a public purpose;
- give VicRoads a minimum of 60 days' written notice of your intention to sell your land;
- have sold your land at a lower price than you reasonably expected to get if your land or part of your land had not been reserved or proposed to be reserved; and
- engage a certified valuer to assess the Loss on Sale Compensation payable to you under the *Planning and Environment Act 1987*.

The assessment of compensation under the *Planning and Environment Act 1987* for Loss on Sale Compensation will be based on the difference between:

- the market value of your land unaffected by the reservation or proposal to reserve your land; and
- the market value of your land affected by the requirement for a public purpose, which is ordinarily reflected in the sale price provided the sale is an arms-length transaction.

The amount of compensation you are able to claim is limited to this assessment and professional expenses.

Financial Loss Compensation

If you wish to submit a claim for Financial Loss Compensation, you must:

- be the owner at the time the right to compensation arose;
- have purchased the land prior to any public knowledge that the land may be required for a public purpose;
- engage a certified valuer to assess the Financial Loss Compensation payable to you under the *Planning and Environment Act 1987*.

The assessment of compensation under the *Planning and Environment Act 1987* for Financial Loss Compensation will be based on the difference between:

- the market value of your land unaffected by the requirement for a public purpose; and
- the market value of your land affected by the requirement for a public purpose.

The amount of compensation you are able to claim is limited to this assessment and professional expenses (see below).

Professional Expenses

The *Planning and Environment Act 1987* provides an entitlement for you to claim legal, valuation or other expenses reasonably incurred in preparing and submitting the claim.

How do I submit my claim for compensation?

The *Planning and Environment Act 1987* incorporates processes from the Land Acquisition and Compensation Act 1986 for determining your claim for compensation. This process is similar to the process used where land is acquired (as detailed in Chapter 2), with the main difference being that you will be required to initiate the process by submitting your claim.

To submit a claim, you must complete a Form 11 Response to Offer (with any necessary changes) and send it to VicRoads' office. Your claim must include an explanation of the basis of the claim and provide copies of any supporting material (for example, tax invoices for professional expenses) you relied upon in making your claim. Your claim must also be supported by a Certificate of Valuation from an independent certified valuer who has undertaken an assessment of the compensation payable in accordance with the *Planning and Environment Act 1987*.

You can find a copy of the relevant Form in the Land Acquisition section of the VicRoads' website.

Once a claim is submitted, VicRoads will be required to respond to your claim and the process then proceeds in a similar manner to the compensation process for land acquisition.

What happens if VicRoads determines that it no longer requires my land?

If VicRoads determines that it no longer requires your land or part of your land and the overlay is subsequently lifted, any compensation that has been paid by VicRoads will need to be repaid to VicRoads by the current owner of the land as required under the *Planning and Environment Act 1987*.

The rationale for this process is that the value of the land will increase when VicRoads makes this determination.

If you (or the current owner) is unable to repay the amount previously paid, at the time it is requested, VicRoads is happy to discuss alternative options.

Early purchase on hardship grounds

If you are finding it extremely difficult to find a purchaser for your property (due to all or part of it being required for a public purpose), we may be prepared to consider a request from you to purchase the property at its unaffected market value (ignoring any effect of VicRoads' proposal). In making such a request, you must demonstrate that your inability to sell your land will cause you significant hardship and is a direct result of VicRoads' proposal, rather than your decision to buy affected land. Each case will be considered individually on its merits, so if you find yourself in this situation, please contact us to discuss your circumstances.



Key Concepts

Acquisition is the process of obtaining land through a compulsory process.

Affected value is the market value with the acquired area removed and the effects of the road proposal taken into account.

Arm's length transaction is a transaction made when the buyers and sellers have no relationship with one another.

Claimant is the person (in this case you) seeking compensation or arrangements for the land that VicRoads has acquired.

Compensation is the money you receive as a consequence of the acquisition of your land.

Highest and best use is the term used to describe what the market considers to be the most valuable use of your land regardless of what you currently use your land for.

Land Acquisition and Compensation Act 1986 is the legislation that outlines the land acquisition and compensation process.

Market value is the amount of money that would have been paid for the interest in land if it had been sold on that date by a willing but not anxious seller to a willing but not anxious buyer.

Notice of Acquisition is the notice you receive when VicRoads has acquired your land.

Notice of Intention to Acquire is the notice informing you that VicRoads intends to acquire your land.

Planning and Environment Act 1987 is the legislation that establishes a framework for the use, development and protection of land in Victoria.

PAO means Public Acquisition Overlay which is the planning instrument that reserves land for future acquisition.

Possession is when VicRoads takes custody of the land by installing a fence or markers on the new property boundary.

Professional expenses are costs necessarily incurred as a consequence of the acquisition.

Severance may apply in partial acquisitions and is compensation for loss of value to any of your land left unacquired.

Special value is the value of any pecuniary advantage, in addition to market value, to a claimant which is incidental to their ownership or occupation of the land.

Unaffected value is the market value ignoring any effects of the road proposal.

Victorian Government Gazette is a government publication that informs the Victorian public of its actions, including the acquisition of land.

