

# Logan City Council

## Early Acquisition of Property for Council Infrastructure Projects Procedure

### Document Control

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### Amendment History

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# 1 Applications for Early Acquisition by Landowners

## 1.1 Prerequisites

Council will consider an application for early acquisition where all the Prerequisites are met, except where any of the Exclusions listed in Item 1.2 apply.

Details	
1.	The planning for the Council Infrastructure Project has advanced to a stage where its configuration and footprint has been identified and Council has a known requirement for the whole or part of the property.
2.	The project is a Council Infrastructure Project and Council has sufficient funds in the budget for the early acquisition of the property.
3.	The Landowner's property is directly impacted (either entirely or partially) by the future footprint of the infrastructure project outlined in Item 1 above.
4.	All Landowners of the property request an early acquisition.
5.	At least one of the landowners of the property is experiencing Genuine Hardship.

## 1.2 Exclusions

An application for early acquisition cannot be made in the following circumstances:

Details	
1.	Claims for loss, discomfort or inconvenience as a result of the Council Infrastructure Project where there is not a direct land requirement over the relevant property. Loss or discomfort is not the subject of a remedy under this policy.
2.	Council is negotiating to purchase the property on the open market.
3.	There is voluntary negotiation for purchase of property immediately prior to the issue of Notices of Intention to Resume under the ALA.
4.	The Landowner had, or reasonably ought to have had, knowledge of the relevant land requirement at the time of purchase of the property (unless there are extenuating circumstances) as it is reasonable to expect a purchaser to exercise due diligence when purchasing a property.

## 1.3 Eligibility Criteria

A Landowner must demonstrate, to the reasonable satisfaction of Council, that they satisfy at least one of the following Eligibility Criteria.

Criteria	Details	Evidence
Failed sale	<p>The Landowner has attempted and failed to sell their property:</p> <ul style="list-style-type: none"> <li>a) on the open market listed with an REIQ accredited real estate agent;</li> <li>b) at fair market value; and</li> <li>c) for a period of at least three months</li> </ul> <p><b>Note:</b> There is an element of subjectivity with this criterion, but Council will require evidence that a legitimate and meaningful sales campaign has been undertaken to market the property.</p>	<p>Letter from the REIQ registered real estate agent documenting the listing of the property for sale and other supporting information such as timeframes, list price, proof of publicly notified advertising, open for inspection dates, public interest and any failed contracts signed by a legitimate buyer.</p> <p>A letter from a real estate agent or other professional party indicating that a property</p>

Criteria	Details	Evidence
		will be difficult to sell is not sufficient.
Refused Development Application	The Landowner has attempted to develop their property, but the development application (submitted under the <i>Planning Act 2016</i> or other relevant legislation) has been refused (or is likely to be refused) by Council (or any other planning authority, including where the property is in a PDA) as a result of Council's future requirement for the property for a Council Infrastructure Project.	The Landowner can demonstrate that a development application is significantly advanced, and Council is satisfied that this planning will be or has been refused through the appropriate development assessment process or through a documented pre-lodgement meeting.
Rejected Equity Loan Application	The Landowner is unable to use their property as equity or collateral for a loan as a result of Council's requirement for the property for a Council Infrastructure Project affecting the value of the property.	A letter indicating a loan is unlikely to be approved due to the Council's property requirement is not sufficient. There is a requirement for Council to confirm that a genuine hardship has occurred. Council reserves the right to confirm this condition with the relevant lending agencies.
Medical Condition	The Landowner, or a dependant of the Landowner, has a medical condition that requires the property to be liquidated in a very short time frame to allow funds to be available for medical fees or to make the Landowner's life (or a dependant's or their carer's life) more comfortable. A medical condition is classified as: a) a serious illness that is life threatening; or b) total and permanent disability.	Evidence that the urgency is genuine. In cases of medical urgency, a letter from a doctor will be required to outline: a) the nature of the medical condition; b) why the sale is urgent, and how it will alleviate the medical condition; and c) any further information the doctor wishes to be considered. If the application is based on a medical urgency, consent will need to be provided for Council to seek clarification with respect to any information from the doctor or medical professional.
Special Circumstances	This may include, but not be limited to: a) the inability to lease the property at fair market value; or b) pressing personal, domestic or social reasons that requires the property to be liquidated in a very short time frame; or c) other exceptional circumstances.	a) Letter from the REIQ registered real estate agent documenting the listing of the property for lease and other supporting information such as timeframes, list price, proof of publicly notified advertising.

Criteria	Details	Evidence
	<b>Note:</b> There is an element of subjectivity with this criterion, and Council will require persuasive evidence.	b) Evidence that the urgency is genuine and that special circumstances exist. c) Evidence of exceptional circumstances.

## 2 Consideration and Determination of an Application

### 2.1 Application and Assessment Process

All applications must be made on the Application for Early Acquisition form (DM:15523288) and sent by email to [Projectacquisitions@logan.qld.gov.au](mailto:Projectacquisitions@logan.qld.gov.au). The application must include documentary evidence regarding the Eligibility Criteria. Each owner of the property must sign the application.

Council recommends that a Landowner obtain their own independent legal advice.

Any transaction ultimately entered into will be undertaken by agreement only and is not a compulsory acquisition transaction under the ALA. The parties will enter into an REIQ contract (or other form of written agreement) on the basis that:

- (a) the purchase price is negotiated having regard to the market value disregarding any impact of the proposed Council infrastructure project. Council will take advice from an independent registered valuer as to the market value of the property. Any loss in value of the property directly attributable to the project will be disregarded for the purposes of the market value;
- (b) each party will be responsible for their own expenses relating to an early acquisition. This includes property valuation fees, legal fees, the fees of any other experts and tax. However, Council may at its sole discretion agree to reimburse the Landowner for reasonable expenses relating to an early acquisition if it is considered appropriate and fiscally prudent to do so;
- (c) Council will be responsible for any stamp duty and registration fees incurred if the acquisition proceeds.

An application for the early acquisition of a property under this policy will initially be assessed by the Corporate Property Program, with technical input provided by the relevant manager or the branch responsible for the Council Infrastructure Project.

The decision to approve or reject an application will ultimately require a Council resolution, based upon the report and recommendations presented by the Corporate Property team.

If the acquisition is approved by Council resolution, the Corporate Property team will work with the Landowner to finalise the acquisition in accordance with the terms and conditions of an REIQ contract (or other form of written agreement).

### 2.2 Termination of Negotiations

Council may terminate negotiations for early acquisition by giving written notice to the Landowner prior to the parties entering into a written agreement of sale if:

- (a) the alignment of the Council Infrastructure Project changes and will no longer affect the property;
- (b) the project is no longer proceeding; or
- (c) the parties cannot reach agreement within a reasonable time as to the terms of the sale.

If negotiations are terminated, Council may commence a formal resumption process at a later date under the provisions of the ALA.

### 3 Definitions

<b>TERM</b>	<b>DEFINITION</b>
ALA	<i>Acquisition of Land Act 1967 (Qld)</i>
Council Infrastructure Project	A project which is: <ul style="list-style-type: none"> <li>(a) funded on Council's capital program;</li> <li>(b) identified as trunk infrastructure in the Local Government Infrastructure Plan adopted by Logan City Council from time to time;</li> <li>(c) identified as trunk infrastructure in an executed Infrastructure Agreement; or</li> <li>(d) approved by a resolution of Council.</li> </ul>
Eligibility Criteria	The eligibility criteria set out in the Early Acquisition of Property for Council Infrastructure Projects Procedure.
Exclusions	The exclusions criteria set out in the Early Acquisition of Property for Council Infrastructure Projects Procedure.
Genuine Hardship	Where the Landowner can demonstrate that they meet at least one of the Eligibility Criteria.
Landowner	The registered owner/s of a freehold property affected by a Council Infrastructure Project.
PDA	Areas declared by the Minister for Economic Development Queensland as a Priority Development Area under the <i>Economic Development Act 2012 (Qld)</i> and for which Economic Development Queensland is the planning authority.
Prerequisites	The prerequisite criteria set out in the Early Acquisition of Property for Council Infrastructure Projects Procedure.