



HARDSHIP PROPERTY ACQUISITION POLICY

Document No:
A3752893

Objective:

The objective of the Policy is to establish a process and the mechanisms for dealing with claims for the early acquisition of a property required for longer term infrastructure purposes under financial 'hardship'.

Regulatory Authority:

- Local Government Act 2009
- Sustainable Planning Act 2009

Purpose:

The purpose of the Policy is to establish a consistent and fair approach when dealing with property that Council has an interest in for future infrastructure without posing undue financial strain on Council.

Framework:

The Policy has the following framework:

- (1) Application parameters;
- (2) Exclusions;
- (3) Hardship criteria;
- (4) Evidence;
- (5) Governance; and
- (6) Other Arrangements;

Parameters:

A claim / application for the early acquisition of a private property that Council has an interest in for longer-term infrastructure must meet ALL of the parameters outlined in Table 1 before being considered by Council.

**TABLE 1
PARAMETERS**

PARAMETER		DETAILS
1	Detailed Planning Finalised	<p>The detailed planning for an infrastructure project has advanced to a stage where its future configuration and footprint has been identified that has:</p> <ul style="list-style-type: none"> (i) A good level of constructability confidence in terms of its engineering and environmental feasibility. This could be in the form of a planning study, area masterplan, concept design or detailed design; and (ii) Formal Council endorsement;
2	Direct Impact	The subject property is directly impacted (either entirely or partially) by the future footprint of the infrastructure project outlined in Parameter 1 above.
3	Owner/s Agreement	<u>All</u> owners of the subject property (as listed on the title), or the owner's power of attorney, agree to the acquisition in writing.
4	Freehold Tenure	The owner/s <u>own</u> the whole of the freehold interest in the subject property.
5	Genuine Hardship	The owner/s of the subject property is experiencing genuine hardship as per the eligibility criteria outlined in Table 3 (below).
6	Funding Availability	Council has sufficient funds in the budget for the early acquisition of the property.

Exclusions:

A claim / application for the early acquisition of a private property that Council has an interest in for longer-term infrastructure will be rejected if ONE of the items outlined in Table 2 is met.

**TABLE 2
EXCLUSIONS**

ITEM	DETAILS
Indirect impact	Claims for loss, discomfort or inconvenience as a result of the infrastructure project where there is not a direct land requirement over the subject property.
Poor due diligence	If the owner/s of the subject property had knowledge (or ought to have had) of Council's interest in the property at the time of purchasing the property. It is reasonable to expect buyers to exercise due diligence before their purchase transaction is finalised.
Divorce or work transfer	A personal circumstance relating to the dissolution of a marriage or being transferred to another location for work.

Hardship Criteria:

The owner/s of the subject property is deemed to suffer hardship where at least ONE of the criteria outlined in Table 3 is met.

**TABLE 3
HARDSHIP CRITERIA**

CRITERIA	DETAILS
Failed Sale	<p>The owner/s has attempted and failed to sell the subject property;</p> <p>(i) On the open market listed with an REIQ accredited real estate agent; (ii) At fair market value; and (iii) For a period of at least three months.</p> <p><i>NOTE: There is an element of subjectivity with this criterion but Council will be looking for evidence that a legitimate and meaningful sales campaign has been undertaken to market the property.</i></p>
Refused Development Application	<p>The owner/s has attempted to develop the subject property but the development application (submitted under the Sustainable Planning Act or other relevant legislation) has been refused (or is likely to be refused) by Council as a direct result of Council's interest in the property for future infrastructure purposes;</p>
Rejected Equity Loan Application	<p>The owner/s is unable to use the subject property as equity / collateral for a loan as a direct result of Council's interest in the property which has affected the value of the property.</p>
Medical Condition	<p>The owner/s of the subject property, or a dependant, has a medical condition that requires the subject property to be liquidated in a very short time frame to free up funds to pay for medical fees and/or to make the applicant's life (or a dependant's or their carer's life) more comfortable. A medical condition is classified as:</p> <p>(i) Serious illness that is life threatening (e.g. cancer); and/or (ii) Total and permanent disability (e.g. paraplegia).</p>

Evidence:

The owner/s of the subject property are required to substantiate their 'hardship' status by providing documentary evidence as part of their application. This may include but not limited to:

- 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, advertisements, open for inspection dates, public interest and failed contracts;
- Information on 'fair market value' including the market analysis undertaken by the real estate agent and/or formal property valuation;
- The Decision Notice from Council detailing the refusal of a development application;
- Letters from at least two reputable financial lending agencies that documents that an application for finance has been declined on the basis that the property offered as collateral is not acceptable due to Council's interest in the property for a future infrastructure project and other supporting information such as the loan request amount, existing mortgage value and the property valuation prepared as part of the process. A letter indicating that a loan is unlikely is not sufficient. Council reserves the right to confirm with the relevant financial lending agencies.
- Letter from a doctor documenting the medical condition that necessitates the immediate sale of the property and other supporting information such as medical records.

Governance:

A claim / application for the early acquisition of a property that Council has an interest in for a longer-term infrastructure project will be assessed by the City Solicitor (or delegate) or an officer from the Finance & Corporate Services Department (e.g. Corporate Services Manager) with technical input provided by the relevant Chief Operating Officer (or delegate) from the Department responsible for the subject infrastructure project.

The decision to approve or reject an application will be made by the Chief Executive Officer (based on a recommendation by the City Solicitor or the Chief Financial Officer) and in consultation with the Mayor, the relevant Committee Chairperson and the relevant Divisional Councillor/s.

Review:

The Chief Financial Officer (or delegate) will be responsible for reviewing this Policy on an on-going basis to ensure it is practical and achieves its intended purpose.

Other Arrangements:

If the early acquisition of a property under hardship is approved to proceed, the process be undertaken with the following arrangements:

- Council shall retain the discretion to purchase only that part of the property required for future infrastructure purposes. With regards to future road corridors, if the planned road reserve boundary is closer than 2.0 metres from a dwelling structure on the property then it would be appropriate for Council to consider acquiring the entire property. If requested by the property owner/s, the Chief Executive Officer may agree to purchase more of the property than required if deemed appropriate and fiscally prudent to ensure the transaction can occur efficiently and/or in good faith;
- The transaction is through negotiation rather than resumption. Council and the property owner/s shall mutually agree to a fair and reasonable value of the property. If consensus cannot be reached through negotiation then the purchase of the property does not occur;
- The value of the property is negotiated on the basis of the price that would have been realised had the planning for the subject infrastructure project not been publically announced. However any property valuation and subsequent negotiation needs to have due regard to the requirements of the Ipswich Planning Scheme and any development constraints that may apply;
- Council is to advise the property owner/s of their rights, entitlements and obligations in accordance with the Policy and recommend to the property owner/s that they obtain their own independent legal advice;
- Each party should be responsible for their own expenses relating to the property acquisition process. This includes property valuation fees, stamp duty and capital gains tax. The Chief Executive Officer may agree to reimbursing the property owner/s for a certain expense if deemed appropriate and fiscally prudent to ensure the transaction can occur efficiently and/or in good faith; and
- Council should not be liable for any injurious affection associated with the purchase of a property. This includes the property owner/s expenses relating to the purchase of another property, relocation costs, redirection of mail and compensation payable under the Sustainable Planning Act for loss of yield. The Chief Executive Officer may agree to reimbursing the property owner/s for an injurious affection expense if deemed appropriate and fiscally prudent to ensure the transaction can occur efficiently and/or in good faith.

Policy Author: Infrastructure Planning Branch of Infrastructure Service Department.

Date of Council Resolution: 1 December 2015

**Committee Reference and Date: Policy and Administration Board No. 2015(12) of 17 November 2015 –
City Management and Finance Committee No. 2015(12) of 24 November 2015**

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