

Your property and RMS projects

Questions and answers December 2011



Transport
Roads & Maritime
Services

Roads and Maritime Services (RMS) often needs to acquire privately owned land so it can provide new or better roads. This fact sheet provides answers to some commonly asked questions on how RMS acquires private property.

The *Roads Act*, 1993 provides the basis for RMS to acquire land. Some aspects of the acquisition process can be complex. RMS policy is described in RMS' *Land Acquisition Information Guide*. This guide is available on the RMS website or by contacting the numbers on the back page. This question and answer sheet is for general information purposes only and does not constitute legal advice.

Individual circumstances vary and if you feel your property could be part of an acquisition you should contact RMS.

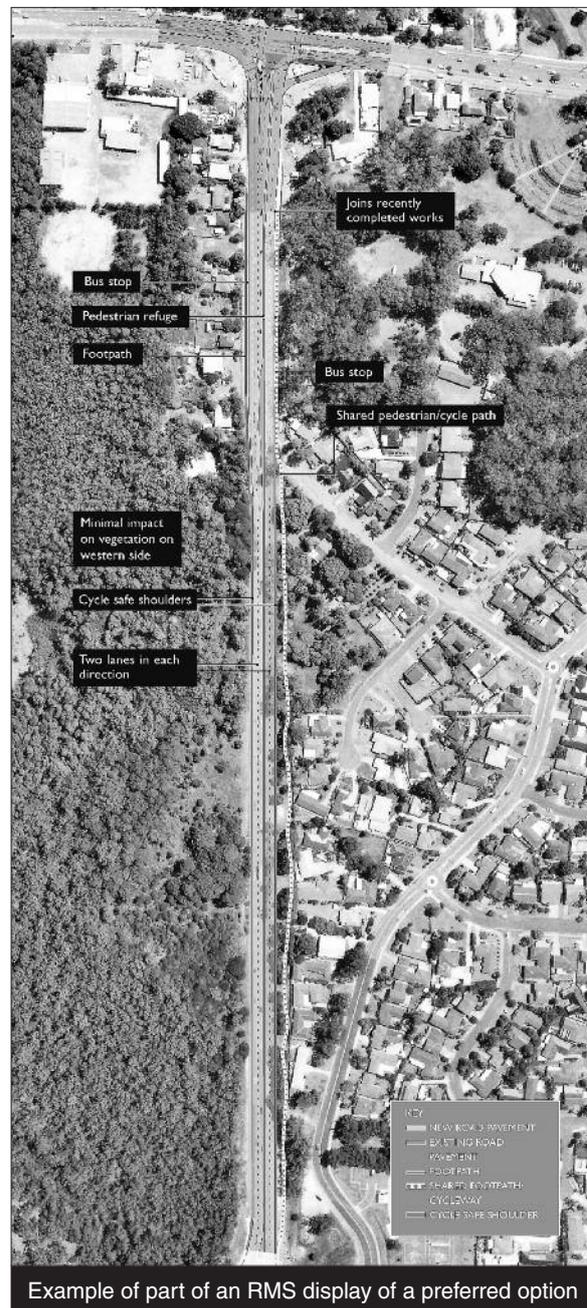
Q1. How will I know if my property is to be acquired for a road project?

A property is directly 'affected' by a road project when RMS needs to acquire part or all of a property, in order to construct the project.

There are a number of ways land owners can find out if their land is required for a road project by RMS.

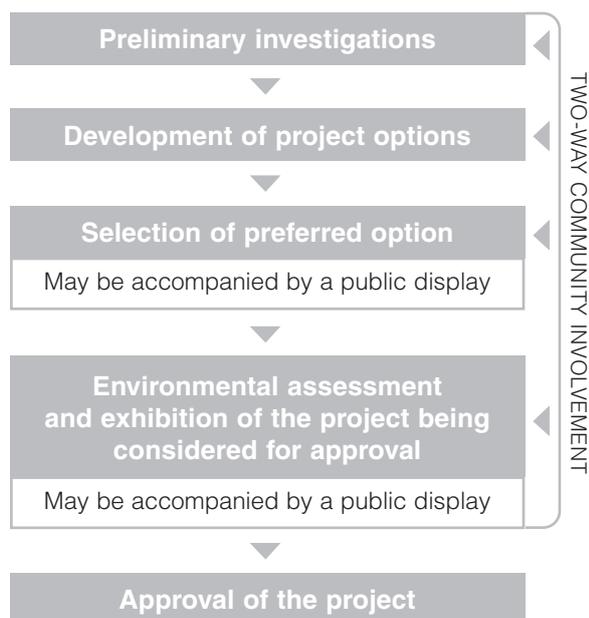
1. The RMS' community information/consultation process

During the planning and design of a project RMS may display route and/or design options and then a preferred route or design. These displays are sometimes accompanied by brochures, letters to residents, and advertisements. Maps may show that private property will need to be acquired if the project goes ahead. The RMS website often shows draft road project plans.



Example of part of an RMS display of a preferred option

Steps in the project development process



Please note: RMS may decide to adopt any of these plans or not to proceed at all. If a landowner is not aware of an RMS requirement to acquire land for a road project through community information, RMS will notify the property owner (see question 3).

2. Or the land owner may go to their council.

Sometimes land zoned or reserved for a road may be shown on the map in your council's local environmental plan or other planning documents. However, road proposals are not always shown on council plans.

Please note: a prospective purchaser can write to the relevant council for information about land (called a Section 149 certificate) for a fee. For example, your property may be directly affected by zoning for future road purposes.

3. Or the land owner may approach RMS.

- You are welcome to visit an RMS office, to view plans or discuss a project that may affect your property.
- Owners or prospective purchasers may make a written enquiry to RMS about their property (for a fee). This is called a property inquiry. RMS' written response will indicate if this property is directly 'affected' by an approved project. An 'approved project' is a project for which RMS:

- has received planning approval (from the Minister for Planning or another consent authority), or
- has itself determined that it is appropriate to construct.

The response may also include proposals that are at an earlier stage in the development or planning process, that is, they are **not** approved projects.

Q2. What if I object to selling my land to RMS?

If private property is required for road purposes, RMS can acquire it under the terms of the *Roads Act 1993*. This can be done either by negotiation and private treaty sale (as if you were selling to another person), or through a compulsory acquisition process. RMS must follow the processes set out in the *Land Acquisition (Just Terms Compensation) Act 1991*.

The *Land Acquisition (Just Terms Compensation) Act* encourages the purchase of land by negotiation, rather than using a compulsory acquisition process. For RMS the starting point is always one of negotiation.

RMS can acquire land even if the landowner objects. Compulsory acquisition requires a recommendation by the Minister for Roads for approval by the Governor.



RMS' community involvement processes to develop a project, such as staffed displays, show that private property may need to be acquired if the project proceeds.

Q3. How is the payment worked out?

When a land purchase is initiated by RMS, it is described by RMS as a 'programmed acquisition'. Under this practice, RMS sends a letter and may directly contact the owner of each property that is 'affected' by the road proposal, advising that:

- Their property is 'directly affected' by a road project (see question 1).
- A valuer representing RMS will make an appointment to inspect the property.
- A valuation will be carried out before making a formal offer to the landowner. The valuation is the market value of the property that is unaffected by the road proposal. That is, the valuation is as though the road project had not been planned.

The amount of payment for land acquired by negotiation or the compulsory acquisition process is assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act, 1991*.

The first step is to seek a mutually acceptable property value between the property owner and RMS. The owner may wish to engage their own valuer (see question 6). If RMS and the landowner cannot agree on the purchase amount, RMS can then take steps to acquire the land (under the compulsory acquisition process).

Where the compulsory acquisition process is undertaken by RMS and the landowner objects to the amount of compensation offered, the landowner may appeal the amount of compensation to the Land and Environment Court (see pages 17–18 of the *RMS Land Acquisition Information Guide*).

More information is available from the *RMS Land Acquisition Information Guide* (see introduction). See also question 8 for more information on payment.

Q4. RMS has announced a preferred option or route for a road project. When will RMS acquire my land?

RMS generally acquires property:

- After a project has been approved, and
- When funds are available for acquisition.

The announcement of a preferred route or concept does not mean that a 'programmed acquisition' process starts. A preferred route may still be subject to change.

In some circumstances RMS may consider acquiring property before a project is approved if:

- 'Hardship' is demonstrated by the owner in writing to RMS (see question 5).
- Funds have been allocated to the project.

Again, the purchase price is based on the assessment of the market value of the property, unaffected by the road proposal (see questions 5 and 8).

Q5. I have just found out RMS may need to acquire my property but the project is not finalised/ approved. However, I *need* to sell now. Help!

RMS generally acquires property:

- After a project has been approved, and
- When funds are available for acquisition.

In certain circumstances RMS may acquire property earlier under the 'hardship' provisions of the *Land Acquisition (Just Terms Compensation) Act* or under the *RMS Preferred Option Hardship Acquisition Policy*.

Depending on the stage in the process there are different options available. An owner who considers he or she will suffer hardship may apply to RMS to acquire the land:

1. The owner must be able to demonstrate there has been a genuine attempt to sell the property on the market. The owner must demonstrate they cannot sell the land at market value because the land has been designated for acquisition.
2. The written application to RMS must demonstrate that the owner needs to sell the land without delay for pressing personal, domestic or social reasons or to avoid a loss in the owner's income.

The RMS purchase price is based only on the market value of the property, unaffected by the road proposal. For details on the hardship policy talk to RMS and see the *RMS Land Acquisition Information Guide* (see also question 8).



This urban area road was being widened following property acquisition

Q6. Can I be reimbursed for my own valuation on my property?

This depends on the process.

- As a part of the 'programmed acquisition' process, yes, RMS writes to the owner to start negotiations. The owner may get an additional valuation report from a registered valuer. Valuation fees can be reimbursed by RMS up to an amount that will be specified by letter.
- RMS does not reimburse valuation fees in the 'hardship' acquisition process as the owner is placing the property on the market (see question 5). RMS becomes the purchaser that cannot be found on the market. Valuation fees for the 'seller' are part of the normal costs associated with selling a property.

Q7. My land is next to an RMS project, but my land is not directly 'affected', am I entitled to any compensation?

- You cannot receive financial compensation if you are only adjacent to a new or upgraded road, including, say, if your property decreases in value.

The *Roads Act* only provides for RMS to acquire land required for road purposes (called 'directly affected' land).

- New or widened roads can have impacts due to their proximity, such as increased noise or a change in drainage/flooding characteristics. RMS must identify the effects of a road project on adjoining communities and propose measures to reduce these environmental or social effects where possible.

Whilst RMS does not provide financial compensation it does its best to reduce impacts. Many people are concerned about noise. See the RMS document on the website by typing 'How noise is addressed' in the search bar.

Q8. Does RMS pay for relocation to my new home and/or other expenses, if my land is directly affected?

This depends on the process.

- Yes. If a 'programmed acquisition' occurs (see question 3), then the final transaction may also include costs such as:
 - Legal costs including conveyancing.
 - Valuation fees.
 - Relocation expenses including stamp duty costs in connection with the purchase of another property of equal value.
 - Mortgage costs and other payments.
 - Solatium – which is an amount of money to compensate the owner for the inconvenience of having to move residence.

Please refer to the *RMS Land Acquisition Information Guide* (see introduction) for more detailed information on these costs or talk to RMS. You may wish to seek your own legal advice.

- No. If the purchase of a property is initiated by the landowner under 'hardship' provisions (described in questions 4 and 5), only the market value of the property is paid. The owner sells to RMS as a private treaty, similar to any other house or land sale. The property is valued at the market value of the land and buildings ie, the value is as though the road project does not exist.

Please note: see the *RMS Land Acquisition Information Guide* for information on the acquisition of part of a property.

Q9. I run a business from a property that will eventually be acquired by RMS.

Can I keep the business name?

You can negotiate to either keep or leave the business name.

Will RMS buy the business?

No. RMS is not authorised to purchase and operate businesses.

Will I be compensated for the loss of or loss in value to my business?

Normally, yes, if the loss is caused by the RMS acquisition. If RMS acquires a property involving a business as part of a programmed acquisition, RMS will compensate for reasonable disturbance costs if the business has to relocate.

However in some circumstances a business may operate on very short term or expired leases. The landlord can sell the property with vacant possession to RMS and the business will not be compensated.

RMS does not purchase the business itself, only the land it operates on. It does not usually place any restraint on the owner to carry on with the business in alternative premises.

Business issues are a complex matter. RMS property staff can provide information about specific business issues and property acquisition.

Q10. Will RMS compensate me for any improvements I make to my property between now and when it is bought?

RMS will pay 'market value' (the same as putting the property up for sale on the market).

When RMS acquires a property, the purchase price is the market value of the property unaffected by the road project. That is, this value ignores the impact of the road proposal on the property's value.

Q11. Do I have to sign a confidentiality agreement?

There are no confidentiality clauses in RMS contracts for property acquisition.

Q12. What if not all the property (i.e. only part of the property) needs to be acquired?

If RMS only needs a part of a lot or a property to build or upgrade a road, the amount to be paid for partial acquisition is generally assessed using a 'before and after' method.

This involves two separate valuations (done at the same time):

- The first valuation is of the property unaffected by the new road or road widening project.
- The second valuation is of the remaining land, on the basis that the new road has been constructed and is in use.

The difference between the two valuations then becomes the payment for the partial acquisition.

RMS will also adjust services or public utilities, relocate fences and complete other property adjustments because of the partial land acquisition.

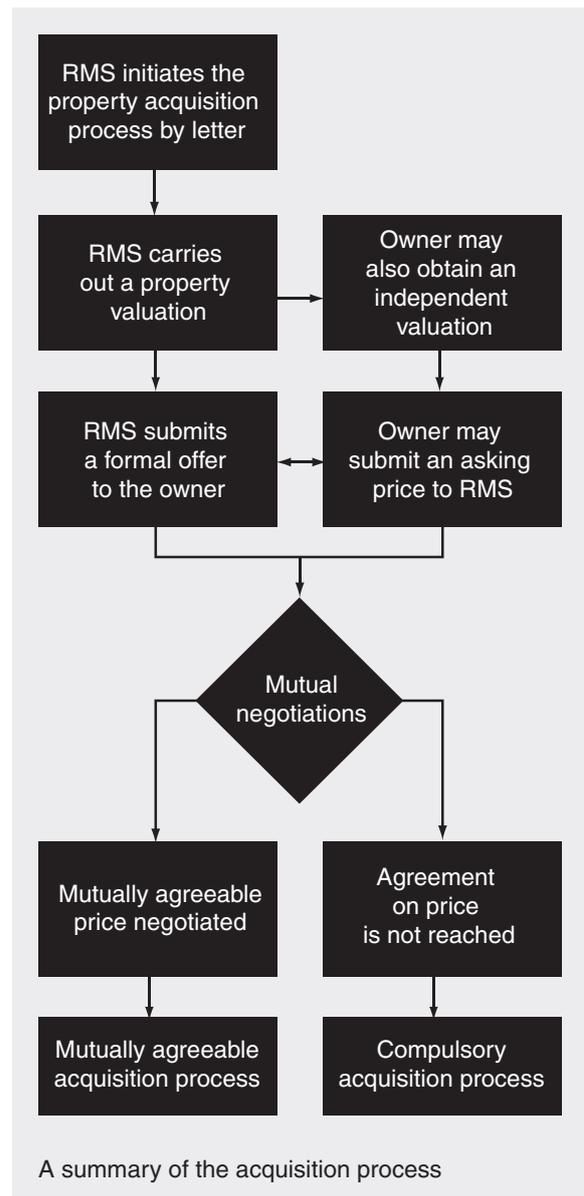
Q13. What do I do if I think part or all of my property needs to be acquired by RMS for a road project?

If you have seen a map at a display or in a document that shows this may be the case, please contact RMS. RMS will need the property's address, lot and deposited plan (or DP) number to investigate if there is any:

- Potential acquisition due to project options.
- Potential acquisition due to a preferred option.
- Future acquisition due to an approved project being announced (see question 1).

RMS staff will discuss your concerns and options with you. Please do not delay in seeking information on these issues – make sure you write down your questions about a property matter and contact RMS as soon as possible.

Phone 132 213 ask for the manager, property services section in your region.



→ For further enquiries:

 www.rms.nsw.gov.au

 132 213