



PLANNING SYSTEM

Act and Regulation changes

Circular	PS 06-009
Issued	27 April 2006
Related	

Changes to the land acquisition process for reserved land

This circular is to advise councils, relevant State agencies and the community of changes to the *Environmental Planning and Assessment Act 1979* regarding the procedure for owner-initiated acquisition of land reserved for public purposes.

Introduction

On 28 March 2006, notice was given of the tabling in Parliament of the Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006. The Act was assented to on 11 April 2006.

In summary, the amendment Act:

- provides that the procedure for owner-initiated acquisition of land reserved in an environmental planning instrument (e.g. a local environment plan) made under the *Environmental Planning and Assessment Act 1979* (EP&A Act) is the same procedure as in the *Land Acquisition (Just Terms Compensation) Act 1991* (LAJTC Act)
- provides an opportunity for State agencies and local councils to review reservations prior to acquisition, and to rezone land reserved for public purposes where the land is no longer needed
- means that a public authority of the State will not be required to acquire land unless it is of the opinion that the owner will suffer hardship if there is a delay in the acquisition of land by the relevant authority.

The purpose of the change is to provide a single procedure for owner-initiated acquisitions throughout NSW. This is done by amending section 27 of the EP&A Act to reflect the owner-initiated procedure under the LAJTC Act. Section 28 of the LAJTC Act, which refers to the EP&A Act provisions for acquisition is omitted.

Application

With the legislation now passed, the amendment takes effect from the date that notice of the Bill was tabled in Parliament (i.e. 28 March 2006) and applies State-wide.

The acquisition process

When an owner of land reserved for public purposes under an environmental planning instrument requests the acquiring authority purchase the land, the acquiring authority will investigate and determine if the land is still required for the purpose for which it is reserved. If it is required and on a priority program for works, negotiations will commence.

If the land is not on the relevant authority's priority program, the landowner must be able to demonstrate hardship. The criteria to show hardship are outlined in section 24 (2) and (3) of the LAJTC Act, and include not being able to sell the land, pressing personal, domestic or social reasons, or to avoid loss of income.

Where the land is no longer required the public authority should initiate the process to rezone the land. The attached flowchart outlines the process.

Review of land reserved for public purposes

Under the recent planning reforms enacted in 2005, all local councils will need to prepare a new local environmental plan for their local government area within two to five years, and to review their plan at least every five years.

As part of this process it is appropriate for public authorities who have reserved land under a local environment plan (or other environmental planning

instrument) to also review whether the land is still needed for the public purpose it was originally reserved. Councils' new local environmental plans can then incorporate any rezoning if the land is no longer needed by the public authority.

It is also intended that a new State environmental planning policy (SEPP) for public reserved lands be made to list land that is no longer needed for acquisition. The SEPP would remove the need for acquisition and rezone the land, bearing in mind adjoining zonings and the objectives of the council's local environmental plan. The SEPP will also make provision for additional sites to be incorporated into the schedule as needed.

Details of the new SEPP will be forwarded in due course.

Transitional arrangements

From the date of commencement of the amendment on 28 March 2006 to the date when council's new local environmental plan is made, the provisions for the owner-initiated acquisition of land reserved for a public purpose in the amended EP&A Act will prevail over any contrary acquisition provision/s in council's existing local planning instrument/s.

Similarly the provisions of the EP&A Act amendment prevail over any other acquisition provisions in any other environmental planning instruments.

Standard instrument for LEPs

Clause 24 of the standard instrument for the preparation of local environmental plans will be amended to reflect the provisions of the legislation. Details of the new clause will be provided once finalised.

Further information

A copy of the Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Bill 2006 as tabled in Parliament on 28 March 2006 (and explanatory notes) is available from the Parliamentary website at www.parliament.nsw.gov.au (see 'Bills'):

Copies of the relevant legislation, including the *Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Act 2006* (as made), the *Environmental Planning and Assessment Act 1979* (consolidated) and the *Land Acquisition (Just Terms Compensation) Act 1991* are available on the Parliamentary Counsel Office's website at www.legislation.nsw.gov.au (see 'As made' and 'Browse A to Z in force').

Enquiries:

Land Management Branch

T: 02 9895 7626

E: landmanagement@planning.nsw.gov.au

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.asp.

Authorised by:

Sam Haddad

Director General

Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

Crown copyright 2006
NSW Department of Planning
www.planning.nsw.gov.au
DOP 06_001

Disclaimer: While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

ATTACHMENT A. OWNER-INITIATED ACQUISITION PROCESS FOR LAND RESERVED FOR PUBLIC PURPOSES

