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| <b>Version Control and Objective ID</b>       | Version No: 1   | Objective ID: A5492518 |
| <b>Adopted at Council Ordinary Meeting on</b> | 28 October 2019 |                        |
| <b>Date of Review</b>                         | 28 October 2023 |                        |

## 1. Statement

This policy provides a consistent and fair approach when dealing with property that council has an interest in for future infrastructure. The planning for infrastructure projects is often undertaken well in advance of construction and the land required for infrastructure projects is generally not acquired until construction is imminent.

## 2. Purpose and Principles

This policy establishes the process and the mechanisms for assessing claims for the early acquisition of property identified by council for infrastructure purposes and the applicant is experiencing genuine hardship. Ipswich City Council will accept an application for early acquisition when planning of the infrastructure has advanced to a stage where the project has a preferred option and a resolution is adopted by council.

The principles of transparency, fairness and equity will be applied to all assessment of applications to achieve an outcome that is beneficial to the Ipswich community.

## 3. Strategic Plan Links

This policy aligns with the following iFuture 2021-2026 Corporate Plan themes:

- Vibrant and Growing
- Safe, Inclusive and Creative

## 4. Regulatory Authority

- *Local Government Act 2009*
- *Planning Act 2016*
- *Acquisition of Land Act 1967*
- Property Acquisition and Disposal Policy

## 5. Human Rights Commitment

Ipswich City Council (Council) has considered the human rights protected under the *Human Rights Act 2019 (Qld)* (the Act) when adopting and/or amending this policy. When applying this policy, Council will act and make decisions in a way that is compatible with human rights and give proper consideration to a human right relevant to the decision in accordance with the Act.

**6. Scope**

This policy applies to privately owned properties within the Ipswich local government area.

This policy applies to all early acquisition claims from owners of property within the boundaries of the Ipswich City Council local government area and where there is a known land requirement as a result of an council infrastructure project a claim/application for the early acquisition must satisfy ALL of the parameters outlined in Table 1 to be considered by council.

**TABLE 1  
PARAMETERS**

| DETAILS   |
|---|
| The detailed planning for an infrastructure project has advanced to a stage where its future configuration and footprint has been identified that has:  |
| (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;  |
| The subject property is directly impacted (either entirely or partially) by the future footprint of the infrastructure project outlined in Parameter 1 above.   |
| All owners of the subject property (as listed on the title), or the owner’s power of attorney, agree to the acquisition in writing.   |
| The owner/s own the whole of the freehold interest in the subject property.   |
| The owner/s of the subject property is experiencing genuine hardship as per the eligibility criteria defined in Table 3.  |
| Council has sufficient funds in the budget for the early acquisition of the property.   |

**Exclusions:**

A claim/application for the early acquisition under this policy does not apply in the following circumstances:

- Property owner(s) suffer(s) loss or discomfort as a result of the planning, construction or operation of an infrastructure project where there is no land requirement for their property. Loss or discomfort is not the subject of a remedy under this policy.
- Council is negotiating to purchase the property on the open market to achieve some commercial or other advantage.
- There is voluntary negotiation for purchase of property immediately prior to the issue of Notices of Intention to Resume under the *Acquisition of Land Act 1967*; or
- The property owner(s) 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 purchasers to exercise due diligence on property acquisition.

**TABLE 2  
EXCLUSIONS**

| DETAILS  |
|--|
| 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.   |
| 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 purchase of the property. It is reasonable to expect buyers to exercise due diligence before their purchase transaction is finalised. |

**Hardship Criteria:**

The owner/s of the subject property is deemed to meet the grounds for early acquisition where at least ONE of the criteria outlined in Table 3 is met.

**TABLE 3  
HARDSHIP CRITERIA**

| CRITERIA                                | DETAILS  | EVIDENCE   |
|---|--|--|
| <b>Failed Sale</b>                      | <p>The owner/s has attempted and failed to sell the subject property;</p> <ul style="list-style-type: none"> <li>(i) On the open market listed with an REIQ accredited real estate agent;</li> <li>(ii) At fair market value; and</li> <li>(iii) For a period of at least three months</li> </ul> <p>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.</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 publically notifiable advertising, open for inspection dates, public interest and failed contracts signed by a legitimate buyer. A letter from a Real Estate agent or other professional party indicating that a property will be difficult to sell is not sufficient.</p>   |
| <b>Refused Development Application</b>  | <p>The owner/s has attempted to develop the subject property but the development application (submitted under the Planning Act 2016 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>   | <p>An applicant can demonstrate that a development application is significantly advanced, and the Chief Executive Officer is satisfied that this planning will be refused by Council through the development assessment process.</p>   |
| <b>Rejected Equity Loan Application</b> | <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>  | <p>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.</p>   |
| <b>Medical Condition</b>                | <p>The owners 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> <ul style="list-style-type: none"> <li>(i) Serious illness that is life threatening (e.g. cancer); and/or</li> <li>(ii) Total and permanent disability (e.g. paraplegia).</li> </ul> | <p>Provide evidence that the urgency is genuine. In cases of medical urgency, a letter from a doctor will be required to address the following:</p> <ul style="list-style-type: none"> <li>• the nature of the medical condition; and</li> <li>• whether the condition has been triggered or exacerbated by the Council property requirement; and</li> <li>• why the sale is urgent, and how it will alleviate the medical condition; and</li> <li>• any further information the doctor wishes to be considered.</li> </ul> <p>If the application is based on a medical urgency, consent will need to be provided for Council to seek clarification, with respect to any such information from the doctor or medical professional.</p> |

The owner/s of the subject property are required to substantiate their request for early acquisition by providing documentary evidence as part of their application.

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 will be undertaken by agreement only and is not a compulsory acquisition transaction. 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 market value before the infrastructure project was announced.

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 reimburse the property owner/s for certain expenses if deemed appropriate and fiscally prudent to ensure the transaction can occur efficiently and/or in good faith.

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

- the alignment of the infrastructure project has changed and will no longer affect the property, or
- the project is no longer proceeding.

Council may elect to withdraw from negotiations if the parties do not reach agreement. Council may as a consequence commence formal resumption process at a later date under the provisions of the *Acquisition of Land Act 1967*.

## **7. Roles and Responsibilities**

An application for the early acquisition of a property that council has an interest in for an infrastructure project will be assessed by the Property Services Team with technical input provided by the relevant General Manager or (a delegate) from the Department responsible for the strategic infrastructure project.

The decision to approve or reject an application will be made by the Chief Executive Officer (based on a recommendation by the Corporate Services General Manager) and pursuant to a Council resolution.

## **8. Key Stakeholders**

- Infrastructure Strategy – Infrastructure and Environment
- Community and Cultural Services – Community, Cultural and Economic Development
- Environment and Sustainability – Infrastructure and Environment

## **9. Monitoring and Evaluation**

- Ensure proper justification is provided by the applicant to meet the hardship criteria.
- Ensure the project has been approved by council.

**10. Definitions**

**Council:** Means Ipswich City Council

**11. Policy Owner**

The General Manager (Corporate Services) is the policy owner and the Property Services Manager is responsible for authoring and reviewing this policy.