



Land acquisition and compensation

General information for landowners and tenants

The Western Distributor Authority (WDA) is the government body responsible for delivering the West Gate Tunnel Project for the Victorian Government.

Introduction

Major infrastructure projects often require the unavoidable acquisition of some land. The West Gate Tunnel Project has been developed in a manner that minimises this by utilising existing road reserves where possible, and by tunneling. While no houses need to be acquired for the West Gate Tunnel Project, some privately owned land, including land occupied by businesses and government authorities is needed.

This information factsheet provides a brief overview of the process that will apply for the acquisition of surface level properties. For information regarding underground acquisition, please see the WDA's 'Underground strata acquisition and compensation' information factsheet.

Key legislation

The *Major Transport Projects Facilitation Act 2009* enables certain government authorities to compulsorily acquire land that is included in an area formally designated as the 'Project Area'.

The project has been declared under the *Major Transport Projects Facilitation Act 2009* (MTPFA) for the purpose of applying delivery powers under the Act.

Where land is compulsorily acquired, the *Land Acquisition and Compensation Act 1986* (LACA) guides how compensation is assessed.

Full versions of these Acts are available at www.legislation.vic.gov.au



Compulsory land acquisition of property

If any of your land is to be acquired for the West Gate Tunnel Project, the process generally proceeds in the following stages.

1. Initial contact with land owners and tenants

The West Gate Tunnel project team initiated contact with landowners and tenants affected by the Project Reference Design in April 2016 to discuss the potential requirement of properties for the project and provide information well before the formal acquisition process starts.

A design and construction contractor for the project was announced on 2 April 2017. WDA has written to affected land owners along the corridor, identifying the extent of effect. Given the project is currently in the planning and environmental approvals phase, and the Environment Effects Statement (EES) has been released for public comment, this contact will continue through the EES process with owners and tenants of land that has been identified as being required for the construction of the project.

2. You will receive a Notice of Intention to Acquire

Following receipt of approvals and designation of a Project Area (anticipated in late 2017), WDA will issue a Notice of Intention to Acquire (NOITA) to formally advise you of the intention to compulsorily acquire part or all of your property. At this stage, you may seek your own advice (for example, legal or valuation advice) in order to commence negotiations with the WDA.

If you decide to sell your property to the Government at this time, rather than wait for us to take the next step in the acquisition process, your entitlement to compensation and allowances will be the same as would apply under compulsory acquisition. If agreement is reached at this point, there is no need to proceed to the next stage.

3. You may receive a Notice of Acquisition

If you have not finalised negotiations with the WDA regarding the acquisition of the part of your land identified in the NOITA at this stage, negotiations may progress to a Notice of Acquisition. The Notice of Acquisition formalises the acquisition, meaning that you are no longer the legal owner of the land acquired.

The Notice of Acquisition protects your rights to receive compensation while enabling the WDA to obtain possession of the land within a certain timeframe (often before negotiations about the land's value are finalised). In these circumstances you will receive a copy of the Notice of Acquisition, which is published in the Victorian Government Gazette.

In most cases, the WDA must wait for two months after serving a NOITA before giving you a Notice of Acquisition and cannot take possession until the expiry of specific timeframes set out in the legislation. These timeframes differ depending upon whether a property is vacant or if it is a principal place of business or residence. The WDA will work with you to agree the terms of possession wherever possible.

If the land is a principal place of residence or business, the Authority will not take possession for at least three months after giving you a Notice of Acquisition without your prior agreement. Wherever possible, the WDA will work with you to agree on an acceptable time frame in which to take possession of the land acquired.

4. Compensation Payment

If the WDA needs to acquire any part of your land, you will be compensated under the *Land Acquisition and Compensation Act 1986*. This means that:

- Compensation will be assessed on the basis of the market value (based on the highest and best use of the land) of the land acquired, plus any additional amounts and allowances which may apply (for example stamp duty and conveyancing costs where a replacement property is purchased).
- Market value will be assessed by a property valuer appointed by the Valuer-General Victoria.
- The WDA is required to make an offer to you within 14 days of the Notice of Acquisition being published.
- The valuation considers the unaffected value of the land i.e. the land value disregarding the West Gate Tunnel Project.
- If you wish to obtain advice in relation to acquisition and compensation negotiations, the WDA will reimburse the reasonable fees of professionally qualified advisors, such as a lawyer and/or land valuer that you have chosen. To ensure that the WDA agrees with reasonableness of these fees, you may wish to arrange for your advisors to submit fee proposals to the WDA prior to undertaking work for you.

- Depending on your individual circumstances, compensation may be increased by an amount (which cannot exceed 10 per cent of the market value of the acquired land) to compensate you for non-financial disadvantage you may experience because of the acquisition. Although assessed on a case by case basis, the criteria outlined in the Land Acquisition and Compensation Act is considered when assessing how this additional amount might apply to you. This can include your interest in the property acquired (owner or occupant), the length of time it has been owned and occupied, the inconvenience likely to be suffered, and whether it is a principal place of residence or business.
- If you operate a business on the land, compensation may be payable for financial loss suffered to the business as a result of the acquisition of the land. You may wish to discuss this with the WDA at an early stage.

Payment

Once you have received an offer of compensation, you can request at any time that the WDA pay an advance of the offer (provided that the compensation exceeds \$5,000). The advance payment will be made within 30 days of receiving the request and any advance will not affect your entitlement to continue negotiating a final settlement. Once agreement is reached on the amount of compensation payable, the balance of the compensation payment would be paid as soon as possible.

Frequently asked questions:

When will I know if my property will be acquired?

Compulsory acquisition of property happens after the environmental assessment process is complete, planning approval is granted and the project area is designated.

Where a property is affected, the WDA will make direct contact to formally discuss the process and provide information on next steps.

Are there different types of property acquisition?

The West Gate Tunnel Project will include surface construction, tunnels and relocation of services. This means there will be different types of acquisition.

Property acquisition (at surface level):

Acquiring properties required for surface (above ground) construction can be full or

partial, meaning either all or just part of a property may be required.

Underground strata acquisition: Acquiring land below the surface, where the tunnels pass under properties. The property at surface level is not required in this type of acquisition.

Easement acquisition: Where services (such as drainage or power lines) are relocated as a result of this project, the WDA will need to acquire an easement over that land. Ownership of the land does not change, but an interest in the land is acquired to protect the service above or below the property.

I have been planning to renovate/redevelop – should I go ahead?

Compensation is based on the market value of your property at the time of acquisition and based on the highest and best use of the land. Please contact WDA if you have any concerns or proposals that you would like to discuss.

Can I choose not to sell my property?

If your property or part of your property is identified as being required for the delivery of the West Gate Tunnel Project and the project receives planning and other approvals, the part of your property required for the project will be compulsorily acquired. This is not an optional or discretionary process.

How can I be sure I'm getting a fair deal?

WDA will reimburse the reasonable costs of you engaging your own legal advisor and any other relevant professional advisors (such as your own valuer), so that when you receive an offer you have your own independent advice to help you understand it. To ensure that WDA agrees with reasonableness of these fees, you may wish to arrange for your advisors to submit fee proposals to WDA prior to them undertaking work for you.

What happens if we cannot agree on compensation payable?

The matter may be referred (by either you or the WDA) to the Victorian Civil and Administrative Tribunal or the Supreme Court for resolution.

I am a tenant – what are my rights?

Tenants may be eligible to receive compensation. The amount likely to be paid, if any, depends on the nature of your occupancy and the impact of the acquisition of your tenancy. For example, a tenant with a long term lease may be able to demonstrate a more significant impact than one with a month to month arrangement.

I operate a business – what are my rights?

The rights and entitlements of parties (including businesses) with an interest in the land acquired is set out in the Land Acquisition and Compensation Act 1986.

WDA recognises that every business is unique, and compensation for businesses is determined on an individual basis. Business disturbance losses, removal costs and costs such as stamp duty and the conveyancing costs of purchasing a replacement property may be paid, but circumstances vary and it is important that you discuss options with the WDA and your legal advisors.

Once the acquisition process begins, how long does it take?

The minimum timeframes are set out in the Land Acquisition and Compensation Act 1986 and often depends on the type of property acquired as well as the timeframes for and staging of construction. You are encouraged to discuss your individual circumstances with WDA's property team.

Will anyone need to enter my property prior to commencement of acquisition?

In partial acquisition situations a licensed surveyor may need to enter your land to establish survey accurate boundaries. WDA will also work towards making offers of compensation at the earliest possible time, and may request early access for a valuer and other consultants to inspect your property. If this is necessary you will be notified in advance and where appropriate you may be served with a Notice of Entry to enable the contractor to enter your property.

In some instances, part of your property may need to be temporarily occupied to enable the construction works to be undertaken. This would involve the service of a Notice of Temporary Occupation (NOTO) and the MTPFA and LACA outlines your entitlement to compensation under these circumstances. This may include rental for the period of occupation and any financial loss incurred as a result of the occupation.

When will I need to vacate my property?

This can vary from property to property as a result of staged works. WDA will advise you when it needs to gain possession of the land in the early stages of negotiations.

Where the land is a principal place of business, WDA cannot seek to take possession of the land acquired before the expiration of three months following publication of the Notice of Acquisition. The WDA will work with you to

West Gate Tunnel Project tunnel exit

Artist impression only - does not include detailed design

In addition, if the land is a principal place of business or residence, you will be entitled to a rent free period of at least three months following publication of a Notice of Acquisition in the Government Gazette.

When will I receive a compensation offer?

WDA will obtain valuation advice enabling compensation offers to be prepared and made as soon as possible after Notices of Acquisition are published, although if owners choose to negotiate following receipt of a Notice of Intention to Acquire, a compensation offer may be made earlier.

Do I have to accept the compensation offer?

No, an owner may obtain their own valuation advice or other consultant advice to help decide whether or not to accept an offer made by the WDA. The reasonable cost of obtaining this advice will be reimbursed by WDA.

Contact us

Do you have a question about the project? If you need more information or would like to provide feedback, please contact us via



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If you are deaf, or have a hearing or speech impairment, contact us through the National Relay Service. For more information, visit: www.relayservice.gov.au.