

# **TRANSPORT SCOTLAND FUNDING FOR VOLUNTARY PURCHASE SCHEMES (VPS) FOR MAJOR RAIL INFRASTRUCTURE PROJECTS FUNDED BY TRANSPORT SCOTLAND**

## **1.0 INTRODUCTION**

This paper sets out arrangements the use of Transport Scotland funding for Voluntary Purchase Schemes (VPS) for major rail (including light rail and tram) infrastructure projects. Promoters of major rail projects are responsible for the arrangements for any Voluntary Purchase Schemes which they choose to set up and operate using their own funds.

**Authority for the use of Transport Scotland funds for third party promoter voluntary purchase schemes is subject to Parliamentary Approval of Section 26 of the Transport and Works (Scotland) Bill which is being considered by Parliament.**

## **2.0 BACKGROUND**

The statutory powers of a Private Bill provide that, in order to construct the necessary infrastructure, the Promoter of a project has the authority to compulsorily purchase land and property through which any new or rebuilt railway passes.

Unlike other major transportation infrastructure projects such as road schemes, rail projects may have fixed points between which the vertical and horizontal alignment restrict the corridor options available. These design restrictions may make it necessary for the permanent way to pass adjacent to residential or commercial properties. This means that there may be certain properties that, whilst not eligible for purchase under the Promoter's compulsory scheme, may be seriously affected by the construction or operation of a railway. In these circumstances, it may be fair for the Promoter voluntarily to offer to buy such properties from resident owners who wish to sell.

It is open to Promoters of major rail projects to set up and operate Voluntary Purchase Schemes using their own funding. The arrangements set out in this paper are solely concerned with schemes involving the use of funding from Transport Scotland.

## **3.0 VOLUNTARY PURCHASE**

The purpose of a Voluntary Purchase Scheme is to purchase from an owner who is having to sell a property but is unable to do so due to a railway project or a proposed railway project. Schemes should explicitly exclude properties which would be eligible for consideration under any statutory or other arrangement for purchase related to a railway project.

It is the responsibility of a Promoter, if they are a statutory body, to ensure that they have vires to purchase properties accepted for purchase within a scheme and to make payments in compensation if, under particular schemes, there are to be such payments. If a Promoter is a company then the power to acquire properties should be covered in the company's Memorandum of Association.

## **4.0 TRANSPORT SCOTLAND'S DISCRETION**

Transport Scotland has no legal obligation to support any Voluntary Purchase Scheme and there is a presumption that major rail projects will not normally require such a scheme. Many people are content to live close to railways and throughout the UK major infrastructure is successfully constructed without Voluntary Purchase Schemes. However, Transport Scotland recognises that there can be exceptional situations where resident property owners may be seriously affected by the construction or operation of railways in ways which cannot otherwise be mitigated. In such exceptional cases where the owner wishes to sell, the fairest option may be for the Promoter to offer to buy the property in question under a Voluntary Purchase Scheme (VPS).

At its discretion, Transport Scotland will consider funding requests for schemes from Promoters of major rail projects where they can justify the need for a scheme and explain the benefits of the proposed scheme for a project. This discretion will be exercised by Transport Scotland whose decision on the principle of funding any particular Voluntary Purchase Scheme will be final.

This paper sets out essential features which Transport Scotland requires voluntary purchase schemes to have in order to be eligible for consideration for Transport Scotland funding. Schemes which do not comply with what is set out in this paper will not be considered for Transport Scotland funding.

## **5. 0 ESSENTIAL FEATURES OF ELIGIBLE SCHEMES**

5. 1 Schemes should set out the criteria against which the eligibility of individual claims will be judged and the evidence required to establish as a matter of fact how individual claims meet these criteria. Promoters must ensure that the arrangements they propose for assessing evidence within a Voluntary Purchase Scheme are consistent with their arrangements for assessing evidence under any other schemes they operate.

5.2 Essential criteria are listed below. The list is not exhaustive and the Promoter can put forward additional criteria deemed necessary in the context of their project.

### **5.3 Properties**

Schemes should make clear that claims can only be considered in relation to properties affected by the railway project works or the operation of the railway when completed.

Schemes should specifically exclude properties from Voluntary Purchase if the properties fall within the limits of deviation of a railway project and would therefore be subject to compulsory purchase or if they are eligible for consideration under a project's Advance Purchase Scheme.

### **5.4 Qualifying interest**

Schemes should set out the definition of 'qualifying interest' which claimants must have in the property in question. This should be consistent with section 119 of the Town and Country Planning (Scotland) Act 1997. (<http://www.opsi.gov.uk/acts/acts1997/97008--q.htm#100>)

Broadly speaking:

- The claimant must own the property, a tenant cannot apply;
- A property owner who lets the property to someone else is not eligible to claim;
- The claimant must have been living in the property for the 6 months prior to the ‘relevant date’ (para 5.5 refers );
- The property cannot have lain empty for more than 12 months prior to the ‘relevant date’ (para 5.5 refers) and the claimant must have lived in it for at least 6 months before that.

## 5.5 Foreknowledge

Schemes must identify a ‘relevant date’ by which it is estimated that details of the major railway project were released into the public domain. Schemes must set out any conditions concerned with the level of knowledge claimants might reasonably be expected to have if they purchased the property after the railway project was announced.

## 5.6 Serious effect

Schemes must define the criteria or combination of criteria to be used and set out the evidence they will require in order to assess whether claimants are ‘seriously affected’ by either the construction or operation of the railway.

Criteria should include:

- **noise:** Schemes should specify the levels at which property will be considered to be seriously affected by noise and vibration, together with any proposed environmental mitigation measures which have been examined. In setting these levels Schemes will be expected to follow the current advice from the Scottish Executive on planning and noise contained within Circular 10/99, and planning advice note 56 (PAN 56), both entitled “*Planning and Noise*”. Paragraph 17 of PAN 56 states that

*Areas vary in character and the levels of noise that are acceptable in one location may not be acceptable in another.”*

Promoters must justify the application of the particular level which they propose to apply within their scheme.

- **reduction in value of the property:** Schemes should outline the minimum reduction in the value of a property to be established for the owner occupier of the property to be eligible for consideration as being seriously affected. The reduction in value must be due to the major rail project or proposed major rail project. This would normally be expressed as a percentage of the assessed market value as if the project had not been proposed.

Transport Scotland would expect schemes normally only to consider a reduction in value of 15% or more to be indicative of a property being seriously affected. Promoters must provide justification for the application of the particular threshold for reduction in value which they propose to apply within their scheme.

- **medical conditions:** If the claimant, or a dependant living in the property, suffers from a medical condition which will be seriously aggravated by the construction and/or operation of the railway, then they would be deemed eligible to claim.

### **5.7 Effort to sell the property**

Schemes must set out what efforts claimants would be expected to have made to sell their property; and what evidence would be required to establish that the railway project or proposed railway project had affected the marketability of the property before the Promoter would consider making a purchase under the scheme.

### **5.8 Reasons for sale**

Schemes must make it clear that the Promoter must be satisfied that there are pressing reasons for selling a property and that such reasons are not related to the works of the railway project or its use, except where a reason is medical.

Schemes should identify appropriate examples of pressing reasons, such as:

- external financial pressures necessitating the sale of the property;
- domestic or family reasons;
- severe aggravation of a medical condition or the onset of such a condition which, because of the railway works or operation, renders continued residence at the property impossible without a serious adverse effect upon the health of the owner or dependent;
- property seriously affected by noise.

Schemes could include additional examples deemed necessary in the context of their project.

Schemes must indicate what evidence will be required for each reason and, where appropriate, what the arrangements will be for corroboration of the evidence. In particular, schemes must provide for Promoters to seek corroboration of medical evidence by use of their own medical experts to assess any medical reasons put forward by claimants.

### **5.9 APPLICATIONS**

Schemes must state the length of time expected for a reasoned decision on a properly completed application.

Schemes should set a time limit within which claims can be made. The time limit should not exceed 5 years.

### **5.10 VALUATION OF PROPERTY**

Schemes must require property valuations to be undertaken by an appropriate chartered surveyor so that a realistic statutory market value (as if the proposed rail scheme had not been announced) can be derived.

Schemes must set out how they will ensure consistency between valuations carried out for Voluntary Purchase and valuations carried out under other Schemes operated by a Promoter.

Schemes should indicate that there will be no appeal against valuation.

It is expected that Schemes will only reimburse claimants fully if their claim is successful.

### **5.11 OFFERS AND EXPENSES**

Schemes should outline their arrangements to advise claimants about the factors involved in deciding if their property should be purchased under the VPS.

Schemes should make clear that the sum payable under a Voluntary Purchase scheme will be the open market value of a property, disregarding the presence of the works.

Schemes may make provision that in successful claims an additional sum may be payable in relation to reasonable costs associated with the resident owner's move. It is expected that that sum would not exceed such additional sum as would be payable if the property were acquired under compulsory purchase.

Schemes must state the length of time for which any offers will remain valid.

Schemes will state the level of expenses available to claimants under a scheme.

### **5.12 RESOLUTION PROCEDURES**

Schemes should state the arrangements for appeals and the resolution procedures for adjudicating appeals. Arrangements should include a requirement that claimants who wish to appeal must accept the resolution procedures and agree to be bound by the findings. Schemes should state the timescale within which appeals will be dealt with.

It is expected that adjudication would be provided by an independent expert/arbitrator either chosen by mutual agreement between the parties or failing that by the Chairman of the Royal Institution of Chartered Surveyors or an equivalent independent professional body.

### **5.13 ROYAL ASSENT**

Schemes must make clear that successful claims will be dependent on the relevant Private Bill receiving Royal Assent or the project obtaining the necessary Statutory Powers to be constructed.

### **5.14 PROPERTY MANAGEMENT**

Schemes must include appropriate property management arrangements to ensure properties do not suffer detrimental damage during the planning and construction of the railway. Wherever possible, property agents should be employed to manage and tenant properties in order to reduce the level of damage traditionally associated with vacant properties.

Property management arrangements under Voluntary Purchase Schemes, should stipulate a period of no less than 28 days written notice for the occupier of a property to vacate the property, if requested to do so.

## **5.15 ACCESS TO PROPERTY**

Schemes must ensure that within any rental or leasing agreement between Promoters and claimants (or as part of their property management scheme, their property agents), provision should be made to allow the Promoter the right to gain access to the property for any purpose deemed necessary for the project.

## **5.16 RENTAL AND RESALE OF PROPERTIES**

Any income generated from the rental or resale of acquired properties using Transport Scotland funding will be viewed as additional contributions and must be incorporated back into a project.

## **6. APPLICATION TO TRANSPORT SCOTLAND FOR FUNDING FOR A VOLUNTARY PURCHASE SCHEME**

### **6.1 Promoters wishing to apply to Transport Scotland for Funding a Voluntary Purchase Scheme for their major rail project must provide:**

6.1.1 A justification for their project's need for a Voluntary Purchase Scheme

6.1.2 An explanation of the benefits of their proposed scheme for their project

6.1.3 A description of their proposed scheme which includes the essential features set out in this paper;

6.1.4 A statement of how the proposed scheme would be operated, including copies of any forms or documents which it would be planned to issue under the scheme;

6.1.5 A statement of how the Promoter will ensure consistency to the collection and assessment of evidence across their proposed Voluntary Purchase Scheme and any other schemes they operate;

6.1.6 A list of properties which have been identified in the Environmental Statement as potentially being seriously affected by the construction and operation of the railway, and that are not subject to compulsory purchase. Each property listed shall include relevant evidence and an indication of the estimated level of compensation required.

6.1.6 An initial estimate of the likely costs of the scheme and what those costs would cover.

### **6.2 Transport Scotland's Decision**

Following receipt of all necessary information as stated in paragraph 6.1, Transport Scotland will decide whether the Promoter's scheme fits with Transport Scotland's arrangements.

The decision on the submitted VPS will be:

- approval of scheme
- temporarily rejected - request for clarification or additional information
- temporarily rejected – request for specific amendments
- rejection of scheme

Transport Scotland will provide the reason for its decision.

The decision of Transport Scotland will be final.

## **7.0 SCHEMES WHICH ARE APPROVED FOR TRANSPORT SCOTLAND FUNDING**

Schemes which have been approved for Transport Scotland funding will be expected to provide transport Scotland with

- (i) the criteria against which individual applications have been considered;
- (ii) the criteria and methods that applied in decisions to buy individual properties;
- (iii) a set of applications
- (iv) details of the property management arrangements for the properties concerned.

Transport Scotland will then agree the release of funds provided the information submitted at this stage is consistent with the scheme which has been approved.

**May 2006**

## References

*Local Government in Scotland Act 2003*

URL: <http://www.opsi.gov.uk/legislation/scotland/acts2003/20030001.htm> [16/02/06]

*Town and Country Planning (Scotland) Act 1997*

URL: <http://www.opsi.gov.uk/acts/acts1997/1997008.htm> [16/02/06]

*Lands Tribunal for Scotland*

URL: <http://www.lands-tribunal-scotland.org.uk/index.html> [16/02/06]

*Land Compensation (Scotland) Act 1963*

*Land Compensation (Scotland) Act 1973*

*Land Reform (Scotland) Act 2003*

URL: <http://www.opsi.gov.uk/legislation/scotland/acts2003/20030002.htm> [16/02/06]