



Land Compensation Sorting the Facts from Myths (Part 1)

Have you been told that your land is required for a road, a highway or some other piece of infrastructure such as a recreation complex?

You might have known that this was something that was on the cards for some time because your land was reserved for those purposes. However you never triggered the right to claim compensation under the reservation and now you are being told that Main Roads or some other government agency would like to buy your land.

What happens next?

You have probably spent many years acquiring and paying for your property. The question that arises is how do you ensure that your interests are protected?

It may even be that only a small area of your land is in fact the subject of the proposed resumption. What should you do? Surely such a small area cannot be worth very much and it must be better to have the process over and done with as quickly as possible right?

Normally after you are told that your land is required and that the government would like to buy your land, you are invited to obtain a written valuation for which any government agency requiring your land makes a generous offer to obtain and pay for the valuation. Saying that this is still your valuation after all and for that reason an offer for the payment of compensation for the area of the land proposed to be used for the public work (of whichever nature it is) should be fair right?

The good news is that often this is the case, that it is possible to obtain a properly instructed valuer to complete a valuation of your land and to consider the impact of the resumption of a small

part of the land on the whole entire holdings sufficiently to ensure that you are adequately paid for both the part of the land taken as well as for any "injurious affection". The words "injurious affection" sound scary, but really all it means is any affect of the reservation on the adjoining land.

Also, your valuer might turn his mind to considering that your land has been severed and that there is a payment of compensation to you for the severance of your land from the other land you own as a result of the proposed taking/reservation.

Your valuer would then be able to tell you whether or not they consider that they ought to obtain planning advice before advancing the valuation. Such planning advice might only be a brief report for example if only a few square metres is being taken from a parcel of land, you would want to make sure that you are not compromised for the development of the balance of the land by not having a sufficiently sized lot to enable it to be developed for example into a four unit or three unit site.

The process all seems to be rather straight forward up to this point. The government wants your land, they offer to pay for your land, they offer to pay you for a valuation which you obtain and for which they (after considering) may or may not pay for the land taken as well as injurious affection and severance.

Normally such voluntary sale and acquisition process occurs well before any construction commences on the taken/reserved land. Acquisitions of this voluntary nature could occur some years before the work actually commences on the land.



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Cornerstone Legal - 9456 0900

Often the government will acquire land as a condition of planning. Whether or not such conditions are validly imposed is not the subject of this article. In this article we simply wish to canvass what happens in the circumstances of when your land is required for a public work/reservation.

So the process seems to have been going smoothly up to this point.

What then could be the problem?

The problems that may arise could be that your valuer does not properly understand the full extent of the impact of the public work once constructed on the balance of your land. For example, it may be that cars previously able to turn in to your property from traffic travelling in one direction may now not be able to turn into your property. And so the property has been detrimentally affected. The question that arises is what is the extent of this detrimental impact. The second question that may arise is what is the full extent of the injurious affection on your property. It wouldn't be too difficult if it was simply the question of the reduction in the land size enabling only three units to be constructed on

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the site as opposed to four. However there are additional matters of injurious affection relating to noise, smell, vibrations and the like. The question that then arises is how are these properly to be quantified? These are matters that valuers ought properly to be able to assess. However they seem to be matters on which there is often dispute.

For example the Main Roads Department may take the view that there is no injurious affection whatsoever. Or they may take the view that the road in fact improves the value of the land, whereas you or your valuer may take the view that it does not improve the value of the land but rather reduces the value of the land. It may also be that a severed portion of the land requires additional access which cannot be readily obtained from Main Roads and that therefore that severed portion does not really carry with it any particular value at all, a matter which can only be assessed after the taking.

It is for reasons set out above, and so that the full impact of the public work can be assessed on the land, including the injurious affection that we recommend that you allow a process of resumption to occur and after the completion of the works that the value of the land is assessed.

This doesn't mean that you simply sit on your hands and do absolutely nothing and await the final construction to be completed before instructing any planners or valuers. There may be things that are able to be done by the government agency who is undertaking the resumption to reduce the impact on you by the construction of service roads, to access severed land or the construction of noise walls or other mitigating factors to reduce the impact. By explaining to the agency taking your land the extent of the impact, it may be that as opposed to wishing to pay compensation for that impact, that the government agency is prepared to reduce the impact on you occasioned by the road.

Further, there are a host of issues which need to be considered through the construction process. These may include not only noise vibrations from compacting, and/or flooding caused

by the construction of the road, blockage of drains and access to your site. Matters which are compensable that you need to be able to discuss readily with the agency but may need some assistance in doing so.

Many persons are in fact very concerned about the use of the word resumption. There appears to be a myth in the community that the government can acquire your land without any payment to you whatsoever for the land. Thankfully this is only a myth. However it is true that often the process of determining the true value of the land is fraught with difficulties.

The government agency resuming the land uses a set number of valuers from a panel who have a very good understanding of land compensation issues. They will often appreciate what the issues are and obtain necessary planning and other advice from government agencies in respect of any of those concerns. Every government agency has a panel of valuers from whom they obtain their advice.

If you obtain your own valuation, it is very likely that nevertheless it will be reviewed by one of the panel valuers. Further and in addition, there may be a negotiator who is employed by the government agency. This is something which is particularly done by the Main Roads Department. This negotiator may have some valuation expertise. He ought not to be relied upon to provide you with any independent valuation, legal or other advice. You ought to ensure that you receive your own independent advice and reliance on anything other than independent advice is fraught with its own difficulties.

If for the above reasons you have some concerns what can you do?

You may wish to call us at Cornerstone Legal and speak to Mr

Tim Houweling on 9456 0900 whether it be in respect of the negotiation process, any of the accommodation works or other matters relevant to any voluntary sale and purchase by the government. You may also care to read the next article relevant to compensation.

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