



Land Compensation Sorting the Facts from Myths (Part 2)

Agreeing on the Amount of Compensation

So, you are unable to agree the amount of compensation with the government agency who is taking your land for the purposes of a public work.

The government agency is now threatening to resume your land unless you agree.

Is this a good thing or a bad thing?

Firstly, something in respect of terminology. The word "taking" comes from the provisions of the *Land Administration Act*. It has the same meaning as "resumption". In this article we wish to primarily deal with the taking of land under the *Land Administration Act*.

You may be reading this page because you have a matter by way of a reservation of the land under the planning legislation. Many of the same principles would apply, however when your land is resumed, it is carried out under the provisions of the *Land Administration Act*.

The resumption of your land is a process that you do not in any way have any control over. However the Act recognises this by providing compensation for the various elements of the claim, including the value of the land as well as the impact to the adjoining land. The extent to which land may be considered to be adjoining may be the subject of some dispute. However it is clear that it

does not simply relate to land on the same title.

Further, the impact on your land as a result of the public work is not simply the public work which is carried out over that part of the land that is the subject of the taking but relates to a question of what is the impact of the project as a whole over your land.

The other difference with the *Planning Act* is that under planning legislation you trigger a claim for compensation by either having sold the land for less than its true value which is the subject of a reservation or alternatively, triggering a claim by lodging a development application which is refused as a consequence of the reservation itself.

Once your Claim is received

A claim, when received by the Western Australian Planning Commission is for injurious affection under the planning legislation for which the government might elect to purchase the land which is the subject of the reservation.

Withdrawal or Challenge?

You can withdraw from the election to purchase process prior to an award being made for compensation. However if your land is resumed then you do not have the same latitude, but the *Land Administration Act* provides additional heads of claim so that you are properly and fully compensated for the losses and injury to adjacent land for the



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purposes of the taking.

If your land is to be resumed, the first process which is undertaken is what is called a notice of intention to take is issued in respect of your land. This is where the government gives you a formal notice that your land is required for the public work and entitles you to make an objection. Whereas the objection process should be used, it is rarely if ever successful.

Further, challenging a taking order is fraught with its own difficulties and rarely is successful. There have been instances where challenging a taking order has been successful, but it is fraught with its own difficulties. This is certainly a matter on which legal advice is required.

What if your objection is unsuccessful

If the objection process was not successful, the government agency who is doing the taking

(Continued on page 2)

will then proceed to issue formal taking orders. This is done by an agency receiving the approval of the Minister which is then registered at Landgate over your title. The taking order is then sent to you giving notice of the taking having taken place.

Nothing will have changed apart from the fact that a portion or a part of the land or all of the land that is the subject of the taking will then be in the ownership of the government.

Making a Claim

The first thing that you need to turn your mind to is lodging a claim for compensation. This does need to be done quickly after the taking as interest runs from the date on which the claim is lodged. It is for that reason that we recommend careful consideration be given to drafting a claim for compensation taking into account the various heads for compensation as soon as is practicable.

The agency taking your land is then required to complete a report to government within 90 days under the Act. This, however is often not done within the prescribed time. Nevertheless there is a requirement that this be done within 90 days so that an offer for compensation can be made to you.

Sometimes the government may challenge your right to claim compensation. The Act entitles anyone with an interest in land to claim compensation. This includes lease holders, persons with mining tenements or other interests in land.

From time to time a question will arise as to the nature and extent of any interest over land and this may be a matter that needs to be the subject of some detailed advice. If the government rejects your claim, on the basis that you have no entitlement then there is

a mechanism provided for in the Act entitling you to take the matter to the Courts for determination according to law.

After the necessary period enabling the taking authority to obtain the reports, an offer of compensation is then made. This is what is known as an advance payment.

Advance Payment

To receive the advance payment, which could amount to only 90% of the total of the valuation amount, you will need to sign a "deed". Careful consideration must be given to the terms of the deed prior to signing it. Receiving an advance payment does not prejudice your rights to continue to represent for the true value of your land if you considered the advance payment to be insufficient.

The date on which the taking order is registered with Landgate is the date on which the value is to be determined for the land.

It is on this date that the value of the land is to be determined. Circumstances which occur after this date are not relevant to the determination of the value. This does not mean however that comparable sales, after the date of the taking, could not be used to determine what the true value of the land taken is.

Injurious Affection

Additionally, injurious affection can be determined having regard to circumstances after the taking date.

To draft a claim for compensation it is necessary to carefully consider all the various elements of the entitlement to compensation and it may be necessary to obtain some preliminary or full and detailed valuation advice to make the claim. It is however prudent to make such claim early.

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.

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