



Local Government Planners Association

Acquiring Land to Achieve the Plan

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Legal and planning issues associated with land acquisition and compensation

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Synopsis

- Alice in Wonderland vs The Castle
- Fantasy vs Reality



Guiding principles

- Private rights vs public benefit
- Compensation designed to place land owner in position prior to reservation/compulsory taking
- Planning assessments should be objective, not biased
- Requirement that doubt is to be resolved in favour of land owner
- *Nelungaloo*¹
 - The aim is to find the monetary equivalent for the loss
- *Commissioner of Succession Duties (SA)*²
 - Per Dixon J (High Court)
 - Tax valuation vs compensation valuation

Compensation for injurious affection (hypothetical world)

- *Planning and Development Act 2005* Part 11 (ss172 – 193)
- Trigger – s177:
 - Sale
 - Development
- Legal issues – s177(2)
 - *Temwood Holdings*⁴
 - *Bond Corp*³



Hypothetical world cont...

- Valuation methodology – s179(1)
 - Land value only
- Resolution of disputes:
 - Arbitration - quantum – s176
 - SAT – injurious affection? – s177(4)
 - Election to acquire – SAT ss187 and 188

Compulsory acquisition

- *Land Administration Act 1997* Part 10 (ss202 – 258)
- Proper purpose
 - *Mandurah Enterprises*⁵
- Trigger
 - Part 9 Division 3
 - Notice to take – s170
- The claim
 - Within 6 months of Notice – s207
 - No good faith test or notice requirement
 - Offer required to be made 90 days – s217

Compulsory acquisition cont...

- Offer deemed accepted if not rejected 60 days – s219
- Advance payments – s248
- Broader heads of claim – s241
 - Land value plus improvements
 - Relocation/severance
 - Business losses
- Disputes
 - Court or SAT – s220
 - Court is Supreme Court – s223
 - If SAT Judge plus Assessor – s226

Planning issues

- Careful consideration of imposition of reservations or need for public works
- Avoid 1963 MRS reservations going nowhere
- Are conditions requiring ceding of land objectively reasonable?
- Planning evaluation of highest and best use
- No artificial increase to benefit land owner or artificial decrease to benefit government agency
- Fantasy world extends to ignoring planning controls in assessment of land use, but not genuine environmental constraints

Planning issues cont...

- Role of planner as an independent expert
- Planner as expert vs advocate
- Beware of possible testing of opinion by cross examination in trial
- Avoid undue influence by client whether government or private sector

References

1. *Nelungaloo Pty Ltd v Commonwealth* (1948) 75 CLR 495 at [571]
2. *Commissioner of Succession Duties (SA) v Executor Trustee and Agency Co (SA) Ltd* (1947) 74 CLR 358 at [373] – [374]
3. *Bond Corp Pty Ltd v Western Australian Planning Commission* [2000] WASCA 257
4. *Western Australian Planning Commission v Temwood Holdings Pty Ltd* (2004) 211 ALR 472
5. *Mandurah Enterprises Pty Ltd v Western Australian Planning Commission* (2010) 262 ALR 614

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