



Land Acquisition

**Land Acquisition by Local
Governments: Processes and
Compensation Liabilities**

**Peter Wittkuhn
Partner
McLeod's Lawyers**

Means of acquiring land

- By agreement
- Taking order: Land Administration Act 1997 (**LAA**), Part 9
- Planning and Development Act 2005, s. 191
- Ceding of land as condition of subdivision approval
- Election to purchase following claim for compensation for injurious affection

Selecting the land for a public purpose

- Reservation
- Structure plan
- Other
- Balancing precision and expedition





Attempt to acquire by negotiated acquisition



Attempt to acquire by negotiated acquisition

- Provide Statement of Procedures
- Amount of compensation to be guided by LAA s. 241
- Contract of purchase and transfer of land
- Lease-back – some possible complications
- If agreement cannot be reached → proceed to compulsory taking

Persuade Minister for Lands to issue Notice of Intent to Take (NOITT)



Persuade Minister for Lands to issue Notice of Intent to Take (NOITT)

- Explain background and need for the acquisition
- Demonstrate reasonable endeavours to acquire by agreement
- Council must resolve to indemnify State

The nuts and bolts



Minister issues Notice of Intention to Take (NOITT)

- LAA s. 170
- NOITT registered on title
- Published in West
- Served on registered proprietor/s
- Also on occupiers
- Generally, no transactions to be entered into without Minister's approval: s. 172
- NOITT must be acted on within one year unless extended

Opportunity for owner etc to object to proposed taking



Opportunity for owner etc to object to proposed taking

- s. 175
- Minister decides whether to cancel or amend NOITT, or determines that it stands unchanged

Minister signs taking order

- ss. 177-179
- Terminology: resumption, acquisition, taking
- To be published in West
- Served on each holder of a registered interest in the land
- Land becomes State land
- Every registered and unregistered interest is extinguished
- Every interest is converted into a claim for compensation
- Minister must advise interested holders of procedures for compensation
- Acquiring a lesser interest eg. Easement

New titles

- Taking order registered on title
- New titles issue for
 - Land taken: State land
 - Balance of freehold land, if applicable
- By reference to Deposited Plan already prepared

Early entry onto land

➤ s. 184 – 186



Making a claim for compensation

- Within six months of registration of taking order:
s. 207
- Time extendable by Minister: s. 207(2)
- Any person with an interest in land may claim:
s. 202
- Formal requirements: s. 211

Local government as acquiring authority to make an offer: s.217

- Examine claim and obtain valuation within 90 days
- Make an offer as soon as possible thereafter
- Offer to be in approved form
- Not 'without prejudice'

**If offer not rejected, then deemed
accepted**



If offer not rejected, then deemed accepted

- s. 219
- If not rejected within 60 days of service, offer deemed accepted

Means of resolving disputes as to amount of fair compensation



Dispute as to amount of fair compensation: forums for determination

- s. 220
 - (1) By agreement;
 - (2) Court action;
 - (3) State Administrative Tribunal
- Election of forum is up to claimant
- But if claimant fails to proceed within 120 days, local government can commence in SAT: s. 222
- Opportunities in all of these processes for continued negotiations

Making or offering to make advance payment



Making or offering to make advance payment

- s. 248
- Interest only runs on balance (if any) of ultimate successful compensation amount: s. 241(12)

How compensation is assessed

- By Court or Tribunal
- Also guides offers and negotiations
- s. 241

Some aspects of s. 241

- ‘... value ... discounting any increase or decrease in value attributable to the proposed public work’
- Disturbance
- Severance and injurious affection
- Valuation methodologies
 - Comparable sales
 - ‘Before and after’ – s. 241 not a ‘log of claims’
 - ‘Hypothetical development’





Some more aspects of s. 241

- Solatium
- Interest



Another word about ‘...value... discounting any increase or decrease in value attributable to the proposed public work’

- *Pointe Gourde* principle
- *San Sebastian* principle: disregarding ‘steps in the process’