COMPULSORY ACQUISITION
NSW Valuer General’s role

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NSW Valuer General’s role

Governments acquire land and interests in land for public purposes*. They may acquire the whole property, part of a property or an interest in the land including easements for power lines, sewer or water.

In NSW, the acquisition of land is undertaken in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

Most land is acquired through negotiation. Compulsory acquisition occurs when a purchase cannot be made by agreement.

Valuer General

The Valuer General is appointed by the Governor of New South Wales as a statutory officer and acts independently of both State and local government.

This independence is important so there is a separation between the acquisition of land by government for a public purpose and the determination of compensation.

Valuer General’s responsibilities

When an acquiring authority** and land owner*** are unable to negotiate the purchase of the land, an acquiring authority can compulsorily acquire land for a public purpose.

The Valuer General is required by the Land Acquisition (Just Terms Compensation) Act 1991 (the Act) to independently determine the amount of compensation to be paid by the acquiring authority to the former land owner.

Importantly, the Valuer General does not act for either the land owner or the acquiring authority.

The Valuer General is responsible for:

- ensuring land owners are fairly compensated when their land is compulsorily acquired
- providing an independent, fair and transparent process for determining the amount of compensation.

The Valuer General’s approach when determining compensation is based on openness and fairness.

- Land owners are encouraged to ask questions, provide information and clarify concerns.
- All valuation information considered when determining compensation is shared between the land owner and acquiring authority.
- The preliminary report showing the amount of compensation is provided to both the land owner and acquiring authority for consideration and feedback before the final determination of compensation is issued.

* reference to “acquisition of land” will also include interests in land.
** government organisation acquiring land.
*** land owner includes anyone with an interest in the land.
Valuation Services

Valuation Services, part of Property NSW, manages the valuation system on behalf of the Valuer General. The Valuer General sets the standards and policies for the determination of compensation and oversees the work of Valuation Services.

Who acquires land

In NSW, state and local government organisations, including state owned corporations, can acquire land for public purposes. The government organisation acquiring the land is commonly called the acquiring authority.

The acquiring authority manages the acquisition process including all negotiations with the land owner.

Acquisition by agreement

The Act encourages the acquiring authority to purchase the property by agreement. When a property is acquired by agreement, the acquiring authority and the land owner agree on the amount of compensation, and the Valuer General is not involved.

The majority of land acquisitions by government are made by negotiation and agreement.

A period of six months is generally set for negotiation and purchase by agreement before compulsory acquisition can commence. At least one face to face meeting must be held between the land owner and acquiring authority during the negotiation period.

When negotiating the amount of compensation to be paid, section 55 of the Act lists relevant matters to be considered. These are the same whether the acquisition is by negotiation and agreement (except hardship cases, Division 3 of the Act) or by compulsory acquisition. The requirements of section 55 are listed on page 8.

To assist land owners during this negotiation process, the acquiring authority will cover reasonable costs associated with the negotiation including professional valuation and legal advice. The acquiring authority can advise what are considered reasonable costs.

The Act provides for compensation to be in the form of land or the carrying out of works if agreed to between the land owner and the acquiring authority.

Compulsory acquisition

Proposed acquisition notice

When land cannot be acquired by agreement, the Governor of New South Wales can approve the compulsory acquisition of the land.

The issue of the proposed acquisition notice to the land owner by the acquiring authority is the first formal step in the compulsory acquisition process.

The acquiring authority is also required to notify the Valuer General of the proposed acquisition.

Valuation Services on behalf of the Valuer General now becomes involved in the acquisition process. A coordinator is appointed to help you with the process and assist you with any questions or concerns.
Our communication

After the proposed acquisition notice is issued, Valuation Services will write to you to:

- explain the Valuer General’s role and determination of compensation process
- introduce your coordinator who can assist you with answering questions, providing information and organising conferences
- advise you about accessing professional assistance
- remind you to complete your claim for compensation (section 39 claim for compensation form).

An acquiring authority cannot compulsorily acquire land unless a proposed acquisition notice has been given to the land owner.

The proposed acquisition notice includes:

- a description of the land
- the authority of the State proposing to acquire the land
- the period of time in which the land will be compulsorily acquired.

The land owner and acquiring authority can continue to negotiate the purchase during this stage of the compulsory acquisition process. If agreement is reached, the acquisition may be finalised by a contract and transfer or a formal agreement under section 30 of the Act.

In some cases, following receipt of the proposed acquisition notice Valuation Services will commence work on the determination of compensation before the land is compulsorily acquired. This may include preliminary discussions with land owners. No valuation information is shared at this time as the land owner and acquiring authority may still reach agreement.

Early commencement assists with meeting statutory time frames for the delivery of the determination of compensation and gives land owners time to provide information and have their issues and concerns addressed.

Section 39 claim for compensation form

This form is to be completed by the land owner after the proposed acquisition notice has been issued by the acquiring authority.

When completing the form land owners should include the information, issues and concerns they want the valuer to consider when completing the valuation report for the determination of compensation.

Land owners should provide their completed form to:

Property NSW
Valuation Services
Just Terms Compensation
PO Box 252
PARRAMATTA NSW 2124

Just_Terms@property.nsw.gov.au

Section 39 forms are available from the acquiring authority or from www.valuergeneral.nsw.gov.au

For more information about the section 39 claim for compensation form go to page 13.
Acquisition notice

If the acquisition of land cannot be finalised through negotiation, the land is compulsorily acquired by the acquiring authority.

This occurs when the acquiring authority publishes an acquisition notice in the NSW Government Gazette.

This normally occurs after 90 days (and up to 120 days) from the issue of the proposed acquisition notice.

When an acquisition notice is published, it means:

- the Governor of New South Wales has approved the compulsory acquisition of land
- the Valuer General is required to make a determination of compensation
- ownership of the land transfers to government.

However, the land owner is generally entitled to remain in occupation of any building that was their principal place of residence or business for three months, unless a shorter period of time is approved by the minister responsible for the acquiring authority.

Enquiries concerning occupation after the acquisition should be made with the acquiring authority.

Determination of compensation

When land has been compulsorily acquired, the Valuer General is required to independently determine the amount of compensation the acquiring authority must pay the land owner.

When assessing the amount of compensation, a full valuation report is prepared by a qualified, experienced and independent valuer who has no conflict of interest.

The report:

- shows what has been considered by the valuer
- addresses the concerns recorded by the land owner on the section 39 claim for compensation form
- addresses any other valuation issues raised by either the land owner or acquiring authority during the valuation process
- resolves any reasonable doubt in relation to the determination of compensation in favour of the land owner
- explains how the amount of compensation was determined.

All valuation information provided by the land owner, acquiring authority or sourced by the Valuer General for the valuation report will be shared between the land owner and acquiring authority.

Independent quality assurance is undertaken by senior valuers on behalf of the Valuer General who review the valuation report, checking all aspects of the determination including the assessment of the market value of the land and supporting sales evidence.
Factors considered in making the determination

Valuers must consider:

- the requirements of section 55 of the Act which sets out the relevant matters to be considered:
  
  (a) the market value of the land on the date of its acquisition
  
  (b) any special value of the land to the person on the date of its acquisition
  
  (c) any loss attributable to severance
  
  (d) any loss attributable to disturbance
  
  (e) disadvantage resulting from relocation (formerly called solatium)
  
  (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired

Definitions for these terms are on page 13 under section 39 claim for compensation form.

- all information provided by the land owner
- all information provided by the acquiring authority.

Our communication

After the land has been compulsorily acquired, Valuation Services will write to you:

- about determining the amount of compensation
- to share all valuation information used in the valuation report
- about how to get more information or have a conference.

You are encouraged to ask questions, raise concerns and provide information during the valuation process.

Conferences

Conferences are available throughout the process to resolve issues and concerns before the determination of compensation is issued. These can be arranged through the appointed coordinator.

Preparing the valuation report

The valuer preparing the valuation report must contact:

- you or your representative

This contact is an opportunity for you to discuss your claim for compensation form, raise any issues, ask questions and provide any further information you would like considered as part of the claim.

The valuer will also be able to assist with information about the determination of compensation process.
• the acquiring authority to discuss any issues they would like considered when undertaking the valuation.

All valuation information considered for the valuation report is shared between the parties.

Preliminary valuation report

Before the determination of compensation is finalised, Valuation Services will send you and the acquiring authority the preliminary valuation report to review. The report shows the amount of compensation and how it was determined. You have 15 days to provide feedback.

As determinations of compensation are a final decision, any concerns should be addressed before the determination of compensation is issued.

Issuing the determination of compensation

After the preliminary valuation report has been finalised Valuation Services issue the determination of compensation (example on page 10) together with the valuation report to you and the acquiring authority.

The issue of the determination of compensation and valuation report is the final part of the Valuer General’s formal role in the determination of compensation process.

Valuation Services are available to answer any questions about the valuation report and determination of compensation.

Determination of compensation

The determination of compensation shows the amount of compensation payable as determined by the Valuer General and includes the full valuation report.

Time frame

The Valuer General is required to provide the determination of compensation to the land owner and acquiring authority within 45 days. An extension to this time frame can be approved by the minister.

Compensation notice

The acquiring authority must issue the land owner with a compensation notice which includes the determination of compensation.

The compensation notice officially notifies the land owner that the land has been compulsorily acquired and provides the offer to pay the amount of compensation determined by the Valuer General.

The notice also advises the land owner that they have the right to object to the amount of compensation offered.

Agreement with determination

When the land owner agrees to the amount of compensation determined, the acquiring authority is required to pay the amount to the land owner within 28 days of receipt of a deed of release.
Example of determination of compensation issued by the Valuer General

DETERMINATION OF COMPENSATION
Land Acquisition (Just Terms Compensation) Act 1991
Valuation of Land Act 1916

ACQUIRING AUTHORITY: NSW Government

CLAIMANT: John Citizen

PARTICULARS OF LAND ACQUIRED: Lot 11 DP 152455

DATE OF ACQUISITION: 3 February 2017

DETERMINATION OF COMPENSATION: Five Hundred and Ten Thousand Dollars $510,000.

The above determination comprises:

- Market value: Section 55 (a) $400,000
- Special value: Section 55 (b) Not Applicable
- Severance: Section 55 (c) Not Applicable
- Disturbance: Section 55 (d) $35,000
- Disadvantage resulting from relocation: Section 55 (e) $75,000
- Increase in the value of other land: Section 55 (f) Not Applicable
- Decrease in the value of other land: Section 55 (f) Not Applicable

Any liability for the GST is a factor in the market for property and is therefore embedded in the land's market value as defined in section 56 of the Land Acquisition (Just Terms Compensation) Act 1991, and also in allowances for certain other costs. Consequently this determination is GST inclusive where applicable.

The determination of compensation has not taken into account any existing or prospective Native Title claim over the described acquired land. It is recognised that should a Native Title Interest in the land be substantiated at some future time then compensation may be considered at that time in respect to that interest in the land affected by the compulsory acquisition.

The valuation report VOG-JT-003 that was considered in making this determination is annexed. For more information on the report, please contact the Just Terms Compensation Unit via email at Just_Terms@property.nsw.gov.au or telephone 02 9860 5200.

Signature ........................................................

Name: Property NSW valuer

Registered Valuer No: 99999

for Simon Gilkes, NSW VALUER GENERAL

Date: 3rd March 2017
Interest is payable on the amount of compensation from the date the land is acquired until payment is made.

**Disagreement with determination**

**Land and Environment Court**

Land owners not satisfied with the amount of compensation determined by the Valuer General and offered to them by the acquiring authority can lodge an objection with the Land and Environment Court.

Court proceedings involving claims for compensation are between the acquiring authority and the land owner.

Objections need to be lodged within 90 days of receiving the compensation notice. If an objection is not lodged within 90 days the offer of compensation is deemed as accepted.


The court can be contacted at:

- **Level 4, Windeyer Chambers**
  225 Macquarie Street
  Sydney NSW 2000

- **02 9113 8200**

- **lecourt@agd.nsw.gov.au.**

**Owner initiated acquisition in cases of hardship**

Before an acquiring authority acquires privately owned land, the land would usually be designated for acquisition for a public purpose. This means that it is intended that the land will be acquired at some future time. In some circumstances there may be an extended period of time between designation and acquisition. For example, the acquiring authority may need time to obtain further development approvals or further funding for development.

A land owner may request an acquiring authority purchase all or some of the property that is designated for a public purpose.

The land owner is required to show that:

- it has become necessary to sell the property for pressing personal, domestic or social reasons, or to avoid a loss in income, and

- their attempts to sell the property have been unsuccessful because the land has been designated for future acquisition.

If the acquiring authority supports the land owner’s request the land will be acquired.
Accessing expert valuation advice

Land owners may engage a valuer when negotiating the purchase with the acquiring authority or in the compulsory acquisition process.

- The valuer is required to be an independent expert.
- The valuer must not act as an advocate.
- The valuer must be qualified in terms of the Land Acquisition (Just Terms Compensation) Act 1991.
- The valuer must comply with the Land Acquisition (Just Terms Compensation) Act 1991.
- The valuation must comply with professional standards.

Valuation fees reasonably incurred by the land owner in connection with compulsory acquisition form part of the compensation determined.

The professional membership associations for valuers are the Australian Property Institute, Royal Institute of Chartered Surveyors and Australian Valuers Institute and can provide lists of qualified valuers.

For more information

www.valuergeneral.nsw.gov.au
www.propertyacquisition.nsw.gov.au

For detailed information on how compensation for the compulsory acquisition of land is determined refer to the Valuer General’s policy.

Compensation following compulsory acquisition

Contact us

02 6332 8188
8:30am - 5:00pm Mon - Fri

Property NSW
Valuation Services
Just Terms Compensation
PO Box 252
PARRAMATTA NSW 2124

Just_Terms@property.nsw.gov.au

We value your feedback

We want to be sure you are satisfied with our service and that the information we provide meets your needs.

When compensation is determined the Valuer General will ask you to complete a survey about the service you received.

We would appreciate your feedback.

You can phone us on 1300 011 141 or write to the Valuer General at:

feedback@ovg.nsw.gov.au

GPO Box 15
SYDNEY NSW 2001

Do you need an interpreter?

Please call TIS National on 131 450 and ask them to call Valuation Services on 1800 110 038

131 450 TIS
Definition of terms – Section 39 claim for compensation

When a proposed acquisition notice is issued, the land owner has 60 days to complete and lodge a section 39 claim for compensation form with the Valuer General.

It is important that the land owner includes full details of the claim being made. The information on this form is considered by valuers involved in assessing the amount of compensation.

The Act sets out the “heads of compensation” that a land owner can claim under and these are also listed in the claim for compensation form. These are:

• **market value** of land is the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

  The ‘market value’ will disregard (for the purpose of determining the amount that would have been paid):

  o any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and

  o any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

• **special value of the land to the land owner** is the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person’s use of the land

• **loss attributable to severance** of land is the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land owned by that person

• **loss attributable to disturbance** can include any or all of the following:

  o legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land,

  o valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land,

  o financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs),
• stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired),

• financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage),

• any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

For more information on reasonable costs/fees see page 15.

• disadvantage resulting from relocation (formerly called solatium) is compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence (home) as a result of the acquisition. The maximum amount is set by the NSW Government. In assessing the amount of compensation for disadvantage resulting from relocation all relevant circumstances are to be taken into account, including:

  • the interest in the land of the person entitled to compensation, and

  • the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely), and

  • the inconvenience likely to be suffered by the person because of his or her removal from the land, and

  • the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

• any increase or decrease in adjoining land is any increase or decrease in the value of any other land owned by the land owner at the date of acquisition, which adjoins or is severed from the acquired land by reason of carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.
Reasonable costs/fees

The Act provides that costs or fees that are “reasonably incurred” are included in the amount of compensation determined.

The following is considered when assessing if costs have been reasonably incurred:

- has documentary evidence been provided?
- are the costs within a reasonable range for similar matters?
- have the costs been incurred or are they likely to be incurred, as a direct result of the acquisition?

Professional associations may be engaged to review fees.

Costs that are found to be exorbitant are not considered to have been “reasonably incurred”.