

Valuer General's Policy

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Compensation following compulsory acquisition involving possible conflicts of interest

What

This policy provides instruction for cases where there is a perceived or actual conflict of interest with Valuer General NSW determining compensation for land that is compulsorily acquired. This policy removes the Valuer General's delegated authority from Valuer General NSW in these instances.

How

The Deputy Valuer General will review, approve, document and determine the amount of compensation in compulsory acquisition matters where there is a perceived or actual conflict of interest.

Valuer General NSW will provide administrative and valuation support in these matters but will not influence decisions and outcomes.

Compensation is assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act).

Why

This policy will:

- eliminate perceived or actual conflict of interest
- afford procedural fairness to land owners
- ensure land owners are justly compensated for the acquisition of land
- provide transparency and assurance to land owners.

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1 Policy

1.1 Scope

Compulsory acquisitions involving possible conflicts of interest

conflict of interest

acquiring authority

Follow this policy, in compulsory acquisition cases where:

- there could be a perceived or actual conflict of interest
- an entity within the Department of Planning, Industry and Environment (DPIE) is the acquiring authority (AA)
- DPIE is acting on behalf of an AA
- DPIE own, manage or lease the property.

This policy applies to matters determined under the *Land Acquisition (Just Terms Compensation) Act 1991* or Treasurer's Direction 469.02.

1.2 Compulsory acquisition

Background

acquiring authority

compulsory acquisition

Valuer General NSW manage the determination of compensation process, where land is to be compulsorily acquired, under the delegated authority of the Valuer General.

However, other divisions within DPIE may undertake or manage the compulsorily acquisition of land where the compensation payable would normally be determined by Valuer General NSW on behalf of the Valuer General.

This policy:

- removes any perceived or actual conflict of interest in cases where DPIE are involved in the compulsory acquisition of land
- provides the process to be followed by the Valuer General and Valuer General NSW in these cases
- applies to all instances where DPIE is the AA, owner, lessee or manager of the property or managing the process on behalf of an AA.

Valuer General NSW to inform the Valuer General

As soon as Valuer General NSW become aware of any actual or perceived conflict of interest in a compulsory acquisition matter they must inform the Valuer General.

The Valuer General requires Valuer General NSW to keep a record of these matters for the Valuer General.

The Request for Quote

Advice to inform the determination of compensation will generally be obtained from a contract valuer and possibly other experts.

Valuer General NSW will manage the Request for Quote (RFQ) process and provide the Deputy Valuer General (DVG) with access to all responses to the RFQ.

The DVG will review the RFQ responses and approve the engagement of contractor(s).

Valuer General NSW will manage the engagement of the selected contractor(s) and provide them with all relevant information received from either the land owner or AA.

Valuer General NSW will advise contractor(s) of the processes in place to address any actual or potential conflicts of interest.

The preliminary report

preliminary report

Valuer General NSW will review the valuation contractor's draft valuation report and any supporting expert reports. Following the review, the responsible Director will provide comments and a letter of certification to the DVG.

The letter of certification will confirm to the DVG that a quality assurance review has been conducted by Valuer General NSW.

The DVG will review the draft report(s) and any comments provided by Valuer General NSW. The DVG is responsible for liaison with the valuation contractor regarding the draft valuation report.

Once the DVG is satisfied with the draft report, the valuation contractor will supply the DVG with a preliminary valuation report to be issued to the land owner and the AA, along with any supporting expert reports.

The preliminary report is to detail the amount of compensation and how it was determined.

Any errors of fact raised by the land owner or AA about the preliminary report must be addressed by the DVG before the report is finalised.

Determination of compensation

determination of compensation

Valuer General NSW will provide the DVG with a draft Determination of Compensation certificate based on the approved final report. The DVG will sign the Determination of Compensation under delegated authority from the Valuer General.

Communications In order to reinforce the removal of any conflicts of interest all communications with the land owner, the AA and other experts (such as town planners) will be from the DVG.

2 References

2.1 Definitions

acquiring authority 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.

compulsory acquisition While acquiring authorities aim to acquire land by agreement with the land owner, this is not always possible or practicable. When this happens, the acquiring authority may need to acquire the land compulsorily

conflict of interest A situation that has the potential to undermine impartiality because of competing interests

determination of compensation The determination of compensation shows the amount of compensation payable as determined by the Valuer General.

preliminary report Preliminary valuation reports, showing the amount of compensation and how it was determined, are issued to both the land owner and acquiring authority.

2.2 Laws and policies

Governing law *Land Acquisition (Just Terms Compensation) Act 1991*

Related Valuer General policy *Compensation following compulsory acquisition*
Compulsory acquisition advice

3 Context

3.1 Role of the Valuer General

The Valuer General for NSW

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

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

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.

3.2 Background

Compulsory acquisitions

Where land is acquired for a public purpose, compensation is paid to the owner of the land and any other parties having a compensable interest in the land. The Land Acquisition Act requires the acquiring authority to seek agreement with all parties, having an interest in that land, on the compensation which should be paid for the loss of their interest.

Where agreement cannot be reached, the interest will be compulsorily acquired. The Valuer General provides an independent determination of compensation for those interests which are compulsorily acquired.

Once acquired, all interests in land are vested in the AA, by written notification printed in the NSW Government Gazette. The identified land will be freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over, or in connection with, the land.

Any compensable interest in the land will be converted to a right for compensation.

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Any enquiries relating to the policy may be addressed to Valuer General NSW at

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Document control

Approval

Name and position	Signature and date
Dr David Parker, Valuer General	 29 June 2021

Version

Number	Status	Date	Prepared/Reviewed by	Comments
2.0	Final	29/06/2021	David Parker	Policy updated following stakeholder consultation to better align with the requirements of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
1.1	Final	04/06/2019	Rachael Burn	Administrative Update
1.0	Final	30/06/2017	Rachael Burn	First Release

Next review

Date	Comments
July 2022	Annual review, may be reviewed sooner following release or as needed.