

Valuer General's Policy

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Compensation following compulsory acquisition of a substratum interest

What

This policy guides valuers on the issues to consider when determining compensation for the compulsory acquisitions of a substratum interest.

How

A substratum interest may be acquired by an authority of the State for a public purpose when the surface land is not available for sale or required. The Valuer General determines compensation when an agreement for the purchase of the substratum cannot be reached between the person entitled to compensation and the acquiring authority.

Valuers assist the Valuer General in this task by investigating and assessing the amount of compensation payable.

Compensation is assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act) and, where applicable, the *Transport Administration Act 1988* (Transport Administration Act).

Why

This policy will ensure that:

- any land owners are justly compensated for the acquisition of land
- compensation offered to a person entitled to compensation is in line with the Land Acquisition Act and the Transport Administration Act.

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1 Policy

1.1 Scope

Compulsory acquisition of a substratum interest

Where a substratum interest is required for a public purpose an authorised acquiring authority will give a proposed acquisition notice (PAN) to the land owner to initiate the compulsorily acquisition of the substratum interest.

land owner

The substratum is compulsorily acquired through publication of the acquisition in the government gazette, at which time ownership passes to the acquiring authority.

public purpose

1.2 Assessing compensation

Interest in substratum

Land for which compensation is assessed includes an interest in a substratum.

substratum

Matters to be considered when assessing compensation

When you determine the amount of compensation, you must consider the requirements of:

- s. 62(1) of the Land Acquisition Act, which concerns compulsorily acquired land which consists only of an easement, or right to use land, under the surface for the construction and maintenance of works (such as a tunnel, pipe or conduit for the conveyance of water, sewage or electrical cables);
- s. 62(2) of the Land Acquisition Act, which concerns land under the surface compulsorily acquired for the purpose of constructing a tunnel; and
- cl. 2(1) of Sch. 6B to the Transport Administration Act, which concern land under the surface compulsorily acquired for the purpose of underground rail facilities.

For acquisitions to which s. 62(1) of the Land Acquisition Act applies, compensation is not payable except for actual damage done in the construction of the work or caused by the work.

For acquisitions to which s. 62(2) of the Land Acquisition Act applies, compensation is not payable (subject to s. 62(1)) unless:

- (a) the surface of the overlying soil is disturbed, or
- (b) the support of that surface is destroyed or injuriously affected by the construction of the tunnel, or
- (c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.

Clause 2(1) of Sch. 6B to the Transport Administration Act is almost identical to s. 62(2). For acquisitions to which cl. 2(1) applies, compensation is not payable unless:

- (a) the surface of the overlying soil is disturbed, or
- (b) the support of that surface is destroyed or injuriously affected by the construction of the underground rail facilities for the purpose of which the land was compulsorily acquired, or
- (c) any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected

If the Valuer General is of the opinion that one of these provisions applies and that compensation is not payable because the relevant exceptions are not met, the Valuer General must issue a determination of compensation of “nil”.

The Valuer General generally issues a determination of nil compensation immediately after gazettal.

If you are of the opinion that one or more of the relevant exceptions is or may be met, the matter should be referred to the Valuer-General’s delegate for direction. Similarly, if it is unclear whether any of these provisions applies and/or whether any of the exceptions are met, the matter should be referred to the Valuer-General’s delegate for direction.

Desktop review of properties will be undertaken with detailed maps showing the course of the tunnel.

1.3 Issuing the determination of compensation

Determinations of Compensation are issued by the Valuer General.

1.4 Post determination process

Valuer General’s role following completion of the determination

The Valuer General’s formal responsibilities under the Land Acquisition Act are completed when the Determination of Compensation is issued to the person entitled to compensation and the acquiring authority. However, the Valuer General can amend a Determination of Compensation to correct a clerical error or obvious mistake.

Objections against the compensation notice are between the person entitled to compensation and the acquiring authority. However, valuers providing advice on behalf of the Valuer General are to make themselves available to discuss the Determination of Compensation with person entitled to compensations and the acquiring authority involved if required.

Dispute resolution

If the person entitled to compensation wishes to object to the offer of compensation in accordance with the Valuer General's determination, it may do so in the Land and Environment Court. The Valuer General is not a party to such litigation.

2 References

2.1 Definitions

| | |
|--|---|
| easement | An easement is an acquired legal right enjoyed by the easement holder over the land of another. |
| environmental planning instrument | A legal document that regulates land use and development under state environmental planning policies and local environmental plans. |
| fee simple | Absolute title to land, free of any other claims against the title, which can be sold or passed to another by will or inheritance. |
| highest and best use | Valuation concept that refers to the possible use of a property that would give the highest market value. The use must be lawful, physically possible and financially feasible. |
| interest in land | Interest in land means: <ul style="list-style-type: none">• a legal or equitable estate or interest in the land, or• an easement, right, charge, power or privilege over, or in connection with, the land. |
| public purpose | A “public purpose” means any purpose for which land may by law be acquired by compulsory process under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> . |

2.2 Laws and policies

Governing NSW law

Transport Administration Act 1998

Land Acquisition (Just Terms Compensation) Act 1991

Related Valuer General policy

Compensation following compulsory acquisition

Compensation acquisition advice

Compensation following compulsory acquisition involving possible conflicts of interest

Related Valuer General Guidelines

Determination of compensation following the acquisition of a business

Determination of compensation for disadvantage resulting from relocation

3 Context

3.1 Role of the Valuer General

The Valuer General for NSW

In NSW, the *Land Acquisition (Just Terms Compensation) Act 1991* requires that the Valuer General determine the compensation to be offered to the person entitled to compensation and any other parties having a compensable interest in the land following a compulsory acquisition of land, or an interest in land, by a state or local government authority.

The Valuer General is an independent statutory office appointed under the Valuation of Land Act 1916.

A Valuer General NSW valuer or private valuer contracted to Valuer General NSW will prepare a valuation for determination of compensation by the Valuer General or his or her delegate.

The Valuer General is committed to an open and transparent valuation process that is easy for person entitled to compensations to understand.

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Any enquiries relating to the policy may be addressed to Valuer General NSW at: valuergeneral@ovg.nsw.gov.au

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Document control

Approval

| Name and position | Signature and date |
|---------------------------------|--|
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