Compulsory Acquisition of Strata Property

Compulsory acquisition of land by Commonwealth and State authorities has long been controversial, but anxiety has risen in recent years. A number of major infrastructure development projects have been commenced or proposed in recent years, e.g. the NorthConnex and WestConnex projects in Sydney. We understand that more than 1,000 properties have been compulsorily acquired over the past five years and several hundred more are likely to be acquired as a result of these projects.

Acquisitions relevant to a strata scheme usually involve Transport for New South Wales or a Council. Acquisitions can involve an entire property, part of a property or limited rights, such as an easement. Such acquisitions are regulated by the legislation permitting compulsory acquisition, generally the Roads Act 1993 and/or Local Government Act 1993 as well as the Land Acquisition (Just terms Compensation) Act 1991 ("Compensation Act"), which regulates the acquisition process itself, including notice requirements, time limits and the payment of compensation. Essentially, a proposed acquisition notice is issued and after 90 days elapses, given effect by gazettal. Compensation will be determined by the Valuer-General and provision is made for objections and appeals to the Land and Environment Court.

Authorities normally conduct negotiations prior to or in parallel with the statutory process and there is provision in the Compensation Act for an acquisition to proceed with the owner's consent, where the authority and the owner have agreed on all relevant matters, including compensation. Property owners should be cautious about such agreements, as the authority will no longer be required to comply with a number of pre-acquisition obligations under the Compensation Act.

The Compensation Act provides for compensation to be based on market value, with additional components to cover other categories of loss, e.g. special value, disturbance and some legal, relocation and other costs. Many disputes about compensation involve claims in relation to relocation costs or claims that a property has a higher potential value than the one applicable to its current use or both.

State authorities generally claim to act fairly and to pay fair compensation and by and large they do. However, property owners do have difficulties, including:

- Where an authority is considering an acquisition and may have prepared draft plans, but has not made a decision and may or may not proceed. At this point, a property owner has no entitlement to compensation, but the scenario can be catastrophic for property values and prospects of sale.
- Where proximity to a project disrupts the amenity of a property, but the project does not involve acquisition of the property. In this scenario, property owners usually have no entitlement to compensation, but will suffer reduced amenity, property values and prospects of sale.
- Where the acquisition proceeds with the owner's consent, typically by way of deed of acquisition and transfer and where the deed does not deal adequately with all of the issues between the parties, e.g.

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timetabling of events, access arrangements and entitlement to compensation for the common property where the acquisition involves all of the lots in a strata scheme.

- Where a property owner is not fully compensated for delays and legal costs. Political issues, reorganisation of an authority and many other factors can delay a proposed acquisition for months or years, during which time the property owner's amenity is adversely impacted and his or her legal costs continue to mount.
- Where a dispute arises as to proper compensation and it becomes necessary for the property owner to commence expensive proceedings to recover appropriate compensation.

Property owners who are concerned about proposed or possible acquisition of their properties should consider the following:

- There is little likelihood of successfully opposing a lawful acquisition once a decision to proceed has been made, so projects and acquisitions are best opposed at a political and/or planning level.
- They should initiate negotiations with the relevant authority as soon as possible. At the very least, they will have the opportunity to obtain additional information and often alleviate some anxiety. Usually, they will achieve a better outcome, particularly if they have the benefit of legal advice and valuation evidence.
- There are good prospects of challenging an inadequate offer of compensation, either by negotiation or court proceedings.

Key takeaways

- Compulsory acquisition of strata property is regulated by the Roads Act 1993 and the Local Government Act 1993.
- Compensation for acquired property is determined by the Valuer-General and can include various categories of loss.
- Property owners may face challenges regarding compensation, especially in cases of proximity to infrastructure projects.
- Negotiations can occur prior to the statutory process, but owners should be cautious of agreements that waive their rights.
- Delays in the acquisition process can lead to increased legal costs and reduced property values.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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