Compulsory Land Acquisitions – New Owner Rights

Amendments to the Land Acquisition (Just Terms Compensation) Act 1991 ("Act"), which commenced on 1 March 2017, give owners some significant new rights.

Compulsory acquisition process

The acquiring authority must, before issuing an acquisition notice, spend at least six months making bone fide efforts to negotiate the acquisition on agreed terms. This doesn't apply if the landowner "notifies the authority that the owner is not prepared to negotiate" or cannot be located after making reasonable enquiries. It also doesn't apply to some acquisitions, such as most acquisitions relating to subsurface areas or acquisitions of crown land. The Minister responsible for the authority can reduce this period in urgent matters, with the concurrence of the Minister for Finance, Services and Property, as Minister responsible for the Act.

The ability of the responsible Minister to reduce the usual 90 day notice period in a proposed acquisition notice issued by an authority has been restricted. This now required the concurrence of the Minister for Finance, Services and Property (as minister responsible for the Act).

The Valuer-General's role has been expanded. Landowners can make claims for compensation with the Valuer-General and the Valuer-General has some additional powers.

A new review mechanism has been introduced for owner initiated acquisitions. These involve applications by owners of land which has been designated as required, but not yet acquired, who may require the authority to proceed with the acquisition, if they would otherwise suffer hardship. The landowner can apply to the Minister for Finance, Services and Property, as Minister responsible for the Act, for a review of a decision of an authority not to acquire the land. The Minister will then refer the application to a "suitably qualified" independent reviewer, whose decision is final.

Compensation

A landowner can receive additional compensation for any "special value" the land has to the landowner for a particular purpose for which the landowner genuinely proposes to use the land. If market value for land used for that purpose can't be determined, it is taken to be the cost of reinstating that use at another location.

The compensation component previously known as "solatium" has been renamed "disadvantage resulting from relocation" and the maximum amount which can be awarded has been increased to $75,000. This is to be increased on 1 July each year in accordance with CPI increases.

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Post Acquisition Rights

Prior to the amendments, the Act provided that a landowner could in some circumstances remain in occupation of the land for three months after the date of acquisition, but could be charged rent. The Act now provides that, where the land is the landowner's principal place of residence, no rent is payable during this period.

A landowner now has a right of refusal over the land for 10 years after date of acquisition. An authority wishing to dispose of land no longer required during that period must first offer to sell it to the landowner at current market value. There are some exceptions, such as where the authority has made substantial improvements or proposes to dispose of the land to another public authority for another public purpose.

Key takeaways

- Landowners now have significant new rights under the amended Act.
- The acquiring authority must negotiate for at least six months before issuing an acquisition notice.
- Compensation can include additional amounts for special value to the landowner.
- Landowners can refuse to pay rent for three months post-acquisition if the land is their principal residence.
- Landowners have a right of refusal to repurchase their land for 10 years after acquisition.

****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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