



A GUIDE FOR AFFECTED PARTIES TO LAND PURCHASE AND COMPENSATION

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Introduction

The acquisition of land for public purposes such as roading is governed by the Public Works Act 1981 (which will be referred to as the "Act"). If you are affected by this, you will be entitled to compensation under this Act.

The purpose of this document is to provide information for people affected by land acquisitions for road and other transport purposes for which Auckland Transport is responsible. Auckland Transport is a Council controlled organisation of Auckland Council.

This is a guide only to the landowner's rights and the powers that can be exercised under the Act. It is not an exhaustive summary of those rights and powers.

If you think that you may be affected by a proposed public work for roading purposes, you should contact the Property Department at Auckland Transport. Persons affected by a proposed land purchase are recommended to obtain independent legal advice.

What is compensation paid for?

Auckland Council has authority to acquire land under the Act and to negotiate compensation for that land. It is responsible for ensuring that the compensation is negotiated fairly in the interests of both ratepayers and affected landowners.

Negotiation to acquire the land and on the amount of compensation often takes place after all the required consents have been granted, or the designation has been made.

Where the proposed works are minor, a designation may not be required and compensation negotiations can be started at the time landowners are notified of the proposed works.

Land to be acquired by agreement

An important principle of the Act is to ensure that landowners receive fair compensation, and that they are left in a no better or worse position afterwards, than they were before the public work commenced.

The Act expresses a preference for acquisitions to be negotiated and agreements to be freely entered into if possible.

Entitlement to compensation is set out in section 60(1) of the Act. This section states that affected landowners are entitled to full compensation.

Only persons who have an interest in the land are entitled to compensation. Owners of interests that are less than freehold (e.g. A lessee's interest) are also entitled to compensation if their interests are acquired.

Persons who have only a licence to use the land have no claim. An interest in chattels or personal rights does not provide a right to compensation.

You are obliged to take steps to minimise your losses. If you do (or fail to do) anything that has the effect of increasing the amount of your losses, this is deducted from the amount that would otherwise be payable.

What are the rules of compensation?

The rules governing the assessment of compensation are set out in section 62 of the Act. They are as follows:

Willing seller

No allowance is to be made because your land is required for a public work. The Act provides that the value of land to be taken is the amount the land would be expected to sell for if sold on the open market by a willing seller to a willing buyer on a specific date. There are some exceptions to this, set out in section 62(1)(b) of the Act.

Market value

The test of value is the price that your land would fetch on the open market. This is distinct from the personal value to you as the landowner, or value to the council who wants to purchase your land. The intent of the legislation is that a person whose land is acquired or taken, is placed in the position of receiving an amount that is neither more nor less than would have been obtained if the landowner had sold to another private person in an open market sale.

Increase in value resulting from the public work

Where the public work being undertaken increases the value of your land, or the value of any other land in which you have an interest, this may be deducted from the total amount of compensation that would otherwise be paid to you. This principle is called betterment. Betterment applies whether the increase in value occurs before the specified date or is likely to occur after the public work commences.

Disturbance payments?

You may also be entitled to reimbursement for disturbance. This is payment for actual monetary loss of a temporary, non-recurring nature. Such losses are specified in section 66 of the Act. The losses must be as a direct result of your land being taken and where you could not have avoided loss by taking reasonable precautions.

Disturbance can be claimed only where it has actually occurred or will occur. Disturbance payments are not a general amount to cover possible unspecified contingencies such as inconvenience.

In order to qualify:

- Disturbance must be directly attributable to you being required to give up possession of your land to the council.
- Losses must be reasonable and proven such that they would not have occurred were it not for the council's purchase of your land or your business.

Injurious affection

Injurious affection is the permanent depreciation in value of the balance of a property resulting from the use or acquisition of part of the land for a public work. This takes into account the effect of the public work over and above using a strict area basis to determine the value of the land. Injurious affection recognises that the public work may adversely affect the value of the landowner's remaining property.

Damage to property

Compensation may be claimed where works cause physical damage to a property, particularly buildings.

Is compensation payable for business losses?

Compensation is payable for business losses resulting from the relocation of the business or for loss of goodwill if the business is closed. The landowner may also be entitled to relocation expenses. Business loss is not assessed

until the business has moved and enough time has passed to enable the loss to be assessed. You will need to ask your accountant to assist in preparing your claim. Such claims should be supported with verifiable proof of loss by reference to the last 3 years' annual accounts of your business.

Do leaseholders have any rights to compensation?

A leaseholder having more than a month to month tenancy has the rights to compensation under the Act. The leaseholder is entitled to the market value of that leasehold interest and compensation for disturbance. Business leaseholders may also be entitled to compensation for business loss.

Is any special compensation payable for the loss of a home?

In certain circumstances, an additional payment of \$2,000 can be made in recognition of the inconvenience and intangible losses suffered by people who lose their home because it is required for a public work. This is called solatium. It is payable only to people who own and occupy a home personally, and only after vacant possession has been given. Leaseholders may qualify for a lesser amount depending on the terms of their lease, however, it is not payable to weekly or monthly tenants.

What expenses can be claimed?

Expenses incurred as a direct result of the negotiations and acquisitions are able to be claimed, e.g. legal and other professional fees incurred in the sale to the council and purchase of a replacement property in the general locality. All reasonable expenses are recoverable. To avoid any dispute, it is recommended that the landowners obtain the approval of the council's property officer involved in the negotiations before incurring any expense.

You have a duty to minimise your costs and losses. Time spent by landowners in negotiation is not normally compensated for, unless an actual financial cost has been incurred.

When is compensation paid?

The terms of payment are as specified in the agreement between the landowner and the council. Generally, payment is made when vacant possession is given.

How does the process work?

How is compensation assessed?

The council's property officer will discuss with the landowner their entitlement to compensation under the Act. A valuation report is obtained from a registered valuer except in very minor cases. In many cases the property officer and landowner agree to use a particular valuer who is acceptable to both of them. The landowner is also entitled to obtain independent valuation advice. The same procedure applies where advice is required from accountants, or other professional advisers. Reasonable fees incurred will be reimbursed as part of the settlement, provided the reports are available during negotiations.

The valuations obtained form the basis for negotiations to seek agreement on compensation. An open and realistic approach by both parties generally leads to an agreement acceptable to both the council and the landowner.

How does the council actually complete the purchase of land?

Once the council's property officer and the landowner have reached agreement in principle, an agreement is then prepared by the property officer and approval is applied for by the council. The agreement is in the form of an offer from the landowner to the council as purchaser. The landowner signs the agreement

and it is returned to the council for approval and signature. Once the offer is signed on behalf of the council there will be a binding contract. The purchase is then put into effect by either the council completing a declaration under the Act (which transfers the ownership of the land to the council) or by the registration of a transfer from the landowner.

Will the council buy the whole property when only part is affected by the proposed public work?

Where part of a property is acquired for a public work, the council will consider acquiring any other part of the property where:

- The economic value of that other part has been significantly affected or;
- The landowner would have difficulty in obtaining access to the land or using it.

These areas are commonly called severances; however, they do not have to be physically separated by the public work for the council to acquire them. For example, if the front of a house section is acquired for a road, this may deprive the remainder of the property of proper access.

Can the council take land compulsorily?

Where agreement cannot be reached for the purchase of land for a public work, the Act provides for compulsory acquisition by the council. This will only be done after the council has made every reasonable effort to negotiate in good faith for the sale and purchase of the land without reaching agreement.

If the council intends to take your land and you object, you have the right to have your objection heard by the Environment Court. However, your right to object relates only to the taking of the land, not to the amount of compensation payable.

If you and the council cannot agree on the amount of compensation to be paid, following completion of the taking of the land, the Act provides for the compensation to be determined by the Land Valuation Tribunal.

Entry for survey or investigation purposes

The council has powers to enter your land for survey or investigation purposes. The property officer will give you reasonable notice of intention to enter your land for survey purpose, or will seek your agreement where other investigation is required.

I am aware there has been an application for a designation affecting my property. What is the process from here?

Consultation under the Resource Management Act 1991

Designations are planning instruments that give permission under the Resource Management Act 1991 to construct public works.

As part of the designation process, landowners are consulted to establish the effects of the proposed public work on the landowner's property and the various options for mitigation that best meet the requirements of both the council and the landowner. Where the parties do not agree on the appropriate measures, they are established at the designation hearing.

The council will consider appropriate measures to "mitigate", or limit the impact on properties adjacent to the public work when applying for a designation. Landowners will be consulted as part of this process. Mitigation may take several forms. Examples are:

Mitigation of noise, which may include:

- Earth bunding,
- Fencing or planting on the boundary.

Mitigation of visual impacts, which may include:

- Landscaping,
- Planting and screening.

Will the council purchase my property straight away?

The council normally acquires land when it is actually required, which may be some time after designation of the affected land. However, you can request your land to be purchased in advance if:

- You cannot sell the property at current market value because of the designation, and
- Either the designation or requirement prevents reasonable use of your land, or you (or your spouse) owned the land before the designation was notified.

Where the council accepts that the landowner could prove that he or she meets these criteria then it would normally agree to the purchase negotiations starting without requiring the landowner to formally prove that they cannot sell their property.

Consideration may also be given for advance purchase of designated land on hardship, compassionate, or other appropriate grounds.

Where only part of a property is acquired in advance, the acquiring authority may wish to lease part of that back to the vendor at market rates.

Landowners who believe that they have a case for advance purchase should contact **Auckland Transport**.

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