

LAND OWNERS RIGHTS –v- THE CROWN AND LOCAL AUTHORITIES

When land is required for public works the procedures for acquisition are set out in the Public Works Act. The powers of acquisition under the Public Works Act only apply to the Crown and Local Authorities although there is provision for a network utility operator to implement the relevant special provisions of the Resource Management to acquire land for its purposes.

If part, or all of a property is required the relevant authority must serve on the land owner, notice of its requirements and lodge a notice with Land Information NZ. At that time the acquiring authority must endeavour, in good faith, to negotiate the purchase of the land from the owner. Invariably both parties will obtain valuations to try to reach agreement as to the compensation to be paid for the land. Unlike the sale of land between two individuals the compensation to be agreed may provide for permanent depreciation in the value of any land retained by the land owner, damage which may occur to the land and disturbance as a result of the acquisition and works.

On some occasions a land owner may refuse to negotiate for the sale of his/her land and in those instances the Act provides that the acquiring authority may take the land compulsorily and it sets out the procedures to be followed in those instances. It should be remembered that most acquisitions by the Crown or Local Authority are by negotiation with the land owner. In addition the acquiring authority will usually pay the land owner's legal costs and other expenses incurred as a result of the transaction.

The other situation where a land owner's rights may be adversely affected arises when a neighbour wants to carry on an activity which is not authorised under the Local Authority's District Plan. Under the Resource Management Act each local authority is required to have a District Plan which sets out the zoning of all properties within the boundaries of the local authority and the rules for the use of the land within the various zones.

Where a land owner wants to carry on an activity on the land which is not authorised under the District Plan the land owner must apply to the Local Authority for a land use consent which is a type of resource consent.

There are a lot of hoops to jump through for any land owner wanting a land use consent and most enlist the services of an expert in town planning. If the land use is a minor departure from the District Plan it is likely that it will be processed and considered as a non-notified application by Council.

Applications which may have an impact on neighbouring properties or if the environment in the locality may be affected adversely the application will proceed as a publicly notified application and a hearing will be convened. Neighbours may make submissions for the hearing and on environmental matters, members of the public may also make submissions.

Councils consider all matters raised in respect of the application by both the applicant and the people who have made submissions and deliver its decision as soon as their deliberations have been completed.

Anyone who is dissatisfied with the decision and was involved in the hearing, whether as applicant or maker of submissions, may appeal the decision within 15 working days of it being available. An appeal is to the Environment Court.

Basically the procedure for the acquisition of land under the Public Works Act works quite well in practice and it has been my experience that the Crown and local Authorities try to reach a good outcome for all concerned. The position of a land owner whose neighbours want to get a land use is more problematic and may result in some dissatisfied people.

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