

Supplementary  
Submission  
No 57a

**INQUIRY INTO ACQUISITION OF LAND IN RELATION TO  
MAJOR TRANSPORT PROJECTS**

**Name:** Mr Walter McKenzie

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# NSW PARLIAMENT INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

14/02/2022

Dear Committee Members

I refer to my previous submission No 57 (Walter McKenzie).

I can now provide you with further details regarding the matter which highlights more clearly a **serious anomaly** in Land Acquisition in NSW that I don't believe has been covered in other submissions.

Other submissions refer to inadequacies in the NSW Land Acquisition Just Terms Compensation Act 1979 (JTCA), however, an amendment made on 28 March, 2006, to the Environmental Planning and Assessment Act 1979 which gave rise to **Part 3, Clause 3.15 (3) Owner Initiated Acquisition of Land Reserved for Acquisition Purposes**, removed the need for an authority of the State to acquire land effected by a planning instrument (refer to Attachment 1) under the JTCA except under Hardship Provisions in Division 3, with the latter being further addressed below.

This meant that an authority of the State (in my case the Blue Mountains City Council, BMCC) can rezone a block of land as requiring acquisition but not have to compulsory acquire it. Therefore it is not constrained by the JTCA as the latter does not come into play. This is what the BMCC has advised me in writing.

The impact of this is that a Council can effectively sterilise the land as it is no longer able to be sold on the market and no longer to be considered for rezoning by the Council to allow development after the provision of all necessary utilities and services. It can then offer a pittance for the land on a "take it or leave it" basis, forcing the owner to capitulate as otherwise the owner has to continue to incur rates and other charges. In my case the BMCC's offer was a total of \$36K against my official valuation based on market value potential, of \$220K made in 2017 and based on all services having already become available. The land purchase and costs are well over \$96K to date

If compulsory acquisition is initiated by the owner under **Division 3 Owner-initiated acquisition in cases of hardship Section 26** of the JTCA, Clause 26 (Attachment 2), prevents the owner from claiming Disturbance and hence removes the owners ability to access reasonable Legal and Valuation services and so again the owner is pressured into accepting the valuation offered by the State. The contradiction in this is so obvious: the State authority will pay disturbance if you are financially well off but not if you are suffering financial hardship.

Every Environmental and Planning Lawyer I have spoken to has said that this is a serious irregularity in the states laws and needs to be addressed. Its effect is in complete contradiction to the aims of fair compensation.

The following actions are proposed for your consideration:

1. Where a State authority uses a planning instrument to make privately owned land unmarketable, then it should be immediately compulsorily acquired by that authority under JTCA  
or
2. Where compulsory acquisition is initiated due to Hardship provisions under JTCA and where a planning instrument has made the privately owned land unmarketable, then compensation due to Disturbance should be available to the owner.

Sincerely

Walter McKenzie

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https://www.planning.nsw.gov.au/Policy-and-Legislation/Environmental-Planning-and-Assessment-Act-updated/Guide-to-the-updated-Environmental-Planning-an...

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(a) for authorising the council (or other person or body) to determine the trees or other vegetation included in or excluded from the relevant provisions, and

(b) for requiring a permit, approval or other authorisation to remove or otherwise affect trees or other vegetation that is granted by the council (or other person or body), and

(c) for an appeal to the Court against a refusal to grant any such permit, approval or other authorisation.

**3.15 Owner-initiated acquisition of land reserved for public purposes**

(1) An environmental planning instrument that reserves land for use exclusively for a purpose referred to in section 3.14 (1) (c) must specify an authority of the State that will be the relevant authority to acquire the land if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

(2) Section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991* applies for the purposes of determining whether an environmental planning instrument reserves land for use exclusively for a purpose referred to in section 3.14 (1) (c).

(3) An environmental planning instrument (whenever made) is not to be construed as requiring an authority of the State to acquire land, except as required by Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

(4) Subsection (3) applies despite:

(a) any provision of an environmental planning instrument (whenever made) to the contrary, or

(b) the service of a notice to acquire the land on an authority of the State on or after the day on which notice was given in Parliament for leave to introduce the Bill for the *Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Act 2006*.

**3.16 Suspension of laws etc by environmental planning instruments**

(1) In this section, **regulatory instrument** means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.

(2) For the purpose of enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act, an environmental planning instrument may provide that, to the extent necessary to serve that purpose, a regulatory instrument specified in that environmental planning instrument shall not apply to any such development or shall apply subject to the modifications specified in that environmental planning instrument.

(3) A provision referred to in subsection (2) shall have effect according to its tenor, but only if the Governor has, before the making of the environmental planning instrument, approved of the provision.

(4) Where a Minister is responsible for the administration of a regulatory instrument referred to in subsection (2), the approval of the Governor for the purposes of subsection (3) shall not be recommended except with the prior concurrence in writing of that Minister.



- 17 Registrar-General to be notified of proposed acquisition notice and withdrawal or amendment of such notice
- 18 Valuer-General to be notified of proposed acquisition notice

#### Division 2 Acquisition procedures

- 19 Compulsory acquisition by notice in Gazette
- 20 Effect of acquisition notice

#### Division 3 Owner-initiated acquisition in cases of hardship

- 21 Definition of "land designated for acquisition for a public purpose"
- 22 Owners of land to whom Division applies
- 23 Owner who suffers hardship may require authority of the State to acquire land designated for acquisition
- 24 Hardship
- 25 Method of acquisition under this Division
- 26 Compensation for acquisition under this Division
- 27 Authority of the State may lift designation of land
- 27A Review of decisions on hardship applications by independent person
- 28 (Repealed)

#### Division 4 Miscellaneous provisions relating to acquisition

- 29 Acquisition of Crown land
- 30 Compulsory acquisition with consent of owners
- 31 Rescission of acquisition notice
- 32 New interests in land
- 33 Validity of compulsory acquisition
- 34 Former owner's right to occupy land until compensation paid etc
- 35 Power of authority of the State to obtain possession of compulsorily acquired land
- 36 Adverse use of acquired land

- (a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or
- (b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

#### 25 Method of acquisition under this Division

- (1) Land required to be acquired under this Division is to be acquired by compulsory process.
- (2) However, nothing in this Division prevents the land concerned from being acquired by agreement instead of compulsory process within the period required by this Division.
- (3) Division 1 (Pre-acquisition procedures) does not apply to an acquisition of land under this Division.

#### 26 Compensation for acquisition under this Division

The special value of land, any loss attributable to severance or disturbance and disadvantage resulting from relocation (as referred to in Part 3) need not be taken into account in connection with an acquisition of land under this Division, despite anything to the contrary in that Part.

#### 27 Authority of the State may lift designation of land

An authority of the State is not required to acquire land under this Division if, before it is required to acquire the land—

- (a) in the case of land designated for acquisition as referred to in section 21 (1) (a)—that authority gives the owner of the land written notice that the land is no longer designated by that authority for future acquisition, or
- (b) in the case of land designated for acquisition as referred to in section 21 (1) (b)—that authority gives the owner a written undertaking that it will use its best endeavours to remove the relevant reservations and a written notice that the land is no longer designated by that authority for future acquisition.

#### 27A Review of decisions on hardship applications by independent person