



Preston Rowe Paterson
International Property Consultants and Valuers



Infrastructure and Compulsory Acquisition Rolls On

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Greg Preston discusses Preston Rowe Paterson Sydney's extensive experience spanning in excess of 30 years valuing and providing advice to clients when their properties are being acquired for compulsory acquisition. Most acquisitions have been related to the roll out of infrastructure projects in Sydney.

Compulsory acquisition can occur at Local, State and Commonwealth level when the government agency requires land for the development of a Public Purpose.

In Sydney and New South Wales, there has and continues to be a considerable amount of infrastructure work being rolled out which has required that the State Government resume land for various public purposes including road, rail, water, electricity and airport-related infrastructure. Local Government also has acquisition powers for its public purposes under certain circumstances.

Some current major infrastructure projects include:-

- Western Sydney Airport: \$5.3 Billion;
- WestConnex: \$16 Billion;
- Sydney Metro: \$12 Billion;
- Western Sydney Infrastructure Plan: \$2.9 Billion;
- Parramatta Light Rail: \$1 Billion;
- Pacific Highway Upgrade: \$971 Million; and
- Princes Highway Upgrade: \$450 Million

There are also several other projects underway that may be associated with these major projects.

When land is resumed or acquired the assessment of compensation can vary widely in complexity given the nature of the public purpose and the way it affects the various real asset classes (land). The landowner is entitled to the market value of the land; however, they may also be entitled to other heads of claim as depicted in the legislation (referred to later herein).

The process of dealing with a compulsory acquisition matter may be daunting for a landowner when they haven't dealt with it previously. At Preston Rowe Paterson we have the expertise to assist clients understand the assessment of market value and other heads of claim under the Legislation and to advise clients on dealing with the process.

Our Team

We have an experienced team of valuers based in our Sydney CBD offices who deal with compulsory acquisition valuation matters from the most complex through to relatively simplistic matters.



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Obviously more complicated matters are dealt with by our team leaders. Given the issues that usually arise in assessment of compensation we often apply a team approach where one of our senior operatives is assisted by a graduate or researcher.

Our valuation team can undertake initial assessments, advise clients in negotiations with the acquiring authority and dealing with the formal process of the acquisition if need be.

Property Types

We regularly deal with all forms of real estate including commercial, retail, industrial, hotel, residential and special-purpose asset classes and infrastructure for a plethora of reasons including compulsory acquisition.

The route alignment of infrastructure projects does not discriminate between property types.

All types of properties can be affected by compulsory acquisition ranging from CBD office buildings to retail shopping centres, industrial properties, residential development sites, and rural lands that may be earmarked for future higher and better use zonings.

At Preston Rowe Paterson we have recent extensive experience in undertaking compulsory acquisition valuations across all these real estate categories.

A Typical Acquisition Process

The acquisition process typically includes an initial notice from the acquiring authority to the landowner that the land is required for acquisition for a stated public purpose (usually infrastructure development). The initial notice also invites the landowner to participate in a negotiation with the acquiring authority. At this time the full detail of the acquisition may not necessarily be available which can make it difficult to assess the impact of the acquisition on the land to be acquired.

The acquisition may require all the landowner's land or part of the land. In some respects, if all of the land is required the valuation process is far simpler. If only part of the land is acquired complexities arise in terms of the impact of the public purpose acquisition on the retained land.

The acquiring authority may then enter into negotiations which may result in a satisfactory outcome. If not, the acquiring authority will proceed to issue a Public Acquisition Notice (PAN) inviting the landowner to provide an assessment of compensation. If this process does not result in a successful conclusion the authority may proceed to acquire the land and resolve the matter of the compensation payable through further negotiations and/or in a hearing before the Land and Environment Court.

Ultimately the acquiring authority has the power to acquire the land by Gazetting the acquisition in the New South Wales Government Gazette.



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What compensation are you entitled to?

In New South Wales compulsory acquisition is considered under the Land Acquisition (Just Terms Compensation) Act 1991. Under Section 55 of the Act the relevant matters for consideration in determining the compensation payable include: –

- (a) the market value of the land on the date of its acquisition,
- (b) any special value of the land to the person on the date of its acquisition,
- (c) any loss attributable to severance,
- (d) any loss attributable to disturbance,
- (e) the disadvantage resulting from relocation,
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

In a Commonwealth setting compensation is considered under the Lands Acquisition Act 1989.

Section 55 deals with the matters for consideration in assessing compensation including

- (i) the market value of the interest on the day of the acquisition;
- (ii) the value, on the day of the acquisition, of any financial advantage, additional to market value, to the person incidental to the person's ownership of the interest;
- (iii) any reduction in the market value of any other interest in land held by the person that is caused by the severance by the acquisition of the acquired interest from the other interest; and
- (iv) where the acquisition has the effect of severing the acquired interest from another interest, any increase or decrease in the market value of the interest still held by the person resulting from the nature of, or the carrying out of, the purpose for which the acquired interest was acquired.

Acting as an expert in Legal Proceedings and working with other experts

As valuers we are often required to act as an expert in legal proceedings in the Land and Environment Court. For complicated properties and acquisitions several other experts may be involved. These may include town planners, traffic engineers, quantity surveyors, structural engineers, architects, business valuers, retail consultants and the like depending on the nature of the property and acquisition.

The valuer is often referred to as the "tip of the iceberg" as we need to rely on the other experts evidence to prepare the valuation.

Often additional information arises during the overall timing of the acquisition negotiation through to issue of a PAN through to, if necessary, a hearing in the Land and Environment Court.

We have extensive experience in acting as experts on behalf of clients and their instructing solicitors. We work closely with the instructing solicitors and if need be Counsel in the hearing process. Some matters may be heard in the Land and Environment Court as a Section 34 hearing which is more akin to a mediation whereas others can proceed to a trial.



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Working with solicitors and barristers

The assessment of compensation payable is usually founded, in the first instance, in an assessment of market value. The statutes that define the compensation payable include market value as well as other matters such as special value, severance, disturbance, disadvantage following relocation or other increases and decreases in value.

Often for specific properties and acquisitions it is necessary to rely on interpretation of the statutes based on other established common law precedent. This requires us to work closely with our instructing solicitors and Counsel and to have a comprehensive understanding of not only the legislative process and requirements, but also relevant common law precedent relating to the circumstances of the acquisition under consideration.



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