

The value in re-landscaping

Over the last few years Hawkes Bay landscape has undergone some significant changes. The Hastings-Napier Expressway and the Hawke's Bay sports park are just two examples of important projects helping to grow and connect the region.

Recently our office has also seen a spate of valuation jobs for compensation purposes. This article discusses the rights of Crown and Land Owners alike and the process both need to go through when it comes to the commandeering of private property for public use.

The Public Works Act 1981 (PWA) provides for the land needed for these projects to be accumulated and set aside for a number of years. This allows local councils to plan for the future and helps to ensure that these new roads and developments are able to go ahead.

It is important to consider the implications of the Act and stay informed about public works, in particular if you are purchasing or selling property.

What is the Public Works Act (PWA) 1981?

The PWA gives power to the Crown to acquire land for public works, and sets out the payments that may be made to the former owners of the land. The Crown may take land for a wide variety of purposes, such as the building of new roads, schools or parks. The Act does not authorise these projects, rather it provides for the acquisition of land, and land can only be acquired through the process set out in the Act. Land acquired in this way is referred to as 'designated' land.



Hawke's Bay Regional Sports Park

Land Information New Zealand is responsible for administering the Act on behalf of the Crown. A number of organisations are able to apply for land under the PWA. Usually these designating authorities will be State Owned Enterprises or your local territorial authorities. When land is required for a public work, the Crown will engage a Land Information New Zealand accredited supplier to carry out the negotiations. Also under the PWA the Crown may choose to acquire the whole or just a specified part of the land.

Land acquired by agreement

The accredited supplier will obtain a valuation from a Registered Valuer. The owner of the property may also obtain an independent valuation

from a Registered Valuer. These valuations are used for negotiation and agreement on compensation between the parties. The reasonable cost of this advice may be reimbursed if the advice is necessary to quantify the loss of the owner.

If parties cannot agree on the amount of compensation payable, the Land Valuation Tribunal may be used to decide the compensation.

Once an agreement has been reached by the parties, the accredited supplier will prepare an agreement for sale and purchase. When this agreement is signed, it becomes a binding contract. The land will be transferred to the Crown by the normal conveyancing process, with the land owner acting as the

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vendor and the Crown as the purchaser.

Compulsory acquisition

If a voluntary agreement between the parties cannot be reached, the Public Works Act provides for compulsory acquisition of land by the Crown.

If the owner of the land in question objects to the acquisition of the land by the Crown, an objection may be made to the Environment Court.

Compensation

Entitlement to compensation is set out in Part V of the Act. Section 60 (1) of the PWA provides that affected land owners are entitled to full compensation for acquired land. The compensation provisions of the Act aim to ensure that land owners are left in a position that is no better or worse than their original position. Compensation is available to the owners of the land, as well as parties who have an interest in the land (such as a tenant), if that interest is acquired under the Act.

Compensation will usually consist of the value of the land. This is

determined by considering what the land would be expected to sell for on the open market by a willing seller to a willing purchaser. Compensation is not limited to the value of the land taken but may also include:

- Any damage caused by the acquisition to any remaining property;
- Any depreciation in the value of the land retained (injurious affection); and
- Any disturbances caused by the acquisition process.

Compensation for disturbance is inclusive of inconvenience, removal costs and contribution to valuation, legal and other professional costs incurred by the party.

How can you find out what is happening locally?

Often land owners are aware of these projects many years before construction begins. Owners are not able to claim compensation under the Act and then sell their property to a third party. The process under the PWA means that the Crown becomes

the new owner of the land. If you are looking to purchase a property and are unsure about how these projects may affect your new property, it is advisable to do your research. A Land Information Memorandum (LIM) may also list any proposed or existing transport network projects in the local area.

Of note, however, The PWA is an important piece of legislation which helps to shape the local landscape. If you are considering purchasing or selling it is important to be aware of local developments and how these may affect your property.

Useful websites to visit which provide up to date information and plans for new projects include:

Land Information New Zealand (www.linz.govt.nz)

New Zealand Transport Agency www.nzta.govt.nz/

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