

CITY OF
CANADA BAY
COUNCIL

CITY OF CANADA BAY COUNCIL LAND ACQUISITION & CLOSED ROAD DISPOSAL POLICY

(Acquired for public purposes under S186 (2) of the Local Government Act 1993)

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Introduction

The City of Canada Bay Council (CCBC) is responsible for providing public infrastructure and services to the residents and visitors within the Canada Bay local government area.

In some circumstances, it is necessary to acquire land to upgrade existing infrastructure, provide access or provide additional infrastructure (land) where increased demand for facilities are required.

Section 186 of the Local Government Act prescribes what purposes Council can acquire land for as follows:

- (1) *A council may acquire land (including an interest in land) for the purpose of exercising any of its functions.*
- (2) *Without limiting subsection (1), a council may acquire:*
 - (a) *land that is to be made available for any public purpose for which it is reserved or zoned under an environmental planning instrument; or*
 - (b) *land which forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired under this Part.*

Section 187 of the Local Government Act prescribes that:

- (1) *Land that a council is authorised to acquire under this Part may be acquired by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.*
- (2) *A council may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.*

This document is a general guide to the procedures that are followed when Council acquires land for a public purpose. While it provides a comprehensive overview of the essential elements of the Council's acquisition policy, is not intended as a complete statement on the subject.

Throughout this document, the term "affected" means affected by a right for Council to acquire land under Section 186 of the Local Government Act. Payment of compensation only takes place where land is acquired. Owners of property that is affected by the acquisition of land are generally made aware of planning proposals requiring acquisition when the proposals are publicly exhibited prior to the plan being made and/or through Council's community consultation process.

One objective of the Land Acquisition (Just Terms Compensation) Act 1991, referred to throughout this document as the Act, is to encourage the acquisition of land by negotiated purchase in preference to compulsory process. Canada Bay Council fully supports this objective.

Canada Bay Council generally purchases property arising from an owner initiated acquisition either under the "hardship" provisions of the Act, its "preferred option" policy or as a Canada Bay Council initiated acquisition. When agreement is reached the purchase is completed by contract and transfer takes place similar to a sale in the open market; however it should be noted that usually Council's solicitor will prepare contracts.

1. Land Acquisitions

1.1 Objectives

This policy aims to:

1. Ensure the City of Canada Bay has open and accountable processes to consider the acquisition of land assets;
2. Ensure the best value is achieved by Council for the acquisition of land; and
3. Establish the criteria under which Council will consider the acquisition of land.

1.2 Owner Initiated Acquisition under the provisions of the Act

Owners may experience difficulty in selling their property if part or the whole is designated for acquisition for a public purpose. If an owner is unsuccessful in attempting to sell a designated property and is experiencing hardship, then a written application can be made to Council requesting acquisition under the “hardship” provisions of the Act.

To be eligible for consideration for “hardship” acquisition a property must be designated for acquisition within the meaning of the Act. Land is designated for acquisition by the Council for a public purpose if:

- a. an authority of the State has, in connection with an application for development consent or building approval, given the Council or other person dealing with the application written notice that the land has been designated by the authority of the State for future acquisition by the Council for a public purpose, or
- b. the land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (1) (c) of the Environmental Planning and Assessment Act 1979 and the instrument (or some other environmental planning instrument) specifies the Council as the authority required to acquire the land.

To meet the Act’s criteria for “hardship” acquisition an owner must demonstrate that it has become necessary to sell for pressing personal, domestic or social reasons or to avoid a loss in income and that attempts to sell the property have been unsuccessful because of the designation for acquisition by the Council. If an owner meets the hardship criteria to the Council’s satisfaction, the Council will agree to purchase the property and in effect becomes the purchaser that cannot be found in the market place. While it is the Council’s preference to complete hardship acquisitions by negotiated agreement, the compulsory process is also available to the land owner if preferred.

The Council’s basis of assessing payment in hardship matters is market value unaffected by the reason for the acquisition. No other payments in addition to the unaffected market value are made as the owner’s willingness to sell the property in the market place is taken as a preparedness to accept the normal costs associated with selling a property. It should be noted that in most circumstances an owner will not be responsible for a sales commission that would otherwise be payable if the property had been successfully marketed and sold through a real estate agent.

If the owner of the land is a corporation, then to prove hardship, the pressing personal, domestic or social reasons must be shown in respect of a shareholder who owns at least 20% of the shares in the corporation or the acquisition is necessary to avoid a substantial reduction or loss of income of such a shareholder.

1.3 Owner Initiated Acquisition under the “Preferred Option” Policy

In the process of considering the location of proposed development for a public purpose, Council may examine several possible locations and a preferred option may be selected from those locations for further environmental impact study. As a result of community consultation the location of the preferred option will become known. This public knowledge could frustrate attempts by owners to sell properties potentially affected by the taking of land. Properties potentially affected by a preferred option proposal are not designated land because the final option has not been determined. Consequently the owners of such properties are not eligible for consideration to have their property acquired under the owner initiated acquisition provisions of the Act. Council is however prepared to consider the acquisition of such property outside the provisions of the Act.

Council will consider a request for acquisition if an owner can demonstrate hardship using the criteria specified in the Act. The acquisition will be at the discretion of Council and subject to the availability of funds with each party being responsible for all their own costs. The basis of the purchase price will be the assessment of market value unaffected by the "preferred option" policy.

Where an acquisition is proceeding on this basis, compulsory acquisition is not an option. Where an agreement cannot be reached on the purchase price, the following procedure is available:

- The offer is withdrawn
- The owner must choose a valuer from a panel of independent valuers nominated by the Australian Property Institute and referred to the owner by Council for selection. In this way the valuer chosen is mutually acceptable to both the owner and Council.
- The selected valuer will act as an independent expert and will be commissioned by Council to carry out a valuation of the subject property.
- Each party is to be responsible for the payment of 50% of the valuation fee.
- The owner or Council may make written submissions to the valuer within the first seven (7) calendar days after the valuer is instructed.
- The independent expert's determination will be binding on both parties if the owner wishes to proceed.
- No further valuations will be obtained and the offer to acquire at the determined value will remain open for a period of three (3) months, after which time the offer will lapse.

If the offer lapses and a subsequent decision is made to proceed with the preferred option and the property remains affected, Council will recommence negotiations to acquire that part of the property required for the public purpose when the Council's need for possession of the land is imminent.

1.4 Programmed Acquisition (Council initiated)

When land is required for a public purpose, the Council will initiate acquisition by way of a letter to owners of property affected by the proposed acquisition. The letter will advise the owner that a valuer representing the Council will make arrangements to inspect the property and carry out a valuation for the purpose of submitting a formal offer for the owner's consideration. The letter invites land owners to submit an asking price, if that is desired, and also advises that if the owner engages a registered valuer to value the property, the Council will reimburse fees to the maximum amount specified in the letter.

Reimbursement of valuation fees is subject to the conditions contained in Appendix "A". The valuation report is to be in accordance with the "Basic Content of Valuation Reports" contained in Appendix "B". It is expected that the valuer will act as an expert and not an advocate.

Division 4 of Part 3 of the Act, in particular Section 55, details the relevant matters to be considered when determining the amount of compensation:

- Market Value (unaffected by the reason for acquisition);
- Special Value,
- Severance,
- Disturbance,
- Solatium,
- any increase or decrease in the value of adjoining or severed land owned by the affected owner.

For a fuller understanding, refer to Sections 55 - 62 of the Act which are reproduced in Appendix "C". The heads of compensation to be considered are the same whether the acquisition is a negotiated purchase or is completed by compulsory process.

Following assessment, Council will submit written conditions of acquisition to owners for their consideration. One of those conditions will specify the maximum amount that Council is prepared to reimburse in respect to conveyancing costs. If the conditions of acquisition are acceptable, the matter will proceed to exchange of contracts and settlement. If Council's offer is not acceptable, it is suggested that the services of a registered valuer be engaged to carry out an assessment on the owner's behalf. If there is a difference between valuations, negotiations will take place in an attempt to resolve the matter. Every effort will be made to negotiate a mutually acceptable agreement.

Sometimes if the title to the affected land can be transferred to Council by registration of a plan at the Titles Office, a Deed rather than a standard land sale contract will document the acquisition and the compensation payable.

Depending on Council's requirements it may be necessary to acquire the whole of a property or only part of a property. The terms "total" or "partial" are used to describe these situations.

1.5 Total Acquisition

There are additional considerations specific to total acquisitions -

- It is strongly recommended to the property owner that no commitment be made to purchase a replacement property until contracts are exchanged on the sale to the Council.
- If a deposit on a replacement property is required, the Council may make an advance payment of up to 10% of the value of the property being acquired by the Council. The advance payment will be made at the time of or after the exchange of contracts and will be subject to conditions required by the Council's solicitor and is payable solely at Council's discretion. No such payment will be made if the remaining 90% of the compensation will be insufficient to pay out any mortgage affecting the land being acquired.
- The market value of the property will be assessed having regard to the prime cost items and inclusions at the time of inspection. If it is the owner's intention to retain any item, it is necessary to indicate to the valuer at the time of inspection that an item is to be excluded so that a correct assessment can be made. Requests made after the valuation inspection may be refused or the valuation reduced by the value of the item at the sole discretion of Council.
- Including payments of any monies owed with respect to the land such as rates and fees.
- The property must be left in a clean and tidy condition. In accordance with standard real estate transactions, vacant possession will be required on the date of settlement. The Council will carry out an inspection on the date of settlement to ensure compliance and that all inclusions are intact.
- Swimming pools should be clean on the day of settlement and should comply with any relevant statutory or Council requirements including fencing and signage.
- Sometimes Council will not require the acquired property for the public purpose immediately upon completion of its acquisition. In those circumstances Council may consider a lease back to the former owner at a market rental.

1.6 Partial Acquisition

If only part of a property is required by Council, the letter opening negotiations will include a plan showing the boundary and the area and dimensions of that part of the property to be acquired.

The method of assessing the amount to be paid for the land is the "Before and After" method which requires two valuations to be carried out. The first valuation is of the property unaffected by the proposal. The second valuation, as at the same date, is of the residue land on the basis that the proposed acquisition has been completed and the acquired land is being used for that purpose identified in the proposal. The difference between the two valuations is the payment for the land to be acquired.

Council will, at its own cost, arrange and adjust services and public utilities as required, relocate fencing and reinstate access to the new boundary. It should be noted that fencing will be relocated to the new boundary to a standard similar to that existing. If considered necessary, Council will prepare a plan detailing property adjustments for consideration by the land owner and if acceptable that plan may form part of the contract for sale.

On occasion, Council may acquire the whole of a property if the effect of proposed civil works on the residue land is considered to warrant total acquisition. This applies if the owner purchased the property prior to Council formally indicating that the property is to be affected by the acquisition of land, or if the already affected property is to be further adversely affected by the acquisition of additional land. All relevant elements of compensation within section 55 of the Act will be considered.

Where an owner purchased the property in knowledge of Council's requirement, Council may acquire only that part required for the proposed civil works. If an owner purchased in knowledge of affectation due to the proposed part acquisition and has requested Council to acquire the whole property Council may agree to total acquisition. However, if a decision is made to acquire the whole property compensation will be limited to market value unaffected by the proposal together with reasonable conveyancing and valuation costs. If an agreement cannot be reached on conditions of total acquisition, Council may elect to proceed with only the acquisition of the land required for the proposed works.

1.7 Entry for Civil Works

Once an acquisition has been settled, entry for civil works can take place. On occasion, the Council's works construction program requires entry prior to completion of the acquisition and in such matters the Council relies on the owner's cooperation. If required and the owner is agreeable, the Council may arrange formal right of entry on exchange of contracts or, entry by way of licence.

If an agreement cannot be reached to ensure the Council's timely entry onto the required land for civil works, the Minister may approve the issue of a written Proposed Acquisition Notice to compulsorily acquire the land.

1.8 Easements

Sometimes the Council does not need to acquire title to use land for the particular public purpose. This will usually be where the purpose can be achieved by the grant of an easement or other right in favour of the Council across the affected land. The Act provides for compulsory and negotiated acquisition of such rights in a similar way to the acquisition of title to land. Council will proceed with the acquisition of such rights in a similar way to the acquisition of title to an affected owner's land.

2. Compulsory Acquisitions

2.1 Council Initiated Acquisition under the provisions of the Act

Compulsory Acquisition is a statutory process under the Act available to the Council to acquire land for a public purpose. It also provides the means for resolving disputes about the amount of compensation payable if an agreement cannot be reached in a negotiated purchase.

Generally the process is as follows:

The Council seeks the Minister's approval to compulsorily acquire land.

- If the Minister approves, the Council issues a Proposed Acquisition Notice to each party with a known legal or equitable interest in the land, (e.g. a registered proprietor, mortgagee, lessee, trustee) or with a right or privilege over the land, or in connection with it (e.g. easement beneficiary, occupant, licensee, etc). The Notice advises of the Council's intention to acquire the land after 90 days. However, a shorter period can be agreed by the owner and Council, or can be approved by the Minister. A Proposed Acquisition Notice is accompanied by a Compensation Claim Form.
- The issue of a Proposed Acquisition Notice is recorded on the relevant Title registers at the Land Titles Office.
- During the 90 day (or shortened) period after the issue of the Proposed Acquisition Notice, negotiations may continue in an effort to purchase the land.
- During the 90 day (or shortened) period after the issue of the Proposed Acquisition Notice, the Council seeks the Governor's approval to compulsorily acquire the land.
- If contracts for purchase have not been exchanged within the minimum Notice period and if the Governor approves, an Acquisition Notice is published in the Government Gazette within 120 days of the issue of the Proposed Acquisition Notice unless a longer period is agreed to in writing by the owner and the Council.
- An extract of the Acquisition Notice is also published in a local newspaper.
- The Council owns the land from the date of publication of the Acquisition Notice in the Gazette. The former owner's legal and equitable interests in the land are converted to an entitlement to compensation.

2.2 Advance Payment

Following the publication of the Acquisition Notice the Council advises affected owners of the acquisition. It is generally prepared to offer to pay 90% of the Council's purchase offer, in return for vacant possession of the land.

2.3 Terms of Continued Occupation

The Council is entitled to charge rent for the land from the date of notification in the Gazette until possession is obtained. The terms of rental are, in the absence of an agreement, such reasonable terms as the Council may determine. Unpaid rent may be deducted from compensation payable. Parties entitled to compensation are paid statutory interest on the amount of compensation, such interest being calculated from the date of gazettal up until the date of payment.

2.4 Compensation

Each recipient of a Proposed Acquisition Notice is entitled to lodge a claim for compensation with Council. Also, anyone else who considers that they are entitled to compensation but did not receive a Proposed Acquisition Notice may lodge a claim. Claims must be on the prescribed form available from Council, but a form will be sent by the Council with its Proposed Acquisition Notice. Compensation is not paid until a properly completed claim has been lodged. If agreed, compensation may comprise land or works in whole or part settlement of a claim.

The Valuer General determines the amount of compensation (including legal and valuation costs) to be offered by Council in a Compensation Notice.

A Compensation Notice is issued within 30 days after notification of the compulsory acquisition in the Gazette. This Notice is issued whether or not a claim for compensation has been lodged. However, the Minister may approve delay in the issue of a Compensation Notice by up to an extra 60 days. In the case of competing claims, Council may not issue a

Compensation Notice until entitlement is resolved. The Compensation Notice specifies the amount of compensation (as determined by the Valuer-General) offered by the Council for the acquired interest in the former owner's land.

If the amount of compensation is accepted, and the necessary settlement papers and claim form are returned to Council properly completed, Council will pay the compensation within 28 days of receipt of those papers. Interest is paid on the compensation from the date of acquisition (ie, the date of publication of the acquisition in the Government Gazette) to the date of payment.

If the amount of compensation is not accepted, the claimant may lodge an objection with the Land and Environment Court. The objection should be lodged within 90 days of receiving the Compensation Notice. This ensures that the Court will hear the objection and determine the amount of compensation to be paid. Within 28 days after it is given notice of the institution of proceedings, Council will pay the claimant 90% of the compensation offered in the Compensation Notice as an advance on account of compensation, if that is acceptable to the claimant. Interest is also paid on the advance for the period from gazettal to the date that the advance is made. If it is not accepted, the advance and interest will be deposited into a trust account pending the Court decision.

If, within 90 days of a Compensation Notice issuing, the amount offered in that Notice has not been accepted and an objection has not been lodged with the Land and Environment Court, the offer in the Compensation Notice is deemed to have been accepted. Council then deposits the amount offered plus interest into the trust account where it is held until it is accepted or until an objection is lodged with the Court. Money earned by the trust account deposit becomes part of the compensation.

If compensation is in the trust account six years after the date of acquisition and a claim has not been received, the compensation is paid to the State Treasurer and held in the Treasury until paid to an entitled claimant. Interest is not paid on the compensation for the time that it is held in the Treasury.

2.5 Occupation

People in lawful occupation of land compulsorily acquired and to whom compensation is payable are entitled to remain in occupation as tenants of the Council until:

- a. the compensation is paid; or
- b. an advance payment of not less than 90% of the amount offered in the Compensation Notice is paid; or
- c. not less than 90% of the amount offered in the Compensation Notice is deposited into the trust account due to a deemed acceptance, Court action, or competing claims; whichever occurs first.

Furthermore, people lawfully occupying any building on the acquired land which is their principal place of residence or place of business are entitled to remain in occupation as tenants of the Council for three months after it is compulsorily acquired, regardless of whether any of the abovementioned payments have been made. However, the Minister may shorten that period.

The terms of occupancy, including rent, in the absence of an agreement with the occupant are determined by the Council on reasonable terms and any unpaid rent can be offset against any compensation payable by the Council.

Once the Council is entitled to vacant possession, it may request the Sheriff to deliver possession of the land to the Council. The Sheriff's costs may be recovered as a debt or deducted from any compensation payable.

3. Closed Road Disposal

3.1 Objectives

This policy aims to:

1. Ensure the City of Canada Bay has open and accountable processes to consider the disposal of closed roads;
2. Ensure the best value is achieved by Council for the disposal of closed roads; and
3. Establish the criteria under which Council will consider the disposal of closed roads.

3.2 Objectives

From time to time Council is approached by owners of land adjacent to roads, lanes or pathways (together called "roads") to acquire part or all of such roads as they are no longer used or needed for their original purpose. Sometimes the Council itself may decide that a road is no longer required and that it should be closed.

Most, but not all, roads within Council's local government area are owned by the Council as "roads authority" under the Roads Act 1993 (NSW) (Act). Many roads are affected by infrastructure such as water, sewer, gas, electricity and telecommunication facilities, which are not owned by the Council. The maintenance of such facilities usually needs to continue after any road closure. This policy relates only to roads of which the Council is the roads authority but does not apply to the closure of temporary roads. Roads are closed by the publication of a notice in the Government Gazette after approval of the closure by the Minister administering the Act. The Minister may not close a Council owned road without the consent of the Council. Accordingly it is usual for the Council to be the focus of any application by a person to close a road.

This policy is intended to indicate how such road closures will be administered by the Council and how Council will dispose of the former road after it is closed. Council reserves the right to make ad hoc decisions inconsistent with this policy where the amenity of the neighbourhood by reason of the nature or area of the road to be closed is not optimally served by the application of the Council's policy.

3.3 Applications for Road Closure

Application for road closure must be made in writing on a form available from the Council. An application fee will be payable. The application will require:

- The reason for the requested closure.
- Whether the applicant wishes to acquire the whole or any part of the former road if it is closed.
- An undertaking to pay any fees payable to the Land & Property Management Authority (LPMA) to consider the closure if the Council consents to the closure and including any costs for the preparation of plans required for the LPMA's consideration of the request.
- An undertaking to pay all fees and costs associated with the road closure and title issue if both the Council and LPMA agree to the road closure.

The Council will consider the application on its merits and decide whether to consent to the closure. The applicant will be notified in writing of the Council's decision and, if consent is refused, the reasons for the refusal.

3.4 What happens if Council Consents to the Road Closure

- The Council must then apply to LPMA to investigate the closure but may first require a formal contract to be entered into with the applicant dealing with fees, costs, consolidation and sale of the road, if it is closed.
- LPMA will publish in a local newspaper detail of the application and invite submissions about it. The public must have at least 28 days to make such submissions.
- If LPMA consent to the closure in principle it will require approval from service authorities in relation to continuation of necessary services. That may require the relocation and/or removal of pipes, conduits etc or the creation of easements.

- After LPMA is satisfied about all relevant matters it will notify its consent to the closure to the Council and require Council to register a plan at LPMA to identify the closed road for the purpose of gazettal and issue of a new Certificate of Title for the land.
- Council can request the gazettal when the plan is registered and afterwards will request LPMA to issue the Certificate of Title.
- Council is then in a position to complete the sale of the land pursuant to any previous deed or contracts or offer the land for sale on the open market.
- The proceeds of any sale must be used by the Council either to purchase land for other roads or for road works.

3.5 How will Council Dispose of the Closed Road

3.5.1 Road closures arising from Council's initiative

If the road closure arises from Council's initiative, resulting in the creation of a lot or lots suitable for sale to the public, then the land will be offered for sale by auction or private treaty in accordance with advice to Council at the time.

3.5.2 Road closures arising from a request by an adjacent owner or interested person

If the road closure arises from a request by an adjacent owner or interested person, Council requires the following costs to be paid by that person:

- All costs associated with the road closure and the title issue; and
- Council's legal costs in relation to the sale of the closed road; and
- The value of the land or a nominated fixed price.

The value of the land

The adjacent owner will be required to pay to the Council a fair market price for the land to be acquired. Such price will be determined by market valuation by a valuer agreed upon by the Council and the owner or, failing such agreement, by the nominee of the President of the Australian Institute of Valuers (NSW Division). The costs of any such valuer and his/her appointment are to be paid equally by the Council and the owner.

The valuation will normally be determined prior to commencement of the process and be indexed to reflect delays from the date of agreement until completion of the sale.

The value of the closed road will reflect any betterment to the value of adjacent land owned by the purchaser, who initiated the road closure and any betterment to a property development proposal. A binding deed or contract relating to payment of costs associated with the road closure and the sale price of the closed road must be entered into by the initiator before the closure proposal is forwarded on to Land and Property Management Authority (LPMA) for its consent.

Nominated fixed price

Where the area of the land is small, of minimal or no value in isolation (does not usually apply to drainage reserves and closed roads) and when consolidated with the adjoining property does not significantly increase the value of that adjoining property and cannot be sold and developed in its own right, an adjacent owner must pay a nominal fixed price for the closed road acquired by it as follows:

- | | |
|---|------------|
| • Lots at the rear of properties | \$5,000.00 |
| • Half width strips at the side of properties | \$2,500.00 |
| • Full width strips at the side of properties | \$5,000.00 |

3.5.3 Where land on either side of the closed road is owned by private owners.

If road closure is proposed of a laneway, pathway or narrow road with land on either side owned by a private owner, Council will offer one half of the area of the closed road to the owner of land adjacent to the relevant half of the closed road.

If an adjacent owner does not respond within 30 days of Council's offer to sell the relevant half of the closed road, or fails to enter into documentation within a reasonable time of its submission to that owner by the Council or its solicitors, then Council may offer such half of the closed road to the adjacent owner on the other side of the closed road.

Where the road closure is initiated by either of the adjoining owners, the price of such half road shall be one half of all costs associated with the road closure and title issue including the Council's legal costs associated with the sale.

If land is acquired by an adjacent owner of a closed laneway, pathway or narrow road then Council will require it to be consolidated with the adjacent land of the acquiring owner, at that owner's cost at the time of the sale.

4. Appendices

4.1 Appendix "A" - Reimbursement of Valuation Fees - Conditions of Payment

The purpose of the reimbursement of valuation fees is to provide the owner with the opportunity to obtain an independent valuation report from a Registered Valuer. The role of the Valuer is to provide a valuation report as to the owner's entitlement to compensation in accordance with the Land Acquisition (Just Terms Compensation) Act 1991. In some cases the valuation will form the owners claim to the Canada Bay City Council (Council) and in other cases the valuation report may act to verify that the compensation offered by the Council is fair and reasonable. The Valuer is to act as an expert not as an advocate for the owner. The valuation must comply with professional standards.

The Council is prepared to reimburse a fee incurred in obtaining a valuation report up to the maximum amount specified in the letter opening negotiations and subject to the following conditions:-

1. The Valuer engaged must be registered to carry out valuations for that particular type of property and preferably be a current member of the Australian Property Institute.
2. The Valuation Report shall be in accordance with Appendix "B" Basic Contents of Valuation Reports. The Valuer should be prepared to support the valuation in discussions with the Council's Valuers.
3. A copy of the report in its final form signed by the valuer is to be supplied with and in support of the asking price.
4. Reimbursement will take place upon settlement of the acquisition; however the Council will, under direction from the land owner, make a payment of 50% of the fee directly to the valuer following the valuation report being made available to the Council.

Owners are advised to ensure that the Valuer is prepared to provide the valuation in accordance with the conditions outlined above and is also prepared to accept a fee to the maximum amount specified in the letter opening negotiations.

In the event that it is considered necessary to engage some other consultants such as Accountants, Town Planners, Surveyors, etc., prior approval in writing must be obtained if it is intended to seek reimbursement of these fees from the Council.

4.2 Appendix "B" - Basic Content of Valuation Reports

1. Evidence that the valuation was undertaken by the valuer who signed the report and disclosed his/her registration number together with a statement that he/she is registered to value the subject class of property.
2. Date of valuation and date of inspection.
3. Areas/dimensions and legal particulars of the land. Any legal constraints which would restrict development should be noted.
4. A description of the improvements.
5. A site plan showing position of improvements in relation to boundaries.
6. A floor plan showing accurate areas, date and the north point.
7. Specific list of inclusions valued.
8. An outline of permitted land use under current relevant environmental planning instrument and/or local government codes.
9. A description of the class of land valued and the current or potential use of the land together with its location.
10. Details of the sales/rental information relied upon to arrive at the valuation, together with analysis and calculations.
11. Photographs of sales evidence.
12. Valuation rationale
13. Assessment of all individual Heads of Compensation as detailed in Land Acquisition (Just Terms Compensation) Act 1991.
14. The rental value of the property.
15. Affectation by stormwater flooding, stormwater overland flow, mainstream flooding, sea level rise, tidal inundation.

16. Affectation by erosive processes.
17. Condition of seawalls.
18. Affectation by contamination, including asbestos.
19. Affectation by services, both underground and overhead and easements.

4.3 Appendix "C" - Extract of the Land Acquisition (Just Terms Compensation) Act 1991

Relevant matters to be considered in determining amount of compensation.

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In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division):

- 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. solatium;
- 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.

Market value

56. (1) In this Act:

"market value" of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):

- a. any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired; and
- b. any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired; and
- c. any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.

(2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.

Special value

57. In this Act:

"special value" of land means the financial value of any advantage, in addition to market value, to the person entitled to compensation which is incidental to the person's use of the land.

Loss attributable to severance

58. In this Act:

"Loss attributable to severance" of land means the amount of any reduction in the market value of any other land of the person entitled to compensation which is caused by that other land being severed from other land of that person.

Loss attributable to disturbance

59. In this Act:

"loss attributable to disturbance" of land means any of the following:

- a. legal costs reasonably incurred by the persons entitled to compensation in connection with the compulsory acquisition of the land;

- b. valuation fees reasonably incurred by those persons in connection with the compulsory acquisition of the land;
- c. financial costs reasonably incurred in connection with the relocation of those persons (including legal costs but not including stamp duty or mortgage costs);
- d. stamp duty costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the purchase of land for relocation (but not exceeding the amount that would be incurred for the purchase of land of equivalent value to the land compulsorily acquired);
- e. financial costs reasonably incurred (or that might reasonably be incurred) by those persons in connection with the discharge of a mortgage and the execution of a new mortgage resulting from the relocation (but not exceeding the amount that would be incurred if the new mortgage secured the repayment of the balance owing in respect of the discharged mortgage);
- f. any other financial costs reasonably incurred (or that might reasonably be incurred), relating to the actual use of the land, as a direct and natural consequence of the acquisition.

Solatium

60. (1) In this Act:

“**solatium**” means compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition.

(2) The maximum amount of compensation in respect of solatium is:

- a. except as provided by paragraph (b)-\$15,000; or
- b. such higher amount as may be notified by the Minister by notice published in the Gazette.

(3) In assessing the amount of compensation in respect of solatium, all relevant circumstances are to be taken into account, including:

- a. the interest in the land of the person entitled to compensation; and
- b. the length of time the person has resided on the land (and in particular whether the person is residing on the land temporarily or indefinitely); and
- c. the inconvenience likely to be suffered by the person because of his or her removal from the land; and
- d. the period after the acquisition of the land during which the person has been (or will be) allowed to remain in possession of the land.

(4) Compensation is payable in respect of solatium if the whole of the land is acquired or if any part of the land on which the residence is situated is acquired.

(5) Only one payment of compensation in respect of solatium is payable for land in separate occupation.

(6) However, if more than one family resides on the same land, a separate payment may be made in respect of each family if:

- a. the family resides in a separate dwelling-house; or
- b. the Minister responsible for the authority of the State approves of the payment

(7) If separate payments of compensation are made, the maximum amount under subsection (2) applies to each payment, and not to the total payments.

Special provision relating to market value assessed on potential of land

61. If the market value of land is assessed on the basis that the land had potential to be used for a purpose other than that for which it is currently used, compensation is not payable in respect of:

- a. any financial advantage that would necessarily have been forgone in realising that potential; and
- b. any financial loss that would necessarily have been incurred in realising that potential. Special provision relating to acquisition of easements or rights, tunnels etc.

Special provision relating to acquisition of easements or rights, etc

62. (1) If the land compulsorily acquired under this Act consists only of an easement, or right to use land, under the surface for the construction and maintenance of works (such as a tunnel, pipe or conduit for the conveyance of water, sewage

or electrical cables), compensation is not payable except for actual damage done in the construction of the work or caused by the work.

- (2) If land under the surface is compulsorily acquired under this Act for the purpose of constructing a tunnel, compensation is not payable (subject to subsection (1)) unless:
- a. the surface of the overlying soil is disturbed; or
 - b. the support of that surface is destroyed or injuriously affected by the construction of the tunnel; or
 - c. any mines or underground working in or adjacent to the land are thereby rendered unworkable or are injuriously affected.
- (3) If the land compulsorily acquired under this Act consists of or includes an easement or right to use the surface of any land for the construction and maintenance of works (such as canals, drainage, stormwater channels, electrical cables, openings or ventilators), the easement or right is (unless the acquisition notice otherwise provides) taken to include a power, from time to time, to enter the land for the purpose of inspection and for carrying out of any additions, renewals or repairs. Compensation under this Part is payable accordingly.