

ANZVGN 5 VALUATIONS FOR COMPULSORY ACQUISITIONS

This Guidance Note should be read in conjunction with and is subject to the provisions of ANZ Practice Standard 1

1.0 INTRODUCTION

1.1 Purpose

The purpose of this Guidance Note is to provide information, commentary, opinion, advice and recommendations to Members involved in preparing valuations for compensation purposes including pre-acquisition advising and any subsequent discussions, negotiation or representation as part of a Public Authority acquisition process. This Guidance Note applies equally to valuers providing valuations to claimants (owners) and a Public Authority.

1.2 Status

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

1.3 Scope

This Guidance Note applies to Members involved in preparing valuations for compulsory acquisition* of interests of land. It should be used in conjunction with other guidance notes and practice standards as applicable to the type of property or issues involved.

** Whilst "resumption" is historically referred to in the context of compulsory acquisition proceedings, most recent statutes have adopted the word "acquisition" as standard terminology. For the purpose of this Guidance Note and its accompanying Standard these words are taken as referring to the same process. Acquisitions can be either by compulsory process or by negotiation.*

Note: Whilst this Guidance Note and ANZPS 1 relate to acquisition by Public Authorities, The current trend of privatisation may result in acquisitions being undertaken by private enterprise organisations under statutory provisions. This Guidance Note and the Practice Standard apply equally to those acquisitions.

1.4 Members Client

A Member may be involved in the process acting for either the Public Authority, or the claimant of an interest in land affected by the proposed or actual acquisition. In many cases when acting for a claimant, the Member's reasonable fees will be reimbursed by the Public Authority. This may be subject to certain conditions such as production of a copy of the report or production of a report meeting certain criteria. Where disputed claims are referred to a Court for determination, the Court will make an award as to costs. In such cases, both the claimant and the Public Authority are at risk in the recovery of costs. Where disputed claims are determined by agreement, the Public Authority will generally reimburse reasonable fees in respect to a valuation report carried out by the Member acting for the claimant. The party for whom the Member acts is the client regardless of who pays the fee.

1.5 Instructions

Members should accept instructions in writing in accordance with Rule 1.20 of the Rules of Conduct. As some dispossessed claimants may not fully understand the compulsory acquisition and related valuation processes, it may be appropriate for valuers to recommend that such claimants obtain expert advice from other appropriate specialists such as a suitably experienced solicitor or accountant (where there may be taxation issues). This process should ensure that the claimant is properly advised, that the Member is correctly instructed and is provided with a source of expert interpretation on points of law and taxation related aspects. It also assists in placing the Member at "arm's length" from the

dispossessed claimant to ensure that the Member's opinion is expressed as an independent expert. An acquiring authority may accept liability for a claimants reasonable professional expenses but confirmation of this should be obtained by the client in writing from the acquiring authority.

1.6 Valuers Entry into the Process

The Member's entry into the process may be at any time between notification from a Public Authority of an intention to acquire through to litigation. Early involvement by the Member will result in that member being in a better position to provide appropriate and timely advice. This Guidance Note applies equally in pre-acquisition stages.

1.7 Agreeing the Fee Basis and Payment

It is important that agreement is reached prior to commencement of the task on the basis of the Member's fees. This agreement should recognise that the Public Authority may offer to pay part or all of these fees. However, the agreement should also recognise that the client may be liable for additional fees.

1.8 Post Consultancy Report

Post Consultancy should be provided if required. As there is a reasonable probability of consultancy being required beyond the report phase, it is prudent to establish this position with the client at the time of taking instructions. In addition to agreeing the initial fee, it is recommended that from the outset Members agree in writing the following:

- basis of continuing consultancy fee
- basis of fee for any additional work or preparation required as a result of work by other experts on the team or as required by legal representative
- basis of fee for representation at any meetings, mediation or court hearing.

As the process can be protracted, it is recommended that agreement be made for rendering periodic accounts.

1.9 Other Professionals

In some matters, the Member may be the only professional engaged, in others the Member could be part of a team which includes various legal representatives, accountants, town planners, engineers, surveyors, etc.. Whilst strategic direction

may be provided by legal representation, the Member is responsible for ensuring their own professional integrity when acting as an expert. It is appropriate to include a note in a valuation report which identifies any outside professional advice relied upon.

2.0 BASIS of COMPENSATION ASSESSMENT

2.1 Legislation

Acquisitions and resumptions are effected under various legislation which affects many different types of property and many different interests in property (refer to "Property" in the Glossary of Property Terms).

2.1.1 Enabling Legislation

Acquisitions and resumptions are effected under enabling legislation. This will normally contain provisions for compensation assessment or invoke the provisions of other over-arching legislation. An understanding of such legislation is fundamental to assessing compensation.

2.1.2 Interest to be Assessed

The subject of the assessment is not simply the property but rather the claim of the claimant for compensation which could include the value to the claimant of the interest being acquired, plus claims under various other heads such as injurious affection, betterment, severance, disturbance and reinstatement. As an expert, the Member has a responsibility to consider all heads of claim identified in the relevant legislation.

2.1.3 Market Value of Claimants Interest

The value of the owner's interest is usually required to be assessed in accordance with the provisions of the relevant act. The claimants interest will include the market value of the property together with other heads of compensation.

2.1.4 Court Decisions

Many of the principles of compensation assessment have been laid down in Court decisions. A sound knowledge of the application of these legal precedents is fundamental to assessing compensation. Some decisions may be from other states or countries or have been given in terms of prior legislation and therefore their relevance may need to be considered.

2.1.5 Examination of Issues

Both the assessment of the claimants interest in the property, which includes various heads of claim are likely to involve the examination of a range of issues. Where these are complex and outside the valuers area of expertise, it may be prudent to instruct (with the client's written consent and appropriate understanding on fees) other experts. They should be briefed in writing and advised that they may be called to give evidence.

2.1.6 Legal Representation

Where a legal representative, experienced in compensation matters, is engaged as part of the team, it would be appropriate for that person to examine both the letter of instruction to the valuer and the report, or other specialist advice before it is issued. In such cases it may be preferable for the legal representative to issue instructions to other experts.

2.1.7 Date of Assessment

Any pre-acquisition assessment should relate to the current market. It is prudent, to advise the client that if the matter proceeds to formal acquisition, then the date at which compensation is assessed may change depending on the statutory requirements.

2.1.8 Guidance on Methodology

This Guidance Note is not intended to provide detailed assistance with methodology, and the valuer should refer to publications specialising in both the subject and court decisions. Most valuation publications will contain chapters dealing with the subject and the Institute's own professional journal has over many years reported court decisions and articles on compensation matters.

3.0 INSPECTION & INQUIRY GUIDELINES**3.1 Other Standards & Guidance Notes**

Other standards and guidance notes provide direction and guidance for most elements of the property inspection, inquiry, research and analysis and these should be referred to. However due to the task requiring the assessment of the owner's interest and claims under other heads, special comment is warranted on certain aspects which the Member should address.

3.1.1 Improvements Demolished before Settlement

Members should be aware that instances may arise where they will be required to discuss or defend their assessment long after the improvements on the property have been demolished. It is important therefore that full and accurate inspection notes are maintained, and that these are supported by sketches and colour photographs (or video where appropriate). The property inspection must be completely objective and must record both the positive and negative aspects of the property. Significant features of surrounding properties which might also be acquired and which impact on the subject property should also be recorded.

3.1.2 Interview the Owner

It is important for the Member, whether acting for the claimant or the Public Authority, to discuss with the claimant(s), the details of the property being acquired and the acquisition process to ensure that all relevant particulars of the property and the owner's legal past and future use (if part only or an easement taken), but also so that the claimant feels that their position is well understood and that they will be adequately compensated. Note that this is likely to be a significant and unfamiliar event for the owner and occurring in an environment over which the owner has limited control. It is an opportunity to demonstrate professionalism and appropriate sensitivity, no matter which party is represented by the Member. An interview with the claimant should also be used to confirm other interests in the property, and how those interests affect those of the claimant for whom the report is prepared.

3.1.3 Interviews and Discovery

There could be unusual aspects requiring investigation and research both for the property and other heads of claim. These should be well documented and obtained where possible in writing from the source of the information. It is appropriate to explain circumstances sufficiently to your information source so they properly understand the nature of the information required (this could save embarrassment and damage to your case under cross examination for you or your information supplier). In particularly important or difficult cases it may be necessary to obtain copies of contracts of sale as appropriate confirmation if litigation is involved (you will also need to establish that the contracts contain no special clauses which would impact on their use to determine value). In order to obtain copies of contracts it

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may be necessary to utilise the discovery powers of the court however valuers should explore other methods before turning to the court for assistance.

3.1.4 Public Authority

Where part of a property is required (including an easement), it is particularly important to interview staff from the Public Authority involved. While the acquisition notification will usually indicate the purpose of the acquisition, details of proposed works are important for establishing injurious affection, severance, betterment and reinstatement where applicable. The extent of works could impact significantly on the assessment. It is likely that the authority will have carried out studies of any impact. Members should obtain copies of plans and studies, examine and discuss them with the Authority and claimant who will possibly be able to indicate how these will impact on the use of the property.

3.1.5 Report Notes

Members should ensure that they keep full and accurate field notes of all inspections, meetings, sources of information, calculations and basis of their valuations. Photographs should also be obtained.

4.0 REPORT CONTENT

4.1 Other Standards & Guidance Notes

Other standards and guidance notes provide direction and guidance on contents of reports. In addition to considering those headings, the points to address and the annexures to provide in the report, the particular requirements of your client should be considered. Members should check if a preliminary report is required. The following should also be considered for inclusion.

4.1.1 Acquisition or Resumption Date

Details of the acquisition or resumption should be noted and a copy of any notification annexed to the report. Most important are:

- date of the acquisition (if gazetted),
- date of Notice to Treat/Notice of intention to acquire/Notice of Acquisition,
- stated public purpose and scheme description,
- interest acquired,
- legal description of land resumed,
- name of the Public Authority.

- Legislation under which the interests have been acquired.

4.1.2 Effect of the Acquisition or Resumption

Where part only of the property has been acquired, it is particularly important to note in some detail the impact of the acquisition on the residue of the property. Such issues as injurious affection, betterment, severance, disturbance and reinstatement may have to be considered and commented upon, as appropriate.

4.1.3 Town Planning / Resource Management

Town planning or Resource Management details should always be included in a report, however additional detail is warranted where the current or proposed zoning may have been or is a step in the acquisition process (and as such may have to be ignored in the assessment of compensation). In such a case comment on the most likely alternative zoning should be included (supported if necessary by a planning consultants report).

4.1.4 Reference Material

At appropriate points in the report, reference should be made to reports by other experts and publications or documents relied upon. Where appropriate, copies of these or extracts there-from should be annexed to the report.

4.1.5 Heads of Claim

Heads of claim should be explained and their qualification/quantification adequately detailed.

4.1.6 Summary of Claim

At some point in the report provide a summary of the amounts claimed for the value of the interest in the property taken and amounts under the heads of claim. This should be set out in such a way as to comply with any particular requirements of the relevant legislation and to enable any prescribed claim form to be completed. A total of the assessments or values of the claims should also be shown.

4.1.7 Separate Valuation Statements

If the Member has prepared a number of valuations reflecting different interpretations of the law, planning or other matters, it is appropriate that separate valuation statements be made, **clearly setting out the basis of each valuation.**

4.1.8 Degree of Detail

Members may be directed by the claimant's legal representatives as to the degree of detail to be

provided in their report. Where relevant, reports should be consistent with the Institutes practice standards.

market evidence, facts and reasoned argument in accordance with the relevant legislation and court procedures.

4.1.9 Suitable for Exchange

The Member should produce a report suitable for exchange prior to any discussions of value or negotiations (subject to direction from any legal representative). This will enable the parties to better understand the points of difference between them and will ultimately assist the Court. Exchange will normally be at the direction of the client or the team leader who may be a Property Professional, or legal representative.

4.1.10 Expert Witness

Members should be aware of any relevant court rules of practice directions or regulations relating to expert witnesses and should be conversant with and comply with their requirements.

5.0 POST ASSESSMENT CONSULTANCY

5.1 After the Assessment

A significant part of a Member's work can occur after the assessment has been carried out. This can take the form of discussions and negotiation, preparation and proof of evidence for appeal hearing, giving evidence and being cross-examined. If not prepared to carry through to these stages the Member acting as a valuer should notify the client and, if necessary, decline the instructions. It is desirable for the member's brief to extend beyond the assessment to include the negotiation of a settlement of the compensation claim. It is generally unacceptable for a Member acting as a valuer who has carried out an assessment to subsequently refuse to participate in the resolution process. The provisions of this clause apply equally to Members acting for acquiring authorities and claimants. Instances may occur where negotiations are undertaken by another professional who instructs a Member. In these cases this clause applies to the Member.

5.2 Negotiation with other Professionals

Professionals assessing compensation claims following acquisition by a Public authority will often be called upon to negotiate with other property professionals. In any negotiation it is essential that both Members be prepared to substantiate their opinions by reference to