For more information

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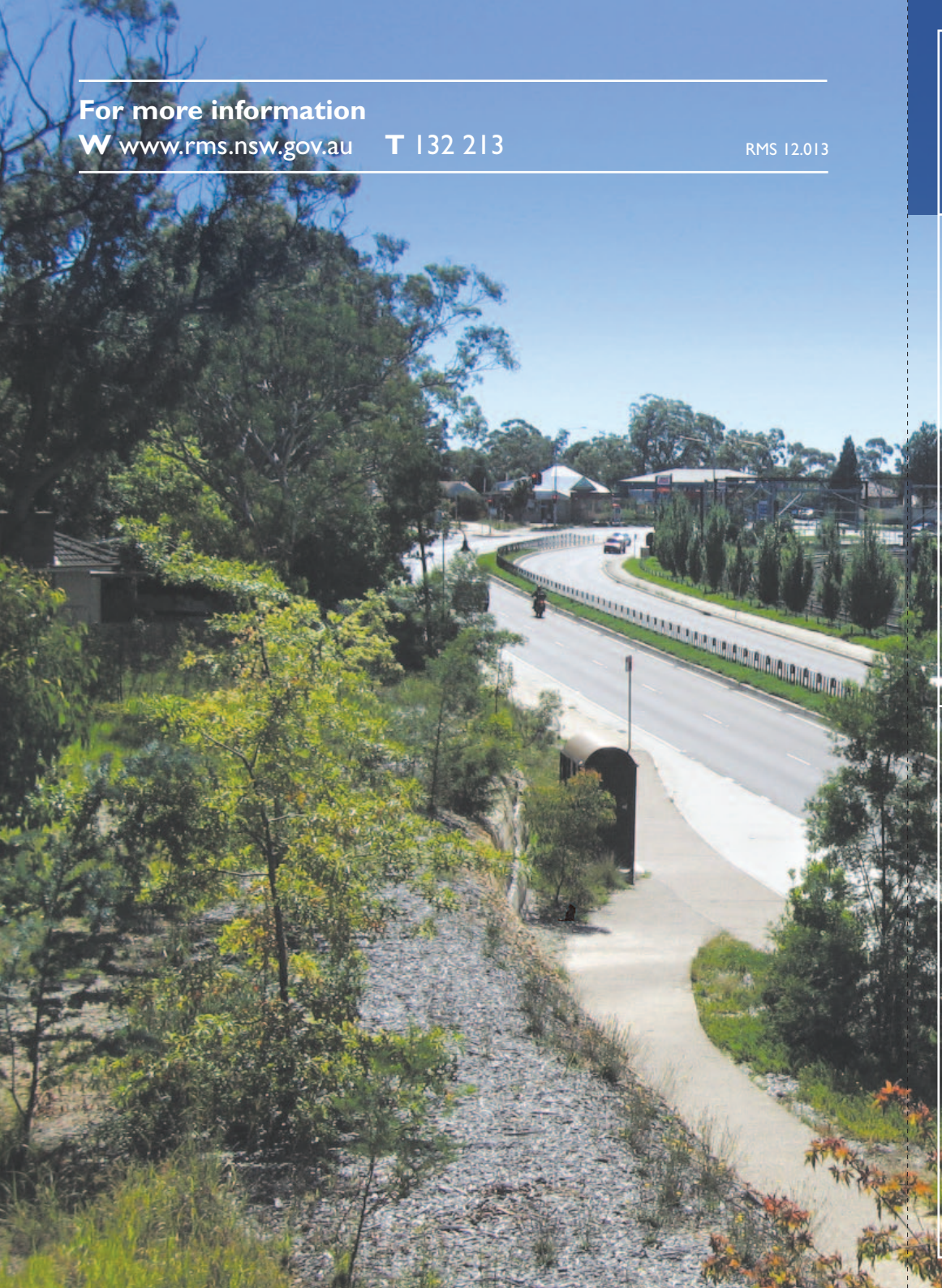

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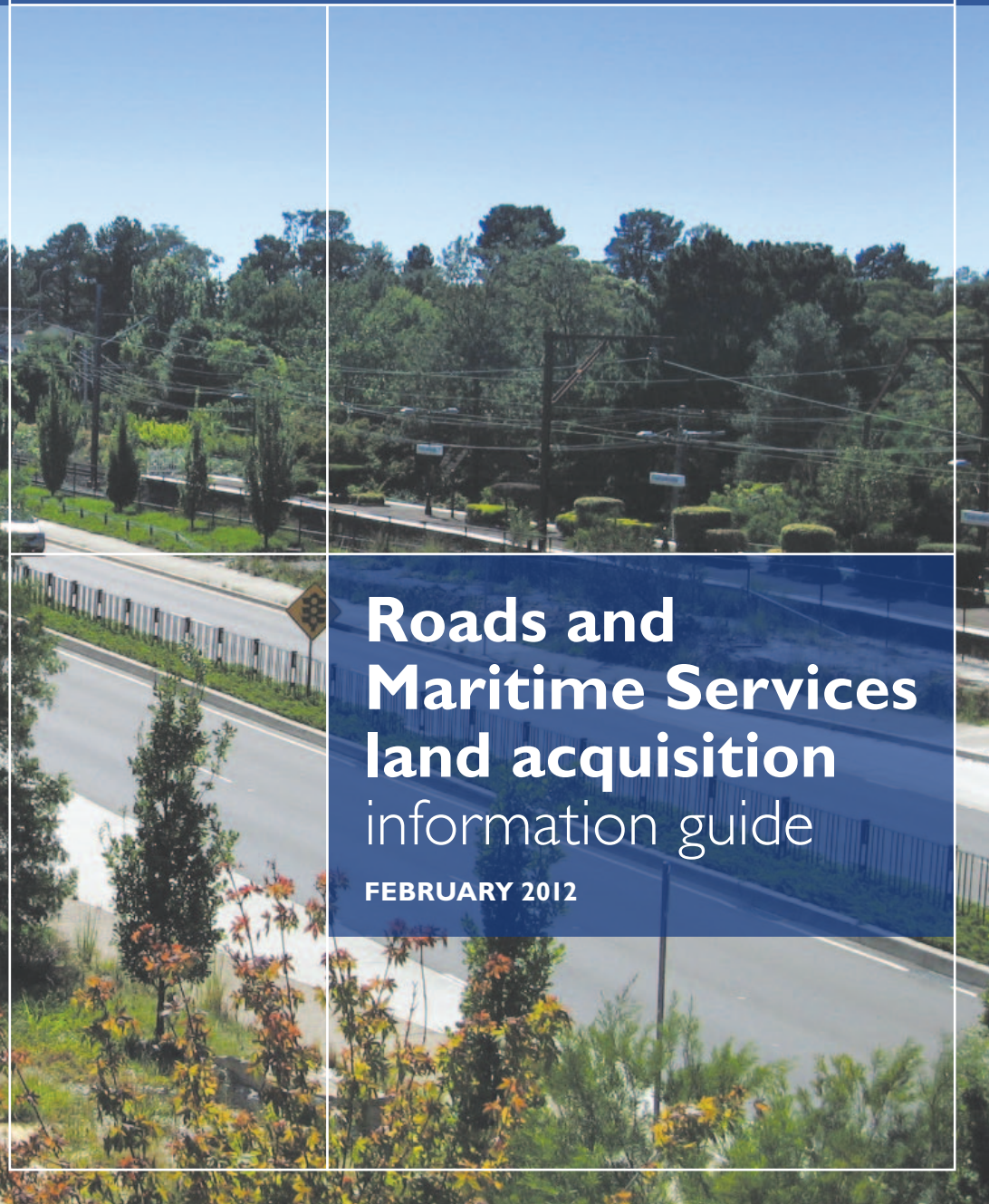

Roads and Maritime Services land acquisition information guide

FEBRUARY 2012

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Cover image: Great Western Highway upgrade, Faulconbridge, 2001

Land acquisition and you

Roads and Maritime Services (RMS) is the government body responsible for providing a safe and efficient road transport system in NSW (formerly known as the Roads and Traffic Authority).

In order to undertake these upgrades and road constructions, RMS may need to acquire private land, which may contain buildings. We will refer to this as 'property.' It may be the property of residents, business owners, or various other legal interests such as lessees.

For property acquisition, a property is said to be directly affected by a road project when RMS needs to acquire part or all of the property, in order to construct the project.

Property owners that are directly affected by the roadwork proposals (requiring the acquisition of land) are generally made aware of these proposals, either through:

- enquiries made when purchasing the property,
- from proposals shown on local planning schemes, or
- RMS community consultation for new projects.

Depending on what RMS requires for the proposed roadwork, 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.

These situations are discussed on pages 10 to 13.

Please note that RMS is not required to acquire more property than is necessary for the roadwork.

When RMS needs to acquire property, it contacts the relevant landowners and initiates a process of consultation and negotiation. RMS strives to work with landowners and prefers to achieve a mutually acceptable agreement for purchase. Reaching an agreement with landowners is central to RMS' land acquisition procedures. However, if agreement is not reached, the property may be acquired by compulsory acquisition.

Entitlement to compensation is identical whether the property is purchased by agreement or compulsorily acquired.

RMS' *Land Acquisition Information Guide* is governed by the *Land Acquisition (Just Terms Compensation) Act* 1991, together with the *Roads Act* 1993.

This document is RMS' *Land Acquisition Information Guide* and describes the process that RMS follows when it acquires land. Individual circumstances vary and if you feel you need specific information you should contact RMS.

Intersection of Koolang Road and Avoca Drive, Green Point, 2010

M7 Motorway, Glendenning, 2006

Using this guide

This guide explains what happens when RMS needs to acquire private land to either upgrade roads, build new roads or maintain existing roads.

The purpose of the guide is to give people an understanding of what to expect from RMS if their property is to be acquired.

However, it is not legal advice nor a statement of legal rights and should not be relied on as such.

This document is divided into seven sections. Each section deals with a particular aspect of RMS' land acquisition process.

Section 1
Property acquisitions that are initiated by RMS

Section 2
Acquisition by agreement

Section 3
Goods and Services Tax (GST)

Section 4
Entry for roadwork by agreement

Section 5
Compulsory acquisition

Section 6
Owner initiated acquisition (commonly called hardship acquisition)

Section 7
Owner initiated acquisition under the 'preferred option' policy

A glossary is provided at the end of each section. This glossary explains the technical or otherwise unclear terminology used in that section.

Appendices at the end of this guide provide extracts of those sections of the *Land Acquisition (Just Terms Compensation) Act* 1991 which are relevant to the acquisition process explained in this guide.

1. Property acquisition initiated by Roads and Maritime Services

Property acquisition, under the *Land Acquisition (Just Terms Compensation) Act 1991*, may be by purchase or by compulsory acquisition. This section describes what happens when RMS needs to purchase land for roadwork.

How do I know if my property will be required for a road project?

A property is directly 'affected' by a road project when RMS needs to acquire or purchase part or all of a property, in order to construct the project.

There are a number of ways land owners can find out if their land is required for a road project by RMS.

1. RMS community information/ consultation process

During the planning and design of a project RMS may display route and/or design options and may then decide on a preferred route or design. These displays are sometimes accompanied by brochures, letters to residents and advertisements. Maps may show that some private property may need to be acquired if the project goes ahead. The RMS website often shows draft road project plans.

Please note: RMS may decide to adopt or alter any of these plans or not to proceed at all.

If a project proceeds to detailed planning assessment or design stage, RMS will notify the property owner before the RMS purchase process starts.

2. Or the land owner may go to their council

Sometimes land shown or reserved for a road may be shown on the map in your council's local environmental plan or other planning documents. However, road proposals are not always shown on council plans.

Please note: a prospective purchaser can apply to the relevant council for information about land (called a Section 149 Certificate) for a fee. For example, your property may be within a town planning zone for future road purposes.

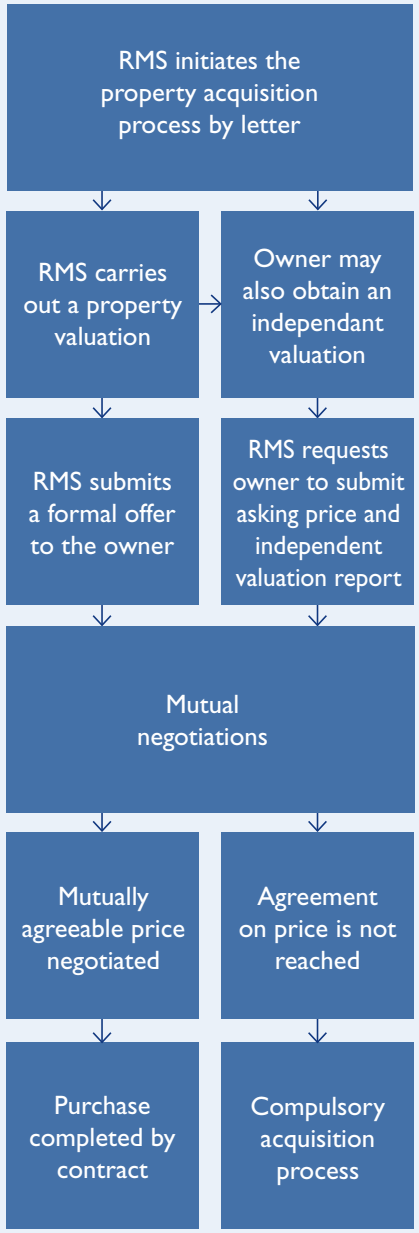
3. Or the land owner may approach RMS

You are welcome to visit an RMS office, to view plans or discuss a project that may affect your property.

Where a property is being sold or purchased, it is good practice for owners or prospective purchasers to make a written enquiry to RMS about their property (for a fee). This is called a property inquiry. RMS' written response will indicate any potential land acquisition.

Community consultation is part of RMS' project process

A summary of the acquisition process



There are three key steps:

Step 1

The property acquisition process is initiated when RMS contacts the owners of affected property by letter.

This letter is to:

- Advise owners that a valuer representing RMS will make arrangements to inspect the property and carry out a valuation.
- Advise that on the basis of this valuation RMS will submit a formal offer to purchase the property.
- Invite owners to engage a registered valuer to value their property, following which RMS will reimburse the valuer's fee. A maximum amount that will be reimbursed to the owner, for getting a valuation, is specified.
- Advise that for purchase contracts, the reimbursement of the valuer's fee is subject to conditions. These conditions are listed in Appendix A. The valuation report prepared by the valuer is required to be in accordance with the information in Appendix B called 'Basic Content of Valuation Reports'. RMS requires that the valuer act as an expert and not as an advocate on behalf of the owner.
- Specify an allowance, which RMS will reimburse, for owners to obtain conveyancing services and legal advice.

Step 2

Once the RMS valuation assessment has been carried out, RMS will provide owners with a letter of offer. This letter will contain the conditions of RMS' offer to purchase the property for them to consider.

Step 3

If the owner accepts the conditions of purchase, RMS and the owner proceed to a conveyancing process, similar to the process of a property sale in the open market. The primary difference is that RMS' solicitor will prepare the contracts.

If the owner does not find the RMS offer of purchase acceptable, the owner may submit an independent valuation report in support of their claim. If there is a difference between the two valuations, negotiations will take place involving the valuers to determine if a professional agreement can be reached. In such cases, RMS endeavours to negotiate a mutually acceptable agreement.

1.1 Payment and the *Land Acquisition (Just Terms Compensation) Act* 1991

The acquisition process is governed by the *Land Acquisition (Just Terms Compensation) Act* 1991. Division 3 of Part 4 of the Act, in particular section 55, covers the matters that are considered when assessing payment.

These can be summarised as follows:

- Market value (the market value of the property as unaffected by the road proposals)
- Special value
- Severance
- Disturbance
- Solatium
- Any increase or decrease in the value of adjoining or severed land (as affected by the road proposals)

Please refer to Appendix C, which contains an extract of sections 55-62. Matters that are considered for compensation remain the same whether the acquisition is a negotiated purchase or is by compulsory process.

1.2 Glossary

Acquisition (or acquire)

Where the property is purchased by agreement or compulsorily acquired.

Adjoining land

Land in the same ownership that directly adjoins a land parcel which is acquired, or part of which is acquired, for roadwork.

Directly affected property

A landowner's property that requires all or some part of it to be acquired for roadwork.

Disturbance

This may include legal costs, valuation fees, relocation costs, stamp duty costs, mortgage discharge and execution fees and some other financial costs reasonably incurred. These costs must be reasonably incurred and are set out in section 59 of the *Land Acquisition (Just Terms Compensation) Act* 1991.

Market value

The Act notes this to mean: 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. This disregards any increase or decrease in value caused by the road proposal. A definition is found in section 56(1) and (2) of the *Land Acquisition (Just Terms Compensation) Act* 1991.

Purchase

Property is sold to RMS by contract with the agreement of the owner.

Severance

The Act notes this to mean: 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.

Severed land

Land that is severed from the main land parcel as a result of a land acquisition.

Solatium

The Act notes this to mean: financial 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.

Special value

The Act notes this to mean: 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.

2. Acquisition by agreement

This section describes the process of the acquisition of property when RMS and the owner agree, which is referred to as 'purchase'.

As noted in the introduction, there are two types of purchase by agreement:

- partial and
- total.

Depending on what RMS requires for the proposed roadwork, it may be necessary to purchase a part of the property or the total property. The terms 'partial' or 'total' are used to describe these situations. Please note that RMS is not required to purchase or acquire more property than is necessary for roadworks.

This section will firstly consider issues surrounding partial purchase, and then consider issues relating to total purchase.

2.1 Partial property purchase

This section outlines the process that RMS follows when purchasing part of a property.

The initial letter sent by RMS to the owners will include a plan that shows the proposed new boundary of that property. That is, the new road boundary that will result from the purchase of the required land. This plan will also include the dimensions and area of the required part of the property.

2.1.1 Assessing the value of part of a property

It is often appropriate to use a 'before and after' method of valuation to assess the amount to be paid for the part of the property.

This method requires two valuations to be carried out. The first valuation is of the total property, as unaffected by the road proposal, known as the 'before valuation'.

The second valuation, known as the 'after valuation', which will be undertaken at the same date, is of the remaining land *as if* the new road has been completed and in use. The difference between the 'before' and 'after' valuations is the basis for the payment for the property to be purchased.

2.1.2 Property adjustments resulting from a partial purchase

If part of a property is acquired RMS will adjust services and public utilities as needed at RMS' cost. These adjustments will take place prior to or during roadwork. In addition, RMS will relocate fencing

and, where appropriate, reinstate access to the road network. Fencing along the new property boundary will be relocated or if necessary built new to a standard similar to the existing fence on the property.

If necessary, RMS will prepare a plan detailing property adjustments for consideration by the land owner. If this plan is acceptable it may form part of the contract for sale.

2.1.3 Conditions under which partial purchase of property may become a total purchase of the property

On occasion, RMS may purchase the total property although only part of it is required for the proposed road. This occurs when the effect of the proposed road on the remaining land is considered so significant that it warrants total purchase.

In this case, RMS will agree to purchase the whole property and may consider all the relevant elements of compensation for the total property being purchased, within section 55 of the *Land Acquisition (Just Terms Compensation) Act* 1991.

For an extract of the elements of compensation see sections 55 - 62 of the Act, which are reproduced in Appendix C of this document.

Where RMS proposes partial purchase, but an owner requests total purchase, RMS considers relevant circumstances which may include whether the current owner purchased the property prior to RMS formally indicating that the property is to be directly affected.

In such circumstances, RMS may decline a total purchase. Alternatively RMS may agree to total purchase and it is at RMS' discretion as to whether it considers all the relevant elements of compensation under section 55, for that part of the land not required for roadwork.

However, if the owner requests total purchase and the owner purchased the property knowing that it would be affected by future roadwork, RMS may decline total acquisition. If a decision is made by RMS to purchase the total property in these circumstances, compensation (for the total property) will be limited to the market value of the property unaffected by the road proposal, together with reasonable conveyancing and valuation costs.

If the owner and RMS cannot agree on the conditions of total purchase, RMS may proceed with the acquisition of only the land required for roadwork.

2.2 Total property acquisition

This section describes a number of issues that owners may wish to consider when RMS purchases a total property.

First, RMS strongly recommends that the property owner make no commitment to purchase a replacement property until contracts are exchanged on the sale of their existing property to RMS.

Second, if the owner requires a deposit for a replacement property, RMS will make an advance payment of up to 10% of the total purchase price of the property that RMS is purchasing. The advance payment will be made any time after the exchange of contracts. The advance payment will be subject to conditions specified by RMS' solicitor.

The upgraded Central Coast Highway at Wamberal, 2008

Third, when assessing the market value of the total property, the value of prime cost items and inclusions, that is, all items that are normally included in the sale of a property, are taken into account. If the owner intends to retain any of the included items, he or she is requested to inform the RMS valuer at the time of the inspection which item/s he or she wishes to exclude from the sale so that a correct assessment of the value of the property can be made.

Requests made after the valuation inspection to retain items may be refused. Alternatively, the valuation will be reduced by the value of the item/s.

Fourth, RMS requires vacant possession on the date of settlement. This means that all belongings, animals, vehicles and other items have been removed from the land. The purchased property must be left in a clean and tidy condition. RMS will carry out an inspection on the date of settlement to ensure that the property has been left in a clean and tidy condition and that all items included in the sale are intact.

Last, swimming pools should be clean on the day of settlement. Further, swimming pools need to be left in a condition that complies with any relevant statutory or council requirement, including fencing and signage.

2.3 Glossary

Public utilities

Public service infrastructure such as, but not limited to, water, power and telephone lines.

Remaining land

Land that is not acquired for the roadwork, but which forms part of the owner's original land parcel.

Prime cost items and inclusions

These are items that normally pass with the sale of the property and are noted in the contract for sale.

Vacant possession

Land that is no longer occupied by the person who is selling the land. This means that all belongings, animals, vehicles and other items have been removed from the land.

3. Goods and services tax (GST)

When RMS begins the process of purchasing a property by sending a letter to the owner (see page 7), this letter will include a GST questionnaire.

The owner is requested to complete this questionnaire and return it to RMS.

If the completed questionnaire indicates that the owner, known as a 'vendor', is registered for GST and thinks that GST is payable to the Australian Taxation Office as a result of the sale, then RMS will ensure that the purchase price it offers for the property includes GST. In this case the owner will be required to supply RMS with a tax invoice.

Nabiac interchange, Pacific Highway, 2006

4. Entry for Roads and Maritime Services to undertake roadwork by agreement

This section outlines RMS' rights in regard to access to a property that has been purchased.

Once the purchase has been settled, RMS, as the new landowner, can enter the property in order to commence roadwork.

On occasion, RMS' roadwork timeline will require entry to the property prior to the settlement of the purchase. In this case RMS relies on the owner's cooperation. If required, and if the owner agrees, RMS may arrange formal right of entry on exchange of contracts or entry by way of a lease.

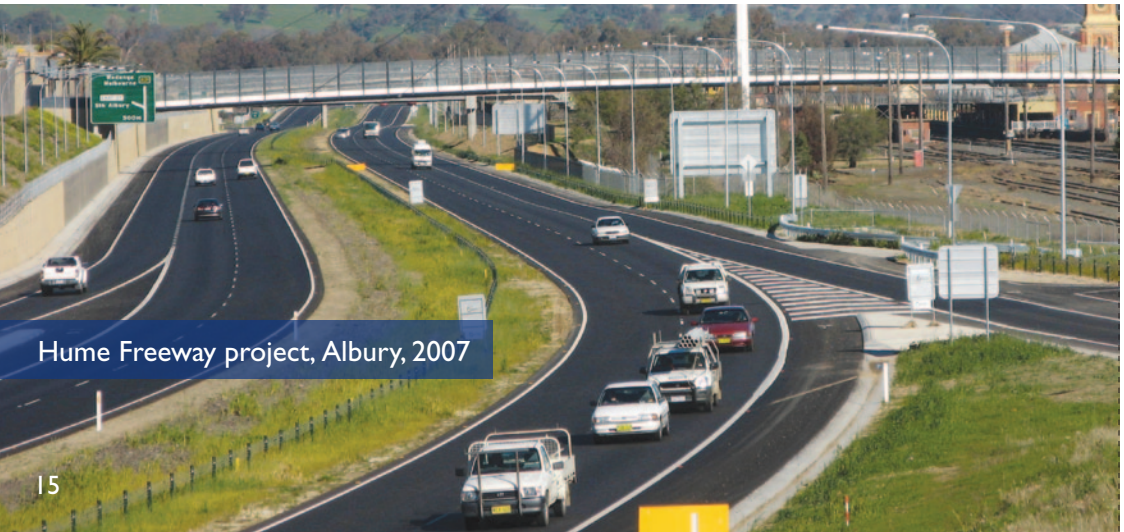
4.1 Glossary

Entry by way of lease

This is where a landowner signs a lease with RMS, that allows RMS to begin roadwork on the land prior to purchase.

Formal right of entry

RMS legally has the right to enter and occupy the land for the purpose of roadwork in accordance with a clause in the purchase contract.



Hume Freeway project, Albury, 2007

5. Compulsory acquisition

This section describes the process that RMS generally follows when an agreement with the owner has not been reached for the purchase of land required for roadwork.

Compulsory acquisition is a statutory process under the *Land Acquisition (Just Terms Compensation) Act* 1991. The Act sets out the process that RMS must follow when it is necessary to acquire land using a compulsory process. The statutory process also provides the means for resolving disputes about the amount of compensation that is payable to the landowner.

Generally, the compulsory acquisition process followed by RMS is as described in the following sections.

However, the owner may wish to obtain legal advice on his or her rights in the compulsory acquisition process. The owner may be entitled to reasonable costs incurred in obtaining such advice.

5.1 Approval

RMS recommends that the Minister seeks the Governor's approval to compulsorily acquire land.

5.2 Notification of the proposed acquisition

If the Governor approves, RMS issues a proposed acquisition notice to those parties:

- with a known legal or equitable interest in the land, (for example a registered proprietor, mortgagee, lessee, trustee), or
- with a right or privilege over the land, or in connection with it (for example an easement beneficiary, occupant or licensee).

This notice states RMS' intention to acquire the land after 90 days. However, a shorter period of time can be agreed to by the owner and RMS, or be approved by the Minister if the Minister is satisfied that it is impracticable to give any longer period of notice. Note that a proposed acquisition notice is accompanied by a compensation claim form.

When RMS issues a proposed acquisition notice, it is recorded on the relevant title registers at the Land and Property Management Authority (formerly known as the Land Titles Office).

5.3 Negotiations to purchase continue

During the 90-day (or shortened) period after the issue of the proposed acquisition notice (the notice period), RMS and the owner may continue to negotiate to purchase the land by agreement.

5.4 Compulsory acquisition

If contracts for purchase have not been exchanged within the notice period, an acquisition notice is published in the NSW Government Gazette. This must happen within 120 days of the issue of the proposed acquisition notice, unless a longer period is agreed to in writing by the owner and RMS.

An extract of the acquisition notice is published in a local newspaper.

RMS owns the land from the date of publication of the acquisition notice in the Government Gazette. The (former) owner's legal and equitable interests in the land are converted to an entitlement to compensation.

5.5 Compensation

This section outlines the process to lodge a claim for compensation with RMS.

Anyone who receives a proposed acquisition notice can lodge a claim for compensation with RMS. Also, people who did not receive a proposed acquisition notice, but believe that they are entitled to compensation, can lodge a claim. When a person lodges a claim, they must use the prescribed claim form, and fill this out in the correct manner.

The Valuer General determines the amount of compensation that is offered. Legal and valuation costs are included in the compensation amount. If agreed by RMS and the owner, compensation may also involve other land or works.

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

If the person lodging the claim accepts the amount of compensation being offered, they will need to fill out the necessary settlement papers and claim form. Once these are returned to RMS, RMS will pay the compensation within 28 days of receiving these papers. RMS will also pay interest on the compensation from the date of acquisition to the date of payment.

If the person lodging the claim does not accept the amount of compensation offered, they are entitled to lodge an objection to the amount of compensation with the NSW Land and Environment Court. This objection should be lodged with the Court within 90 days of having been given the compensation notice. This ensures that the Court will hear the objection and determine the amount of compensation to be paid.

The claimant must then give RMS notice of the institution of proceedings. Within 28 days of this notice being given, RMS will pay the claimant 90% of the compensation offered in the compensation notice, if the claimant agrees to accept such payment. This payment is an advance on account of compensation. RMS will also pay interest on the advance for the period from the date of the publication of the acquisition notice in the Government Gazette to the date that the advance is made. If the advance is not accepted by the claimant, the advance and interest will instead be deposited into a trust account pending the Court decision.

If the amount offered in the compensation notice has not been accepted within 90 days of the compensation notice being issued, and an objection has not been lodged with the Land and Environment Court, the offer is deemed under the Act to have been accepted.

When this situation occurs, RMS will then deposit the amount offered plus interest into a 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 the compensation remains in a trust account for six years after the date of acquisition and a claim has still 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.

5.6 Advance payment

Once the acquisition notice has been published in the Government Gazette, RMS advises affected owners of the acquisition. At this point in time, RMS may offer an advance payment in return for vacant possession of the land, particularly to assist land owners who need to relocate their residence or business.

5.7 Ongoing occupation of the property that has been compulsorily acquired

This section describes the terms and conditions under which people who are lawfully entitled to occupy land, which has been compulsorily acquired by RMS, are permitted to continue to occupy that land for a limited period of time.

When a person is lawfully occupying land that has been compulsorily acquired by RMS, and is entitled to compensation, they are entitled to remain on the land, until:

- The compensation is paid; or
- An advance payment of not less than 90% of the amount offered in the compensation notice is paid; or
- Not less than 90% of the amount offered in the compensation notice is deposited into a trust account due to a deemed acceptance, court action, or competing claims;

whichever occurs first.

Furthermore, anyone who lawfully occupies a building as their main place of residence or place of business is entitled to continue to occupy the building for a period of three months after it has been compulsorily acquired. This is the case regardless of whether any of the abovementioned payments have been made. However, the Minister may shorten that period.

Once one of the above scenarios has occurred, RMS becomes entitled to 'vacant possession' of the land. If the occupant has not vacated the land RMS is then entitled to direct the Sheriff to deliver possession of the land to RMS. The Sheriff's costs may then be recovered as a debt or deducted from any compensation payable.

5.8 Terms of continued or ongoing occupation of the property

When RMS acquires land by the compulsory acquisition process, it is entitled to charge rent for the land from the date of notification in the Government Gazette until possession is obtained. If there is no agreement between RMS and the claimant regarding the terms of occupancy, then reasonable terms, including rent, are determined by RMS. If there is unpaid rent, this can be offset against any compensation payable by RMS.

People who are entitled to receive compensation are paid interest on the amount of compensation they are offered. This interest is calculated from the date the acquisition notice is published in the Government Gazette up until the date of payment of compensation.

5.9 Glossary

Vacant possession

Land that is no longer occupied by the person from whom the land has been acquired. This means that all belongings, animals, vehicles and other items have been removed from the land.

Proposed acquisition notice

A notice under section 11 of the Act of intention to acquire land by compulsory process.

Acquisition notice

A notice under section 19 of the Act, published in the Government Gazette, declaring that land described in the notice is acquired by RMS by compulsory process.

Land and Environment Court

A specialist NSW environmental and planning Court which has the authority to hear claims for compensation arising from land acquisitions.

Competing claims

Claims for the same or overlapping interests in the property.

Compulsorily acquired

Land that has been acquired by acquisition notice in the Government Gazette.

The Valuer General

An independent NSW government authority that has responsibility to carry out valuations of land that has been compulsorily acquired.

NSW Government Gazette

The official Government Gazette that is published weekly, in which official proclamations, orders, declarations and notices, etc., are published.

Compensation notice

A written notice under section 42 of the Act, notifying former land owners of the amount of compensation offered by RMS (as determined by the NSW Valuer General).

Deemed acceptance of compensation

A statutory provision under section 45 of the Act, where a person who has been given a compensation notice has neither accepted the amount of compensation offered nor lodged an objection with the Land and Environment Court within 90 days of the compensation notice being given is taken (deemed) to have accepted the amount of compensation. When this occurs, RMS is required to pay the amount of compensation into a trust account.

6. Owner initiated acquisition (commonly called hardship acquisition)

In certain circumstances, some land owners may request RMS to purchase all or some of the owners property that is designated for future acquisition.

For example, some owners may experience difficulty in selling their property if part or the total of the property is designated for future acquisition. If an owner is unsuccessful in attempting to sell this property and is experiencing some financial or personal hardship as a result of this, they can make a written application to RMS 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. A property is designated for acquisition if:

- RMS has, in connection with an application for development consent or building approval, given written notice that the property has been designated for road and future acquisition by RMS; or
- The property is reserved in an environmental planning instrument for a public purpose and RMS is specified as the body responsible for acquiring the property.

To meet the Act's criteria for 'hardship acquisition' an owner must demonstrate:

- That it has become necessary to sell the property for pressing financial, personal, domestic or social reasons or to avoid a loss in income.
- That their attempts to sell the property have been unsuccessful, because the land has been designated for future acquisition by RMS.

If an owner meets the criteria for hardship to RMS' satisfaction, RMS agrees to purchase the property. In effect RMS becomes the purchaser that cannot be found in the market place.

RMS prefers to complete hardship acquisitions by negotiated purchase. However, it is also possible to complete the acquisition by a compulsory acquisition process (see page 16), if this is the landowner's preference.

When RMS acquires a property under the hardship provisions of the Act, the payment for the property is based on the market value of the property as if it was unaffected by the road proposal.

No additional costs or items of compensation are included in the payment 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.

Site surveyors on the Northern Distributor project, north of Wollongong, 2008

7. Owner initiated acquisition under the 'preferred option' policy

This section outlines circumstances in which RMS may consider purchasing property where a preferred route option has indicated that (all or part of) a property may be required for roadwork. In these circumstances owners of property potentially affected by the future acquisition of land are permitted to request that RMS acquire their property.

In the process of considering the location of a new road, RMS often examines several possible routes or design options and may then select a preferred option.

Once the location of this preferred option becomes public knowledge (through RMS information or consultation), this could frustrate attempts by owners to sell their property, if it is potentially affected by the future acquisition of land.

Unless RMS has made known that the proposal is its preferred option, then this policy does not apply.

Properties potentially affected by a preferred option proposal may not be classified as designated land because the project design has not been finalised or approved. Where the land is not designated for future acquisition, the owners of such properties cannot have their property acquired under the owner initiated acquisition provisions of the *Land Acquisition (Just Terms Compensation) Act* 1991.

RMS is, however, prepared to separately consider the purchase of property following a request from the owner. It should be noted that this process is at RMS' discretion, and is not under the *Land Acquisition (Just Terms Compensation) Act* 1991.

While RMS is under no obligation to, it will, however, consider a request for acquisition if an owner can meet the hardship criteria specified on page 22. The acquisition is subject to the availability of RMS funds. Each party is responsible for all their own costs. Purchase price is determined by an assessment of the market value of the property as if unaffected by the road proposal. The market value is determined by a valuation undertaken by RMS at its cost. A formal offer is issued to the owner including a purchase price.

Where an acquisition is proceeding on this basis, compulsory acquisition (see page 16) is not an option.

Where RMS and the landowner do not agree on the purchase price, the following procedure is available:

a. The offer is withdrawn.

b. The owner chooses a valuer from a panel of independent valuers. These valuers are nominated by the Australian Property Institute and referred to the owner by RMS for selection. In this way the valuer chosen is mutually acceptable to both the owner and RMS.

c. The selected valuer acts as an independent expert and is commissioned by RMS to carry out a valuation of the property.

This procedure is subject to the following conditions:

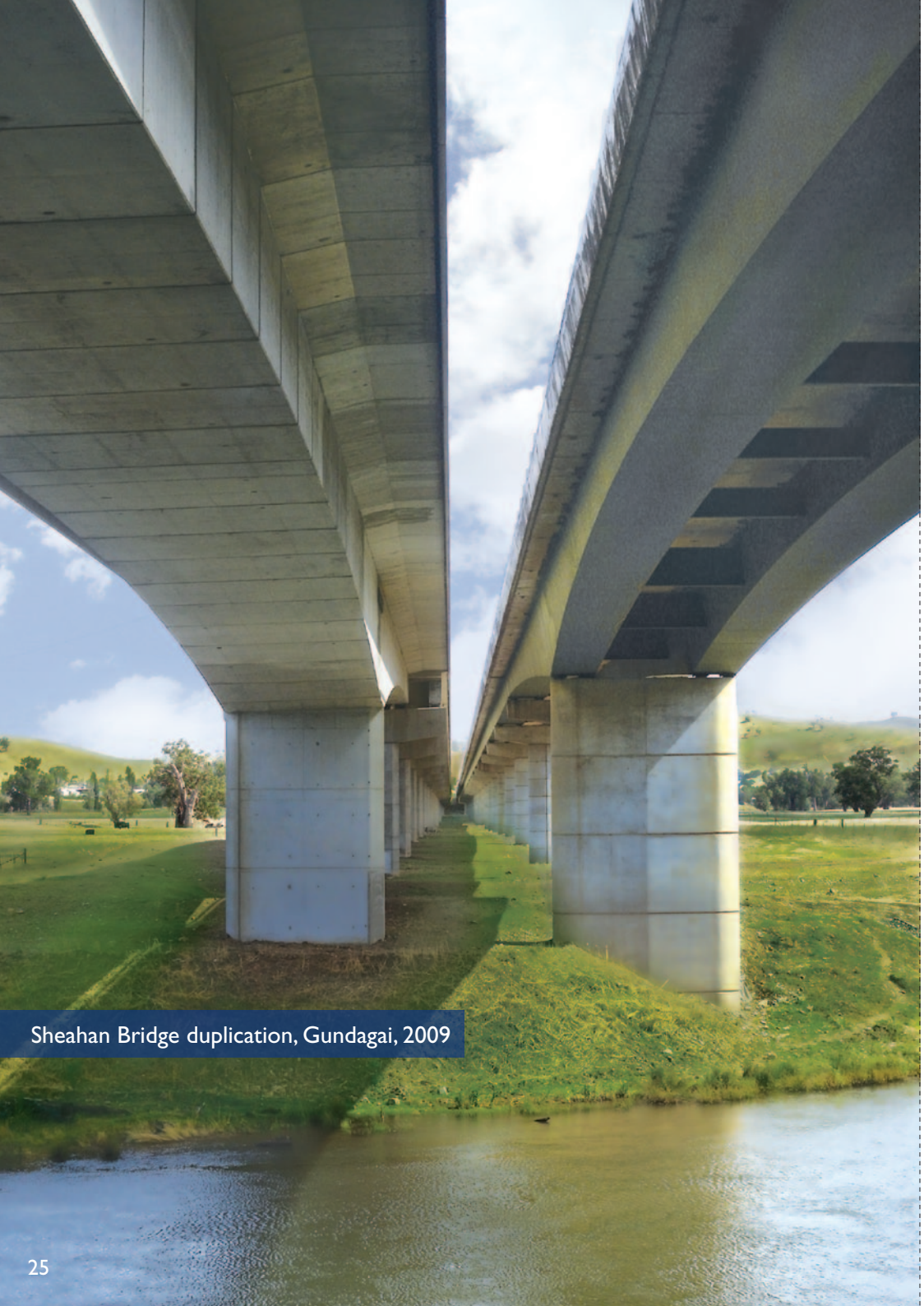
- Each party is to be responsible for the payment of 50% of the expert's fee.
- The owner or RMS may make written submissions to the expert valuer within the first seven (7) calendar days after the expert valuer is instructed.
- The expert's decision will be binding on both parties if the owner wishes to proceed.
- No further valuations will be obtained and the offer to acquire at the value determined by the expert will remain open for a period of three (3) months, after which time the offer will lapse.

If the offer lapses and then at a later date a decision is made to proceed with the project, RMS will recommence negotiations to acquire the part of the property required for roadwork.

7.1 Glossary

Preferred option

RMS may investigate various route options when planning for a new road project. After various studies have been undertaken RMS may decide upon what is called a 'preferred option' for the project. However, this does not fix the final boundaries for a project.



Sheahan Bridge duplication, Gundagai, 2009

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 Roads and Maritime Services (RMS) and in other cases the valuation report may act to verify that the compensation offered by RMS is fair and reasonable. RMS requires that the valuer must act as an expert and not as an advocate for the owner. The valuation must comply with professional standards.

RMS 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 must be prepared to support the valuation in discussions with RMS' valuers. It is expected that inclusive of RMS' fee allowance, the valuer will attend at least one meeting with RMS 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 RMS 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 RMS.

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 RMS.

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.
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 section 55 of the *Land Acquisition (Just Terms Compensation) Act* 1991.
14. The rental value of the property.
15. Details of any people, companies or businesses in occupation of the property.

Appendix C

Selected extract from the *Land Acquisition (Just Terms Compensation) Act* 1991, as at February 2012

Relevant matters to be considered in determining amount of compensation.

55.

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; (see note at end of Extract) 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.

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.

Note in respect to Solatium

In accordance with Section 60(2) (b) the maximum amount of solatium was increased to $24,244 effective from the 1 March 2011. There may be further increases in the maximum amount of solatium from time to time and it is suggested that you speak with RMS Property Acquisition staff for the latest information.

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Lizard Tree Bridge, Hume Highway near Wagga Wagga, 2009