

Presentation to FIG Congress 2010

Clarifying the Crown's role for landowners in land acquisition and managing the expectations of owner/consultants on fees reimbursements.

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Who are we?

- Craig is a regulator, and has responsibility for administering the Public Works Act, accreditation, and standards and guidelines.
- Trevor manages a team of statutory decision makers, making decisions on the Crown's acquisition and disposal transactions.

Acquisition of land for public works



- Acquisition of land for public works in New Zealand is governed by the Public Works Act 1981 (PWA)
- LINZ administers the PWA and makes all statutory decisions for acquisitions by Crown agencies.
- Local authorities are responsible under the PWA for their own acquisitions.

Acquisition - part of larger project



- A public work consists of:
 - Initial scoping, project scoping, and consultation on routes and methods
 - Planning approvals and designations
 - Acquisition of land
 - Construction and operation.
- **A project can be publicly identified long before acquisition of land begins.**

Case Study – Paraparaumu



- Project identified in 2009
- Initial stages only – three separate route options
- As at planning stage, no acquisition negotiations had commenced
- However, many landowners wanted to know what the impact was for them at this early stage
- Main concerns were about how they would be compensated if the land was acquired

Impacts on landowners



- LINZ provides information to landowners on their rights and their compensation entitlements.
- Until now it has been provided only once negotiations for acquisition begin.
- However, landowners' concerns about their rights and compensation arise as soon as a project is announced.

Lessons

- Land acquisition is part of a larger public works project.
- Information should be available once the project is publicly identified.
- Information may not be detailed but should:
 - be project specific
 - set out information on rights and compensation
 - identify the roles of all of the parties, and
 - identify the anticipated acquisition timeframe.

Reimbursing owners for land being acquired

- S66 of the Public Works Act 1981 provides for actual and “reasonable” fees to be reimbursed on settlement.
- Land Information New Zealand’s Clearances team acting under delegation makes statutory decisions on claims.
- Owners submit fees via an accredited supplier who has been involved in the face to face negotiations.

The issue

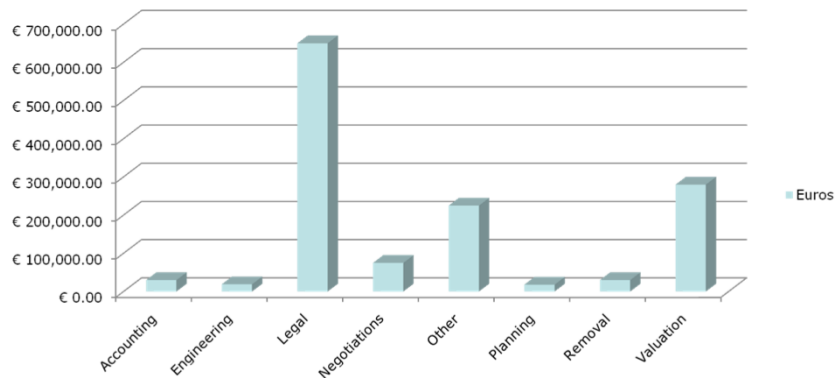
- Transactions can take several years to conclude so costs are being incurred over that period.
- Historically claims were reimbursed on settlement but significant sums are now being incurred eg \$10000 NZD (\$5000 euro) over, say, six months.
- Clearly owners have limited, if any, capacity to carry those costs.
- Clearances may only become aware of these costs after six months by which time the cost has been incurred and an expectation of payment raised.

The issue continued...

- The statutory test of “reasonable” is applied retrospectively...harder to determine depending on the quality of information in the invoice from the service provider and the report from the accredited supplier.
- Risk can arise if a decision is made to decline a claim even in part.
- This then has an impact on the balance of the negotiation process.

Breakdown of Fees Reimbursed

Breakdown of Fees Reimbursed to Owners Jan 2009-March 2010



Ways to mitigate issues

- Advise owners at outset about the process for considering claims including:
 - Nature of service providers expected.
 - Timing of invoices.
 - Test of “reasonable”.
 - Duty to mitigate costs.
 - Not all costs may be approved as reasonable and implication.
 - Pre-approval threshold?..a budget?

Observations on “reasonable”?



- Standard of “reasonable” should not be set to high.
- Claimants should have access to independent advice.
- Crown is not a “golden goose laying golden eggs” for service providers.
- Service providers need to be competent to assist owners.
- Reasonable is fair, just moderate, fit for purpose, governed by reason.

Continued...and summary



- Invoices should be itemised and contain detail to allow decision makers to apply principles.
- Level of complexity is a factor.
- Desirable for LINZ to publish a guideline for owners and service providers.
- Make these guidelines available at point of first interaction.
- Risk of decline should be reduced.

What LINZ is doing



- Reviewing PWA compensation provisions and the interface between planning and acquisition legislation
- Exploring the option of preparing with the Crown agencies involved, information to landowners on
 - The 'lifecycle' of a public works project
 - The roles of various parties involved in the acquisition process
 - Clarifying 'reasonable' in relation to claiming fees