



Acquisition agreement to facilitate Abernethy Road works

Australasian Property Investments Limited

And

Shire of Serpentine Jarrahdale

Table of contents

1.	Definitions and interpretation clauses	2
1.1	Definitions	2
1.2	Interpretation	3
2.	Owner's obligations	4
2.1	Access and possession for Road Widening Works	4
2.2	Cede Road Land on subdivision of Land	4
2.3	No compensation for Road Land	4
2.4	Owner's acknowledgements	4
3.	Shire's obligations	5
3.1	Possession and Risk of Road Land	5
3.2	Complete the Road Widening Works	5
3.3	Indemnity	5
3.4	Shire to maintain insurance	5
4.	Shire may elect to take action to excise Road Land	5
4.1	Shire may issue notice	5
4.2	Shire's obligations	6
4.3	Owner's obligations	6
5.	Disposal of interest in the Land	7
6.	Costs	7
7.	Notices	8
7.1	Notice requirements	8
7.2	When Notices considered given and received	8
7.3	Nominated Contact Details	8
8.	General	9
8.1	Entire agreement	9
8.2	Further assurances	9
8.3	Governing law	9
8.4	Assignment of Shire's rights	9

8.5	Counterparts	10
Schedule		11
Mortgagee Consent		12
Signing page		13
Annexure A	Plan of Road Land	14
Annexure B	Required Working Spaces	15
Annexure C	Statement of Procedures	16



Acquisition agreement to facilitate Abernethy Road works

Date

Parties

Australasian Property Investments Limited

ABN 51 097 936 760 of Level 3, 50 Kings Park Road, West Perth WA 6005

(Owner)

Shire of Serpentine Jarrahdale

ABN 98 924 720 841 of 6 Paterson Street, Mundijong, WA 6123

(Shire)

Recitals

- A. The Owner owns the Land and the Shire has care, control and management of Abernethy Road.
- B. The Shire, as part of its widening and upgrade works of Abernethy Road, seeks to:
- (a) undertake the Road Widening Works on the Road Land; and
 - (b) acquire the Road Land for road purposes.
- C. The Owner has agreed to:
- (a) grant the Shire the right to enter the Road Land and undertake the Road Widening Works; and
 - (b) cede the Road Land to the Crown free of cost,
- on the terms and conditions of this Deed.
-

The parties agree as follows:



1. Definitions and interpretation clauses

1.1 Definitions

In this Deed:

Business Day	means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.
Ceding	is defined in clause 2.2.
Deed	means this deed as supplemented, amended or varied from time to time.
Excision Notice	is defined in clause 4.1(a).
Item	means an item in the Schedule.
Land	means the land described in Item 1.
LAA	<i>Land Administration Act 1997.</i>
Road Land	means the area described in Item 2 and hatched on the plan attached as Annexure A.
Required Working Space	Means the area described in item 3 and hatched on the plan attached as Annexure B.
Road Widening Works	means: <ul style="list-style-type: none"> (a) the works to construct, upgrade and widen Abernethy Road; and (b) any necessary directly related infrastructure works to be constructed by or on behalf of the Shire within the Road Land, <p>generally in accordance with the plans attached at Annexure A & B</p>



Shire includes the Shire's employees, agents, contractors and invitees.

Subdivision is defined in clause 4.1(a)(i).

Taking is defined in clause 4.1(a)(ii).

1.2 Interpretation

In this Deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) a reference to a **person** includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any clause, annexure, exhibit and schedule;
- (g) a reference to a document includes any agreement or contract in writing, or any certificate, notice, Deed, instrument or other document of any kind;
- (h) a provision of this Deed may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or the preparation or proposal of that provision;
- (i) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (j) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Deed do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary; and



- (k) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day, it is taken to have occurred or been done on the next day.

2. Owner's obligations

2.1 Access and possession for Road Widening Works

Upon execution of this Deed, the Owner agrees to give the Shire access to and vacant possession of the Road Land for the Road Widening Works. Access to part of the owners land as shown in annexure B for the road widening works.

2.2 Cede Road Land on subdivision of Land

The Owner agrees with the Shire to cede the Road Land free of cost and without payment of compensation by the Crown or the Shire, for the purpose of a road reserve on the future subdivision or development of the Land, by vesting the Road Land in the Crown pursuant to section 168 of the *Planning and Development Act 2005* (**Ceding**).

2.3 No compensation for Road Land

The Owner acknowledges and agrees that no claim lies against the Shire, the Crown or the Minister for Lands in respect of the acquisition of the Road Land under the LAA, the *Planning & Development Act 2005* or any other statutory provision or otherwise and that the provisions of this Deed are a full and complete discharge of any claim the Owner may have or at any time hereafter may have or but for the execution of this Deed could or might have had against the Shire, the Crown or the Minister for Lands in respect of or in any way related to the acquisition of the Road Land.

2.4 Owner's acknowledgements

The Owner acknowledges that:

- (a) upon execution of this Deed, the Shire is entitled as beneficial owner to lodge an absolute caveat over the Road Land to secure its interest in the Road Land;
- (b) it has received the statement issued by the Shire pursuant to the provisions of section 168 of the LAA, copy annexed hereto as Annexure B; and
- (c) if the Shire proceeds by way of Taking, it has by entry into this Deed:
 - (i) consented to the Taking by the Minister for Lands pursuant to the provisions of section 168(1) of the LAA; and
 - (ii) agreed that no compensation is payable under Part 10 of the LAA for the Taking.



3. Shire's obligations

3.1 Possession and Risk of Road Land

The Shire and the Owner agree that upon execution of this Deed, possession and risk for the Road Land will pass to the Shire and the Shire will be responsible for the Road Land.

3.2 Complete the Road Widening Works

The Shire agrees to:

- (a) carry out and complete the Road Widening Works in accordance with the requirements of the Shire and this Deed; and
- (b) notify the Owner as soon as the Road Widening Works have been completed in accordance with the requirements of this Deed and to the satisfaction of the Shire.

3.3 Indemnity

The Shire shall indemnify and keep indemnified the Owner against all actions, liabilities, proceedings, claims, costs and expenses which the Owner may suffer, incur or sustain in connection with, or arising in any way out of, the loss of or damage to any property, or the death or injury of any person resulting from the Road Widening Works or the use of the Road Land by the Shire or its employees, contractors, or authorised users (including the public at large), provided that nothing in this clause shall require the Shire to indemnify the Owner, its servants, contractors or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Owner, or its servants, contractors, or agents.

3.4 Shire to maintain insurance

In respect of the Road Land, the Shire covenants and agrees to:

- (a) maintain at all times adequate public liability and products liability insurance for a sum of not less than \$100,000,000 in respect of any one claim; and
- (b) on demand supply to the Owner details of the public liability and products liability insurance and a copy of the certificate of currency, or similar such evidence.

4. Shire may elect to take action to excise Road Land

4.1 Shire may issue notice

- (a) In the event the Shire requires the Road Land to be vested in the Crown prior to Ceding of the Road Land by the Owner, the Shire may upon written notice to the



Owner elect to take action to excise the Road Land (**Excision Notice**) by either:

- (i) submitting an application to the Western Australian Planning Commission to subdivide the Land to enable the Road Land to be vested in the Crown pursuant to section 168 of the *Planning and Development Act 2005* (**Subdivision**); or
 - (ii) requesting the Minister for Lands to take the Road Land under section 168(1) of the LAA (**Taking**).
- (b) If the Shire acquires the Road Land pursuant to paragraph (a) above, the Road Land will be acquired free of cost from the Owner, but the Shire will bear all the costs associated in excising the Road Land.

4.2 **Shire's obligations**

In the event the Shire issues an Excision Notice, the Shire covenants and agrees:

- (a) if the Shire proceeds by way of Subdivision, to prepare all documents required to enable the Owner to obtain a new Certificate of Title to the balance of the Land after the vesting of the Road Land;
- (b) if the Shire proceeds by way of Taking, to arrange for the preparation and lodgement all necessary documents with the Minister for Lands, the Department of Lands and Landgate as required for the registration of the Taking and arrange for a new Certificate of Title to the balance of the Land following the Taking if required; and
- (c) bear all the costs and disbursements associated with the performance of the obligations set out in this Deed, including survey fees and costs associated with the Taking or the Subdivision and the preparation, stamping and registration of documents.

4.3 **Owner's obligations**

In the event the Shire issues a written notice to take the necessary action to excise the Road Land pursuant to this clause, the Owner covenants and agrees:

- (a) if requested by the Shire in writing, to arrange the partial discharge of any mortgages over the Road Land prior to the Taking, transfer or vesting of the Road Land;
- (b) if requested by the Shire in writing, to arrange for all of the Land's occupiers, registered interest holders and encumbrance holders to consent in writing to the acquisition of the Road Land;
- (c) if the Shire proceeds by way of Subdivision:



- (i) to cause the Road Land to vest in the Crown pursuant to section 168(3) of the *Planning & Development Act 2005* following completion of subdivision of the Land;
 - (ii) to sign any necessary subdivision application, survey approval form, Application for New or Balance Title, or any conveyance and all other documents (if any) necessary to receive WAPC subdivision approval and excise the Road Land from the Land; and
 - (iii) produce, or make all such arrangements for the production of, the duplicate certificate of title for the Land at Landgate to permit the registration of any document referred to in, or required to give effect to, in this clause.
- (d) if the Shire proceeds by way of Taking, to sign any document required to effect the Taking and any document required under any legislation to be executed to finalise the Taking.

5. Disposal of interest in the Land

In the event the Owner wishes to transfer or mortgage the Land before the Road Land is excised from the Land, the Shire will temporarily withdraw its caveat from the Road Land to permit such registration PROVIDED:

- (a) the Owner is not in default of any of its obligations under this Deed;
- (b) the transferee of the Land has first executed a Deed prepared by the Shire's solicitors whereby the transferee covenants to observe and perform such of the covenants conditions and stipulations of the Owner herein contained (including this covenant) as the Shire shall reasonably require, as if the transferee had been a party to this Deed; or in the case of a mortgage the mortgagee has first executed an undertaking satisfactory to the Shire; and
- (c) the Shire is entitled to re-lodge its absolute caveat over the Road Land following the registration of the transfer or mortgage.

6. Costs

The Shire agrees to bear all the costs and disbursements associated with the performance of the Shire's obligations set out in this Deed, including all costs associated with the Road Widening Works, survey fees and costs associated with the Taking or the Subdivision or the preparation, stamping and registration of documents (which includes any caveat referred to in clause 2.4(a), withdrawal of any such caveat and any deed or mortgagee undertaking described in clause 5).



7. Notices

7.1 Notice requirements

Any notice, demand, approval, consent or other communication under this Deed (**Notice**) must be in writing and must be delivered:

- (a) personally;
- (b) by facsimile; or
- (c) by prepaid express post,

to a party at:

- (d) the address of the party set out in clause 7.3 (**Nominated Contact Details**); or
- (e) such other contact details as the party may from time to time notify to the other party for the purposes of, and in accordance with, this clause.

7.2 When Notices considered given and received

A Notice given in accordance with this clause takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid express post, two Business Days after the date of posting (or five Business Days after the date of posting if posted to or from outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9:00 am and 5:00 pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00 pm on a Business Day, the Notice is taken to be received at 9:00 am on the Business Day after that delivery, receipt or transmission.

7.3 Nominated Contact Details

For the purposes of this clause 7, the Nominated Contact Details of the parties are as follows:

- (a) Owner:



Australasian Property Investments Limited
Level 3, 50 Kings Park Road
WEST PERTH WA 6005

Email: info@apilgroup.com

Attention: Adam Wheeler

(b) Shire:

Shire of Serpentine Jarrahdale ABN
6 Paterson Street
MUNDIJONG WA 6123

Facsimile: +61 8 9525 5441

Attention: Chief Executive Officer

8. General

8.1 Entire agreement

This Deed (including any schedules and annexures) contains the entire understanding of the parties with respect to the matters contained in them. There are no promises, covenants or undertakings other than those specified in this Deed.

8.2 Further assurances

Each party agrees to do all acts and things, and execute all deeds, documents and other writings as are from time to time reasonably required to give effect to this Deed.

8.3 Governing law

This Deed is governed by the law of the State of Western Australia and each party submits to the non-exclusive jurisdiction of the courts in the State of Western Australia.

8.4 Assignment of Shire's rights

The Shire must not assign, mortgage or charge the Shire's rights under this Deed or dispose of the rights granted to it in respect of the Road Land in any way.



8.5 Counterparts

This Deed may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.



Schedule

Item 1	Land	Lot 5 on Diagram 82920, being the whole of the land contained in Certificate of Title Volume 1962 Folio 496.
Item 2	Road Land	That part of the Land as shown hatched on the plan attached to this Deed at Annexure A.
Item 3	Required Working Space	That part of the land as shown hatched on the plan attached to the deed at Annexure B.



Mortgagee Consent

COMMONWEALTH BANK OF AUSTRALIA (**Mortgagee**) being the Mortgagee under Mortgage N502238 or any subsequent or replacement mortgage over the Land (**Mortgage**):

- (a) CONSENTS to the terms of this Deed;
- (b) ACKNOWLEDGES that it has by execution of this consent document, consented to the Taking of the Road Land by the Minister for Lands pursuant to the provisions of section 168(1) of the LAA or the excision of the Road Land by way of the Subdivision; and
- (c) UNDERTAKES until the Road Land is excised from the Land:
 - (i) not to sell the Land or any part thereof, in exercise of its power of sale, without first obtaining the execution of an agreement or covenant between any proposed purchaser and the Shire whereby the proposed purchaser covenants to perform and observe the covenants contained in the Deed where the performance on the part of the Owner remains to be or continues to be performed or observed; and
 - (ii) not to assign the Mortgage or any rights thereunder without first procuring the execution by the proposed assignee of a similar undertaking to the one given in this consent document.

The Shire confirms that in consideration of the Mortgagee fulfilling its obligations pursuant to this consent document, it will promptly, upon receipt of a request of the Mortgagee, do all things necessary to withdraw any caveat it has lodged against the Land.

DATED this day of

2017



Signing page

Executed as deed

Executed by Australasian Property Investments Limited ABN 51 097 936
760 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

The Common Seal of the Shire of Serpentine Jarrahdale ABN 98 924 720
841 was affixed in the presence of:

Signature of Chief Executive Officer

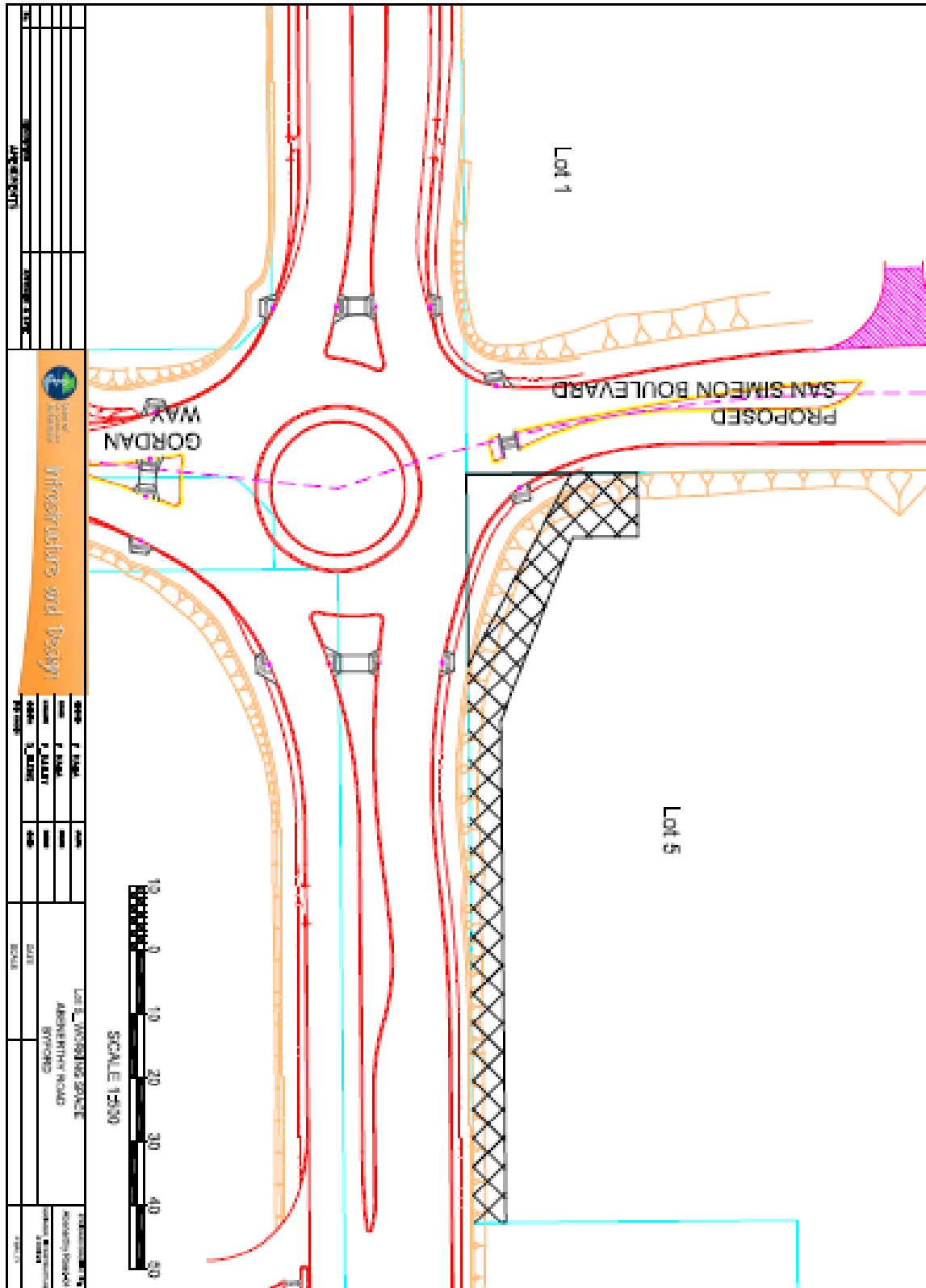
Signature of President

Full name (print)

Full name (print)



Annexure B





Annexure C Statement of Procedures

STATEMENT OF PROCEDURES

Under Parts 9 and 10 of the *Land Administration Act 1997*

This is a statement of the procedures under Parts 9 and 10 of the *Land Administration Act 1997* for the taking, or compulsory acquisition, of land, the taking of interests in land, compensation, rights of appeal and rights as to the future disposition of interests in land taken.

DISCLAIMER

This statement does not override the *Land Administration Act 1997*. You may wish to obtain a copy of the Act from the State Law Publisher of Western Australia or from www.slp.wa.gov.au.

This statement should not be relied upon in determining your rights under Parts 9 and 10 of the *Land Administration Act 1997*, as it is a general summary only.

Parts 9 and 10 of the *Land Administration Act 1997* are complex. You should seek independent legal, valuation and other expert advice as to your rights and liabilities in relation to a taking of land or interests in land and related compensation rights.

1. GLOSSARY

Where the terms listed below are used in this document, they have the following meanings, unless the context indicates otherwise:

- “acquiring authority” means the Minister for Lands and any other Minister of the State or State instrumentality which has the power to take, or compulsorily acquire, land in accordance with Parts 9 & 10 of the LAA;
- “claimant” means a person who is entitled to claim compensation under Part 10 of the LAA;
- “holding authority” applies where land has been taken and designated for the purpose of a public work, and means:
 - (i) the management body, if the land is Crown land that is subject to a management order; or
 - (ii) the holder of the land, in any other case;
- “Interest Holder” includes the owner of the freehold land or holder of certain interests in land, as detailed in the relevant provision of the LAA;
- “LAA” means the *Land Administration Act 1997* (WA);
- “land” includes interests in land, such as leases, easements and mortgages as well as native title rights and interests in land;
- “Minister” means the Minister for Lands, which is a body corporate under the LAA;
- “NOITT” means a notice of intention to take, which is the notice that is required to be issued to initiate a taking except in a few exceptional cases;



- “NTA” means the *Native Title Act 1993* (Cth);
- “occupier” means a person who, in exercise of a right of possession, is in actual occupation of the land, but does not include anyone who is in occupation merely as a member of the family or household of that person;
- “public work” means:
 - (i) a public work as defined in the *Public Works Act 1902* (WA), for example roads, water supply, schools; or
 - (ii) taking land for the grant of an interest in land to a person where the Minister has formed the opinion that the use or development of the land confers an economic or social benefit on the State of Western Australia or the relevant region or locality.

2. INTRODUCTION

The LAA authorises an acquiring authority to acquire, on behalf of the State, all or part of any land, or an interest in any land, by agreement to purchase or by the compulsory taking, for a public work.

The compulsory taking of land and compensation process is designed so that Government can acquire land for public works, while giving certain Interest Holders in the land the right to object and/or the right to claim compensation for the value of the land and improvements taken.

The LAA also allows an acquiring authority to authorise a person to enter onto land to do certain things before, or as part of, carrying out a public work. Depending on the circumstances, the land can be entered before or after the taking process has commenced.

The LAA requires that where an acquiring authority is either:

- (i) directly negotiating for the acquisition of land for a public work or seeking to obtain the Interest Holder’s consent to the taking of its land;
- (ii) exercising its power to compulsorily take land; or
- (iii) authorising a person to enter onto land to do certain things before or as part of carrying out a public work,

certain Interest Holders in the land must be informed of procedures for:

- the taking of that land;
- payment of purchase monies or compensation for the land taken;
- rights of appeal or review; and
- rights as to the future disposition of land taken by agreement or compulsorily taken.



This document is the statement required to be given to certain Interest Holders in any of these cases.

However, it does not apply where it relates to land that is required for the Dampier to Bunbury Natural Gas Pipeline (DNBGP) Corridor, as there is a separate Statement of Procedures to be given in that case. A copy of that Statement of Procedures is available at www.lands.wa.gov.au.

3. AGREEMENT TO ACQUIRE OR CONSENT TO TAKE

As mentioned, the LAA (section 168) authorises an acquiring authority, on behalf of the State, in relation to all or part of any land that is required for a public work:

- (i) to enter into an agreement to purchase that land; or
- (ii) to obtain the Interest Holder's consent to the taking of its land.

If no agreement is reached with the Interest Holder on the purchase price or other consideration, the amount of compensation can be determined by the State Administrative Tribunal or a court of competent jurisdiction, generally the Supreme Court of Western Australia (Supreme Court). The other consideration can include the grant of an interest in Crown land.

The parties can also agree that any property valuation costs incurred by the Interest Holder can be reimbursed to the Interest Holder.

Compensation is determined in the manner set out below in clauses 6 – 8.

4. TAKING OF INTERESTS IN LAND

4.1 Notice of intention to take (NOITT)

The process to compulsorily take land is started by the acquiring authority issuing a "notice of intention to take" (NOITT).

The purpose of a NOITT is to make the Interest Holder aware that the land is subject to a proposed compulsory taking of land and to give the Interest Holder the right to formally object to the proposed taking.

Where any land is required for a public work and an agreement to purchase that land or provide other consideration for the taking of that land is entered into or that land is taken with the consent of the Interest Holder (discussed above in clause 3) the acquiring authority may or may not issue a NOITT.

If the taking is to occur without the consent of Interest Holder, a NOITT must be issued by the acquiring authority and registered on the certificate of title for that land, except in the 2 cases referred to in paragraph 4.3 below.

The NOITT is registered with the Registrar of Titles at the Western Australian Land Information Authority (Landgate).



As soon as possible after the registration of the NOITT, the persons referred to in section 170(5)(b) of the LAA (listed at paragraph 4.2 below) are served with a copy of the NOITT and a copy is published in a newspaper with Statewide circulation. This is usually published in the West Australian newspaper.

For native title holders, if Part 2, Division 3, Subdivision P of the NTA applies to the proposed acquisition of native title rights and interests, the giving of notice in accordance with the NTA satisfies the requirements of section 170(5)(b) of the LAA in relation to native title holders.

For native title holders, if there is no approved determination of native title and Part 2, Division 3, Subdivision P of the NTA does not apply to the proposed acquisition of native title rights and interests, the giving of notice in accordance with section 24MD(7) of the NTA satisfies the requirements of section 170(5)(b) of the LAA in relation to native title holders.

No transactions affecting the land the subject of a NOITT can be entered into without the prior written consent of the Minister. There are certain exceptions listed in section 172(7) of the LAA. A transaction that has been entered into without the prior written consent of the Minister is void.

Further, the land must not be built on or improved in any way without the Minister first giving written approval.

A NOITT remains current for twelve (12) months from the date it is registered on the certificate of title. The Minister can extend a NOITT by giving notice to the Interest Holders. A NOITT can be extended more than once.

The Minister may also cancel or amend a NOITT, or cancel a NOITT and substitute another NOITT, by a further notice, which must be served, registered and published in a similar way as the original NOITT.

In certain circumstances, the freehold proprietor, lessee of Crown land or native title holders may require the acquiring authority to take a small portion of land that will be left after the proposed taking, in addition to the land proposed to be taken.

4.2 Right to object under the LAA

If a NOITT is issued:

- the principal proprietor of land affected by the NOITT;
- any occupier of land affected by the NOITT;
- the holder of any mining, petroleum or geothermal energy rights in land affected by the NOITT; or
- any management body whose management order will be affected by the proposal,

may, alone or jointly with any other person or body so qualified, serve and lodge with the Minister an objection to the taking of the land.

If section 24MD(6A) of the NTA applies to a proposed acquisition of native title rights and interests, the native title holders also have a right to object under the LAA.



The objection must be in writing and:

- specify the full name and address of the objector;
- identify the land;
- specify the nature of the objector's interest in the land; and
- set out the grounds for objection.

The objection must be lodged within 60 days after the registration of the NOITT or such further time as the Minister may allow, which will be set out in the NOITT. A further extension can be requested from the Minister.

Issues relating to compensation are not a valid ground for objection. Compensation issues are dealt with after the taking of the land.

The Minister must consider the objections and any other representations made by objectors. Having considered them, the Minister will determine whether the NOITT will stand unchanged, be amended or cancelled, or cancelled and substituted by a new NOITT. Objectors will be notified of the Minister's decision.

4.3 Taking order

The Minister may make a taking order that is consistent with the NOITT if the Minister is satisfied that a NOITT has been registered in relation to the land and either:

- no objections have been received within the required timeframe; or
- any objections received do not warrant the cancellation, amendment or cancellation and substitution of the NOITT; or
- every objector has consented in writing to the purchase or taking of the objector's interest.

Where a special Act has been passed authorising the construction of a railway, the Minister may also make a taking order consistent with that Act. No NOITT will be issued prior to the taking.

If the Minister is satisfied that it is necessary to use any land for a proposed public work and because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken, the Minister must determine the interests in land to be taken. The Minister may then make a taking order, whether or not a NOITT has been issued.

4.4 When a taking order has been made

A taking order comes into effect upon registration of that order with the Registrar of Titles at Landgate.

As soon as possible after the registration of the taking order, the Minister must advertise an extract of the order in a daily newspaper with Statewide circulation.



A copy of the taking order and forms for claiming compensation under Part 10 of the LAA will be forwarded to each Interest Holder.

If section 24MD(6A) of the NTA applies, the native title holders will be notified in the same way.

A taking order may, at any time within 90 days after its registration at Landgate, be annulled or amended by the registration of an order to that effect. As soon as possible after it is registered, a copy of the order must be published in a daily newspaper with Statewide circulation.

In addition, a copy of the order annulling or amending the taking order together with forms for claiming compensation under Part 10 of the LAA must be served on the same persons who were served with the taking order.

When a taking order or an amended taking order, is annulled or amended, any person who would otherwise have been entitled to compensation is entitled to compensation for reasonable costs incurred, in relation to the taking, up to and including the date of taking, and for any actual damage caused by any entry onto the land.

A claim for either of these types of compensation must be made to the acquiring authority within 60 days after the date of registration of the annulling or amending order, or within such longer period as the Minister may allow.

If the parties fail to agree on the amount of the compensation in either of these cases, the amount may be determined in accordance with the compensation provisions of Part 10 of the LAA, in the manner set out below in clauses 6 - 8.

4.5 Effect of a taking order on interests in land taken

When a taking order is made and registered it has the effect of extinguishing all interests (including freehold) in the land taken, except for any interests that are specifically saved, or 'preserved' in the taking order.

The person(s) who formerly held interests in the land that has been taken have their interests converted into a right to claim compensation under Part 10 of the LAA. Details of how a claim for compensation is to be made and determined is set out below in clauses 6–8.

5. ENTRY ONTO LAND

The Minister may authorise persons to go on to land before the land is taken, to allow certain things to be done in relation to a proposed public work. This is commonly referred to as 'early entry'. In some cases, early entry may be before a NOITT is issued. In other cases, a NOITT or a taking order may never be issued.

5.1 Land required for railway

Where there is a special Act of Parliament authorising the construction of a railway, the Minister for Lands may authorise a person to enter on the land within the corridor described in the special Act (referred to as the 'authorised limits of deviation') to do anything authorised by the special Act or the *Public Works Act 1902* (WA) to construct the railway and any ancillary public works.

Copyright WA Department of Lands 2014



In these circumstances, the principal proprietor, the occupier and the holders of native title rights and interests must be given at least 7 days written notice of early entry before the land is entered. The notice must give a description of the area of land to be entered upon, a description of what is proposed to be done and the time that it is expected to take. Further, those persons must also be advised of the effect of section 183 of the LAA and the procedures under Parts 9 and 10 of the LAA (this document), unless they have already been given that advice.

5.2 Entry onto land before a taking order in certain circumstances

If the Minister is satisfied that:

- (i) it is necessary for land to be used for a proposed public work;
- (ii) the Minister is authorised to take interests in land for that work; and
- (iii) because of the urgency of the work or the difficulty in tracing the proprietors of the land, it is unreasonable or impractical to delay entry onto the land until the land has been taken in accordance with the procedures in the LAA,

the Minister may authorise a person to:

- enter on the land;
- study the feasibility of the proposed public work;
- do anything necessary as preliminary or ancillary to starting construction of, or constructing or providing, the public work; and
- carry out the public work.

The power of the Minister to authorise commencement of work without a taking order in these limited circumstances applies whether or not:

- (a) a NOITT has been issued; or
- (b) the land has been entered under any other section of the LAA.

The Minister or an authorised person must, as far as is practicable, before entering the land give to the principal proprietor, the occupier and the holders of native title rights and interests at least seven (7) days written notice of early entry before the land is entered. The notice must give a description of the area of land to be entered upon, a description of what is proposed to be done and the time that it is expected to take.

Further, those persons must also be advised of the effect of section 186 of the LAA and the procedures under Parts 9 and 10 of the LAA (this document), unless they have already been given that advice.

As soon as practicable after any land has been entered, the Minister must determine the interests in the land to be taken for the public work and may make an appropriate taking order as if this determination were a NOITT.



6. COMPENSATION FOR LAND TAKEN

6.1 Persons entitled to compensation and making the claim for compensation

Every person whose land is taken under Part 9 of the LAA can claim compensation. Any person who has an interest in or who lawfully occupies land, and who suffers damage under entry powers or for material that is removed and the land is not then subsequently taken, is entitled to compensation.

Compensation is payable by the acquiring authority for the land or interest taken, or the damage suffered. In the case of damage caused by entry, a person having an interest in the land must, during the period of the entry, give notice to the acquiring authority that the person will require compensation for such damage.

Claims for compensation are made under Part 10 of the LAA. Approved forms for compensation claims are available from the acquiring authority or from the Minister. The forms are also available on the Department of Lands website:
[http://www.lands.wa.gov.au/Publications/Pages/Forms-\(LAA-Approved\).aspx](http://www.lands.wa.gov.au/Publications/Pages/Forms-(LAA-Approved).aspx).

These forms will be provided at the same time as a copy of the taking order is given to each Interest Holder.

If a taking order includes land the subject of a management order on which a management body (not being a government body) has erected structures or improvements, the management body can claim compensation under Part 10 of the LAA for the depreciated value of those structures and improvements but is not otherwise entitled to compensation.

If an interest in land taken is held under any Act relating to the use of land for mining purposes, the holder of the interest is only entitled to claim compensation under Part 10 of the LAA for actual loss sustained by reason of the taking through damage to a mine on the land or the works connected with a mine.

6.2 Time limit for making claim for compensation

All claims for compensation must be served on the acquiring authority within six (6) months from:

- (a) the date of registration of the taking order; or
- (b) in the case of a claim for damage arising by reason of any entry on or occupation of the land or the removal of any material from the land and the land is not then subsequently taken, the date of the damage or removal of the material from the land.

The right to claim compensation **expires** at the end of **six (6) months** unless an extension of time to lodge a claim has been granted.



If a claimant requires a longer period of time in which to make a claim, an application for extension of time can be made to the Minister. If the Minister is satisfied that the application is reasonable and has been made in good faith, the Minister may extend the time.

When the time limit or the time limit as extended has expired, no action or proceeding can be taken against the acquiring authority for compensation.

6.3 Particulars of the compensation claim

A claim for compensation must be made in the approved form and must state:

- the full name and address for service of the claimant;
- a full description of the land the subject of the claim;
- the nature and particulars of the claimant's interest in the land;
- particulars of any lesser interests or encumbrances in respect of the land (e.g. such as a charge, lease or easement); and
- each matter on account of which compensation is claimed with full particulars of the nature and extent of the claim.

The claim for compensation must be served on the acquiring authority and accompanied by all deeds and documents necessary to establish the claimant's title to the interest or the land the subject of the claim which are in the claimant's custody, possession or power and an abstract or certified copy of all such deeds or documents as are not in the claimant's custody, possession or power.

If the claimant does not give full particulars of any matter mentioned above in his or her claim the acquiring authority may, by written notice, require the claimant to give the particulars within thirty (30) days of receipt of the written notice.

If these particulars are not given within sixty (60) days of receipt of the written notice or such extended time as a judicial member of the State Administrative Tribunal may allow, the claim is absolutely barred. *In other words, compensation can no longer be claimed.*

6.4 Compensation can be paid in land, goods or services

A claimant may request that the claim be satisfied in whole or part by compensation in a form other than money (e.g. by land exchange or the provision of goods or services).

If such a request is made, the acquiring authority must consider the request and negotiate in good faith with the claimant.

6.5 Where a claimant's title to the land is disputed

If the acquiring authority disputes a claimant's title to the land, or to some part of the land, it must serve on the claimant a notice in the approved form within 60 days after the service of the claim or, if further particulars were demanded, within 60 days after the further particulars were given.



If the acquiring authority disputes the claimant's title, the claimant may, upon giving eight (8) days written notice to the acquiring authority, apply to a Judge of the Supreme Court for an order:

- for a trial of any factual issues necessary to determine the question of title; and
- that any question of law arising from the dispute as to the claimant's title be argued to obtain the opinion of the court.

If the acquiring authority does not dispute the claimant's title within sixty (60) days of receiving the compensation claim, or within sixty (60) days after the receipt of further particulars, the acquiring authority is deemed to have admitted the claimant's title.

6.6 Where a claimant's title is not disputed, is only partially disputed or is confirmed by the Supreme Court

If the claimant's title to the land:

- (a) is not disputed (as to whole or part) the acquiring authority must examine the claim within ninety (90) days after the service of the claim on the acquiring authority or within ninety (90) days after any particulars requested by the acquiring authority have been supplied by the claimant; or
- (b) if the Supreme Court confirms (in whole or in part) a claimant's title to the land under dispute, the acquiring authority must examine the claim within ninety (90) days after the judgement of the Supreme Court.

When the claim has been examined the acquiring authority must prepare a report as to the value of the interest claimed over which there is no dispute and as to the damage sustained by the claimant by reason of the taking.

As soon as possible after receipt of a report, the acquiring authority must serve on the claimant in the approved form, an offer of compensation with respect to the land or the interest in the land or the part of the interest in question (Offer of Compensation).

6.7 Claim and Offer of Compensation may be amended

At any time before the claim for compensation is fully settled between the parties, and provided proceedings for determination of the amount of compensation have not been commenced in the Supreme Court or before the State Administrative Tribunal (Tribunal):

- the claimant can amend the claim, but only as to the amount of compensation claimed; and
- the acquiring authority can amend the Offer of Compensation.

Each of the claimant and the acquiring authority is required to give notice to the other of the amendment.



6.8 Rejecting an Offer of Compensation

If the claimant wishes to reject the Offer of Compensation or any amended Offer of Compensation made by the acquiring authority, the claimant must give the acquiring authority written notice in an approved form rejecting it within 60 days after service of the Offer of Compensation or the amended Offer of Compensation. *If this is not done, then the Offer of Compensation or any amended Offer of Compensation is deemed to have been accepted.*

6.9 Method of determining compensation when Offer of Compensation is rejected or is not made by the acquiring authority within time

If the claimant serves the acquiring authority with a written notice rejecting the Offer of Compensation or amended Offer of Compensation, the compensation payable to the claimant may be determined by any one of the following methods:

- agreement between the acquiring authority and the claimant;
- a legal action in the Supreme Court for compensation by the claimant against the acquiring authority under Part 10 of the LAA; or
- referring the claim to the Tribunal under Part 10 of the LAA.

If a claimant rejects the acquiring authority's Offer of Compensation or amended Offer of Compensation, and fails to take legal action in the Supreme Court or refer the claim to the Tribunal within six (6) months after service of the notice of rejection on the acquiring authority, the acquiring authority may apply to the Tribunal for a direction.

Before an acquiring authority applies to the Tribunal for a direction, the acquiring authority must give thirty (30) days' notice to the claimant of its intention to do so.

If an acquiring authority has not made an Offer of Compensation to the claimant within 120 days of:

- (i) if acquiring authority does not dispute the claimant's claim by the latest of:
 - (a) the day of service of the claimant's claim;
 - (b) the day of service of any amendment to the claim; or
 - (c) the day of compliance with any requirement for further particulars;
 or
- (ii) if the title of the claimant was disputed and the Supreme Court upheld the claimant's title in whole or in part – the day of the Supreme Court judgement,

the claimant may either:

- commence legal action in the Supreme Court for compensation against the acquiring authority; or
- refer the claim for the compensation to the Tribunal.



7. THE COURT AND THE STATE ADMINISTRATIVE TRIBUNAL

7.1 Notice of intention to commence Legal Action must be given

A claimant may not commence legal action in a court for compensation unless the acquiring authority has been given 30 days' written notice of those proceedings. The Supreme Court will determine the amount of compensation payable in respect of the taking of the land in such circumstances.

7.2 Referral of claim to Tribunal

A claimant who wishes to refer his or her claim to the Tribunal must serve on the acquiring authority notice, in an approved form, of the appointment of an assessor together with copies of the assessor's consent to act and declaration.

This applies whether the claimant rejected the Offer of Compensation or no Offer of Compensation has been made.

Within thirty (30) days of being served with a notice of appointment of an assessor, the acquiring authority must:

- appoint an assessor and serve on the claimant a copy of the appointment in the approved form; or
- serve on the claimant an Offer of Compensation, or, if an Offer of Compensation has already been made, an amendment to the offer increasing the amount of compensation offered.

If the acquiring authority does not comply with the above, the claimant may request the President of the Tribunal to choose an assessor for the acquiring authority.

7.3 Composition of Tribunal

When the Tribunal is dealing with a claim for compensation, the Tribunal will consist of a judicial member or a senior member who is a qualified person, and two assessors, one appointed by the claimant and one by the acquiring authority; or if the claimant and the acquiring authority agree in writing, the Tribunal may be constituted solely by a judicial member or a senior member who is a qualified person.

8. ASSESSING COMPENSATION

The law and principles of compensation, and the procedures for dealing with a claim for compensation by a court or the Tribunal are complex. Claimants are strongly recommended to obtain expert legal advice as to how that law and principles apply to and affect the claim for compensation, and the procedures required to be followed.

8.1 Date from which compensation is assessed

Where land is taken by agreement, compensation is assessed as at the date of execution of that agreement, or such other date as agreed by the parties.



Where land is taken by way of a taking order, compensation is assessed at the date of registration of the taking order on the certificate of title of the land at Landgate, unless the taking order specifies the date of actual occupation of the land as the date of taking.

Where land is taken for a railway or other work authorised by a special Act of Parliament, compensation is assessed as at the first day of the session of Parliament in which the Act was introduced.

8.2 How compensation is assessed

In determining compensation for the land taken, regard is to be had to the value of the land with any improvements or the interest of the claimant in the land at the date from which compensation is assessed, and discounting any increase or decrease in value attributable to the proposed public work.

In addition, regard is to be had to the loss or damage, if any, sustained by the claimant by reason of:

- (a) removal expenses;
- (b) disruption and reinstatement of a business;
- (c) the stopping of building works in progress at the date when the land is taken and the consequential termination of building contracts;
- (d) architect's or quantity surveyor's fees actually incurred in respect of proposed buildings or improvements which cannot be commenced or continued as a consequence of the taking of the land; or
- (e) any other facts which the acquiring authority, the Supreme Court or the Tribunal considers it just to take into account in the circumstances of the case.

If freehold land is taken from a person who is also the owner of adjoining freehold land, regard is to be had to the amount of any damages suffered by the claimant:

- (a) due to the severing of the land taken from that adjoining land; or
- (b) due to a reduction of the value of that adjoining land,

if the value of any freehold land owned by the claimant is increased by the carrying out or proposed carrying out of the public work for which the land was taken, then the increase in the value of the freehold land will be set off against the amount of compensation that would otherwise have been payable to the claimant for a reduction in the value of any adjoining land above.

8.3 Transactions affecting the land

Where between the date of registration of a NOITT and the date from which compensation is assessed, a transaction relating to the land has affected the value of the land, regard is to be had to the value of the land at the date from which compensation is assessed and discounting the effect of the transaction.



8.4 Improvements on the land

Where any improvements are made on the land after the registration of a NOITT and the consent of the Minister was not obtained, no compensation will be paid for such improvements.

In the case of a railway or other work authorised by a special Act of Parliament, the value of any improvements made after the first day of the session of Parliament in which the Act was introduced but before the registration of the taking order are allowed, not exceeding their actual cost.

8.5 Additional compensation for taking land without agreement

If land is taken without agreement, the Supreme Court or Tribunal, or an Offer of Compensation by the acquiring authority can include an additional amount of compensation. This may not be more than 10% of the amount of compensation awarded or offered, unless exceptional circumstances justify a higher amount. This is often referred to as 'solatium'.

8.6 Interest on compensation payments

- (1) If the land taken produces rent or profits, then at the option of the acquiring authority, either:
 - (a) the amount of the rent or profits received by the acquiring authority, less the reasonable costs of collection, for the period from the date of registration of the taking order to the date of payment of compensation or the date of the award of compensation by the Supreme Court or Tribunal, whichever is the earlier, is to be added to the compensation payable; or
 - (b) interest is to be paid on the amount of compensation for the same period referred to in a) above at the rate of 6% per annum or such higher rate as the acquiring authority, the Supreme Court or the Tribunal considers adequate having regard to the circumstances of the case.

If the land ceases to produce any rent or profits after the taking, interest is to be paid in accordance with paragraph (b).

- (2) If the land taken does not produce any rents or profits, interest is to be paid at the rate prescribed under section 8(1) of the *Civil Judgments Enforcement Act 2004* as at the date of early entry for construction or carrying of the public work or the date of registration of the taking order, whichever is the earlier. The interest is payable from:
 - (a) the date of service of the claim for compensation on the acquiring authority; or
 - (b) the date of early entry for the construction or carrying of the public work,

whichever is earlier, to the date:



15

- (c) when the Offer of Compensation was served on the claimant, if the compensation was awarded by the Tribunal or the Supreme Court is not more than the amount offered by the acquiring authority; or
 - (d) of settlement of the claim for compensation, in any other case.
- (3) Subject to (1) & (2) above;
- (a) when any amount representing an advance payment of compensation is paid to a claimant, interest on the total amount of compensation is payable only to the date of the first payment, and interest is then only payable on the balance outstanding from time to time; and
 - (b) when any amount is offered by the acquiring authority as an advance payment of compensation pending settlement of the claim and the offer is not accepted by the claimant within 30 days of the date of service of the offer of advance payment, no interest is payable from then on in respect of the amount offered by way of advance payment.
- (4) If an Offer of Compensation or an offer of advance payment is made and the acquiring authority publishes in a daily newspaper with Statewide circulation a notice that the acquiring authority intends to make the payment and within 3 months after the publication of the notice, no person has been able or being able, has not agreed, to accept that payment or any portion of that payment, the acquiring authority may cause the moneys to be paid into the Supreme Court and dealt with under s249 of the LAA and thereafter no further interest is payable on the moneys.

8.7 Apportionment of rates and taxes

If land affected by a taking order:

- (a) is unoccupied on the date of taking, all rates and taxes which are a charge on the land and are payable or paid by the claimant, are to be apportioned between the claimant and the acquiring authority as at that date; or
- (b) is occupied on the date of taking, the rates and taxes referred to in paragraph (a) above are to be apportioned between the claimant and the acquiring authority as at the date when the claimant gave up possession to the acquiring authority or when, by agreement with the acquiring authority, the claimant ceased to be responsible for the payment of rates and taxes.

On the apportionment of rates and taxes above, the aggregate amount, if any:

- (a) due by the claimant is to be deducted from the amount of compensation paid to the claimant; or
- (b) paid by the claimant in respect of any period subsequent to the date on which rates and taxes are to be apportioned, is required to be added to the amount of compensation paid to the claimant.



8.8 Lessening the suitability of the land

If the Tribunal or Supreme Court considers that the claimant has, after registration of the NOITT, or, if no NOITT was issued, after the date of taking, done anything to the land which has the effect of making the land less suitable for the purpose of the public work, the Tribunal or Supreme Court is to take this into account and may deduct such amount from the compensation amount.

If the Tribunal or the Supreme Court considers that the action taken on the land by the claimant has increased the cost of the public work so that the increase in cost is greater than the value of the land taken, the Tribunal or the Supreme Court may order that the claimant pays to the acquiring authority the difference and the costs of the inquiry.

8.9 Advance payment of compensation or purchase money

Where a claim for compensation has been made, the acquiring authority may offer to the claimant an advance payment pending settlement of the claim or, whether or not an advance payment is offered, the acquiring authority may offer to rectify any damage caused to the claimant's land for which the claimant is entitled to claim compensation, pending settlement of the claim.

If the acquiring authority has made an Offer of Compensation and the claimant has not accepted an offer of rectification, the claimant may require the acquiring authority to pay an amount of not more than 90% of the Offer of Compensation as an advance payment, pending settlement of the claim.

In the case where the land or an interest in land is acquired by negotiation and agreement, payment of the purchase price for that land of interest in land will be paid at settlement.

Where an acquiring authority has offered the claimant an amount as an advance payment of compensation and this is not accepted by the claimant within thirty (30) days of that offer, no interest is payable to the claimant from the date of that offer on the amount offered.

8.10 Compensation for mortgaged land

If land, the subject of a claim for compensation, is mortgaged, then, on the application of the mortgagee, the compensation, or so much of it as is required for the purpose, will be paid to the mortgagee in discharge of the mortgage debt, up to the total of the compensation payable.

For this purpose, 'mortgage debt' includes the interest payable on the mortgage for a period of up to 6 months after the date of the taking.

8.11 Land being sold on payment by instalments

If land, the subject of a claim for compensation, was being purchased by the claimant at the date of taking by instalments, then, on application of the seller of the land, the compensation or so much of it as is required for the purpose, will be paid firstly in discharge of the balance of the purchase price then owing and, if any interest is owing in respect of the purchase price, secondly in payment of interest that has accrued on the purchase price during the 12 month period after the date of taking.



8.12 Land subject to rent-charge or annuity

If land, the subject of a claim for compensation, is subject to any rent-charge or annuity, the Tribunal or Supreme Court hearing a claim for compensation is to determine:

- (a) if the interest in land is part only of the interest subject to the rent-charge or annuity – what proportion of the rent-charge or annuity is to be redeemed so that the remaining interest constitutes as good a security for the remaining rent-charge or annuity as the whole of the interest constituted for the whole of the charge or annuity; and
- (b) what part of the compensation is to be paid to the party entitled in redemption of the rent-charge or annuity.

8.13 Minister may agree to grant easements etc. in lieu of compensation or purchase money

If the amount of compensation or purchase money to be paid to any person is determined by agreement, the Minister may agree to grant to the person any easement, right of way, right of occupation, or any other interest, or any right, privilege or concession in relation to the land designated for the public work, or any part of it, in satisfaction in whole or in part of the compensation claimed.

8.14 Court/Tribunal may award easement etc. in lieu of compensation

If the amount of compensation to be paid to any person is determined by the Tribunal or Supreme Court:

- (a) the acquiring authority may offer and the Tribunal or Supreme Court may award to the claimant, any easement, right of way, right of occupation, or any other interest, or any right, privilege or concession in relation to the land designated for the public work, or any part of it, in whole or in part satisfaction of the compensation claimed; and
- (b) the Tribunal or the Supreme Court may declare which (if any) of the easements, interests, rights, privileges or concessions so offered are to be granted to the claimant in satisfaction in whole or in part or in mitigation of the compensation claim.

8.15 Minister may grant surplus interests in land in lieu of compensation

The Minister may, with the consent of the claimant, grant to the person or persons from whom the land has been taken or purchased, any interest in Crown land available to be granted or disposed of in whole or in part satisfaction for any land taken or purchased.

The value of the interest, together with any money compensation, must not exceed the amount which it appears to the Minister would probably have to be paid if compensation were made wholly in money in the usual way.



8.16 Costs of the compensation claim

The costs of an action for compensation in the Supreme Court are at the discretion of the court. The costs of an action for compensation in the Tribunal will be in accordance with Division 5 of Part 4 of the *State Administrative Tribunal Act 2004*.

9. RIGHTS AS TO THE FUTURE DISPOSITION OF INTERESTS IN LAND

In certain circumstances former Interest Holders in land may have rights in respect of that land if, in the future, the land is no longer needed in whole or in part for the proposed public work.

9.1 Land taken for a public work used for another public work or the designation for the public work can be cancelled

Where any land is taken for a public work, there must be a designation on the certificate of title or certificate of Crown land title that the land has been taken for the specific public work.

Where any land is no longer required for the designated public work or is not exclusively required for the public work, the Minister may by order:

- (a) designate the land or a part of it, for another public work; or
- (b) cancel the designation, and it will be removed from the certificate of title or certificate of Crown land title.

In cases where paragraphs 9.2 or 9.3 apply, the Minister cannot exercise this power to designate the land or a part of it, for another public work or to cancel the designation until the requirements in that paragraph has been complied with and all persons entitled to exercise an option to purchase the land have declined to do so.

9.2 Option to purchase if interest less than freehold not required for public work

If an interest in land less than the freehold has been taken and designated for a public work, and the Minister is satisfied that the interest is not required for the public work, the holding authority must notify the holder of the freehold and grant the holder an option to purchase the interest.

The purchase price under the option will be the current market value of the interest as determined by the holding authority on the advice of the Valuer General.

9.3 Option to purchase freehold land, no longer required for public work

In certain cases outlined below, the holding authority must grant the former land owner or the legal representative of the former land owner's deceased estate (qualified person) an option to purchase the freehold land that was taken for a public work.



A grant of an offer to purchase such land is to be made where:

- (a) the freehold land was taken without agreement under the LAA or any other Act and either:
 - the taking or resumption was done less than 10 years ago; or
 - the land has not been used for any public work;
- (b) the Minister proposes to:
 - cancel the designation of the public work for which the freehold land was taken; or
 - change the designation for a public work that is not ancillary or incidental to the purpose for which the land was originally taken;
- (c) the land is not a small portion of land that was taken at the request of the former land owner;
- (d) the land has not been substantially improved since the taking; and
- (e) either -
 - the land as a separate lot complies with the requirements of the *Planning and Development Act 2005*; or
 - the land can be amalgamated with adjoining land, that is owned in freehold by a qualified person in such a way that the land when amalgamated is a separate lots(s) that complies with the *Planning and Development Act 2005*.

In all of the above cases, the holding authority must –

- publish once in a daily newspaper with Statewide circulation a notice to the effect that the land is no longer required for the public purpose for which it was taken; and
- serve a copy of that notice on each person who appears to be a qualified person.

A qualified person who wishes to apply for an option to purchase the freehold must apply in writing to the holding authority within 30 days, or such extended period approved by the Minister (Period), after the publication of the notice.

The holding authority must grant an option to purchase the freehold land to any applicant that the authority is satisfied is qualified, and notify any applicant of its decision within 60 days after the end of the Period.

The purchase price for the grant of the option will be the current market value of the freehold land as determined by the holding authority on the advice of the Valuer General.



If there is more than one applicant, the holding authority must satisfy itself as to which of the applicants is qualified and may determine such order or priority for the exercise of options granted as it thinks reasonable.

An option is to be granted on such terms and conditions as the holding authority considers reasonable and may include a condition prohibiting assignment of the option.

If any person is aggrieved with the decision of the holding authority in:

- not being granted an option to purchase;
- the priorities of the options being granted;
- the purchase price; or
- the other terms and conditions of the option,

that person may, within 21 days of receipt of notice of the decision or longer if approved by the Minister, lodge an appeal with the Minister for Lands for a review by the Governor under Part 3 of the LAA.

9.4 Request for determination

Where any freehold land has been designated for the purpose of a public work and is not being used for that work, a person who would have been qualified, if the requirements in paragraph 9.2 were to apply, may by notice in writing to the Minister, require the Minister to determine whether the land is required for the purpose of the public work or not.

A person who obtains a determination is not entitled to require another determination in respect of the interest for a period of 12 months after being notified of the determination.

If the Minister determines that the land is not required for the public work, the Minister must notify the holding authority of the decision and the holding authority must proceed with the offering of an option to purchase to such qualified applicants in accordance with paragraphs 9.2 or 9.3 above, as appropriate.

10. USE OF APPROVED FORMS

Many of the forms for claiming compensation (and for other purposes) must be in a form approved pursuant to the LAA. Interested parties are advised to ensure that they are using the correct forms. Copies of the approved forms can be obtained from the acquiring authority or from the website of the Department of Lands:
[http://www.lands.wa.gov.au/Publications/Pages/Forms-\(LAA-Approved\).aspx](http://www.lands.wa.gov.au/Publications/Pages/Forms-(LAA-Approved).aspx).

11. TAKING UNDER OTHER ACTS

Land may also be taken under legislation other than the LAA. That legislation may adopt Parts 9 and 10 of the LAA either in whole or in part with modifications. Persons with interest(s) in land taken under other legislation are advised to consult the relevant Act.