

Scheme Number SCM7671 - Land and Asset Valuation

Compensation Recommendation of Determination Standard Specifications

1. Standard Specifications

These standard specifications apply to all contracts/agreements unless specifically amended in a Request for Tender/Quote (RFx) and contract/agreement document.

2. Statutory and Policy Requirements

- 2.1. Any recommendation of determination (determination) must comply with the provisions of the *Land Acquisition (Just Terms) Compensation Act 1991 (the Act)*.
- 2.2. Any determination must consider and separately report all items listed in *Section 55 of the Act*, unless otherwise agreed.
- 2.3. Any determination is to be inclusive of GST (where applicable).
- 2.4. Each recommendation must comply with the Valuer-Generals' policy - *Compensation following compulsory acquisition*.
- 2.5. The date of determination must be contemporaneous with the acquisition date of gazettal.
- 2.6. All service providers must comply with the *Land and Environment Court Expert Witness Code of Conduct*.
- 2.7. All service providers must comply with the *State Records Act 1998*.

3. Professional Standards

- 3.1. Compliance with the Practice Standards in the Australian Property Institute Professional Practice Guide (or equivalent as deemed by the buying agency) and the Royal Institute of Chartered Surveyors International Valuation Standards is mandatory. Whilst compliance with Guidance Notes or equivalent is not compulsory, they represent 'good practice' and should be followed.

4. Recommendation of Determination Report Quality Assurance and Feedback

- 4.1. The buying agency reserves the right to review/audit any determination report and request amendments to align with statutory, policy, standards and professional requirements.
- 4.2. An Issues Register may be maintained by the buying agency to report on and store resolutions to such issues.
- 4.3. The buying agency reserves the right to withhold payment for the service should the quality of the service not meet requirements. The buying agency has sole discretion in this regard.

5. Methodology

- 5.1. Any recommendation of determination is to be undertaken pursuant to the heads of compensation contained in *the Act*. *Section 55 of the Act* details the relevant matters to be considered in determining the amount of compensation to be paid to the former owner/claimant.

5.2. **Section 55 of the Act** states:

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only:

- 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) *disadvantage resulting from relocation,*
- 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.*

5.3. When compensation is being determined the Service Provider must consider all information provided by both the former owner/claimant and the acquiring authority.

5.4. The determination will consider all relevant material information and documents provided, whether they are from the former owner/claimant, the acquiring authority or independently commissioned by the Valuer General. The determination report which accompanies the determination is to include these documents.

5.5. Where only part of a property is acquired it is expected that full **before and after determinations** will be carried out. Piecemeal assessments will only be accepted in instances where the land acquired is of a minor nature and has minimal affect on the value and size of a property.

5.6. In all instances where a piecemeal approach is intended to be used, prior to the assessment taking place, approval is required from the acquiring agency.

5.7. The determination of the market value may be rounded where appropriate.

5.8. For loss attributed to disturbance, where actual or estimated amounts are used, these figures are not to be rounded.

5.9. The aggregated total for the various heads of compensation is not to be rounded.

6. **Conflict of Interest**

6.1. Service Providers must be familiar with NSW Government's and the Buying Agency's Conflict of Interest Policies.

6.2. In any RFX a Statement of Association and Interests Form may be requested, confirming that the service provider, being the company, its personnel and/or subcontractors, has no actual, perceived or known potential conflicts of interest in connection to the requested recommendation of determination.

6.3. Following receipt of a RFX but prior to responding, service providers must advise Property NSW (PNSW) if any personnel of the Service Provider, or the Service Provider itself, has carried out any work for the former owner/claimant or acquiring authority on the subject or any related matters or if there is an actual or perceived potential conflict of interest. PNSW will determine whether the RFX will progress.

7. **Service Provider Obligations**

7.1. Following contract award, should it become apparent that the contracted delivery date cannot be met, the service provider must inform the buying agency immediately providing detailed reasons and a proposed new delivery date.

- 7.2. Following contract award (unless previously known and advised) the service provider must, as soon as possible, advise if other **professional advice** is required.

8. Document Management

- 8.1. All records that are relied on in the determination of compensation are to be copied and retained on a file in accordance with the *State Records Act 1998* and Functional Retention and Disposal Authority: FA238.
- a) Records are defined in the State Records Act as *any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.*
- 8.2. Documents include, but are not limited to, requests for determination, departmental copies of acquisition notices, withdrawals or amendments of acquisition notices, departmental copies of the former owner's claims for compensation, departmental copies of notices by former owners requiring the authority of the State to acquire land (under hardship provisions), valuers reports, determinations of compensation and all correspondence relating to an acquisition.
- 8.3. It is the responsibility of the service provider to create copies of its records and retain them in accordance with the *State Records Act 1998*. All records are to be retained for a minimum of 15 years from the date of acquisition of the property.
- 8.4. Information obtained during the investigation of the determination will be regarded as the intellectual property rights of the buying agency and must be produced on request. However, in the case of a compensation determination the intellectual property rights are with the Valuer-General.
- 8.5. Any professional reports obtained whilst undertaking a determination report which relates to the subject property must be provided to the buying agency.
- 8.6. All documents provided in the RFX process are "in-confidence" and should not be shared, communicated or used for any other purpose.

9. Fees

- 9.1. The service provider will not, without the express permission of the principal, disclose any material related to its fee.
- 9.2. The amount of a tax invoice is to be the agreed amount and is due payable by the buying agency within 30 days of the invoice date and after approval of the invoice by the buying agency.
- 9.3. The tax invoice is to contain the buying agency's reference number as provided in the contract/agreement.
- 9.4. All invoices must note the biller correctly; this will be provided in the contract/agreement.

10. Contract/Agreement Variation

- 10.1. Following the supply of a preliminary determination report to the interested parties, queries may be raised requiring a service provider's response. If the parties consider the time required to respond to the queries is excessive, a variation to the original fee may be considered. A detailed schedule showing the date, action item, time spent and total additional hours is to be provided. The approval of a variation is at the sole discretion of the buying agency.

- 10.2. Should the acquiring authority reach settlement with the former owner prior to completion of any determination, a cease work instruction will be given with a request to submit a schedule showing the work carried out up until that point, including the amended fee.

11. Research and Investigation

- 11.1. In the absence of market evidence, adjoining compensation settlements by the Acquiring Authority should be investigated for factors that may be relevant as part of a whole of market consideration.
- 11.2. The service provider must contact the former owner/claimant in the course of preparing *its* determination to establish a full appreciation of the value of the owner's interest.
- 11.3. Disturbance costs must be investigated and assessed under Section 59(1) of the *Act*. Where the former owner/claimant has not incurred and would not incur costs and fees under Sections 59(1)(a), (b) and ©, no allowance is to be made.

12. Determination Report

- 12.1. The determination report must include the reference number provided by PNSW on the cover page and also be included in the footer or header of the report. This is required to create a linkage between the report and the Certificate of Determination.
- 12.2. The determination report must include a section titled, *Purpose of Report* detailing the reasons why the report is required on behalf of PNSW.
- 12.3. The word "instructions" is not to be used.
- 12.4. The determination report must provide a comprehensive speaking report including, but not limited to:
- Detailing all relevant information including determination methodology
 - Basis of determination
 - Items of compensation considered in the assessment
 - Supporting sales evidence with identifying aerial photographs that includes cadastral overlay whenever possible (or at the very least one or other) and relevant plans
- 12.5. The determination report must advise the amount of compensation payable to the former owner/claimant(s). If there is more than one former owner/claimant then the report is to be co-joined, mortgagee interests are also to be co-joined.
- 12.6. The Determination(s) of Compensation in the report will address the claims of the former owner/claimant and the Acquiring Authority. This will improve the transparency of the process as well as giving both the Acquiring Authority and former owner/claimant confidence that all aspects of their submission have been considered. Specifically, the report must include the following headings:
- Statement of Claim
 - Response to Claim
- 12.7. Each determination report must be undertaken completely independently of any previous valuation information.
- 12.8. The service provider will not, without the express permission of the acquiring authority:
- a) discuss the matter with any third party, or
 - b) disclose his report with any third party.
- 12.9. The determination report must include all applicable heads of compensation as described in *the Act*.

- 12.10. The determination report is to be peer reviewed by another Registered Valuer in your firm.
- a) In the case of sole operators this will not be possible and it is not expected that you seek a valuer from outside your current operations
- 12.11. A draft PDF copy of the determination report ('draft report') is to be electronically uploaded to the Just Terms manager (JTM) for review by the Just Terms group. The draft report may also be subject to a final review by a senior member of the Just Terms group.
- 12.12. Following approval of the draft report the coordinator from the Just Terms group will advise the service provider that the preliminary report is to be uploaded into the JTM in PDF format.
- 12.13. The preliminary report will be issued and a period of 15 business days will be allowed for both the acquiring authority and former owner/claimant to make a submission. Once the submissions are received, a new section will be added to the report titled, 'Response to Preliminary'.
- 12.14. When the Response to Preliminary section is completed, the draft report will be sent to the Just Terms coordinator for final approval.
- 12.15. When approval has been given, the final report will be uploaded into the JTM for final issue.
- 12.16. A determination report must contain:
- a) a date of valuation (gazette date) and a date of inspection,
 - b) the highest and best use of the property,
 - c) areas, and legal particulars of the property including any legal constraints that would restrict development,
 - d) a description of any improvements,
 - e) comprehensive discussion of claims and issues, including discussions between former owner/claimant, acquiring authorities and contract valuer.
 - f) an outline of permitted land use under the current relevant planning instrument and/or local government codes,
 - g) details of the sales/rental information used to inform the valuation, together with analysis and calculations,
 - h) property sales evidence (residential),
 - i) valuation rationale and market commentary relevant to the property,
 - j) assessment of all individual Heads of Compensation (refer to *Clause 5, Methodology*),
 - k) commercial properties - details of any people, companies or businesses that occupy the property.
 - l) contain the following statement:

This determination has been carried out in accordance with the Land and Environment Court Expert Witness Code of Conduct. I have read the Uniform Civil Procedure Rules 2005 and also have a copy of the Schedule 7 Expert Witness Code of Conduct and I agree to be bound by them.
- 12.17. **Determination Report – Business Compensation**
- A business determination report should include the important elements of the business, and where relevant include:
- a) the identity and professional qualifications of the business valuer,
 - b) An outline of the purpose of the valuation report and the business entities it covers,
 - c) A specification that the business is lawful, that is, that it meets all required legal and/or licensing requirements,
 - d) A comprehensive discussion of any claim and issues, including discussions between any former owners/claimants, acquiring authorities and contract valuers

- e) the basis for the value applied in the business valuation analysis,
- f) the date of the valuation (gazette date),
- g) the type and sources of information used in the value analysis, together with calculations, basis and limitations,
- h) A description of the valuation approaches and methods used for relocation and where relevant extinguishment scenarios,
- i) photographs of the business, as appropriate, and
- j) An assessment of all individual compensation matters detailed in *the Act*.

13. RFX Response

13.1. A RFX response must include:

- a) Commencing and completion dates, including advice if you are not able to meet the required delivery date but propose an alternative delivery date.
- b) A statement that there are no foreseeable/known constraints, such as planned leave, court appearances, other contractual commitments, etc, to the finalisation of the report, including the audit review process undertaken by PNSW and the preliminary report response period.
- c) Where possible, advice on whether other **professional advice** is required, e.g. Town Planning, Legal, Engineering advice.

14. Provision of Information

- 14.1. Following publication of the acquisition notice in the Government Gazette, information held by the acquiring authority is provided to the former owner.
- 14.2. Former owners often provide information to support their claim for compensation under *Section 39 of the Act*. This may be to the acquiring authority or the Valuer General.
- 14.3. If a document is voluntarily given to the Valuer General over which a claim for privilege (either legal or commercial) might have been made, the privilege is waived. This means that if legal privilege or commercial in confidence status is to be maintained the information or document should not be provided to the Valuer General.
- 14.4. Any information provided to the service provider directly by the acquiring authority and/or the former owner/claimant must be provided to principal immediately on receipt.

15. Flow on Services

- 15.1. The service provider will be available to explain the determination, on the request of the Valuer General and/or the Principal, to the acquiring authority, the former owner/claimant and legal representatives of the parties.
- 15.2. The service provider will not be released to:
 - a) Provide determination/valuation advice on a commercial arrangement with the acquiring authority or the former owner/claimant in regard to the acquired property.
 - b) In the event of an appeal to the amount of compensation offered by the acquiring authority, appear at the Land and Environment Court as an independent expert witness on behalf of either the acquiring authority or the claimant.
- 15.3. In the event that flow on services are required, those services will be separately negotiated.