

David Russell SC
Just Terms Coordinator
Level 15, McKell Building
2-24 Rawson Place
Sydney NSW 2000

By email: justterms@services.nsw.gov.au

Dear Mr Russell,

Re: Land Acquisition (Just Terms Compensation) Act 1991

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

It is understood that the Government is to review of the *Land Acquisition (Just Terms Compensation) Act 1991* ("the Act"). It is encouraging to note that the Government acknowledges that there is general concern with the impacts of compulsory acquisition of private land and in this regard, the Urban Taskforce welcomes this review.

We understand that the review process will involve the preparation of an issues paper to focus community consultation and that the outcomes of the consultation will then be reported back to the Government by the end of this year. At this stage, early input is being sought and interested parties are being encouraged to nominate their issues of concern, presumably for inclusion in the issues paper to be released as part of the next round of consultation. In this regard the Urban Taskforce provides the following comments for your consideration and inclusion in the issues paper.

1. Where land is required for a public purpose the owner must be entitled to have the authority to either remove the reservation, or acquire the land

The Urban Taskforce has been particularly concerned with the lack of respect for property rights in NSW. We argue that the use of town planning laws as a mechanism for seizing private property rights and using the rights for public purposes, without compensation is unjust. This is evident when considering section 27 of the *Environmental Planning and Assessment Act 1979* and the way that this section of the Act relates to Part 2, Division 3 *Land Acquisition (Just Terms Compensation) Act 1991*.

Section 27 of the *Environment Planning and Assessment 1979* enables the authority to draft an environmental planning instrument to reserve land for use exclusively for a public purpose. Furthermore the environmental planning instrument must make provision for the acquisition of that land by a public authority. The policy basis for these provisions of the Act is obvious. There are circumstances where private land may need to be reserved for the greater good of the community. Furthermore, if land is required for a public purpose then the financial burden of fulfilling that purpose should fall on a public authority rather than the private land owner who happens to own the land at the time.

Without section 27 of the Act, land could be sterilised for future public purposes and the private landowners could do nothing but continue to be responsible for the land, bear all costs of the land (including rates and taxes) and wait to see whether any public authority would ultimately wish to acquire the land.

Unfortunately, the requirements for the authority to acquire land once reserved for a public purpose is limited by Part 2, Division 3 of the *Land Acquisition (Just Terms Compensation) Act 1991*. While Part 2, Division 3 allows the owner of the land to serve notice on the authority who

reserved the land to acquire the land, the authority is only compelled to acquire the land in cases where the owner of the land is able to demonstrate that they will suffer hardship if the land is not acquired. That is, the authority is not required to acquire land unless it is of the opinion that the owner will suffer hardship (within the meaning of the Act) if there is any delay in the acquisition of the land.

The Act defines the circumstances where an owner of land suffers hardship. In this regard, the owner of land suffers hardship only in cases where:

(a) the owner is unable to sell the land, or is unable to sell the land at its market value, because of the designation of the land for acquisition for a public purpose, and

(b) it has become necessary for the owner to sell all or any part of the land without delay:

(i) for pressing personal, domestic or social reasons, or

(ii) in order to avoid the loss of (or a substantial reduction in) the owner's income.

(3) However, if the owner of the land is a corporation, the corporation does not suffer hardship unless it has become necessary for the corporation to sell all or any part of the land without delay:

(a) for pressing personal, domestic or social reasons of an individual who holds at least 20 per cent of the shares in the corporation, or

(b) in order to avoid the loss of (or a substantial reduction in) the income of such an individual.

We argue that the terms of the Act unfairly favour the authority and burdens the owner of land with requirements to demonstrate hardship for just compensation. Under these rules an owner can only require the government to acquire (and therefore pay for land rendered useless by government decree) if the owner is able to establish that they would suffer hardship if it was not acquired.

The net result is that the underlying policy rationale for the original law is set aside, unless the owner can establish "actual hardship". Furthermore, the law makes it very difficult for a corporation to satisfy the hardship test – even though corporations are owned by people who have a legitimate right to expect their property rights will be respected.

Therefore, the Urban Taskforce urges that the review of the *Land Acquisition (Just Terms Compensation) Act 1991* consider the removal of the requirement for an owner of land to only be able to compel an authority to acquire their land that has been reserved for a public purpose unless they are able to demonstrate hardship. The fundamental principle should be that where land is required for a public purpose, the owner of that land should be entitled to have the authority to either remove the reservation, or acquire the land.

2. Where land has been reserved or acquired by an authority any uplift in value must be shared by the original owner and authority

Where an authority reserves and acquires land, the level of compensation is dependent on the land value prior to reservation and acquisition. It must be acknowledged that land valuation is greatly influenced by the development potential of the land. Therefore, if an authority was to acquire land and then cause the development potential of the land to be increased, the uplift in value caused by the increased development potential must be distributed between the authority and original owner of the land. For instance, if prior to acquisition, land originally enjoyed a residential zoning with a floor space ratio of say 0.8:1, but after acquisition the land was rezoned to say a mixed use zoning which provided greater flexibility in land use and increased development density of say 3.5:1, then the value of the land would be greatly increased. It would be unfair if the original owner was denied a proportion of the increased land value.

I trust that the above matters will be considered and further discussed in the discussion paper that will be prepared to focus the next stage of the consultation process for this important issue. Should you require any further clarification of the content of this correspondence, please feel free to contact me.

Yours sincerely
Urban Taskforce Australia

A handwritten signature in blue ink, appearing to read 'Chris Johnson', with a long horizontal flourish extending to the right.

Chris Johnson
Chief Executive Officer