

## **Refining Principles of Compensation for Traditional and Non-traditional Public Purposes in Land Acquisition**

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### **Abstract**

As the capital cities of Australia move from the initial urbanization to a re-urbanisation phase, the impact on residents resulting from changes in use or the intensification of existing uses in compulsory acquisition cases, brings into question the adequacy of the current principle of compensation. This paper examines the expanding purposes for which land is compulsorily acquired in Australia, and the evolving complexities in providing parity of value to dispossessed parties.

Cases are examined in identifying the emerging purposes for land is acquired and a survey is used in exploring the impact of the types of acquisitions which encompass the partial and total acquisition of land. This provides a basis for establishing a framework which better supports the option for the introduction of the principle of reinstatement as a future principle. It further asks whether expanding the existing items of disturbance (costs associated with relocating) and solatium (compensation for non-financial loss) is an alternative to improving options for reinstating dispossessed owners.

The primary contribution made is through the development of a framework which expands options for reinstatement in place of market value in some circumstances and defines the factors to be included under the heads of disturbance and solatium. It further builds a case for a share in the uplift in value resulting from the acquisition of land in the cases of economic development.

**Keywords:** Reinstatement, Market Value, Solatium, Disturbance

## **Introduction**

The compulsory acquisition of land is undertaken by all three tiers of government in Australia, with the States responsible for over 80 per cent of all acquisitions of which the acquisition of land for transportation is the dominant purpose, (Russell 2013:21). Each State and has its own enabling acquisition legislation which establishes the relevant heads of compensation payable and overarches the operation of the various government agencies undertaking acquisitions. It is highlighted by Brown (2010:3) that across Australia 'none of the nine statutes governing land acquisition are a model of excellence,' and that while the legislation was generally adequate, it is the 'factual complexities surrounding the tasks for claimants, administrators, valuers and the courts' is where the challenge arises. This is further compounded by the fact that the acquisition of land includes the taking of land on both a partial or total acquisition bases, which impact people's homes, businesses and investment use property, to which Jacobs (2010) highlights the evolving complexity in assessing compensation.

Across the capital cities of Australia, the current legislation has been suited to the acquisition of land in an evolving city environment, where traditional public purposes precipitated the need for land to be acquired for infrastructure, health, education and transport. Since the early 1990s, Melbourne, Sydney and parts of Brisbane have moved from the initial phase of land urbanisation, to a more complex rationale encompassing the regeneration and re-urbanisation of some locations and land uses (Property Council of Australia 2009). As traditional public purposes now coexist with more complex rationales for acquisition, a more detailed and comprehensive response in accounting for the needs of dispossessed parties as stakeholders in the acquisition process is needed. Drafting for such evolution is not simple and requires expansion of the principles that have governed traditional acquisition purposes, when assessing compensation for more complex and evolving public purposes which include housing, retailing and civic uses.

This paper commences with a review of the process and purposes for which land is acquired and the bases of acquisition which encompass both partial and total takings of land. This paves the way for the evolving rationale of defining traditional public purposes primarily encompassing infrastructure, to the fast evolving rationale of land uses which better reflect the lands highest and best use. In demonstrating this evolving rationale two cases set out how the acquisition process has been facilitated in Australia and the United States. This gives rise to the paper introducing options for policy reform by examining parity of compensation options in modernising the acquisition process and the assessment of compensation.

## **Acquisition process and purpose**

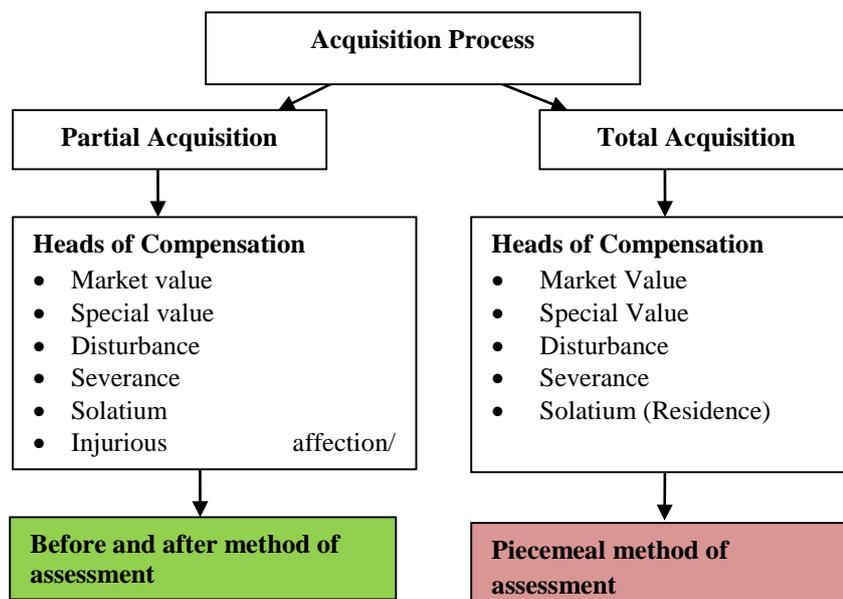
This section focuses on two key factors which demonstrate the challenges confronting policy makers and legislators in drafting compensation provisions. The firstly factor addresses the differences between total versus partial acquisition and the second relates to the purpose underlying the acquisition. What emerges from this section is a gap in the parity of value, in particular where the dispossessed party is unable to either be rehoused in similar premises within a similar or surrounding location or to re-establish their business resulting from the extinguishment of their business.

The compulsory acquisition of land entails two broad types of acquisition, partial and total acquisition of land. Within each type of acquisition, different principles and legislative provisions have evolved in assessing compensation across the various jurisdictions. Common to both types of acquisition is the overriding principle of compensation for the market value of land taken, being a contestable measure on which part of the compensation is assessed (Hyam 2009). It is at this point that these two forms of acquisition diverge in practice, but are assumed to be one resulting from the notion that value is determined on the basis of the parties being willing to but not anxious to trade on a given day. This factor solely relates to value in exchange, as defined under the Spencer Principle of market value, which features in both partial and total acquisition cases.

Beyond the market value of the land taken, the basis of a claim for compensation will depend on the type of acquisition and the impact of the acquisition on the dispossessed party. The form of acquisition will impact on the Heads of Compensation claimable and most importantly will drive the

methodology used in the assessment of compensation. Figure 1 distinguishes the difference in a claim, the heads of compensation and the methods of assessment.

**Figure 1: Total v Partial Acquisition Approach**



Source: Hornby 1996

In assessing compensation in partial and total acquisition cases, Hornby (1996:307) sets out the formula for each type of acquisition in accounting for the various heads of compensation as follows:

*Partial Acquisition – Before and After Method:*

(Before value **less** after value) **plus** Solatium and Disturbance = Sum of Compensation

*Total Acquisition - Piecemeal Method:*

Market Value **plus** Special Value **plus** Severance **plus** Solatium and Disturbance = Sum of Compensation

In the case of a partial acquisition, the use to which the acquired land is put and the impact of that use on the land retained by the dispossessed is to be accounted for in the after value and hence the compensation paid for head of market value. This includes any uplift in value where the retained land benefits from the use to which the acquired land is put or conversely, any loss resulting from an adverse use of the acquired land and its use. The method of capturing either a positive or adverse impact is defined by Hyam (2009) as the 'Before and After Method' of assessment. This method measures the value of the property before the acquisition and again after the acquisition where a portion of the land is retained by the dispossessed party. Mangioni (2010) states that the difference in the before and after value captures each of the heads of compensation as set out in Figure 1, with the exception of items of disturbance and solatium.

The acquisition of land and the type of acquisition is primarily determined by the requirements of an acquiring authority which is dictated by the purpose and extent of the acquisition. An acquiring authority is not compelled to acquire any more land than is required for the public purpose for which it is acquired as set out in Minister for Public Works (NSW) v Duggan (1951) 83 CLR 824 and Thompson v Randwick Corporation (1950) 81 CLR 87. Whilst case law prohibits the taking of any additional land that is required for the public purpose, the State of Tasmania has the statutory power to enter into agreement under section 10 Land Acquisition Act 1993 to acquire more land than is required by agreement.

In NSW, it is not uncommon for an acquiring authority to negotiate the acquisition of the total property, particularly in the case of residential property where a partial acquisition has been proposed and is not in the best interest of the dispossessed party to remain in occupation (Prentice 2002). Similarly, in

cases of partial acquisition where the use of the acquired land so detrimentally impacts the retained land, for example where the retained land is land-locked and loses all access, the difference between the before and after value may be close to the total value prior to the acquisition.

Of particular note in Figure 1 in distinguishing between partial and total acquisition, is the option for reinstatement where a party continues to reside or occupy the retained portion of the land not acquired. This is in contrast to a dispossessed party whose land is totally acquired and hence are forced to purchase an alternate property particularly in the case of a principal place of residence. In the case of partial acquisition for road widening, the principle of disturbance may extend to include items of capital expenditure such as double glazing, air-conditioning and other noise minimisation remedies. In other cases, this may extend to include the relocation of the existing house on the retained portion of the land where practical.

The above point marks the primary difference between partial and total acquisition, and in particular where a dispossessed party is able to reinstate themselves in a partial acquisition. This is in contrast to a dispossessed party the subject of a total acquisition, of which the total compensation is insufficient to reinstate their home or business where such interest is located in a marginal value location. This point is the subject of the next section of this paper and is elaborated on in the cases which follow.

## **Research method and result discussion**

In examining traditional and non-traditional public purposes, we have used secondary sources of research, which Sorenson (1995) refers to as findings from other researchers studies which include a survey with dispossessed parties. In this paper, the use of surveys to examine the results and attitudes is stated by Fowler (2009:1) to be a means of quantitatively measuring descriptions of outcomes of a study population. The survey results provide some context to the problem and attitudes of those impacted by the acquisition in the real world. In examining the acquisition rationale and its impact on dispossessed parties, a retrospective study design is used to examine two cases involving the acquisition of land for non-traditional public purposes. Kumar (1996:86) refers to retrospective studies as a way of articulating the phenomenon of a problem or issue that has happened in the past and in this paper, is transmitted through the examination of cases.

While it is not possible to consider examples or cases covering the range of public purposes, the acquisition of land for road building purposes has been selected as a traditional public purpose and two cases examining acquisition for economic development are used to examine non-traditional public purposes. It is noted that most acquisitions for traditional public purposes are resolved by negotiation, Prentice (2002) highlights that less than one percent of acquisition matters for road construction or widening proceed to litigation.

Traditional public purposes for which land is acquired include public infrastructure which encompass sewerage treatments and desalination plants, health and educational facilities and road building and widening works. Research undertaken by Prentice (2002) measures the dispossessed satisfaction of the process and compensation paid in achieving the objectives of acquisition for road works. In undertaking this research a survey of 23 dispossessed property owners was undertaken on a number of key points which encompassed the acquisition process and principles used in assessing compensation. The 23 property owners surveyed were randomly selected from a pool of dispossessed residential property owners in which the acquiring authority provided details and access to parties from which land was acquired.

### **Surveys – acquisitions for traditional public purposes**

In this survey, it is acknowledged that the sample of three percent of dispossessed owners in NSW gives an indicative opinion of the success of the acquisition process and compensation principles. A summary of the key survey questions and results are set out in Tables 1 and 2 with discussion following:

**Table 1: Survey summary with results expressed as a percentage**

Question	Satisfied	Dissatisfied	Neutral
1) How satisfied were you with the amount of compensation paid?	74	22	4
2) Do you think the timeframe for the acquisition process was suitable	83	17	nil

**Table 2: Survey summary to questions expressed as a Yes or No as a percentage**

Question	Yes	No	Unsure
3) If the underground of your land were acquired for a tunnel or easement would you expect compensation?	100	nil	nil
4) Did you object to the amount of compensation that was initially offered by the acquiring authority?	61	39	n/a
5) Question to the 61 percent who objected in Q 4) above: Did your compensation amount increase?	36	64	n/a
6) In your opinion, do you think that the Commonwealth or State Government should have the power to acquire land?	22	78	nil

**Source: Prentice 2002**

In this survey, of the 23 parties dispossessed, 19 parties or 83 percent negotiated a settlement with the acquiring authority and 4 owners or 17 percent had their property compulsorily acquired of which 2 cases proceeded to court. In conclusion to this survey, participants were asked to give suggestions as to ways in which the acquisition process and compensation could be improved in the future.

In compulsory acquisition cases for road works generally across NSW, Bourke (Cited in Prentice 2002:62), provides the acquisition statistics at 95 per cent of all acquisitions are by agreement, 5 per cent by compulsory process with less than one per cent proceeding to court. In the case of the Sydney M2 Motorway, being the largest road works undertaken during the 1990s, 240 properties were acquired by agreement, 6 by compulsory acquisition, with 2 cases proceeding to court.

What these surveys demonstrate is that in the case of traditional public purposes and in particular road widening, the dispossessed party views the end-result as the community benefiting as a whole. In contrast, they would not want to live on a busy freeway after the acquisition and take the option to take the compensation and relocate elsewhere. The use to which the acquired land is put, has no apparent or perceived uplift in value and the option to take the compensation and relocate elsewhere is compelling. In fulfilling the objectives of land acquisition statute of achieving acquisition through negotiation rather than compulsory taking, Viitanen *et al* (2010) suggests that other options including land readjustment are alternatives yet to be fully explored. Mangioni (2010) adds land readjustment options by proposing that reinstatement be added in the negotiation process in further achieve agreement between the parties. The aid for a dispossessed party requiring alternate premises should not be limited by the fact that the land taken has been designated to a traditional public purpose.

### **Cases – non-traditional public purposes**

In the case of economic development as a public purpose, this has evolved in the United States since its post WWII rapid economic expansion. The first noted case involving “economic development” occurred in 1954, *Berman v. Parker* 348 U.S. 26 (1954) where Turnbull & Salvino (2006) note eminent domain being used in a slum clearing program in Washington D.C., in which land acquired was sold onto private developers for redevelopment. Again in 1981, *Poletown Neighbourhood Council v. City of Detroit* 304 N.W. 2d 455 (Mich 1981) the city paid for land using eminent domain which was on-sold to General Motors for a new factory.

Whilst an evolving purpose in the United States, economic development has not gained the same level of support in Australia. Despite attempts to acquire land for economic development, this purpose

has been tested in the courts, which ruled against this purpose where local Government itself is not the developer. In examining land acquisition cases for non-traditional purposes, two cases one in the United States and a second case in Australia have been used to show the disparity that apply in Australia to economic development as a public purpose at present.

### **United States - Kelo v City of New London 125 S. Ct. 2655 (2005)**

#### ***Summary of facts***

Kelo and others resided in a rundown part of the City of New London, Connecticut in which the Local Government elected to acquire the subject and surrounding land and provide this land to a developer for the purposes of urban renewal and redevelopment of that quarter of the City. Kelo choose not to move and resided in her property for four years after the order declaring the acquisition was issued following her loss in the Superior Court. The City of New London agreed to move Kelo's house to an alternate parcel of land and further pay compensation to settle the matter. The initial objective of the dispossessed in Kelo was the principle of equivalence and not a matter of monetary compensation, which was insufficient to rehouse her in the surrounding location under the initial offer made for compensation.

#### ***Justification and dissent for compulsory purchase and ruling***

In deliberating on the Kelo case, the court decided in favour 5-4 for eminent domain for redevelopment purposes. An important précis of the decision follows which highlights the difficulty confronting the court in deliberating on economic development as a public purpose:

The majority opinion, by Justice Stevens, found that it was appropriate to defer to the city's decision that the development plan had a public purpose, saying that "the city has carefully formulated a development plan that it believes will provide appreciable benefits to the community including, but not limited to, new jobs and increased tax revenue." In the dissent, Justice Sandra Day O'Connor argued that this decision would allow the rich to benefit at the expense of the poor, asserting that "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms."

In contrast to the Kelo case, within Australia the same rationale of economic development met with the opposite outcome. This outcome resulted from statutory safeguards in the Local Government Act, which prohibits the acquisition of land and subsequent on-sale of that land to a developer without consent of the land owner. Despite these provisions within the Act, Parramatta City Council proceeded to acquire land in which the matter was appealed twice, first by Parramatta Council and then by the dispossessed party to the High Court of Australia, which found in favour of the dispossessed. In opposing acquisition for economic development, a précis of the case follows:

### **Australia – R&R Fazzolari Pty Ltd v Parramatta City Council; & Mac's Pty Limited v Parramatta City Council [2009] HCA 12**

#### ***Summary of facts***

In 2007 the Council sent proposed acquisition notices to the owners of the land located in the town centre of Parramatta, of which the dispossessed owned a number of retail shops. The land was required as part of a redevelopment referred to as 'Civic Place.' The redevelopment was to be carried out under a Private Public Partnership (PPP). "Under that agreement the council would transfer certain of the acquired land to Grocon and receive substantial financial payments and other consideration from Grocon." In the first instance the Land and Environment Court ruled that the proposed acquisition was unlawful on the grounds that the purpose of the acquisition was the re-sale by council to the developer. Council appealed the matter to the New South Wales Court of Appeal, which unanimously set aside the declarations made the lower court. In conclusion, the High Court of Australia found that the primary purpose of the acquisition was for re-sale and reinstated the decision of the Land & Environment Court NSW finding that the proposed acquisition was unlawful.

### **Justification and dissention for compulsory purchase and ruling**

The High Court have considered in detail the agreement between Council and the developer and found that the primary purpose of the taking was for the on-sale of the land to a developer.

Local Government Act Section 188 (NSW)

*“A council may not acquire land under this Part by compulsory process without the approval of the owner of the land if it is being acquired for the purposes of re-sale.”*

In response to this sub-section of the Local Government Act, the High Court confirmed the position of the primary judge that this sub-section did not apply, as the adjoining land acquired by council was itself acquired for the purposes of re-sale, which was acquired in November 2004 and December 2006. The High Court ordered that each appeal to the court should be allowed with costs. Further, cost should also be awarded in favour of the appellants for the courts below the High Court, NSW Court of Appeal and NSW Land & Environment Court.

In contrasting the traditional and non-traditional public purposes for which land may be acquired, it is probable that the acquisition for traditional public purposes are less likely to be met with the same level of resistance as non-traditional purposes. In these cases the dispossessed land is being acquired to form someone else’s home or business use, which seems to evoke a greater degree of equity and at minimum the impost of the principle of equivalence. This may be achieved potentially in a number of different ways, which may include a greater share of the uplift in value resulting from public purpose. At the very least, the dispossessed party would be far more compelled to be placed in as equal position as they were prior to the taking of their land. In addressing the potential options for reform, the following section provides a number of options which are more flexible to some of the constraints which have been interpreted by the courts in applying the black letter of acquisition laws.

### **Parity of compensation options**

In addition to the market value of land compulsorily acquired, heads of compensation exist which attempt to account for non-financial loss resulting from the taking of land (Solatium) and for relocation expenses reasonably incurred in placing the dispossessed party in the same position they were in prior to the acquisition (Disturbance). These heads of compensation demonstrate that compensation beyond market value of the acquired land taken must be made and is founded on the premise that the willing buyer willing seller principle only relates to the market value component in acquisition cases.

In drafting for reform, consideration is made on two bases, the first being the review of existing and emerging reforms in Australia, and secondly through the lens of a more radical approach which challenges some of the conventions which underpin the current principles of compensation. Of importance in the acquisition process is the option for the dispossessed to be reinstated where feasibly possible. While not possible in each circumstance, equivalence must also extend to rehousing the dispossessed with an interest in fee simple. In the case of investment property, this may also extend to include similar premises within the proposed development, where the acquisition is undertaken for economic development.

### **Reforming the heads of compensation other than market value**

Current provisions for parity of compensation in addition to market value generally operate under two heads of compensation in Australia, these are Disturbance and Solatium. As set out in Table 3, these heads of compensation vary across State jurisdictions. In addition to their operation in Australia, they exist in various forms internationally. Table 3 highlights the breadth of application of these two heads of compensation across Australia. It is noted the main divide in the provision for solatium, being a fixed amount versus a percentage of the total compensation, of which 10 per cent is used in Western Australia.

**Table 3: Solatium & Disturbance summary across Australia**

<b>Jurisdiction</b>	<b>Solatium</b>	<b>Disturbance</b>	<b>Reinstatement</b>
<b>VIC</b> Land Acquisition & Compensation Act 1986	Up to 10% of total compensation	Section 41 Professional costs	Section 42 Purchase or intended purchase

<b>Qld</b> Acquisition of Land Act 1967	No Provision (Brown 2004:173)	Section 20 Reasonable professional & financial costs	No provision
<b>NSW</b> Land Acquisition (Just Terms Compensation) Act 1991	Up to \$25,500	Section 59 Items reasonably incurred for relocation, finance and acquisition costs.	No provision
<b>South Australia</b> Land Acquisition Act 1969	No Provision	Section 25 Not detailed	Section 25 Similar to disturbance
<b>Western Australia</b> Land Administration Act 1997	Up to 10% of total compensation	Section 241 Removal & professional	No specific provision
<b>TAS</b> Land Acquisition Act 1993	Limited circumstances	Section 27 Reasonable costs	Section 31 Where no market
<b>ACT / Commonwealth</b> Lands Acquisition Act 1989	Yes, as decided by the authority or court	Section 55 Reasonable expenses	Section 58 No general market

In Hong Kong an alternate safety net exists, referred to as the Home Purchase Allowance (HPA). The Home Purchase Appeals Committee (2007) sets out provisions for domestic property being an ex gratia HPA based on the replacement cost of a notional 7 year old property in the same location as the acquired property. This provides some recognition of the issues facing dispossessed parties and a measure of restoring dispossessed parties with an alternate property within the same location. The Hong Kong model is a tangible step towards reinstatement compensation.

In New Zealand, solatium for the purchase of a dwelling has recently increased from NZ\$2,000 to up to NZ\$50,000. The \$2,000 figure had not been updated since 1975 and it was decided that an increase was required to modernise the amount. Rather a set amount, the solatium is now on a sliding scale and provisions are currently being drafted within the legislation to set out the criteria to determine how much is paid in each case. One option is whether a component of this solatium could be paid on early agreement i.e. within 6 months of negotiations commencing, (Pers Com, Land and Property Information New Zealand 2013). In addition, a new land-loss payment will be introduced, at 10% of the land value acquired to a maximum of NZ\$25,000 for any one property (and minimum of \$250).

#### **Alternate reforms and profit share framework**

In contrast to solatium and disturbance, Epstein (1985) proposes a sharing model in which any uplift in value is shared between the dispossessed and acquiring authority/developer. This model adopts the proposal of a low public interest project would result in a higher profit share and higher public interest results in a low or no profit share. The primary question is how would the degree of public interest be determined and what percentage would be provided to a dispossessed party along the variant scale of such determinations

In questioning the principle of the Epstein Model, Mills cited in Hollander (2000) discusses the defensible argument of utilitarianism being an action which supports the greatest good for the greatest number of people. In contrast to the payment of compensation to parties affected by the taking of land, Curtin & Witten (2005) ask whether parties benefiting from public projects should in fact pay for the increase in property values brought about by such projects, this gives rise to the potential for a betterment tax. In contrast, Kalbro and Sjodin (1993) expand on the Epstein Model by defining the split in the uplift in value which is shared between the stakeholders to the acquisition as shown in Figure 2. This challenges the Raja Principle which contains the value of the property to the dispossessed and not the acquiring authority. This principle predominantly worked well in acquisitions for traditional public purposes, where a defined project profit was not readily defined or observable.

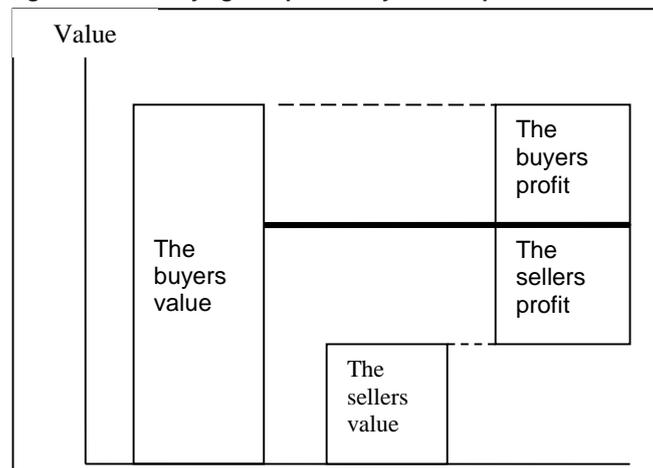
An option to disturbance and solatium would be an alternate property reinstating the dispossessed. If this cannot be achieved, the dispossessed would be relocated in a property as close in value to the property acquired. This task and duty would be a responsibility of an acquiring authority in which their resources would be used rather than the dispossessed if that were the choice of the dispossessed.

Where the dispossessed party live in marginal value locations, then an alternate property within the same or surrounding location up to the average value of property within that location may serve as an alternative.

In applying the mid-points options of profit sharing to the cases of Fazzolarri and Kelo reviewed earlier, both may have been resolved avoiding protracted litigation. In the case of Kelo, the Plaintiff was reinstated with their residence relocated on alternate land and hence an eventual but protracted mid-point was reached. However for many of the surrounding residents to Kelo the same benefits were not received. In applying either the Epstein or mid-point framework, each owner could have been either relocated for provided with sufficient compensation to be re-housed within or close to the location their land was acquired from.

In the case of Fazzollari, simpler options may have been available by offering alternate retail premises within the proposed Civic development complex, which also accommodated retail premises. Alternatively a profit share of the unutilised floor space (FRS) could have been offered as part of the compensation in recognition of the potential similar use to which the land may be put. Rather than each side incurring legal costs of many hundreds of thousands of dollars, these funds are better directed through profit sharing with the dispossessed party.

**Figure: 2 Voluntary agreed price - buyer/seller profit**



Source: Kalbro and Sjodin 1993

## Conclusion

The purposes for which land is acquired have expanded in the re-urbanisation phase of highly developed cities to encompass both traditional and non-traditional public purposes. The necessity to be able to acquire land for both of these broad purposes is important and necessary in regenerating underdeveloped and obsolete land uses. In undertaking the acquisition process, it is important that all stakeholder needs are addressed and options are available for reinstatement of a dispossessed party, particularly in the case of economic development where a dispossessed party may be rehoused or their business relocated within the new development.

It was further shown that in partial acquisition cases, a form of reinstatement does exist, in which items of disturbance form part of the compensation in allowing the dispossessed party to relocate on the retained portion of their land where practical. This option needs to be expanded to provide similar protection for owners who are the subject of total acquisitions, in which costs of relocating under items of disturbance must also include such professional services as buyer agents and location specialists. This is particularly the case where the acquiring authority does not participate in the relocation process.

It was demonstrated that a difference exists in attitudes towards the options in the case of road widening purposes versus economic development, however in each purpose, particularly in marginal value locations, reinstatement is an important safety net for a dispossessed owner. To this end, it was further shown that solatium and items of disturbance are within existing legislation in Australia and are being strengthened as is the case internationally. This supports the fact that beyond the determination of market value, that the parties to an acquisition in particular the dispossessed, are not willing and the requisite heads of compensation must reflect that fact.

The equivalence principle must go beyond that of the equivalence of market value and encompass physical or economic equivalences in acquisition cases. This will place greater pressure and resourcing the acquisition process, however in the case of economic development, where more intense uses of land underlie the acquisition of land, the option of reinstatement to alternate property within the proposed development or surrounding areas are worthy of further exploration.

In contrast to acquisition being dictated by statute, good public policy is an alternative warranting further exploration and development in better accommodating the needs of the dispossessed party and in deed the community through more fluent market based options. As highlighted in Hong Kong, new for older dwellings formularises the assessment of compensation and provides greater options for rehousing dispossessed parties. A share of the buyers value resulting from the uplift in value resulting from market demand for higher and better uses of land should not be withheld from the dispossessed party simply because they either did not or could not exercise that option.

At minimum, the sum of items of disturbance and solatium where the latter exists, attempt to recognise that equivalence extends well beyond market value. What is difficult for policy makers, is striking the balance between those who are prepared to move and relocate but where the sum of all compensation is insufficient to relocate. In contrast, those that may seek compensation for potential increments in value which have yet to be achieved with land not developed to highest and best use.

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