

## Caught in the shadows: unpacking compensation claims for the acquisition of land for public works

**The Public Works Act 1981 provides the basis for landowners to be paid compensation for land that is acquired by the Crown for public works. But what happens in the limbo period between a project being announced and land being acquired? If an anticipated project affects a land owner's use of the land is there any basis for recovery?**

The Court of Appeal's recent decision in *Casata Limited v Minister for Land Information* clarifies the approach to compensation claims arising from the "shadow period."

### Shadow period

The "shadow period" is the time between the announcement of the proposed public work for which the land is to be acquired, and the completion of the acquisition. The "shadow" cast by a prospective project, the details of which may be in a state of flux, can cause land values in the area to fluctuate for properties that are directly affected, which can impact landowners, developers and investors.

### Facts of the case

Casata Limited's (**Casata**) core business was commercial property investment. It owned two properties in Petone, and contended that the shadow cast by the announcement of a roading project between the Hutt Valley and Tawa Porirua, the Petone-Link Road (the

**Project**) cost it the opportunity to sell or redevelop the properties, which were ultimately acquired under the Public Works Act 1981 (the **Act**) for the purposes of the Project.

The parties were able to agree on the land value of the properties, but unable to agree on Casata's claim for additional compensation in the sum of \$4.2 million (subsequently reduced to \$3.6million), due to the effects of the shadow of the Project. Casata claimed it was prevented from maximising its returns from the capital investment in the properties as during the shadow period its property rights were effectively suspended, and it was unable to either invest in the development of the land (so as to increase its value) or sell the land and reinvest elsewhere.

Casata relied on two sections of the Act to support its claim:

1. Section 60(1)(c) which provides that there is a basic entitlement to full compensation where land suffers damage from the exercise of any power under the Act; and
2. Section 66 which provides that the owner of any land taken or acquired under the Act shall be entitled to recover compensation for any disturbance to the land.

### Court of Appeal's findings

The Court of Appeal rejected Casata's claim, finding that it did not have an entitlement to additional compensation on the basis of either section 60(1)(c) or section 66.

With regard to section 60(1)(c) the Court observed:

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(Continued)

- The statutory entitlement to compensation in s60(1)(c) requires the identification of a relevant statutory power, the exercise of which has given rise to damage. It is only where the exercise of such a power has caused land to suffer damage that compensation is payable for that damage. An announcement of a project will not of itself constitute the exercise of a statutory power under the Act (or any other statute).
- The natural and ordinary meaning of the phrase "any land suffers damage" as it appears in s60(1)(c) requires physical interference with the land: that is, something that affects the land itself. In this case the announcement of the Project had not caused physical damage to either of Casata's properties. The kind of loss that Casata sought to recover was a business or economic loss, but only physical damage is compensable under s60(1)(c).
- The effect of the Project's announcement must be an economic one (since there had been no physical damage to the land). Section 62(1) clearly provides that the assessment of compensation must not be affected where the value of the land taken for any public work had been reduced by the prospect of the work. This means that adverse effects on land value caused by the announcement of a Project must be set to one side for the purposes of valuing the land to be acquired. Economic effects of the shadow are those that relate to the value of the land. The potential for land development remains as it was before the announcement, and must reflect what the notional willing buyer would pay for the land if sold on the open market, in accordance with the rule in s62(1)(b). Development potential is a recognised component of the land.

With respect to Casata's claim under section 66, the Court of Appeal reiterated its view that loss alleged to be

caused by the shadow essentially goes to the value, and a claim cannot be advanced by way of disturbance to the land. The kinds of disturbance payments which are set out in section 66(1) reinforce that view. Casata's claim was not a claim for reasonable costs incurred in moving from the land taken, nor did it relate to improvements not readily removable from land.

**Key takeaways**

The Court's comments have usefully clarified the compensation regime under the Act, making it clear that the scope of the regime will not extend as widely as some landowners may like it to. While the announcement of a project may cast a shadow, it does not necessarily follow that a landowner will be entitled to additional compensation: physical interference with the land itself is required.

**Want to know more?**

If you have any questions about the Public Works Act 1981, please contact [Mike Kerr](#) and [Anna Davidson](#).