



# Landowner Guide

## What you need to know

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# **Auckland Transport (AT) is acquiring your land for a transport project (Project). We will work with you to try and reach agreement on a compensation amount for this land.**

## **What is AT responsible for?**

AT is responsible for all of the Auckland region's transport services (excluding state highways) from roads and footpaths to cycling, parking and public transport.

AT is a Council Controlled Organisation. On behalf of Auckland Council, AT will acquire land that we need for the Project.

The Public Works Act 1981 (the Act) allows AT to acquire land for the Project and pay compensation. AT must ensure compensation is fair and reasonable for both ratepayers and affected landowners.

## **Compensation**

### **Who is entitled to compensation?**

You need to have an interest in the land we need for the Project to be entitled to compensation.

### **What are the rules of compensation?**

The Act requires that affected landowners receive fair compensation so that landowners are left no better or worse off than they were before their land was acquired.

The rules about compensation are in section 62 of the Act. They are:

#### **Willing seller**

The Act states that the land AT acquires will be valued on the amount it would sell for on the open market by a willing seller to a willing buyer on a specified date. There are some exceptions to this, and you'll find these under section 62(1)(b) of the Act.

#### **Market value**

The value of your land is the price it would sell for on the open market. You should receive no more nor less than the amount you would sell your land for on the open market.

#### **Increase in value resulting from the public work**

If the Project increases the value of the land remaining (if we acquire only part of it), your total compensation amount may be reduced. This is known as "betterment".

#### **Injurious affection**

Any drop in the value of the land remaining after we acquire part of it is called "injurious affection". This recognises that the public work may negatively impact the value of your remaining property if only part of the land is acquired, and you will be compensated as such.

## **Disturbance payments**

In addition to compensation for the value of the land acquired, you may also be entitled to compensation for disturbance. This is payment for actual monetary loss or costs of a temporary, nonrecurring nature.

You cannot claim disturbance payments for personal matters such as inconvenience. Disturbance payments are costs or losses that you could not have avoided by taking reasonable precautions (refer to the 'What expenses can be claimed?' section below).

To qualify:

- The disturbance cost must have been incurred as a direct result of AT acquiring your land.
- You must prove that any losses are a result of your land or business being acquired.

## **Damage to property**

Compensation may be claimed if anything we do during the Project causes physical damage to your property, particularly buildings.

## **Is compensation payable for business losses?**

Yes, compensation may be claimed for losses resulting from the relocation of a business that is located on your land, or for loss of goodwill, if it can be proven that there has been an actual loss of profits. A landowner may also be entitled to relocation expenses.

## **Additional compensation**

You are entitled to an additional payment under the Act for losses in addition to the value of the land being acquired. This payment is to recognise and compensate you for your time and the disruption and inconvenience caused.

If the land AT acquires contains your home that you live in (as your primary place of residence), and you give vacant possession on an agreed date (or if none, within one month of vacant possession being required by written notice), compensation between \$35,000 to \$50,000 may be payable under section 72 of the Act.

Under Section 72A of the Act you may be able to claim:

- i) \$35,000 if you leave your house empty and hand it over to AT on the agreed date (vacant possession), plus
- ii) a further payment of \$10,000 if a sale and purchase agreement is signed within six months of negotiations. This agreement must include an agreed date you will hand over your empty house to AT, plus

## **This guide will let you know your rights under the Public Works Act 1981 (the Act) when AT needs your land for the Project (which is a public work).**

- iii) a further payment of \$5,000 if AT agrees (at its discretion) that you are experiencing hardship or that during the acquisition of your land, circumstances mean we should make this payment to you.

If AT only needs part of your land or if the land does not contain your home that you live in, you are entitled to compensation equivalent to 10% of the value of the land (from a minimum of \$250 to a maximum of \$25,000).

### **What expenses can be claimed?**

You can claim expenses for your reasonable costs related to negotiating and the acquisition of your land. This includes reasonable legal and other professional fees for buying a replacement property. We recommend you contact AT for approval of expenses before you pay any fees, so to avoid any dispute in the reimbursement of these fees.

You must minimise your costs and losses. Your personal time spent in the negotiation is not reimbursed.

For more information on reimbursement of reasonable costs and entitlements, refer to the Guide to Compensation for Reasonable Fees or Costs attached.

### **Will the cost of moving houses be covered?**

If AT acquires your whole property, you can claim reasonable costs for moving your belongings to your new property. This is subject to your new property being within the same area, or within a nearby location where a new property could be reasonably purchased in substitution. AT would be happy to discuss this with you.

Claims for moving costs must be reasonable. We recommend you contact AT before you speak with a moving company so you can be certain of what costs will be covered.

### **When is compensation paid?**

Generally, payment is made when you vacate your house and provide vacant possession to AT on an agreed date.

### **How does AT treat GST?**

All of AT's land purchases are GST inclusive.

## **How does the process work?**

### **Land to be purchased by agreement**

AT's preference is to reach an agreement with you for the land that is to be acquired on what is referred to as a "willing buyer willing seller" scenario.

To commence this, AT will obtain a valuation from an independent registered valuer.

Then we will send an offer letter to purchase the land and may include a section 18 (s18) notice, based on the independent valuer's assessment of the value of the land.

A s18 notice will set out AT's desire to acquire the land and will be given to you (as landowner) and every person with a registered interest in the land. The s18 notice will be lodged on the record of title of the land that is required.

There will be a three-month good faith period in which AT will negotiate and hopes an agreement can be reached in this time.

We recommend you obtain independent registered valuation advice. If you engage a registered valuer, you need to tell the valuer the valuation is for compensation purposes under the Act.

The reasonable cost of the valuation advice will be reimbursed on settlement or by agreement with AT.

We recommend you share the valuation report you receive from the independent valuer with us. The valuations obtained by both parties form the basis for negotiation and agreement on the amount of compensation AT will pay for the land being acquired.

If there is a big difference between the two valuations, AT may ask for the two valuers to meet to try and resolve any differences in the compensation amount.

### **How does Auckland Transport complete the purchase of land?**

Once an agreement is reached, you will sign what is called a section 17 Agreement. You will send this to AT for approval and signing.

Once the agreement is signed on behalf of Auckland Council, there will be a binding contract. Then, AT will pay your compensation and complete the transfer of ownership.

If we only purchase part of your land, we will register a compensation certificate against your record of title pending the transfer of ownership of the land.

### **Will Auckland Transport buy the whole property when only part is affected by the proposed public work?**

- If the value of the part of your property that is not affected by the public work is significantly affected and has become significantly less useful or significantly more costly to retain, we may acquire the whole property.
- We may also acquire the whole property if you as the landowner would have difficulty in accessing the land or using it.

These areas are commonly called severances. For example, if the front of a section is needed for a road, this may mean access to the rest of the property is cut off.

### **Can Auckland Transport take land without the landowner's agreement?**

If we cannot reach an agreement within three months after we send you a s18 notice, AT can acquire the land compulsorily without the landowner's agreement. We will only do this after we have made a reasonable effort to negotiate the purchase in good faith.

If AT on behalf of Auckland Council proceeds to take your land we will issue a section 23 notice (Notice of Intention to Take Land) to all parties with a registered interest in the land. You can lodge an objection at the Environment Court within 20 working days.

Any cost you incur in respect of submission or appeals on the Resource Management Act process, along with any costs incurred in objecting to the s23 notices will not be recoverable under the Act.

### **What happens when compensation cannot be agreed?**

AT will recommend a mediation process to try and resolve the compensation differences.

If you and AT cannot agree on compensation, the Land Valuation Tribunal can decide the compensation amount.

### **Entry for survey or investigation purposes**

AT will ask your permission to go on to your land to do a survey or investigation.

You will receive reasonable notice before AT enters that will outline the purpose of the investigation work, the location of the work on your property and the length of time the work will take.

If access is not granted, AT will need to issue an access notice under s110 or s111 of the Act.



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