

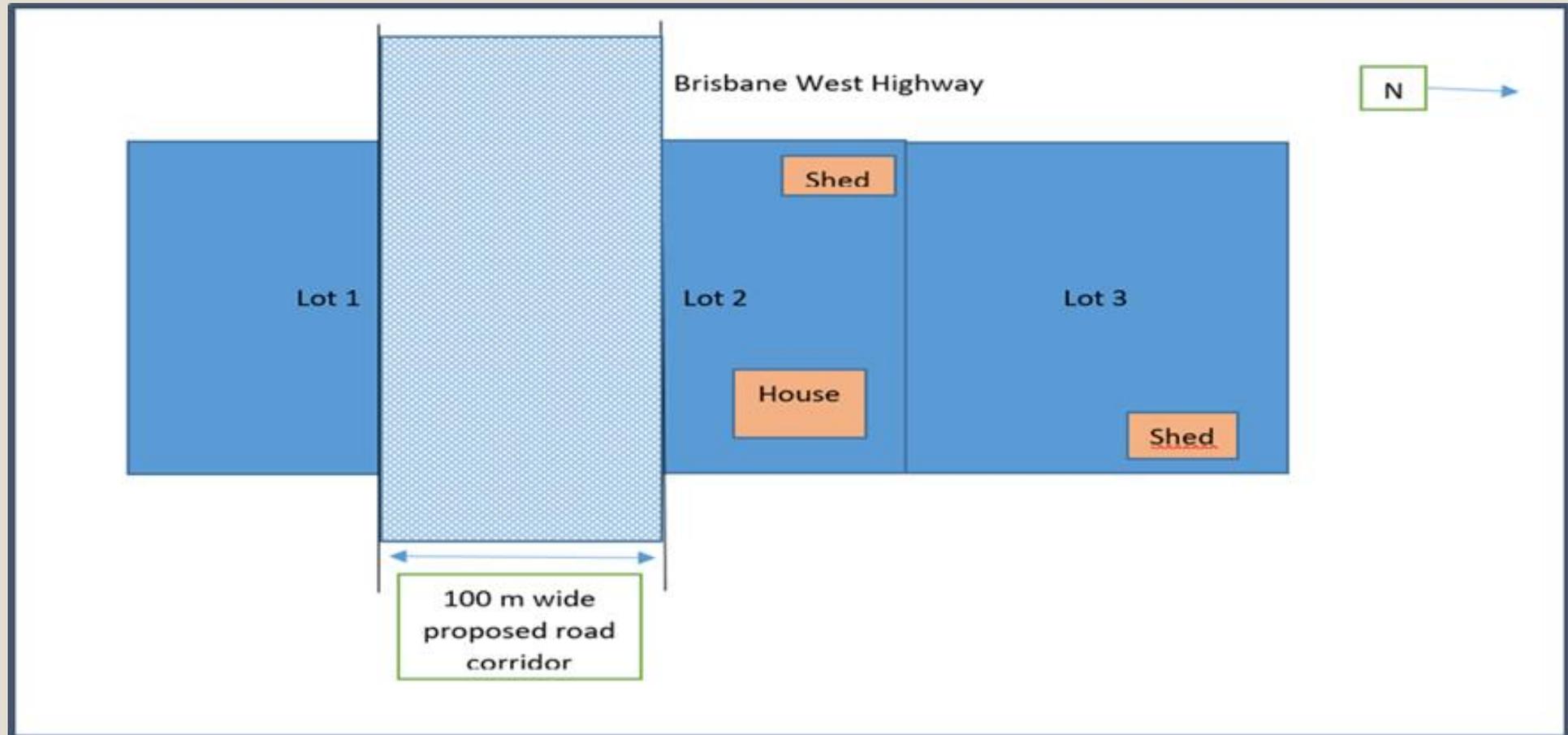
MOOT COURT CASE: VALUATION OF LAND COMPENSATION

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CASE RESUME

Claimant	:	Horizon Properties Pty Ltd (Horizon)
Respondent	:	Transport Department of Queensland (Transport Department)
Real Property Description	:	Lots 1, 2 & 3 SP 123456 (2 ha Each)
Area Resumed	:	1.2 Ha (6000 m2 from lot 1 and 6000m2 from lot 2) 100m meter wide road corridor
Purpose of Resumption	:	Transport Purposes – Woomba Bypass
The Property	:	444 New York Highway, Woomba, QLD

RESUMPTION PLAN



PURPOSE OF COMPENSATION

“Purpose of Compensation is that gives to the owner compelled to sell the right to be put, so far as money can do it, **in the same position as if his (her) land had not been taken from him (her)**. In other words, he/she gains the right to receive a money payment not less than the loss imposes on him/her in the public interest, but on the other has no greater (*Horn v Sutherland Corporation* 1941).”

BASIS OF COMPENSATION

The Acquisition of Land Act 1967 (the Act), in Section 20 Assessment of compensation:

1. Value of Land Taken
2. Severance
3. Injurious affection
4. Enhancement

Other Elements of Claim

5. Disturbance

6. It is further noted in Section 20(5) that costs attributable to disturbance comprise legal, valuation, and other professional fees incurred by the claimant in relation to the preparation of the filing of the claimant's claim for compensation, and any additional costs incurred through the purchase of additional land to replace the resumed land. These additional costs can include stamp duty, financial costs, legal costs, and other financial costs.

BEFORE AND AFTER APPROACH

This method used by Land Appeal Court in this following case:

- ***Stanfield v Commissioner of Main Roads (1969)***

“This case involved severance damage caused by resumption for an expressway at p.82 the Court adopting the “before and after method” stated it could see no other way open assess severance damage.”

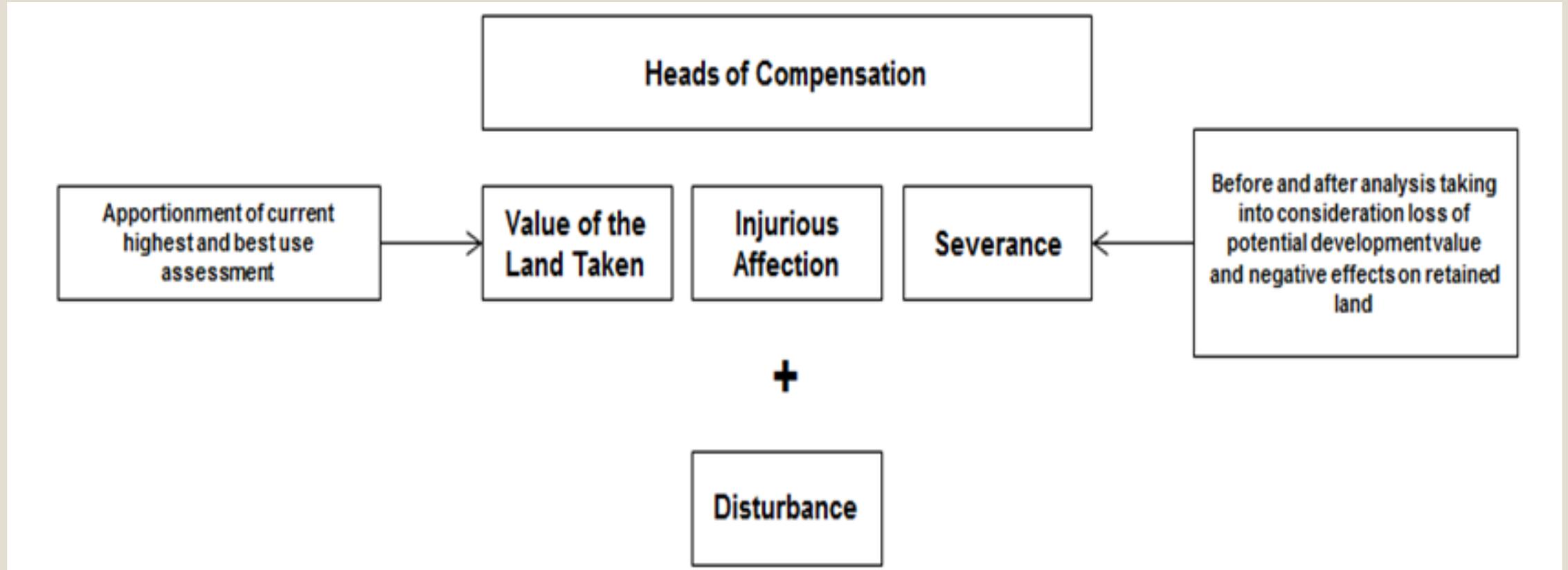
- ***V.J. Riordan and another v The Commissioner of Main Roads (1974)***

“According to accepted principles of valuation this difference (between the before and after valuation) represent the total loss suffered by a claimant as a result of resumption affecting a subdivisional scheme, and includes loss of land and injurious affection resulting from the resumption.”

- ***Council of the City of Townsville v J.S. Plant (1976)***

“The case involved resumption of part of piece of land resulting in an alteration in a residential subdivision scheme – the agreed approach was a valuation by way of the ‘before and after’ method.”

ELEMENT COMPENSATION CALCULATION



BASIS OF COMPENSATION ASSESSMENT

a. Principle of Equivalence

In assessing the claimant's compensation as a result of the resumption, the Principle of Equivalence outlines the basis for compensation. This was stated by Brown (1991:80), noting that "the purpose of compensation is that it gives to the owner compelled to sell the right to be put, so far as money can do it, in the same position as if his (her) land had not been taken".

The purposes of the valuation report is to assess the compensation, if any, required to put Horizon Properties Pty Ltd in the same position as if the land had not been taken for the purposes of the Woomba Bypass.

b. Market value of land

The market value of land to be considered by the court in assessing the compensation to Horizon is codified by the Spencer Principle, taken from *Spencer v Commonwealth* (1907) 5 CLR 418. The principle states that “to arrive at the value of the land at that date, we ... to suppose it sold then, not by a means of a forced sale, but by voluntary bargaining between the plaintiff and a purchaser willing to trade, but neither of them so anxious to do so that he(he) would overlook any ordinary business consideration.

We must further suppose both to be perfectly acquainted with the land and cognisant of all circumstances which might affect its value, either advantageously or prejudicially, including its situation, character, quality, proximity to conveniences or inconveniences, its surrounding features, the then present demand for land, and the likelihood as then appear to persons best capable of forming an opinion, of a rise or fall for what reasons so ever in the amount which one would otherwise be willing to fix as to the value of the property.” As such, the following assessment of the value of compensation to Horizon will be assessed with regard to the Spencer Principle of market value.

c.Special value of land to owner

This principle is derived from *Pastoral Finance Association Ltd. v Minister (1914)*. It is stated as 'what would the prudent person be willing to give for the land sooner than fail to obtain it?' The dispossessed owner is entitled to be compensated for what the land was worth to them.

In this case *Horizon Properties Pty Ltd* does not have any special value that can be determined as the compensation.

d.Enhancement

This principle was established in *Pointe Gourde Quarrying & Transport Co.Ltd. v Sub Intendant Crown Lands (1947)*. It was stated that "it is well settled that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition."

In valuing the land, no increase in value has been identified, and as such, enhancement has not been deemed relevant to consider. In addition, there is no attributable enhancement value that would be required to be set off against the compensable value of the land.

e.Reinstatement

Reinstatement is most typically used where land resumed for the purposes of a scheme by the constructing authority is highly specialised in nature, and as such, requires the cost of reinstatement to be considered to compensate the dispossessed owner of the land.

The following tests are outlined in the *West Midland Baptist (Trust) Association (INC) v Birmingham Corporation* [1970] AC 874:

- The claimant's required land must be devoted to a purpose of such nature that there is no general demand for that purpose;
- The claimant's acquired land must have continued to be devoted for that purpose but for the acquisition; and
- The claimant must have a bona fide intention to reinstate himself/herself in some other place for the same purpose.

Applying the above tests to the use of the land owned by Horizon, reinstatement cannot be justified as a method to assess the compensation payable, as the land is not currently used for such a purpose that would be expected to have no general demand.

f. Disturbance

The Milledge Principle, outlined in *The Commonwealth v Milledge* 90 VLR 157, and now codified in the Acquisition of Land Act 1967, provides for additional compensation to be paid to the claimant on top of assessed land value for the costs of disturbance.

In the situation of Horizon Properties, it is noted that as part of the claim for compensation, a total of \$185,000 of costs including legal fees, valuation fees, town planning fees, and engineering fees. Whilst it is noted that the constructing authority disputes these costs, as per the Milledge Principle and the Acquisition of Land Act 1967, the claimant is entitled to receive compensation for these costs.

g. Severance

Severance damage is defined as the depreciation in the value of the retained land as a result from its division into two or more parts, or its reduction in area and consequent loss of value for some current or higher (potential) use. The Acquisition of Land Act 1967 provides requires severance to be considered in addition to the value of the land taken and disturbance at section 20(1)(i).

In the case of Horizon Properties, the proposed bypass will sever the land currently made up of three contiguous lots. As a result, severance is required to be considered as it has been deemed that the value of the retained land will be affected due to this. This is predominantly through the 1.2 hectare decrease due to the proposed bypass on the value of the retained land for its assessed highest and best use.

As such under the circumstances, severance is considered in assessing Horizon's claim for compensation.

h.Injurious Affection

The Acquisition of Land Act 1967 in section 20(1)(ii) additionally provides for the compensation of injurious affection where there has been a part take of the land, and the effect of the exercise of any statutory powers of the constructing authority on the balance land.

In the current situation, injurious affection is deemed to be relevant as a result of the scheme negatively impacting the use for which the land has been identified as suitable. This is particularly with respect to the resultant noise of passing traffic that will be present on the proposed bypass, and the effect of increased toxic automotive fumes on the balance land.

As a result, it has been determined that Horizon is eligible for compensation with regard to injurious affection, in addition to compensation for severance.

ASSESSMENT OF COMPENSATION

Market value of land

Value assessment of land – highest and best use				
Lot	Area (ha)	Value apportionment factor	Adopted value*	Assessed value
Lot 1	1.5	1.25	\$280,000	\$3,360,000
Lot 2	1.5	1.25	\$280,000	\$3,360,000
Lot 3	2	1.25	\$280,000	\$4,480,000
Total value				\$1,120,000
Total value (\$ / hectare)				\$224,000

Severance

Compensation under severance				
Lot	Area (ha)	Reduced lot area (ha)	Apportioned Value	Adopted value*
Lot 1	1.5	0.9	\$224,000	\$201,600
Lot 2	1.5	0.9	\$224,000	\$201,600
Lot 3	2	2	\$224,000	\$448,000
Total value				\$851,200
Total value (\$ / hectare)				\$224,000
Loss in value due to severance				(\$268,800)

Injurious Affection

Compensation - injurious affection					
Lot	Area (ha)	Reduced Lot Area	Apportioned Value	Negative Effect On Balance Land	Adopted Value
Lot 1	1.5	0.9	\$224,000	90%	\$181,440
Lot 2	1.5	0.9	\$224,000	90%	\$181,440
Lot 3	2	2	\$224,000	90%	\$403,200
Total value					\$766,080
Total value (\$ / hectare)					\$201,600
Loss in value due to injurious affection					\$85,120

Disturbance

Disturbance costs attributed to land take	
Item	Value
Legal Fees	\$150,000
Valuation Fees	\$15,000
Town Planning Fees	\$10,000
Engineering Fees	\$10,000
Total Disturbance Costs	\$185,000

Total Compensation Payable

Total value of compensation payable to Horizon Properties	
Head of compensation	Value
Severance	\$268,800
Injurious Affection	\$85,120
Other Compensation	
Disturbance	\$185,000
Total compensation payable	\$538,920

CONCLUSIONS

BEFORE SCENARIO

(1) In the before scenario, Lots 1, 2, and 3 valued with 5 hectares of arable farmland with a modest farmhouse and two rural buildings. The surface area before is 5 hectares in total, divided by 1,5 hectares for Lot 1 and 2, and 2 hectares for Lot 3. We assume there is 1 hectares in total from 2007 small resumption in 2007 for Lot 1 and 2. Based on our assessment, there is only one possible high and best use for the land, namely rural homestead site, based on the land condition.

(2) The value of 1-1.5 hectare rural residential home sites in the surrounding area between \$250,000 and \$300,000 per site. We use value apportionment factor as average of the site surface to calculate the property value in each hectare. We value the property \$280,000 per hectare for all the lots, because the property relative small but each lot leave with the same condition which has a favourable position in front of Brisbane West Highway which gives this property direct access to the main road. Therefore our total calculation for the adjoining property before acquisition is \$1,120,000 and \$224,000 per hectares.

AFTER SCENARIO

(1) After the resumption, the corridor will take 1.2 hectares in total from Lot 1 and 2, 6000m² for each lot with the 100 metres wide in corridor. The acquisition separate the remaining land from Lot 1 from the 2 other adjoining lots (lot 2 and 3) with 0.9 hectares area. Lot 2 remain 0.9 hectare and Lot 3 still stay with the same 2 hectares.

(2) In the after scenario we also assess the residential home sites as the possible highest and best use for the property. We use \$224,000 per hectares to calculate the property value with the assumption same value per hectares for each lot because they still has the same position and advantage like before. Therefore, total market value for 3 lots after resumption is \$851,200.

REFERENCES

Legislation

- Acquisition of Land Act 1967(QLD)

Cases

- Pastoral Finance Association Ltd v The Minister (1914) AC 1083(3)
- Pointe Gourde Quarrying & Transport Co.Ltd. v Sub Intendant Crown Lands (1947)
- Spencer v The Commonwealth (1907)_5_CLR_418(3) (1)
- The Commonwealth v Milledge (1953) 90 CLR 157
- West Midland Baptist (Trust) Association (INC) v Birmingham Corporation [1970] AC 874