

LAND FLOODING AND COMPENSATION IN THE UPPER CLUTHA

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Before dealing with problems which I think may occur on lands flooded during the Clutha power development programme, it is perhaps desirable to traverse the statutory situation as it now exists and its progress to its present stage.

The Public Works Act 1928 received its most significant alteration under the Finance Act No. 3 1944, which established different criteria from those which existed in the determination of compensation. The effect of this was determined as follows:

1. No allowance is to be made because of land being compulsorily taken.
2. The value shall be based on willing-buyer/willing-seller sale.
3. The special suitability to the Crown is to be disregarded.
4. The prospect of the work is not to influence the value.
5. There will be allowance for betterment to be deducted where this occurs to the land not taken.
6. The 'specified date' or the date of valuation was precisely defined.

It is probably fair to say that the 1944 Amendment took care of the situation with reasonable public support until the middle sixties, when two major factors began to assume increasing importance – these being the greatly increased activity of the Crown and particularly local bodies in land acquisition for an expanded area of public use, and the inflation which became an apparently permanent feature of our economy. Some tinkering was carried out to the rules in 1963, but 1970 saw the first major alteration in the law since 1944 to cover firstly the compensation requirements imposed through the

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medium of the Town and Country Planning Act 1953, and secondly the provision for the payment in addition to normal compensation previously payable. This latter covered in a very restrictive manner:

- (a) A 'solatium' for the loss of one's residentially zoned house.
- (b) Additional payment for the repurchase of a home for old people of limited means.
- (c) The refund of expenses where negotiations were carried out where land was no longer required.
- (d) Compensation for tenants on a weekly or monthly tenancy.

The 1970 Amendment went a considerable distance in compensating for some of the less tangible losses sustained by displaced residents of urban properties. The intensification of the rate of inflation after 1970, together with the very narrow field of application for the payment of solatium, led to major amendments in 1973.

The 1973 Amendment increased the amount of solatium payable, widened the class of property on which it was payable and extended the type of acquisition on which it was payable. The additional compensation payable to repurchase widened substantially the grounds under which this became payable, varied the amount payable under different circumstances and varied the repayment and interest requirements in different circumstances. A very significant change was the acquiring authorities' right to alter the specified date to one which does not operate to the detriment of the claimant.

Very broadly speaking, we now have the following basis for compensation payment:

1. The market value of the land on a willing-buyer/willing-seller basis, disregarding –
 - (a) the compulsory taking of the land,
 - (b) any special suitability to the Crown,
 - (c) the influence of the prospect of the work,at the specified date which is not detrimental to the claimant.
2. Any betterment to the remaining area is deducted from payment.
3. Where a claimant gives possession of his home he may get up to \$1,500 solatium.
4. The claimant may receive payment either as a grant, an interest-free loan or an interest-bearing loan towards the repurchase of a dwelling.

Before dealing with the special features of the Upper Clutha area I would like to comment on three features of the compensation law at present operating.

1. "The value will be uninfluenced by the prospect of the work." Valuers in interpreting value are asked to determine values today when the only evidence of value which is uninfluenced by the prospect of the work may have occurred perhaps a decade before the land was actually acquired.

2. The payment of a solatium at a fixed amount for a residence acquired at the Crown's instigation which, although delightfully simple to administer, has, I consider, a very rough element of justice. I would take a lot of convincing that the mental suffering of a youthful owner of a brief period is the same as an elderly person of long-standing ownership. If, as I contend, this suffering is largely a function of age and length of ownership, it should not be beyond the ingenuity of man to establish a more equitable method of payment. English legislation has attempted to do this by having a qualifying period of ownership which varies the amount payable on the basis of value with a maximum of £1,500.

3. The payment of a grant or interest-free loan for the repurchase of a dwelling recognizes the difficulty that a displaced home-owner has in replacing his home with a similarly priced one. It appears to me that the farmer who loses his whole farm (including his home) would be faced with greater problems of property replacement because of, firstly, the small stock of farms available and, secondly, the lesser rate of turnover of farm properties compared with urban properties.

THE UPPER CLUTHA SCHEME

The question, therefore, is how does this present legislative situation relate to the Upper Clutha?

I would say that generally the urban residence or urban business will be adequately dealt with, because the recent amending legislation has been specifically aimed at the urban anomalies which existed.

I am not happy about the situation of the rural land owner, and to discuss his problems it would be convenient to consider three main classes of property, i.e. (a) the isolated residence, (b) whole farm properties, (c) part farm properties.

The Isolated Residence

The urban dweller is entitled to a solatium for the mental anguish of losing his present home, but has the knowledge that it is possible to obtain a somewhat similar house in a somewhat similar locality.

The owner of the isolated residence receives exactly the same sum of money, but has the additional mental anguish of knowing that his replacement house will almost certainly be of an orthodox type of modern construction and that the zoning of land use under the Town and Country Planning Act will, with much greater certainty, preclude him from living within close proximity to his present site.

The question I ask is: should in fact solatium payments be much more flexible, or even open ended?

The Whole Farm

A commercial business when run efficiently produces profits in excess of an appropriate return on the assets employed, and these excess profits create a 'business goodwill' for which a claimant is entitled to be compensated. This goodwill payment provides funds, part of which will provide bridging income until he can establish a new business and receive an appropriate reward for his own special business skills.

A farm produces profits to the extent of the efficiency of the farmer in taking advantage of the unique production features of the property known to him. Among other factors, this special knowledge is a major factor contributing to the low turnover of farm properties. Present compensation implies that the farmer can immediately re-establish profitability on a newly purchased property to the same standard as before – this is certainly not the case. The inherent problem in measuring this loss is the seasonal variation in production in both real and monetary terms.

English legislation makes provision for the payment (if repurchase is carried out within three years) of one year's wages of management and super-profit above the rental value of the land.

A similar type of payment should be authorized, but this should also take into account the ever-increasing prices which have to be paid to acquire land – hence there could perhaps be provision for the extension of the date of compensation valuation to a time which will relate more closely to the time of repurchase of a replacement property.

The Part Farm

When part of a farm is taken it may involve either land alone or both the land and the buildings on it.

Compensation for buildings is paid on the basis of their present value (i.e. normally the present replacement cost less depreciation).

If the farmer is required to replace these buildings, he must make a cash investment to the extent of the difference between the new cost and the compensation paid. The farmer could well have insufficient resources to meet this cost or, in the event of having sufficient resources, a quite different investment priority.

I suggest that interest-free advances of the additional money required should be made, and these would become interest-bearing loans or capital repayable when the particular structure compensated for would be considered to be normally due for replacement.

For land, the principle of the willing-buyer/willing-seller basis of value for compensation and the case law underpinning this mitigates against the idea of personal loss.

In general, the addition of a marginal unit of land to an urban property would be deemed to be less valuable than the previous unit. With farm land, however, because land is the fixed factor of production, the marginal unit tends to be more valuable than the previous unit. This is reflected in the land market by adjoining owners paying greater prices for land on a unit-area basis than outside buyers. The claimant must perforce replace the land on an 'adjoining owner' market basis and he should be compensated as such.

With the Upper Clutha scheme the land which will be taken is normally also much more valuable to the hill country with which it is associated than if farmed on its own, and valuers associated with the compilation of 'before and after' valuations must be fully aware of this.

CONCLUSION

No scheme of the size envisaged in the Upper Clutha can be completed without a great deal of community cost, individual monetary cost and individual social cost. We tend to view disruption of the community as a cost which the community is prepared to pay to achieve the benefits it believes the scheme will confer, and its measurement is ultimately a political judgment.

The individual cost is one covered by legislation which was conceived in the 1920s and developed on a strictly monetary basis until the 1970s when some allowances have been made for individual social cost, but with particular reference to the urban situation.

The individual social cost is one of which the community is becoming much more aware as the implementation of the Public Works Act affects increasing numbers of people. It is an area where progress must be made in the near future.

The whole question of compensation can no longer be treated by the implementation of statutory amendments dealing with the particular problem of the time. What I consider is necessary is a thorough examination by an independent organization which would report to the government. This organization might well consider the title of the white paper presented to the British Parliament in 1972: "Development and Compensation – Putting People First".
