

**HOLDOUTS, SITE AMALGAMATIONS AND RENEWAL OF URBAN  
AREAS: A CALL FOR LEGISLATIVE REFORM**

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**ABSTRACT**

*Developers play a key role in the development of housing for Australian communities. However, composing a site is a complex and intricate process because owners 'hold out' to achieve maximum possible prices. This paper proposes that legislative reform is necessary to aid in housing renewal. Housing renewal may counteract problems of land scarcity, population growth, ageing buildings and urban sprawl. Compulsory acquisition case law in Australia and the United States is compared to identify a viable option for legislative reform. Drawing upon the American experience considerations to protect landowners' rights are identified which seek to balance rights against housing renewal needs.*

Keywords: Infill development, Urban renewal, Holdouts, Site amalgamation, Compulsory acquisition in Australia, Eminent Domain

# HOLDOUTS, SITE AMALGAMATIONS AND RENEWAL OF URBAN AREAS: A CALL FOR LEGISLATIVE REFORM

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## ABSTRACT

*Developers play a key role in the development of housing for Australian communities. However, composing a site is a complex and intricate process because owners 'hold out' to achieve maximum possible prices. This paper proposes that legislative reform is necessary to aid in housing renewal. Housing renewal may counteract problems of land scarcity, population growth, ageing buildings and urban sprawl. Compulsory acquisition case law in Australia and the United States is compared to identify a viable option for legislative reform. Drawing upon the American experience considerations to protect landowners' rights are identified which seek to balance rights against housing renewal needs.*

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## INTRODUCTION

Sometimes developers are likened to the big, bad wolf that blows down the first little pig's house in the fairytale 'The Three Little Pigs'. In painting developers in that light, arguably due consideration has not been given to the economic and other benefits that development brings. Housing provided by local, State and the Commonwealth Governments accounts for only 4.03 per cent of total housing (Australian Bureau of Statistics 2006), meaning that developers play a primary role in the construction of housing for families. However, has the contribution developers make in overcoming or easing broader issues associated with accommodating Australia's growing population, the provision of affordable housing and urban renewal been discounted or altogether forgotten?

Population growth (Australian Bureau of Statistics 2006), land scarcity (Queensland Department of Infrastructure and Planning 2008), housing shortages (Housing Industry Association 2011) and community problems, such as long commutes to employment centres, traffic problems, a lack of affordability and urban sprawl suggest that redevelopment of existing areas (or 'infill redevelopment') is desirable ('Sydney housing "unaffordable"' 2010, Property Council of Australia 2009 and City Futures Research Centre 2010). One of the main difficulties of infill redevelopment is amalgamating the site itself. Site amalgamations are made more difficult by owners' arguably 'unreasonable' ability to veto a project by refusing to sell or 'holding out' to achieve an above market price (Lehavi and Licht 2007).

The extension of compulsory acquisition laws to facilitate site amalgamations has not been considered in the Australian context. In fact, using compulsory acquisitions to benefit a private sector entity (a 'private-to-private transfer') has been criticised, both in Australia (Brennan 2008a) and the United States (Cohen 2005-2006, Castle Coalition 2006a and Castle Coalition 2006b). Nevertheless, both the Australian and United States systems are considered to identify whether Australia might learn from the United States system and its shortcomings to ensure protection of landowners' rights. Two recent Australian cases are discussed highlighting the desirability of legislative change. Consideration is given to the shortcomings of the United States urban renewal programs, some of the fundamental flaws of the United States compulsory acquisition system (Stelle Garnett 2003 and Bell and Parchimovsky 2006) and the controversial 2005 United States Supreme Court case, *Kelo v City of New London* 545 U.S. 469 (2005) (*Kelo*).

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This paper argues that government intervention to aid site amalgamations is warranted and may be achieved by extending compulsory acquisition powers. Preliminary considerations are suggested that attempt to ensure protection of landowners' rights, whilst balancing these interests against the need for infill redevelopment.

## **RESEARCH METHODOLOGY**

A research methodology was established for the paper. It is not extended to proposals to undertake community consultation or implement legislative reforms. This is because the article is an exploratory study focussing on the identification of the 'holdout' issue and possible concerns arising from legislative reform proposals.

To develop the research methodology a qualitative research approach was adopted to identify the research question for this article (King and Horrocks 2010). An analysis of the author's 'self and context' and 'perspective' (Neuman 2011) on the research question was undertaken. The author's background experience as a property development solicitor focussed the research on the developer's role in carrying out site amalgamations. This perspective allowed the research question to be defined: is there a need for legislative reform in the site amalgamation process.

To answer the research question, a content analysis technique was implemented. Compulsory acquisition was identified as a possible option for legislative reform. From that, Australian legislation and Government reports, Australian High Court and United States Supreme Court cases and peer-reviewed journal articles relating to compulsory acquisition law in Australia and the United States were identified. Secondary sources, such as non-refereed journal articles and media articles were also considered as informing popular opinions on the topics. Each document was reviewed to determine the relevance of its content. The quality of the journal and whether articles were peer reviewed were also considered.

Upon completion of the initial review, a thematic analysis of the documents was undertaken which enabled the development of a conceptual framework for the article. This conceptual framework sought to identify and discuss issues relevant to the promotion of infill redevelopment from the perspectives of the three stakeholders in the process - the developer, local government and landowner.

## **AMALGAMATING SITES – THE DEVELOPER'S ROLE AND THE HOLDOUT PROBLEM**

The private sector provides approximately 96 per cent of Australian housing (Australian Bureau of Statistics 2006), much of which is provided by developers. To undertake a project, a developer will identify and acquire a site, develop it and, where necessary, reconfigure titles to create parcels of land (ie allotments), or community titles scheme lots. Each developer approaches the identification of an infill redevelopment site differently (Dredge 2009). One may identify contiguous parcels already available for sale that have redevelopment potential. Alternatively speculative targeting of potential redevelopment areas may occur by negotiating to acquire adjoining properties. While the contractual form adopted differs, each of these processes is a 'site amalgamation'.

Site amalgamations cause developers to bear considerable risks because of the necessity to commit to the investment of both time and funds to compose the site (Read, Schwartz and Zillante 2010). When a developer cannot reach agreement with all targeted owners to purchase their properties, difficulties arise for the site amalgamation. The remaining owners that have not yet committed to sell may be in a superior bargaining position than the developer. Negotiations are often protracted because of 'holdouts'. The 'holdout problem' (Munch 1976) arises when an owner anticipates securing a higher sale price, profiting from a developer's interest in a site (Read, Schwartz and Zillante 2010). The holding out by even a very small number of owners may prevent the entire site from being secured.

Planners may exclude certain properties from redevelopment proposals. However, if redevelopment of a community titles scheme is to occur, a developer must first acquire all lots in the scheme. This hampers the replacement of older buildings nearing, or exceeding, their economic life (Dredge 2009 and Bugden 2005), and occurs largely because there are limited mechanisms in the *Body Corporate and Community Management Act 1997 (Qld) (BCCM Act)* to terminate a scheme. Termination may only occur in two circumstances:

- A resolution without dissent is passed (s78(1)(a) of the *BCCM Act*). A resolution without dissent is defined in s105(3) of the *BCCM Act* as a resolution in which no vote is counted against the motion. It is notoriously difficult to achieve when differing ownership of lots exists.
- The District Court may order termination of the scheme where it is just and equitable (s78(2) of the *BCCM Act*). However, as the common law protects vested private property rights (*Clissold v Perry* (1904) 1 CLR 363), the District Court is unlikely to make the order where owners oppose the termination.

Legislative intervention relating to the termination of community titles schemes for redevelopment would facilitate site amalgamations. However, this must be balanced against landowners' property rights.

Protection of landowners' and occupiers' rights is important. Nevertheless, in certain circumstances, these individual rights may need to be restricted in favour of the benefits to the wider community (Singer 2006). The benefits resulting from infill redevelopment, assisted by government intervention in the site amalgamation process, justifies limiting these rights.

Government intervention in site amalgamations is also desirable because of a scarcity of land available for new housing, causing a need to foster infill developments. Land scarcity is experienced in many areas throughout Australia. An example of this is the Gold Coast, Australia's sixth largest city. Only 3.72 per cent of the 131,200 ha in the city is available for new housing development. Based on Council's 2008 population projections there are, at best, 10 years of land supply into which the growing population can fit (Queensland Department of Infrastructure and Planning, 2008). Projections that Queensland's population will more than double its 2007 population by 2056, when it is expected to grow to 8.7 million people (Australian Bureau of Statistics 2006) compounds the problem.

Capital cities, particularly Sydney, are experiencing even greater land scarcity issues. Residents have excessively long commutes to work because of urban sprawl, there are serious traffic problems and housing is amongst the most expensive in the developed world. If development of the fringe suburbs continues, these problems will only worsen ('Sydney housing "unaffordable"' 2010, Property Council of Australia 2009 and City Futures Research Centre 2010).

Infill redevelopments, particularly mixed use schemes combining housing, recreation and employment opportunities assist to achieve higher density land use than development of rural areas does. Infill redevelopments may be promoted by easing site amalgamation difficulties through legislative intervention. Compulsory acquisition laws are one means of achieving this, but do not currently permit intervention into the site amalgamation process.

## **CURRENT AUSTRALIAN LAW**

Using compulsory acquisition to overcome holdouts has been criticised. It has been argued that private-to-private transfers are an objectionable and unnecessary incursion on private property rights. Market forces more appropriately dictate whether a redevelopment can proceed (Brennan 2008a, Cohen 2005-2006, Castle Coalition 2006a, Castle Coalition 2006b and Becker as cited in Bell and Parchomovsky 2006).

However, a free market scenario produces a 'sub-optimal amount of assembly' (Munch 1976) because the traditional concept of a 'willing buyer and a willing seller who act in their own self-interest without duress or compulsion' does not apply to a site amalgamation scenario without difficulty. Holdouts by owners and dependence by developers on a property to complete a site amalgamation causes inefficiencies and market failure. Both factors warrant government intervention into the process. Compulsory acquisition may be the appropriate means to achieve this intervention.

## Use of compulsory acquisition in Australia to avoid ‘holdouts’

There is currently no legislation either federally or in Queensland permitting private-to-private transfers. Acquisitions must be for a ‘public purpose’. Before private-to-private transfers are permissible in Queensland or at Commonwealth level, economic development of a region must be recognised in legislation as a public purpose. Whilst cases dealing with private-to-private transfers have arisen in both the Northern Territory and New South Wales, the High Court interpreted the relevant legislation differently, allowing a Northern Territory government acquisition, but preventing the acquisition by Parramatta City Council.

### *Griffiths*

*Griffiths v Minister for Lands, Planning and Environment* (2008) 235 CLR 232 (*Griffiths*) concerned the Northern Territory Government’s acquisition of native title land to enable the grant of title to a cattle farmer. It was the first case in Australia permitting a private-to-private transfer where the economic development of a town was the only public benefit accruing from the acquisition.

The land subject to compulsory acquisition in *Griffiths* was Crown land in Timber Creek, Northern Territory. Between 1981 and 1997, Fogarty’s company held a pastoral lease over the land. After the lease expired, Fogarty and the other applicants sought the grant of the fee simple title from the Minister for Lands, Planning and Environment. The appellants, the Ngaliwurru and Nungali peoples, applied for recognition of their native title interests. They objected to Fogarty’s application under the *Lands Acquisition Act 1978* (NT) (*NT Acquisition Act*) based on their pre-existing native title rights to the land which were recognised by the Federal Court. Despite the recognition, the Minister nonetheless compulsorily acquired them. The Minister’s decision was appealed and ultimately considered by the High Court.

Five of the High Court justices permitted the acquisition, while two judges dissented. Gummow, Hayne and Heydon JJ, with whom Gleeson CJ and Crennan J agreed, allowed the compulsory acquisition of the native title interests. Their Honours concluded that s43 of the *NT Acquisition Act*, which permitted acquisitions “for any purposes whatsoever” authorised the compulsory acquisition. It was irrelevant that the beneficiaries of the compulsory acquisition were non-government entities.

The dissenting judges in *Griffiths*, Kirby and Kiefel JJ, held that the other judges’ reasoning in the case contradicted the common law. Limiting private property rights is permissible only where legislation is clear and unambiguous. Kirby and Kiefel JJ disagreed with the majority of the Court that the language in s43 of the *NT Acquisition Act* was sufficiently clear and unambiguous to enable destruction of the native title rights.

### *Fazzolari and Mac’s*

Approximately 11 months after *Griffiths* was decided, the High Court decided *R & R Fazzolari Pty Ltd v Parramatta City Council; Mac’s Pty Ltd v Parramatta City Council* (2009) 237 CLR 603 (*Fazzolari and Mac’s*). In *Fazzolari and Mac’s*, the High Court held that local government powers do not extend to private-to-private transfers. The case concerned Parramatta City Council’s attempted compulsory acquisition of two small allotments in Parramatta’s central business district: the land owned by Mac’s Pty Ltd was only 260 square meters and R & R Fazzolari Pty Ltd’s land was between 631 and 648 square meters. The land was to be redeveloped into ‘Civic Place’. The facilities in Civic Place, a \$1.4 billion integrated project, included residential and office towers, Council chambers and offices, a public library and art gallery, community facilities, meeting rooms, a childcare centre, shopping centre, public car park, pedestrian walkways for access to public transport and 13,000 square meters of public open space. It was also estimated to create 8,800 jobs (Tobias JA in *Parramatta City Council v R & R Fazzolari Pty Ltd; Parramatta City Council v Mac’s Pty Ltd* [2008] NSWCA 132 (11 June 2008), ¶ 23 and 73 (*Parramatta Court of Appeal Decision*)).

Section 188 of the *Local Government Act 1993* (NSW) provides, subject to certain exceptions, owners' consent to an acquisition must be obtained where property is compulsorily acquired and resold. The Local Government Minister must also consent to the acquisition. Consent may be forthcoming if the public benefit arising from an acquisition is demonstrated. Council submitted that the extent of public facilities forming part of the development warranted Ministerial approval. Ministerial consent was obtained and the acquisition process commenced. In the meantime, Council and Grocon (Civic Place) Pty Ltd and Grocon Contractors Pty Ltd (collectively Grocon) signed a development agreement. Payment to Grocon was to include cash instalments and ownership to specified allotments, including those owned by R & R Fazzolari Pty Ltd and Mac's Pty Ltd (*Parramatta Court of Appeal Decision*, ¶ 69). The applicants contested the acquisitions on this basis.

The High Court handed down two judgements. In the first, French CJ disagreed with Council's argument that it could acquire the land without owners' consent, concluding that the development agreement caused a resale of the land. As a result, the land was not to be used for public purposes, despite the extensive community facilities being developed. His Honour determined that the acquisition was occurring purely to allow Grocon to profit from the development.

In the second High Court judgement, Gummow, Hayne, Heydon and Kiefel JJ reached the same conclusion as French CJ, determining that the use of each acquired parcel must be investigated. Their Honours held that the development agreement advanced the area's master plan, but after considering the agreement terms, concluded that the land was acquired to satisfy a contractual need, rather than for a public benefit.

After the High Court's decision in *Fazzolari and Mac's*, the New South Wales Parliament adopted the *Land Acquisition (Just Terms Compensation) Amendment Act 2009* (NSW), enabling Council to proceed with the development of Civic Place. It appears, however, that the project has progressed little since the amending legislation was passed in June 2009 (Parramatta City Council n.d.).

*Griffiths* demonstrates that where legislation is worded to grant sufficiently wide powers to acquiring authorities, private-to-private transfers are valid. This contrasts with the much narrower interpretation of local government powers in *Fazzolari and Mac's*. The distinction in the powers means that it is possible that *Griffiths* will only apply to State and Territory Government implementation of extensive and wide ranging compulsory acquisition powers. Analysis of the pros and cons of wide ranging compulsory acquisition powers may be undertaken by comparing the current and historical position in the United States, where compulsory acquisitions for private-to-private transfers is permitted.

## **LESSONS TO BE LEARNT FROM THE UNITED STATES**

### **Current and historical problems: urban renewal programs and condemnation blight**

Before 2005, compulsory acquisition powers in the United States could only be used for a private-to-private transfer where the properties had fallen into disrepair to an extent that they became blighted. Concerns by government that blight was widespread prompted measures between the 1940s and 1960s to initiate the wholesale redevelopment of many of America's largest cities (Stelle Garnett 2003, Kanner 2008-2009 and Lehavi and Licht 2007). It was thought that the rapid decline of cities could be halted by a program of urban renewal geared at replacing 'blighted' properties with middle and upper income housing (Stelle Garnett 2003). In fact, the urban renewal programs were destined for failure from their commencement. American cities began to decline when suburban land was heavily subsidised after World War II, resulting in it often being cheaper to purchase than inner city rentals (Kanner 2008-2009). This caused a large-scale migration from cities into suburbs and associated winding back of police and education services during the 1960s. Urban decline worsened after innumerable low cost inner city homes that were shabby, but perfectly habitable were demolished (Kanner 2008-2009). The urban renewal programs were a 'resounding failure' (Lehavi and Licht 2007) because the political realities of the time and the flawed design of the programs resulted in large scale community destruction (Stelle Garnett 2003 and Kanner 2008-2009).

The urban renewal projects displaced hundreds of thousands of families and tens of thousands of businesses from run down, but close-knit, vibrant communities (Stelle Garnett 2003 and Lehavi and Licht 2007). They affected, for the most part, minorities and low-socio economic households, the projects being labelled ‘negro clearance’ measures (Stelle Garnett 2003 and Werner 2001-2001). Planners ‘had a knack for picking low-income neighbo[u]rhoods where residents had deep attachments to friends, relatives, neighbo[u]rs, churches, schools, and local businesses’ (Stelle Garnett 2003). Insufficient relocation efforts made for those displaced residents further exacerbated the socio-economic problems they experienced because of the urban renewal projects (Stelle Garnett 2003 and Kanner 2008-2009).

In addition to the disastrous urban renewal programs, the United States is dogged by problems of ‘condemnation blight’, which occurs when a government intentionally adopts a course of action that devalues land. By manipulating the market value of land before an acquisition occurs, governments minimise the compensation payable to owners when using compulsory acquisition to purchase land. Despite this, these measures may still comply with the ‘just compensation’ requirement in the Fifth Amendment of the United States Constitution (Bell and Parchomovsky 2006).

To devalue land the government may for example, announce a proposed acquisition some time in advance. Once the announcement is made, property values decline because both public and private capital is removed from an affected area, and the number of residential sales decreases (Bell and Parchomovsky 2006 and Lee 2006-2007 (but contrast Gergen 1993)). Provided sufficient time elapses between the announcement and the acquisitions, market values of the affected properties decline. However, this approach may go awry. The removal of too much public infrastructure from an area, such as policing, may render it ‘uninhabitable, and therefore “unrenewable”’ (Stelle Garnett 2003) because of the number of vacant buildings and skyrocketing crime rates (Kanner 2008-2009).

The failure of the urban renewal programs and problems of condemnation blight prompted the United States legislature to implement measures to limit the injurious effects of compulsory acquisition on affected owners. The *Uniform Relocation Assistance and Real Properties Acquisition Act* 1971 (US) seeks to ensure that losses, not otherwise adequately compensated by traditional compulsory acquisition legislation, are reimbursed to displaced individuals. The Act requires:

- a) payment of replacement value compensation, rather than fair market value;
- b) payment of moving expenses, mortgage costs and re-establishment expenses (Stelle Garnett 2006-2007); and
- c) the provision of relocation advisory services to assist with identification of comparable replacement housing. If comparable replacement housing is not available, those agencies may take necessary or appropriate action to provide it, including payment of subsidies (Stelle Garnett 2006-2007).

Since the urban renewal programs, compulsory acquisition laws in the United States have developed significantly; however, before 2005 blight was a necessary precursor for a valid private-to-private transfer to occur. The 2005 Supreme Court decision in *Kelo* extended compulsory acquisition powers for private-to-private transfers to non-blighted properties. It caused a public uproar (Lee 2006-2007) being described as ‘the most visible public backlash in recent years’ (Brennan 2008), resulting in ‘near universal condemnation’ and ‘political maelstrom’ (Bell and Parchomovsky 2006). While *Griffiths* received some media and academic coverage (‘Land Appropriation in the NT’ 2008, Brennan 2009, Strelein 2008, Reale 2009 and Brennan 2008b), it was certainly not subject to the type of ‘backlash’ which occurred after *Kelo*. United States laws may inform the Australian debate on private-to-private transfers because of the common heritage of the legal systems, recognition of the economic value attributed to land, the balancing of private property rights (s51(xxxii) of the *Commonwealth of Australia Constitution Act 1900* (Imp) 63 & 64 Vict and Fifth Amendment, Constitution of the United States of America) and the extensive academic, media and political debate that has centred around the issues. The shortcomings of the system are identifiable, so by considering them, Australia may adopt a system that avoids, or at least minimises, the same shortcomings of the United States system.

### ***Kelo v City of New London* 545 U.S. 469 (2005)**

The *Kelo* decision recognised that a town’s economic development is a desirable public purpose, removing the limitation on private-to-private transfers to blighted properties. The case arose when the New London Development

Corporation (NLDC), a government agency, proposed acquiring 115 properties. Suzette Kelo and the other petitioners owned 15 of these allotments, none of which were blighted. The 90 acre project was earmarked for the Fort Trumbull waterfront, in New London, Connecticut, adjacent to the \$300 million research facility proposed by Pfizer Inc.

New London City became a 'distressed municipality' in the 1990s after the closure of the Naval Undersea Warfare Centre, which employed 1,500 residents in the Fort Trumbull area. The local population had significantly deteriorated over an extended timeframe and unemployment was twice the State's average. The New London City Council sought to revive the city by creating the NLDC to draft and implement a redevelopment of Fort Trumbull's waterfront. NLDC's redevelopment plan proposed a hotel and conference centre, marinas, a pedestrian 'river walk', apartments, a museum, commercial office space and a retail centre. The NLDC was negotiating a \$1 per year, 99-year lease with the developer, Corcoran Jennison, to undertake all development work. The project was anticipated to create between 1700 and 3150 jobs, increase property tax revenues by between US\$680,544 and US\$1,249,843, encourage public access to the waterfront and be the catalyst to rejuvenating the city (*Kelo* cited in Rutkow 2006).

The petitioners argued that private-to-private transfers were only permissible where the properties were blighted. The United States Supreme Court disagreed by a majority of five-to-four, determining that the indirect benefit to the community from the potentially increased property taxes was sufficient to satisfy the public use test. This was the case even though the private sector would experience the greatest gain from the project. The majority's decision relied on two previous cases, *Berman v Parker* 348 U.S. 26 (1954) (*Berman*) and *Hawaii Housing Authority v Midkiff* 457 U.S. 229 (1984) (*Midkiff*). These cases broadly interpreted the 'public use' requirement in the United States Constitution to include promoting the economic development of a city. The Court held that once the public purpose is established, the extent of acquisitions required, and acceptance of the expected benefits arising from those acquisitions, was at the legislature's discretion.

By way of contrast, two of the dissenting judges, O'Connor and Thomas J disagreed that the acquisitions were valid. O'Connor J specifically rejected Her Honour's own earlier decision in *Midkiff* concluding that the broad language of the decision was 'errant' (*Kelo* cited in Barros 2007). Her Honour sought to limit compulsory acquisitions for private-to-private transfers to remove blight, or to correct 'widespread social injustice' (*Kelo* cited in Rutkow 2006).

O'Connor J's explanation for arriving at a decision, which appeared to contradict Her Honour's earlier position, has been criticised as being unconvincing (Barros 2007). A more convincing argument may have been that, with the benefit of hindsight, the decisions in *Midkiff* and *Berman* wrongly interpreted the 'public use' requirement too broadly (Barros 2007).

Thomas J also delivered a dissenting opinion in *Kelo*. His Honour considered that the 'public use' requirement in the United States Constitution should be limited to 'actual use by the public' (Rutkow 2006) and applied a social justice approach to the case, commenting that private-to-private transfers disproportionately affect 'poor communities' (*Kelo* cited in Rutkow 2006).

While the 1940s to 1960s urban renewal projects in the United States were an abject failure, there is potential for modern urban renewal projects, such as the projects proposed in *Kelo* and *Fazzolari and Mac's*, to contribute to local economies and increase their socio-economic base. This will occur by stimulating jobs growth and providing community facilities. Despite this, there are significant drawbacks with the United States system of wholesale and widespread acquisitions to prompt redevelopment. Australia may benefit from facilitating site acquisitions whilst avoiding the undesirable elements of the United States system. This may only occur if Australian legislation contains appropriate limitations on the use of compulsory acquisition powers, adequate protections for landowners and flexible compensatory measures are implemented.



## PROTECTING LANDOWNERS' RIGHTS

Traditionally, property rights have been viewed as the 'castle model' (an owner's property is their castle and it cannot be interfered with) or under the 'investment model' (rights may be limited where there are 'reasonable expectations likely to yield economic returns' (Singer 2006)). By way of contrast the 'citizenship model' of property rights asks whether it would be fair and just for an obligation to be borne by the community as a whole rather than a small number of individuals. That is, an owner's rights may be limited where it is fair and just. If *Kelo* is considered in light of the three models, the petitioners' argument rests heavily on the castle model. The NLDC was attempting to seize their homes and the reason put forward did not satisfy the petitioners. However, the redevelopment project may be considered in a different light – the citizenship model. Taxes generated from properties pay for many local services. Economic development of a region has, as one of its benefits, the possibility of increasing property taxes and local government rates. Increasing these taxes allows more extensive services to be provided to the residents (Singer 2006). An ability to veto a project may impact on the standard of living for the entire neighbourhood (Singer 2006). Does this approach 'disproportionately concentrate' (Singer 2006) the burdens on the small number of owners who are subject to compulsory acquisition orders? Provided that adequate compensation is paid, no; meaning that compulsory acquisition in these circumstances is justified. However, the welfare of those affected people must be protected. It is unjust to disproportionately burden a limited number of owners without adequately caring for their interests. Accordingly, any legislative reforms must consider and implement protections for landowners on the following issues, amongst others:

- Replacement value compensation, rather than fair market value and other expenses such as moving expenses, mortgage costs and re-establishment expenses should be paid (Stelle Garnett 2006-2007).
- Relocation advisory services may be implemented to re-house displaced persons, help overcome social problems arising from compulsory acquisitions and to recommend the grant of financial assistance (Law Reform Commission Report No. 14 1980).
- Non-repayable grants or loans to owners whose property is compulsorily acquired should be considered. The Law Reform Commission favours loans over grants (Law Reform Commission Report No. 14 1980).
- Land restitution (or the provision of alternative housing as opposed to re-housing assistance) be considered as an option in compulsory acquisition legislation, to allow resettlement over monetary compensation (Law Reform Commission Report No 14 1980, p. 99). This resettlement could include the physical relocation of a person's home to a new parcel of land. An effective resettlement occurs where alternative land is 'equal in quality, size and legal status' (Winnett 2010 and Nau 2009), owners' connections to the region are considered and they are involved in the relocation process (Winnett 2010).
- Restricting a government's ability to acquire land where wholesale redevelopment of an area is intended (Werner 2000-2001 and Gray 2007).
- Recognition should be made that acquiring authorities have limited funds to pay compensation to owners. The expansion of compulsory acquisition powers may necessitate additional funds being expended, without having been budgeted for. Passing on compensation expenses to those private sector entities receiving the predominant financial gain from an infill redevelopment project reduces the additional outlays for compensation. Simultaneously, it discourages the removal of capital or infrastructure from an area which, while reducing values and consequently compensation, may have the unintended effect of creating condemnation blight.
- Precise limits on compulsory acquisition powers for private-to-private must be set to avoid the potential for abuse.

This is not an exhaustive list of issues. Community and industry consultation is necessary to identify an exhaustive list of conditions and considerations for inclusion into legislative reform proposals.

## CONCLUSION

It is in Australia's best interests to promote infill redevelopment. Site amalgamations are the key to enabling infill redevelopments, but are affected by holdouts. The free market does not provide an efficient means of amalgamating sites and factors such as land scarcity, urban sprawl and population growth, warrant government intervention to aid in site amalgamations to promote urban renewal.

Australia may take advantage of the lessons learned in the United States by tailoring any legislative response to Australian circumstances, and having regard to the features, good or otherwise, of the United States system. Protection of landowners' rights is essential. These rights must, however, be balanced against the wider community need for renewal of urban environments, so that housing for Australia's growing population may be provided. Legislation must give certainty to landowners and developers alike and compensation must be fair. Developers must be able to redevelop infill areas, but landowners must not be dispossessed and be unable to secure appropriate, safe and affordable alternative housing. After all, the big bad wolf might not have been as big and bad if he helped the three little pigs find new houses instead of gobbling them up!

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