

## Council's processes when acquiring land for public road not unreasonable

<b>Legislation</b>	Ombudsmen Act 1975, Public Works Act 1981
<b>Agency</b>	Local authority
<b>Ombudsman</b>	Nadja Tollemache
<b>Case number(s)</b>	A2987
<b>Date</b>	1992

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### *Council's failure to acquire land for a public road*

The complainants purchased a property. Their solicitor upon carrying out a title search of the property, discovered that the Council had lodged a compensation certificate against the title and that three years earlier, the Council had agreed with the previous owner that it would 'forthwith proceed to acquire' under the provisions of the Public Works Act 1981 a certain piece of land within the subdivision for a road. The complainants were concerned that the agreement had been signed three years previously and the Council had still not acquired the land in question for a road. They were anxious to have the compensation certificate removed from the title.

The Council advised that the wording in the compensation certificate agreement contained an error. Council provided copies of resolutions and reports which showed that the actual agreement reached between the Council and the previous owner was that a piece of land in the subdivision would be acquired 'at such time' as a road should be required for the purposes of serving future development in the area.

The complainants accepted that the original agreement contained an error by using the word 'forthwith'. However they submitted that nevertheless they should be entitled to rely on the compensation certificate registered against their title which provided that the Council should forthwith acquire the land in question for a road. Section 19 of the Public Works Act 1981 sets out the procedure applying to, and the legal effect of, registration of compensation certificates. Under section 19(5) of the Act, the purchaser of land subject to a compensation

certificate can have no greater rights than his or her predecessor in title. Consequently, if an error which a Court would rectify is contained in an agreement to which a compensation certificate relates, the purchaser (in this case, the complainants) cannot claim to take advantage of that error any more than the original contracting party. It was clear from the information provided that the original contracting parties intended that the Council would acquire the land for a road only at such time in the future as a road should be necessary. It seemed to the Ombudsman that as the written agreement did not reflect the actual agreement reached, there would be little doubt that a Court would grant relief and allow the Council to rectify the written agreement.

The complainants submitted that people should be able to rely on the title as being correct. However, section 19(6) of the Public Works Act permits inspection of a compensation certificate agreement and provides that if the agreement requires the vesting of any land, then the person making the inspection shall if he or she so requests, be advised as soon as possible of the extent to which the agreement has been performed.

The Ombudsman considered that the Council could not be responsible for any failure by the complainants to fully make these statutorily contemplated enquiries. The Ombudsman therefore did not accept that the Council had acted unreasonably or unlawfully by failing to acquire the land 'forthwith' for a road. The complaint was not sustained.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*