



**ACCESS FROM THE NORTH PROPOSALS  
("THIRD DON CROSSING")**



**A GUIDE TO THE COMPULSORY PURCHASE PROCESS AND  
COMPENSATION**

# **CONTENTS**

## **SECTION 1 INTRODUCTION**

## **SECTION 2 COMPULSORY PURCHASE PROCESS**

### COMPULSORY PURCHASE PROCEDURE

- Outline of Procedure
- Individual Notices
- Objections
- Public Local Inquiry (PLI)
- Site Visit
- PLI Costs
- Post Inquiry Procedure
- Decision
- Compulsory Purchase Order (CPO)
- Possession
- Short Tenancies

### RELATED PROCEDURES

- Severance
- Blight
- Voluntary Purchase as an Alternative to Compulsory Purchase

## **SECTION 3 COMPENSATION**

- Introduction

### COMPENSATION WHEN PROPERTY IS PURCHASED

- General Principles
- Value of Property

### VALUE OF RELATED EFFECTS

- Severance and other Injurious Affection
- Disturbance
- Residential Disturbance
- Business Disturbance
- Individual Assessment

### OTHER ISSUES

- Loans
- Home Loss Payment
- Farm Loss Payment
- Planning Permission after Acquisition
- Advance Payment of Compensation
- Interest
- Lands Tribunal for Scotland

## **SECTION 4 CONTACT DETAILS**

## **SECTION 1 INTRODUCTION**

- 1.1 This brochure provides guidance on the statutory procedures which Aberdeen City Council (“the Council”) follows for the compulsory purchase of land and the payment of compensation for same, in relation to any scheme promoted under the relevant legislation by the Council, as roads authority, for the construction of a new road or the improvement of an existing road. The proposed new access road, popularly known as “The Third Don Crossing”, from Bridge of Don across the River Don is such a scheme. The Council do not need to purchase property for a scheme on a compulsory basis if owners are willing to sell their properties to the Council voluntarily on terms which are acceptable to both parties. This guidance applies only where the Council is exercising compulsory powers to purchase property. It will be of most interest to those who have businesses or property which are directly affected by a scheme. In terms of the relevant legislation, the Council is the acquiring authority responsible for promoting the Compulsory Purchase Order for the Third Don Crossing Ryden LLP (Commercial Property Consultants) in Aberdeen have been appointed by the Council to deal, on the Council’s behalf, with negotiations for land acquisition and the assessment of compensation for any land compulsorily acquired.
- 1.2 The law and procedure relating to compulsory purchase and compensation is complex. Of necessity the information set out in this brochure is a simplification and cannot cover every circumstance that may arise. The information contained in this brochure is not intended to be a complete guide to the law and carries no legal force. However, it aims to provide an understanding of the compulsory purchase procedure and the principles to be applied in assessing compensation.
- 1.3 This guidance should not be regarded as a substitute for professional advice. If any interest you have in a business or property is affected by the scheme, the Council recommends that you seek advice from a professionally qualified person such as a surveyor or solicitor. They can advise you on the rights that you have and act on your behalf if appropriate. Whilst the Council will not meet the costs of your obtaining general professional advice, it will meet the fees of any professionally qualified person you appoint to negotiate the amount of compensation you will receive for the compulsory purchase of your property in line with a set scale. If you are in any doubt as to whether your professional costs will be met you should consult a professional advisor.
- 1.4 The Council’s Environment & Infrastructure technical specialists are responsible for the design and development of the road scheme.

## **SECTION 2 COMPULSORY PURCHASE PROCESS**

### **COMPULSORY PURCHASE PROCEDURE**

#### ***Outline of Procedure***

- 2.1 Where the Council has proposals to construct a new road or improve an existing road, it commissions design and development work, including environmental impact assessments to bring the proposals to reality. Once this initial design and development work has been completed to the level necessary to enable the Council to determine the proposed line of the road, the Council is in a position to identify the extent of the property required for the scheme.
- 2.2 Where the Council intends to purchase property on a compulsory basis, they promote and make a Compulsory Purchase Order (“CPO”). The CPO identifies the land and rights over land (which for simplicity are referred to in this guidance as “property”) required for the scheme by reference to a schedule and a map. The owners and occupiers are identified as accurately as possible and their details are included in the schedule. Each owner and occupier listed in the schedule, together with certain other parties as required by statute, will be served with the relevant notices under the statutory procedure along with explanatory literature.
- 2.3 The Council advertises in the local press the making of the CPO. Public exhibitions may be held and information on the scheme may be available on an internet website.
- 2.4 The assessment of compensation is covered in Section 3.

#### ***Individual Notices***

- 2.5 The Council must serve notice on certain parties specified by statute, including every owner and tenant (except for tenants for a month or less) of any property comprised in the CPO, stating the effect of the CPO. If the name or address of any party, eg an owner of a piece of property, is not known and there is no person on the property to which the notice may be delivered, notices are posted on the property.
- 2.6 The content of both the press notice and the individual notices is very similar, and each will:
  - State that a CPO has been made.
  - Specify the manner in which objections to the CPO may be lodged.
  - Say where in the locality the CPO and map may be inspected.

## **Objections**

- 2.7 This guidance is about the CPO procedure and compensation issues only. Any other statutory orders, which may be published, and any Environmental Statement published, follow their own statutory procedures, which are set out fully in the notices accompanying their publication.
- 2.8 Anyone who wishes to object to the CPO must do so in writing to the Scottish Ministers at the address given and by the date specified in the press and in the individual CPO notices which have been served. This objection period is normally, and cannot be less than, 21 days and runs from the date of service of individual notices or of the first date of publication of the press notice.
- 2.9 There is no specific format for an objection to the CPO other than it must be in writing.
- 2.10 Following the period for objections, the Scottish Ministers will consult the Council on any written objections received by them. Only objections relating solely to matters of compensation will be disregarded.
- 2.11 The Scottish Ministers will liaise with all objectors and the Council with a view to resolving the objections.
- 2.12 If this process does not result in all objections being withdrawn or otherwise resolved it is normal for those objections to be considered at a Public Local Inquiry (PLI) arranged by the Scottish Government.

## **Public Local Inquiry (PLI)**

- 2.13 The PLI is held before a Reporter appointed by the Scottish Government. The Reporter determines how the inquiry is to proceed. Generally he or she will try to keep proceedings informal whilst ensuring that all parties are able to have their say in an organised and orderly manner to ensure that the case for and against the compulsory purchase of property is fully tested.

## **Site visit**

- 2.14 The Reporter will visit the site before, during or after the close of the PLI. Objectors are entitled to attend and the arrangements for the visit will be announced. However, the Reporter will not discuss the merits of the case on the visit.

## ***PLI Costs***

- 2.15 The costs incurred by people in attending or being represented at the PLI are generally only met by the Council where their property is included in the CPO, they object, and the hearing into their objection results in their property being removed or partly removed from the CPO. Where only part of their property is removed from the CPO, only part of their costs is normally met.

## ***Post Inquiry Procedure***

- 2.16 After the close of the inquiry, the Reporter will produce a report for the Scottish Government setting out his or her conclusions and putting forward recommendations.

## ***Decision***

- 2.17 After considering the Reporter's recommendations, the Scottish Ministers will decide whether or not to confirm the CPO.
- 2.18 The Scottish Ministers may make a decision, which is contrary to the Reporter's recommendations.
- 2.19 When the Scottish Ministers have reached their decision, they will inform the objectors and any other person who appeared at the inquiry and asked to be notified. The decision letter will set out the reasons for the decision. Any party can request a copy of the Reporter's report.

## ***Compulsory Purchase Order (CPO) post confirmation***

- 2.20 If the Council has decided not to proceed with the compulsory purchase that brings an end to the matter. If the Council decides to proceed with the compulsory purchase then those parties specified by statute, including each owner listed in the schedule to the CPO, will be served with the relevant notices under the statutory procedure along with explanatory literature outlining the effects of the CPO and a form for claiming compensation. At the same time the Council will advertise the confirmation of the CPO in a notice in the press.
- 2.21 The date of publication of the above mentioned notice is relevant in terms of the timetable for the following two actions:
- For you to mount a legal challenge against the validity of the CPO. The time limit for this is 6 weeks. The challenge can only be made by way of a formal Court action. There is therefore a need to act very quickly. If you think there are valid grounds for challenge, you should take legal advice.
  - For the Council to take title to and possession of your property. Details relating to this are contained in the following sections.
- 2.22 Following completion of the statutory procedure the next stage is for the Council to take title to and possession of the property included in the CPO.

- 2.23 There are a number of different methods of achieving this. The Council normally proceed by way of what is called a General Vesting Declaration (“GVD”).
- 2.24 The GVD cannot be executed until 2 months after the publication of the notice referred to at 2.20 and 2.21 above. This notice will have included notification of the Council’s intention to proceed by way of a GVD. The Council will serve a notice of the making of the GVD on the affected parties. The notice will specify a date, which must be at least 28 days away, when the Council will take title and entry to, and possession of, the property.

### ***Short Tenancies***

- 2.24 Tenancy agreements are normally included in the GVD process. However this is not the case for a short tenancy. A short tenancy is a lease for less than a year or from year to year. The Council cannot purchase a short tenancy by the GVD route. There are several alternative procedures open to the Council and the method chosen will depend on the individual circumstances of the short tenancy in question. Alternatively, the Council may decide that the best course of action is to let the tenancy run its course.

## **RELATED PROCEDURES**

### ***Severance***

- 2.25 Where part of your property is included in the CPO and GVD, and you consider the effect on the remainder of the property is particularly severe, then you may be entitled to serve a notice of objection to severance. If successful the Council would be required to purchase the whole of your property. There is a strict 28-day time limit for formally objecting to severance. That period runs from the date you are served with the notice that the Council has made the GVD. If you are concerned about severance you should consult your professional advisor.

### ***Blight***

- 2.26 Blight is a procedure whereby you can require the Council to buy your property without going through the whole CPO process. In certain limited circumstances a property may be blighted as a result of the CPO. Your property could also be blighted by the scheme over and above the CPO, for example by road orders. The rules governing when a property is blighted are complex. If you think your property may be blighted then you should consult your professional advisor.

### ***Voluntary purchase as an alternative to compulsory purchase***

2.29 Notwithstanding the fact that the Council is exercising compulsory powers of purchase for the scheme nothing prevents them at any time from purchasing property for the scheme on a voluntary basis. Where the purchase proceeds on a voluntary basis, the terms, including the price, must be agreed. In those circumstances the compensation provisions explained in this brochure do not apply.



## **SECTION 3 COMPENSATION**

### INTRODUCTION

- 3.1 This Section provides guidance on compensation which is payable for property compulsorily purchased for the scheme. It includes guidance for both business and residential owners and occupiers. This guidance is not intended to be a complete guide. The statutory provisions and case law that govern the eligibility for and assessment of compensation is complex. It is stressed again that you should seek advice from a professionally qualified person such as a surveyor or solicitor.
- 3.2 Where the Council do not purchase any of your property, compensation may still be payable for the effects of the actual construction of the scheme as following its completion. General guidance on this will be available at the relevant time.
- 3.3 Ryden LLP will assess the level of compensation and will discuss same with you or your professional advisor.

### COMPENSATION WHEN PROPERTY IS PURCHASED

#### ***General Principles***

- 3.4 The assessment of compensation will depend on individual circumstances. The underlying principle is to put you, in financial terms, so far as money can do so, in the same position as if your property had not been taken from you. Basically, the assessment of compensation will take into account the value of your property and the value of related effects (known as Severance, Injurious Affection and Disturbance). However, the level of compensation is assessed without any increase or decrease in value attributable to the scheme itself.
- 3.5 The amount of compensation payable cannot exceed your total financial loss. There is a duty on you to mitigate that loss.

#### ***Value of Property***

- 3.6 There are 6 basic rules for assessing the value of property compulsorily purchased. These rules are set out in an Act of Parliament. A brief summary of the rules is set out below.

#### ***Rule 1***

- 3.7 In assessing the compensation, no addition to or reduction from the value of the property is made to reflect the fact that it is being compulsorily purchased. The purchase of the property is assumed to be an open market transaction between willing parties.

## **Rule 2**

- 3.8 The value of the property is based upon what the property might be expected to realise if sold in the open market to a willing seller.
- 3.9 In most circumstances the open market value will be based on the existing use of the property, provided proper consents are in place.
- 3.10 The property may have potential for development if planning permission for that development could be obtained. If the Council accept the property has development potential then this will be taken into account in assessing compensation.
- 3.11 If the Council do not accept that your property has development potential then you can apply to your local planning authority for a Certificate of Appropriate Alternative Development. This will determine whether or not your proposed development would have received planning permission had the scheme not gone ahead. The rules governing such an application are linked to planning law and are complex and outwith the scope of this guidance. You should refer any query on this aspect to your professional advisor or your local planning authority.

## **Rule 3**

- 3.12 This rule applies in specialist circumstances where certain uses of property can only be undertaken by a statutory authority. In assessing compensation no account is taken of these special circumstances.

## **Rule 4**

- 3.13 Any increase in the value of property which is attributable to a use of the property which is unlawful or detrimental to the health of the occupants of the premises or to public health, is not taken into account.

## **Rule 5**

- 3.14 It may not be possible to arrive at a market value where the property to be purchased is (and but for the CPO would continue to be) devoted to a purpose for which there is no general demand or market (eg a church). In such circumstance, compensation may be assessed on the basis of how much it would cost to reinstate the facility elsewhere.

## **Rule 6**

- 3.15 The provisions of Rule 2 do not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the property. The compensation you receive, therefore, may not only reflect the open market value of your property, but may also take into account the value of related effects, as described in the following paragraphs.

## ***Value of related effects***

### SEVERANCE AND OTHER INJURIOUS AFFECTION

- 3.16 Severance is where only part of your property is purchased for the scheme. Compensation may be payable for the adverse physical effects the severance has on the remainder of your property, eg the purchase of part of your property may result in the loss of access to the remainder.
- 3.17 In circumstances where you consider the effects of severance on the remainder of your property are particularly severe, then you may be entitled to serve a notice of objection to severance. If successful the Council would be required to purchase the whole of your property. There is a strict 28-day time limit for formally objecting to severance. That period runs from the date you are served with the notice that the Council have made the GVD. If you are concerned about severance you should consult your professional advisor.
- 3.18 Injurious affection can also arise where only part of your property is purchased for the scheme. Compensation may be payable for any injurious affection, the term used to describe the adverse effects (such as noise and vibration) the scheme and its construction can have on the remainder of your property.
- 3.19 Any claim for severance or other injurious affection must be consistent with the remainder of the claim. If you claim compensation based on the potential your property would have had for development that may have an effect on any claim for severance and injurious affection.
- 3.20 There may be instances where the scheme does not have an adverse effect on your remaining property. On the other hand the scheme may increase the value of your remaining property. In such circumstances, any compensation will take into account any increase in value of your remaining property.
- 3.21 The compulsory purchase of your property may involve in costs or expenses such as removal expenses, loss of goodwill, loss of profits, professional fees etc. These items are generally referred to as disturbance. Any disturbance would be included in your overall compensation but any disturbance element of the claim must be consistent with the remainder of the claim. Compensation will normally only include a payment for disturbance if the value of the property is based on existing use and not its development potential.

### ***Residential Disturbance***

- 3.22 In the case of a residential property you can claim reasonable costs and expenses if you have to leave that property. The claim can include the costs associated with purchasing a replacement property (but not the purchase price of the property itself) and the costs of moving into the property. Examples of additional items, which may be claimed, are legal fees and surveyor's fees.

### ***Business Disturbance***

- 3.23 In the case of a business property depending upon the particular circumstances of the purchase, disturbance compensation may be based on either the costs of relocating the business or extinguishing the business. Normally you would be expected to relocate your business. If this is not possible it may be necessary for the business to close, in which case compensation will be based on the cost of the total extinguishment of the business.
- 3.24 There may be circumstances where the costs of relocating the business are greater than the value of the business. In these circumstances there is a case that can be made that compensation is based on extinguishment, as no prudent businessman would incur the costs of relocating the business. However each case must be looked at on its own merits.
- 3.25 If you relocate your business you may be entitled to claim the reasonable costs and expenditure arising, including for example, removal expenses, legal fees, surveyor's fees and architect's fees.

### ***Individual Assessment***

- 3.26 Every loss will be considered on its merits. The onus is on you to justify your claim. It is up to you to prove that you should be compensated. Accordingly, it is of the utmost importance that you keep a detailed record of losses sustained and costs incurred in connection with the compulsory purchase of your property. You should keep all relevant documentary evidence such as receipts, invoices and fee quotes.

### **OTHER ISSUES**

#### ***Loans***

- 3.27 If a loan is secured over your property the lender is entitled to be compensated. All or part of your compensation may need to be paid to the lender to redeem all or part of your loan.

### ***Home Loss Payment***

- 3.28 If you are actually living in the property you may be entitled to a home loss payment in addition to any other compensation due. The home loss payment is an additional sum to reflect and recognise your distress and discomfort at being compelled to move out of your home.

### ***Farm Loss Payment***

- 3.29 If you are occupying an agricultural unit and are displaced from that unit, you may be entitled to a farm loss payment in addition to any other compensation due. The farm loss payment recognises that as a result of a move to unfamiliar land, you may be faced with temporary losses of yield.

### ***Planning Permission after Acquisition***

- 3.30 If during the period of ten years after the purchase of your property by the Council, planning permission is granted for the additional development of that property, you may be entitled to additional compensation to reflect any increase in the value of your property.

### ***Advance Payment of Compensation***

- 3.31 It is not unusual for final compensation to take a considerable time to be agreed. You are entitled to request an advance on your compensation. The Council are obliged to make the payment within three months of receipt of the request provided they have taken possession of the property.
- 3.32 The level of advance payment is normally 90% of either the agreed compensation, or where there is no agreement, the Council's estimate. If there are outstanding loans on the property then the advance payment may be reduced.

### ***Interest***

- 3.33 Simple interest, at a prescribed rate, is payable from the date the Council takes possession of your property until the compensation is paid.

### ***Lands Tribunal for Scotland***

- 3.34 If the amount of compensation payable for the compulsory purchase of your property is not agreed, then it can be referred to the Lands Tribunal for Scotland for determination.

## SECTION 4 CONTACT DETAILS

- 4.1 If having read this brochure you are still unclear about the compulsory purchase process and compensation and require further explanation, or simply wish to discuss any particular aspect in more detail, please get in touch with:

Stephen Booth  
Principal Surveyor  
Aberdeen City Council  
St Nicholas House  
Aberdeen  
AB10 1GY

Tel: 01224 522675  
Email: [stbooth@aberdeencity.gov.uk](mailto:stbooth@aberdeencity.gov.uk)

Richard Lang  
Partner  
Ryden LLP  
25 Albyn place  
Aberdeen  
AB10 1YL

01224 588866  
Richard.lang@ryden.co.uk

## Location Plan Not to Scale



Based upon the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Aberdeen City Council 100023401, 2010.