LAND ACQUISITION AND COMPENSATION

PROPOSALS FOR NEW LAND ACQUISITION & COMPENSATION LEGISLATION

REPORT TO THE MINISTER FOR PLANNING

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JANUARY 1983
CHAPTER VIII

TOWN PLANNING COMPENSATION

801. This chapter is concerned with compensation for town planning controls when no land is taken. The provisions setting out the right to compensation in these circumstances are set out in the Town and Country Planning Act 1961. It is thus necessary to analyse these provisions and consider whether any changes are warranted.

802. The Act also empowers a responsible authority, in certain specified circumstances, to compulsorily acquire land in order to implement a planning scheme (s. 40). In such a case the provisions of the Lands Compensation Act 1958 are relevant; as are the various reform measures contained in previous chapters. This chapter is not concerned with this compulsory acquisition situation.

EXISTING PROVISIONS

803. The right to compensation for loss suffered as a result of planning controls is confined to a limited number of situations. The main ones are where -

* land is reserved for a public purpose;
* land is deemed to be reserved for a public purpose;
* a permit to use land is refused on the ground that the land is or will be required for a public purpose;
* access to an existing street is restricted;
* a building, lawfully in existence before a planning scheme comes into force, is required to be removed or substantially altered;
* a planning scheme prohibits the continuance of the use of land for any purpose for which the land was being lawfully used before the scheme came into force.

There is no general right to compensation for loss as a result of a provision which specifies the purposes for which land may be used or which prohibits or restricts or regulates the use of land for specified purposes. Nor can compensation be obtained for restrictions on building demolition or tree removal. Put simply there is no compensation for zoning.
804. It is desirable to set out the relevant parts of the Town and Country Planning Act. Section 41(1) provides:

"Subject to this Act compensation shall be payable by the responsible authority to the owner or occupier of any land or the owner of any interest therein for loss or damage suffered by or as a result of the operation of any interim development order or any planning scheme under this Act where no part of that land was purchased or acquired by the responsible authority."

Section 42(1)(c), which is the critical provision, provides:

"No compensation shall be payable under any provision of this Act in respect of -

(c) any provision in an interim development order or planning scheme which specifies or enables to be specified the purposes for which land may be used or which prohibits restricts or regulates the use of land for specified purposes, except where -

(i) the land is pursuant to the order or scheme reserved or deemed to be reserved for a public purpose; or

(ii) application is made for a permit to use the land for any purpose and the application is refused on the ground that the land is or will be required for a public purpose; or

(iii) the order or scheme or any action taken thereunder closes stops up diverts limits or prohibits access to any existing street road or way -

but subject to sub-section (1B) nothing in this section shall exempt a responsible authority from the payment of compensation under this Act in any case where the responsible authority pursuant to an approved scheme -

requires the removal or substantial alteration of any building or works which was or were lawfully in existence on any land before the publication in the Government Gazette of the notice of approval of the scheme; or
prohibits the continuance of the use of any land or of any existing building or works for any purpose for which the land or building or works was or were being lawfully used immediately before the said publication."

The effect of these provisions has been succinctly described by Gobbo J. as follows:

"It is in my view clear that the legislature was seeking to exclude from the general compensation provision of s. 41(1), all provisions in schemes and orders that regulated the use of land, these being commonly known as zoning restrictions, save where the land was reserved for a public purpose or, though not reserved, an application was refused on the ground that the land was required for a public purpose. In effect, the door that was so wide open in s. 41(1) was almost closed by s. 42(1)(c), to be partly reopened again by the exceptions in (i), (ii) and (iii)."

(Cape Developments Pty Ltd v City of South Barwon (1982) V.R. 1011, at p. 1014.)

Compensation claims under these exceptions are commonly referred to as "loss and damage" claims.

805. The scope of the exceptions in s. 42(1)(c) was also considered by Anderson J. in Van Der Heyden v M.M.B.W. (1980) V.R. 255. In that case the Town Planning Appeals Tribunal had disallowed an appeal against the refusal of a permit in a Conservation zone on the ground that the land is, or will be, required for a public purpose, or alternatively was land reserved or deemed to be reserved for a public purpose. Anderson J. held that, in making this declaration, the Tribunal acted ultra vires. He went on to consider what was meant by the expression "public purpose" and said:

"what may reasonably be inferred when reference is made to reserving or requiring land for a public purpose is that such land is reserved or required for use for a public purpose."

(Original emphasis, p. 261.)

It was insufficient, his Honour said, to show that the planning control limited the use of the land for the benefit of the public. The Court added these further comments:

"Furthermore, I think that the phrase 'deemed to be reserved' earns its inclusion in both ss. 17(2) and 42(1)(c)(i) because of the earlier history of town planning legislation. The phrase is not intended to mean that a restricted private use from which some benefit to the community might flow involves that the land is deemed to be reserved for a public purpose."

(p. 262)
As the Court indicated (at p. 262) the legislation strongly suggests that land must expressly be reserved or deemed to be reserved before any right to compensation will arise.

806. The right to claim compensation for loss and damage when land is or is deemed to be reserved, or when it is required for a public purpose, does not arise until an application has been made for a permit for the use and development of the land and the application is refused. (See s. 42(2) for the detailed provision.) In other words the landowner must "bring on" the right to claim compensation; and, if an authority wishes to avoid paying compensation, it may grant the permit sought. However if neither the authority or Planning Appeals Board grants an unconditional permit for the use or development applied for, the landowner can claim compensation.

807. An alternative means of claiming compensation is for the owner to sell the affected land and claim for loss on sale. In order to make such a claim the Minister must be satisfied that -

(a) the land has been or is proposed to be reserved for public purposes;

(b) the owner has sold the land at a lesser price than he might reasonably have expected to receive had there been no reservation;

(c) before selling the land the owner notified the responsible authority of his intentions; and

(d) the owner sold the land in good faith and took all reasonable steps to obtain the best possible price for the land.

808. The amount of compensation payable for loss or damage is limited by s. 42(6) to the difference between:

(a) the value of the land as affected by the existence of or any provision in a planning scheme or I.D.O; and

(b) the value of the land as not so affected.

The relevant date of valuation is probably the date upon which a permit is refused or the sale takes place, but this has been subject to some uncertainty; see G.L. Fricke (ed.), Compulsory Acquisition of Land in Australia, 2nd ed., p. 89. There is a further limitation on compensation imposed by s. 42(3) in cases where the provision causing the loss and damage was included, or able to be included, in substantially the same form in any land use control that was in force or could have been in force at the time the offending provision commenced. In such a situation the landowner is limited to the compensation, if any, that would have been payable under the earlier land use control.
When land is reserved in a planning scheme, the legislation envisages the possibility of at least two claims for compensation:

(i) before the land is acquired, for loss caused by the restrictions contained in the reservation of the land; and

(ii) when the land is ultimately acquired.

Clearly, any compensation paid under (i) must be taken into account in further claims under (i) or claims under (ii). Section 42(4) seeks to do this. It provides that when compensation is to be paid "regard shall be had" to any amount already paid or payable as compensation. This provision has been interpreted in two different ways: as a straight deduction (the C.R.B. interpretation); and as a proportion (the M.M.E.W. suggested interpretation). The difference is illustrated by this example:

Assume

- land reserved 1976
- loss and damage claim 1976
- land acquired 1983
- inflation 10% per year

<table>
<thead>
<tr>
<th>Loss and Damage Claim</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Unaffected Value 1976</td>
<td>$100,000</td>
</tr>
<tr>
<td>AFFECTED VALUE 1976</td>
<td>$ 50,000</td>
</tr>
<tr>
<td>Compensation</td>
<td>$ 50,000</td>
</tr>
</tbody>
</table>

**Method 1**

- Unaffected Value 1983 $194,870
- Arithmetic Deduction $ 50,000
- Compensation $144,870

**Method 2**

- Unaffected Value 1983 $194,870
- Proportionate deduction $ 97,435 (50%)
- Compensation $ 97,435

The difference between the two methods in the final amount awarded as compensation is substantial — in this example $47,435. The proportional method is based on the principle that the landowner has had the use of $50,000 since 1976. Invested at 10% this would have yielded the additional sum of $47,435!
810. Claims for compensation under the Town and Country Planning Act are determined "as if the claim were a claim with regard to the purchase or taking of land" and Part III of the Valuation of Land Act is incorporated with "such adaptations as are necessary": see s. 41(2). This legislative short-cut has caused numerous problems of interpretation. The two types of claims are fundamentally different: the ownership of the land is taken in one case but not in the other. (See a discussion of cases this provision has generated in G.L. Fricke (ed.), Compulsory Acquisition of Land in Australia, 2nd ed., pp. 84-86 and p. 111 and also see Cape Developments Pty Ltd v City of South Barwon at pp. 1014-1018.)

811. When compensation is paid for loss caused by town planning controls, the responsible authority is required to notify the Registrar-General or Registrar of Titles (as the case may be). An entry is then made in the official records to ensure that the fact that compensation has been paid will be brought to the attention of prospective purchasers.

OPTIONS FOR REFORM

812. It is not possible to consider this topic without forming a view as to the philosophy of compensation for town planning restrictions. (See the Report of the Committee of Inquiry into Town Planning Compensation ("Gobbo Committee" or "Gobbo Report"), March 1978, at p. 20 for an almost identical comment.) It is thus necessary to discuss matters of philosophy and set the basis upon which recommendations are made, before descending into particulars. There is little that can be said which is new; this issue has been a vexed and controversial question for decades. No doubt it will continue so to be. For that reason the discussion of the philosophy of town planning compensation is brief.

813. There are three basic options for reform:

(a) a reduction in the right to claim compensation;

(b) an increase in the right to claim compensation; and

(c) retention of the existing system, but with modifications to improve its operation.

All three options deserve discussion.
Reducing Compensation Rights

814. One option for reform is to confine the payment of compensation to loss of existing use rights. Thus there would be no compensation for loss caused by restrictions contained in a reservation unless the use existing at the time the reservation was imposed was prevented from continuing. Having regard to the specific reference in s. 42(1)(c) to existing uses, this option amounts to the repeal of s. 42(1)(c)(i) and (ii). If this option was adopted it would be necessary (at least if one was to be consistent) to assess compensation for compulsory acquisition on the existing use value of land rather than market value.

815. The philosophical justification for this option is that what the owner loses as a result of the reservation is the potential value of the land — sometimes referred to as "hope value". It is argued that the loss of "hope value" is not a real loss, but a fiction or book loss; consequently it is wrong to outlay community funds to meet such a loss. Another aspect of this philosophy is that the needs of the community should override the development "rights" of the owner whenever the two are in conflict. The decision to allow a change from the existing use, it is argued, is and should be a community decision.

816. The logical extension of this philosophy is a scheme along the lines of that recommended by the Commission of Inquiry into Land Tenures ("Else-Mitchell Inquiry"), Final Report, February 1976. This scheme involved the compulsory acquisition of the development rights to all land without compensation. The right to continue an existing use would be retained by the landowner. However if a new use was proposed which was not then able to be lawfully carried on the landowner would have to buy the development right from the community. The Else-Mitchell proposal is philosophically attractive as it captures for the community increases in land value that result from land use decisions and from the growth of the community. However the fact is that the proposal was too radical to be widely accepted. This is despite the fact that it would have ended the harmful effects of land speculation; and the fact that the report was signed by one of Australia's leading developers.

817. The strength of the Else-Mitchell proposal lies in its universal application: all land and all landowners would lose development rights. When the principle is confined to only selected land — such as land reserved in a planning scheme — there is a much greater chance of inequity between landowners. The owners of
zoned land face controls which limit the potential use of their land, but these controls do not generally prevent a change from the existing use. The owners of zoned land do not generally lose all their development rights. However, on occasions the effect of zoning is to confine the use of land to the existing use. In this case the landowner is not entitled to claim compensation. Why, then, should there be compensation when land is reserved or required for a public purpose, but none when land is zoned? The philosophical justification is that the ultimate purpose of reserved land is that it be used and occupied for public purposes. Such land is not regarded as having any long-term private use. Land which is zoned, on the other hand, is regarded as being suitable for long-term private use, even if subject to stringent controls. Consequently when land is reserved the owner is deprived of the rights he would have had if the land had been zoned instead. If the appropriate alternate control (or underlying zoning) confined the use of the land to the existing use, the owner would suffer no loss as a result of the reservation. On the other hand if the underlying zoning enabled the owner to change the use of the land, the effect of the reservation would be to deprive the owner of the potential value of the land. Some would say that the conceptual distinction between the controls imposed by reserves and zones is illusory; and that the concept of underlying zoning is fictional. However, it cannot be denied that the effect of a reservation, at least in certain circumstances, is to deny the landowner of something he had before. The real question is whether community resources should be used to compensate the "deprived" landowner. This is a matter for value judgment; there is no "correct" answer.

Increasing Compensation Rights

818. There are some who believe that there ought to be an increase in compensation rights under the Town and Country Planning Act. The extreme view is that there ought to be compensation for the adverse effects of zoning. This view was put to the Gobbo Committee, but was rejected:

"Where town planning is tied, as it is in Victoria, to a system ofzonings which, according to the particular zoning bestowed on the land, significantly affect the value of the land, then there will always be controversy about injustices and about sudden riches in one owner and sudden loss suffered by another. It is obviously not feasible to have a system of compensation for everyone who suffers a loss, any more than it is to confer a favourable zoning on everyone." (p. 36)
Although the Gobbo Committee rejected compensation for zoning, it did recommend an extension of the right to obtain compensation:

"When the zone or control, insofar as it affects any land, is designed to secure the preservation of a feature of that land for the community at large and the land, because of such zoning or control, is incapable of being put to any reasonably beneficial use in all the circumstances, then compensation should be payable for the loss and damage caused by the planning restrictions in question." (p. 10)

In order to implement the new compensation formula a number of organisational and procedural recommendations were made. The procedure envisaged by the Committee was that there could be no claim for compensation for preservation controls over buildings until there had been applications and consultations designed to establish:

(a) what development would have been permitted but for the controls;

(b) what development is permitted after the controls; and

(c) the value of the property before and after the controls.

In the case of preservation controls in conservation zones, the Committee envisaged investing the Minister or the Planning Appeals Board with the power to order that the land be deemed to be reserved for a public purpose. The previous government introduced the Public Works and Planning Compensation Bill in December 1978 to implement the Gobbo Report. The Bill invested considerable discretion in the Minister for Planning and established new machinery to process claims. In most respects, however, it was based on the Gobbo Report.

819. The Gobbo Report attracted considerable criticism from within the community, particularly from those charged with the responsibility of implementing planning controls. This criticism sharpened when the Bill was introduced into the Parliament. (See, for example, Stuart Morris, "Ten Doubts about the proposed 'Gobbo Legislation', Australian Municipal Journal, June 1979, p. 329.) One concern was that the Gobbo proposals blurred the distinction between reservations and zones, making good planning more difficult and increasing uncertainty in the planning process. The concepts employed to give effect to the proposal were somewhat obscure and slippery, especially the concept "reasonably beneficial use". There was concern about the complexity of the Bill and the additional machinery created to handle compensation claims. But one of the most fundamental
criticisms was that, whilst compensation rights were being extended, no attempt was being made to recover the windfall gains that accrue as a result of favourable rezonings. In other words the Cobbo proposals represented a one-sided approach to the compensation question. Typical of this criticism was the declaration of the State Conference of the Australian Labor Party in June 1979 that a Labor Government:

"would not legislate any new complex compensation schemes for land affected by zoning controls unless this could be done in conjunction with a scheme to ensure that private windfalls from zoning decisions accrued to the public (to whom such windfalls rightfully belong)."

820. The question of recovering "betterment" is a difficult one; and to research this issue and proffer advice upon it has been beyond the scope of this report. There are various options and some of these are discussed in the Cobbo Report. The Elise-Mitchell proposal is another possibility; as is some combination of taxes designed to effectively and equitably recover some part of the unearned increment resulting from zoning changes. Mr A.T. Cocks has suggested the following combination of taxes: a Capital Gains Tax, a Site Withholding Tax, and the imposition of a betterment levy as a special impost on selected developments, particularly those where an authority becomes the lessee of developable land (see "Cities without Cash - Compensation", paper delivered to "Cities without Cash" Conference, March 1977). These options warrant further consideration. However this will be pointless unless governments are prepared to make decisions which might be thought to be politically difficult.

Retaining the Existing System

821. The existing system is based on the philosophical distinction between designating land for public vis-a-vis private use. This distinction, which is discussed in paragraph 817 herein, is one that has found wide acceptance. One of the reasons for this is that the right to compensation is clear-cut - there are no blurred edges. The existing system recognises that, as landowners reap the benefit of favourable planning decisions, they must take the consequences - at least up to a point - if planning decisions are adverse. That point is when loss is suffered as a result of the land being reserved or required for public purposes.
822. The existing system has also enabled wide-ranging planning and conservation measures to be taken. In a world full of uncertainties some caution should be shown in the use of resources. The extension of compensation rights for planning restrictions would inevitably mean fewer restrictions and fewer conservation controls. Whether this is a good or bad thing depends very much of the viewpoint of the person making the judgment. From the community viewpoint, however, there can be little doubt that sensitive planning controls are in our long term interest and should be retained.

823. The existing system also has the advantage that it is the existing system. There are no new concepts to grapple with; there is no complex administrative machinery to master. There is less need to educate the public about how the system works. These advantages are real and must be taken into account before recommending substantial changes.

Recommendation

824. It is recommended that there be no substantial changes to the existing law concerning compensation for town planning restrictions. The option of increasing compensation rights and the option of reducing compensation rights should both be rejected for philosophical, practical and planning reasons. The situation could be reviewed if some form of betterment tax was introduced; however this depends upon finding an appropriate formula and having sufficient public support to implement it. Although it is recommended that the existing scheme be retained, the legislation contains deficiencies and requires amendment. These are discussed in the next section.

RECOMMENDED AMENDMENTS

825. It would be desirable to recast ss. 41 and 42 of the Town and Country Planning Act to make it explicit that there is no compensation payable when no land is taken, except in specified circumstances. Section 41(1) is misleading and s. 42(1) complex. These sections could be drafted in simpler language. The circumstances in which compensation is payable should remain unaltered, except that the provision for "seemed" reservations may now be obsolete.

826. Section 42(6), which sets the maximum amount of compensation, should be amended in two respects. (This sub-section is summarised in paragraph 808 herein). In light of the decision in Cape Developments Pty Ltd v City of South-Baron these amendments might not be strictly necessary, but would clarify the legislation. The relevant "reference" value should not be the
value of the land unaffected by any planning control; rather it should be the value of the land on the basis of such planning control as would likely have been in force in relation to that land had it not been reserved. (The discussion and recommendations relating to this issue in the context of compulsory acquisition are equally applicable in this context: see paragraphs 644-647 herein.) The fact that land will be valued on the basis of certain zoning, any residential, does not necessarily mean that the land will have a residential value. The land may be useless for anything other than the public purpose for which it is required (e.g. drainage). In such a case the fact that the land is notionally "zoned" residential would not help the landowner. The second amendment recommended is a specification that the relevant date for assessing value be the date upon which the liability to pay compensation first arose.

827. The type of loss and damage for which compensation is payable should also be clarified. The Gobbo Committee recommended that the relevant provisions should be amended to enable recovery of legal and valuation costs incurred by the owner in preparing and submitting his claim (see para. 4.5.6). This is a fair and reasonable suggestion and should be adopted. An appropriate formula might be along similar lines to that suggested in respect of compulsory acquisition (see paragraph 620 herein). If the recommendations in this report are adopted, it will also be necessary to exclude losses from injurious affaction and gains from enhancement from the compensation calculations (see paragraph 629 and Chapter X herein). An appropriate formula might be that compensation be payable for pecuniary loss suffered as the natural, direct and reasonable consequence of the operation of the planning control, and if compensation is payable there should be an additional amount payable for professional expenses, that is any legal, valuation or professional expenses reasonably incurred in preparing and submitting the claim, but that no allowance be made for injurious affaction or enhancement.

828. There is uncertainty about whether a landowner can claim compensation when he has purchased the land after the imposition of a reservation. The Act does not prevent such claims, but it might be fairer to aspiring claimants if it did. This is because such claimants have great difficulty in showing any "loss and damage". The landowner can hardly complain about the restrictions imposed by the reservation when he bought the land in full knowledge of such restrictions. There are possible circumstances in which such a landowner may suffer loss; for example he may have purchased the land in anticipation of the reservation being revoked, but that revocation may not have occurred. However, in such a case the loss is not of a type that should be compensated. The philosophical justification for
compensating the owners of reserved land is that the use of their land has been restricted over and above that that would have occurred if the land had been zoned instead. This justification can only apply to a person who owned the land at the time a reservation was imposed. Consequently it is recommended that the legislation make it clear that subsequent purchasers are not entitled to compensation.

Section 42(4) should be amended to make it clear that the proportional system be used. As the example in paragraph 809 shows, the "straight deduction" method is illogical. Provision should also be made for the repayment of compensation, by the person then holding the relevant interest in the land, when a reservation is revoked or otherwise discontinued. This was recommended by the Gobbo Committee (paragraph 4.5.6). Once again the proportional system is the logical method to be adopted. However some time-limit (say 5 years) should be imposed upon the right to recover compensation and allowance would need to be made for losses suffered during the period that the land was reserved.

The Town and Country Planning Act should incorporate the relevant part of the new Land Acquisition Act to govern claims procedure and the resolution of disputes. (These matters are discussed in paragraphs 566-569 herein.) This would also incorporate the provisions concerning an advance of compensation pending the resolution of the dispute. This was recommended by the Gobbo Committee (para. 3.5.6) but has never been implemented.

Another amendment that should be made to the Town and Country Planning Act relates to the power of responsible authorities to impose conditions upon planning permits requiring part of the land to be set aside for public purposes without payment of compensation. For example a condition might be imposed on a permit for a shopping centre requiring land to be dedicated to the public, without compensation, to be used for public toilets or a public library operated by the local municipality. On one view such a condition is a valid exercise of existing powers: see Lloyd v Robinson (1962) 8 L.G.R.A. 247 (High Court). However doubts have been raised about this from time to time and it is desirable that the legislation be clarified. The Gobbo Committee made a similar recommendation on this issue (para. 4.5.9). It must be noted that there can be no compulsion in such a condition because the developer may choose not to act on the permit.

Section 24(7) of the Town and Country Planning Act, which deals with compensation procedures when permits are revoked, will also need to be brought up to date. Claims of this type could use procedures set forth in paragraphs 566-569 herein.
CHAPTER IX

LAND AFFECTED BY BLIGHT

901. The word "blight" is an inexact term. Originally used in botany and medicine, it is now more commonly applied to land. It is a confusing term because it is used in quite different circumstances. Thus it is desirable to establish at the outset what is meant in this report by the word "blight". Land is said to be affected by blight if -

(a) the saleability or value of the land is affected by the possible future acquisition of the land for a proposed public project; and

(b) the landowner has no existing right to claim compensation.

902. An essential ingredient in this definition of blight is the possibility that, one day, the land may be compulsorily acquired. So defined blight does not extend to detriment caused by a proposed private project. However it is proper to treat detriment by a proposed private project as blight if there is a reasonable expectation that government will assist private enterprise in the proposed project by compulsorily acquiring the land.

903. The other essential ingredient in this definition of blight is the fact that the owner has no legal remedy. If the owner has a legal remedy — such as a right to compel immediate acquisition or a right to recover compensation for any depreciation in the value of the land — then it would be inaccurate to describe the land as being affected by blight. It would also be inaccurate to describe land as being affected by blight when an Authority was in the process of compulsorily acquiring the land. In such a case the landowner would be entitled to fair compensation as a right and does not need any additional assistance as a matter of discretion.

904. Blight is nothing new. Whilst current concern is focused on the Latrobe Valley, blight has occurred in relation to reservoirs, freeways and transmission lines. The situation landowners find themselves in has been described as "planning limbo": decisions are delayed, indeed, sometimes never made at all. (See Gobbo Report, p. 6.) Two factors have made blight a more common feature
in modern times: first the increased scale of modern projects; and second the greater demand for public participation in decision making about major projects. It is not possible, nor desirable, to attempt to reduce the scale of projects or the amount of public participation. Other solutions must be found to ameliorate the condition of those landowners suffering from blight. Various solutions have been advanced — ranging from compelling the acquisition of the land to doing nothing. This chapter examines some of the general policy options and makes recommendations. This is followed by an analysis of the specific problem of blight in the Latrobe Valley. This issue deserves special discussion because it is a significant current concern. It is also a complex issue involving blight, town planning controls and land acquisition.

**BLIGHT: OPTIONS AND RECOMMENDED REFORMS**

Gobbo Committee Recommendations

905. The issue of blight was squarely addressed by the Gobbo Committee. It found that some landowners suffered hardship by being left in "planning limbo" and considered the measures that should be adopted to avoid or mitigate this hardship. The Committee summarised the issues as follows (at p. 18):

"It is essential that statutory authorities have at least the power to acquire at the request of these affected owners. The question is whether they should be compelled to acquire in these circumstances. In addition, should there be time limits on public projects being discussed but never finally deciding upon? A further question concerns whether there should be time limits on public purpose reservations in planning schemes so that freeways, reservations do not stand for very long periods."

The Committee then recommended:

* that authorities be given the power to purchase a property, in advance of a final decision, where the authority has put forward a proposal that affects the value of the property;

* that it was not necessary or practicable to compel authorities to acquire in the limbo period before planning schemes are exhibited or interim development orders made;

* that as a matter of policy direction authorities be directed to conduct public discussions on a limited time scale which should not exceed twelve months; and
that it was undesirable to fix a maximum time for the operation of reservations in planning schemes as it would be difficult to find any meaningful time limit and any adopted would have to be hedged about with so many qualifications and provisions as to result in complexity without any real usefulness.

906. The Gobbo Committee did not stop at the above recommendations. It thought it necessary to go beyond the power and goodwill of the authorities involved. Consequently the Committee recommended:

"That the Minister for Planning have power, on the request of an owner and where the land is the subject of an announcement of a project by an authority or possible project resulting in the saleability of the land being adversely affected, to declare that a particular piece of land is affected by a reservation for the purposes of Sections 41 and 42, such being deemed to have been requested by that authority, thus enabling an owner to have the rights to compensation given by those sections."

907. The Gobbo Committee recommendations were included in a modified form in the Public Works and Planning Compensation Bill 1978. However this Bill was never passed, largely due to criticisms of other proposed changes to compensation laws.

908. In response to the Gobbo Report the State Conference of the Australian Labor Party carried a detailed resolution in June 1979. In reference to planning blight the resolution stated:

"Statutory authorities would be given the power, exercisable at their own discretion, to purchase property following a request from the owner of a blighted property."

"In certain cases the relevant Ministers would be empowered to direct the purchase of land that becomes sterile as a result of the uncertain planning future. A clear set of criteria would be adopted to give guidance to both the government and affected landowners. A Labor Government would also set down guidelines for the conduct of public discussions and consultations regarding major public works proposals, so as to avoid lengthy delays and hardship to persons who may be affected by planning uncertainty."
Proposal in Interim Report

909. In the interim report made by the present author in June 1982 it was recommended that where a landowner has been substantially affected by planning blight his land should be purchased by the relevant Authority, when funds become available. It was recommended that the purchase be subject to normal conveyancing conditions for a price being the value of the land after disregarding any effect on that value caused by the publication of information relating to the proposed project. The recommendations in the interim report were designed to implement the spirit of both the Cobbo recommendations and the A.L.P. resolution, whilst adopting a more practical formula. This formula proposed that the Minister for Planning be empowered to declare that a landowner has been substantially affected by planning blight. In considering this question, it was proposed that the Minister be required to take the following matters into account:

(a) whether the land has been rendered sterile as a result of a public project or possible public project (referred to as a "planned project");
(b) whether the landowner has suffered substantial hardship as a result of the planned project;
(c) evidence of sales of comparable land not affected by blight;
(d) evidence concerning attempts to sell the land;
(e) the use to which the land has been put, including whether the land was held, wholly or partly, for speculative purposes;
(f) any evidence that a planning permit application has been refused;
(g) the nature of the planned project and the likelihood of it coming to fruition;
(h) the use to which the land could be put until such time as the land is likely to be required for the planned project.

If the Minister made a declaration, the Authority could (and, if funds were available, would) be directed to purchase the land.

910. The proposal in the interim report has been criticised as revolving around the acquisition of land rather than around the compensation provisions in the Town and Country Planning Act. To a considerable extent this criticism is justified, although the proposal did have practical merit as an interim measure when account is taken of the existing policies of some major authorities. As a permanent measure to mitigate the effects of blight the proposal had a number of weaknesses:
Large sums would be spent well in advance of the time that the Authority needed to own the land. These sums might otherwise be used for public projects that would generate employment.

In some cases land would be purchased which would not be ultimately required for public purposes. Plans and governments change.

Authorities would own land that would be better used if it remained in private ownership. Statutory authorities created for the purpose of electricity supply or road construction have no warrant to be farmers. Leasing is a second-best alternative: people treat their own property better than they treat a landlord’s property.

As a compensation mechanism, a policy based on selective acquisitions is very much a “hit or miss” concern. It is difficult to categorise landowners suffering from blight into just two categories: the deserving and the undeserving.

A policy of selective acquisitions can have the effect of making the blight worse. Blight is a psychological phenomenon to a considerable degree. Selective acquisitions by an Authority can create a climate of opinion that there is no role for the private landowner - thus intensifying the blight of the remaining privately-owned land.

These weaknesses add up. Consequently it is not recommended that any proposal based solely on land acquisitions be adopted as a permanent measure to combat blight. Rather solutions must be found in the planning process and using planning legislation.

Recommended Reforms

911. The first reform that is recommended is that the government establish guidelines for the conduct of public discussions and consultations regarding major public works proposals. These guidelines should recognise the importance of public participation in these matters, but nevertheless be geared to avoiding lengthy delays and hardship to persons who may be affected by planning uncertainty. This recommendation is not new, but it is very important. Much of the blight in the Latrobe Valley has been caused by ill-timed and ill-considered public announcements. Ironically these announcements were made shortly after the Government received the recommendations of the Gobbo Committee.
912. The second step that should be taken to reduce blight is to adopt modern, fair compensation laws for compulsory acquisition. To some extent land loses value when it is nominated for a proposed project because potential purchasers do not believe they will be fairly compensated when the acquisition ultimately takes place. This impression must be corrected if blight is to be reduced.

The adoption of the recommendations in Chapters IV, V, and VI would provide the foundation for correcting this impression; extensive publicity about the compensation available on acquisition would build on this foundation.

913. Statutory authorities should always have the power to purchase land which is afflicted by blight as a result of a proposed project. In some cases, especially when the land is rendered sterile (i.e. unable to be used for any real purpose), acquisition will be the only satisfactory alternative. However, large scale acquisitions should not be seen as the main method of alleviating blight.

914. The next reform that is recommended to reduce blight is to ensure that Authorities observe the spirit of town planning legislation in relation to requests to reserve land for public purposes. Land which will be definitely required for public purposes within a reasonable period should be included in a reservation or proposed reservation, rather than being zoned. In this way the landowner can claim compensation for loss pursuant to the Town and Country Planning Act. Planning authorities are reluctant to reserve land, unless requested to do so by the Authority who will require it, because the planning authority will then be the body liable to pay the compensation. Section 42(5B) of the Town and Country Planning Act provides that the compensation be paid by the Authority requiring the land if the reservation or proposed reservation is imposed at its written request or with its written consent. If Authorities fail to make a written request when they will definitely require particular land within a reasonable period, this is an abuse of the planning process and is a key factor causing blight.

915. It is desirable to go further than merely rely upon the goodwill of Authorities to observe the spirit of town planning legislation. In the first place it is recommended that s. 42(5B) of the Town and Country Planning Act be amended so that where land is reserved in a planning scheme or I.D.O. the Authority, for whom the land will be required for the public purpose, be obliged to pay any compensation regardless of whether the reservation was imposed at its request or with its consent. This reform would mean that the decision whether to reserve land for public purposes would be made in the general planning context, rather than on the sole basis of the interests of specific purpose Authorities. It might be said that it would be unfair to burden an Authority with compensation payments when it did not request or consent to the reservation. However, no reservation can be imposed without the approval of the Governor-in-Council. This gives specific purpose Authorities an opportunity to contest any proposed reservation, with the decision being taken at the proper level - that is, by the elected government.
The reforms recommended in the previous five paragraphs could do much to reduce and mitigate hardship and inequity caused by blight. However it is inevitable that some hardship and inequity will remain. For example land may be required for a public purpose in the distant future, causing a blight on the land, yet it would be premature to reserve the land until more detailed studies were conducted. Thus it is necessary to go further than the above recommendations and provide a mechanism whereby a landowner, who is suffering substantial hardship as a result of the blight, can obtain some relief. It is desirable that any such mechanism be discretionary in nature in order to ensure that the most serious problems are tackled first. In any event the very nature of blight excludes any absolute or hard-and-fast formula for compensation. Consequently it is recommended that the Minister for Planning have the power, on the request of an owner, to declare that land is proposed to be reserved for a public purpose (specifying the Authority for whom the land is proposed to be reserved) for the purposes of s. 42(5) of the Town and Country Planning Act if the Minister is satisfied that the landowner has been substantially affected by blight. In reaching his decision the Minister should be guided by detailed criteria, such as those set out in paragraph 909 herein. The effect of this recommendation is that a landowner suffering hardship from blight (but not mere planning restrictions) could obtain a declaration from the Minister for Planning and then sell his property on the basis of it being a proposed reservation. If the land sold for a price less than it would have brought had it not been a proposed reservation (i.e. not affected by blight), the landowner could then claim for compensation for loss on sale pursuant to s. 42(5) of the Town and Country Planning Act. It is desirable to confine this discretionary remedy to compensation for loss on sale in order to concentrate benefits on landowners suffering an actual, rather than a potential, loss.

A possible disadvantage of this discretionary remedy is that it would increase the administrative and political burden carried by the Minister for Planning and his department. It might be thought preferable to give or delegate the power to make a declaration to the Planning Appeals Board. This would make the decision independent of the government of the day and would enable a hearing to take place. Each of these factors has its pros and its cons. As far as the administrative burden is concerned, this is an inevitable consequence of any discretionary remedy. However the number of applications is unlikely to be large and could be expected to diminish once an initial pattern was established.
The system that has been recommended has a number of advantages:

* It provides a mechanism to relieve the worst cases of blight, whilst maintaining some control to ensure that unworthy cases are excluded. At the moment the landowner suffering from blight has no remedy.

* It provides landowners with the opportunity to claim compensation when an actual loss is suffered: that is at the time of sale.

* It does not commit Authorities to purchase land long before the land is required or in circumstances where the land may not ultimately be required for any public purpose.

* It maintains land in private ownership, thus ensuring that it is used to its full productive capacity by a person who has a stake in the land.

* It is less expensive to Authorities than a selective policy of acquisitions, but can relieve more landowners by spreading compensation payments.

* It does not contribute to the psychology of blight in the same way as does a policy of selective acquisitions.

* It integrates the planning of major projects with the planning process generally. This strengthens the planning process and improves co-ordination between authorities.

If the foregoing recommendations are adopted, hardship and inequity from blight will be reduced and mitigated; but it is inevitable that some landowners will still claim to suffer loss because their land is afflicted with blight. To some extent the landowner must be expected to bear these losses. It is not possible or desirable to compensate every loss in land value that might spring from government action. The right to own land is a precious right that brings considerable benefits. Many people cannot afford to exercise this right of land ownership. Just as land ownership brings benefits, it also carries responsibilities and consequences. As a matter of philosophy, surely it is reasonable to expect the landowner to bear some of the consequences of living in a society which must wisely use its resources and plan for the future.

**BLIGHT IN THE LATROBE VALLEY**

The Latrobe Valley contains huge deposits of brown coal. These constitute Victoria's major energy resource. Most of the coal is under farmland, although some is under urban settlements and rural/residential land. Because the usual method of mining brown coal is by open cut, it will be necessary to acquire land in order to exploit the coal resource. It is this threat of acquisition that forms the basis of blight in the Latrobe Valley. However the imposition of planning controls, in order to minimize the cost of ultimately exploiting the coal, is another cause of
concern to landowners. In a sense the planning controls reflect current official thinking about the ultimate exploitation of the coal. There is also concern about the compensation payable when land is acquired by the S.E.C. This section discusses these issues and makes recommendations. There are various elements that need to be considered: planning controls, S.E.C. and government announcements concerning coal exploitation, and S.E.C. land acquisition policies.

Planning Controls

921. One of the first planning controls in Victoria was the Latrobe Valley Sub-Regional Planning Scheme 1949. This scheme, which was actually approved in 1951, imposed controls on most of the land in the Latrobe Valley. The scheme remained as the basic land use control until the mid-1970s when it was progressively replaced by municipal controls. The scheme identified two major areas containing brown coal: known as the Western Coalfields (Yallourn, Morwell, Hazelwood, etc) and the Loy Yang or Eastern Coalfields (to the south-east of Traralgon). The land in these areas was zoned Agricultural B. Rural land, outside the two major coalfields which had been identified at that time, was mainly zoned Agricultural A. The difference between the two zones was negligible: the minimum size for subdivision in Agricultural A was 5 acres, whilst in Agricultural B it was 10 acres. Nevertheless any person who purchased land zoned Agricultural B since 1951 must be expected to have known that significant brown coal deposits existed beneath the land.

922. In 1975 the State Government issued a formal statement of planning policy in respect of the Latrobe Valley. This statement emphasised the need to avoid land uses that would prevent the exploitation of the brown coal resource. The statement of planning policy did not directly impose any controls on land use.

923. The municipal planning controls that replaced the Latrobe Valley Sub-Regional Planning Scheme 1949 generally imposed more stringent land use controls, especially on subdivision. For the most part, however, the municipal controls were an up-date of the 1949 scheme.

924. A major change occurred in the planning controls in April 1978 when the State Government imposed the Central Gippsland (Brown Coal Deposits) Interim Development Order 1978. (Strictly speaking these were six separate I.D.O.s for technical legal reasons.) This I.D.O. was imposed after a study had identified a much larger area of winnable coal than had previously been thought to be available. The study revealed coal between the
Western Coalfields and the Loy Yang Coalfields, to the east of the Loy Yang Coalfields, and at Gelliondale and Won Wron to the south of the Latrobe Valley. The total area of land identified as being over coal was approximately three times that which was identified in the 1949 scheme. The 1978 I.D.O. applied to all land which was thought to contain winnable coal. It imposed a minimum subdivisional area of 25 hectares and prohibited most land uses other than farming and forestry. Strict controls were also imposed upon the erection of houses. At first permits were refused for new houses on allotments of less than 25 hectares, although this policy was later relaxed.

925. The I.D.O. caused considerable concern among landowners in the Latrobe Valley. No doubt this concern partly arose because a much larger area of land was identified for possible brown coal exploitation. The fact that the I.D.O. was imposed without sufficient indication of the time schedule proposed contributed to landowner anxiety. The ban on houses on land less than 25 hectares also imposed a hardship which landowners thought unjust. The I.D.O. was labelled as "the freeze" and "the blanket" and was the instigator of numerous landowner associations in the Valley.

926. In October 1978 the Minister for Minerals and Energy provisionally allocated a portion of the coal resource to the State Electricity Commission of Victoria ("S.E.C."). The S.E.C. portion consisted of the Western Coalfields and the Loy Yang Coalfields — in other words it was substantially, though certainly not exactly, the same as the coalfields identified in the 1949 scheme. (The cost of mining coal in these two areas is thought to be generally less than in the remaining areas.) As a result of the provisional allocation the I.D.O. was amended in December 1978 to impose more stringent planning controls in the S.E.C. areas. The main change was that in certain designated areas there was an absolute prohibition on the erection of houses on allotments of less than 25 hectares. At the same time guidelines for land acquisition were adopted for the provisional S.E.C. areas. There was also a relaxation of planning control in the non-S.E.C. areas in that it became possible to obtain permits to erect houses on existing allotments of less than 25 hectares. There was no change in the subdivision provisions.

927. The 1978 I.D.O. ceased to be operative after two years by virtue of s. 17(1AC) and (1AD) of the Town and Country Planning Act 1961. However its terms were incorporated into the relevant municipal planning schemes and these remain as the operative controls today.
S.E.C. Announcements

928. Since the imposition of the 1978 I.D.O. the picture has been complicated by various S.E.C. announcements which have not been accompanied by the imposition of special land use controls. In May 1980 the S.E.C. published a conceptual plan for the development of the S.E.C.'s provisionally allocated eastern and western coalfields. This conceptual plan involved 21 power station sites and other facilities. A great deal of land was involved, especially for the purpose of overburden dumps. The land identified for possible future use as a power station or overburden dump was, in the main, outside the area subject to the 1978 I.D.O. This was because of a policy decision not to locate such facilities as far as possible, on land containing winnable coal. From the point of view of the landowner, however, the effect of this policy decision was to widen the concern about the future. The announcement of the area required for the Driffield power station had a similar effect; a substantial portion of the land required for this project was not subject to the 1978 I.D.O. In March 1982, shortly before the state election, the State Government approved long term S.E.C. plans for the future development of the western coalfields in an attempt to give a measure of certainty to the local community as to where and when development in the western area would take place. These long term plans emphasised developments up to the year 2010. Whilst similar to the 1980 conceptual plan, there were significant changes - for example a large area of land at Andersons Creek was identified for the first time as a site for an overburden dump.

S.E.C. Land Acquisition

929. The S.E.C. has been engaged in land acquisition in the Latrobe Valley in three distinct circumstances:

(a) market purchases - where both the S.E.C. and the landowner want the transaction;

(b) compulsory acquisitions - where the S.E.C. wants the land; and

(c) purchases requested by the landowner - when the landowner wants the transaction because the saleability of the land has been affected by the proposed brown coal exploitation or proposed ancillary works.
In the final category the S.E.C. has no immediate need or desire to own the land; the purchase is made when it is solely for the purpose of alleviating hardship. It is very important to bear the above distinctions in mind when considering S.E.C. land acquisition policies in the Latrobe Valley. The land acquisition guidelines announced by the previous government fell into the trap of confusing category (b) with category (c).

930. The S.E.C. derives its power to purchase or compulsorily acquire land from ss. 23 and 103 of the State Electricity Commission Act 1958. Section 103 confers a general power on the S.E.C. to purchase or acquire land:

(a) which it is authorised to acquire under the Act;

(b) which is required for the purposes of the Act; or

(c) which, in the opinion of the Commission and with the approval of the Governor in Council, is or may be required for or in connexion with any proposed project.

Section 23 confers a specific power to purchase or acquire such land, within 32 kilometres of Morwell, as the Governor-in-Council from time to time by Order directs. Section 23(3) contains an important qualification on this specific power: it provides that an owner of land within an "Order-in-Council area" may require the S.E.C. to serve a notice to treat within 28 days. In other words the owner can compel an immediate compulsory acquisition if he chooses. Section 23(3) owes its inclusion in the legislation to historical factors which have now radically changed. Section 23 is originally derived from s. 13 of the Electricity Commissioners Act 1918. At that time sub-section (2) provided that the compensation payable when land was acquired should not exceed the value of the land at the commencement of the then present session of Parliament, plus an amount for improvements to the land since that date. In other words land values were pegged to 1918 values. The inclusion of a right to demand immediate acquisition made sense in this context. It was not until quite recent times that sub-section (2) was replaced by a provision that required land values to be assessed at the date of the Notice to Treat. Despite this change sub-section (3) was retained and now has much greater significance. Virtually all the land subject to S.E.C. interest in the Latrobe Valley is within 32 kilometres of Morwell. The usual procedure that the S.E.C. follows is to obtain an Order-in-Council setting out the land required for a proposed project and then to acquire the land when it is needed for the project or when the landowner requests immediate acquisition. On occasions land is acquired before it is needed, presumably to alleviate hardship. In some other cases the S.E.C. seeks a separate Order-in-Council for each individual purchase. When this procedure is used the landowner cannot compel immediate acquisition.
In November 1978 detailed guidelines were adopted in respect of land acquisition and land use control within the provisionally designated S.E.C. areas. The amendments made to the 1978 I.D.O. in December 1978 were as a result of these detailed guidelines. The guidelines provided as follows:

1. Land should be retained in private ownership and use for as long as is practicable.

2. Future subdivisions shall not be less than 25 hectares.

3. Except where a permit for housing development has been issued on small lots less than 25 hectares, residential development on small lots is prohibited, except in very special circumstances.

4. Where subdivision into lots smaller than 25 hectares has been authorised by the Shire concerned and permits for houses would have been granted prior to the issue of the I.D.O the S.E.C will act as willing buyer for such undeveloped lots and will be prepared to acquire the land under Sections 23 and 103 of its Act. Advice accordingly will be forwarded to the respective landowners.

5. Land use in the S.E.C area will be as permitted by the I.D.O. or the later incorporation of the I.D.O into the various Shire Planning Schemes.

6. Where the owner of a property or residence has a genuine need to sell and is unable to do so, and/or is unable to obtain current market value for his assets, the S.E.C will provide such compensation as may be deemed to be appropriate by the Management Group within the Central Gippsland Brown Coal Working Committee where such matters will be treated as hardship cases.

7. Except as outlined above the S.E.C will not purchase land or houses before they are needed from time to time for its authorised projects. Where land has been acquired it will be leased for private use until such time as the land needs to be utilised for the project development.

8. Where small lots have been created by earlier subdivision, but where residential development has been precluded by planning ordinances brought down prior to the issue of the I.D.O, the S.E.C sees no obligation to acquire the land prior to the implementation of authorised projects except in the case of specific and proven hardship.
It should be noted that all purchases made pursuant to these guidelines fall into the third category set out in paragraph 929 above: when the S.E.C. has purchased land pursuant to guideline 4 or 5 it was not because it wanted immediate ownership of the land.

932. In order to empower it to acquire the land referred to in guideline 4, the S.E.C. obtained an Order-in-Council on 14 November 1978 in respect of 146 undeveloped small lots in the provisionally designated S.E.C. areas. This meant that the owner of any of these allotments could require the S.E.C. to acquire his allotment forthwith. No Order-in-Council has been made in respect of land which might fall within guideline 6. Rather the S.E.C. obtains a separate Order-in-Council in respect of each individual purchase. In order to maintain a hardship claim pursuant to guideline 6 the S.E.C. requires the landowner to test the market for three to four months to establish that there is no buyer willing to pay an acceptable price. Sometimes an auction is held to establish the lack of a buyer. The S.E.C. then negotiates with the landowner on the basis of the value of the land as if unaffected by the S.E.C. proposals. The S.E.C. does not pay legal, valuation or other expenses which might be recovered in the event that the land was compulsorily acquired. Rather the purchase proceeds as a normal commercial transaction.

933. In June 1980 the State Government decided that the arrangements for compensation which then existed in the provisionally designated S.E.C. areas should also apply in those areas identified outside the coalfields that might be required for power stations, overburden dumps, and the like. Subsequent events have superseded this decision insofar as it applies to the western coalfields, but this policy decision still applies to various areas of interest in the eastern coalfield area:

* Latrobe Power Station site;
* Flynn Power Station site;
* Flynn Creek Power Station site;
* Fernbank Power Station site and Overburden Disposal Area site;
* two further overburden disposal areas to the east of the Flynn Creek Power Station site.

However the S.E.C. seeks a separate Order-in-Council in respect of each individual purchase. Thus it is not possible for a landowner to compel the S.E.C. to acquire his land.

934. In August 1980 an Order-in-Council was signed authorising the S.E.C. to purchase land which in the opinion of the Commission may be required for or in connection with the proposed Driffield project.
In March 1982, when long term plans were announced for the western coalfields, Orders-in-Council were signed in respect of the following areas:

* Hermes Oak Power Station site;
* Tyers Power Station site;
* Hazelwood South Power Station site;
* Bennetts Creek Power Station site;
* Andersons Creek Overburden Disposal area.

Guidelines were also adopted in respect of these approved sites:

1. Land should be retained in private ownership for as long as practicable.

2. Land use will be in accordance with the relevant planning controls, however, subdivisions and new housing will not be accepted.

3. The ownership of any land may be transferred by way of sale without any restriction.

   However, should the owner request the S.E.C to acquire his/her property then such action will be adopted.

4. Market value will be determined on the basis that S.E.C statements on the proposed developments will be disregarded.

5. Where land has been acquired it will be leased for private use until such time as the land is needed for project development.

These Orders-in-Council and guidelines superceded the 1978 guidelines, insofar as these were relevant. It is not known how the ban on subdivision and new housing was to be enforced.

936. The S.E.C. is also acquiring land for two approved projects:

* Yallourn East Field Open Cut extension;
* Loy Yang project.

Orders-in-Council exist authorising these acquisitions.
Analysis

937. Apart from the acquisitions referred to in paragraph 936, it should be noted that the S.E.C. has no immediate need to own the land it is acquiring. If the western coalfields development plan is adhered to (and that is a big "if"), some of the land will not be required until the year 2025. In the more likely event that long term plans are varied, land will be purchased which will never be required. Insofar as land over coal is concerned, the fact that no final decision has been made regarding the allocation of the brown coal resource (between S.E.C. and non-S.E.C. uses) is a further reason why some land purchases may be premature.

938. The basis for the immediate purchase of land that might ultimately be required is to be fair to landowners concerned. This is a desirable aim, but one must ask whether current policies are the best way of achieving it. Moreover the costs of premature land purchases must be recognised. These include the expenditure of large sums which might otherwise be used to generate employment; and, in some cases, a potential waste of public funds. Moreover it is undesirable that the S.E.C. hold farmland for many years as it has no experience or warrant to be engaged in that activity. S.E.C. land acquisitions can also have the effect of making the blight worse. Blight is a psychological phenomenon to a considerable degree. Increasing S.E.C. land ownership creates a climate of opinion that there is no role for the private landowner and thus intensifies the blight on the remaining privately-owned land.

939. Although the aim of S.E.C. policy is to be fair to landowners, many landowners claim that the S.E.C. is quite unfair. However the landowner complaints tend to merge the various circumstances in which compensation might be payable. It is desirable to distinguish between complaints which are directed at compensation for compulsory acquisition, complaints about planning restrictions, and complaints about blight per se. Insofar as the first type of complaint is concerned the reforms recommended in chapters IV, V and VI will radically improve the position of the landowner.

940. The second type of complaint - about planning restrictions - may be new in the Latrobe Valley, but has often been heard in other parts of Victoria especially in conservation and scenic areas. For sound policy reasons compensation should not be available for planning restrictions per se, whether the restrictions are imposed to conserve flora, preserve scenic amenity, or enhance the ultimate exploitation of brown coal under the land. (The philosophy underlying this policy is discussed in Chapter VIII.) One complaint that has been voiced in the Latrobe Valley is that
the 25 hectare minimum requirement for subdivision is too harsh and landowners should receive some compensation for this restriction. Two things can be said about this complaint. First the loss caused by the restriction is merely a loss of "hope" value - the existing use is undisturbed. Second this type of restriction is common in Victoria and is imposed for all types of reasons: to conserve flora, preserve scenic amenity, retain agricultural viability, prevent urban sprawl and to prevent pollution of streams and rivers. It would be undesirable to make an exception in the case of a restriction on subdivision because the land was over coal.

941. In some circumstances, however, planning restrictions may operate harshly and warrant some government action to alleviate hardship. It is undesirable to lay down rules about this in advance - such as that the land is incapable of "reasonably beneficial use" or is "sterile". Rather the situation should be closely monitored by both the S.E.C. and Minister for Planning; and where circumstances warrant, appropriate action be taken. In the case of the S.E.C. that action should be to acquire the land; in the case of the Minister; the action could be to include the land in a reservation for S.E.C. purposes and thus open the door for compensation pursuant to the Town and Country Planning Act. The sort of restriction that might warrant government intervention is a prohibition on the erection of a house on an existing allotment, purchased for that purpose, in circumstances where the only reason for the prohibition is that one day the land will be required to enable coal to be extracted from beneath it. On one view there is no need for special intervention in such a case because the land could be said to be "proposed to be reserved for a public purpose" and thus give the landowner a right to compensation pursuant to the Town and Country Planning Act. Should this view be incorrect, however, it is desirable that the S.E.C. or Minister for Planning intervene in these extreme cases of planning causing hardship.

942. In relation to land affected by blight, the S.E.C. policies have been criticised by landowners on a number of counts. These criticisms are additional to the criticisms that might be made of S.E.C. policies on public policy grounds. In essence a landowner selling to the S.E.C. is in a weak bargaining position and, however benevolent or fair the S.E.C. may be, there will often be dissatisfaction on the part of the landowner as to the price paid. Just as psychological factors play a significant role in determining market prices, psychological factors influence the degree of satisfaction that a seller has with a particular price. Another criticism of the S.E.C. land acquisition policies is that landowners cannot be certain that their land will be acquired. However with a limited amount of money available it is only natural that the S.E.C. is selective in its purchases on "hardship" grounds. Obviously if the same amount of money was
used to compensate landowners for loss on sale, rather than in
acquiring the land, there would be considerably more
beneficiaries. This would not eliminate the complaint that
relief from blight has been denied, but would reduce the number
of complainants—especially those suffering genuine hardship.

Recommendations

943. There is no reason why the general recommendations concerning
blight, contained in paragraphs 911 to 919 herein, should not be
applied in the Latrobe Valley. If these recommendations are
adopted both the affected landowners and the public interest would
benefit. The recommended reforms should operate in lieu of the
general S.E.C. policy of land acquisition based on "hardship"
grounds.

944. It is desirable that steps be taken to prevent landowners from
compelling acquisition of land in declared Order-in-Council areas
in circumstances where the S.E.C. has no immediate need to own the
land. Examples of these areas are the various power station sites
that will not be required until the next century; and the
Andersons Creek and Driffield sites might also fall into this
category. To achieve the desired objective s. 23(3) of the State
Electricity Commission Act 1958 should be repealed. Pending the
repeal of this sub-section it is recommended that the
Orders-in-Council for the abovementioned projects be examined to
determine whether there is scope for the operation of s. 23(3).
In those cases where s. 23(3) could be used to compel premature
acquisitions, it is recommended that the relevant Order-in-Council
be revoked, except insofar as it applies to properties already
being acquired. Following the repeal of s. 23(3) the revoked
Orders-in-Council could be reinstated.

945. It is also recommended that where land will definitely be
required for a public purpose within a reasonable time then it be
placed in a reservation in the relevant planning control. This
will enable landowners to obtain compensation pursuant to the
Town and Country Planning Act 1961, but not require premature
acquisition of the land. In the case of land subject to an
existing Order-in-Council, it will probably be thought to be
necessary to include this land in a reservation, or proposed
reservation, pending a final decision about its future. One
method might be to exhibit an amendment to the relevant planning
controls proposing to reserve the land. This should be done at
the same time as any Order-in-Council is revoked as a result of
the recommendation contained in the previous paragraph. In this
way landowners in these areas would not be disadvantaged.

946. The effect of the above recommendations is to re-establish the
primacy of the town and country planning-system in the Latrobe
Valley. This is desirable for numerous reasons, but not least
because this established planning system already contains
appropriate machinery for resolving compensation issues.