



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 6

Acquisition of land in relation to major transport projects

Report 17

August 2022

6



Portfolio Committee No. 6 - Transport

Acquisition of land in relation to major transport projects

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Chair: Ms Abigail Boyd MLC



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Terms of reference

1. That Portfolio Committee No. 6 - Transport and Customer Service inquire into and report on the acquisition of land by Transport for New South Wales and related agencies in relation to major transport projects, with particular reference to:
 - (a) the response of agencies to the Russell and Pratt Reviews into the Land Acquisition (Just Terms Compensation) Act 1991,
 - (b) the conduct of agencies in acquiring:
 - (i) land for the WestConnex Project,
 - (ii) land for metropolitan rail projects,
 - (iii) land for any project related to the Western Sydney Airport,
 - (iv) land for the Parramatta Light Rail Projects (Stages One and Two),
 - (v) land zoned as commercial land acquired between 2015 and 2020,
 - (vi) land for the North Wilton estate acquired by Landcom,
 - (vii) any other specific land acquisitions that may give rise to community concerns about current government process
 - (c) how government agencies identify land for acquisition and the extent to which the price of the land and the identity of landowners are taken into account when determining the route and sites for such projects,
 - (d) how government agencies conduct direct negotiations with landholders in relation to purchasing land/properties prior to, or in parallel with, the compulsory acquisition process, and the extent to which such process is fair, unbiased and equitable,
 - (e) the interaction of the planning, infrastructure and transport planning systems of government to support best practice outcomes for the NSW community,
 - (f) whether government agencies are adequately protecting the public against 'land-banking' and other speculative practices undertaken by persons or interests seeking to profit from future transport projects and rezoning decisions,
 - (g) whether, and what legislative or other measures should be taken by the government to capture the uplift in land/property value created as a result of such transport projects,
 - (h) the conduct of agencies and government in relation to the determination of the route

of the M9 (Outer Sydney Orbital), and

(i) any other related matters.

2. That the Committee report by 12 August 2022.¹

The terms of reference were self-referred by the committee on 10 March 2021.²

¹ The original reporting date was 1 March 2022 (*Minutes*, Legislative Council, 16 March 2021, p 1995). The reporting date was later extended to 30 June 2022 (*Minutes*, Legislative Council, 23 February 2022, p 2963).

The reporting date was later extended to 12 August 2022 (*Minutes*, Legislative Council, 21 August 2022, p 3461).

² *Minutes*, NSW Legislative Council, 16 March 2021, pp 1994-1995.

Committee details

Committee members

Ms Abigail Boyd MLC	The Greens	<i>Chair</i>
Hon Mark Banasiak MLC	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
Hon Wes Fang MLC*	The Nationals	
Hon John Graham MLC	Australian Labor Party	
Hon Shayne Mallard MLC**	Liberal Party	
Hon Daniel Mookhey MLC	Australian Labor Party	
Hon Chris Rath MLC***	Liberal Party	

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- * The Hon Wes Fang MLC replaced the Hon Lou Amato MLC as a substantive member of the committee from 1 March 2022. The Hon Lou Amato MLC replaced the Hon Sam Farraway MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022. The Hon Taylor Martin MLC substituted for Hon Sam Farraway MLC from 19 April 2021 to 25 January 2022.
- ** The Hon Shayne Mallard MLC replaced the Hon Scott Farlow MLC as a substantive member of the committee from 29 March 2022.
- *** The Hon Chris Rath MLC replaced the Hon Don Harwin MLC as a substantive member of the committee from 29 March 2022. The Hon Don Harwin MLC was a substantive member of the committee to 22 March 2022. The Hon Don Harwin MLC replaced the Hon Shayne Mallard MLC as a substantive member of the committee from 25 January 2022.

Secretariat

Vanessa O'Loan, Principal Council Officer

Stephen Fujiwara, Senior Council Officer

Rachel Buist, Council Officer

Tina Higgins/Emma Rogerson, Director

Chair's foreword

Good planning and appropriate infrastructure are essential to supporting the needs of New South Wales residents. In the last 10-15 years, there has been a boom in infrastructure development across the state. An unprecedented number of transport projects undertaken, which has necessitated the government acquiring land to ensure those projects can proceed.

Years of disquiet about the application of the *Land Acquisition (Just Terms Compensation) Act 1991* led to the Russell Review in 2014 and the Pratt Review in 2016 and while their recommendations resulted in positive change in some areas, not all recommendations were adopted. Instead, we are still hearing of heavy-handed approaches by acquiring authorities, cultural and performance issues in the office of the Valuer General, and the need for the Auditor General to review controversial acquisitions, including the acquisition of the Camellia site for the Parramatta Light Rail project. These issues have done nothing to instil public confidence in the Government's approach to land acquisitions, and have only served to reinforce the injustice being felt by those who are having their homes or businesses acquired.

Troublingly, acquiring authorities seem to have forgotten that they are dealing with real people. People who have invested their time, money, effort and energy into building a home for their family or a business. To these people, the process of acquisition is not simply a business transaction. The current process, which has been shown to be distressing for those having their properties acquired, appears to have been used in a way that is clearly contrary to the intent of the legislation. The refusals of acquiring authorities to engage in genuine negotiations, valuations rising by upwards of 70% from first to final offer, the inability for owners to obtain financial assistance for legal and expert services, and the lack of mental health support during the process all speak to a process that is out of touch with what is expected by the public and which was intended by the legislation.

While the process of land acquisition may be necessary, it is absolutely imperative that it is both fair and transparent. Parties must be put on a more equal footing, and negotiations must be genuine, open and equitable, with clearer information about compensation offers and timelines. Accordingly, we have called for a review of section 10A of the legislation, to ensure the provision is strengthened in favour of property owners to redress some of the power imbalance that currently exists in the acquisition process.

The basis for determining compensation has also been shown to be problematic. Displacing owners from their communities and support networks due to their inability to buy back into their own community is hardly 'just'. It is unfathomable that New South Wales is the only jurisdiction in Australia that does not allow for the concept of 'reinstatement' to be considered in determining compensation and 'market value'. This clearly must be rectified. We anticipate that reform in this area will address many of the criticisms we heard from residents, providing assurance that they would be able to repurchase a similar property in a similar location if they so desire.

Recognising that these issues are systemic and longitudinal in nature, it is of the utmost importance that the NSW Government establish an independent review of the land acquisition process for the projects that were examined during this inquiry. Best practice requires that this process continues into the future and where errors are found, owners should be compensated accordingly. In addition to these measures, statutory authorities must also take into consideration the experience of property owners and actively integrate their feedback into improving their processes.

Finally, the committee thanks all those who participated in this inquiry through their submissions and oral evidence. Their participation brought to the fore the human face and impact that the acquisition

process has on those that have had, or are having, their properties acquired. I also wish to acknowledge and thank my committee colleagues for their involvement in this important inquiry, and the committee staff for their hard work and professionalism.

A handwritten signature in cursive script, appearing to read "Boyd".

Ms Abigail Boyd MLC
Committee Chair

Findings

- Finding 1** **37**
That the NSW Government's purchase of 4-6 Grand Avenue, Camellia led to a loss of tens of millions of public dollars.
- Finding 2** **38**
That, on the evidence presented, Sydney Metro has not negotiated in good faith with the residents of Orchard Hills.
- Finding 3** **74**
That the current culture of acquiring authorities, including specifically that of Sydney Metro, is making the acquisition process more difficult for residents and small businesses than it should be.

Recommendations

- Recommendation 1** **38**
 That the NSW Government commission an independent review into land acquisitions undertaken in relation to each of the major transport projects referred to in this report, with:
- this review to consider probity issues and compliance with the legislative framework and compensation outcomes for affected landholders
 - previous property owners entitled to additional compensation to rectify errors by acquiring authorities
 - the findings of this review to be made publicly available.
- Recommendation 2** **38**
 That the NSW Government implement a continuous review process, to ensure acquiring authorities comply with legislative frameworks for future acquisitions related to transport projects.
- Recommendation 3** **74**
 That the NSW Government amend section 10A of the *Land Acquisition (Just Terms Compensation) Act 1991* (and any other associated provision) to ensure that:
- acquiring authorities are obliged to genuinely negotiate;
 - letters of offer are provided soon after the negotiation period commences, with a reasonable amount of information provided to affected owners on the basis and breakdown of offers;
 - acquiring authorities provide partial upfront payments to affected owners including for expert reports and legal fees;
 - acquiring authorities ensure the independence of valuers and where conflicts of interest arise these are drawn to the attention of the owner;
 - owners can access an independent mediator, if requested.
- Recommendation 4** **75**
 That the NSW Government:
- seek to remove all non-disclosure terms that currently apply in all residential land acquisition agreements, and any other agreements entered into by acquiring authorities with residents impacted as a result of infrastructure projects
 - not enter into any such future non-disclosure agreements.
- Recommendation 5** **76**
 That the NSW Government urgently amend the basis for determining compensation in the *Land Acquisition (Just Terms Compensation) Act 1991*, to introduce a 'reinstatement' approach to the calculation of 'market value'.
- Recommendation 6** **76**
 That the NSW Government act to ensure that the eligibility and quantum of solatium payments associated with land acquisitions is adequate and that access to those payments is sufficiently broad and includes compensation for unreasonable delays.

Recommendation 7

77

That the NSW Government improve the transparency of the procedures and review the guidelines for hardship acquisitions for owners that experience a reduction in property value, are negatively impacted by construction or a property rezoning which arises as a result of a government project.

Recommendation 8

77

That the NSW Government undertake an investigation into the workings of the office of the Valuer General NSW, with this investigation to include a root cause analysis of the delays in the provision of determinations and an audit of a sample of determinations from the last 5 years to ensure compliance with legislation and case law.

Recommendation 9

78

That the NSW Government, via the Centre for Property Acquisition, ensure that all acquiring authorities develop and implement strategies to measure customer satisfaction, with a breakdown of results between substratum and above ground acquisitions, with the outcomes to be publicly reported on at least an annual basis.

Recommendation 10

78

That the Legislative Council consider an inquiry into the status of land at the Sydney Science Park, infrastructure provision to that site and related matters.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 10 March 2021.

The committee received 99 submissions and 6 supplementary submissions.

The committee held six public hearings: three at Parliament House in Sydney and three via videoconference.

The committee also conducted a site visit to Orchard Hills.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 The framework for land acquisitions

This chapter provides an overview of the *Land Acquisition (Just Terms Compensation) Act 1991* and two previous government commissioned reviews conducted in relation to the Act – the 2014 Russell Review and the 2016 Housing Acquisition Review (Pratt Review).

The acquisition of land for public infrastructure purposes

- 1.1** Government agencies, some state owned corporations and local councils have the authority to acquire land for public infrastructure or facilities. While the NSW Government aims to make the best use of existing state-owned land for these purposes, at times it will need to acquire private land.³
- 1.2** According to the NSW Government submission, land acquisition for essential infrastructure purposes is critical to the state's growing population and the government's duty to provide essential services to its citizens. Acknowledging that acquisitions of private land are not approached lightly, and only taken when there is a significant benefit to the broader public, the NSW Government outlined the importance of the acquisition process being fair and transparent, allowing landowners to make informed decisions, with appropriate support throughout the process.⁴
- 1.3** In practice, according to Property Acquisition NSW, the Centre for Property Acquisition provides an independent service to help property owners understand the property acquisition process, '[w]hen the Government makes a decision to build a project, such as a new road or hospital, it instructs the relevant agency to investigate where that project might best be located, or what might be the best route'.⁵ This is in conjunction with 'extensive consultation ... with the community to find out its views on where and how a project might be built'.⁶
- 1.4** Once a preferred design, route or location for the project is determined, the agency responsible may identify properties that need to be acquired to deliver the project.⁷
- 1.5** In this regard, it is important to note that both Transport for NSW and Sydney Metro (and the former Roads and Maritime Services) have legislative powers to acquire land for public purposes, as prescribed within the:
- *Transport Administration Act 1988* & *Transport Administration Amendment (Sydney Metro) Act 2018*, and
 - the *Roads Act 1993*.⁸

³ Submission 73, NSW Government, p 1.

⁴ Submission 73, NSW Government, p 1.

⁵ NSW Government, Property Acquisition NSW, <https://www.propertyacquisition.nsw.gov.au/property-acquisition>

⁶ NSW Government, Property Acquisition NSW, <https://www.propertyacquisition.nsw.gov.au/property-acquisition>

⁷ Submission 73, NSW Government, p 1.

⁸ Submission 73, NSW Government, p 9.

The land acquisition process

- 1.6** The *Land Acquisition (Just Terms Compensation) Act 1991* prescribes the process an acquiring authority must follow in order to acquire land from a landowner, as well as the principles for determining compensation on just terms.⁹ The objects of the Act are to:
- provide a statutory guarantee that the amount of compensation will be not less than the market value at the date of acquisition
 - ensure compensation on just terms for landowners whose land is acquired
 - establish procedures which simplify and expedite the acquisition process
 - require an authority to acquire land designated for acquisition for a public purpose where hardship is demonstrated
 - encourage the acquisition of land by agreement instead of by compulsory process.¹⁰
- 1.7** Typically, all legal interests in land are identified before commencing the acquisition process. The NSW Government explained that detailed planning of activities is usually conducted many weeks in advance of the announcement of a new project and the commencement of acquisitions, to ensure as many landowners are advised by the acquiring authority first. At this point, owners are provided with specific project information, and information related to their rights in relation to the property acquisition process.¹¹
- 1.8** When the acquisition process formally commences, the acquiring authority will instruct an independent valuer to inspect the property. This valuer will determine the market value of the property and any additional compensation payable. Landowners are encouraged to obtain their own valuation from an independent valuer, with the reasonable costs of this being paid for by the acquiring agency.¹²
- 1.9** Once the independent valuation is complete, acquiring authorities will issue a formal letter of offer and enter into a process to reach agreement with landowners and their professional consultants. The NSW Government advised that the process of reaching agreement often involves the exchange of both parties' completed valuation reports, followed by a number of legal and valuation meetings between both parties, with a view to reaching an agreement on compensation'.¹³
- 1.10** To comply with the legislation, the acquiring authorities are required to make a genuine attempt to acquire the property interest by agreement within a minimum six month period before commencing the compulsory acquisition process.¹⁴

⁹ Submission 73, NSW Government, p 1.

¹⁰ *Land Acquisition (Just Terms Compensation) Act 1991*, s 3. See also Submission 73, NSW Government, p 2.

¹¹ Submission 73, NSW Government, p 10.

¹² Submission 73, NSW Government, p 2.

¹³ Submission 73, NSW Government, p 10.

¹⁴ Submission 73, NSW Government, p 10.

- 1.11** According to the NSW Government, '[o]ver 80% of government acquisitions of private land ... are achieved through agreement between the landowners and the acquiring authority on an independent market valuation of the property'.¹⁵ During this negotiation process any additional compensation is also determined.¹⁶
- 1.12** In the instance that the acquiring authority and the affected party cannot reach an agreement on the amount payable over the minimum six month negotiation period, the property may be acquired compulsorily under the Act.¹⁷ As the NSW Government explained:
- ... [t]he acquiring authority commences this process by issuing a Proposed Acquisition Notice (PAN) to the property owner and advising the Valuer General. Following the expiry of the PAN period [90 days], the property will be compulsorily acquired through gazettal and the Valuer General will independently determine the amount of compensation payable.¹⁸
- 1.13** The NSW Government claimed that '[l]ess than 20% of acquisitions proceed to compulsory acquisition, which occurs when the acquiring authority and the landowner are unable to agree on land valuation and compensation'.¹⁹
- 1.14** Following the compulsory acquisition of a property, the NSW Government advised that 'a person is entitled to remain [in] the building for 3 months after ... if it is the person's principal place of residence or principal place of business'.²⁰

Determinations by the NSW Valuer General

- 1.15** The NSW Valuer General is an independent statutory officer appointed by the Governor of New South Wales to oversee the State's land valuation system. The Valuer General's functions are primarily set out in the *Valuation of Land Act 1916* and the *Land Acquisition (Just Terms Compensation) Act 1991*.²¹
- 1.16** As noted at 1.12, the NSW Valuer General becomes involved when a landowner and acquiring authority are unable to reach an agreement on the amount of compensation to be paid and the property is acquired compulsorily through gazettal.²² Under the *Land Acquisition (Just Terms Compensation) Act 1991* the NSW Valuer General independently determines the appropriate amount of compensation due.²³
- 1.17** Dr David Parker, NSW Valuer General explained to the committee the independent determination process:

¹⁵ Submission 73, NSW Government, p 2.
¹⁶ Submission 73, NSW Government, p 2.
¹⁷ Submission 73, NSW Government, p 2.
¹⁸ Submission 73, NSW Government, pp 2 and 11.
¹⁹ Submission 73, NSW Government, p 2.
²⁰ Submission 73, NSW Government, p 11.
²¹ Submission 73, NSW Government, p 3.
²² Submission 73, NSW Government, p 3.
²³ Submission 73, NSW Government, p 3.

... I assess the disturbance claims of the dispossessed and I assess the other heads of compensation. I do that with regard to the provisions of the Act, court precedent—of which there is quite a lot—and Valuer General policy. I read the claims submitted by the dispossessed and the issues list submitted by the acquiring authority and we exchange that information between each party so that there is no risk of adverse information. When completed, a preliminary report is provided to both parties for consideration before I finalise my determination. There are a series of conferences for the parties during the process and it is very common for my determination to differ from the claim made by the dispossessed or the offer made by the acquiring authority.²⁴

- 1.18** Dr Parker also advised that a landowner can appeal to the Land and Environment Court if they are unhappy with the Valuer General's determination.²⁵

Appeals to the Land and Environment Court

- 1.19** As noted above, if a person is dissatisfied with the amount of compensation offered by the acquiring authority, as per the determination of the Valuer General, the person may lodge an objection with the Land and Environment Court. The Court then decides the amount of compensation that will justly compensate the person for the acquisition of the land.²⁶
- 1.20** An application to the Land and Environment Court must be lodged within 90 days of the compensation notice being issued by the acquiring authority. The applicant must give the acquiring authority notice in writing that they have begun proceedings in the Court, after which the applicant and the acquiring authority will provide evidence about entitlement to and quantum of compensation.²⁷
- 1.21** In nearly all cases, the Court will arrange a conciliation conference between the parties under section 34 of the *Land and Environment Court Act 1979*, with the purpose of assisting the parties to resolve the claim for compensation without the need for a hearing.²⁸
- 1.22** If the case does proceed to a hearing, the amount of compensation determined by the Land and Environment Court could be more or less than the amount of compensation originally offered by the acquiring authority.²⁹
- 1.23** A party may only appeal against the Land and Environment Court's decision on the matter on a question of law. If the order or decision was made by a commissioner, the appeal is made under section 56A of the *Land and Environment Court Act 1979* and is heard by a judge of the Court. If the order or decision was made by a judge, the appeal is made under section 57 of the *Land and Environment Court Act 1979* and is heard by the NSW Court of Appeal.³⁰

²⁴ Evidence, Dr David Parker, NSW Valuer General, 6 October 2021, p 27.

²⁵ Evidence, Dr Parker, 6 October 2021, p 27.

²⁶ Land and Environment Court of New South Wales, Compensation for compulsory acquisition of land, (17 December 2020), <https://www.lec.nsw.gov.au/lec/your-legal-problem-is-about---/compulsory-acquisition-of-land.html>

²⁷ Submission 73, NSW Government, p 4.

²⁸ Submission 73, NSW Government, p 4.

²⁹ Submission 73, NSW Government, p 5.

³⁰ Submission 73, NSW Government, p 5.

Hardship acquisitions

- 1.24** Under section 23 of the *Land Acquisition (Just Terms Compensation) Act 1991* an authority of the state can acquire land in certain hardship circumstances, for example, if the owner is unable to sell the land at its market value because of the designation of the land for acquisition for a public purpose.³¹
- 1.25** According to the NSW Government, applications for hardship acquisition are made to the relevant authority using a Notice Requiring Acquisition of Land form from the Centre for Property Acquisition website. If an authority rejects the application for hardship or there is no response within 90 days, the applicant can seek an independent review of the application. It is then referred to a panel of independent reviewers appointed by the Minister for Water, Property and Housing.³²
- 1.26** The NSW Government advised that a total of eight applications have been considered by this panel since its inception in April 2017, with four decisions upheld, two overturned in favour of the applicant, one withdrawn and one pending.³³

Recent reviews or reports related to the property acquisition process

- 1.27** This section outlines two previous government commissioned reviews conducted in relation to the *Land Acquisition (Just Terms Compensation) Act 1991* and the implementation of recommendations from each review.
- 1.28** According to the NSW Government, both reviews 'were undertaken with the objective of delivering a fairer, more transparent, more equitable land acquisition process for landowners, while improving consistency and accountability of government agencies engaged in the acquisition of private property'.³⁴
- 1.29** In its submission to the inquiry, the NSW Government stated that the 'majority of the government's commitments [in response to the two reviews] have been delivered or are ongoing and are monitored for continuous improvement'.³⁵

2014 Russell Review

- 1.30** In 2014, the NSW Government commissioned Mr David Russell SC to undertake a review of the *Land Acquisition (Just Terms Compensation) Act 1991*. The aims of the review were to:
- define and clarify what real property rights or interests in real property are
 - recommend a set of principles to guide the process for how acquisitions of real property should be dealt with by Government

³¹ Submission 73, NSW Government, p 6.

³² Submission 73, NSW Government, p 6.

³³ Submission 73, NSW Government, p 6.

³⁴ Submission 73, NSW Government, p 7.

³⁵ Submission 73, NSW Government, p 7.

- consider whether and how these principles should be reflected in current legislation, and
- recommend a process for considering these principles in future legislation.³⁶

- 1.31** However, the Russell Review 'did not include consideration of the level of compensation payable for the acquisitions of real property'.³⁷
- 1.32** The Russell Review made 20 recommendations to government including 'several amendments to the Act and to the property acquisition process to ensure that it adequately supports participants'.³⁸
- 1.33** In October 2016, the NSW Government provided a response to the Russell Review, 'supporting most of the recommendations ... and ma[king] several amendments to the Act as a result'.³⁹ One of the recommendations from the review, Recommendation 17, was not implemented and was discussed during the current inquiry, relating to compensation being based on a 'reinstatement basis'. This will be discussed further in Chapter 3.

2016 Pratt Review

- 1.34** In 2016, the then Customer Service Commissioner, Mr Michael Pratt AM, conducted a Housing Acquisition Review with the objective of 'improving the manner in which the NSW Government deals with residents'⁴⁰ which was 'triggered by concerns in relation to WestConnex'.⁴¹
- 1.35** The Law Society of NSW described the review as a high-level, citizen focused review which 'produced a series of resident "pain points", guiding principles and recommendations'.⁴²
- 1.36** The Pratt Review made 20 recommendations, including the 'establishment of the Centre for Property Acquisitions and the Property Standards Group, and amendments to the administrative process'.⁴³
- 1.37** In response to recommendations from this review, the NSW Government 'immediately undertook work ... to improve the property acquisition process by developing circulars and certain guidelines, and by establishing the Centre for Property Acquisition to provide a whole-of-government approach to supporting landowners through the acquisition process'.⁴⁴

³⁶ NSW Government, Russell Review of the *Land Acquisition (Just Terms Compensation) Act 1991* (2014), p 6.

³⁷ Submission 61, The Law Society of New South Wales, p 2.

³⁸ Submission 73, NSW Government, p 2.

³⁹ Submission 72, NSW Government, p 2.

⁴⁰ Submission 73, NSW Government, p 2.

⁴¹ NSW Customer Service Commissioner, *NSW Housing Acquisition Review Summary Report*, 14 September 2016, https://www.propertyacquisition.nsw.gov.au/sites/default/files/resources/customer_service_commissioner_nsw_housing_acquisition_review_summary_report.pdf

⁴² Submission 61, The Law Society of New South Wales, p 3.

⁴³ Submission 73, NSW Government, p 2.

⁴⁴ Submission 73, NSW Government, p 2.

- 1.38** The Centre for Property Acquisition, based within Transport for NSW, is responsible for ensuring that all government agencies have access to consistent property acquisition standards, processes and guidelines, as well as ensuring all property owners, residents and businesses are dealt with in a respectful and empathetic way.⁴⁵ The property acquisition standards state that:
- property owners will be treated fairly and with empathy and respect
 - property owners will be provided with clear information about their rights
 - property owners will be supported throughout the acquisition process with assistance tailored to meet their individual circumstances
 - the acquisition process will be consistent across projects and acquiring authorities
 - the Government will monitor and report publicly on the effectiveness of the land acquisition process.⁴⁶
- 1.39** Reforms that followed this review included:
- the minimum six month negotiating period to provide residents with more certainty and time to understand the process
 - the creation of a Personal Manager role in acquiring agencies to provide affected owners with a single point of contact for the acquisition
 - the offering of free counselling to residents being affected
 - greater access to information about the compulsory acquisition process.⁴⁷

Current context and approach to the inquiry

- 1.40** Land acquisition for essential infrastructure is an important step in the delivery of critical infrastructure. Transport for NSW is currently delivering the largest infrastructure program in Australia with \$72 billion of investment over four years for major city-shaping and precinct projects like Sydney Metro, light rail, motorways and road upgrades.⁴⁸
- 1.41** Reflecting on the current levels of activity, Transport for NSW confirmed that the scale of corridor preservation currently underway has not been seen since the 1950s.⁴⁹
- 1.42** According to data provided by the Centre for Property Acquisitions, most acquisitions are undertaken by local councils, Sydney Metro and Transport for NSW. In the 2021 financial year, local councils undertook 157 acquisitions, with approximately 70 of these being partial and the remainder whole acquisitions. Sydney Metro completed 152 acquisitions, nearly all of which

⁴⁵ Submission 73, NSW Government, p 7.

⁴⁶ Submission 73, NSW Government, p 9.

⁴⁷ Submission 73, NSW Government, p 8.

⁴⁸ Evidence, Mr Mark Slater, Executive Director Property Group, Infrastructure and Place, Transport for NSW, 18 March 2022, p 52.

⁴⁹ Evidence, Mr Geoff Cahill, Director Corridor Identification and Protection, Transport for NSW, 18 March 2022, p 60.

were full acquisitions, and Transport for NSW undertook 147 acquisitions, the majority of which were only partial (approximately 120).⁵⁰

- 1.43** Transport for NSW advised that, as at April 2022, there were 639 property acquisitions underway, including acquisitions of interests in land. Of these, 285 are in the Greater Sydney region and 354 are in regional NSW. This was in addition to 142 live interests in land being acquired by the agency.⁵¹
- 1.44** In the 2021 financial year, Transport for NSW acquired property in relation to a number of projects, including the Coffs Harbour Bypass, Barton Highway, M7-Northern Road and Mulgoa Road upgrade.⁵²
- 1.45** In relation to Sydney Metro, the committee was advised that there were:
- 417 interests being acquired for Metro West (Westmead to The Bays), being 149 freehold interests (75 commercial and 74 residential) and 268 leasehold interests (202 commercial and 61 residential)⁵³
 - 64 acquisitions undertaken for the Metro Western Sydney Airport project, 19 of which were in Orchard Hills (and of this 19, 15 being freehold interests)⁵⁴
 - 513 interests to be acquired, across 13 buildings, for Metro West (Pyrmont & Hunter Street stations).⁵⁵
- 1.46** The first part of this report focuses on concerns raised by affected landowners in relation to acquisitions for specific transport projects. The second part of this report looks more broadly at the adequacy of the legislation governing land acquisitions, including the approach taking to determining just compensation.

⁵⁰ Centre for Property Acquisition, *Acquisitions by acquiring authority and type – financial year 2021*, Property acquisition data, <https://www.nsw.gov.au/housing-and-construction/property-acquisition/data/agency-and-type-2021>

⁵¹ Centre for Property Acquisition, *Acquisitions by acquiring authority and project – financial year 2021*, Property acquisition data, <https://www.nsw.gov.au/housing-and-construction/property-acquisition/data/agency-and-type-2021>; Answers to questions on notice, Transport for NSW, 22 April 2022, p 2.

⁵² Centre for Property Acquisition, *Acquisitions by acquiring authority and type – financial year 2021*, Property acquisition data, <https://www.nsw.gov.au/housing-and-construction/property-acquisition/data/agency-and-type-2021>

⁵³ Answers to questions on notice, Sydney Metro, 5 November 2021, p 2.

⁵⁴ Answers to questions on notice, Sydney Metro, 3 May 2022, p 2; Answers to questions on notice, Sydney Metro, 5 November 2021, p 4; Evidence, Mr Peter Regan, Chief Executive, Sydney Metro, 5 October 2021, p 31.

⁵⁵ Answers to questions on notice, Sydney Metro, 3 May 2022, p 6.

Chapter 2 Key concerns related to land acquisitions for recent major transport projects

Before looking at broader policy issues in relation to the *Land Acquisition (Just Terms Compensation) Act 1991*, this chapter will focus on concerns raised in relation to some property acquisitions for major transport projects, including the acquisition of the Camellia site for the Parramatta Light Rail project, and acquisitions related to the Sydney Metro-Western Sydney Airport project, the M9 (Outer Sydney Orbital) project and WestConnex.

Acquisition of 4-6 Grand Avenue Camellia for the Parramatta Light Rail project

- 2.1** During this inquiry, the acquisition process for 4-6 Grand Avenue, Camellia, was examined in relation to its acquisition for the Parramatta Light Rail project.
- 2.2** When complete, the Parramatta Light Rail will comprise 12 km of two-way track connecting Westmead to Carlingford, via the Parramatta CBD and Camellia.⁵⁶ According to the NSW Government, the Parramatta Light Rail will provide the community with 'turn up and go' services every 7.5 minutes, at a total cost of \$2.4 billion. It is expected to commence service in 2023.⁵⁷
- 2.3** According to the NSW Government, the Parramatta Light Rail is expected to deliver a number of benefits, including:
- supporting projected increases to population and employment opportunities in the Greater Parramatta area
 - providing critical infrastructure and public transport options to facilitate the development of Parramatta as a business district
 - providing an improved experience for commuters by reducing both the time taken for travel and improving reliability 'compared with bus and existing heavy rail'
 - a reduced dependence on private vehicles, by providing alternative transport options, including active transport corridors to enable walking and cycling.⁵⁸
- 2.4** In December 2015, the 'preferred route' for the Parramatta Light Rail project was announced, running 'from Westmead to Strathfield via Parramatta CBD, and incorporating Camellia and Sydney Olympic park'.⁵⁹
- 2.5** The land at 4-6 Grand Avenue at Camellia was acquired by Transport for NSW in 2016 'to support the light rail for staging and cleaning',⁶⁰ otherwise described as a 'stabling and

⁵⁶ Fact sheet, Transport for NSW, 'Parramatta Light Rail Frequently Asked Questions', April 2022, p 1.

⁵⁷ Media release, Transport for NSW, 'Parramatta Light Rail on track at Westmead', 12 November 2020.

⁵⁸ NSW Government, *Project Overview, Parramatta Light Rail (Stage 1), Westmead to Carlingford via Parramatta CBD and Camellia*, August 2017, p 8.

⁵⁹ Media release, Transport for NSW, 'Making it happen in Western Sydney: Parramatta light rail network unveiled', 8 December 2015.

⁶⁰ Evidence, Mr Robert Sharp, Secretary, Transport for NSW, 15 June 2021, p 33.

maintenance facility'.⁶¹ In 2017, further detail regarding the route was publicly announced, including a stop at Camellia.⁶²

Acquisition of the Camellia site

- 2.6** The Camellia site was initially owned by Akzo Nobel Pty Ltd, who in March 2015 released an expression of interest process for the public sale of the site.⁶³
- 2.7** Throughout 2015, Transport for NSW made three conditional offers to Akzo Nobel Pty Ltd to purchase the site – the first offer was for \$19.84 million, the second offer for \$22.0 million and the third offer for \$28.25 million.⁶⁴ All three offers were conditional to 'the vendor accepting responsibility for remediating the site'.⁶⁵
- 2.8** In November 2015, Billbergia, a property development and investment business, purchased the site using the special interest vehicle Grand 4 Investments for \$38.15 million.⁶⁶ Mr Rick Graf, Development Director, Billbergia, told the committee that the purchase of 4-6 Grand Avenue 'was part of our ongoing long-term strategy for urban renewal of the precinct'.⁶⁷ He advised that Billbergia had plans to redevelop the site for commercial lease to technology, transport and manufacturing firms.⁶⁸
- 2.9** In terms of the remediation of the site, Billbergia provided evidence that they had estimated decontamination costs to be in 'the order of \$10 million'.⁶⁹
- 2.10** Regarding the timing of the purchase of the Camellia site by Billbergia, Mr Graf specified that:

... at no stage in the 10 months we sought to purchase the land, and when Billbergia exchanged contracts for the purchase of the land in November 2015, were we aware that TfNSW [Transport for NSW] was interested in the site for any purpose ... it was not until February 2017 that Premier Berejiklian unveiled the detailed route and announced the proposed locations for the 16 Parramatta Light Rail stops. This was two years after we took steps to acquire the land and eight months after TfNSW had purchased the site from us.⁷⁰

⁶¹ Media release, Transport for NSW, 'Parramatta Light Rail Stabling and Maintenance Facility Construction to Begin', 26 March 2021.

⁶² Media release, Transport for NSW, 'Parramatta Light Rail to connect communities', 17 February 2017.

⁶³ NSW Auditor General, Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 13.

⁶⁴ NSW Auditor General, Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 13.

⁶⁵ NSW Auditor General, Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 13.

⁶⁶ NSW Auditor General, Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 13.

⁶⁷ Evidence, Mr Rick Graf, Development Director, Billbergia, 15 June 2021, p 2.

⁶⁸ Evidence, Mr Graf, 15 June 2021, p 2.

⁶⁹ Evidence, Mr Graf, 15 June 2021, p 6.

⁷⁰ Evidence, Mr Graf, 15 June 2021, p 2.

- 2.11** In 2016, Transport for NSW acquired 4-6 Grand Avenue, Camellia from Billbergia for \$53 million.⁷¹
- 2.12** When questioned about the acquisition, Mr Graf stated that Billbergia 'were and remain a very reluctant seller', as the group were 'close to executing a long-term commercial lease' with a large corporate client.⁷²
- 2.13** On 16 November 2020, media reports raised various concerns with Transport for NSW's acquisition of the site.⁷³ These reports specifically drew attention to the purchase price of the property, with suggestions that the government had overpaid. There were also concerns about the brief period of negotiation and 'degree of haste' with which the acquisition was made, and the extent of historic industrial contamination at the site.⁷⁴
- 2.14** In relation to media reports of potential overpayment by Transport for NSW in acquiring the site, Mr Graf described Billbergia's views on the cost of the acquisition:
- The price ultimately paid by TfNSW was \$53.5 million and from our side of the transaction it covered, or partly covered, three components. It covered the price Billbergia paid for the site, the costs expended by Billbergia over the 18-month period since January 2015, and partial consideration of the value of Billbergia's lease revenue forgone from the proposed redevelopment of the site because of the sale. We were and remain a very reluctant seller and we lost a 30-year asset.⁷⁵
- 2.15** On 17 November 2020, the Hon Andrew Constance MP, then Minister for Transport and Roads, requested that the Auditor-General for NSW undertake an audit examining:
- ... whether TfNSW [Transport for NSW] conducted an effective process to purchase 4–6 Grand Avenue, Camellia [and] whether TfNSW has effective processes and procedures to identify and acquire property required to deliver the NSW Government's major infrastructure projects.⁷⁶
- 2.16** On 18 May 2021, the NSW Auditor General's report entitled *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia* was released. The report raised several concerns about the acquisition process for the property at 4-6 Grand Avenue, Camellia and contained a number of recommendations and findings.⁷⁷

⁷¹ Evidence, Mr Sharp, 15 June 2021, p 25.

⁷² Evidence, Mr Graf, 15 June 2021, p 2.

⁷³ See, for example, Adele Ferguson, Matt O'Sullivan and Chris Gillett, 'The secret \$53m Sydney land deal that has left NSW taxpayers with an even bigger clean-up bill', Sydney Morning Herald, 16 November 2020; Chris Gillett and Adele Ferguson, 'NSW Government bought land for three times its value for light rail project', 7.30 Report, Australian Broadcasting Corporation, 16 November 2020.

⁷⁴ Chris Gillett and Adele Ferguson, 'NSW Government bought land for three times its value for light rail project', 7.30 Report, Australian Broadcasting Corporation, 16 November 2020.

⁷⁵ Evidence, Mr Graf, 15 June 2021, pp 2-3.

⁷⁶ Media release, 'Acquisition of 4–6 Grand Avenue, Camellia', Audit Office of New South Wales, 18 May 2021.

⁷⁷ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021.

Findings of the NSW Auditor General

- 2.17** The NSW Auditor General's report focused on concerns about the timing of the valuation commissioned by Transport for NSW, the process and probity of the transaction, and the failure to estimate the costs of remediating contamination prior to purchasing the property.⁷⁸
- 2.18** The NSW Auditor General noted that Transport for NSW did not get a formal valuation until after finalising the acquisition and did not determine the costs for remediation prior to acquiring the property.⁷⁹
- 2.19** The NSW Auditor General found that Transport for NSW 'was aware of contamination issues affecting the land and had access to considerable information about the environmental conditions'.⁸⁰ Further, the NSW Auditor General noted that:
- Since 1989, the site has been registered on the NSW Environment Protection Authority's contaminated land register. In addition, the then Department of Planning had undertaken its own study into the contamination in the Camellia area in 2015 to inform its precinct planning.⁸¹
- 2.20** According to the 2015 Department of Planning study, contamination is a key issue for redevelopment of the Precinct as a result of its long industrial history.⁸² The study went on to note:
- Significant areas of the Precinct are impacted by contaminants such as asbestos, hexavalent chromium and other hazardous substances. A number of properties in the Precinct are under some form of statutory remediation management.⁸³
- 2.21** The NSW Auditor General noted that 'At the time of this report, TfNSW [Transport for NSW] has entered into contracts worth \$106.9 million for environmental remediation of the site, ground improvement works and other remediation-related consultant costs, such as EPA site auditors'.⁸⁴

⁷⁸ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021.

⁷⁹ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 4.

⁸⁰ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 30.

⁸¹ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 38.

⁸² NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 34.

⁸³ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 34.

⁸⁴ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 6. See also Tabled document, Parramatta Light Rail - Remediation Contract – 6 Grand Avenue Camellia - ISD-17-6467 with Ventia Utility Services Pty, tabled by Hon Daniel Mookhey MLC, 15 June 2021; Answers to questions on notice, Mr Sharp, 14 July 2021, p 5.

- 2.22** In addition to evaluating the process used to acquire the property at Camellia, the NSW Auditor General considered the 'application of disciplines associated with complex procurement, such as probity, in a NSW Government context'.⁸⁵ The NSW Auditor General concluded that probity management controls and assurances were 'insufficient', heightening the 'risk of corruption, misconduct and maladministration'.⁸⁶
- 2.23** During evidence to the inquiry, Ms Margaret Crawford, NSW Auditor General informed the committee that briefing notes to decision makers did not include key information, nor did the persons making the offer have delegation of authority to do so.⁸⁷ The committee also heard that the expenditure was approved via email, which may fall outside of 'normal process' for 'expenditure of that amount'.⁸⁸
- 2.24** As a result, the NSW Auditor General was unable to exclude the possibility that the transaction was affected by misconduct or corruption.⁸⁹ Ms Crawford stated:
- Given failings such as poor documentation, Transport's own policies and procedures and guidelines were not followed, all the indicators that the price changed so much between one date and another, all of those matters—the lack of a probity plan, the lack of negotiation plans, the lack of elements or the lack of things that we would expect to see for a transaction of this nature means that we could not rule out the possibility of corrupt practice.⁹⁰
- 2.25** The NSW Auditor General expressed concern that despite Transport for NSW becoming aware of the 'potential for probity or integrity issues with the transaction' in February 2019, no misconduct or other investigation was undertaken to 'assess whether those risks were realised'.⁹¹

Response of Transport for NSW

- 2.26** The committee examined Transport for NSW representatives on the findings and recommendations from the Auditor General, and the assurance processes the agency has put in place to improve the probity and compliance aspects of property acquisitions.

⁸⁵ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 1.

⁸⁶ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 2.

⁸⁷ Evidence, Ms Margaret Crawford, New South Wales Auditor-General, Audit Office of New South Wales, 15 June 2021, p 40.

⁸⁸ Answers to questions on notice, Ms Margaret Crawford, NSW Auditor-General, NSW Audit Office, 14 July 2021.

⁸⁹ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 2; Evidence, Ms Crawford, 15 June 2021, p 35.

⁹⁰ Evidence, Ms Crawford, 15 June 2021, p 35.

⁹¹ NSW Auditor General, *Performance Audit, Acquisition of 4-6 Grand Avenue, Camellia*, New South Wales Auditor-General's Report to Parliament, 18 May 2021, p 3.

- 2.27** Mr Robert Sharp, Secretary, Transport for NSW, who commenced in the position in April 2021, stated that the agency 'welcome[s] and accept[s] the findings ... in respect to the acquisition' of the Camellia site.⁹²
- 2.28** At the hearing on 15 June 2021, Mr Sharp outlined the work undertaken by Transport for NSW to fulfil the recommendations made by the NSW Auditor General. This included:
- bringing in independent expertise to help address the deficiencies identified by the Auditor-General in the land acquisition policies and processes
 - expediting the formulation of a single set of policies and procedures to govern all of Transport's projects
 - obtaining independent assurance and validation of the efficacy of their improvement initiatives
 - implementing policies and procedures to articulate standards of monitoring and compliance assurance
 - executing a risk-based compliance assurance program.⁹³
- 2.29** The committee explored with Mr Sharp why concerns about the Camellia acquisition were not immediately referred to the Independent Commission Against Corruption (ICAC), an issue of concern for the NSW Auditor General. Mr Sharp was unable to comment on that point specifically at the hearing, given he was not Secretary at the time.⁹⁴ In answers to questions on notice, Transport for NSW stated:
- An internal audit was the most appropriate initial course to identify whether the acquisition had been made in accordance with TfNSW policy, noting that there was no allegation of misconduct at the time. The internal audit did not find evidence of alleged misconduct to investigate or that necessitated a referral to the Auditor-General or ICAC.⁹⁵
- 2.30** Noting that the Auditor General raised concerns in relation to internal policies and procedures not being followed for the Camellia acquisition, representatives were asked how there can be confidence in Transport for NSW's approach and compliance in relation to other property acquisitions around that time.
- 2.31** Ms Camilla Drover, Deputy Secretary, Infrastructure and Place, Transport for NSW, discussed the process of reform that was taking place 'given the coming together of the legacy RMS and the legacy transport organisations'. She touched upon the structure, function and reorganisation of work that had been undertaken in order to improve the property functions at the agency, including land acquisitions.⁹⁶

⁹² Evidence, Mr Sharp, 15 June 2022, p 20.

⁹³ Evidence, Mr Sharp, 15 June 2021, p 20.

⁹⁴ Evidence, Ms Camilla Drover, Deputy Secretary, Infrastructure and Place, Transport for NSW, 15 June 2021, pp 26-27; Evidence, Mr Sharp, 15 June 2021, p 27.

⁹⁵ Answers to questions on notice, Transport for NSW, 14 July 2021, p 3.

⁹⁶ Evidence, Ms Drover, 15 June 2021, p 22.

- 2.32** Mr Sharp also discussed the independent internal audit process underway at that time, to look at residential and commercial property acquisitions for Transport for NSW's infrastructure work. This audit examined 20 acquisitions undertaken between 1 November 2019 and 30 October 2020, however as at June 2021, the report had not been finalised.⁹⁷
- 2.33** At the hearing in June 2021, Mr Sharp also confirmed with the committee that there had been, in the last three years, three separate investigations into how Transport for NSW's acquires property, including a commercial land acquisition internal audit in 2019.⁹⁸ This audit looked at 24 commercial land acquisitions over 5 years, all over \$1 million.⁹⁹
- 2.34** Subsequent to that hearing, Transport for NSW advised that 'there were no acquisitions currently being undertaken that use the policies and procedures which were in existence at the time of the Grand Avenue acquisition'.¹⁰⁰
- 2.35** The committee was also interested in the remediation costs and plans for the Camellia site and whether the contamination at the site may be affecting neighbouring land and waterways.
- 2.36** Transport for NSW confirmed that the contract for Ventia to remediate the site, as at July 2021, was \$115,693,699 (including GST).¹⁰¹ Mr Sharp acknowledged that in June 2016 it was originally \$53 million.¹⁰² On notice, Transport for NSW also advised:
- that an independent Site Auditor accredited by the Environmental Protection Authority regularly inspects the site to monitor the remediation progress
 - no contaminants have been seeping into the Parramatta River from the site
 - that the site is being remediated for the purpose of future use as the Parramatta Light Rail Stabling and Maintenance Facility only, and the remediation solution is not conducive to residential development or any other use.¹⁰³
- 2.37** The committee also explored issues relating to the Camellia acquisition at a later hearing, on 18 March 2022. Mr Mark Slater, Executive Director Property Group, Infrastructure and Place, Transport for NSW, informed the committee that the agency had 'implemented six of the seven objectives and recommendations from the ... Auditor-General's report' as a means to ensure 'our property acquisition processes and policies align with the Auditor-General's recommendations and meet the community's expectations regarding integrity, rigour and value for money'.¹⁰⁴
- 2.38** Mr Slater was also questioned about the outcomes of Transport for NSW's internal audit, which was to 'focus on high value and high risk transactions' and whether they complied with policies, processes and procedures. Mr Slater reported:

⁹⁷ Evidence, Mr Sharp, 15 June 2021, p 24.

⁹⁸ Evidence, Mr Sharp, 15 June 2021, p 24.

⁹⁹ Evidence, Mr Sharp, 15 June 2021, p 25.

¹⁰⁰ Answers to questions on notice, Transport for NSW, 14 July 2021, p 2.

¹⁰¹ Answers to questions on notice, Transport for NSW, 14 July 2021, p 5.

¹⁰² Evidence, Mr Sharp, 15 June 2021, p 30.

¹⁰³ Answers to questions on notice, Transport for NSW, 14 July 2021, pp 6-8.

¹⁰⁴ Evidence, Mr Slater, 18 March 2022, p 52.

At high level I understand that there were 50 transactions that were audited and there were no findings from that audit that indicated that appropriate due diligence had not been undertaken and the approvals were not in place. The key areas of risk that were highlighted by the Auditor-General in Camellia, which was the focus of the audit—there were no findings that indicated that any transactions that were reviewed from that audit were amiss.¹⁰⁵

- 2.39** The committee was advised that this audit process covered, amongst other things, whether environmental surveys were undertaken to identify ongoing environmental commitments and liabilities, such as contaminated land.¹⁰⁶
- 2.40** Further, Mr Slater highlighted to the committee how processes have improved in light of the Camellia matter and how the agency adopted a 'significant change process through that six month period'. Reflecting on the issues that occurred during the Camellia acquisition, including the lack of a valuation report being obtained before a letter of offer was provided, and the transaction not having the appropriate due diligence and sign off, Mr Slater advised that 'these are all things which are now hard-coded' into the process.¹⁰⁷

Acquisition of land at Orchard Hills for the Sydney Metro-Western Sydney Airport project

- 2.41** The committee also heard from concerned Orchard Hills residents about property acquisitions related to the Sydney Metro-Western Sydney Airport project. In particular, there were concerns about the amount of land being acquired for the project, compensation offers increasing by over 70% from the first to last offer and the use of market value assessments resulting in unjust compensation.
- 2.42** Turning to the project background and context, the new 23 kilometre Sydney Metro-Western Sydney Airport Line will link St Marys to the centre of the new Aerotropolis in Bringelly via the new Western Sydney International (Nancy-Bird Walton) Airport.¹⁰⁸
- 2.43** According to Mr Peter Regan, Chief Executive, Sydney Metro, the metro line will comprise of 10 kilometres of twin tunnels in two sections and 13 kilometres of railway tracks at ground level or elevated on a skytrain viaduct.¹⁰⁹ It will also include six new metro stations at the following locations:
- St Marys, interchanging with the existing suburban railway station and connecting customers with the rest of Sydney's rail system
 - Orchard Hills, to service a future commercial and mixed-use precinct
 - Luddenham, to service a future education, innovation and commercial precinct
 - two stations within the airport site, at the airport terminal and at the airport business park

¹⁰⁵ Evidence, Mr Slater, 18 March 2022, p 54.

¹⁰⁶ Answers to questions on notice, Transport for NSW, 22 May 2022, p 2.

¹⁰⁷ Evidence, Mr Slater, 18 March 2022, p 55.

¹⁰⁸ Sydney Metro, *Sydney Metro – Western Sydney Airport Project overview, September 2020*, p 3.

¹⁰⁹ Evidence, Mr Peter Regan, 5 October 2021, p 20.

- the commercial heart of the Western Sydney Aerotropolis (the area proposed to be named Bradfield).¹¹⁰

- 2.44 Additionally, the project will include a stabling and maintenance facility, with an operations control centre at Orchard Hills to support operations for the new metro line, fleet maintenance, and house offices, worker parking and storage.¹¹¹
- 2.45 The Sydney Metro-Western Sydney Airport project is estimated to cost \$11 billion,¹¹² and is a joint partnership between the Australian and NSW Governments, funded 'on a 50:50' basis.¹¹³
- 2.46 According to Sydney Metro, the project will 'support planned growth in Western Sydney Aerotropolis and other future commercial and residential precincts' as well as 'boost economic productivity by supporting new jobs and educational opportunities closer to home'.¹¹⁴
- 2.47 In regards to Orchard Hills, Sydney Metro proposed that the metro station, to be located on the eastern side of Kent Road, north of Landsdowne Road, 'would help transform the area into a compact, high-amenity and walkable new community'.¹¹⁵

Key issues raised by inquiry participants

- 2.48 There were a number of concerns raised by Orchard Hills residents in relation to property acquisitions for the Sydney Metro project. For context, 19 properties were acquired by Sydney Metro in the Orchard Hills area.¹¹⁶
- 2.49 Residents contended that there had been inadequate information provided by Sydney Metro regarding the project, with a lack of clarity and transparency in relation to why so much land was required. Residents questioned whether the scale of land being acquired was fair, given some was being taken for 'future expansion'.¹¹⁷
- 2.50 On this point, Mr Jesse Vella, an affected owner, questioned whether the acquiring authority had acquired more land than was necessary for the construction of infrastructure for public purpose, claiming that Sydney Metro had not made all attempts necessary to minimise land acquisitions.¹¹⁸

¹¹⁰ Sydney Metro, Project overview, About Sydney Metro – Western Sydney Airport, <https://www.sydneymetro.info/westernsydneyairportline>

¹¹¹ Sydney Metro, *Sydney Metro – Western Sydney Airport Project overview, September 2020*, p 34.

¹¹² Department of Infrastructure, Transport, Regional Development and Communications, *Key Projects, Sydney Metro-Western Sydney Airport*, (29 March 2022), <https://investment.infrastructure.gov.au/projects/key-projects/western-sydney-airport.aspx>

¹¹³ Media Release, Hon Paul Fletcher MP, Minister for Communications, Urban Infrastructure, Cities and the Arts, 'New Sydney Metro - Western Sydney Airport line takes off', 22 December 2021.

¹¹⁴ Sydney Metro, *Sydney Metro – Western Sydney Airport Project overview, September 2020*, p 13.

¹¹⁵ Sydney Metro, *Sydney Metro – Western Sydney Airport Project overview, September 2020*, p 24.

¹¹⁶ Evidence, Mr Regan, 5 October 2021, p 21.

¹¹⁷ Site visit summary report – Orchard Hills, 19 May 2021, p 1.

¹¹⁸ Evidence, Mr Jesse Vella, Orchard Hills resident, 5 October 2021, p 2.

- 2.51** Of great concern to residents was the sheer scale of the land to be taken for what Sydney Metro described as 'construction, storage and landing areas'. Given this, some residents questioned why the land could not be leased instead.¹¹⁹
- 2.52** Further concerns were raised about the design of the metro rail link and the land acquired, with residents claiming Sydney Metro were purposely acquiring good parcels of land from residents and leaving residents with substandard land in return. Residents had made attempts to have the rail tunnel extended or moved further inland, supported by cost analysis, in order to save and/or minimise the number of properties acquired, all to no avail.¹²⁰
- 2.53** Residents also called for better documentation of proposals for the project, to better understand how it would affect them and the wider Orchard Hills area.¹²¹
- 2.54** Other issues raised by affected owners in Orchard Hills included:
- a lack of genuine negotiation by Sydney Metro during acquisition processes
 - the high cost of obtaining expert reports (some in excess of \$100,000), which many owners have paid themselves
 - the inability of valuations to consider property uplift as a result of the project, and the low property valuations provided by Sydney Metro over the course of the acquisition period despite significant appreciation in the property market
 - how affected owners were unlikely to be able to buy back in the same area based on the compensation offers
 - that affected owners felt that representatives of Sydney Metro were rude, abrupt at times and lacked empathy.¹²²
- 2.55** On the latter point, one submitter commented:

The key issue resulting from the Just Terms Act is actually very simple - we are unable to be reinstated back into our suburb of Orchard Hills in a like-for-like property. Orchard Hills landowners have been significantly disadvantaged by no fault of their own as a result of the acquisition process. We have been unjustly pushed out of the local property market due to inadequate compensation. When we received our notification of acquisition, we were immediately denied of having the financial capability to remain residing in Orchard Hills on a comparable property.¹²³

¹¹⁹ Site visit summary report – Orchard Hills, 19 May 2021, p 1.

¹²⁰ Site visit summary report – Orchard Hills, 19 May 2021, p 2.

¹²¹ Site visit summary report – Orchard Hills, 19 May 2021, p 2.

¹²² Site visit summary report – Orchard Hills, 19 May 2021, p 2. See also, for example, Evidence, Mr Sam Grima, Orchard Hills resident, 5 October 2021, p 11-13; Evidence, Mrs Theresa Grima, Orchard Hills resident, 5 October 2021 p 12; Answers to questions on notice, Ms Lauren Vella, Orchard Hills resident, 3 November 2021, p 1; Evidence, Mr Victor Xiberras, Orchard Hills resident, 5 October 2021, p 3; Evidence, Mr Vella, 5 October 2021, pp 2-3; Submission 87, Mr Neil Gagen, p 1; Submission 89, Name suppressed, p 3; Submission 95, Name suppressed, p 3; Submission 97, Name suppressed, p 3.

¹²³ Submission 97, Name suppressed, p 3.

- 2.56** Mr Sam and Mrs Therese Grima, affected Orchard Hills residents, also emphasised this issue, highlighting that the compensation provided for acquisition of their property would not help them to find a comparable property in the Orchard Hills area. They described the legislation as 'outdated' and needing change, arguing that it does not work well for acreage properties.¹²⁴
- 2.57** Mrs Grima also told the committee that Sydney Metro was relying on the Draft Cumberland Plain Conservation Plan to devalue their property, and that this draft plan may not even go ahead. She also raised concerns about the valuation being discounted by \$360,000 due to three trees on the property.¹²⁵ Contending that Sydney Metro did not want to genuinely negotiate, Mrs Grima advised the committee that she and her husband were proceeding to the Valuer General for a determination.¹²⁶
- 2.58** Mr Justin and Mrs Christine Vella, also from Orchard Hills, raised with the committee the high upfront costs required to engage in the acquisition process, in total approximately \$108,000 (including GST) for legal and other expert costs.¹²⁷ As at 3 November 2021, none of these costs had been reimbursed by Sydney Metro.¹²⁸ Mr Luke Kohler similarly reported high upfront costs, in excess of \$80,000.¹²⁹
- 2.59** Further, Mrs Vella told the committee that she had reached an agreement about compensation with Sydney Metro 'purely for the fact that we did not want to proceed to court'. She explained the emotional toll of the process on her family, marriage and children, advising that the decision to reach an agreement took into consideration the impact of the process on their mental health.¹³⁰
- 2.60** During a committee visit to Orchard Hills to meet with some of these residents, the residents described feeling 'powerless' and emphasised the need for certainty and stability especially in terms of continuity of care and access to medical services and schools.¹³¹
- 2.61** Some residents also highlighted the significant disparity in compensation offers provided by Sydney Metro. Mr Victor Xiberras, told the committee that the first and last offer from Sydney Metro differed by 73 per cent:

The first offer compared to their last offer was a 73 per cent increase. What I am gutted about is how a first offer can be so low and come up by 73 per cent to the last offer, which she still cannot relocate with that money back into the area. In saying that, a 73 per cent increase just shows how out of state Sydney Metro's valuers are.¹³²

¹²⁴ Submission 86, Mr and Mrs Sam and Theresa Grima, p 2.

¹²⁵ Evidence, Mrs Grima, 5 October 2021, p 10.

¹²⁶ Evidence, Mrs Grima, 5 October 2021, p 10.

¹²⁷ Evidence, Mrs Lauren Vella, Orchard Hills resident, 5 October 2021, p 5.

¹²⁸ Answers to questions on notice, Mrs Lauren Vella, 3 November 2021, p 1.

¹²⁹ Evidence, Mr Luke Kohler, 5 October 2021, p 7.

¹³⁰ Evidence, Mrs Christine Vella, Orchard Hills resident, 5 October 2021, p 16.

¹³¹ Site visit summary report – Orchard Hills, 19 May 2021, p 2.

¹³² Evidence, Mr Xiberras, 5 October 2021, p 3.

- 2.62** Recounting her experience with the offer process, Mrs Vella said that the final offer was 'dramatically higher' than the first. From December 2020 to June 2021, the offer increased by 73.19 per cent.¹³³
- 2.63** Likewise, Mr Kohler corroborated these accounts. From November 2020 to June 2021, the offer of compensation for his property increased by 70 per cent yet was still significantly below the value placed on it by two independent valuers:
- In September 2020 we got an acquisition notice from the metro and by November we got an offer. The offer at that time was less than half of what the current market value was. I went and got my two of my own independent valuations and both of them came back at double of what that was. Double! How can that be? How can that possibly be that that valuation can be double for what I am getting offered for my property that I am getting kicked out of? In June 2021, so six months later basically, we got an offer ... of 70 per cent more.¹³⁴
- 2.64** During the site visit with residents, the committee heard first-hand accounts about the emotional stress, anxiety and depression being experienced as a result of the property acquisitions. Residents reported feeling powerless and overwhelmed, noting that they felt a lack of support.¹³⁵
- 2.65** Mrs Grima emphasised that since being advised of the acquisition 'we have been living in a nightmare, with continuous stress to us, our family and my business, which we cannot get back'.¹³⁶ The physical and emotional impacts of the acquisition process were also noted by other submission authors.¹³⁷
- 2.66** In particular, Mrs Vella noted that the Sydney Metro representative they were given to provide support, which she called a 'personal relationship manager', lacked information about the technical side of the specific acquisition process, such as why the property was being acquired and valuation related information. The nominated person was also the same representative who had earlier told them their property would not be acquired. Mrs Vella stated that due to these factors, she 'lost complete trust in him'.¹³⁸
- 2.67** The committee also heard how the timeframes involved in the acquisition process were having a bearing on the emotional and physical impacts of the process. For example, Mr and Mrs Vella reported that from the time that they were notified of a potential acquisition, to their property being compulsorily acquired was approximately 3 years and 7 months.¹³⁹

¹³³ Evidence, Mrs Vella, 5 October 2021, p 16; Answers to questions on notice, Mr Jason and Mrs Christine Vella, Orchard Hills residents, 3 November 2021, p 1.

¹³⁴ Evidence, Mr Kohler, 5 October 2021, p 4.

¹³⁵ Site visit summary report – Orchard Hills, 19 May 2021, p 2.

¹³⁶ Evidence, Mrs Grima, 5 October 2021, p 10.

¹³⁷ Submission 89, Name suppressed, p 4; Submission 87, Mr Neil Gagen, p 1; Submission 95, Name suppressed, p 3; Submission 97, Name suppressed, p 3; Evidence, Mr Xiberras, 5 October 2021, pp 3, 6; Evidence, Mrs Vella, 5 October 2021, p 5; Evidence, Mrs Grima, 5 October 2021, p 10; Evidence, Mr Grima, 5 October 2021, pp 12, 13.

¹³⁸ Evidence, Mrs Vella, 5 October 2021, p 7.

¹³⁹ Evidence, Mrs Vella, 5 October 2021, p 10; Answers to questions on notice, Ms Lauren Vella, Orchard Hills resident, 3 November 2021, p 1.

Response of Sydney Metro

- 2.68** At a hearing in October 2021, the committee questioned Sydney Metro representatives, about the 19 acquisitions in Orchard Hills area for the Sydney Metro Western Sydney Airport project, and the concerns raised by residents.
- 2.69** In particular, Mr Peter Regan, Chief Executive, was asked about Sydney Metro's approach to the negotiation process and why some offers had increased more than 70 percent. Mr Regan explained that the process is 'dynamic', continuously considering additional information as it becomes available, including other property sales and market data.¹⁴⁰
- 2.70** Sydney Metro confirmed, however, that no landowners in Orchard Hills accepted the first or second offers.¹⁴¹ When asked whether there were meaningful negotiations conducted with the Orchard Hills owners, Ms Rebecca McPhee, Deputy Chief Executive, Sydney Metro, advised the committee that they met with residents and tenants throughout the process, including offering them the opportunity to meet with herself which they accepted. She added: 'I am also able to say that there were recent important pieces of information we were able to take into account in making those revised offers. ... but we were open to negotiations and we did have multiple meetings with the owners through the process'.¹⁴²
- 2.71** After the hearing, Sydney Metro advised that following formal offers of compensation in November/December 2020, 'new market evidence became available that 240 Luddenham Road had transacted in May 2021'. This was considered by their independently appointed valuers and led to increases in the initial offers of compensation. Revised formal letters of offer were then issued and parties then exchanged valuation reports and negotiated outcomes, leading to agreements being reached in 40 per cent of cases (6 of the 15 freehold acquisitions).¹⁴³
- 2.72** In response to questions raised by Orchard Hills residents about the possibility of construction leases for their land rather than complete acquisitions, Mr Regan noted that undertaking a construction lease arrangement was not possible due to the extent of construction activities planned over four to five years:
- The whole of the land that is being acquired at Orchard Hills is required for extensive construction activities. Those activities—which will take place over four to five years—include storing spoil, removing spoil, construction and storage of the cast tunnel segments, a grout-batching plant, significant site spoil facilities, dive sites, construction and launching of boring machines and very significant alteration to that land. All of the land that is being acquired is being used for the construction purpose.... It will utilise all of that land and will considerably change the land from its current form.¹⁴⁴
- 2.73** Mr Regan acknowledged that there are some cases where constructions leases are used, although he stated that 'it is less common than acquisition', often used where there is a short-term requirement to acquire the land but the land is not significantly altered. For Orchard Hills, he explained that some of the land will be 'permanently part of the railway infrastructure' and other

¹⁴⁰ Evidence, Mr Regan, 5 October 2021, p 22.

¹⁴¹ Answers to questions on notice, Sydney Metro, 5 November 2021, p 4.

¹⁴² Evidence, Ms Rebecca McPhee, Deputy Chief Executive, Sydney Metro, 5 October 2021, p 23.

¹⁴³ Answers to questions on notice, Sydney Metro, 5 November 2021, pp 2-3.

¹⁴⁴ Evidence, Mr Regan, 5 October 2021, p 24.

parts of the land will be part of the broader infrastructure, with some land 'not in a form that could be returned because it is then part of a public domain...'.¹⁴⁵

2.74 Mr Regan added that in the absence of a perfect understanding of the construction requirements and final site layout, acquiring the land is the most sensible option:

Acquiring the land gives us the ability to do the construction in the most effective and efficient way ...

...

Because the site itself—and depending on the final alignment and the final construction, all or part of that site may or may not be available post-construction. It is not just the station and the railway infrastructure they are going to see there; it is all the supporting infrastructure including new roads, other facilities. It is unlikely that land in that area would be completely untouched or unused in the future ...¹⁴⁶

2.75 Mr Regan further explained that acquiring the land also gives the government flexibility in terms of the infrastructure, 'to connect the public space and the other facilities and the appropriate planned land uses, which include development at the time'. He added:

But the difficulty is each individual site is not individually separable through that process, and that has been the challenge that we have been working through. I understand the point that some property owners have been pushing there, but that is not something that we have been able to accommodate, given the intensity of the use of the land.¹⁴⁷

2.76 In response to concerns regarding the amount of land acquired by Sydney Metro for the project, Mr Regan noted 'it was a fact that most Sydney Metro construction sites are larger than the final station footprint' as a result of 'how they are used during construction'.¹⁴⁸ To demonstrate this point Sydney Metro provided the committee with a map of the construction zone at Orchard Hills, showing the extent of the area required for launching heavy equipment such as tunnel boring machines, establishing workshops, and material batching facilities (Figure 1).¹⁴⁹

2.77 Reflecting on comparisons between Orchard Hills and land acquired for Westmead Metro station, Mr Regan said these are an 'apples and oranges comparison', explaining the difference between the two projects, including Orchard Hills being low density, 'open to the sky', whereas Westmead is an underground station in a highly urbanised environment. He felt a more similar comparison would be Bella Vista on the Metro North-West line, noting that both this site and the Orchard Hills site are about the same size and used similarly during the construction phase.¹⁵⁰

¹⁴⁵ Evidence, Mr Regan, 5 October 2021, p 24.

¹⁴⁶ Evidence, Mr Regan, 5 October 2021, pp 25-26.

¹⁴⁷ Evidence, Mr Regan, 5 October 2021, p 25.

¹⁴⁸ Evidence, Mr Regan, 5 October 2021, p 20.

¹⁴⁹ Answers to questions on notice, Sydney Metro, 5 November 2021, p 7.

¹⁵⁰ Evidence, Mr Regan, 5 October 2021, p 20.

- 2.78** Further, Mr Regan noted that Sydney Metro has not sought to acquire more land than necessary to meet financial targets or development plans for the Orchard Hills site.¹⁵¹
- 2.79** On the issue of support provided to affected owners, Sydney Metro gave evidence about the appointment of two separate representatives – a dedicated personal manager and dedicated acquisition manager, with the latter being trained in accordance with the Centre for Property Acquisition standards and guidelines. Ms McPhee described to the committee how both these roles provided support and assistance to affected landowners throughout the process.¹⁵²
- 2.80** The committee also heard that the costs of legal representation can be covered by Sydney Metro and can be provided up-front. For Orchard Hills though, Mr Regan noted that this offer has not always been accepted but that they have offered to pay advance payments and can do so on a case by case basis.¹⁵³
- 2.81** Acknowledging the impact of the process on landowners and the responsibilities of an acquiring authority, Mr Regan gave evidence that Sydney Metro is 'trying to give people as much visibility and notice as to the process', so that the process can be worked through and issues and alternatives identified early.¹⁵⁴
- 2.82** Mr Regan outlined the 'balancing act' involved in trying to be able to 'justify making higher payments to particular individuals based on circumstances unique to their property in the overall context of the market', with the need to be able to justify the use of taxpayer funds. Acknowledging that it is a difficult process, he stated that 'there is always going to be significant... tension or stress when you are talking about people's homes or their businesses and we understand that'.¹⁵⁵

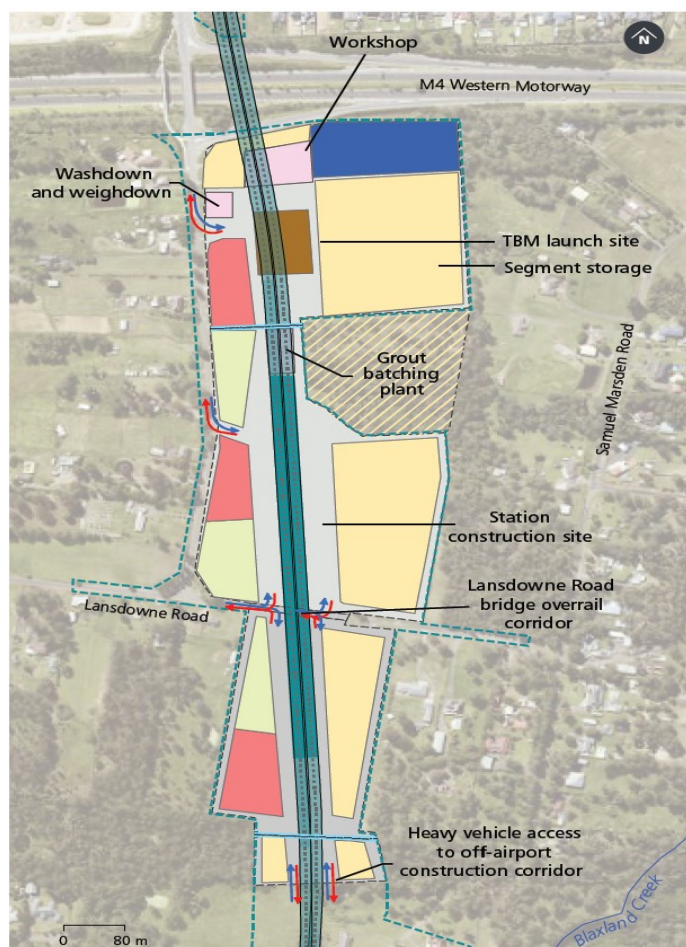
¹⁵¹ Evidence, Mr Regan, 18 March 2022, p 43.

¹⁵² Evidence, Ms McPhee, 5 October 2021, p 28.

¹⁵³ Evidence, Mr Regan, 5 October 2021, p 34.

¹⁵⁴ Evidence, Mr Regan, 5 October 2021, p 30.

¹⁵⁵ Answers to questions on notice, Sydney Metro, 5 November 2021, p 28.

Figure 1 Map of construction zone at Orchard Hills¹⁵⁶

Rezoning of land at Bringelly to support the Western Sydney Aerotropolis project

- 2.83** Concerns were also raised during this inquiry about the rezoning of land in Bringelly related to the Western Sydney Aerotropolis project, which has led to some properties being devalued.
- 2.84** The Western Sydney Aerotropolis is a 11,200-hectare area surrounding the Western Sydney International (Nancy-Bird Walton) Airport located within the Western Parkland City.¹⁵⁷ According to the NSW Government the Aerotropolis will be a 'hub for industry and innovation', including aerospace, defence, agribusiness, pharmaceutical, freight and education industries.¹⁵⁸ It will be 'the beating heart of the Western Parkland City, connecting to Greater

¹⁵⁶ Answers to questions on notice, Sydney Metro, 5 November 2021, p 7.

¹⁵⁷ NSW Government, The Western Sydney Aerotropolis, <https://wpca.sydney/about/the-western-sydney-aerotropolis/>

¹⁵⁸ The Western Sydney Aerotropolis, Western Parkland City Authority (2022), <https://wpca.sydney/about/the-western-sydney-aerotropolis/>

Parramatta and the Harbour CBD to realise the vision for Greater Sydney as a metropolis of three cities'.¹⁵⁹

- 2.85** The Western Sydney International (Nancy-Bird Walton) Airport is expected to begin operations in 2026, and will be a 'full service airport operating curfew free, delivering international, domestic and freight services'.¹⁶⁰
- 2.86** In 2020, the NSW Government announced that '6,500 hectares of land [would be] rezoned to provide for employment, residential and environmental uses in the Western Sydney Aerotropolis' to support this project.¹⁶¹
- 2.87** In 2022, the final Aerotropolis Precinct Plan was released, with the stated objective to 'guide development in the Aerotropolis in a consistent and sustainable manner over time'. The Precinct Plan claims to 'support the land use zoning and other provisions in the Aerotropolis State Environmental Planning Policy'.¹⁶²
- 2.88** As stated in the government's Western Sydney Aerotropolis Plan, the Aerotropolis will be framed around a landscape-led approach, where the Wianamatta–South Creek corridor and an expansive network of green and blue corridors shape the city's structure and building.¹⁶³

Key issues raised by inquiry participants

- 2.89** Some inquiry participants raised concerns about the rezoning of land to support the Western Sydney Aerotropolis Precinct Plan, claiming that the rezoning had restricted their options for development of their properties whilst also suppressing resale value without compensation.¹⁶⁴
- 2.90** For example, Mrs Silvana Di-iorio, Bringelly resident, explained that under the previous zoning 'we could still make improvements and build' on our land whereas under the new zoning this was not allowed.¹⁶⁵ Mrs Di-iorio asserted it was 'unreasonable that the government has restricted the potential of our land and not provide[d] us with adequate compensation'.¹⁶⁶

¹⁵⁹ NSW Department of Planning and Environment, Western Sydney Aerotropolis explained, (29 April 2022), <https://www.planning.nsw.gov.au/Plans-for-your-area/Priority-Growth-Areas-and-Precincts/Western-Sydney-Aerotropolis/Western-Sydney-Aerotropolis-explained>

¹⁶⁰ Commonwealth Department of Infrastructure, Transport, Regional Development and Communication, *Western Sydney Airport*, <https://www.westernsydneyairport.gov.au/>

¹⁶¹ Media Release, Hon Rob Stokes MP, Minister for Planning and Public Spaces, Hon Stuart Ayres MP, Minister for Western Sydney, 'Jobs boom for western Sydney aerotropolis', 13 September 2020.

¹⁶² NSW Government, Department of Planning and Environment, Western Sydney Aerotropolis Precinct Plan, March 2022, p 5.

¹⁶³ NSW Government, Western Sydney Aerotropolis Plan September 2020, <https://www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-faqs/Research-and-demography/Population-projections-refresh/Western-Sydney-Aerotropolis-Plan-2020-Part1.pdf?la=en>

¹⁶⁴ Submission 4, Mrs Maria Zucco, pp 3-4; Submission 12, Mrs Carol Goodwin, p 1; Submission 13, Name suppressed, p 1; Submission 27, Mr Jacob Farrugia, p 1; Submission 77, Mrs Silvana Di-iorio, p 1; Submission 25, Mr Michael McGrath, p 8.

¹⁶⁵ Submission 77, Mrs Silvana Di-iorio, p 1.

¹⁶⁶ Submission 77, Mrs Silvana Di-iorio, p 2.

2.91 Another local resident explained the impact of rezoning on their property:

On 1 October 2021 our land was re-zoned from Low Density Residential (LDR) to Agribusiness with an Agri-Park “overlay”, with a museum, bike paths and a public road to be included on our land; No individual contact was made with us regarding this change; No consideration has been given to the huge negative financial impacts of this down-grading of our zoning; No compensation has been offered for the downgrading of zoning; No consideration has been made to acquiring any of the land.¹⁶⁷

2.92 Likewise, submission author Mr Jacob Farrugia asserted that these restrictions have rendered many residents' properties 'unsellable or worthless with no clear compensation/acquisition strategy in place. Their lives have literally been put on hold'.¹⁶⁸

2.93 As a result of the land rezoning and subsequent uncertainty about the future, Bringelly residents spoke of experiencing extreme distress and associated mental health concerns.¹⁶⁹

2.94 In his submission to the inquiry, Mr Farrugia described the situation of residents and landowners local to the Aerotropolis:

Land owners ... are currently suffering great emotional and psychological toll, due to the way they are being treated and the way the Aerotropolis has left them in limbo for an indefinite amount of time ... I am reaching out on behalf of my community as they currently feel helpless, deserted and are very distraught by the current evolving situation.¹⁷⁰

Response from NSW Government

2.95 During this inquiry, in October 2021, the Department of Planning, Industry and Environment outlined community concerns about planning for the Aerotropolis in a report entitled '*Aerotropolis – responding to the Issues*'. This report found that 'the main area of concern for landowners centred on the perceived value impact on their land'.¹⁷¹

2.96 The Department of Planning, Industry and Environment noted specific community concerns regarding the Environment and Recreation Zone, which mirrored concerns heard by this inquiry. In particular:

- the zone's potential impact on land values, particularly being perceived as down zoning
- the perception that the government is seeking to use private land for a public purpose without adequately compensating the landowner

¹⁶⁷ Submission 54, Name suppressed, p 4

¹⁶⁸ Submission 27, Mr Jacob Farrugia, p 1.

¹⁶⁹ Submission 12, Mrs Carol Goodwin, p 1; Submission 44, Name suppressed, p 1; Submission 27, Mr Jacob Farrugia, p 1.

¹⁷⁰ Submission 27, Mr Jacob Farrugia, p 1.

¹⁷¹ NSW Department of Planning, Industry and Environment, *Aerotropolis - Responding to the Issues*, October 2021, p 9.

- uncertainty for landowners' regarding 'opportunities to undertake development' and 'future land transactions'.¹⁷²

2.97 To address these concerns, the Department of Planning, Industry and Environment noted several changes to the planning for the Aerotropolis:

- the Environment and Recreation zone will be removed from some properties and replaced with the RU4 Rural Small Holding zone
- the Environment and Recreation zone was to be reduced by 1,329.8 hectares (32.6%) to 896.6 hectares within the Liverpool local government area
- additional permitted land uses will be re-introduced to align the Environment and Recreation zone more closely with the previous zone that applied including dual occupancies, dwelling houses and secondary dwelling depending on previous uses permissible in the zone.¹⁷³

2.98 The Department also identified community and industry outreach initiatives that will be used to address misconceptions about the 'scope and intent of the Environment and Recreation zoning', including:

- education sessions ... for industry practitioners and stakeholders about the Environment and Recreation zone and the planning controls that apply to the Aerotropolis
- publication of a Guideline to Existing Use Rights and Permissible Land Uses ... on the Department of Planning, Industry and Environment's website.¹⁷⁴

Acquisitions in relation to the M9 (Outer Sydney Orbital) project

2.99 Concerns were also raised in this inquiry about property acquisitions in relation to the M9 (Outer Sydney Orbital) project.

2.100 The M9 is a proposed motorway and freight rail line corridor that would extend around Sydney from the Illawarra, across Western Sydney and to the Central Coast. The project is part of the NSW Government's 'planning for the long term transport needs of Western Sydney'.¹⁷⁵

2.101 In its submission, the NSW Government advised that the identification of the proposed corridor would occur in stages. Stage 1 covers South-Western to North-Western Sydney and Stage 2 relates to South-Western Sydney to the Illawarra.

¹⁷² NSW Department of Planning, Industry and Environment, *Aerotropolis - Responding to the Issues*, October 2021, p 18.

¹⁷³ NSW Department of Planning, Industry and Environment, *Aerotropolis - Responding to the Issues*, October 2021, pp 19-20.

¹⁷⁴ NSW Department of Planning, Industry and Environment, *Aerotropolis - Responding to the Issues*, October 2021, pp 20-21.

¹⁷⁵ Transport for NSW, Outer Sydney Orbital Stage 1 corridor investigation, (22 March 2021), <https://www.transport.nsw.gov.au/corridors/oso>

- 2.102** The final draft corridor and draft strategic assessment for Stage 1 of the Outer Sydney Orbital corridor, from Box Hill in Sydney's North-West to the Hume Motorway, was exhibited in March 2018.
- 2.103** As a result of consultation, further refinements of the proposed corridor were made to minimise the number of properties that would need to be acquired. Stage 1 was also altered to start at Richmond Road in Sydney's North-West and a proposed rail loop at Dunheved was removed from the proposed corridor.¹⁷⁶
- 2.104** Western Sydney councils identified the need to confirm the Stage 1 Outer Sydney Orbital corridor in their Local Strategic Planning Statements which was completed and approved by the Greater Sydney Commission and the Department of Planning, Industry and Environment in early 2020. The relevant parts of the alignment for the Stage 1 corridor have also been incorporated in the plans for the Aerotropolis.¹⁷⁷
- 2.105** While the Stage 1 corridor has not yet been gazetted, the NSW Government confirmed that funds have been allocated for hardship acquisitions.¹⁷⁸
- 2.106** In regards to Stage 2, Transport for NSW publicly exhibited part of the Outer Sydney Orbital (through Appin) in late 2020.¹⁷⁹ Two options for the corridor were put to the community for consideration – a 'blue' option and a 'yellow' option. Following this feedback, Transport for NSW confirmed that the 'blue' option has been identified as the preferred option and has been further refined to minimise impacts on koala habitats and land identified as having Aboriginal cultural sensitivity.¹⁸⁰

Key issues raised by inquiry participants

- 2.107** The committee received numerous submissions and heard from members of various local support groups about the Outer Sydney Orbital and its impact on landowners. The concerns raised by these individuals primarily focused on the poor communication and consultation they had received, the problematic nature of corridor planning and concerns regarding how compensation is determined, with some calling for reinstatement instead of market value assessments.¹⁸¹
- 2.108** Ms Jo O'Brien, Member, Outer Sydney Orbital Macarthur Action Group, noted that when the Outer Sydney Orbital corridor was announced, Transport for NSW staff delivered envelopes to hundreds of residents telling them that their home was in the corridor. She stated: "They did not always stop to explain what this meant, leaving people in shock and in tears, and with no idea

¹⁷⁶ Submission 73, NSW Government, p 17.

¹⁷⁷ Submission 73, NSW Government, p 17.

¹⁷⁸ Submission 73, NSW Government, p 17.

¹⁷⁹ Submission 73, NSW Government, p 17.

¹⁸⁰ Transport for NSW, Outer Sydney Orbital Stage 2 (4 November 2021), <https://www.transport.nsw.gov.au/corridors/oso2>

¹⁸¹ Evidence, Mr Ian Choudhury, Founding Member and Secretary, Appin Orbital Motorway Support Group, 27 May 2022, pp 2-3.

what they could do about it. People immediately bordering the proposal were not directly notified at all'.¹⁸²

- 2.109** Further, Ms O'Brien noted that while consultation took place in 2015 with large landholders and organisations, 'other landholders were never directly notified, with no direct communication from Transport for NSW or any other government department'.¹⁸³
- 2.110** In 2018, local community meetings were well attended by residents of the affected areas however some negotiations took place privately and no reports on the Outer Sydney Orbital consultation process in 2015 or 2018 have ever been publicly released.¹⁸⁴
- 2.111** Additionally, at a hearing in May 2022, Ms O'Brien told the committee that hundreds of owners in the path of the Outer Sydney Orbital did not know what was going to happen to their properties for 4 years.¹⁸⁵
- 2.112** The impact of proposed corridor acquisition was also described by one resident, as detailed in the case study below.

Case study: A residential property owners account of a proposed corridor acquisition¹⁸⁶

One submission author provided evidence of the impact of a proposed corridor on their property. The individual stated 'We were caught completely unaware that a corridor was even being considered in our area. We were completely unaware of any investigations or community consultation that had taken place and were stunned when a stranger arrived on our doorstep to hand us a white envelope advising that the government was able to acquire our land'.

This individual outlined the impact this notification had on them, given the additional restrictions added to their land. Local real estate agents confirmed that the 'property was now worthless unless they could find a property speculator who was willing to gamble on making some money further down the track'.

Discussing the emotional and financial impact of this, the individual stated: 'We were terrified about the prospect of being prisoners on our own land for 25+ years and dreaded the thought of going through a property acquisition - whether that meant via hardship terms, agreed terms or forced acquisition'.

They added: 'We were one of the lucky ones though as, after much community outcry and with the support of our local MP, the corridor was relinquished. However, the feeling of distrust of government authorities will never be extinguished'.

¹⁸² Submission 81, Ms Jo O'Brien, p 1.

¹⁸³ Submission 81, Ms Jo O'Brien, p 2.

¹⁸⁴ Submission 81, Ms Jo O'Brien, p 3.

¹⁸⁵ Evidence, Ms Jo O'Brien, Private citizen and Member, Outer Sydney Orbital Macarthur Action Group, 27 May 2022, p 7.

¹⁸⁶ Submission 80, Name suppressed, p 1.

- 2.113** In terms of compensation, sections 54 and 55 of the Act detail a landowner's entitlement to 'just compensation' and stipulate how compensation will be determined. However, in doing so, the Act specifies that 'the amount of compensation will be not less than the market value of the land at the date of acquisition'.¹⁸⁷
- 2.114** However, market value does not necessarily guarantee that the owner will receive compensation at a level that would allow the owner to purchase a similar property in a similar location. This type of compensation is referred to as 'reinstatement'.
- 2.115** Mr Ian Choudhury, Founding Member and Secretary, Appin Orbital Motorway Support Group, indicated that this is a significant issue for people who own properties that are under the threat of acquisition but that acquisition may not occur for 20 years:
- ... if buyers knew that that property in 2040 is going to be valued based on the reinstatement value of that property at the time, we would not be held ransom in our own properties for the next 20 years. We'll be able to sell by telling the new buyer that the law is the law in New South Wales—which will have to, of course, be changed—which allows the person who has got that residence to at least be reinstated. That would be wonderful for us because then we are not stuck where we are until 2040 or whatever year it is it happens in.¹⁸⁸
- 2.116** Adding to this concern, Ms O'Brien, reflected that the uncertainty about a potential acquisition and the amount of compensation they will receive has left owners in limbo:
- People feel like they are in limbo ... Their sense of security is gone, they cannot see any point in improving their homes or properties. No one will buy a property that they cannot develop and is at risk of compulsory acquisition. People are stuck in a place that they can no longer enjoy.¹⁸⁹
- 2.117** In order to make reinstatement viable, the Appin Orbital Motorway Support Group suggested that property developers and owners of land banks should be required to pay a capital gains levy which could in part fund reinstatement values for other affected landowners.¹⁹⁰
- 2.118** Other key concerns raised by inquiry participants included the time delays experienced to receive compensation,¹⁹¹ the inability to appeal Valuer General determinations or question the approach,¹⁹² the lack of community consultation¹⁹³ and the apparent refusal of the acquiring authority to consider alternate routes.¹⁹⁴

¹⁸⁷ *Land Acquisition (Just Terms Compensation) Act 1991*, s 3.

¹⁸⁸ Evidence, Mr Choudhury, 27 May 2022, pp 3, 5.

¹⁸⁹ Submission 81, Ms Jo O'Brien, p 3.

¹⁹⁰ Submission 26, Appin Orbital Motorway Support Group, p 2.

¹⁹¹ Submission 68, Name suppressed, p 1; Submission 80, Name suppressed, pp 1 and 2; Submission 26, Appin Orbital Motorway Support Group, p 2; Submission 82, The University of Sydney, p 4.

¹⁹² Submission 26, Appin Orbital Motorway Support Group, p 2.

¹⁹³ Submission 80, Name suppressed, p 1; Submission 81, Ms Jo O'Brien, pp 1-3.

¹⁹⁴ Submission 37, Name suppressed, p 1; Submission 9, Name suppressed; p 1; Submission 81, Ms Jo O'Brien, pp 2-3.

Response from Transport for NSW

- 2.119** Concerning the Outer Sydney Orbital, Mr Geoff Cahill, Director Corridor Identification and Protection, Transport for NSW, told the committee that corridor planning is essential to provide 'the absolute critical spines and connectivity ... and we want to protect those corridors prior to the area being developed'.¹⁹⁵
- 2.120** Mr Cahill advised that when completed the Orbital will provide a connection from North-West residential areas through to Western Sydney and also South-West residential areas down to the Illawarra.¹⁹⁶
- 2.121** Reflecting on the corridor identification process, Mr Cahill reflected that 'there were a number of corridors for the Outer Sydney Orbital investigated between the time of the study area being exhibited in 2015 and when we went out with a preferred corridor in 2018'.¹⁹⁷
- 2.122** Many stakeholders made representations to Transport for NSW regarding the best route and as Mr Cahill explained, 'corridor preservation involves trying to get a balance between a whole lot of competing values and interests. Residential areas are of utmost importance, as is commercial industrial precincts as well as environment engineering components'.¹⁹⁸
- 2.123** However, Mr Cahill also acknowledged that there can be significant time delays between corridors being identified and the start of construction but the cost of not doing so now would far exceed the cost of undertaking the process closer to the start of construction and perhaps prevent essential services from being built:

Those corridors may not need to be built on for 10, 20, 30, 40 or 50 years. But the objective is to plan for those now before urbanisation and other developments preclude that future transport from being built or forcing future transport to plough through homes, which would have major social disruption, or being forced to go underground, which can be some 10 times the cost and may preclude particularly public transport from being built.¹⁹⁹

Acquisitions related to the Jannali Commuter Carpark (Mary Street) project

- 2.124** In February 2019, the NSW Government committed to delivering up to 200 additional commuter parking spaces at Jannali Station,²⁰⁰ as part of the Commuter Car Park Program to 'provide customers with well-designed and conveniently located commuter parking'.²⁰¹
- 2.125** In correspondence to the Mayor of Sutherland Shire Council, dated 7 September 2020, then Minister for Transport and Roads, the Hon Andrew Constance MP, acknowledged the collaboration between the council and Transport for NSW 'to determine the best way to deliver

¹⁹⁵ Evidence, Mr Cahill, 18 March 2022, p 60.

¹⁹⁶ Evidence, Mr Cahill, 18 March 2022, p 60.

¹⁹⁷ Evidence, Mr Cahill, 18 March 2022, p 63.

¹⁹⁸ Evidence, Mr Cahill, 18 March 2022, p 68.

¹⁹⁹ Evidence, Mr Cahill, 18 March 2022, p 60.

²⁰⁰ Submission 53, Sutherland Shire Council, p 5.

²⁰¹ NSW Government, Commuter Car Park Program Jannali, February 2021, p 1.

on this commitment' but aired concerns about the council not yet finalising a 'clear pathway forward to deliver this local infrastructure'.²⁰²

- 2.126** As a result, the then Minister advised the Council that the government would proceed to deliver the project 'on its own and would not be exploring integrated delivery options with the council'.²⁰³
- 2.127** According to Transport for NSW, the preferred location for the project 'was initially the Council-owned Box Road site, however Council was unable to commit to a clear timeframe for delivery, resulting in Transport for NSW looking at alternative sites'.²⁰⁴
- 2.128** By contrast, Sutherland Shire Council advised that Transport for NSW 'broke off negotiations on the Box Road carpark site on 7 September 2020 ... but no update was provided until February 2021'.²⁰⁵
- 2.129** In February 2021, the government announced that planning was underway for a new ground plus three storey car park on Mary Street, Victoria Street and Mitchell Avenue, Jannali.²⁰⁶ This would involve the compulsory acquisition of nine residential properties.²⁰⁷
- 2.130** According to Sutherland Shire Council, the 'first awareness of the project to the most affected property owners and occupiers was a door knock by TfNSw [Transport for NSW] representatives on 11 February 2021'.²⁰⁸
- 2.131** Following the announcement, 'residents organised an effective campaign to stop the Mary Street project ... [with] Council resolv[ing] on 22 February 2021 to support them'.²⁰⁹
- 2.132** Both Sutherland Shire Council and Mr Tom Richards, Member, Save Our Homes Jannali, expressed the view that the proposed commuter car park on Mary St lacked transparency, planning, justification and community consultation, particularly given that the project involved the compulsory acquisition of nine homes.²¹⁰
- 2.133** On 4 March 2021, during this inquiry, Transport for NSW withdrew the compulsory acquisition notices for the nine homes and abandoned the Mary Street project.²¹¹
- 2.134** As of November 2021, Transport for NSW advised on the project's website that it was again working with Sutherland Shire Council to deliver the project at the Box Road site by 2024. It

²⁰² Submission 53, Sutherland Shire Council, p 5.

²⁰³ Submission 53, Sutherland Shire Council, p 5.

²⁰⁴ Transport for NSW, Jannali Commuter Carpark, 2 November 2021, <https://www.transport.nsw.gov.au/projects/current-projects/jannali-commuter-car-park>

²⁰⁵ Submission 53, Sutherland Shire Council, p 2.

²⁰⁶ NSW Government, Commuter Car Park Program Jannali, February 2021, p 1.

²⁰⁷ Submission 53, Sutherland Shire Council, p 2.

²⁰⁸ Submission 53, Sutherland Shire Council, p 2.

²⁰⁹ Submission 53, Sutherland Shire Council, p 2.

²¹⁰ Submission 53, Sutherland Shire Council, pp 2- 3; Submission 51, Save Our Homes Jannali, pp 2 and 7; Evidence, Mr Tom Richards, Member, Save Our Homes Jannali, 18 February 2022, p 10.

²¹¹ Submission 53, Sutherland Shire Council, p 8; Evidence, Mr Richards, 18 February 2022, p 10.

also confirmed that it was 'no longer proceeding with the acquisition of any residential properties as part of the Jannali Commuter Car Park project'.²¹²

Acquisition of properties in relation to the WestConnex project

- 2.135** This inquiry also heard concerns about property acquisitions in relation to the WestConnex project. A number of these concerns mirrored those that arose during the 2018 Public Accountability Committee inquiry into the impact of the WestConnex project.²¹³
- 2.136** WestConnex is the largest infrastructure project in Australia, linking Western and South-Western Sydney with the city, airport and port in a 33-kilometre continuous motorway.²¹⁴ WestConnex will also link Greater Sydney to major international gateways at Sydney Airport and Port Botany, and the future Western Harbour Tunnel, BeachesLink and F6 extension.²¹⁵
- 2.137** WestConnex is being delivered in four stages and as of July 2022, two stages of this project had been completed with a further two stages, the M4-M5 Link Tunnels and the Rozelle Interchange, to be delivered in 2023.²¹⁶
- 2.138** As mentioned in Chapter 1, the acquisition process for WestConnex was undertaken by the former Roads and Maritime Services prior to 1 December 2019. After this date Transport for NSW assumed responsibility.

Key issues raised by inquiry participants

- 2.139** During the inquiry the committee heard from Heworth Holdings Group, the owners of the former Balmain Tigers Rugby League Club, and former Inner West residents who had their properties compulsorily acquired for the construction of the WestConnex project.
- 2.140** Consistent across witnesses and submissions were reports of poor process, lack of consultation, the acquisition of substratum land without compensation, property damage and extensive disruption from protracted construction noise and land subsidence.²¹⁷

²¹² Transport for NSW, Jannali Commuter Carpark, 2 November 2021, <https://www.transport.nsw.gov.au/projects/current-projects/jannali-commuter-car-park>

²¹³ Public Accountability Committee, NSW Legislative Council, *The impact of the WestConnex project* (2018), pp 85-99, 102-108, 113-120.

²¹⁴ NSW Government, WestConnex, <https://www.nsw.gov.au/westconnex>

²¹⁵ NSW Government, WestConnex, <https://www.nsw.gov.au/westconnex>

²¹⁶ WestConnex and Transurban, About WestConnex, <https://www.westconnex.com.au/explore-westconnex/about-westconnex/>

²¹⁷ For example see: Evidence, Ms Rosemarie Gates, Leichhardt residents, 27 May 2022, p 21; Evidence, Mr Raymond Greig, Former St Peters resident, 27 May 2022, p 22; Evidence, Mrs Sandra Greig, Former St Peters resident, 27 May 2022, p 22; Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, pp 22-23, 27; Evidence, Mr John Bartholomew, Committee Member, Rozelle Against WestConnex, pp 23-24; Evidence, Mr Colin Charlton, Former St Peters resident, 27 May 2022, pp 25-26; Submission 65, Mr Jamie Parker MP, p 2; Submission 73, Cr Pauline Lockie, p 8.

2.141 Of further concern was the conduct of the acquiring authority and the inability of landowners to obtain what they considered to be reasonable compensation. Mr Peter Hehir, Convenor, Rozelle Against WestConnex, told the committee that he was in touch with approximately 850 families, many of whom felt that they were coerced into accepting 60% or less of the market value of their property.²¹⁸

2.142 Claims of intimidation and bullying, resulting in unjust compensation, was also supported by Councillor Pauline Lockie:

As one of the main spokespeople for WAG, and someone who'd been regularly interviewed in the media about my own acquisition, I was contacted by many residents who shared their experiences of the process with me. Their stories highlighted the various ways in which ordinary people were bullied by the RMS, and forced to accept offers that were tens, if not hundreds, of thousands below what they were legally entitled to receive. Many of these residents were too frightened to go public with their experiences in case they were treated even more poorly.²¹⁹

2.143 Providing a business perspective, Heworth Holdings Group were particularly critical of the acquisition process of their site. Mr Christopher Walsh, Head of Property, told the committee that 'Heworth has incurred over \$1 million in professional fees, approximately \$15 million in holding costs, and has suffered a 21-month delay to the development program'.²²⁰ Transport for NSW 'repeatedly and significantly delayed ... and has not ever provided an open offer of compensation'.²²¹

2.144 Mr Walsh went further to argue that the *Land Acquisition (Just Terms Compensation) Act 1991* is too heavily weighted in favour of an acquiring authority:

The conduct of Transport for NSW as a whole is simply representative of how heavily weighted the just terms Act is towards the acquiring authority and how a landowner's rights are dependent on a box-ticking exercise with no real certainty until the final hammer falls.²²²

2.145 Other issues raised during the current inquiry included:

- the inability of landowners to effectively negotiate with acquiring authorities²²³
- the disparity of some compensation outcomes for similar properties in the same locality²²⁴
- issues with determinations made by the Valuer General²²⁵

²¹⁸ Evidence, Mr Hehir, 27 May 2022 p 27. See also: Evidence, Mr Charlton, 27 May 2022, p 26; Evidence, Mrs Greig, 27 May 2022, p 22.

²¹⁹ Submission 76, Cr Pauline Lockie, p 5.

²²⁰ Evidence, Mr Christopher Walsh, Head of Property, Heworth Holdings Group, 6 October 2021, p 9.

²²¹ Evidence, Mr Walsh, 6 October 2021, p 9.

²²² Evidence, Mr Walsh, 6 October 2021, p 9.

²²³ Submission 65, Mr Jamie Parker MP, p 1; Submission 67, Mr Richard Capuano, p 7; Submission 76, Cr Pauline Lockie, pp 3-4; Submission 85, Inner West Council, pp 3, 4-5.

²²⁴ Evidence, Mr Charlton, 27 May 2022, p 25; Evidence, Mrs Greig, 27 May 2022, p 22;

²²⁵ Submission 76 Cr Pauline Lockie, pp 3-4; Submission 67, Mr Richard Capuano, pp 4-5, 10-11.

- the inability of owners to purchase in the same area resulting in displacement²²⁶
- the exclusion of uplift value in determining compensation²²⁷
- compensation for hardship applications excluding disturbance, severance and solatium payments²²⁸
- the WestConnex project acquiring surface properties and substratum rights using public funds and awarding ownership to Transurban²²⁹
- the level of tunnelling being significantly shallower than the approved plans.²³⁰

Response to the 2018 inquiry into the impact of WestConnex

- 2.146** In response to the Public Accountability Committee's 2018 inquiry into the impact of WestConnex, the NSW Government provided a response in June 2019 to the report's recommendations, some of which address the concerns raised by affected homeowners and businesses.
- 2.147** First, the Government reported that its strong preference was for acquisitions to be completed on agreed terms with landowners, stating that owners are 'encouraged to seek the services of legal advisors to assist with negotiations and the overall acquisition process'. The NSW Government, in this response, stated that over 80 per cent of land acquisition matters for WestConnex were completed on agreed terms and not compulsorily acquired.²³¹
- 2.148** The NSW Government also provided a response on the issue of property damage, stating that it was committed to ensuring that property owners are treated fairly and will hold the contractor accountable for any damage judged to be caused by construction works. The government said that this process requires the owner to submit a claim to the contractor who will then determine if they are at fault for the damage incurred, and if a homeowner is dissatisfied with the outcome they can request a review of the decision.²³²
- 2.149** To address issues of noise disturbance, the NSW Government noted that additional noise mitigation strategies were put in place including a number of reports and reviews to be undertaken by the Acoustics Advisor and Community Complaints Mediator, which would be made available to the public.²³³

²²⁶ Submission 58, Mr Raymond and Mrs Sandra Greig, p 3; Submission 65, Mr Jamie Parker MP, p 2; Submission 76 Cr Pauline Lockie, p 1; Submission 78, Mr Colin Charlton, p 1.

²²⁷ Submission 65, Mr Jamie Parker MP, p 2.

²²⁸ Submission 65, Mr Jamie Parker MP, p 2; Submission 33, Mr Christopher McIntyre, p 1.

²²⁹ Submission 50, RAW (Rozelle Against WestConnex), p 5; Evidence, Ms Gates, 27 May 2022, p 22; Evidence, Mr Charlton, 27 May 2022, p 26.

²³⁰ Submission 14, Mr Michael Gill, p 1; Submission 55, Ms Rosemarie Gates, p 1.

²³¹ Correspondence from the Hon Andrew Constance MP, Minister for Transport and Infrastructure to the Clerk of the Parliaments, providing government response to the inquiry into the impact of the WestConnex project, 17 June 2019.

²³² Government response to the inquiry into the impact of the WestConnex project, 17 June 2019.

²³³ Government response to the inquiry into the impact of the WestConnex project, 17 June 2019.

- 2.150** Further, on the issue of the mental health impacts of acquisition and construction, the NSW Government acknowledged that the process can be distressing, subsequently leading to the provision of independent and confidential counselling to affected residents. The NSW Government also highlighted the role of 'Personal Managers' in the process, being those appointed to guide and support owners through the acquisition process.²³⁴
- 2.151** Despite the government's response after the 2018 inquiry, many of the residents continue to maintain concerns with how they were treated during the acquisition process and how the legislation failed to provide them with 'just compensation'.
- 2.152** Some of the frustrations conveyed through submission and oral testimony include:
- 'There has been no review, not even an attempt to reach out to homeowners, nothing. The Committee failed to hold the RMS and Govt accountable – and many are of the opinion they have turned their backs on us'.²³⁵
 - 'I have received literally hundreds of emails and phone calls from people who were incredibly distressed about the whole process and who confided in me that they had been forced, coerced, badgered and bashed into accepting ... market value of their property'.²³⁶
 - 'Speaking with people who have been through it and who are about to go through it, there is still that fear, but nothing has changed. It has gotten worse. They are still being cheated'.²³⁷
 - 'We ask for a full review of our acquisition, and to be recompensed the compensation that the RMS and NSW Government have cheated from us'.²³⁸

Historical review of compensation

- 2.153** The seriousness of these findings, and evidence provided by the Valuer General, along with the significant discrepancies in compensation paid for similar properties during other acquisition processes, in particular WestConnex, led to calls for a historical review of past acquisitions. For example, Cr Pauline Lockie, specifically requested that the WestConnex acquisition process be reviewed:

... I believe the acquisitions for WestConnex need to be investigated. I appreciate that would be a very big task, but ... giving people who want to have their case revisited the opportunity to do so, and to have some rectification made available for those people, would be a really important step forward for the Government to reinstall faith in this system.²³⁹

- 2.154** Similarly, Mr Ian Choudhury, Founding Member and Secretary, Appin Orbital Motorway Support Group and Mr Colin Charlton, a former resident of St Peter's strongly supported the

²³⁴ Government response to the inquiry into the impact of the WestConnex project, 17 June 2019.

²³⁵ Submission 67, Mr Richard Capuano, p 17.

²³⁶ Evidence, Mr Hehir, 27 May 2022, p 26.

²³⁷ Evidence, Mr Richard Capuano, Former St Peters resident, 27 May 2022, p 27.

²³⁸ Submission 58, Mr Raymond and Mrs Sandra Greig, p 3.

²³⁹ Evidence, Cr Pauline Lockie, Inner West Council, 27 May 2022, pp 17-18.

proposition of reviewing valuations to ensure they were fair.²⁴⁰ A historical review was also unequivocally supported by Rozelle Against WestConnex.²⁴¹

Committee comment

- 2.155** The committee's objective in commencing this inquiry was to take a close look at the application and operation of the *Land Acquisition (Just Terms Compensation) Act 1991*, with the framework for this investigation being largely driven by the examination of acquisitions in relation to specific major transport projects.
- 2.156** On this basis, the committee sought to explore not only the concerns of affected landowners in relation to particular projects, but also the high level policy issues related to the application of the Act.
- 2.157** While the committee acknowledges that land acquisition is a necessary part of ensuring that public infrastructure meets the current and future needs of the community, it is absolutely critical for the land acquisition process to be fair, transparent and supportive for those impacted.
- 2.158** In this regard, the committee notes measures which have been implemented to improve the acquisition process, arising from the Pratt Review, the Auditor General's report and the review of structure and practices as a result of RMS being integrated into Transport for NSW. However, as evidence to this inquiry shows, further improvements are clearly needed to minimise the impact of acquisitions on affected landowners, to ensure people are not displaced unnecessarily and that people and business are compensated fairly.
- 2.159** Turning now to the acquisition of the Camellia site for the Parramatta Light Rail project, the committee notes the Auditor General's concerns and findings. While the lack of due diligence, probity and process in relation to this acquisition is considered an 'outlier' by some, the transaction has clearly done nothing to instil public confidence in Transport for NSW's approach to acquisitions.
- 2.160** Although a number of internal audits have been conducted to ensure the same mistakes are not being repeated, the committee believes there would be benefit in having a broader independent review. We therefore recommend that the NSW Government commission an independent review into land acquisitions undertaken in relation to each of the major transport projects referred to in this report, with the review to consider probity issues and compliance with the legislative framework, and compensation outcomes for affected landholders, and the findings of this review to be published. Additionally, to the extent these reviews identify errors, property owners should be retrospectively compensated.

Finding 1

That the NSW Government's purchase of 4-6 Grand Avenue, Camellia led to a loss of tens of millions of public dollars.

²⁴⁰ Evidence, Mr Choudhury, 27 May 2022, p 4; Evidence, Mr Charlton, 27 May 2022, p 28.

²⁴¹ Evidence, Mr Hehir, 27 May 2022, p 28.

Recommendation 1

That the NSW Government commission an independent review into land acquisitions undertaken in relation to each of the major transport projects referred to in this report, with:

- this review to consider probity issues and compliance with the legislative framework and compensation outcomes for affected landholders
 - previous property owners entitled to additional compensation to rectify errors by acquiring authorities
 - the findings of this review to be made publicly available.
-

- 2.161** Furthermore, the committee recommends that the NSW Government implement a continuous review process, to ensure acquiring authorities comply with legislative frameworks for future acquisitions related to transport projects.
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Recommendation 2

That the NSW Government implement a continuous review process, to ensure acquiring authorities comply with legislative frameworks for future acquisitions related to transport projects.

- 2.162** Early in this inquiry the committee met with a number of Orchard Hills residents who were having their homes acquired in relation to the Sydney Metro Western Sydney Airport project. The committee could see that residents were understandably devastated at losing their homes, and stressed and frustrated with the acquisition process.
- 2.163** The committee was alarmed to receive evidence that compensation offers for some of these residents had increased by more than 70 per cent between the initial and final offers. While some movement during the negotiation process is understandable and to be expected, an increase as significant as this begs the question as to whether the first offer was unreasonably low. It is also difficult to accept that valuations should be significantly affected or devalued by the Draft Cumberland Plain Conservation Plan or the mere existence of three trees.
- 2.164** Two other concerns from Orchard Hills residents stood out to the committee. The first was the high costs incurred by some residents to access legal advisors and valuers, with some paying over \$100,000 for this assistance. The second was the physical and emotional impact of the process on homeowners, and the displacement that would be caused by people not being able to buy back within their home suburb. The committee makes recommendations addressing these issues in the next chapter.
-

Finding 2

That, on the evidence presented, Sydney Metro has not negotiated in good faith with the residents of Orchard Hills.

- 2.165** The now defunct Jannali Commuter Carpark (Mary Street) project was yet another example of the detrimental impact the acquisition process can have on property owners. Owners were caught off guard with the news that their homes were to be acquired, when clearly Transport for NSW could have worked more effectively with the local council to identify more appropriate locations for the car park that would minimise the impact the build would have on residents. While the matter has since been resolved, the committee questions to what extent Transport for NSW was acting transparently and responsibly within the parameters of the acquisitions framework.
- 2.166** Overall, across the specific projects we examined, it was clear that there are a number of similar issues and concerns regarding the acquisition process and its impact on landowners. We repeatedly heard concerns about the method of determining compensation, the timeliness of the process, and the lack of appropriate consultation and communication with communities. These broader policy issues are discussed in the next chapter.
- 2.167** On the issue of corridor planning, the committee acknowledges that there is an unprecedented number of transport projects underway, and likely a high number of future acquisitions. Despite the necessity, scale and number of these projects, corridor planning and land acquisitions should not be an opportunity for the Government to capitalise on uncertainty while decisions are made regarding final routes.
- 2.168** It is not acceptable for landowners to be kept in the dark for extended periods of time while their lives and the value of their properties are kept in limbo. In our view there needs to be either additional compensation for delays or a reinstatement approach to the determination of compensation to ensure property owners are fairly treated and not disadvantaged. We address this issue in further detail in the following chapter.

Chapter 3 Adequacy of the framework and policy approach to land acquisitions

This chapter considers the adequacy of the legislative and policy approach to land acquisitions by acquiring authorities. It will outline concerns related to the negotiation process and to the provision of 'just compensation' under the *Land Acquisition (Just Terms Compensation) Act 1991*. The chapter also examines concerns related to the timeliness of determinations by the Valuer General, along with the emotional impact of the acquisition process on landowners.

The negotiation process

- 3.1** As discussed in Chapter 1, the *Land Acquisition (Just Terms Compensation) Act 1991* (the *Act*) is the legislative vehicle that allows for the compulsory acquisition of land by authorities of the State.²⁴² In administering this legislation, the key objective is to acquire land by agreement, with the NSW Government stating that the overall process 'has been designed to be fair, easy to understand, and transparent for those affected', providing 'landowners with comprehensive support throughout the process'.²⁴³
- 3.2** Under Section 10A of the *Land Acquisition (Just Terms Compensation) Act 1991* the 'authority of the State is to make a genuine attempt to acquire the land by agreement for at least six months before giving a proposed acquisition notice'.²⁴⁴
- 3.3** Concerns were raised during the inquiry as to whether acquiring authorities are making a genuine attempt to negotiate during the acquisition process. Many inquiry participants contended that the negotiation process is unfair for landowners, often stemming from the imbalance in power between the parties.

Lack of a genuine approach to negotiations

- 3.4** Some stakeholders contended that acquiring authorities are often not willing to genuinely negotiate, as required under section 10A of the Act. In this regard some argued that the legislation should be clarified and/or strengthened, to ensure acquiring authorities are approaching negotiations in a manner that is fair, transparent and supportive to landowners.
- 3.5** Beatty Legal highlighted that the legislation provides no guidance as to how negotiations are to be conducted by acquiring authorities. In fact, the firm claimed that 'most acquiring authorities adopt ... a largely adversarial approach that requires affected owners to submit and plead their claim before the authority and its experts'.²⁴⁵

²⁴² *Land Acquisition (Just Terms Compensation) Act 1991*, s 3.

²⁴³ Submission 73, NSW Government, p 2.

²⁴⁴ *Land Acquisition (Just Terms Compensation) Act 1991*, s 10A(2).

²⁴⁵ Submission 39, Beatty Legal, p 3.

- 3.6** In its submission, Beatty Legal outlined recent matters in which acquiring authorities have:
- been unwilling to consider any offers above what their own panel valuer has determined even where an affected owner has provided a competing valuation from a senior and experienced valuer using the same methodology
 - tried to dictate to affected owners which experts they may engage and at what cost
 - refused to seek opinions from third party valuers independent of the State
 - declined to extend the six month negotiating period in instances where plans have changed such that fresh expert evidence is necessary regarding market value
 - resisted making payments of advance compensation to help affected owners engage experts to participate in the negotiation process.²⁴⁶
- 3.7** The Law Society of NSW raised a concern that the first letter of offer, given during the negotiation period, can often lack adequate details to demonstrate how the figure was derived. At this stage, a valuation report is not generally provided, and the only way an owner/occupier can reasonably determine if the offer is reasonable is to obtain their own valuation report at their own cost.²⁴⁷
- 3.8** This position was echoed by Newhouse and Arnold Solicitors who argued that by making the acquiring authorities provide the 'valuation and any other reports relied upon' with the offer of compensation, affected landowners could better understand the basis of the claim.²⁴⁸
- 3.9** Some stakeholders raised a concern that the full six month negotiation period is not utilised as intended, given acquiring authorities often provide a letter of offer several months after the first acquisition notice.
- 3.10** This was an issue experienced by Councillor Pauline Lockie, Inner West Council, who had her home compulsorily acquired as a result of the WestConnex project. Cr Lockie told the committee that negotiations for her property did not commence until a few weeks before the six month period was due to expire. In her view, 'there is nothing in the legislation that compels agencies to genuinely negotiate'. She added:
- I think the reason that changes once you enter the court process is that a lot of the rights that landowners have to various elements of compensation are actually in case law. Unless you are in a process where a judge will call you out if you are not awarding compensation that you are required to, there is nothing to compel the agencies, as it stands, to do that.²⁴⁹
- 3.11** Like Cr Lockie, The Law Society of NSW also raised an issue in relation to the six month negotiation period under section 10A, noting that a letter of offer is often only provided two to three months after the first notice.²⁵⁰

²⁴⁶ Submission 39, Beatty Legal, pp 5-6.

²⁴⁷ Submission 61, The Law Society of New South Wales, p 5, also Submission 35, My Ray Dib, p 20.

²⁴⁸ Submission 36, Newhouse and Arnold Solicitors, p 4; see also Evidence, Ms Ballanda Sack, Special Counsel, Beatty, Hughes and Associates, 18 March 2022, p 15.

²⁴⁹ Evidence, Cr Lockie, 27 May 2022, p 15.

²⁵⁰ Submission 61, The Law Society of NSW, p 5.

- 3.12** Other concerns were put forward about the approach of acquiring authorities to the negotiation phase. Based on its experiences with Transport for NSW regarding acquisitions of land for WestConnex, the Sydney Gateway and the Western Harbour Tunnel, the Inner West Council contended that 'genuine negotiations really never happen with Transport, as it refuses to meet or exchange valuations to genuinely attempt to negotiate a reasonable outcome'.²⁵¹
- 3.13** Mr Matthew Pearce, General Counsel, Inner West Council, commented that the conduct of Transport for NSW 'during the acquisition process, and the associated negotiations for these major transport projects, can only be described as inconsistent, unfair and lacking transparency' with some council employees describing 'the negotiations as brutal'.²⁵²
- 3.14** Mr Pearce stated that he did not feel Section 10A of the Act offered more transparency and open negotiation during the six month period, stating that Inner West Council had experienced occasions in which Transport for NSW has refused to meet at all and refused to exchange valuations, making it difficult for the Council to understand the reasons for the value of compensation offered.²⁵³
- 3.15** As a result of its dealings with Transport for NSW to date, Mr Pearce advised that Inner West Council will refer matters to the Valuer General if it is clear Transport for NSW is not making a genuine attempt to negotiate:
- Transport does not make a genuine attempt to negotiate an outcome over the six months. As a consequence, the council's general position is, if the six months comes and goes and we are not satisfied with any outcome that results from the negotiation process, we will just refer it to the VG [Valuer General]. Whatever we get back from the VG, if we accept that, fine. If not, we will just go to court.²⁵⁴
- 3.16** With similar concerns, Mr David Newhouse, Partner, Newhouse & Arnold Solicitors, stated that he had 'seen a consistent policy of stonewalling by acquiring authorities in recent times'. Mr Newhouse cautioned that if acquiring authorities did not make genuine attempts to acquire land by negotiation, then the consequences would be 'more and more matters will go and are going to the Valuer General or owners are worn down by the process to just accept the low offers'.²⁵⁵
- 3.17** The committee also received evidence on this issue directly from those who are having or have had their properties compulsorily acquired. Mrs Therese Grima, an Orchard Hills resident, spoke of her experience with Sydney Metro acquiring her property, contending that the 'process is not a negotiation':

[e]very offer we made to them was refused and they did not want to negotiate. It has been a heart-wrenching process. We have been professional and courteous and treated Sydney Metro with respect all the way through this process. Every offer we made to them was refused and they did not want to negotiate.²⁵⁶

²⁵¹ Evidence, Mr Matthew Pearce, General Counsel, Inner West Council, 18 March 2022, p 22.

²⁵² Evidence, Mr Pearce, 18 March 2022, p 22.

²⁵³ Evidence, Mr Pearce, 18 March 2022, p 23.

²⁵⁴ Evidence, Mr Pearce, 18 March 2022, p 23.

²⁵⁵ Evidence, Mr David Newhouse, Partner, Newhouse & Arnold Solicitors, 18 March 2022, p 11.

²⁵⁶ Evidence, Mrs Grima, 5 October 2021, p 10.

- 3.18** Similarly, Mr Raymond and Mrs Sandra Greig, former St Peters residents, reported that their experience of acquisition for WestConnex left them feeling 'completely powerless and there was no negotiation with the RMS. They were particularly cruel to us, and abused our trust and their authority'.²⁵⁷

Imbalance of power

- 3.19** A number of inquiry participants noted that there is an imbalance of power between a landowner and acquiring authority, with many highlighting this as an issue in relation to the negotiation process, particularly in terms of access to information and experts, to assist in establishing if the compensation offered is fair.²⁵⁸
- 3.20** In its submission, Beatty Legal argued that the existing negotiation process does not enable and help 'affected owners to pursue their entitlement to compensation for the loss of their land' and that rather it 'imposes, in reality, a significant, mandatory, economic burden on them while offering limited opportunity for meaningful negotiations'.²⁵⁹
- 3.21** Beatty Legal observed that the acquisition process means '[a]ffected owners are currently forced to incur substantial costs and expend significant time and energy in order to exercise their right to obtain “just” compensation by participating in a foreign, technical, and rigid exercise, at the end of which many of their claims are rejected by the acquiring authority'.²⁶⁰
- 3.22** Furthermore, the firm concluded that '[t]he process is one that exacerbates the inherent disparity in negotiating power favouring acquiring authorities that arises from the statutory right to compulsorily acquire land, and which forces affected owners to either compromise their claim or to be willing to litigate'.²⁶¹
- 3.23** Similarly, Ms Ballanda Sack, Special Counsel, Beatty, Hughes and Associates, told the committee that when entering negotiations with the acquiring authorities '[t]here is no sense ... that it is like a mediation, a meeting of equal parties or that there is an independence to it'. She noted that the stonewalling experienced by property owners was 'extremely distressing' given that there was 'this false hope of a process that is fair and that they will get just compensation, yet the first time they see the resuming authority face to face, it is very clear that this is not a negotiation'.²⁶²

²⁵⁷ Submission 58, Mr Raymond and Sandra Greig, p 2.

²⁵⁸ See for example: Evidence, Mr Christopher Drury, Deputy Chair, Environmental Planning & Development Committee, The Law Society of New South Wales, 6 October 2021, p 2; Evidence, Mr Vella, 5 October 2021, p 2; Evidence, Mr Xiberras, 5 October 2021, pp 3-4; Evidence, Mrs Grima, 5 October 2021, p 10; Submission 18, Mr Andrew Fryc, p 1; Submission 39, Beatty Legal, p 2; Submission 54, Name suppressed, pp 1-2; Submission 55, Ms Rosemarie Gates, p 1; Submission 60, LPG Holdings Pty Ltd, p 2.

²⁵⁹ Submission 39, Beatty Legal, p 3.

²⁶⁰ Submission 39, Beatty Legal, pp 1-2.

²⁶¹ Submission 39, Beatty Legal, p 3.

²⁶² Evidence, Ms Sack, 18 March 2022, p 13.

- 3.24** This was supported by many inquiry participants who argued the negotiation process with acquiring authorities to acquire land by agreement was 'unfair'.²⁶³ Submission author, Mr John Douglas, described the process with acquiring authorities as '[e]ssentially ... a David & Goliath battle leaving those affected with little confidence of achieving a fair outcome or to maintain the status quo where they live or maintain the viability of their business'.²⁶⁴
- 3.25** Other inquiry participants contended that the acquisition is biased in the government's favour:
- 'the determination of the acquiring authorities is biased in favour of the NSW government to reduce our just compensation'²⁶⁵
 - 'the Compulsory Acquisition process seems broken and heavily biased towards achieving a great outcome for the NSW Government, while ignoring the costs impacts and disruption of the owners they compulsorily displace'²⁶⁶
 - '...it is a general feeling of the community—that the legislation is heavily weighted towards the Government'.²⁶⁷
- 3.26** There was also a concern that the use of non-disclosure agreements by acquiring authorities limits the negotiation process, with this lack of transparency leading to inequitable outcomes in the acquisition process for those with similar properties.
- 3.27** Mr Jamie Parker MP, Member for Balmain, stated that the requirement for property owners to sign non-disclosure agreements was evidence of state authorities attempting to limit the flow of information to other concerned parties and deny them transparency and the opportunity to negotiate for a similar outcome.²⁶⁸
- 3.28** Reflecting on her experience with the acquisition process as a private individual, Cr Lockie noted that the only reason she has been able to be so candid with the committee about her experience was because she was not required to sign a non-disclosure agreement.²⁶⁹ However, as her next door neighbour Mr Colin Charlton pointed out, the settlements that they received for their respective properties, of a similar size and condition, varied by \$450,000.²⁷⁰
- 3.29** While Cr Lockie proceeded to a determination by the Valuer General, Mr Charlton did not, explaining to the committee how he was worn down by the process and unable to 'even take what the other properties got into consideration'.²⁷¹

²⁶³ See for example: Submission 75, FM Legal Pty Ltd, p 2; Submission 67, Mr Richard Capuano, p 20; Submission 57, Mr Walter McKenzie, p 2; Submission 31, Mr John Douglas, p 1; Submission 44, Name Suppressed, p 1; Submission 63, Hawkesbury City Council, p 1; Submission 76, Cr Pauline Lockie, p 1; Submission 85, Inner West Council, p 5; Submission 19, Name suppressed, p 1.

²⁶⁴ Submission 31, Mr John Douglas, p 4.

²⁶⁵ Submission 18, Mr Andrew Fryc, p 2.

²⁶⁶ Submission 31, Mr John Douglas, p 1;

²⁶⁷ Evidence, Mrs Vella, 5 October 2021, p 16.

²⁶⁸ Evidence, Mr Jamie Parker MP, Member for Balmain, 27 May 2022, p 13.

²⁶⁹ Evidence, Cr Lockie, 27 May 2022, pp 13-14.

²⁷⁰ Evidence, Mr Charlton, 27 May 2022, p 25.

²⁷¹ Evidence, Mr Charlton, 27 May 2022, p 25.

- 3.30** Related to the imbalance of power being experienced by landowners, some stakeholders also commented on the challenges associated with having to deal with different staff when dealing with acquiring authorities. Mr Pearce, Inner West Council, gave evidence that 'for each compulsory acquisition, we deal with a different 'Transport team', commenting that the approaches are often inconsistent'.²⁷²
- 3.31** Mr Pearce was of the view that if there was continuity in the acquiring authority, there would be greater consistency, and the opportunity to build an ongoing relationship for a quicker process.²⁷³ He argued that all acquisitions should be 'assisted or determined by the Centre of Property Acquisitions, who should utilise employed and experienced acquisition officers ... [to] alleviate the different internal approaches and procedures ...'.²⁷⁴

Potential improvements to Section 10A

- 3.32** Newhouse and Arnold Solicitors, Beatty Hughes and Associates and the Law Society of New South Wales put forward suggestions as to how Section 10A could work better to benefit property owners involved in the acquisition process.
- 3.33** In terms of property owners being notified of a proposed acquisition, Newhouse and Arnold Solicitors insisted that the opening letter advising of the intended acquisition should occur within 7 days of the government's announcement, in order for owners to avoid the 'limbo' experienced when waiting for an opening meeting with the acquiring authority.²⁷⁵ It also called for an offer for compensation to be issued by the acquiring authority 'within 28 days of its opening letter, to ensure that the 6 month period can be fully utilised'.²⁷⁶
- 3.34** Likewise, The Law Society of New South Wales suggested that the six month negotiation period under Section 10A of the Act 'should commence when a letter of offer is received' and not when a letter is sent noting the intent of the acquiring authority to acquire land.²⁷⁷
- 3.35** The Law Society of New South Wales and Beatty Legal were also of the view that funds should be provided upfront by acquiring authorities to property owners to assist with obtaining expert advice.²⁷⁸ Beatty Legal suggested that \$50,000 should be provided to freehold interest owners, and \$25,000 to other owners.²⁷⁹
- 3.36** Both Mr Newhouse and Ms Sack noted the importance of property owners having upfront access to funds from the acquiring authorities to assist with mortgage payments, and other out-of-pocket up-front expenses such as engaging experts to assist with valuations and legal representation when dealing with the acquiring authorities.²⁸⁰

²⁷² Evidence, Mr Pearce, 18 March 2022, p 23.

²⁷³ Evidence, Mr Pearce, 18 March 2022, p 30.

²⁷⁴ Evidence, Mr Pearce, 18 March 2022, pp 12-13.

²⁷⁵ Submission 36, Newhouse and Arnold Solicitors, p 4.

²⁷⁶ Submission 36, Newhouse and Arnold Solicitors, p 4.

²⁷⁷ Submission 61, The Law Society of New South Wales, p 5.

²⁷⁸ Submission 61, The Law Society of New South Wales, p 5; Submission 39, Beatty Legal, p 2.

²⁷⁹ Submission 39, Beatty Legal, p 3.

²⁸⁰ Evidence, Mr Newhouse, 18 March 2022, p 15; Evidence, Ms Sack, 18 March 2022, p 15.

- 3.37** Beatty Legal further suggested that 'statutory protection should be afforded for any costs reasonably incurred by the affected owner during the negotiation phase where the proposed acquisition is withdrawn before the issue of a Proposed Acquisition Notice'.²⁸¹
- 3.38** The committee also explored the need for an alternate dispute resolution process as a means to avoid compulsory acquisition. Beatty Legal suggested that once an opening letter is served on an owner advising of the proposed acquisition, a mediator should be appointed, with the costs of this service to be borne by the government.²⁸²
- 3.39** Ms Sack explained that an alternative dispute resolution process provided early on, before a property acquisition notice is issued, may assist in avoiding a compulsory acquisition.²⁸³
- 3.40** Ms Sack noted the importance of an 'independent voice' in the acquisition process which was lacking and, as a result, driving the outcomes currently being witnessed. Ms Sack suggested this could be remedied 'by way of a dedicated agency or ... having an opportunity for a mediator'.²⁸⁴
- 3.41** Cr Lockie also strongly supported the need for a dispute resolution service to be provided saying that it wasn't until her family had entered the court process that the acquiring authority was willing to negotiate:

There is an urgent need for further legislative reform to level this playing field so that people whose properties are being acquired are treated fairly and compassionately. Introducing a truly independent mediation service with the power to make acquiring agencies genuinely negotiate early in the process would help

...

Having some sort of independent mediation service come in that had the power to compel agencies to genuinely negotiate is important because certainly what my family found was that once we entered the court process—the Land and Environment Court—and began that mediation process, we suddenly started seeing resistance to some of the claims that we put forward drop. You can see that in the final amount that we received.²⁸⁵

NSW Government perspective

- 3.42** In its submission to the inquiry, the NSW Government noted that the Centre for Property Acquisition was 'responsible for overseeing the acquisition process and training managers and support personnel, with an emphasis on meeting landowners' needs and proactively providing advice and assistance'.²⁸⁶

²⁸¹ Submission 39, Beatty Legal, p 2.

²⁸² Submission 39, Beatty Legal, p 7.

²⁸³ Evidence, Ms Sack, 18 March 2022, p 11.

²⁸⁴ Evidence, Ms Sack, 18 March 2022, p 13.

²⁸⁵ Evidence, Cr Lockie, pp 12 and 15.

²⁸⁶ Submission 73, NSW Government, p 3.

3.43 The NSW Government advised that any agency acquiring land or property under the Act must observe and comply with the *Property Acquisition Standards* of the the Centre for Property Acquisition.²⁸⁷ These standards were outlined in paragraph 1.39.

3.44 The NSW Government explained that all Transport for NSW and Sydney Metro property acquisition team members are required to complete mandatory training provided by the Centre for Property Acquisition and ongoing training courses, with these ensuring 'that all persons involved in communication with landowners regarding land acquisitions have appropriate training in empathy and consideration of the support required for landowners during the acquisition and relocation process'.²⁸⁸

3.45 Mr Peter Regan, Chief Executive, Sydney Metro, told the committee that the land acquisition process is not taken lightly, acknowledging that 'it can be a very stressful and difficult process and time for affected property owners'. On the issue of negotiation, Mr Regan added:

... we absolutely do our best to try to reach agreement and reach agreement in a positive and collaborative fashion with as many owners as we can. In that regard, I think the record does speak for itself that we have reached agreement. It is a difficult space because—we do get lots of feedback that is positive.²⁸⁹

3.46 Transport for NSW's Property Acquisition Policy states they are 'committed to accountable, professional, fair and consistent property acquisition' which is achieved through 'transparent decision making' and 'central oversight' and 'non-compliance may result in disciplinary action, up to and including dismissal'.²⁹⁰

3.47 Mr Mark Slater, Executive Director Property Group, Infrastructure and Place, Transport for NSW, echoed Sydney Metro's evidence stating that land and property acquisitions can be complex and challenging and they work closely with owners to ensure fair compensation is paid:

... it is equally important that land acquisitions for these purposes are fair and transparent and contain the necessary checks and balances ... Transport works closely with home and business owners to ensure they receive fair compensation in accordance with the just terms Act ... Transport also implemented six of the seven objectives and recommendations from the May 2021 Auditor-General's report ... This ensured our property acquisition processes and policies align with the Auditor-General's recommendations and meet the community's expectations regarding integrity, rigour and value for money.²⁹¹

3.48 Mr Slater went further to state that negotiations are key to achieving agreement and the reported refusals to exchange valuations was not a process or issue that he was aware of:

It does us no benefit to not try to negotiate. Outside of what is hard-coded in the process, and what was in the prior process, around engaging fairly, openly and transparently, exchanging valuations and seeking to reach an outcome, which the

²⁸⁷ Submission 73, NSW Government, p 9.

²⁸⁸ Submission 73, NSW Government, p 9.

²⁸⁹ Evidence, Mr Peter Regan, 18 March 2022, p 31.

²⁹⁰ NSW Government, Transport for NSW, Policy documents, <https://www.transport.nsw.gov.au/about-us/access-to-information/policy-documents>

²⁹¹ Evidence, Mr Slater, 18 March 2022, p 52.

statistics show that we do, it just does not align with what I see as our practice, our approach and the way that we do things.²⁹²

- 3.49** Transport for NSW also firmly refuted the proposition that internal valuation reports are utilised to limit the compensation offered,²⁹³ referring to the Transport property acquisition policy which supports the suite of artefacts and process documents that ensure staff clearly understand what is expected of them.²⁹⁴

Adequacy of compensation

- 3.50** A significant and ongoing concern of landowners is the adequacy of compensation when land is acquired. This section considers the approach to determining compensation under the land acquisition framework, including the role of the Valuer General and the concept of reinstatement. It will also touch upon the component of compensation that can be provided for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence.

Is the compensation 'just'?

- 3.51** Sections 54 and 55 of the *Land Acquisition (Just Terms Compensation) Act 1991* set out a landowner's entitlement to 'just compensation' and the relevant matters to be considered in determining the amount of compensation when a property is compulsory acquired.

54 Entitlement to just compensation

(1) The amount of compensation to which a person is entitled under this Part is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land.

55 Relevant matters to be considered in determining amount of compensation

In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only (as assessed in accordance with this Division)—

- (a) the market value of the land on the date of its acquisition,
- (b) any special value of the land to the person on the date of its acquisition,
- (c) any loss attributable to severance,
- (d) any loss attributable to disturbance,
- (e) the disadvantage resulting from relocation,
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying

²⁹² Evidence, Mr Slater, 18 March 2022, p 58.

²⁹³ Evidence, Mr Slater, 18 March 2022, p 54.

²⁹⁴ Evidence, Mr Slater, 18 March 2022, p 55.

out of, or the proposal to carry out, the public purpose for which the land was acquired.²⁹⁵

- 3.52** Throughout the inquiry, participants argued that 'just compensation' was not provided from acquiring authorities during the acquisition process. For example, one submission author who had experienced their property being compulsorily acquired stated that they had not been 'provide[d] a fair and just outcome' in terms of compensation. This individual added: 'Throughout the acquisition process we have found the legislative requirements regarding the market value assessment result in unjust compensation to impacted landowners'.²⁹⁶
- 3.53** For submission author Mr Ray Dibb, 'just compensation should ensure that all items of loss which flow naturally and reasonably from the process and outcome of acquisition are compensated, including that for economic detriment'. He further argued that the 'compensation amount should be sufficient for a replacement property that corresponds to the property being acquired in physical conditions as well as economic and location attributes'.²⁹⁷
- 3.54** In her evidence to the committee, Ms Penny Murray, Partner, Addisons Lawyers, and Member, Environmental Planning and Development Committee, The Law Society of New South Wales, commented that in recent years there appears to have been a shift towards a:
- ... stricter approach to the interpretation of the legislation ... in conjunction with ... acquiring authorities ... be[ing] much more conservative, [and] less likely to be willing to engage in a forthright discussion on compensation matters.²⁹⁸
- 3.55** Ms Sack argued that the '[r]ules for calculating compensable losses are arcane and often do not match how the land or business owners value their interests in land'. She described how the acquiring authority's offer letter 'bundles compensation into a lump sum that is not supported by information identifying how that amount was reached'.²⁹⁹
- 3.56** On this aspect, Newhouse and Arnold Solicitors provided the committee with correspondence from the The Centre for Property Acquisition confirming that it is their position that under the Act acquiring authorities are not required to provide a specified breakdown of compensation with the initial letter, rather this exchange of information should occur during negotiations:

The Centre for Property Acquisition can confirm there is not a requirement under the Land Acquisition (Just Terms Compensation) Act 1991 for acquiring authorities to provide a specific detailed breakdown of compensation within the initial letter of offer.

...

It is important that Acquiring Authorities are in a position, following the issue of a letter of offer, to mutually exchange independent valuation reports with affected property owners, discuss the details, and negotiate a mutually acceptable outcome at structured valuation conference. This would include a discussion of specific breakdowns of the

²⁹⁵ *Land Acquisition (Just Terms Compensation) Act 1991*, s 37.

²⁹⁶ Submission 97, Name suppressed, p 2.

²⁹⁷ Submission 35, Mr Ray Dibb, p 32.

²⁹⁸ Evidence, Ms Penny Murray, Partner, Addisons Lawyers, and Member, Environmental Planning and Development Committee, The Law Society of New South Wales, 6 October 2021, pp 2-3.

²⁹⁹ Evidence, Ms Sack, 18 March 2022, p 11.

assessed compensation as well as the valuation itself. The mutual exchange of valuations and subsequent expert discussions, is considered the appropriate forum to discuss in more detail, all applicable heads of compensation.³⁰⁰

3.57 Newhouse and Arnold Solicitors contended that this position is clearly contrary to Principle 7 of the Centre of Property Acquisition's '*Standards and principles: the 10 guiding principles of property acquisition*' which states 'Clear reasons and explanations are given for financial calculations, offers and terms of settlement'.³⁰¹

3.58 In the absence of a breakdown and clear explanation as to compensation offers, Beatty Legal noted that many affected owners are ultimately pressed to make one of two choices:

1) begrudgingly accept an unsatisfactory offer, which is materially less than what they understand should be paid to them based on the independent expert advice that they have received; or

2) face the substantial risk, further costs, and delay of having their compensation determined by the Valuer General (VG) or, on appeal, by the Land and Environment Court (Court), a process which may take many months, if not years, to complete.³⁰²

3.59 On the latter point, several inquiry participants specifically referred to the Land and Environment Court appeal process, noting that time, cost and stress were significant factors that had stopped many of them from proceeding with such action.³⁰³

3.60 As Mr Raymond and Mrs Sandra Greig recounted of their experience with Roads and Maritime Services for the WestConnex project:

We were led to believe the RMS would not make a better offer, and told we would have to go to the Valuer General and Land & Environment Court if we didn't accept the offer, that it would likely take another year and be considerably expensive to resolve the matter, and that we might not get a better outcome.³⁰⁴

3.61 Other participants spoke of the definition of market value within the Act and how this had led to unreasonably low offers of compensation by acquiring authorities. Section 56(1) of the Act sets out how the 'market value' of land should be determined.

56 Market Value

(1) In this Act –

market value of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but

³⁰⁰ Additional information, Mr David Newhouse, Partner, Newhouse and Arnold Solicitors, 25 March 2022, p 2.

³⁰¹ Additional information, Mr David Newhouse, Partner, Newhouse and Arnold Solicitors, 25 March 2022, p 2.

³⁰² Submission 39, Beatty Legal, p 2.

³⁰³ See Submission 31, Mr John Douglas, p 1; Submission 39, Beatty Legal, p 5; Submission 41, Name suppressed, p 2; Submission 58, Mr Raymond and Sandra Greig, p 2; Submission 67, Mr Richard Capuano, p 6.

³⁰⁴ Submission 58, Mr Raymond and Mrs Sandra Greig, p 2.

not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid)—

(a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and

(b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and

(c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.³⁰⁵

3.62 The Law Society of New South Wales discussed how an uplift in value, which may occur after a public infrastructure project is announced, is not taken into account in compensation to dispossessed landowners:

Any uplift in value that occurs by virtue of the new infrastructure project for which land is being resumed is not available to a dispossessed landowner due to the definition of 'market value' in section 56 of the Act. It is often a contested issue in compensation cases as to whether increases in value of resumed land are due to the public purpose for which the land was resumed (which cannot be factored into the market value assessment) or other factors.³⁰⁶

3.63 As noted by Ms Murray, for many people going through the acquisition process, the property market had 'gone up in particular areas and so ... [people] were negotiating in an environment where the offers did not reflect reality'.³⁰⁷

3.64 Land owners affected by property acquisitions also suggested that valuers engaged by the acquiring authority or the Valuer General may lack independence, and have an incentive to provide valuations that are favourable to the government.³⁰⁸ In a detailed submission to the inquiry, Mr Ray Dibbs, a property owner affected by land acquisitions by Transport for NSW, posited how valuers may be inclined to produce valuations biased to favour the acquiring authority:

Valuers must earn a living, and for many their core stream of work comes from repeat work with private institutions such as banks and government agencies. This means that valuers often compete with one another to win favour with government agencies as preferred valuers, so when they are engaged by TfNSW there is the real risk of completing the report on a basis favourable to TfNSW.³⁰⁹

³⁰⁵ *Land Acquisition (Just Terms Compensation) Act 1991*, s 56(1).

³⁰⁶ Submission 61, The Law Society of New South, p 6.

³⁰⁷ Evidence, Ms Murray, 6 October 2021, pp 2-3.

³⁰⁸ See for example: Submission 31, Mr John Douglas, p 4; Submission 35, Mr Ray Dibb, p 12; Submission 59, Joe Rizzo, p 2; Submission 67, Mr Richard Capuano, pp 11, 19; Submission 76, Councillor Pauline Lockie, p 4.

³⁰⁹ Submission 35, Mr Ray Dibb, p 12.

3.65 Councillor Pauline Lockie, Independent Councillor, Inner West Council, similarly suggested valuers engaged by the Valuer General may also feel pressure to produce biased estimates of property value:

If ... valuers commissioned by the Valuer-General office are reliant on repeat business from the NSW government, I can imagine the pressure to hand down valuations that are in line with what the government agencies want, rather than what residents are legally entitled to, would be very great.³¹⁰

3.66 Furthermore, Mr Newhouse provided the committee with information to show a number of cases in which Sydney Metro's initial valuation offers remained unchanged over the course of the negotiation period during the acquisition process, despite significant appreciation of the property market during the same period (Table 1).³¹¹

³¹⁰ Submission 76, Cr Pauline Lockie, p 4.

³¹¹ In the majority of cases dealt with by Newhouse and Arnold, the initial offer from Sydney Metro remained unchanged over the course of the negotiation period. The table is reproduced from correspondence, from Mr David Newhouse, Partner, Newhouse & Arnold Solicitors, to the Chair, dated 23 March 2022.

Table 1 Sydney Metro claims referred to Valuer General in 2021 from Newhouse and Arnold Solicitors³¹²

SYDNEY METRO CLAIMS REFERRED TO VALUER-GENERAL IN 2021 FROM NEWHOUSE & ARNOLD SOLICITORS						
Interest	SM's Initial Offer to Claimant	SM's Submission to VG*	VG Determination	Difference between VG Determination and SM Submission to VG (%)	Difference between VG Determination and SM Submission to VG (as a multiple)	Difference between SM's Initial Offer and SM's Submission to VG i.e. change over 9 months
Freehold	\$1,379,500.00	\$1,379,500.00	\$1,670,965.00	121%	1.2x	No change
Freehold	\$1,229,500.00	\$1,229,500.00	\$1,434,725.00	117%	1.2x	No change
Freehold	\$839,297.00	\$839,297.00	\$874,920.00	104%	1.05x	No change
Leasehold	No offer provided	\$0.00	\$759,438.00	-	-	No offer provided
Leasehold	\$414,054.00	\$753,844.00	\$1,916,418.00	254%	2.5x	182%
Freehold	\$743,900.00	\$743,900.00	\$870,673.00	117%	1.2x	No change
Freehold	\$1,238,400.00	\$1,238,400.00	\$1,620,300.00	131%	1.3x	No change
Freehold	\$861,000.00	\$861,000.00	\$1,100,274.00	128%	1.3x	No change
Leasehold	\$32,310.00	\$174,987.00	\$422,521.00	241%	2.4x	542%
Leasehold	\$462,418.00	\$462,418.00	\$2,278,317.00	493%	4.9x	No change
Freehold	\$2,612,180.00	\$2,612,180.00	\$3,849,000.00	147%	1.5x	No change
Freehold	\$2,612,180.00	\$2,612,180.00	\$3,828,000.00	146%	1.5x	No change

SM = Sydney Metro
VG = Valuer-General

- 3.67** As Mr Newhouse observed, the amounts being offered by the acquiring authorities did not allow the dispossessed to 'buy back in the same market' with their assets being diminished as a result of 'delays in getting a final answer, whether it be from the VG [Valuer General], which you are aware takes three to six months, or through the court process, which can take one to three years'. Mr Newhouse noted that this can put families even further behind financially and emotionally.³¹³
- 3.68** As one submission author reflected '[c]ompensation should reflect replacement cost as the owner should not be left out of pocket by more than half as prices around the area rise. Owners should be able to buy back into the community and area they were in'.³¹⁴
- 3.69** Mr Jesse Vella, an Orchard Hills resident affected by the Sydney Metro project, stated that the significant issue resulting from the Just Terms Act was actually very simple: 'We are unable to be reinstated back into our suburb of Orchard Hills in a reasonably equivalent property. New South Wales is the only jurisdiction in Australia that does not offer compensation on a reinstatement basis'.³¹⁵

³¹² Correspondence, from Mr David Newhouse, Partner, Newhouse & Arnold Solicitors, to the Chair, dated 23 March 2022.

³¹³ Evidence, Mr Newhouse, 18 March 2022, p 12.

³¹⁴ Submission 89, Name suppressed, p 3; See also Submission 67, Mr Richard Capuano, p 29; Submission 68, Name suppressed, p 1.

³¹⁵ Evidence, Mr Vella, 5 October 2021, p 2.

- 3.70** Mr Luke Kohler, also an Orchard Hills resident, explained that '[o]f the last recent four sales in Orchard Hills, three of them we are told we cannot use because of the Just Terms Act. The claim is that they only have this uplift that they have because of the announcement of the station'.³¹⁶
- 3.71** Reflecting on the time between an agreement and the payout also leaving property owners at further disadvantage, Mr Tom Richards, Member, Save Our Homes Jannali, said:
- ... when you are given the value of your home six months ago and cashed out six months later, you are never going to be able to go and buy that property for the equivalent value in the market as it currently is, and I think that is a real concern.³¹⁷
- 3.72** Similarly, Mr Parker MP observed that many constituents have found it difficult to find 'new homes within the same neighbourhoods ... particularly so for families who wish to remain in their local school catchments and those who have established social, health and other support networks in the area'. He noted that this issue was not assisted by the rise in property values resulting in many people struggling to buy back into the same market.³¹⁸
- 3.73** As a result, Mr Parker MP advocated for the government to 'require its agencies to offer an additional premium to owner-occupiers who are forced to relocate through a compulsory acquisition process, to provide the best opportunity to replace their homes with a like-for-like property'.³¹⁹
- 3.74** Mr Parker MP also called for compensation to be calculated as per the reinstatement recommendation, which was Recommendation 17 in the Russell Review.³²⁰ This recommendation stated:
- That the Land Acquisition Act be amended so as to provide for compensation on a reinstatement basis, in relation to a dwelling house, in terms similar to those of Section 61(2)(b) of the equivalent Commonwealth legislation.³²¹
- 3.75** The 2014 Russell Review specifically noted that all Australian legislatures except New South Wales have provisions that allow for the cost of reinstatement of a disposed owner.³²²
- 3.76** Many other participants in this inquiry also supported the notion of 'reinstatement' to be used as the basis with which to determine the value of a property rather than relying on market value alone.³²³

³¹⁶ Evidence, Mr Kohler, 5 October 2021, p 4.

³¹⁷ Evidence, Mr Richards, 18 February 2022, p 17.

³¹⁸ Submission 65, Mr Jamie Parker MP, Member for Balmain, p 2.

³¹⁹ Submission 65, Mr Jamie Parker MP, Member for Balmain, p 2.

³²⁰ Evidence, Mr Parker MP, 27 May 2022, p 12.

³²¹ NSW Government, Russell Review of the *Land Acquisition (Just Terms Compensation) Act 1991* (2014), p 62.

³²² NSW Government, Russell Review of the *Land Acquisition (Just Terms Compensation) Act 1991* (2014), p 62.

³²³ For example see: Evidence, Mr Choudhury, 27 May 2022, p 3; Evidence, Mr Parker MP, 27 May 2022, pp 12 and 15; Evidence, Cr Lockie, 27 May 2022, pp 12 and 16; Evidence, Mr Vella, 5 October

3.77 As Mr Christopher Drury, Deputy Chair, Environmental Planning and Development Committee, The Law Society of New South Wales, told the committee, the issue of reinstatement is one of the biggest issues faced by owners:

... the difficulty of owners finding like-for-like is probably one of the most significant problems that affected owners face. It is not just residential owners but it is business owners as well—you know, if you have a warehouse in a particular location A it does not necessarily follow that you can easily find another one nearby. It is a big problem.³²⁴

3.78 This was also reflected by Mr Ian Choudhury, Founding Member and Secretary, Appin Orbital Motorway Support Group, who argued that the compensation provided should be enough for an owner to buy back into the same area:

We are asking for like for like, which means if they live in Appin they should be compensated enough so they can buy another equivalent property in Appin. That's what we are talking about—not out in Bourke or something, but in Appin, in the same area. Now, if the compensation they get is lower than what it cost to go and buy a place in Bourke, so be it. That is the market. They should be able to at least buy like for like.³²⁵

3.79 Despite these calls, it is important to note that a different view was reached on this issue in the 2016 Pratt Review, which was conducted to improve the process of acquisition particularly for property owners. In setting out the guiding principles that formed the basis of the recommendations, the Pratt Review asserted that 'The valuation and acquisition process is fair, consistent and transparent based on 'market value' not reinstatement'.³²⁶

3.80 In late 2016 the NSW Government responded to the Russell and Pratt Reviews and made particular reference to reinstatement, reinforcing the position that it does not apply to the acquisition of 'standard residences':

... it is appropriate for the amount of compensation to which the former owner is entitled to include consideration of the cost of acquiring a similar property to be used for the same purpose. However, these circumstances are rare and such provisions do not apply to land acquisitions involving standard residences.³²⁷

2021, p 2; Evidence, Mr Hehir, 27 May 2022, p 28; Submission 68, Name suppressed, p 1; Submission 80, Name suppressed, p 1; Submission 97, Name suppressed, p 3.

³²⁴ Evidence, Mr Drury, 6 October 2021, p 5.

³²⁵ Evidence, Mr Choudhury, 27 May 2022, pp 3 and 5.

³²⁶ NSW Customer Service Commissioner, *NSW Housing Acquisition Review, Summary Report*, 14 September 2016, <https://www.nsw.gov.au/housing-and-construction/property-acquisition/about-us/review-of-property-acquisition-nsw>

³²⁷ NSW Government, NSW Government Response to Russell Review and Pratt Review, NSW Government – Property Acquisition in NSW, <https://www.nsw.gov.au/housing-and-construction/property-acquisition/about-us/review-of-property-acquisition-nsw>

Monetary compensation for emotional impact

3.81 Under section 60 of the *Land Acquisition (Just Terms Compensation) Act 1991*, a compensation offer by an acquiring authority can take into account the non-financial disadvantage resulting from the requirement to relocate their principal place of residence as a result of the acquisition.³²⁸

3.82 There are various factors that can be considered in determining this component of compensation, including the length of time an owner has resided at the property and the inconvenience that may be suffered as a result of their removal from the land.³²⁹

3.83 A number of inquiry participants felt that this payment does not go far enough to adequately address and provide compensation for the emotional impact caused by the acquisition process and relocation.³³⁰ Reflecting on the experience of his clients, Mr Newhouse stated:

I have countless stories of owners who are in the same position—some we could help, but others were worn out by the process and just accepted the low offers. For these families, it is more than just money. They have a history in their home, a loved one's ashes spread across the garden, a horse or a dog buried in the backyard, children's height charts on walls. I was told late last year that a child died in the lounge room. These are real people with real stories who are impacted by the Government's proposed project. The Act ignores these stories and the acquiring authorities treat them like a statistic, often with no empathy.³³¹

3.84 In the context of this payment being only available to those affected by the acquisition of their principal place of residence, and not business owners or landlords, Ms Sack noted that the process can be just as traumatic, arguing business owners should also be entitled to compensation:

...one should not underestimate the amount of energy, effort and emotional commitment that those businesses have made ... These businesses have been on these sites for a long time ... Unravelling that when an acquisition comes through is something where—it sucks resources out of the business ... There is no mechanism for compensation ...

..

It may be, in a way, less emotional, but the impacts are still significant ... We have got a lot of clients that are heavily invested and committed in their locations and things. They need to be in that location because that allows their business to operate and, all of a sudden, you suck them out of that location and the business can collapse because they do not have that network for their market.³³²

³²⁸ *Land Acquisition (Just Terms Compensation) Act 1991*, s 60(1).

³²⁹ *Land Acquisition (Just Terms Compensation) Act 1991*, s 60(3).

³³⁰ For example see: Evidence, Mrs Wilhelmina 'Helma' Mulhall, Member, Save Our Homes, Jannali, 18 February 2022, p 11; Evidence, Mr Newhouse, 18 March 2022, p 13; Evidence, Ms Sack, 18 March 2022, p 14; Evidence, Mr Charlton, 27 May 2022, p 26; Evidence, Ms O'Brien, 27 May 2022, p 9.

³³¹ Evidence, Mr Newhouse, 18 March 2022, p 12.

³³² Evidence, Ms Sack, 18 March 2022, p 14.

Hardship applications

3.85 During the course of the inquiry the issue of hardship applications and the impact they have on property owners was also brought to the committee's attention.

3.86 According to the NSW Government an 'acquiring authority may designate land for future acquisition for a public purpose, even though it may not need the land for some time'.³³³ Under these terms an owner may apply for early acquisition if they can show that they 'would suffer hardship if the acquisition of the land is delayed'.³³⁴

3.87 The NSW Government's submission further explained the definition of hardship and some of the reasons a hardship application may be made:

'Hardship' is defined broadly in the Act as not being able to sell the land - at all or at market value - because of its designation of land for acquisition for a public purpose, and it has become necessary for the landowner to sell because of pressing personal, domestic or social reasons, or to avoid a loss of income.³³⁵

3.88 Under the terms of the Act, the owner is not entitled to 'any loss attributable to severance or disturbance and solatium' (the latter being the compensation amount for disadvantage resulting from relocation).³³⁶ Some inquiry participants, however, raised concerns in relation to hardship claims and how these matters are treated under the legislation.³³⁷ Specifically, there were concerns that due to the very nature of an owner having to apply for a hardship acquisition they have no power to negotiate which allows the acquiring authority to offer a very low purchase price.³³⁸

3.89 Reflecting on the low levels of compensation often offered, Mr Parker MP called for a review of the hardship application process, noting that 'these are people whose homes, most often, have been damaged or have been made basically unliveable and they have to beg Transport to buy their property from them'. Mr Parker MP emphasised that there is no moving allowance provided or funds for other costs and often people sell their houses for remarkably low amounts. Commenting on the unreasonableness of the approach provided to these claims, Mr Parker MP added:

The final point about that is, WestConnex or Transport will say, "We are not going to acquire your property because there is no impact on it," but then, when they do a hardship acquisition, they give an incredibly low price because they say, "You are next to a motorway." I mean, both of them can't be right.³³⁹

³³³ Submission 73, NSW Government, p 6.

³³⁴ Submission 73, NSW Government, p 6.

³³⁵ Submission 73, NSW Government, p 6.

³³⁶ *Land Acquisition (Just Terms Compensation) Act 1991*, s 26.

³³⁷ For example see: Evidence, Mr Parker MP, 27 May 2022, pp 12, 15-16; Submission 33, Mr Christopher McIntyre, p 1; Submission 57a, Walter McKenzie, p 1; Submission 61, The Law Society of New South Wales, p 6; Submission 65, Mr Jamie Parker MP, Member for Balmain, pp 2-3; Submission 75, FM Legal PTY Ltd, p 3.; Submission 80, Name suppressed, p 1.

³³⁸ For example see: Evidence, Mr Parker MP, 27 May 2022, p 15; Submission 31, Mr John Douglass, p 2; Submission 33, Mr Christopher McIntyre, p 1; Submission 57a, Mr Walter McKenzie, p 1.

³³⁹ Evidence, Mr Parker MP, pp 12 and 15-16.

3.90 Demonstrating that these issues are not limited to individual projects, FM Legal Pty Ltd's submission described the issues a resident encountered with a hardship application to their Local Council:

The hardship provisions of the Just Terms Act are available but are extremely difficult to have accepted. For instance, we have one matter with an owner who cannot sell their land on the open market due to RE1 zoning, who is suffering from significant medical problems, has no income and is in default of his mortgage, yet Council has for months now asked for more and more information to delay making a decision. It would be likely that Council has a funding problem so may not be able to acquire the land even though they want to do so, and indeed so the owner wants to sell to them. Council has the power to then remove the zoning instead. However, there is no compensation paid to the owner and the owner must bear their legal costs and undergo the stress of dealing with the Council for months and even years even if the council do this.³⁴⁰

Calls for a review of the compensation regime

3.91 In its submission and oral testimony, The Law Society of New South Wales was critical of the fact that 'there has not been a wholesale review into the basis for which you can get compensation for acquisition for 30 years'.³⁴¹

3.92 While acknowledging that the Russell review and Government response in 2016 led to some beneficial change to legislation and processes, Ms Murray pointed out that the Russell review 'specifically excluded consideration of the level of compensation payable for acquisitions of real property' and the review recommended that further consultation was required on this issue.³⁴²

3.93 Further, The Law Society of New South Wales argued that the need for a review is more pressing due to the number of Land and Environment Court and Court of Appeal cases that have included judgements that affect disturbance, relocation, and extinguishment claims. These factors and the number of recent infrastructure projects that are occurring in urban areas means that the ability to achieve compensation on just terms is of the utmost importance.³⁴³

3.94 In undertaking a review of the Act, specifically focused on compensation, the Law Society of New South Wales suggested that the following issues should be considered:

- applicability of and implementation of section 54(1) - entitlement to just terms compensation as an overriding objective to be considered when interpreting the Act;
- compensation for stamp duty or a rollover provision in the *Duties Act 1997* enabling a stamp duty exemption for purchase of a replacement property to an equivalent value as that compulsorily acquired. Currently this compensation is only payable to owner-occupiers, but it is not payable to owners where the land is occupied by a related entity or person or is held for investment purposes (e.g. held for negative gearing purposes or as part of a self-managed superannuation fund);

³⁴⁰ Submission 75, FM Legal PTY Ltd, p 3.

³⁴¹ Evidence, Ms Murray, 6 October 2021, p 2.

³⁴² Evidence, Ms Murray, 6 October 2021, p 2.

³⁴³ Submission 61, The Law Society of New South Wales, p 2.

- compensation for business costs beyond the term of the lease where that business has a short-term lease but has a long history of and an expectation of renewals;
- explicit provisions for land tax adjustments so that a payment is not made for the whole year when the land is acquired mid-year;
- compensation for business losses or loss of locational goodwill due to relocation or inability to relocate;
- consideration of the impact of income tax on compensation payable;
- compensation for advice other than legal and valuation advice;
- consideration of advance payment for legal, valuation and other costs incurred well before gazettal of the resumption;
- enforceability of property adjustment plans and commitments made as part of the project approval or planning; and
- whether dispossessed occupiers should pay rent to the resuming authority when they have already had to suffer the burden of dispossession.³⁴⁴

3.95 Additionally, Beatty Legal and a number of submission authors called for this type of review to also include consideration of reinstatement, uplift, reacquisition of land by the original owner and payment for substratum acquisition.³⁴⁵

The NSW Government's perspective

3.96 The committee specifically raised a number of concerns regarding the adequacy of compensation with representatives of Sydney Metro, who have been acquiring properties in relation to the Metro Northwest, Metro City and Southwest, Metro West (Westmead to The Bays) and Metro Western Sydney Airport.

3.97 Mr Peter Regan, Chief Executive, Sydney Metro, maintained that Sydney Metro complies with the requirements of the *Land Acquisition (Just Terms Compensation) Act* in terms of compensation offers, with consultants, lawyers and valuers engaged to ensure the authority meets their obligations, including the obligations they have as a public organisation to ensure they appropriately spend government money. Mr Regan stated that Sydney Metro is 'absolutely trying to find the right path between the expectations of owners and our own obligations and we do that within the law'.³⁴⁶

3.98 In response to concerns regarding valuations conducted by Sydney Metro and the extremely low valuations offered to property owners, Mr Regan discussed the factors considered when determining the value of a property:

³⁴⁴ Submission 61, The Law Society of New South Wales, pp 2-3.

³⁴⁵ See: Submission 39, Beatty Legal, p 2, Submission 97, Name Suppressed, p 2; Submission 55, Ms Rosemarie Gates, p 1; Submission 67, Mr Richard Capuano, p 28

³⁴⁶ Evidence, Mr Regan, 18 March 2022, p 34.

'... it is often done on a number of bases to look at, for example, the value of the property as is, the value of the property if it was redeveloped, the value of the property in different circumstances or different valuation methods, and it certainly is not the case that we do that and then choose the lowest'.³⁴⁷

3.99 Mr Regan disagreed with the proposition put forward by other inquiry participants that Sydney Metro was 'out to low ball' property owners, instead observing that 'there is going to be a disconnect at times between what the owner of a property thinks it is worth, or wishes it was worth, and what our valuers say it is worth. That is the challenge'.³⁴⁸

3.100 Exploring this issue further, and concerns some stakeholders had about the number of matters proceeding to the Valuer General due to low compensation offers or agreement not being reached, the committee considered statistics regarding the number of acquisitions settled by agreement versus those that proceeded to a determination by the Valuer General. For example, Table 2 demonstrates this breakdown for a number of Sydney Metro projects.

Table 2 Percentage of properties acquired by Sydney Metro through agreement versus assessment by the Valuer General³⁴⁹

Project	Acquisitions by agreement	Assessment by the Valuer General
Northwest	78%	22%
City & South West	82%	18%
West (Westmead to the Bays) (as at 19 March 2021)	72%	28%
Western Sydney Airport (as at 8 April 2022)	70%	30%

3.101 It is important to note that within these statistics there are further regional variations. For example, Mr Regan acknowledged that in Orchard Hills, where properties were acquired for the Sydney Metro Western Sydney Airport project, approximately 50 per cent were acquired through agreement, with the remainder assessed by the Valuer General.³⁵⁰

3.102 Further, Mr Regan noted that not reaching an agreement with a property owner did 'not necessarily mean that we have not behaved well'.³⁵¹ He added that the agency does its 'best to try to reach agreement ... in a positive and collaborative fashion with as many owners as we can', and referred to the positive feedback it had received with some property owners being 'very pleased with the process'.³⁵²

³⁴⁷ Evidence, Mr Regan, 18 March 2022, p 34.

³⁴⁸ Evidence, Mr Regan, 18 March 2022, p 34.

³⁴⁹ Answers to questions on notice, Sydney Metro, 3 May 2022, p 4.

³⁵⁰ Answers to questions on notice, Transport for NSW, 5 November 2021, p 5.

³⁵¹ Evidence, Mr Regan, 18 March 2022, p 36.

³⁵² Evidence, Mr Regan, 18 March 2022, pp 31 and 36.

3.103 Reflecting on why there can be differences in the rate of agreement for some areas, Mr Regan gave evidence about the nature of acquisitions in the Hunter Connection (for the Metro West project) being very different, given the high proportion of strata occupation, including retail and commercial space. He also discussed the Orchard Hills acquisitions and how the level of significant growth experienced in the Orchard Hills area more broadly had presented challenges to the acquisition of properties due to what he perceived was a 'lack of perhaps agreement or understanding as to ... why those properties were being acquired, which has created a different circumstance'.³⁵³

3.104 Mr Regan stressed that Sydney Metro aims to reach an agreement with landowners when acquiring a property but acknowledged that there are challenges with these transactions, given the nature of them:

... these transactions are inherently more bespoke because each property needs to be dealt with sort of as a case by case but also taking into account the broader picture of the infrastructure and the precinct that sort of surrounds it. So it is a challenge. We take our obligations here really seriously and we really try to find a way to reach agreement and to use the tools within the Act to do that wherever we can. It is not always possible but there are mechanisms in place under the policies and the legislation that then allow the Valuer General or the Land and Environment Court to further determine that, if necessary, and I would reiterate we continue to pay people's costs and try and minimise the impact on them on the way through. But it is a difficult area; there is no doubt about it. It is one of the big challenges for us at the front end of any of these projects because we also need to acquire the land on a critical pathway to enable construction of the project to be able to meet the broader transport objective.³⁵⁴

3.105 On the issue of compensation amounts not capturing the uplift in market value, Ms Rebecca McPhee, Deputy Chief Executive, Sydney Metro, stated:

... one of the requirements of the Act to ensure that the Government is not overpaying for the land is that in consideration of the market value of the land the valuers are required to exclude any uplift as a result of the investment'. In terms of the Sydney Metro, 'any uplift that is associated directly with the building of the Metro station must be excluded from the valuation.'³⁵⁵

3.106 Mr Regan acknowledged that it can be difficult to separate uplift as a result of a proposed project and that of more general investment in a given area. He noted that this could contribute to a wide range of valuations for a given property:

Certainly in a fast-moving, fast upward-rising market, that becomes even more challenging because it is harder to delineate what the increasing value is for where there is a broad-based infrastructure investment or uplift taking place. Is it the metro or is it something else that is driving it? That is, I think, something that we have seen on the Western Sydney Airport metro line.³⁵⁶

³⁵³ Evidence, Mr Regan, 18 March 2022, pp 36 -37.

³⁵⁴ Evidence, Mr Regan, 5 October 2021, p 35.

³⁵⁵ Evidence, Ms McPhee, 5 October 2021, p 35.

³⁵⁶ Evidence, Mr Regan, 18 March 2022, pp 34-35.

- 3.107** Nevertheless, Mr Regan emphasised that in acquiring land to build public infrastructure, Sydney Metro is not able to compensate landowners for the 'value of increase in land caused by that infrastructure investment itself'. As a result, he observed that this often led to 'very material difference[s] in expectation and what we are required or able to pay and often there is a very significant misunderstanding that that is not something that we are able to pay'.³⁵⁷
- 3.108** Transport for NSW, echoed Sydney Metro's acknowledgement that acquisitions are a 'challenging and complex experience' for everyone involved. Mr Mark Slater, Executive Director Property Group, Infrastructure and Place, Transport for NSW, informed the committee that the property acquisition process has been improved in recent years and that the compensation provided is in accordance with the Act.³⁵⁸
- 3.109** Mr Slater referenced the property acquisition standards that were released in June 2019 as being the basis for ensuring that impacted residents have clear information about the compulsory acquisition process and reiterated that they aim to complete acquisitions by agreement.³⁵⁹
- 3.110** On that point, Transport for NSW reported that since the commencement of Section 10A of the Act in 2017, 90 per cent of acquisitions have been by agreement with 10 per cent escalating to a compulsory acquisition.³⁶⁰

Concerns about Valuer General determinations

- 3.111** As noted in Chapter 1, the NSW Valuer General becomes involved when a landowner has not been able to reach an agreement with the acquiring authority on the amount of compensation to be paid which results in the property being compulsorily acquired through gazettal.³⁶¹

Issues related to compensation amounts

- 3.112** In exploring the tension between the compensation provided by the Act and the inability of dispossessed owners to find similar housing with the compensation offered by acquiring authorities, Dr David Parker, Valuer General of New South Wales, expressed the view that a 'fundamental flaw in the legislation is that you are compensated for that which is taken away from you; you are not compensated for that which you will then have to buy'.³⁶²
- 3.113** Dr Parker added that in his experience, claimants 'tend to approach the negotiation period with a view on the worth of their property rather than the value of their property. The worth to them is invariably higher than the market value'.³⁶³

³⁵⁷ Evidence, Mr Regan, 18 March 2022, p 34.

³⁵⁸ Evidence, Mr Slater, 18 March 2022, p 52.

³⁵⁹ Evidence, Mr Slater, 18 March 2022, p 52.

³⁶⁰ Evidence, Mr Slater, 18 March 2022, p 56.

³⁶¹ Submission 73, NSW Government, p 3.

³⁶² Evidence, Dr Parker, 18 February 2022, p 5.

³⁶³ Evidence, Dr Parker, 18 February 2022, p 6.

- 3.114** According to those inquiry participants who had taken their matter to the NSW Valuer General for determination, the experience had further hindered their prospects of getting 'just compensation'. For example, submission author Mr Joe Rizzo reflected that the 'low value put on our property by the Valuer General will force us into a worse financial position and to not be able to purchase back into an area which we know and love is devastating'.³⁶⁴
- 3.115** LPG Holdings Pty Ltd submitted that the values being attributed by the Valuer General of comparable properties 'differ[ed] wildly and there is no consistency being applied in the valuing approach'.³⁶⁵
- 3.116** Further, the Appin Orbital Motorway Support Group noted that '...there appears to be no process to question the NSW Valuer General without lodging an objection with the NSW Land and Environment Court which is outside the financial resources of most residents'.³⁶⁶
- 3.117** Some participants claimed that the Valuer General determinations are biased:
- 'The Valuer General that has just determined our matter seems to be totally biased and their conservative mindset and approach they took to our valuation just makes me now see that the system is totally wrong with this being allowed to happen'.³⁶⁷
 - 'There can be no doubt that the Valuer General and Land and Environment Court are biased – and that there is considerable “interference” by the Gov[ernment], to deliver outcomes that favour the acquiring authority'.³⁶⁸
 - 'Something is clearly wrong with the Valuer General process of assessing compulsory acquisition claims when it is biased so heavily in favour of government agencies over ordinary residents'.³⁶⁹
- 3.118** Having experienced the compulsory acquisition process, Mr Mark Harrold, owner of Sydney Helicopters Pty Ltd and Heliport Developers Pty Ltd, detailed for the committee the difficulties he encountered during the process of compulsory acquisition, claiming that a determination by the Valuer General did not necessarily result in a fair outcome.

³⁶⁴ Submission 59, Mr Joe Rizzo, p 1.

³⁶⁵ Submission 60, LPG Holdings Pty Ltd, p 2.

³⁶⁶ Submission 26, Appin Orbital Motorway Support Group, p 2.

³⁶⁷ Submission 59, Mr Joe Rizzo, pp 1-2.

³⁶⁸ Submission 67, Mr Richard Capuano, p 20.

³⁶⁹ Submission 76, Cr Pauline Lockie, p 4.

Case study: Mr Mark Harrold, Sydney Helicopters Pty Ltd and Heliport Developers Pty Ltd³⁷⁰

Mr Mark Harrold has operated Sydney Helicopters since 2007 at Clyde, offering charter flights, general tourism flights and film-work, as well as essential services including aerial firefighting, flood relief, power line work, water sampling, and national parks and wildlife surveys amongst others.

Mr Harrold was first informed of the proposed acquisition of his property by Sydney Metro on 21 October 2019, with Sydney Metro undertaking to seek alternative locations to relocate Mr Harrold's business. Sydney Metro advised Mr Harrold that it required possession of the property by 1 July 2021.

In February 2020, Mr Harrold identified a suitable property at Castlereagh, part of the Penrith Lakes Development Corporation land (the PLDC Site) to relocate his business and advised Sydney Metro.

In July 2020, Slater and Gordon, on Mr Harrold's behalf, submitted a claim outline to Sydney Metro and its lawyers, Ashurst Group, which set out what it thought Mr Harrold was entitled to pursuant to the Act. The claim outline was based on a relocation to the PLDC site. This step was taken to begin negotiations with Sydney Metro regarding compensation for relocation.

On 9 September 2020, Sydney Metro made an offer of compensation to Mr Harrold of \$882,450. The offer was made on the basis of the termination of his businesses. As Mr Harrold stated: '...Metro had made no attempt to negotiate our claim and had rather adopted a dictatorial stance on where we should go or be extinguished.'

After negotiations with Sydney Metro stalled, Mr Harrold's claim for compensation was submitted to the Valuer General on 19 February 2021. On 19 March 2021, Mr Harrold's property was compulsorily acquired. An initial valuation of \$6.7 million was provided by the Office of the Valuer General. This was then reduced to \$3.34 million. Mr Harrold was subsequently contacted by staff of the Valuer General's Office alerting him to the fact that the three valuers who had been assigned to his matter had no part in the final determination. In particular, one staff member '...believed that there had been an abuse of process and that Dr Parker had refused to listen to their reasoning for just compensation'.³⁷¹

Mr Harrold was of the view that the way in which the Valuer General operates 'is very limited. It has a very narrow view of how compensation is to be addressed ...'³⁷² He added that:

As it stands right now, the determination handed down by the Valuer General has left me short immediately of about \$500,000 or \$600,000 just on fees alone, professional fees alone, that I have had to incur as a direct result of Transport for NSW acquiring my interests in my site.

Mr Harrold has since lodged an appeal with the Land and Environment Court, which he described as a 'very daunting prospect for us'.

³⁷⁰ Submission 72, Sydney Helicopters Pty Ltd, Heliport Developers Pty Ltd; Evidence, Mr Mark Harrold, Director and Business Owner, Sydney Helicopters Pty Ltd, and Heliport Developers Pty Ltd, 6 October 2021, pp 20-26. This case study is based on the content of the submission and the transcript of evidence dated 6 October 2021.

³⁷¹ Evidence, Mr Harrold, 6 October 2021, p 20.

³⁷² Evidence, Mr Harrold, 6 October 2021, p 25.

Timeframes for determination

- 3.119** Significant concerns were also raised in relation to the timeframe for determinations once a matter proceeds to the Valuer General for assessment. These concerns were put to both the Valuer General and the representatives from the Department of Planning and Environment, the agency responsible for the employment of valuation staff.
- 3.120** As mentioned in Chapter 1, the Valuer General is the independent statutory officer appointed to oversee the State's land valuation system.³⁷³ Staff from the 'Just Terms' team are employees of the Department of Planning and Environment, providing services or functions as required by the Valuer General.³⁷⁴
- 3.121** Before turning to the timeframes for determinations, it is important to consider the Valuer General's workload. In terms of the overall number of determinations made by the Valuer General, information is available in the Valuer General's annual reports, as shown in Table 3:

Table 3 Determinations of compensation issued by the Valuer General³⁷⁵

Determinations of compensation made	2017–18 Number	2017–18 Total value (\$million)	2018–19 Number	2018–19 Total value (\$million)	2019–20 Number	2019–20 Total value (\$million)	2020–21 Number	2020–21 Total value (\$million)
Under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> – for properties above ground (surface land)	149	\$299.8	204	\$281.8	96	\$92.6	77	\$107.2
Under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> – for land below the surface (includes Treasurer's directions)	774	\$0	385	\$0	0	\$0	3821	\$0
In accordance with Treasurer's Directions (for intergovernmental transfers)	56	\$30.2	50	\$59.9	32	\$31.5	11	\$5.9
Total	979	\$330	639	\$341.7	128	\$124.1	3909	\$113.1

- 3.122** For the current reporting period, from July 2021 to 6 April 2022, the Just Terms team had finalised 602 determinations, 417 substratum matters and 185 other matters.³⁷⁶

³⁷³ Evidence, Dr Parker, 6 October 2022, p 30.

³⁷⁴ Evidence, Mr Stewart McLachlan, Executive Director, Property and Development, Department of Planning and Environment, 18 March 2022, p 2.

³⁷⁵ Valuer General of New South Wales, Annual Report 2020 - 2021, NSW Government - Valuer General, https://www.valuergeneral.nsw.gov.au/publications/annual_reports

³⁷⁶ Answers to questions on notice, Department of Planning and Environment, 20 April 2022, p 1.

- 3.123** In terms of the timeframe for determinations, section 42(1) of the Act states that an authority of the State which has compulsorily acquired land must, within 45 days after the publication of the acquisition notice, give the former owners of the land written notice of the compulsory acquisition, their entitlement to compensation and the amount of compensation offered (as determined by the Valuer-General).³⁷⁷ The Minister may extend the period of determination, but not by more than 60 days, if the Minister is satisfied that this is necessary.³⁷⁸
- 3.124** However, in recent years the timeframes to complete determinations have significantly departed from the 45 days allowed by the Act, as seen in Table 4 below.

Table 4 Average determination timeframes by the Valuer General³⁷⁹

Time to complete determinations:	Time to complete determinations:	Time Under Act (s42(1))
2018-19	166 days	45 days
2019-20	171 days	45 days
2020-21	81 days	45 days

- 3.125** On notice, the Department of Planning and Environment noted that for this financial year to 6 April 2022 the average number of days to issue 417 substratum determinations was 12 days, whereas for 185 other matters it was 181 days.³⁸⁰
- 3.126** When assessing the data in Tables 3 and 4 the committee noted that in 2019/2020 the total of 128 determinations were made at an average of 171 days and only applied to properties above ground. In 2020/2021, however, the total of 3906 determinations, made at an average of 81 days, included 3821 substratum determinations.
- 3.127** Dr Parker noted that substratum determinations are less time consuming than other types of acquisition as they only require 'a single letter' and the approval process is 'measurable in seconds'.³⁸¹
- 3.128** Taking into account this information and the statistics provided by the Department of Planning and Environment, it appears that the average time to complete determinations is significantly reduced by averaging the time taken for all types of determinations, rather than reporting the average time by type of determination.

³⁷⁷ *Land Acquisition (Just Terms Compensation) Act 1991*, s 42(1).

³⁷⁸ *Land Acquisition (Just Terms Compensation) Act 1991*, s 42(4).

³⁷⁹ Valuer General of New South Wales, Annual Report 2020 - 2021, NSW Government - Valuer General, https://www.valuergeneral.nsw.gov.au/publications/annual_reports

³⁸⁰ Answers to questions on notice, Department of Planning and Environment, 20 April 2022, p 3.

³⁸¹ Evidence, Dr Parker, 6 October 2022, p 29.

- 3.129** The timeframe for determinations was a concern of some stakeholders. Mr Rizzo reflected that the accumulation of delays in the acquisition process, including with the Valuer General and 'late' payment from the acquiring authority has resulted in 'yet more delays before we have the funds to buy another property. In that time we further lose out as we have to purchase in a market that is likely at least 10% above what it was'.³⁸²
- 3.130** FM Legal Pty Ltd also recounted the experience of a client who had their matter referred to the Valuer General in March 2021 and did not receive a determination until late June 2021 noting that 'they will not be able to buy the same size property as they have lost out by the time delay'.³⁸³
- 3.131** Mr Harrold, described his experience with the Valuer General process as being 'longwinded and far from fair'³⁸⁴ and had left him with 'absolutely no faith in the system whatsoever'.³⁸⁵
- 3.132** Mr Matthew Pearce, General Counsel, Inner West Council, also gave an example of length timeframes. He told the committee that the acquisition concerning the St Peter's Interchange was sent to the Valuer General for determination in early December 2021 but as of 18 March 2022, he was still unclear as to when a determination would be issued.³⁸⁶
- 3.133** These delays were also noted by legal representatives. Ms Penny Murray, Partner, Addisons Lawyers, and Member, Environmental Planning and Development Committee, The Law Society of New South Wales, stated that while the Valuer General's office had 'generally been very good ... in the last six months there has been difficulties. There has been a lot of delays, I think, with the Metro West acquisitions'.³⁸⁷
- 3.134** Ms Murray advised that she had 'been seeing delays of six months to get determinations and then sometimes two or three months between a preliminary and a final determination'. She was also concerned by the appointment of some consultants doing the investigations and questioned whether they were 'adequately qualified to make some of the comments that they made'.³⁸⁸
- 3.135** Responding to questions about these concerns, Mr Stewart Mclachlan, Executive Director, Property and Development, Department of Planning and Environment, outlined the process for making a determination, to give context to the overall approach and timeframes:

At present, a matter would be undertaken by either an internal valuer, although more likely an external contract valuer for the department. That matter would come to our team for review and quality assurance. When one of my senior managers or principal valuers is comfortable that it meets the relevant standards and has done the relevant checks and balances, it would be sent to me. How that then is provided to the Valuer General is I undertake a final review to make sure that the relevant feedback the Valuer General has given myself or the team previously is ideally being implemented or considered in this matter, and if I am comfortable that has occurred I send it to the Valuer General for review and noting if it is a preliminary, or review and approval if it

³⁸² Submission 59, Mr Joe Rizzo, pp 1-2.

³⁸³ Submission 75, FM Legal Pty Ltd, p 5.

³⁸⁴ Evidence, Mr Harrold, 6 October 2021, p 20.

³⁸⁵ Evidence, Mr Harrold, 6 October 2021, p 23.

³⁸⁶ Evidence, Mr Pearce, 18 March 2022, pp 26-27.

³⁸⁷ Evidence, Ms Murray, 6 October 2021, p 3.

³⁸⁸ Evidence, Ms Murray, 6 October 2021, pp 3-4.

is a final determination. In terms of the time frames taken, I would say for every matter that is being signed off, for want of a better word, from one of our principal valuers, the Valuer General would receive that within one to two business days of that sign-off, assuming I am comfortable.³⁸⁹

- 3.136** Mr Mclachlan acknowledged that the timeframe for determinations was an issue, stating: 'That is something we are well aware of and something we are working to reducing'. Speaking to the delays, Mr Mclachlan gave evidence that there was 'generally a reason why it has taken that time—whether we are awaiting experts or consultant reports, whether we are awaiting details from the claimant, which does occur a lot, or whether we are awaiting details from the acquiring authorities'. He assured the committee that '[i]f there are delays or inquiries, both the acquiring authority or the claimant can contact the Valuer General ... and we can talk through what is occurring on the matter'.³⁹⁰
- 3.137** Mr Mclachlan was of the view that there had been significant improvement in the last three to six months as a result of 'some structural and other business improvement initiatives'.³⁹¹ This, according to Mr Mclachlan, was a result of the implementation of a new process called 'Just terms 21', whereby when undertaking a determination from the date of gazettal:
- ... there are relevant drop dates for both the claimant and the acquiring authority—or drop-dead dates, as we call them—where information needs to be provided. For a draft determination at the moment, certainly 70 days would not be uncommon, and we are working to reduce that down to 45 days.³⁹²
- 3.138** In order to address the issue of timeliness of determinations by the NSW Valuer General, Mr Newhouse called for the government to 'require the Valuer General to issue draft determinations within 21 days of Gazettal, to allow comments from both sides and finalise determinations within 45 days'.³⁹³
- 3.139** The committee also explored the extent to which internal issues between the Valuer General and valuation staff may be affecting the timeframes for determinations.
- 3.140** At a hearing on 11 June 2021, for the Joint Standing Committee on the Office of the Valuer General, evidence was introduced that highlighted that the Valuer General of New South Wales, Dr Parker, was instructed, via letter on 10 May 2021, by the then Secretary of the Department of Planning and Environment, to only communicate with 4 of 120 staff.³⁹⁴ This was raised to 8 of 120 staff in October 2021³⁹⁵ and the instructions were due to be rescinded in February 2022.³⁹⁶
- 3.141** During this period, Dr Parker withdrew the delegations that were in place for the Just Terms team, requiring all just terms valuations to go before him, the Deputy Valuer General or the

³⁸⁹ Evidence, Mr Mclachlan, 18 March 2022, p 6.

³⁹⁰ Evidence, Mr Mclachlan, 18 March 2022, pp 5 and 8.

³⁹¹ Evidence, Mr Mclachlan, 18 March 2022, p 5.

³⁹² Evidence, Mr Mclachlan, 18 March 2022, pp 5 and 8.

³⁹³ Submission 36, Newhouse and Arnold Solicitors, p 6.

³⁹⁴ Evidence, Hon Daniel Mookhey MLC, Shadow Treasurer and Shadow Minister for the Gig Economy, 6 October 2021, p 28.

³⁹⁵ Evidence, Dr Parker, 6 October 2021, p 28.

³⁹⁶ Evidence, Dr Parker, 18 February 2022, p 2.

Director, Valuation Quality Assurance, for review prior to issue.³⁹⁷ A functional consequence of this decision limited the pool of available staff with the authority to review and finalise determinations.

- 3.142** Dr Parker advised the committee that he took this step because he started 'reviewing valuation reports and became extremely concerned at the level of... issues arising'. Pressed on this point further, Dr Parker said his concern related to 'the extent to which determinations were not compliant with Valuer General policy, court precedent or the Act'.³⁹⁸

Emotional impact on landowners

- 3.143** During the inquiry, many inquiry participants spoke of the mental, physical and emotional toll of the acquisition process.³⁹⁹

- 'It has caused unnecessary shock, anxiety, stress, worry, financial disadvantage, lack of sleep, physical exhaustion and generalised damage to health. This is an intolerable and unacceptable toll on people's mental health and quality of life'.⁴⁰⁰
- 'It had us arguing constantly, both my wife and I were stressed, worried sick and in a state of anxiety verging on depression. Our children were struggling and we felt like giving up. It nearly destroyed our marriage. The entire family felt like giving up'.⁴⁰¹
- 'You cannot understand the pressure and stress this puts on a family to have their life's work taken away, no compensation agreed to, and a real lack of communication and empathy on behalf of the NSW Government, Sydney Metro and all concerned'.⁴⁰²
- 'The unnecessary stress associated with this whole situation and financial stress has made it very difficult, and even harder due to COVID ... we have been living in a nightmare, with continuous stress to us, our family and my business, which we cannot get back'.⁴⁰³

- 3.144** As one Orchard Hills resident described to the committee:

This whole process has left our family devastated. The emotional trauma and uncertainty of this process has placed a considerable amount of stress on our marriage, children and finances for the last 3 years and 4 months. We live every day with the

³⁹⁷ Evidence, Dr Parker, 6 October 2021, p 28; Answers to questions on notice, NSW Valuer General, 3 November 2021, p 2.

³⁹⁸ Evidence, Dr Parker, 6 October 2021, p 29.

³⁹⁹ See Submission 13, Name suppressed, p 1; Submission 31, Mr John Douglas, p 1; Submission 33, Mr Christopher McIntyre, p 1; Submission 41, Name suppressed, p 2; Submission 52, Name suppressed, p 1; Submission 54, Name suppressed, p 2; Submission 58, Mr Raymond and Sandra Greig, p 1; Submission 60, LPG Holdings Pty Ltd, p 2; Submission 62, Name suppressed, p 4; Submission 67, Mr Richard Capuano, p 5; Submission 72, Sydney Helicopters Pty Ltd, Heliport Developers Pty Ltd, p 3; Submission 76, Cr Pauline Lockie, p 7; Submission 80, Name suppressed, p 6; Submission 89, Name suppressed, p 4; Submission 95, Name suppressed, p 3; Submission 97, Name suppressed, p 3.

⁴⁰⁰ Submission 12, Mrs Carol Goodwin, p 2.

⁴⁰¹ Submission 25, Mr Michael McGrath, p 8.

⁴⁰² Submission 32, Mr Winston Jeffrey, p 1.

⁴⁰³ Evidence, Mrs Grima, 5 October 2021, p 10.

possibility of our main security, our home, being replaced insufficiently and the uncertainty of not knowing where we will be able to relocate to. Whilst at the same time, we are trying to offer comfort and maintain stability for our children whose lives, friendships and schools are all based locally. Due to all of this, we have had many sleepless nights. Our family's plans and lives have been placed on hold for over 3 years due to this metro line and the uncertainty it has caused. It has irrevocably changed the direction and course of our lives forever and we still suffer every day due to it.⁴⁰⁴

- 3.145** These sentiments were supported by Mr Parker MP, who spoke of the impacts felt by property owners in his electorate as a result of the acquisition process for the WestConnex, the Western Harbour Tunnel and the Sydney Metro West projects:

In all cases it is an extremely difficult time, but in instances where the family home is involved it becomes an emotional issue as well as a financial one. Impacts are felt by affected property owners but also their neighbours, as established communities are broken up and neighbours displaced.⁴⁰⁵

- 3.146** Further, Mr Tom Richards, Member, Save Our Homes Jannali, spoke of the 'isolating experience' faced by nine Jannali residents when told by Transport for NSW representatives via doorknock that their houses would be acquired for a commuter carpark. As Mr Richards described:

... it is a quick 15-minute conversation—"Here's a letter. See you later"—and then they are left to pick themselves up ... the individual home owners are left on their doorstep on their own to contemplate what they do next ... people were completely devastated.⁴⁰⁶

- 3.147** Mr Richards noted that Transport for NSW did not offer any 'emotional or mental supports to protect citizens' welfare' and that 'case management standards and duty of care' by Transport for NSW was lacking.⁴⁰⁷

- 3.148** This was echoed by residents of Orchard Hills in relation to Sydney Metro, who indicated that Sydney Metro had acquisition managers that performed a dual role of being both the 'contact person for information about the project', as well as 'performing the role of counsellor ... [which] did not instill confidence in the residents'.⁴⁰⁸

- 3.149** Orchard Hills residents called for 'better communication by Sydney Metro with impacted communities ... with residents concerned that Sydney Metro representatives were rude, abrupt at times, seemed "heartless" and lacked empathy for such a significant disruption to these communities'.⁴⁰⁹

⁴⁰⁴ Submission 95, Name suppressed, p 3.

⁴⁰⁵ Submission 65, Mr Jamie Parker MP, Member for Balmain, p 2.

⁴⁰⁶ Evidence, Mr Richards, 18 February 2022, p 12.

⁴⁰⁷ Evidence, Mr Richards, 18 February 2022, p 10.

⁴⁰⁸ Site visit summary report – Orchard Hills, 19 May 2021, p 2. See also Evidence, Mr Vella, 5 October 2021, p 7.

⁴⁰⁹ Site visit summary report – Orchard Hills, 19 May 2021, p 2.

- 3.150** According to Mr David Newhouse, Partner, Newhouse & Arnold Solicitors, there is also a difference in the approach provided by the acquisition teams at Transport for NSW and Sydney Metro, including the use of employed dedicated staff versus contractors, and access to a grievance process:

...[Transport for NSW use] employed staff who are there seeing this on a day-to-day basis. They typically have valuation experience, ... Most importantly, there is a process in Transport for NSW that if you do have a grievance, you can escalate it up the chain ... With Sydney Metro and others, there is no process. You cannot go up to senior management and have those discussions. You are left with the contractors at the ground level, and you cannot have those negotiations.⁴¹⁰

NSW Government perspective

- 3.151** In his evidence, Mr Mark Slater, Executive Director Property Group, Infrastructure and Place, Transport for NSW, told the committee that the 'property acquisition process has been improved in recent years to ensure home owners and business owners have appropriate support and time to make informed decision[s] and to ensure that they are supported throughout the process'.⁴¹¹
- 3.152** In June 2019, Transport for NSW released new property acquisition standards which representatives claimed have resulted in the provision of clearer information on the compulsory acquisition process for impacted residents, in addition to a 'capability uplift across Transport for all staff involved in the property acquisition process'.⁴¹² According to Mr Mark Slater, Executive Director Property Group, Infrastructure and Place, Transport for NSW, the 'new standards commit acquiring authorities like Transport to improving the experience of property owners by ensuring acquisition processes are fair, consistent and transparent'.⁴¹³
- 3.153** Mr Slater also advised that the agency has implemented six of the seven objectives and recommendations from the May 2021 Auditor-General's report: 'This ensured our property acquisition processes and policies align with the Auditor-General's recommendations and meet the community's expectations regarding integrity, rigour and value for money'.⁴¹⁴
- 3.154** As previously noted at 1.39, the Centre for Property Acquisition has a set of Property Acquisition Standards, with Standard 5 (c) stating:

Acquiring authorities must invite property owners to participate in the acquisition feedback process managed by the Centre for Property Acquisition at a time and through a channel which is appropriate for the property owner.⁴¹⁵

⁴¹⁰ Evidence, Mr Newhouse, 18 March 2022, p 13.

⁴¹¹ Evidence, Mr Slater, 18 March 2022, p 52.

⁴¹² Evidence, Mr Slater, 18 March 2022, p 52.

⁴¹³ Evidence, Mr Slater, 18 March 2022, p 52.

⁴¹⁴ Evidence, Mr Slater, 18 March 2022, p 52.

⁴¹⁵ Property Acquisition in NSW, Property Acquisition Standards, NSW Government – Property acquisition standards and principles, <https://www.nsw.gov.au/sites/default/files/2022-03/property-acquisition-standards.pdf>

- 3.155** In terms of customer feedback and satisfaction regarding the acquisition process with acquiring authorities, Mr Slater told the committee that the most recent survey results provided via the Centre for Property Acquisition 'indicated that six out of 10 acquisitions residents were satisfied' with 'Transport for NSW'.⁴¹⁶ The committee was unable to ascertain how these results may have differed between substratum and non-substratum acquisitions.
- 3.156** Speaking specifically about Sydney Metro, Mr Peter Regan, Chief Executive, advised that the agency used a combination of permanent staff and external parties as a result of the 'surge capacity' of the number of acquisitions currently underway and acknowledged that this needed to be improved. However, he insisted that 'the decisions around the offers and the approach taken are still decisions taken by Sydney Metro employees. We do use third-party advisers and valuers and contractors to supplement our capability to manage the processes, but the key decisions are still made by staff'.⁴¹⁷
- 3.157** In response to stakeholder concerns about the conduct of Sydney Metro representatives during the acquisition process, Mr Regan confirmed that in some cases third parties were in direct contact with individuals whose properties are being acquired rather than official Sydney Metro staff. When questioned as to what assurances Sydney Metro had that these third parties were carrying out those acquisitions in the way that Sydney Metro hoped they were, Mr Regan replied that 'we absolutely expect the highest standards of behaviour. If we get feedback that that is not the case, then that is something we look into and address'.⁴¹⁸
- 3.158** Ms McPhee also gave evidence that Sydney Metro undertake assurance reviews and audits of their processes, with the last one being completed in February last year. She told the committee that these reviews are 'focused on how our staff are applying our standards, policies and procedures in accordance with the Act'.⁴¹⁹

Committee comment

- 3.159** This inquiry has highlighted the need for the legislative framework for land acquisitions to be fair, unbiased and equitable. It is critical for the legislation to both protect and support landowners. What may be a business transaction for acquiring authorities is actually a highly emotional and distressing experience for those that have to go through it.
- 3.160** Despite the evidence of 'Transport for NSW and Sydney Metro claiming that the current process is fair and transparent, the committee is very concerned by how heavily the system is weighted in favour of the State. Clearly there is a power imbalance, and the many aspects of the process fail to even the footing between the parties.
- 3.161** While we accept that that some staff at 'Transport for NSW and Sydney Metro genuinely attempt to work in a collaborative and supportive manner during acquisitions, we simply heard too many stories to the contrary, where owners felt that they were obstructed by staff that refused to approach the acquisition process as a cooperative endeavour.

⁴¹⁶ Evidence, Mr Slater, 18 March 2022, p 56.

⁴¹⁷ Evidence, Mr Regan, 18 March 2022, p 37.

⁴¹⁸ Evidence, Mr Regan, 18 March 2022, p 37.

⁴¹⁹ Evidence, Ms McPhee, 18 March 2022, p 37.

- 3.162** In particular, the committee was deeply concerned to hear about the conduct of acquiring authorities during the negotiation phase. In our view, acquiring authorities are not always acting within the spirit of section 10A, making it difficult for landowners to feel like the process is one of genuine negotiation.
- 3.163** We note the improvements put forward by a number of legal stakeholders in this inquiry, particularly in relation to section 10A. We would support changes which would see the six month period, in full, being used for genuine negotiations, with the legislation strengthened to ensure acquiring authorities are providing full and frank information about the basis for offers, upfront payments for landowners to engage experts, and the provision of a mediator or dispute resolution service to independently assist the parties when negotiating. We therefore make a recommendation in this regard.

Finding 3

That the current culture of acquiring authorities, including specifically that of Sydney Metro, is making the acquisition process more difficult for residents and small businesses than it should be.

Recommendation 3

That the NSW Government amend section 10A of the *Land Acquisition (Just Terms Compensation) Act 1991* (and any other associated provision) to ensure that:

- acquiring authorities are obliged to genuinely negotiate;
 - letters of offer are provided soon after the negotiation period commences, with a reasonable amount of information provided to affected owners on the basis and breakdown of offers;
 - acquiring authorities provide partial upfront payments to affected owners including for expert reports and legal fees;
 - acquiring authorities ensure the independence of valuers and where conflicts of interest arise these are drawn to the attention of the owner;
 - owners can access an independent mediator, if requested.
-

- 3.164** Turning now to the use of non-disclosure agreements by acquiring authorities, it is the committee's view that these agreements limit the flow of information between residents undergoing the acquisition process, failing to promote transparency and confidence in the fairness of offers.
- 3.165** Noting that the disclosure of property values are routinely made available to the public through the publication of auction and property sale information, the committee is not convinced that agreements should remain confidential. In our view, open disclosure may help promote consistency in acquisition outcomes, and assist residents to feel like they are on a more even footing with authorities when negotiating.

- 3.166** We are also aware that non-disclosure terms are used not only in acquisition agreements but also other agreements that acquiring authorities enter into with residents affected by the construction of infrastructure projects. In our view this is generally unnecessary and undermines the transparency within which acquiring authorities should operate.
- 3.167** The committee therefore recommends that the NSW Government seek to remove all non-disclosure terms from residential land acquisition agreements, and any other agreements entered into by acquiring authorities with residents impacted as a result of infrastructure projects, and not enter into any such future non-disclosure agreements.

Recommendation 4

That the NSW Government:

- seek to remove all non-disclosure terms that currently apply in all residential land acquisition agreements, and any other agreements entered into by acquiring authorities with residents impacted as a result of infrastructure projects
- not enter into any such future non-disclosure agreements.

-
- 3.168** A concern repeated by many in this inquiry was that the compensation provided to landowners is unjust and unfair. The committee frequently heard how compensation amounts are perceived as low, and do not enable landowners to buy back within the same area.
- 3.169** While we acknowledge that the basis for determining 'market value' under the Act does not allow for 'reinstatement', evidence clearly shows that the impact of this is more often than not displacement for a family. Homeowners are forced to move out of their locality, breaking ties with family and community. Children may be uprooted from schools, and emotional distress and anguish is inevitably caused.
- 3.170** A reasonable person would expect that if their property was to be compulsorily acquired, they would be provided with equivalent funds to purchase a similar property in a similar location. It is clear, however, that the current legislation does not always allow this, and that affected homeowners are left feeling the process is unfair and biased towards the state.
- 3.171** The committee was also concerned by the issue of uplift and the impact of not taking this factor into consideration when determining compensation. Investment in infrastructure is often linked to an increase in property prices which means that 'market value' based compensation will almost certainly disadvantage owners.
- 3.172** The committee notes that the NSW Government failed to implement recommendation 17 of the 2014 Russel Review relating to 'reinstatement'. The fact that New South Wales is still, 8 years later, the only jurisdiction in Australia to not provide for reinstatement or relocation is astounding. The committee believes that reinstatement would, by definition, remove much of the fear felt by owners when they are advised that their property will be acquired and ensure a more consistent and transparent approach to compensation by acquiring authorities.
- 3.173** Accordingly, the committee recommends that the NSW Government amend the basis for determining compensation in the *Land Acquisition (Just Terms Compensation) Act 1991*, to introduce a 'reinstatement' approach to the calculation of 'market value'.

Recommendation 5

That the NSW Government urgently amend the basis for determining compensation in the *Land Acquisition (Just Terms Compensation) Act 1991*, to introduce a 'reinstatement' approach to the calculation of 'market value'.

- 3.174** The committee empathises with the difficulties faced by those who have undergone or are undergoing the compulsory acquisition process and acknowledges the mental, physical and emotional toll of the acquisition process.
- 3.175** We were dismayed to hear that some acquiring authorities feel that it is acceptable for designated acquisition managers to also undertake the role of support person. While acknowledging that the acquisition process has improved in recent years, it is essential that the person offering support is independent from the person managing the process on behalf of an acquiring authority. As such, the committee strongly urges all acquiring authorities to publicise the availability of and provide independent and confidential counselling services to affected residents.
- 3.176** Additionally, the committee was not convinced that the eligibility for and quantum of a solatium payment is appropriate in compensating owners for the emotional impact, disadvantage and difficulties of having to move. Therefore, the committee recommends that the NSW Government act to ensure that the eligibility and quantum of solatium payments associated with land acquisitions is adequate and that access to those payments is sufficiently broad. Noting broad concerns from landowners about delays in the acquisition process, and the emotional toll this creates, it is our view that solatium payment should include compensation for unreasonable delays.
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Recommendation 6

That the NSW Government act to ensure that the eligibility and quantum of solatium payments associated with land acquisitions is adequate and that access to those payments is sufficiently broad and includes compensation for unreasonable delays.

- 3.177** Furthermore, the committee feels that there should be further investigation into the process for accessing a hardship acquisition for those that have been negatively impacted by a project but have not had their property acquired. As it stands, we feel that the current process does not adequately compensate owners who are forced to apply for this type of acquisition or experience property damage or loss of property value based on the location of their property.
- 3.178** Therefore, the committee recommends that the NSW Government improve the transparency of the procedures and review the guidelines for hardship acquisitions for owners that experience a reduction in property value, are negatively impacted by construction or a property rezoning which arises as a result of a government project.
-

Recommendation 7

That the NSW Government improve the transparency of the procedures and review the guidelines for hardship acquisitions for owners that experience a reduction in property value, are negatively impacted by construction or a property rezoning which arises as a result of a government project.

- 3.179** Noting that a proportion of matters proceed to a determination by the Valuer General, and that the process is stressful, timely and exhausting for owners, it is of utmost importance that compulsory acquisition matters are concluded in a timely manner. While there is a legislative time standard of 45 days, it is alarming to hear that matters are taking over four times this long to be determined. This is not acceptable.
- 3.180** The committee is concerned that internal staffing matters may be influencing the process or timeframes achieved by the Valuer General's office. It was also alarming to receive evidence from the Valuer General that he had removed delegations given concerns he had about the extent to which determinations complied with Valuer General policy, court precedent and legislation. This evidence, in the context of the Auditor General's recent findings about the acquisition processes undertaken by Transport for NSW and broader community concerns, fails to instil confidence in the government's approach to acquisitions and the role of the Valuer General in making appropriate determinations.
- 3.181** As a result, the committee recommends that the NSW Government undertake an investigation into the workings of the office of the Valuer General NSW. This investigation should include a root cause analysis of the delays in the provision of determinations and an audit of a sample of determinations from the last 5 years to ensure compliance with legislation and case law.
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Recommendation 8

That the NSW Government undertake an investigation into the workings of the office of the Valuer General NSW, with this investigation to include a root cause analysis of the delays in the provision of determinations and an audit of a sample of determinations from the last 5 years to ensure compliance with legislation and case law.

- 3.182** In addition to the recommendations above, the committee believes it would be helpful for there to be wider data collected in relation to the experience of landowners who endure the compulsory acquisition process.
- 3.183** While the committee understands that Transport for NSW conducts customer satisfaction surveys, it appears Sydney Metro do not. The committee feels that it is very important for the NSW Government and acquiring authorities to obtain and report on this information. Noting that the Centre for Property Acquisition plays a role in providing standards and training in relation to the acquisition process, we recommend that the NSW Government, via the Centre for Property Acquisition, ensure that all acquiring authorities develop and implement strategies to measure customer satisfaction, with outcomes to be publicly reported on at least an annual basis. All survey results must distinguish between substratum and above ground acquisitions.
-

Recommendation 9

That the NSW Government, via the Centre for Property Acquisition, ensure that all acquiring authorities develop and implement strategies to measure customer satisfaction, with a breakdown of results between substratum and above ground acquisitions, with the outcomes to be publicly reported on at least an annual basis.

- 3.184** Finally, while not touched upon in the report, a range of evidence was received about the Sydney Science Park. Questions were raised in relation to how the land was acquired for the park, the decision making processes at Transport for NSW in regards to corridor and rail planning for the Outer Sydney Orbital, the accelerated agreement between Sydney Water and Celestino to provide water infrastructure to the Sydney Science Park, and who was responsible for funding the project. While the committee notes that the evidence was limited, we consider that it is deserving of further examination. Accordingly, the committee recommends that the Legislative Council consider an inquiry into Sydney Science Park focusing on the status of the land, infrastructure provision to that site and related matters.
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Recommendation 10

That the Legislative Council consider an inquiry into the status of land at the Sydney Science Park, infrastructure provision to that site and related matters.

Appendix 1 Submissions

No.	Author
1	Name suppressed
2	Confidential
3	Ms Mary Pratt
4	Mrs Maria Zucco
4a	Mrs Maria Zucco
5	Name suppressed
6	Mr Richard Lesniewicz
7	Name suppressed
8	Name suppressed
9	Name suppressed
10	Name suppressed
11	Name suppressed
12	Mrs Carol Goodwin
13	Name suppressed
14	Mr Michael Gill
15	Mr Jeffrey Osborne
15a	Mr Jeffrey Osborne
15b	Mr Jeffrey Osborne
16	Name suppressed
17	Mr Joe Gattellari
18	Mr Andrew Fryc
19	Name suppressed
20	Name suppressed
21	Mrs Linda Seeney
22	Confidential
23	Name suppressed
24	Mr Tony Coso
25	Mr Michael McGrath
26	Appin Orbital Motorway Support Group
27	Mr Jacob Farrugia
28	Confidential

No.	Author
29	Name suppressed
30	Mr Peter Ingall
31	Mr John Douglas
32	Mr Winston Jeffrey
33	Mr Christopher McIntyre
34	Mr Terry Dundas
35	Mr Ray Dibb
36	Newhouse & Arnold Solicitors
37	Name suppressed
38	Name suppressed
39	Beatty Legal
40	Mr Bruno Spatari
41	Name suppressed
41a	Name suppressed
42	Mr Vineh Charan
43	Heworth Holdings Group
44	Name suppressed
45	Name suppressed
46	Name suppressed
47	Mr Nikolaos Maropoulos
48	Name suppressed
49	Name suppressed
50	RAW (Rozelle Against WestConnex)
51	Save Our Homes Jannali
52	Name suppressed
53	Sutherland Shire Council
54	Name suppressed
55	Ms Rosemarie Gates
56	Mr Charles Kolano
57	Mr Walter McKenzie
57a	Mr Walter McKenzie
58	Mr Raymond and Sandra Greig
59	Mr Joe Rizzo
60	LPG Holdings Pty Ltd
61	The Law Society of New South Wales

No.	Author
62	Name suppressed
63	Hawkesbury City Council
64	Bradcorp Holding Pty Ltd
65	Mr Jamie Parker MP
66	Name suppressed
67	Mr Richard Capuano
68	Name suppressed
69	Name suppressed
70	Ms Julia Finn MP
70a	Ms Julia Finn MP
71	Name suppressed
72	Sydney Helicopters Pty Ltd, Heliport Developers Pty Ltd
73	NSW Government
74	Mr Kevin Armstrong
75	FM Legal Pty Ltd
76	Cr Pauline Lockie
77	Mrs Silvana Di-iorio
78	Mr Colin Charlton
79	Mr Walter Di-iorio
80	Name suppressed
81	Ms Jo O'Brien
82	The University of Sydney
83	Confidential
84	NSW Auditor General
85	Inner West Council
86	Mr Sam and Mrs Therese Grima
87	Mr Neil Gagen
88	Name suppressed
89	Name suppressed
90	Name suppressed
91	Confidential
92	Ms Jennifer Downs
93	Name suppressed
94	Name suppressed
95	Name suppressed

No.	Author
96	Mr Owen Coleman
97	Name suppressed
98	Dr Adrian Sheen
99	Western Motorcycles

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Tuesday 15 June 2021	Mr Rick Graf	Development Director, Billbergia
Jubilee Room Parliament House, Sydney	Mr Paul Addison	Group Commercial Manager, Billbergia
	Mr Rob Sharp	Secretary, Transport for NSW
	Ms Camilla Drover	Deputy Secretary, Infrastructure and Place, Transport for NSW
	Ms Margaret Crawford	NSW Auditor-General, Audit Office of New South Wales
	Mr Ian Goodwin	Deputy Auditor-General, Audit Office of New South Wales
	Ms Claudia Migotto	Assistant Auditor-General, Performance Audits, Audit Office of New South Wales
Tuesday 5 October 2021	Mr Jesse Vella	Orchard Hills resident
Via videoconference	Mrs Lauren Vella	Orchard Hills resident
	Mr Victor Xiberras	Orchard Hills resident
	Mr Luke Kohler	Orchard Hills resident
	Mrs Christine Vella	Orchard Hills resident
	Mr Sam Grima	Orchard Hills resident
	Mrs Therese Grima	Orchard Hills resident
	Mr Peter Regan	Chief Executive, Sydney Metro
	Ms Rebecca McPhee	Deputy Chief Executive, Sydney Metro
Wednesday 6 October 2021	Ms Penny Murray	Member, Environmental Planning & Development Committee, The Law Society of New South Wales
Via videoconference	Mr Christopher Drury	Deputy Chair, Environmental Planning & Development Committee, The Law Society of New South Wales

Date	Name	Position and Organisation
	Mr Christopher Walsh	Head of Property, Heworth Holdings Group
	Ms Julia Finn MP	Member for Granville
	Mr Mark Harrold	Director and business owner, Sydney Helicopters Pty Ltd, Heliport Developers Pty Ltd
	Mr Adrian McMillan	Associate, Slater & Gordon
	Dr David Parker	Valuer General of NSW
Friday 18 February 2022	Dr David Parker	Valuer General of NSW
Via videoconference	Mr Tom Richards	Member, Save Our Homes Jannali
	Mr Liam Mulhall	Member, Save Our Homes Jannali
	Mrs Helma Mulhall	Member, Save Our Homes Jannali
Friday 18 March 2022	Mr Stewart McLachlan	Head Executive Director, Property and Place, Department of Planning and Environment
Macquarie Room	Mr David Newhouse	Partner, Newhouse & Arnold Solicitors
Parliament House, Sydney	Ms Ballanda Sack	Special Counsel, Beatty Hughes & Associates
	Mr Matthew Pearce	General Counsel, Inner West Council
	Mr Peter Regan	Chief Executive, Sydney Metro
	Ms Rebecca McPhee	Deputy Chief Executive, Sydney Metro
	Mr Paul Plowman	General Manager Asset Lifecycle, Sydney Water
	Mr Geoff Cahill	Director Corridor Protection, Transport for NSW
	Ms Julie Gee	Chief Transport Planner, Customer Strategy & Technology, Transport for NSW
	Mr Mark Slater	Executive Director Property Group, Infrastructure and Place, Transport for NSW

Date	Name	Position and Organisation
Friday 27 May 2022	Mr Ian Choudhury	Founding Member and Secretary, Appin Orbital Motorway Support Group
Room 814/815		
Parliament House, Sydney	Mrs Fiona Evans	Founding Member, Appin Orbital Motorway Support Group
	Ms Jo O'Brien	Private citizen and Member, Outer Sydney Orbital Macarthur Action Group
	Mr Jamie Parker MP	Member for Balmain
	Cr Pauline Lockie	Councillor, Inner West Council
	Mr Peter Hehir	Convenor, RAW (Rozelle Against WestConnex)
	Mr John Batholomew	Committee member, RAW
	Ms Rosemarie Gates	Leichhardt resident
	Mr Raymond Greig	Former St Peters resident
	Mrs Sandra Greig	Former St Peters resident
	Mr Richard Capuano	Former St Peters resident
	Mr Colin Charlton	Former St Peters resident

Appendix 3 Minutes

Minutes no. 34

Wednesday 31 March 2021

Portfolio Committee No. 6

Room 1254, Parliament House, Sydney at 11.03 am

1. Members present

Ms Boyd, *Chair*

Mr Farlow

Mr Farraway (via Webex from 11.06 am)

Mr Graham (via Webex until 11.18 am)

Mr Mallard (via Webex)

Mr Mookhey

2. Apologies

Mr Banasiak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos. 30, 31, 32 and 33 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 25 March 2021 – Letter from Mr Mookhey, Ms Boyd and Mr Banasiak requesting a meeting of Portfolio Committee No. 6 to consider a proposed self-reference into road tolling.

5. Consideration of terms of reference

The committee to consider the following terms of reference:

That Portfolio Committee No. 6 - Transport and Customer Service inquire into and report on matters relating to tolling regimes for roads in New South Wales including:

- a) an updated review of the tolling regimes in place on different roads and an explanation for the differences between each,
- b) the total cost paid by drivers in tolls for the Westconnex toll road over the life of its contract, and the extent to which this represents value for money,
- c) the impact, and the geographical distribution of the impact, of toll costs on NSW drivers and on productivity,
- d) the extent of toll relief provided in NSW and whether it is adequate,
- e) opportunities to increase transparency for the public, particularly over how tolling contracts are negotiated and varied, and the extent to which tolls are paid,
- f) the rationale for allowing higher than CPI increases on certain tolls, and for the truck toll being set at three times the toll for car traffic,
- g) the ability or otherwise of trucking businesses to afford increases in tolling charges and the extent or otherwise of their ability to pass this through,

- h) opportunities to increase the assurance to the public that tolling arrangements represent the fairest possible outcome, including the appropriateness of involving an independent agency such as Independent Pricing and Regulatory Tribunal (IPART) in the determination of tolls and their escalation,
- i) the long term impact on government finances as a result of toll roads being wholly or partly operated by non-government entities, and
- j) any other related matter.

Resolved, on the motion of Mr Mallard: That the proposed terms of reference be amended by inserting after item i) the following new paragraph:

"consideration of the impact of direct or debt financing of road projects, including what would have been the impact on regional road projects of the direct financing of West Connex."

Resolved, on the motion of Mr Graham: That the committee adopt the terms of reference as amended.

Resolved, on the motion of Mr Mallard: That this committee:

- a) notes that the Public Works Committee is conducting an inquiry into the Northern Beaches and Western Harbour Tunnel
- b) take into account the committee secretariat and agency workloads when conducting these inquiries concurrently, and
- c) liaise with the Public Works Committee in relation to the conduct of these two inquiries.

6. Conduct of the inquiry into road tolling regimes

6.1 Proposed timeline

Resolved, on the motion of Mr Mookhey: That the committee adopt the following timeline for the administration of the inquiry:

- Sunday 23 May 2021 – submission closing date
- June/July 2021 – hearings and site visits.

6.2 Stakeholder list

Resolved, on the motion of Mr Farlow: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

6.3 Advertising

The committee notes that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

It is no longer standard practice to advertise in the print media. The committee should pass a resolution if it wishes to do so.

7. Inquiry into the acquisition of land in relation to major transport projects

7.1 Hearings and site visits

Resolved, on the motion of Mr Mookhey: That the committee:

- conduct a site visit to Orchard Hills and hold a half day public hearing on date in late April or May 2021 to be determined in consultation with the Chair, with members availability to be canvassed by the secretariat via email
- invite the Member for Mulgoa, Mrs Tanya Davies MP, to make a submission to the inquiry and appear as a witness at the half day public hearing

- invite representatives of Sydney Metro to appear as a witness at the half day hearing
- meet and hear from affected residents.

8. Adjournment

The committee adjourned at 11.24 am, until *Sine die*.

Emma Rogerson
Committee Clerk

Minutes no. 35

Thursday 13 May 2021

Portfolio Committee No. 6 – Transport and Customer Service

Members' Lounge, Parliament House, 2.16 pm

1. Members present

Ms Boyd, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Farlow

Mr Graham

Mr Mallard

Mr Mookhey

2. Apologies

Mr Farraway (substantive member for inquiry into Budget Estimates 2020-2021)

Mr Latham (participating for inquiry into acquisition of lands for major transport projects)

Mr Martin (substituting for Mr Farraway for the duration of the inquiry into acquisition of lands for major transport projects)

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 34 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 19 April 2021 – Letter from the Hon Sam Farraway MLC, Deputy Government Whip to secretariat, providing advice that the Hon Taylor Martin MLC will be substituting for Mr Farraway for the duration of the inquiry into acquisition of lands for major transport projects
- 26 April 2021 – Letter from Ms Julia Finn MP, Member for Granville to secretariat, seeking advice as to what is admissible under the inquiry's terms of reference
- 27 April 2021 - Email from Mrs Tanya Davies MP, Member for Mulgoa to secretariat, declining invitation to give evidence at a hearing in Penrith on 19 May 2021 due to other engagements
- 27 April 2021 – Email from Mr Todd Lister, Parliamentary Services, Transport for NSW to secretariat - advising Sydney Metro representatives decline invitation to give evidence in Penrith on 19 May 2021 but will attend hearings at Parliament House

5. Inquiry into the acquisition of land in relation to major transport projects

5.1 Provision of documents to participating member

Resolved, on the motion of Mr Farlow: That Mr Latham, who has advised the committee that he intends to participate for the duration of the inquiry into acquisition of land in relation to major transport projects, be provided with copies of inquiry related documents.

5.2 Amendment to Terms of Reference

Resolved, on the motion of Mr Mookhey: That submissions and evidence regarding the acquisition of land by councils in relation to major transport projects are permitted by the inquiry's terms of reference.

6. Inquiry into Budget Estimates 2020-2021

6.1 Correspondence

The committee noted the following items of correspondence relating to the inquiry into Budget Estimates 2020-2021:

Received

- 23 March 2021 – Letter from Ms Camilla Drover, Deputy Secretary Infrastructure and Place, Transport for NSW to secretariat, clarifying evidence given during the hearing on 25 February 2021
- 25 March 2021 – Letter from Mr Damon Rees, Chief Executive Officer, Service NSW to secretariat, clarifying evidence given during the hearing on 8 March 2021
- 6 April 2021 – Letter from Ms Carol-anne Nelson, Deputy Secretary, Regional and Outer Metropolitan, Transport for NSW to secretariat, clarifying evidence given during the hearing on 10 March 2021

Sent

- 2 March 2021 – Email from the secretariat to Hon Andrew Constance MP, Minister for Transport and Roads, attaching transcript of evidence with questions on notice highlighted and supplementary questions
- 10 March 2021 – Email from the secretariat to Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, attaching transcript of evidence with questions on notice highlighted and supplementary questions
- 11 March 2021 – Email from the secretariat to Hon Victor Dominello MP, Minister for Customer Service, attaching transcript of evidence with questions on notice highlighted and supplementary questions
- 15 March 2021 – Email from the secretariat to Hon Paul Toole MP, Minister for Regional Transport and Roads, attaching transcript of evidence with questions on notice highlighted and supplementary questions

6.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution establishing the Inquiry:

- answers to questions on notice from Ms Elizabeth Tydd, Information Commissioner, Information and Privacy Commission NSW, received 22 March 2021
- and supplementary questions from the Hon Andrew Constance MP, Minister for Transport and Roads, received 23 March 2021
- answers to supplementary questions from Ms Samantha Gavel, Privacy Commissioner, Information and Privacy Commission NSW, received 29 March 2021
- answers to questions on notice and supplementary questions from the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, received 31 March 2021
- answers to questions on notice and supplementary questions from the Hon Victor Dominello MP, Minister for Customer Service, received 1 April 2021
- answers to questions on notice and supplementary questions from the Hon Paul Toole MP, Minister for Regional Transport and Roads, received 6 April 2021.

6.3 Consideration of Chair's draft report

The Chair submitted her draft report entitled *Budget Estimates 2020-2021*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Mookhey: That:

- a) The draft report be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished transcripts of evidence, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- d) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- e) That the report be tabled on 18 May 2021.

7. Inquiry into road tolling regimes

7.1 Consideration of an online questionnaire

Resolved, on the motion of Mr Graham: That the committee conduct an online questionnaire for the Inquiry into road tolling and that:

- the online questionnaire be open for 3 weeks
- the wording for the website be as follows:
 - While online questionnaire is open:**
 - Online submissions
 - Individuals are invited to submit their comments on the inquiry here [hyperlink to online questionnaire]. This is a new way for individuals to participate in inquiries in a timely and accessible way.
- the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:
 - the committee agree to publish the report via email, unless a member raises any concerns
 - individual responses be kept confidential on tabling.
- questions be circulated by the secretariat and agreed to via email

8. Adjournment

The committee adjourned at 2.27 pm, until Wednesday 19 May 2021, 1.50 pm, Orchard Hills (Site visit).

Emma Rogerson
Committee Clerk

Minutes no. 36

Wednesday 19 May 2021

Committee No. 6 – Transport and Customer Service

Kent Road, Orchard Hills, 3.02 pm

1. Members present

Ms Boyd, *Chair*
Mr Farlow
Mr Graham
Mr Mallard (until 3.15 pm)
Mr Martin
Mr Mookhey

2. Apologies

Mr Banasiak, *Deputy Chair*
Mr Latham

3. Inquiry into acquisition of land for major transport projects**3.1 Site visit – Orchard Hills**

The committee conducted a tour of inspection of the proposed Orchard Hills Metro Station accompanied by Mr Jesse Vella and Mr Victor Xiberras, impacted residents.

Media were present and the committee agreed to the media boarding the bus for part of the tour.

The committee attended a private residence on Kent Road, Orchard Hills and met with the following residents:

- Christine and Jason Vella
- Lauren and Jesse Vella
- Victor Xiberras
- Luke Kohler
- Helen Gagen
- Sam Grima
- Steve Mizzi
- Ajmair Chnagan.

4. Adjournment

The committee adjourned at 5.20 pm, *sine die*.

Emma Rogerson
Committee Clerk

Minutes no. 37

Tuesday 15 June 2021

Portfolio Committee No. 6 – Transport and Customer Service
Jubilee Room, Parliament House, 1.03 pm

1. Members present

Ms Boyd, *Chair*
Mr Farlow
Mr Graham
Mr Martin
Mr Mookhey

2. Apologies

Mr Banasiak, *Deputy Chair*
Mr Latham (participating)
Mr Mallard

3. Previous minutes

Resolved, on the motion of Mr Martin: That draft minutes nos. 35 and 36 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 1 June 2021 – Email from Ms Anju Sharma, A/Manager, Government Services, Office of the Secretary, Transport for NSW to secretariat, advising that Transport for NSW will respond to the Auditor-General's report in relation to the acquisition of land at Camellia by 30 June 2021, and that a hearing date after 30 June may be of greater assistance to the Committee in its inquiries
- 3 June 2021 – Letter from Ms Rachel Simpson, Chief of Staff, Transport for NSW to secretariat, advising it would be inappropriate for Mr Rodd Staples to give evidence as he was not employed when Camellia land was purchased
- 7 June 2021 – Email from Ms Hayley McIntosh, Executive Officer, Office of the Secretary, Department of Premier and Cabinet to secretariat, advising Mr Tim Reardon is unable to attend hearing on 15 June 2021 due to long standing Board commitments
- 10 June 2021 – Email from Mr Rodd Staples, former secretary, Transport for NSW to secretariat, declining invitation to give evidence at hearing on 15 June 2021.

Sent:

- 7 May 2021 – Letter from Chair, to Ms Julia Finn MP, Member for Granville, providing advice on the scope of the inquiry into the acquisition of land for major transport projects terms of reference
- 8 June 2021 – Letter from secretariat to Mr Rodd Staples, former Secretary, Transport for NSW, inviting him to give evidence at a public hearing on 15 June 2021.

5. Inquiry into the acquisition of land in relation to major transport projects

5.1 Site visit summary report

Resolved, on the motion of Mr Graham: That the committee authorise and publish the site visit summary report prepared by the secretariat.

5.2 Public hearing

Allocation of questioning

Resolved, on the motion of Mr Mookhey: That the sequence of questions to be asked during the inquiry hearings be left in the hands of the Chair.

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters

The following witnesses were sworn and examined:

- Mr Rick Graf, Development Director, Billbergia Group
- Mr Paul Addison, Group Commercial Manager, Billbergia Group

Mr Graf tendered the following documents:

- Opening statement
- Bundle of emails regarding the sale of land at 4-6 Grand Ave, Camellia to Transport for NSW, as provided to the NSW Auditor General.

Mr Mookhey tabled the following documents:

- Excerpt from mortgage taken out by Akzo Nobel Pty Ltd
- Timeline of events of sale of 4-6 Grand Ave, Camellia according to Transport for NSW
- Timeline of events of sale of 4-6 Grand Ave, Camellia from the NSW Auditor General's report.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Rob Sharp, Secretary, Transport for NSW
- Ms Camilla Drover, Deputy Secretary, Infrastructure and Place, Transport for NSW

Mr Sharp tendered the following documents:

- Opening statement
- Correspondence between the Hon Andrew Constance MP, Minister for Transport and Roads and Mr Rob Sharp, Secretary, Transport for NSW, in relation to the NSW Auditor-General's recommendation that an investigation be conducted.

Mr Mookhey tabled the following documents:

- Colliers valuation report of 4-6 Grand Ave, Camellia
- Parramatta Light Rail - Remediation Contract – 6 Grand Avenue Camellia - ISD-17-6467 with Ventia Utility Services Pty.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, NSW Auditor-General, Audit Office of NSW
- Mr Ian Goodwin, Deputy Auditor-General, Audit Office of NSW
- Ms Claudia Migotto, Assistant Auditor-General, Performance Audits, Audit Office of NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.20 pm. The public and the media withdrew.

5.3 Tendered documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following documents tendered during the public hearing:

- Opening statement, tendered by Mr Rick Graf, Development Director, Billbergia Group
- Timeline of events of sale of 4-6 Grand Ave, Camellia according to Transport for NSW, tabled by Hon Daniel Mookhey MLC
- Timeline of events of sale of 4-6 Grand Ave, Camellia from the NSW Auditor General's report, tabled by Hon Daniel Mookhey MLC
- Opening statement, tendered by Mr Rob Sharp, Secretary, Transport for NSW
- Correspondence between the Hon Andrew Constance MP, Minister for Transport and Roads and Mr Rob Sharp, Secretary, Transport for NSW, in relation to the NSW Auditor-General's recommendation that an investigation be conducted, tendered by Mr Rob Sharp, Secretary, Transport for NSW
- Colliers valuation report of 4-6 Grand Ave, Camellia, tabled by Hon Daniel Mookhey MLC
- Parramatta Light Rail - Remediation Contract – 6 Grand Avenue Camellia - ISD-17-6467 with Ventia Utility Services Pty, tabled by Hon Daniel Mookhey MLC.

Resolved, on the motion of Mr Mookhey: That the committee accept and publish, except for identifying information, the following document tendered during the public hearing:

- Excerpt from mortgage taken out by Akzo Nobel Pty Ltd, tabled by Hon Daniel Mookhey MLC.

Resolved, on the motion of Mr Mookhey: That the:

- a) committee defer consideration of the bundle of emails regarding the sale of land at 4-6 Grand Ave, Camellia to Transport for NSW, as provided to NSW Auditor General. tendered during the hearing by Mr Rick Graf, Development Director, Billbergia Group until the secretariat has reviewed the document for identifying information
- b) committee secretariat provide an electronic copy to committee members for their information.

5.4 Future inquiry activities

The committee discussed potential topics for future hearing dates for the inquiry and possible witnesses, including:

- impacted businesses at Hunter Connection in relation to the Sydney Metro Project,
- other local communities affected by acquisitions, including Jannali, Riverview and the Hawkesbury
- those impacted by the M9 (Outer Sydney Orbital) Route, and
- Mr Tim Reardon, Secretary, Department of Premier and Cabinet, in relation to the Camellia site.

Resolved, on the motion of Mr Mookhey: That the committee hold a further hearing on Friday 23 July 2021 and invite the following witnesses:

- Sydney Metro (3 hours)
- Orchard Hills residents
- Policy and legal experts in relation to the *Land Acquisition (Just Terms Compensation) Act 1991*.

6. Inquiry into road tolling

6.1 Invitation to visit NorthConnex

The committee discussed Transurban's invitation for members to visit the NorthConnex.

Resolved, on the motion of Mr Graham: That the committee write to Transurban to seek further information on the proposed site visit being offered and advise that the committee is considering the invitation.

6.2 Re-opening of submission portal and questionnaire

Resolved, on the motion of Mr Graham: That the submission portal and online questionnaire be re-opened until 21 July 2021.

7. Adjournment

The committee adjourned at 4.36 pm, until Wednesday 14 July 2021, Macquarie Room, Parliament House (public hearing).

Emma Rogerson
Committee Clerk

Minutes no. 39

Thursday 12 August 2021

Portfolio Committee No 6 – Transport and Customer Service

Via Webex, 1.01 pm

1. Members present

Ms Boyd, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Farlow

Mr Farraway

Mr Graham

Mr Mallard (from 1.16 pm)

Mr Mookhey

2. Correspondence

The committee noted the following items of correspondence:

Received

- 16 July 2021 - Email from Mr Mark Pearson MLC, Animal Justice Party to secretariat, advising he will be a participating member for the PC6 Better Regulation and Innovation hearing on 30 August 2021
- 27 July 2021 – Email from Ms Charlie Inwood, Office of Hon Andrew Constance MP, Minister for Transport and Roads to secretariat, confirming witness list for Budget Estimates 2021-2022 initial hearing on 26 August 2021
- 27 July 2021 - Email from Ms Mica Magee, Office of Hon Paul Toole MP, Minister for Regional Transport and Roads to secretariat, confirming witness list for Budget Estimates 2021-2022 initial hearing on 24 August 2021
- 29 July 2021 - Email from Mr Rowan Carter, Office of Hon Kevin Anderson MP - Minister for Better Regulation and Innovation to secretariat, confirming witness list for Budget Estimates initial hearing on 30 August 2021
- 29 July 2021 - Email from Mr Rowan Carter, Office of Hon Kevin Anderson MP, Minister for Better Regulation and Innovation to secretariat, advising of non-attendance of particular witness requested by committee for hearing on 30 August 2021
- 29 July 2021 - Email from Ms Priya Pagaddinnimath, Office of Hon Victor Dominello MP, Minister for Customer Service and Digital to secretariat, confirming witness list for Budget Estimates 2021-2022 initial hearing on 20 August 2021.

Sent

- 16 July 2021 - Email from the secretariat to the Hon Paul Toole MP, Minister for Regional Transport and Roads, attaching witness invitation for Budget Estimates 2021-2022 - Initial Hearings
- 16 July 2021 - Email from the secretariat to the Hon Victor Dominello MP, Minister for Customer Service and Digital, attaching witness invitation for Budget Estimates 2021-2022 - Initial Hearings
- 16 July 2021 - Email from the secretariat to the Hon Andrew Constance MP, Minister for Transport and Roads, attaching witness invitation for Budget Estimates 2021-2022 - Initial Hearings
- 16 July 2021 - Email from the secretariat to the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, attaching witness invitation for Budget Estimates 2021-2022 - Initial Hearings
- 29 July 2021 - Email from secretariat to Mr Rowan Carter, Office of Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, clarifying attendance of witnesses requested by the committee.

3. Inquiry into Budget Estimates 2021-2022

3.1 Postponement of scheduled hearings 16-31 August 2021

The committee noted:

- the public health concerns around the COVID-19 Delta variant and current Public Health Orders in Greater Sydney
- that agreement has been reached amongst Members of the Legislative Council that, as a matter of necessity, on the next sitting a motion will be moved by leave and agreed to postponing until a date to be determined the in-person budget estimates hearings scheduled for 16-31 August 2021
- the importance of ongoing parliamentary accountability and scrutiny of the executive government
- that agreement has therefore also been reached on a series of fully virtual preliminary budget estimates hearings to be held with public servant witnesses from eight portfolios.

Resolved, on the motion of Mr Farlow: That the committee postpone the following Budget Estimates 2021-2022 hearings:

- Friday 20 August 2021 – Customer Service and Digital (Dominello)
- Tuesday 24 August 2021 – Regional Transport and Roads (Toole)
- Thursday 26 August 2021 – Transport and Roads (Constance)
- Monday 30 August 2021 – Better Regulation and Innovation (Anderson).

3.2 Revised Budget Estimates 2021-2022 timetable – virtual hearing

Resolved, on the motion of Mr Farlow: That the committee hold the following preliminary Budget Estimates hearings in a fully virtual format:

- Wednesday 25 August 2021 – Customer Service and Digital
- Friday 3 September 2021 – Transport and Roads.

3.3 Allocation of question time and total hearing time

Resolved, on the motion of Mr Graham: That the portfolios of Customer Service and Digital and the Transport and Roads be examined concurrently by Opposition and Crossbench members only from 9.30 am until 11.00 am, and then from 11.15 am until 12.45 pm, with 15 minutes reserved for Government questions at the end of the session, if required.

3.4 Witnesses to appear at hearings

The committee noted the limit of 4 witnesses per hearing to assist Hansard and the transcription of evidence. Resolved, on the motion of Mr Graham: That the committee invite the following witnesses to give evidence at the hearings for the portfolios of the Customer Service and Digital, and Transport and Roads:

Customer Service and Digital

- Ms Emma Hogan, Secretary, Department of Customer Service
- Mr Adam Dent, Chief Executive Officer, State Insurance Regulatory Authority, Department of Customer Service
- Mr Damon Rees, Chief Executive Officer, Service NSW, Department of Customer Service
- Mr Stephen Brady, Chief Operating Officer, Department of Customer Service
- Ms Rose Webb, Deputy Secretary, Better Regulation Division, Department of Customer Service

Transport and Roads

- Mr Rob Sharp, Secretary, Transport for NSW
- Ms Megan Bourke-O'Neil, Deputy Secretary, Greater Sydney, Transport for NSW
- Mr Howard Collins, Chief Operations Officer, Greater Sydney, Transport for NSW
- Ms Camilla Drover, Acting Deputy Secretary, Infrastructure and Place, Transport for NSW
- Mr Peter Regan, Chief Executive, Sydney Metro
- Mr Bernard Carlon, Executive Director, Centre for Road Safety.

3.5 Livestream and recording of hearing

The committee to note that the hearing will be livestreamed via the Parliament's YouTube channel.

Resolved, on the motion of Mr Graham: That the committee agree to record the hearing, and that this recording be placed on the inquiry webpage as soon as practicable after the hearing.

3.6 Virtual committee guidelines and procedural fairness

The committee noted that, to help ensure that Hansard can transcribe the hearing, witnesses and/or members should avoid speaking over each other.

4. Inquiry into the acquisition of land in relation to major transport projects

4.1 Upcoming hearings

The committee noted that the 1 September hearing can no longer proceed due to the Budget Estimates timetable.

Resolved, on the motion of Mr Mookhey: That:

- the witnesses scheduled for the 1 September be invited to appear at the hearing on 5 October
- the format for the October hearings be confirmed closer to the time and held fully virtual if necessary, subject to the health advice and Hansard and technological restrictions at that time.

4.2 Consideration of whether certain submissions are within the scope of the terms of reference

Resolved, on the motion of Mr Farlow: That the following submissions:

- be accepted as correspondence to the inquiry as they do not refer to an acquisition of land and/or property:
 1. Mr Roydon Ng
 2. "Restore Inner West Line & Save T3 Bankstown Line" - Mr Roydon Ng
 3. Sydenham to Bankstown Alliance (SBA)
- be accepted and processed as submissions to the inquiry as they refer to an acquisition of land and/or property:
 4. Ms Jennifer Downs
 5. Mr Charles Kolano
 6. Ms Cate Medcraft
 7. Mr Gregory Kilgannon
 8. Patricia Hughes
 9. Dimitrios Hatzitoulousis
 10. Patrick Aziz
 11. Mr Walter McKenzie

5. Adjournment

The committee adjourned at 1.19 pm, until 9.15 am, on Wednesday 25 August 2021 via Webex, Budget Estimates hearing — Customer Service and Digital.

Emma Rogerson
Committee Clerk

Minutes no. 42

Tuesday 28 September 2021

Portfolio Committee No. 6 – Transport and Customer Service

Via Webex, 9.16 pm

1. Members present

Ms Boyd, *Chair*
Mr Fang (substituting for Mr Farraway)
Mr Farlow
Mr Graham
Mr Mallard (*until 12.50 pm*)
Mr Mookhey

2. Apologies

Mr Banasiak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Mallard: That draft minutes nos. 37 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Sent

- 18 June 2021 – Letter from Chair to Ms Penny Roberts Head of Corporate Affairs – NSW & WestConnex, Transurban, requesting additional information on the benefits of a potential site visit to NorthConnex.

Received:

- 21 May 2021 – Letter from Ms Margaret Crawford, Auditor-General for New South Wales, to the Chair, regarding the invitation to make a submission to the inquiry into road tolling regimes.
- 25 June 2021 – Letter from Ms Penny Roberts, Head of Corporate Affairs – NSW & WestConnex, Transurban, in response to correspondence from the Chair, providing additional information on the benefits of a potential site visit to NorthConnex.
- 10 September 2021 – Letter from Ms Claudia Migotto, Assistant Auditor-General, Audit Office of NSW, declining the committee's invitation to appear at a public hearing as part of the inquiry into road tolling regimes.
- 13 September 2021 – Letter from Mr Nathen Matababi regarding the inquiry into road tolling regimes.
- 17 September 2021 – Email from Ms Shani Murphy, Office of the Hon. Shayne Mallard MLC, Government Whip in the Legislative Council, advising that the Hon. Wes Fang MLC will be substituting for the Hon. Sam Faraway for the hearing on 28 September 2021 as part of the inquiry into road tolling regimes.
- 23 September 2021 – Email from Mr Robert Giltinan, Director of Policy and Public Affairs, NRMA, declining the committee's invitation to appear at a hearing on 28 September or 7 October as part of the inquiry into road tolling regimes, and offering to answer any questions in writing.

5. Inquiry into road tolling regimes**5.1 Public Submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-25, 27, 29-30, 33-40, 43-54, 56-69, 61-62, 64, 66-71, 73, 75-82, 85-87, 89-93, 95-100, 102-109, 111-115, 117-120, 122-149, 151, 153-170, 172-173, 176-178, 180-184, 186-202, 204-210, 212-215, 218, 221-230.

Resolved, on the motion of Mr Mookhey: That submission no.41 be published.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Mookhey:

- That the committee authorise the publication of submission nos. 26, 28, and 31 with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.
- That the committee authorise the publication of submission no. 217, with the exception of highlighted sections which may be considered offensive, with these sections to remain confidential.

5.3 Confidential submissions

Resolved, on the motion of Mr Graham: That the committee keep submission nos 55, 60, 63, 65, 72, 74, 83-84, 88, 94, 101, 110, 116, 121, 150, 152, 171, 174-175, 185, 203, 211, 216, 220 confidential, as per the request of the authors.

5.4 Online questionnaire report

The committee noted that as agreed by email, an online questionnaire report based on the responses to the Survey Monkey questionnaire was published on the committee's website.

5.5 Witness invitation to the Australian Competition & Consumer Commission (ACCC)

Resolved, on the motion of Mr Mookhey: That the committee invite the Australian Competition & Consumer Commission to make a submission to the inquiry into road tolling regimes, noting recent commentary regarding the sale of the remaining 49% stake in WestConnex to Transurban by the NSW Government.

5.6 Briefing on virtual hearing proceedings

The Chair briefed members on virtual hearing arrangements.

5.7 Live streaming and recording of hearing

The committee noted that all hearings for the inquiry into road tolling regimes, including this hearing, will be live streamed via the Parliament's website and recorded. All recordings will be made publicly available online.

6. ***

7. Public hearing

Organisation of contract carrier witnesses

The committee noted that the Transport Workers' Union NSW assisted in facilitating the individual contract carriers who are appearing alongside the TWU as witnesses, as previously agreed by the committee.

Allocation of questioning

Resolved, on the motion of Mr Graham: That in accordance with the resolution appointing the committee, the sequence of questions to be asked during the inquiry hearings will alternate between opposition, crossbench and government members, in that order, with equal proportion of time allocated being allocated to each.

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters

The following witnesses were sworn and examined:

- Mr Michael Kilgariff, CEO, Roads Australia
- Mr Royce Christie, Director – Policy, Roads Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Matt Threlkeld, Executive Director, Bus NSW
- Mr Philip Whipp, Industry Development Manager, Bus NSW
- Mr John King, President, Bus NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Richard Olsen, State Secretary, Transport Workers' Union of NSW
- Mr Gavin Webb, Chief Legal Officer, Transport Workers' Union of NSW
- Mr Paul Newton, Contract carrier
- Mr Glen Finaly, Contract carrier.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rebekah Doran, Senior Manager, Civil Law – Western Sydney, Legal Aid NSW
- Ms Maddison Johnstone, Co-founder, Operation Redress
- Mr Michael Fraser, Co-founder, Operation Redress.

The evidence concluded and the witnesses withdrew.

Mr Mallard departed at 12.50 pm.

The following witnesses were sworn and examined:

- Mr Warren Clark, Chief Executive Officer, National Road Transport Association (NatRoad)
- Mr Allan Thornley, Managing Director, Shaws Darwin Transport, NatRoad Member Organisation

- Ms Rachel Smith, Director – Policy and Advocacy, Australian Logistics Council
- Mr Kerry Corke, Policy Consultant, Australian Logistics Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Simon O'Hara.

The public hearing concluded at 3.00 pm.

8. **Adjournment**

The committee adjourned at 3.00 pm, until Tuesday 5 October 2021, via videoconference (public hearing for inquiry into land acquisitions)

Madeleine Dowd
Committee Clerk

Minutes no. 43

Tuesday 5 October 2021

Portfolio Committee No. 6 – Transport and Customer

Via videoconference, 9.21 am

1. **Members present**

Ms Boyd, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Farlow (from 11.30 am)

Mr Franklin (substituting for Mr Farlow until 11.30 am)

Mr Graham

Mr Mallard (from 11.30 am)

Mr Martin (from 9.33 am until 9.50 am, from 10.50 am)

Mr Mookhey

2. **Apologies**

Mr Latham (participating)

3. **Previous minutes**

Resolved, on the motion of Mr Mookhey: That draft minutes no. 42 be confirmed.

4. **Correspondence**

The committee noted the following items of correspondence:

Received

- 21 September 2021 – Email from Ms Sue Hampton, Associate to his Honour Judge D Russell SC to secretariat, advising Judge Russell declines the invitation to give evidence at hearing on 6 October 2021
- 28 September 2021 - Email from Mr Peter Kermond, General Manager, Binksie Services Pty Ltd to secretariat, advising he is unable to attend hearing on 6 October 2021 due to medical procedures
- 29 September 2021 - Email from Mr Simon Cook, Chief Executive Officer, Wests Ashfield Leagues to secretariat, declining invitation to attend hearing on 6 October 2021.

Sent

- 30 September 2021 – Summons from Chair to private citizen to appear at a hearing on 5 October 2021.

Resolved, on the motion of Mr Graham: That the committee keep the following correspondence confidential as per the recommendation of the secretariat:

- 30 September 2021 – Summons from Chair to private citizen to appear at a hearing on 5 October 2021.

5. Inquiry into the acquisition of land in relation to major transport projects

5.1 Public submissions

Resolved, on the motion of Mr Graham: That the committee authorise the publication of submissions nos. 3, 4, 4a, 6, 12, 14, 15, 15a, 15b, 17, 18, 21, 24-27, 30-36, 39, 40, 42, 43, 47, 50, 51, 53, 55-57, 61, 63-65, 70, 70a, 72-79, 81, 84-87.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Franklin: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 1, 5, 7-11, 13, 16, 19, 20, 23, 29, 37, 38, 41, 44-46, 48, 49, 52, 66, 68, 69, 80, 90, 93, 94.

Resolved, on the motion of Mr Graham:

- That the committee authorise the publication of submission no. 95 and 97, with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.
- That the committee authorise the publication of submission no. 96, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Mr Banasiak: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submissions nos. 54, 58, 59, 60, 62, 67, 71, 88, 89.

Resolved, on the motion of Mr Banasiak: That the committee authorise the publication of submission no. 82 with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.

The committee deferred consideration of Submission no. 92.

5.3 Confidential submissions

Resolved, on the motion of Mr Banasiak: That the committee keep submission nos. 2, 22, 28, 83, and 91 confidential, as per the request of the author.

5.4 Answers to questions on notice and supplementary questions

The committee noted the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Transport for NSW, received 14 July 2021
- answers to questions on notice from NSW Audit Office, received 14 July 2021
- answers to questions on notice from Billbergia Group, received 22 July 2021.

5.5 Tabled document 15 June 2021 - Bilbergia Group

Resolved, on the motion of Mr Mookhey: That the committee accept and publish, with the exception of identifying information, the following document tendered during the hearing on 15 June 2021:

- Bundle of emails regarding the sale of land at 4-6 Grand Ave, Camellia to Transport for NSW, as provided to the NSW Auditor General, tendered by Mr Rick Graf, Development Director, Billbergia Group.

5.6 Live streaming and recording of hearing

Resolved, on the motion of Mr Franklin: That the committee authorise publication of the video recordings on the Parliament's YouTube channel.

5.7 Public hearing

Allocation of questioning

Resolved, on the motion of Mr Banasiak: That:

- the allocation of questions for the first two witness panels be left in the hands of the Chair
- the sequence of questions to be asked during the last witness panel of the hearing alternate between opposition, crossbench and government members, in that order, with equal proportion of time allocated being allocated to each.

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Mr Jesse Vella, Orchard Hills resident
- Mrs Lauren Vella, Orchard Hills resident
- Mr Victor Xiberras, Orchard Hills resident
- Mr Luke Kohler, Orchard Hills resident.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mrs Christine Vella, Orchard Hills resident
- Mr Sam Grima, Orchard Hills resident
- Mrs Therese Grima, Orchard Hills resident.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter Regan, Chief Executive, Sydney Metro
- Ms Rebecca McPhee, Deputy Chief Executive, Sydney Metro.

The evidence concluded and the witnesses withdrew.

6. Adjournment.

The committee adjourned at 1.02 pm, until 9.15am, Wednesday 6 October 2021 via Webex – Land acquisitions (public hearing).

Emma Rogerson
Committee Clerk

Minutes no. 44

Wednesday 6 October

Portfolio Committee No. 6 - Transport and Customer Service

Via videoconference, 9.18 am

1. Members present

Ms Boyd, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Farlow (from 9.20 am)

Mr Graham

Mr Mallard (until 11.00 am)

Mr Martin (from 11.00 am)

Mr Mookhey

2. Apologies

Mr Latham (participating)

3. Correspondence

The committee noted the following items of correspondence:

Received

- 5 October 2021 – Email from Mr Sam and Mrs Therese Grima, Orchard Hills residents to committee, advising on the discount to proposed land valuation due to retained trees on their property
- 6 October 2021 – Email from Mr Mark Harrold, Sydney Helicopters to committee, requesting that his solicitor, Mr Adrian McMillan of Slater and Gordon be invited to give evidence on the legal process of compulsory acquisitions.

Resolved, on the motion of Mr Banasiak: That the committee authorise:

- the publication of correspondence from Mr Sam and Mrs Therese Grima regarding the discount to proposed land valuation due to retained trees on their property, dated 5 October 2021
- the insertion of a footnote to the transcript of evidence of Mr Sam and Mrs Therese Grima, dated 5 October 2021, containing the clarification provided in the correspondence.

4. Inquiry into the acquisition of land in relation to major transport projects**4.1 Public hearing**

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Mr Chris Drury, Deputy Chair, Environmental Planning & Development Committee, The Law Society of NSW
- Ms Penny Murray, Member, Environmental Planning & Development Committee, The Law Society of NSW

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Chris Walsh, Head of Property, Heworth Holdings Group

Mr Walsh tendered the following documents:

- bundle of correspondence between Heworth Holdings and Transport for NSW regarding the former Balmain Tigers Leagues Club, Rozelle.

The evidence concluded and the witness withdrew.

The Chair noted that Members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

Ms Julia Finn MP, Member for Granville was admitted and examined.

The evidence concluded and the witness withdrew.

4.2 Deliberative meeting (*via teleconference*)

Resolved, on the motion of Mr Mookhey: That Mr Adrian McMillan, Associate, Slater and Gordon be invited to appear to give evidence before the Committee on 6 October 2021.

4.3 Public hearing resumed

The following witnesses were sworn and examined:

- Mr Mark Harrold, Sydney Helicopters Pty Ltd, Heliport Developers Pty Ltd
- Mr Adrian McMillan, Slater and Gordon Ltd

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Dr David Parker, Valuer General of NSW

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.36 pm.

Tendered documents

Resolved, on the motion of Mr Mookhey: That the committee accept and publish, with the exception of identifying information, the following document tendered during the public hearing, upon receipt:

- Emails from valuer of the Just Terms Compensation team, Department of Industry and Environment to Mr Mark Harrold, Sydney Helicopters Pty Ltd regarding final valuation by the Valuer General of NSW, tendered by Mr Mark Harrold.

Resolved, on the motion of Mr Mookhey: That the committee defer consideration of the bundle of correspondence between Heworth Holdings and Transport for NSW regarding the former Balmain Tigers Leagues Club, Rozelle, tendered during the hearing by Mr Christopher Walsh, Head of Property, Heworth Holdings until the secretariat has reviewed the documents for identifying information.

4.4 Partially confidential submissions

The committee deferred consideration of Submission no. 92.

4.5 Invitations to further witnesses

Resolved, on the motion of Mr Mookhey: That the committee write to the Secretary of the Department of Planning, Industry and Environment, inviting:

- the Head of the Just Terms Compensation Team to attend as a witness at a future hearing date
- the Department make a submission addressing comments made by the NSW Valuer General in his evidence provided during the public hearing on 6 October 2021.

Resolved, on the motion of Mr Mookhey: That the committee write to Mr Jim Betts, in his former capacity as Secretary of the Department of Planning, Industry and Environment, inviting him to attend as a witness at a future hearing date, and make a submission addressing comments made by the NSW Valuer General in his evidence provided during the public hearing on 6 October 2021.

5. Inquiry into Road Tolling

The committee noted changes to the hearing schedule for the public hearing on the 7 October 2021:

- Ms Finn, appearing from 11.00 am until 12.30 pm
- Infrastructure Partnerships appearing from 12.30 pm until 1.15 pm
- The Western Sydney Regional Organisation of Councils Ltd (WSROC) appearing from 1.15 pm until 2.00 pm.

6. Adjournment

The committee adjourned at 1.41 pm, until Thursday 7 October 2021, 10.00 am, via Webex, Road tolling inquiry (public hearing).

Emma Rogerson
Committee Clerk

Minutes no. 45

Thursday 7 October 2021

Portfolio Committee No. 6 – Transport and Customer Service

Via Webex, 10.05 am

1. Members present

Ms Boyd, *Chair*

Mr Farraway (*until 12.30 pm*)

Mr Farlow

Mr Graham

Mr Mallard

Mr Mookhey

2. Apologies

Mr Banasiak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos. 42 be confirmed.

4. Inquiry into road tolling regimes**4.1 Document tendered by Transport Workers Union of NSW**

Resolved, on the motion of Mr Graham: That the committee accept and publish the following documents tendered during the public hearing on 28 September 2021:

- Toll Woolworths Toolbox Briefing, tendered by Mr Richard Olsen, State Secretary, Transport Workers' Union of NSW.

4.2 Replacement submission made by Infrastructure Partnerships Australia

Resolved, on the motion of Mr Graham: That the committee accept and publish the replacement submission provided by Infrastructure Partnerships Australia.

4.3 Briefing on virtual hearing proceedings

The Chair briefed members on virtual hearing arrangements.

4.4 Live streaming and recording of hearing

The committee noted that all hearings for the inquiry into road tolling regimes, including this hearing, will be live streamed via the Parliament's website and recorded. All recordings will be made publicly available online.

5. Inquiry into land acquisition of land in relation to major transport projects

5.1 Consideration of submission no. 92

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of submission no. 92 with the exception of potential adverse mention, which is to remain confidential, as per the recommendation of the secretariat.

6. Public hearing

Allocation of questioning

The committee noted that in accordance with the resolution appointing the committee, the sequence of questions to be asked during the inquiry hearings will alternate between opposition, crossbench and government members, in that order, with equal proportion of time allocated being allocated to each.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The Chair noted that Members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

Ms Julia Finn MP, Member for Granville was admitted and examined.

The evidence concluded and the witness withdrew.

Mr Farraway departed at 12.30 pm.

The following witness was sworn and examined:

- Mr Adrian Dwyer, Chief Executive Officer, Infrastructure Partnerships Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Clr Barry Calvert, President, Western Sydney Regional Organisation of Councils (WSROC)
- Mr Charles Casuscelli, Chief Executive Officer, Western Sydney Regional Organisation of Councils (WSROC).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.05 pm.

7. Inquiry into road tolling regimes

7.1 Future hearings

The committee discussed the future conduct of the inquiry, including holding a further two public hearings.

8. Adjournment

The committee adjourned at 2.10 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 47

Monday 25 October 2021

Portfolio Committee No. 6 – Transport and Customer Service

Via Webex, 9.48 am

1. Members presentMs Boyd, *Chair*

Mr Fang (substituting for Mr Farraway)

Mr Farlow

Mr Graham

Mr Mallard

Mr Mookhey

2. ApologiesMr Banasiak, *Deputy Chair***3. Previous minutes**

Resolved, on the motion of Mr Mallard: That draft minutes nos. 43, 44 and 45 be confirmed.

4. Correspondence

Committee noted the following items of correspondence:

Received:

- 9 October 2021 - Letter from Councillor Ian Mutton to the committee, calling on the committee to examine Transport for NSW's conduct in relation to the planning of Sydney Harbour Bridge cycleway.
- 11 October 2021 – Affidavit of service of summons to private citizen for the hearing on 5 October 2021 for the inquiry into acquisition of land for major transport projects.
- 14 October 2021 – Email from Mr Christopher Walsh, Heworth Holdings to secretariat, requesting all tabled documents be published in full, for the inquiry into the acquisition of land for major transport projects.
- 19 October 2021 - Email from Mr Tim Sowden, Senior Media and Government Relations Manager, Transurban, to the secretariat declining the invitation to appear at a hearing as part of the inquiry into road tolling regimes on 25 October 2021.
- 20 October 2021 – Email from Mr Tom Marshall, Assistant Director, Australian Competition & Consumer Commission, to the secretariat declining the invitation to appear at a hearing as part of the inquiry into road tolling regimes on 25 October 2021.
- 20 October 2021 – Letter from the Hon. Shayne Mallard MLC, Government Whip in the Legislative Council, advising that the Hon. Wes Fang MLC will be substituting for the Hon. Sam Farraway MLC at the road tolling hearing on 25 October 2021.

Resolved, on the motion of Mr Mallard: That the committee keep the Affidavit of service of summons, dated 11 October 2021, confidential, as per the recommendation of the secretariat, and consistent with previous resolutions regarding this matter

5. Inquiry into the acquisition of land for major transport projects**5.1 Documents tendered by Heworth Holdings Group**

Resolved, on the motion of Mr Mookhey: That the committee accept and publish the following document, and its attachments, with the exception of identifying information which is to remain confidential, as per the recommendation of the secretariat:

- Brief to Portfolio Committee No. 6, tendered by Mr Christopher Walsh, Head of Property, Heworth Holdings Group, to the public hearing held 6 October 2021

5.2 Future hearings

The committee discussed the future conduct of the inquiry, and agreed to defer consideration of this matter at the next meeting of the committee on 26 October 2021.

6. Inquiry into road tolling regimes

6.1 Additional public submissions

Resolved, on the motion of Mr Graham: That the committee accept and publish submission nos. 231 (Mr Ian Spring) and 232 (Australian Competition & Consumer Commission).

6.2 Future activity and timeline

The committee discussed the future conduct of the inquiry, and agreed to defer consideration of which witnesses will be invited to future hearings at the next meeting of the committee on 26 October 2021.

Resolved, on the motion of Mr Mallard: That the secretariat canvass member availability for two dates in February, one for a hearing and the other for a potential site visit to visit NorthConnex.

Resolved, on the motion of Mr Graham: That the report be tabled by end April 2022.

6.3 Briefing on virtual hearing proceedings

The Chair briefed members on virtual hearing arrangements.

6.4 Live streaming and recording of hearing

The committee noted that all hearings for the inquiry into road tolling regimes, including this hearing, will be live streamed via the Parliament's website and recorded. All recordings will be made publicly available online.

7. Public hearing

The committee noted that in accordance with the resolution appointing the committee, the sequence of questions to be asked during the inquiry hearings will alternate between opposition, crossbench and government members, in that order, with equal proportion of time allocated being allocated to each.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Phillip Davies, Tolling Customer Ombudsman.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Robert Giltinan, Director of Policy & Research, NRMA
- Mr Wal Setkiewicz, Principal Advisor, Infrastructure & Economics, NRMA.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.16 pm.

8. Adjournment

The committee adjourned at 12.22 pm until Thursday 26 October 2021, 9.15 am, Macquarie Room, Parliament House (Budget Estimates hearing).

Madeleine Dowd
Committee Clerk

Minutes no. 48

Tuesday 26 October 2021

Portfolio Committee No. 6 - Transport and Customer Service

Macquarie Room, Parliament House, Sydney, at 9.17 am

1. Members present

Ms Boyd, *Chair* (from 9.17 am until 11.16 am, and then from 11.57 am)

Mr Banasiak, *Deputy Chair*

Mr Fang (substituting for Mr Farraway)

Mr Farlow

Mr Graham

Mr Poulos (substituting for Mr Mallard *via WebEx*)

Mr Veitch (substituting for Mr Mookhey)

Mr Field (participating, from 10.34 am until 11.00 am)

2. Correspondence

The committee noted the following items of correspondence:

Received

- 12 October 2021 - Email from Mr Justin Field to the Chair advising that he will be a participating member for the Regional Transport and Roads hearing on 26 October and the Customer Service and Digital hearing on 27 October 2021
- 14 October 2021 - Email from Ms Nella Hall, Office of Hon Mark Latham to the secretariat, advising Mr Latham will be a participating member for the PC7 hearings on 26 and 28 October, PC1 hearings on 27 October and 4 November and the PC6 Transport and Roads hearing on 2 November 2021
- 18 October 2021 - Email from Ms Shani Murphy, Office of the Hon Shayne Mallard MLC, Government Whip, to secretariat, advising that Mr Poulos will be substituting for Mr Mallard for the Regional Transport and Roads hearing on 26 October 2021
- 19 October 2021 - Email from Ms Cara Punch, Office of the Hon Mark Buttigieg MLC, Opposition Whip, to the secretariat, providing Opposition substitutions and participating member advice for preliminary Budget Estimates 2021-2022
- 19 October 2021 - Email from Ms Charlie Inwood, Office of Minister Stokes MP, Minister for Transport and Roads, to the secretariat, confirming witnesses for the hearing on 26 October 2021
- 19 October 2021 - Email from Ms Mica Magee, Office of the Hon Paul Toole MP, Deputy Premier and Minister for Regional Transport and Roads, to the secretariat, confirming witnesses for the hearing on 26 October 2021
- 19 October 2021 - Email from Mr Rowan Carter, Office of the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, to the secretariat, confirming witnesses for the hearing on 27 October 2021
- 20 October 2021 - Email from Mr Lachlan Barnsley, Office of Mr Sam Farraway MLC, Deputy Government Whip, to the secretariat, advising that Mr Fang will be substituting for Mr Farraway for the PC6 Budget Estimates hearings on 26 and 27 October 2021
- 20 October 2021 - Email from Mr Rowan Carter, Office of the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, to the secretariat, advising that Mr David Chandler, NSW Building Commissioner will appear instead of Mr Mathew Whitton, Director Consumer, Building and Property, NSW Department of Customer Service at hearing on 27 October 2021.

Sent

- 15 October 2021 - Email from the secretariat to the Hon Paul Toole MP, Deputy Premier and Minister for Regional Transport and Roads, forwarding witness invitation for supplementary Budget Estimates 2021-2022
- 15 October 2021 - Email from the secretariat to the Hon Rob Stokes MP, Minister for Transport and Roads, forwarding witness invitation for supplementary Budget Estimates 2021-2022

- 15 October 2021 - Email from the secretariat to Hon Victor Dominello MP, Minister for Customer Service and Digital, forwarding witness invitation for supplementary Budget Estimates 2021-2022
- 15 October 2021 - Email from the secretariat to Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, forwarding witness invitation for supplementary Budget Estimates 2021-2022
- 20 October 2021 - Email from the secretariat to Mr Rowan Carter, Office of the Hon Kevin Anderson MP, seeking confirmation of attendance of Mr Mathew Whitton, Director Consumer, Building and Property, NSW Department of Customer Service at hearing on 27 October 2021.

3. Inquiry into Budget Estimates 2021-2022 – supplementary hearings

3.1 Order for examination of portfolios

The committee noted that under the Budget Estimates 2021-2022 resolution the portfolios of Regional Transport and Roads be examined concurrently by Opposition and Crossbench members only, from 9.30 am to 12.45 pm, with 15 minutes reserved for Government questions from 12.45 pm to 1.00 pm, if required.

3.2 Live streaming and recording of hearing

Resolved, on the motion of Mr Banasiak: That the committee publish all recordings of Budget Estimates 2021-2022 supplementary hearings on the Parliament's YouTube channel.

3.3 Public hearing: Regional Transport and Roads

Departmental witnesses were admitted.

The Hon Paul Toole MP, Deputy Premier and Minister for Regional Transport and Roads was admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters. The Chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The following witnesses were sworn:

- Mr Rob Sharp, Secretary, Transport for NSW (*in person*)
- Mr Dale Merrick, A/Chief Customer Officer & Chief Executive, NSW Trainlink, Transport for NSW (*via WebEx*)
- Mr Pete Allaway, A/Deputy Secretary, Regional and Outer Metropolitan, Transport for NSW (*via WebEx*)
- Mr Anthony Hayes, Executive Director, Community and Place, Regional and Outer Metropolitan, Transport for NSW (*via WebEx*)
- Ms Gillian Geraghty, Head of Regional Project Delivery, Infrastructure and Place, Transport for NSW (*via WebEx*)
- Mr Bernard Carlon, Executive Director, Centres for Road Safety and Maritime Safety, Transport for NSW (*via WebEx*)
- Ms Barbara Wise, Executive Director, Transport Partnerships, Regional and Outer Metropolitan, Transport for NSW (*via WebEx*).

The Chair declared the proposed expenditure for the portfolio of Regional Transport and Roads open for examination.

The Deputy Premier and departmental witnesses were examined by the committee.

The Deputy Premier withdrew at 12.46 pm.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.46 pm.

4. Other business

Resolved, on the motion of Mr Graham: That:

- the hearing scheduled for the inquiry into the acquisition of land in relation to major transport projects on 10 December 2021 be postponed and in its place the committee conduct a hearing for the inquiry into the road tolling regime.
- Transurban and the Australian Competition and Consumer Commission be called as witnesses for the hearing scheduled on 10 December 2021, and appear in person if possible, for the inquiry into the road tolling regime inquiry.

5. Adjournment

The committee adjourned at 12.51 pm, until 9.15 am, Wednesday 27 October 2021, Macquarie Room, Budget Estimates hearing — Customer Service and Digital.

Vanessa O'Loan
Committee Clerk

Minutes no. 52

Friday 10 December 2021

Portfolio Committee No. 6 – Transport and Customer Service
Room 814/815, Parliament House, Sydney, 10.18 am

1. Members present

Ms Boyd, *Chair*
Mr Farlow (*from 12.00 pm*)
Mr Farraway (*via WebEx, from 12.00 pm until 12.50 pm*)
Mr Graham
Mr Mallard
Mr Mookhey

2. Apologies

Mr Banasiak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mookhey: That draft minutes no. 47 be confirmed.

4. Correspondence

Committee noted the following items of correspondence:

Received:

- 9 December 2021 - Letter from Ms Michele Huey, Group Executive, Transurban, and Mr Andrew Head, Chief Executive Officer, WestConnex, to the committee Chair addressing various evidence provided to the committee for the inquiry into road tolling regimes.

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of correspondence from Ms Michele Huey, Group Executive, Transurban, and Mr Andrew Head, Chief Executive Officer, WestConnex, addressing various evidence provided to the committee for the inquiry into road tolling regimes, dated 9 December 2021.

5. Inquiry into the acquisition of land for major transport projects

5.1 Future activity and timeline

The committee noted that further hearings have been confirmed for 18 February 2021 and 18 March 2021.

Resolved, on the motion of Mr Mookhey: That the report be tabled by 30 June 2022.

5.2 Witnesses at future hearings

Resolved, on the motion of Mr Mookhey: That members nominate witnesses for the hearing on 18 February by 26 January 2022.

5.3 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Sam and Mrs Therese Grima, Orchard Hills residents received on 28 October 2021
- answers to questions on notice from Mrs Lauren Vella, Orchard Hills resident received on 3 November 2021
- answers to questions on notice from Ms Christine Vella, Orchard Hills resident received on 3 November 2021
- answers to questions on notice and supplementary questions from the NSW Valuer General received on 3 November 2021
- answers to questions on notice and supplementary questions from Sydney Metro received on 5 November 2021
- answers to questions on notice from Mr Adrian McMillan, Slater and Gordon, received on 12 November 2021.

6. Inquiry into road tolling regimes

6.1 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication status of answers to questions on notice and supplementary questions from

- Ms Rebekah Doran, Legal Aid, received 25 October 2021
- Mr Matt Threlkeld, Executive Director, BusNSW, received 26 October 2021
- Mr Charles Casuscelli, Chief Executive Officer, Western Sydney Regional Organisation of Councils, received 15 November 2021.

6.2 Future activity and timeline

The committee discussed future activity for the inquiry, including a potential hearing to hear from residents affected by tolls in the south west corridor.

Resolved, on the motion of Mr Graham: That the committee table its report by 31 May 2022.

6.3 Hearing on 14 February 2022

Resolved, on the motion of Mr Graham: That the committee invite NSW Treasury and Transport for NSW for 2 hours each at the hearing on 14 February 2022.

6.4 Public hearing

The committee noted that in accordance with the resolution appointing the committee, the sequence of questions to be asked during the inquiry hearings will alternate between opposition, crossbench and government members, in that order, with equal proportion of time allocated being allocated to each.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital Division, Australian Competition and Consumer Commission
- Mr Matthew Schroder, General Manager, Infrastructure, Transport Access and Pricing Branch, Australian Competition and Consumer Commission
- Ms Daniel McCracken-Hewson, General Manager, Merger Investigations Branch, Australian Competition and Consumer Commission.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Michele Huey, Group Executive, Transurban, New South Wales
- Mr Andrew Head, Chief Executive Officer, WestConnex.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 2.01 pm.

6.5 Amendment to the inquiry terms of reference

Mr Graham moved: That paragraph 1(b) of the terms of reference be amended by inserting 'and across New South Wales to 2060' before 'and the extent to which this represents value for money'.

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard.

Question resolved in the affirmative.

6.6 Recall of Transurban-WestConnex to hearing on 14 February 2022

Resolved, on the motion of Mr Graham: That Transurban-WestConnex be recalled to the committee's fifth hearing on 14 February 2022 for 1 hour, and that they be notified of the committee's invitation as soon as possible.

7. Adjournment

The committee adjourned at 2.08 pm, *sine die*.

Anthony Hanna
Committee Clerk

Minutes no. 54

Monday 14 February 2022

Portfolio Committee No. 6 – Transport and Customer Service

Via WebEx at 9.45 am

1. Members present

Ms Boyd, *Chair*

Mr Amato

Mr Farlow (*until 2.30 pm*)

Mr Graham

Mr Harwin

Mr Martin (*substituting for Mr Farlow from 2.30 pm*)

Mr Mookhey

2. Apologies

Mr Banasiak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos. 52 and 53 be confirmed.

4. Inquiry into road tolling regimes**4.1 Answers to questions on notice**

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of answers to questions on notice from:

- the Australian Competition and Consumer Commission, received on 24 January 2022
- Ms Michele Huey of Transurban and Mr Andrew Head of WestConnex, received on 2 February 2022.

4.2 Offsite hearing

Resolved, on the motion of Mr Mookhey: That:

- the committee hold a sixth half day public hearing (offsite) within the south west M5 corridor to examine issues surrounding traffic on local roads as a result of the M5 toll; and
- the Chair's proposed witness list be circulated via email to the committee with members given 24 hours to provide comments.

4.3 Live streaming and recording of hearing

The committee noted that all hearings for the inquiry into road tolling regimes will be live streamed via the Parliament's website and recorded. All recordings will be made publicly available online.

4.4 Photo of committee for social media

Resolved, on the motion of Mr Farlow: That the secretariat take a screenshot of the committee during its deliberative for the purposes of publishing on social media.

4.5 Proposal from Mr Graham – NSW Government witnesses on 14 February 2022

Resolved, on the motion of Mr Mookhey: That:

- the NSW Government witnesses appearing on 14 February 2022 be given notice that they will be asked questions relating to paragraph (b) of the ToR
- the Chair write to NSW Government witnesses inviting them to make a supplementary submission to the inquiry to provide information as to the amount drivers will pay in tolls in total to 2060.

4.6 Public hearing

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Philip Gardner, Deputy Secretary, NSW Treasury
- Ms Jacqui Christie, Executive Director, NSW Treasury
- Ms Cassandra Wilkinson, Executive Director, NSW Treasury

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Camilla Drover, Deputy Secretary, Infrastructure and Place, Transport for NSW
- Mr Joost de Kock, Deputy Secretary, Customer Strategy and Technology, Transport for NSW
- Ms Meg Bourke-O'Neil, Deputy Secretary, Greater Sydney, Transport for NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were examined on their former oath:

- Ms Michele Huey, Group Executive, Transurban, New South Wales

- Mr Andrew Head, Chief Executive Officer, WestConnex.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.00 pm.

5. Inquiry into the acquisition of land in relation to major transport projects

5.1 Witnesses on 18 February 2022

Resolved, on the motion of Mr Mookhey: That the appearance of Mr Matthew Scard, Chief Executive Officer of Celestino, be deferred to the next hearing date for this inquiry.

6. Adjournment

The committee adjourned at 4.04 pm, until 9.15 am, Friday 18 February 2022 via WebEx – Land acquisitions (public hearing).

Anthony Hanna
Committee Clerk

Minutes no. 55

Friday 18 February 2022

Portfolio Committee No. 6 – Transport and Customer Service

Via videoconference, at 9.02 am

1. Members present

Ms Boyd, *Chair*

Mr Banasiak, *Deputy Chair*

Mr Amato

Mr Farlow

Mr Graham (*from 9.03 am*)

Mr Harwin

Mr Searle (*substituting for Mr Mookhey*)

2. Apologies

Mr Latham (*participating*)

3. Previous minutes

Resolved, on the motion of Mr Farlow: That draft minutes nos. 48, 49, 50 and 51 be confirmed.

4. Inquiry into Budget Estimates 2021-2022

4.1 Correspondence

The committee noted the following items of correspondence:

Sent

- 1 November 2021 – Email from the secretariat, to the Hon Paul Toole MP, Deputy Premier and Minister for Regional Transport and Roads, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 2 November 2021 – Email from the secretariat, to the Hon Victor Dominello MP, Minister for Customer Service and Digital, forwarding transcript of evidence with questions on notice highlighted and supplementary questions
- 3 November 2021 – Email from the secretariat, to the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, forwarding transcript of evidence with questions on notice highlighted and supplementary questions

- 9 November 2021 – Email from the secretariat, to the Hon Rob Stokes MP, Minister for Transport and Roads, forwarding transcript of evidence with questions on notice highlighted and supplementary questions.

4.2 Budget Estimates 2021 -2022 additional hearings timetable

The committee noted the proposed timetable for additional hearings:

- Metropolitan Roads, Women's Safety and the Prevention of Domestic Violence and
- Sexual Assault, Tuesday 1 March 2022, Macquarie Room
- Transport, Veterans, Friday 4 March 2022, Macquarie Room
- Infrastructure, Cities and Active Transport, Monday 14 March 2022, Macquarie Room
- Regional Transport and Roads, Wednesday 16 March 2022, Jubilee Room.

4.3 Witnesses, allocation of question time and total hearing time

The committee noted that as per the Notice of Motion for additional budget estimates hearings:

1. (a) (i) each portfolio, except The Legislature, be examined concurrently by Opposition and Crossbench members only, from 9.30 am to 11.00 am, and from 11.15 am to 12.45 pm, then from 2.00 pm to 3.00 pm, and from 3.45 pm to 5.15 pm, with 15 minutes reserved for Government questions at the end of the morning and afternoon session, if required,

(ii) the portfolio of The Legislature be examined concurrently by Opposition, Crossbench and Government members from 9.30 am until 12.30 pm,

(b) Ministers be invited to appear for the morning session unless requested by the committee to appear also for the afternoon session.

4.4 Witnesses to appear at hearings

Resolved, on the motion of Mr Banasiak: That:

- the secretariat circulate witness list to members with any comments or further nominations to be lodged by midday Monday 21 February
- the committee not invite parliamentary secretaries to appear as a witness at the hearings.

4.5 Recording of hearing

Resolved, on the motion of Mr Searle: That the additional Budget Estimates hearings be recorded and that these recordings be placed on the inquiry webpage as soon as practicable after the hearing.

4.6 Answers to questions on notice

The committee noted that following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from the Hon Paul Toole MP, Deputy Premier and Minister for Regional Transport and Roads, received 22 November 2021
- answers to questions on notice from Ms Samantha Gavel, NSW Privacy Commissioner, received 22 November 2021
- answers to questions on notice and supplementary questions from the Hon Victor Dominello MP, Minister for Customer Service and Digital, received 23 November 2021
- answers to questions on notice and supplementary questions from the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, received 24 November 2021
- answers to questions on notice and supplementary questions from the Hon Rob Stokes MP, Minister for Transport and Roads, received 30 November 2021.

5. Inquiry into acquisition of land in relation to major transport projects

5.1 Public submissions

Resolved, on the motion of Mr Searle: That the committee authorise the publication of supplementary submission no. 57a.

5.2 Partially confidential submissions

Resolved, on the motion of Mr Searle: That the committee authorise the publication of submission no. 98, with the exception of identifying and/or sensitive information which are to remain confidential, as per the recommendation of the secretariat.

5.3 Witnesses – 18 March 2022 hearing

Resolved, on the motion of Mr Graham: That the following witnesses be invited to appear at the hearing on 18 March 2022:

- Mr Jim Betts, former Secretary, DPIE
- the Head of Just Terms Compensation Team, DPIE
- Transport for NSW
- Mr Matthew Scard, Chief Executive Officer, Celestino.

Resolved, on the motion of Mr Graham: That the Chair circulate a list of further proposed witnesses via email to the committee for members to provide comments.

5.4 Further hearing dates

Resolved, on the motion of Mr Graham: That the secretariat canvass a further half day hearing date with members, with consideration to inviting Celestino to that future date rather than 18 March 2022

5.5 Live streaming and recording of hearing

The committee noted that all hearings for the inquiry into acquisition of land in relation to major transport projects will be live streamed via the Parliament's website and recorded. All recordings will be made publicly available online.

5.6 Photo of committee for social media

Resolved, on the motion of Mr Banasiak: That the secretariat take a screenshot of the committee during its deliberative for the purposes of publishing on social media.

5.7 Public hearing

Allocation of questioning

Resolved, on the motion of Mr Searle: That the allocation of questions for today's hearing be left in the hands of the Chair.

The committee proceeded to take evidence in public.

Witnesses were admitted via video link.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witness was examined on his former oath:

- Dr David Parker, Valuer General of NSW.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Tom Richards, Member, Save Our Homes Jannali
- Mr Liam Mulhall, Member, Save Our Homes Jannali
- Mrs Helma Mulhall, Member, Save Our Homes Jannali.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 11.03 am.

6. Adjournment

The committee adjourned at 11.04 am, until 9.15 am, Jubilee Room, Budget Estimates hearing – Metropolitan Roads, Women's Safety and the Prevention of Domestic Violence and Sexual Assault.

Stephen Fujiwara
Committee Clerk

Minutes no. 60

Friday 18 March 2022

Portfolio Committee No. 6 – Transport

Macquarie Room, Parliament House, Sydney, 9.47 am

1. Members present

Ms Boyd, *Chair*

Mr Mookhey

Mr Farlow, until 12.15 pm, and from 1.30 pm

Mr Graham, until 3.00 pm

Mr Harwin, until 12.30 pm

Mr Martin (substituting for Mr Farlow from 12.15 until 12.30 pm)

2. Apologies

Mr Banasiak, *Deputy Chair*

Mr Fang

Mr Latham (participating)

3. Correspondence

The committee noted the following items of correspondence:

Received

- 4 March 2022 – Email from Mr Anthony Rowan, Director, ARPL Planning Development and Heritage, to the secretariat, declining the committee's invitation to provide evidence at the public hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects
- 7 March 2022 – Email from Mr Sam Sangster, Managing Director, Klok Advisory, to the secretariat, declining the committee's invitation to provide evidence at the hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects
- 7 March 2022 – Letter from Dr Paul Grimes, Secretary, NSW Treasury, to the secretariat responding to the committee's request for a supplementary submission to address paragraph 1(b) of the terms of reference for the inquiry into road tolling regimes
- 8 March 2022 – Letter from Mr Rob Sharp, Secretary, Transport for NSW, to the Chair responding to the committee's request for a supplementary submission to address paragraph 1(b) of the terms of reference for the inquiry into road tolling regimes
- 8 March 2022 – Email from Ms Rebecca Dixon, Partner, Ashurst, to the secretariat, declining the committee's invitation to provide evidence at the hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects
- 8 March 2022 – Letter from Ms Nicole Ryan, Head of Government, Stakeholder and Community, Sydney Water, to the committee, nominating Mr Paul Plowman, General Manager, Asset Lifecycle as the best placed witness to give evidence on Sydney Water's behalf, and recommending his attendance in place of Mr Gould and Mr Gantt
- 10 March 2022 – Email from Mr Matthew Scard, Chief Executive Officer, Celestino, to the secretariat, advising of concerns regarding invitation to provide evidence at hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects, and requesting his invitation be dispensed or deferred to a future hearing date

- 15 March 2022 – Email from Mr Jarrad Tulloch, Manager, Government and Policy, Office of the Secretary, NSW Department of Planning and Environment, to the secretariat, advising Mr Jim Betts will not be attending to give evidence at the public hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects.

Sent

- 17 February 2022 – Letter from the Chair to Dr Paul Grimes, Secretary, NSW Treasury, requesting a supplementary submission to address paragraph 1(b) of the terms of reference for the inquiry into road tolling regimes
- 17 February 2022 – Letter from the Chair to Mr Rob Sharp, Secretary, Transport for NSW, requesting a supplementary submission to address paragraph 1(b) of the terms of reference for the inquiry into road tolling regimes
- 2 March 2022 – Letter from Chair to Mr Michael Cassel, Secretary, Department of Planning and Environment, inviting the Head of the Just Terms Compensation Team to provide evidence at the hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects
- 2 March 2022 – Letter from Chair to Mr Michael Cassel, Secretary, Department of Planning and Environment, inviting Mr Jim Betts, former Secretary, Department of Planning, Industry and Environment to provide evidence at the hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects
- 15 March 2022 – Email from the secretariat to Mr Jarrad Tulloch, Manager, Government and Policy, Office of the Secretary, NSW Department of Planning and Environment, seeking response regarding attendance of Mr Jim Betts, former Secretary, Department of Planning, Industry and Environment at hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects
- 15 March 2022 – Email from the secretariat to Mr Matthew Scard, Chief Executive Officer, Celestino, advising that the committee agree to dispensing the invitation for him to appear at the hearing on 18 March 2022 for the inquiry into acquisition of land in relation to major transport projects.

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of correspondence from Dr Paul Grimes, Secretary, NSW Treasury and Mr Rob Sharp, Secretary, Transport for NSW, responding to the committee's request for supplementary submissions to the inquiry into road tolling regimes, dated 7 March 2022 and 8 March 2022 respectively.

4. Inquiry into the the shut-down of Sydney Trains on Monday 21 February 2022

4.1 Hearings and witnesses

Resolved, on the motion of Mr Graham: That the committee have a 1.45 hour hearing on Friday 1 April 2022 at 2 pm, with 1.5 hours set aside for opposition/cross bench questions and 15 minutes kept at the end for government questions, if needed.

Resolved, on the motion of Mr Graham: That Mr Rob Sharp, Secretary, Transport for NSW and Ms Megan Burke O'Neil, Deputy Secretary, Transport for NSW be again invited to give evidence, at an in person hearing on Friday 1 April 2022.

5. Inquiry into acquisition of land in relation to major transport projects

5.1 Public submissions

Resolved, on the motion of Mr Mookhey: That the committee authorise the publication of submission no. 99.

5.2 Election of Deputy Chair for the meeting

Resolved, on the motion of Mr Graham: That, in the absence of the Deputy Chair, Mr Mookhey be elected acting Deputy Chair for the purpose of the meeting.

5.3 Public hearing

Allocation of questioning

Resolved, on the motion of Mr Farlow: That the allocation of questions for today's hearing be left in the hands of the Chair.

The committee proceeded to take evidence in public.

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, virtual hearing etiquette and other matters.

The following witness was sworn and examined:

- Mr Stewart McLachlan, Head Executive Director, Property and Place, Department of Planning and Environment (via videoconference)

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr David Newhouse, Partner, Newhouse & Arnold Solicitors
- Ms Ballanda Sack, Special Counsel, Beatty Hughes & Associates

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Matthew Pearce, General Counsel, Inner West Council

The evidence concluded and the witness withdrew.

The following witnesses were examined on their former oaths or affirmations:

- Mr Peter Regan, Chief Executive, Sydney Metro
- Ms Rebecca McPhee, Deputy Chief Executive, Sydney Metro

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Paul Plowman, General Manager Asset Lifecycle, Sydney Water

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Geoff Cahill, Director Corridor Protection, Transport for NSW
- Ms Julie Gee, Chief Transport Planner, Customer Strategy & Technology, Transport for NSW
- Mr Mark Slater, Executive Director Property Group, Infrastructure & Place, Transport for NSW

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.38 pm

6. Adjournment

The committee adjourned at 4.40 pm, until Friday 1 April 2022, location TBC – Inquiry into Road Tolling (off-site public hearing).

Stephen Fujiwara
Committee Clerk

Minutes no. 64

Friday 27 May 2022

Portfolio Committee No. 6 – Transport

Room 814/815, Parliament House, Sydney, 9.48 am

1. Members present

Ms Boyd, *Chair*
Mr Banasiak, *Deputy Chair*
Mr Fang (from 10.00 am)
Mr Graham
Mr Mallard (via webex)
Mr Rath

2. Previous minutes

Resolved, on the motion of Mr Mallard: That draft minutes nos. 61 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 22 February 2022 – Email from Mr John Ferguson to the committee secretariat, forwarding information regarding the Cumberland Plain Conservation Plan 2020
- 23 March 2022 – Letter from Mr David Newhouse, Partner, Newhouse & Arnold Solicitors to the Chair, providing clarification to evidence given at hearing on 18 March 2022 for the inquiry into the acquisition of land in relation to major transport projects
- 25 March 2022 – Letter from Mr David Newhouse, Partner, Newhouse & Arnold Solicitors to the Chair, providing additional information to the committee regarding the inquiry into acquisition of land in relation to major transport projects
- 5 April 2022 – Letter from Ms Ballanda Sack, Special Counsel, Beatty, Hughes and Associates to Chair, providing clarification to evidence given at hearing on 18 March 2022
- 6 April 2022 – Email from Ms Natasha Highman, Principal Legal Officer, Governance & Legal, Department of Planning & Environment to Chair, seeking instructions regarding provision of responses relating to investigation of NSW Valuer General
- 29 April 2022 – Email from Ms Nella Hall, Office of Hon Mark Latham MLC, advising that Mr Latham no longer wishes to be a participating member for the inquiry into acquisition of land in relation to major transport projects
- 3 May 2022 – Letter from Mr Peter Regan, Chief Executive, Sydney Metro to the secretariat, providing clarification to evidence given at hearing on 18 March 2022 for the inquiry into the acquisition of land in relation to major transport projects
- 6 May 2022 – Email from Mr Matthew Scard, Chief Executive Officer, Celestino, to the Chair, advising that Celestino is still in the compulsory acquisition process with Sydney Metro and is not in a position to appear before the committee

- 9 May 2022 - Email from Ms Frances Vumbaca, Private citizen, to the committee, forwarding Hansard excerpt regarding the 2013 Report on Land Valuation System and the eighth general meeting with the Valuer-General
- 11 May 2022 – Email from Mrs Carol Goodwin, Bringelly resident, to secretariat, declining invitation to attend hearing on 27 May 2022 for the inquiry into acquisition of land in relation to major transport projects
- 13 May 2022 – Email from Mr Jacob Farrugia, Private citizen, to secretariat, declining invitation to attend hearing on 27 May 2022 for the inquiry into acquisition of land in relation to major transport projects
- 15 May 2022 – Email from LPG Holdings, to the secretariat, declining invitation to attend hearing on 27 May 2022
- 16 May 2022 – Email from The University of Sydney, to the secretariat, declining invitation to attend hearing on 27 May 2022
- 16 May 2022 – Email from Ms Frances Vumbaca, Private citizen, to the secretariat, declining invitation to attend hearing on 27 May 2022
- 17 May 2022 – Email from Mr Walter and Mrs Silvana Di-iorio, Bringelly residents, to the secretariat, declining invitation to attend hearing on 27 May 2022
- 17 May 2022 – Email from Mr Michael McGrath, Bringelly resident, declining the invitation to attend hearing on 27 May 2022
- 19 May 2022 – Email from Mr Owen Coleman, to the committee, regarding being invited to give evidence at a hearing.

Resolved, on the motion of Mr Graham: That the committee authorise the publication of correspondence from Mr David Newhouse, providing additional information to the committee regarding the inquiry into acquisition of land in relation to major transport projects, dated 25 March 2022.

Sent:

- 7 April 2022 – Email from the secretariat to Ms Natasha Highman, Principal Legal Officer, Governance & Legal, Department of Planning & Environment, advising answers to questions on notice are to be provided on a confidential basis
- 2 May 2022 – Letter from Chair, to Mr Matthew Scard, Chief Executive Officer, Celestino seeking update on compulsory acquisition process at Luddenham and inviting to hearing on 27 May 2022.

4. Unauthorised disclosure of committee deliberations

The Chair raised a potential unauthorised disclosure of committee deliberations.

The committee noted that all committee deliberations, including correspondence between committee members pertaining to the conduct of an inquiry, are considered confidential.

5. Inquiry into acquisition of land in relation to major transport projects

5.1 Partially confidential submissions

Resolved, on the motion of Mr Banasiak: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submission no. 41a.

5.2 Public answers to questions on notice

The committee noted the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Stewart Mclachlan, Head Executive Director, Property and Place, Department of Planning and Environment, received 20 April 2022
- Sydney Water, received 21 April 2022
- Transport for NSW, received 22 April 2022

- Inner West Council, received 22 April 2022
- Sydney Metro, received 3 May 2022.

5.3 Confidential answers to questions on notice

Resolved, on the motion of Mr Graham: That the committee write to Mr Stewart McLachlan, Head Executive Director, Property and Place, Department of Planning and Environment, to advise that the committee intends on publishing the answers to questions on notice with the names of public servants kept confidential.

5.4 Transcript clarifications – 18 March 2022 hearing

Resolved, on the motion of Mr Banasiak: That the committee authorise:

- the publication of correspondence from Mr Newhouse, Ms Sack and Mr Regan clarifying their evidence; and
- the insertion of footnote/s to the relevant paragraphs within the hearing transcript for 18 March 2022, as requested by the witnesses.

5.5 Amendment to Minutes No. 33 – 10 March 2021

Resolved, on the motion of Mr Rath:

- That Minutes No. 33 be amended by inserting the resolution below
- That Minutes No. 33, as amended, be confirmed.

'3. Conduct of the inquiry into the acquisition of land in relation to major transport projects

The committee resolved the following:

- That the committee adopt the following terms of reference:
 1. That Portfolio Committee No. 6 – Transport and Customer Service inquire into and report on the acquisition of land by Transport for New South Wales and related agencies in relation to major transport projects, with particular reference to:
 - (a) the response of agencies to the Russell and Pratt Reviews into the Land Acquisition (Just Terms Compensation) Act 1991,
 - (b) the conduct of agencies in acquiring:
 - (i) land for the WestConnex Project,
 - (ii) land for metropolitan rail projects,
 - (iii) land for any project related to the Western Sydney Airport,
 - (iv) land for the Parramatta Light Rail Projects (Stages One and Two),
 - (v) land zoned as commercial land acquired between 2015 and 2020,
 - (vi) land for the North Wilton estate acquired by Landcom,
 - (vii) any other specific land acquisitions that may give rise to community concerns about current Government process;
 - (c) how government agencies identify land for acquisition and the extent to which the price of the land and the identity of landowners is taken into account when determining the route and sites for such projects,
 - (d) how government agencies conduct direct negotiations with landholders in relation to purchasing land/properties prior to, or in parallel with, the compulsory acquisition process, and the extent to which such process is fair, unbiased and equitable,
 - (e) the interaction of the planning and transport planning systems of government to support best practice outcomes for the NSW community,

- (f) whether government agencies are adequately protecting the public against 'land-banking' and other speculative practices undertaken by persons or interests seeking to profit from future transport projects and re-zoning decisions,
- (g) whether, and what, legislative or other measures should be taken by the Government to capture the uplift in land/property value created as a result of such transport projects,
- (h) the conduct of agencies and government in relation to the determination of the route of the M9 (Outer Sydney Orbital), and
- (i) any other related matters.

2. That the committee report by 1 March 2022.

- That the closing date for submissions be 2 July 2021.
- That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.
- That the timeline for hearings be considered by the committee following the receipt of submissions. Further, that hearing dates be determined by the Chair after consultation with members regarding their availability.'

5.6 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Banasiak: That:

- members provide any supplementary questions to the secretariat within 24 hours of receiving the transcript of evidence
- witnesses be required to provide answers to questions on notice/supplementary questions within 14 days.

5.7 Allocation of questioning

Resolved, on the motion of Mr Banasiak: That the sequence of questions to be asked during the inquiry hearings alternate between opposition, crossbench and government members, in that order, with equal proportion of time allocated being allocated to each.

5.8 Public hearing

The committee proceeded to take evidence in public.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Ian Choudhury, Founding Member and Secretary, Appin Orbital Motorway Support Group
- Mrs Fiona Evans, Founding Member, Appin Orbital Motorway Support Group

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Jo O'Brien, Private citizen and Member, Outer Sydney Orbital Macarthur Action Group

Ms Jo O'Brien tendered the following document:

- Opening statement.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Jamie Parker MP, Member for Balmain

- Cr Pauline Lockie, Councillor, Inner West Council

Mr Jamie Parker tendered the following document:

- Opening statement.

Cr Pauline Lockie tendered the following documents:

- Opening statement.
- Revised submission No. 76.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Rosemarie Gates, Leichhardt resident
- Mr Raymond Greig, Former St Peters resident
- Mrs Sandra Greig, Former St Peters resident
- Mr Peter Hehir, Convenor, RAW (Rozelle Against WestConnex)
- Mr John Batholomew, Committee member, RAW
- Mr Richard Capuano, Former St Peters resident
- Mr Colin Charlton, Former St Peters resident

Ms Rosemaire Gates tendered the following document:

- Opening statement.

Mr Peter Hehir tendered the following documents:

- Opening statement.
- Bottleneck newspaper, published August 2017.

Mr John Batholomew tendered the following document:

- Opening statement.

Mr Richard Capuano tendered the following documents:

- Opening statement.
- A set of documents including extracts from the *Crimes Act* and the *Independent Commission Against Corruption Act*.

The evidence concluded and the witnesses withdrew.

The hearing concluded at 1.03 pm.

5.9 Tendered documents

Resolved, on the motion of Mr Fang: That the committee accept and publish the following documents tabled during the public hearing:

- Opening statement, tendered by Ms Jo O'Brien.
- Opening statement, tendered by Mr Jamie Parker.
- Opening statement, tendered by Cr Pauline Lockie.
- Revised submission No 74, tendered by Cr Pauline Lockie.
- Opening statement, tendered by Ms Rosemarie Gates.
- Opening statement, tendered by Mr Peter Hehir.
- Opening statement, tendered by Mr John Batholomew.
- Opening statement, tendered by Mr Richard Capuano.

Resolved, on the motion of Mr Fang: That the committee not accept and publish the following documents tabled during the public hearing:

- Bottleneck newspaper, published August 2017, tendered by Mr Peter Hehir.
- A set of documents including extracts from the *Crimes Act* and the *Independent Commission Against Corruption Act*, tendered by Mr Richard Capuano.

6. Adjournment

The committee adjourned at 1.15 pm, until 9.15 am, Friday 31 May 2022 in Room 814/815 – Inquiry into privatisation of bus services (public hearing).

Vanessa O'Loan

Committee Clerk

Draft Minutes no. 68

Monday 25 July 2022

Portfolio Committee No. 6 – Transport

Room 1043, Parliament House, Sydney, 10.06 am

1. Members present

Ms Boyd, *Chair*

Mr Barrett (substituting for Mr Fang from 10.51 am)

Mr Fang (until 10.51 am)

Mr Graham

Mr Mallard

Mr Mookhey

Mr Rath

2. Apologies

Mr Banasiak, *Deputy Chair*

3. Previous minutes

Resolved, on the motion of Mr Mallard: That draft minutes nos. 63, 64 and 67 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 19 May 2022 – Email from Ms Megan Gellel, Executive Assistant to the General Manager, Campbelltown City Council, to the committee secretariat declining the committee's invitation to give evidence at the road tolling hearing on 24 May 2022
- 24 May 2022 – Email from private individual to the committee secretariat raising concerns about a proposal that was canvassed at the road tolling hearing on 24 May 2022
- 25 May 2022 – Email from Mr Daniel Egli, private individual, to the committee secretariat, enclosing a copy of his opening statement from the road tolling hearing on 24 May 2022 and requesting for it to be treated as a submission to the inquiry
- 7 June 2022 – Email from Ms Sue Weatherley, Director, City Strategy and Innovation, Georges River Council, to the committee secretariat clarifying her evidence to the committee on 24 May 2022
- 8 June 2022 – Email from Mr Jeffrey Tullock, President, Bexley Chamber of Commerce, to the committee secretariat clarifying his evidence to the committee on 24 May 2022

- 15 June 2022 – Email from Mr Ian Choudhury, Founding Member and Secretary, Appin Orbital Motorway Support Group, to the committee secretariat, enclosing a copy of further information clarifying the meaning of 'like-for-like' in terms of compulsory acquisition of land
- 20 June 2022 – Email from Mr Richard Capuano on behalf of Mr Raymond and Mrs Sandra Greig, former St Peters residents, to the committee secretariat, providing additional information reflecting on their experience providing evidence to the committee and providing further context about the acquisition of their property
- 21 June 2022 – Email from Mr Peter Hehir, Convenor, Rozelle Against WestConnex and Mr John Bartholomew, Committee member, Rozelle Against WestConnex, to the committee secretariat, providing additional information about the WestConnex project and suggested recommendations
- 21 June 2022 – Email from Mr Colin Charlton, former St Peters resident, to the committee secretariat, calling for a comparison of property prices paid for homes acquired in St Peters as part of the WestConnex project
- 21 June 2022 – Email from Ms Jo O'Brien, Private citizen and Member, Outer Sydney Orbital Macarthur Action Group, to the committee secretariat, providing a timeline and additional information about the Outer Sydney Orbital after 26 March 2018
- 21 June 2022 – Email from Mr Richard Capuano, former St Peters resident, to the committee secretariat, providing additional information about the land acquisition process and a complaint about members conduct during the hearing on 27 May 2022
- 28 June 2022 – Email from Mr Gavin David Wanigesekera, private individual, to the committee secretariat regarding GPS traffic data for Parramatta Road and the M4 tunnels
- 6 July 2022 – Email from Ms Talia Katz, Media and Government Relations Manager, Transurban, to the committee secretariat, enclosing Transurban's response to evidence from the road tolling hearing on 24 May 2022 on alleged overcharging on the M5 motorway
- 12 July 2022 – Letter from Mr Rob Sharp, Secretary, Transport for NSW, to the Chair, responding to evidence from the road tolling hearing on 24 May 2022 on alleged overcharging on the M5 motorway.

Sent:

- 18 May 2022 – Letter from the committee Chair to Mr Chris Minns MP, Member for Kogarah, advising Mr Minns of the road tolling hearing in his electorate on 24 May 2022
- 28 June 2022 – Letter from the committee Chair to Ms Michele Huey, Group Executive, Transurban, requesting a response to evidence from the road tolling hearing on 24 May 2022
- 28 June 2022 – Letter from the committee Chair to Mr Rob Sharp, Secretary, Transport for NSW, requesting a response to evidence from the road tolling hearing on 24 May 2022
- 2 June 2022 – Email from the committee secretariat to Mr Stewart Mclachlan, Executive Director, Property and Development, Department of Planning and Environment, proposing to publish the document titled 'Confidential answers to land acquisition hearing 18 March 2022' with the names of the public servants redacted.

Resolved, on the motion of Mr Mookhey: That the committee:

- keep the additional information from Mr and Mrs Greig dated 20 June 2022 confidential, as per the recommendation of the secretariat as it contains potential adverse mention
- keep the additional information from Mr Capuano dated 21 June 2022 confidential, as per the recommendation of the secretariat as it contains potential adverse mention
- write to Mr Capuano noting his correspondence and advising it was considered by the committee
- authorise the publication of the response from Transurban, dated 6 July 2022, addressing evidence of alleged overcharging on the M5 motorway
- authorise the publication of correspondence from Mr Rob Sharp, Secretary, Transport for NSW, dated 12 July 2022, addressing evidence of alleged overcharging on the M5 motorway.

5. Inquiry into Budget Estimates 2022-2023 – procedural resolutions

The committee noted that the Budget Estimates timetable for 2022-2023 was agreed to by the House, with hearings commencing at 9.30 am and concluding by 5.15 pm. Below is a table of Portfolio Committee No. 6 hearings:

Date	Portfolio
Wednesday 24 August 2022	Metropolitan Roads, Women's Safety and the Prevention of Domestic and Sexual Violence
Friday 26 August 2022	Transport, Veterans
Wednesday 31 August 2022	Regional Transport and Roads
Tuesday 6 September 2022	Infrastructure, Cities, Active Transport

5.1 Allocation of question time and total hearing time

The committee noted that committee to note that under the Budget Estimates 2022-2023 resolution each portfolio, except The Legislature, will be examined concurrently by Opposition and Crossbench members only, from 9.30 am to 11.00 am, and from 11.15 am to 12.45 pm, then from 2.00 pm to 3.30 pm, and from 3.45 pm to 5.15 pm, with 15 minutes reserved for Government questions at the end of the morning and afternoon session, if required.

5.2 Witness requests

Resolved, on the motion of Mr Graham: That for the portfolios of Metropolitan Roads, and Women's Safety and the Prevention of Domestic and Sexual Violence the committee invite the following witnesses:

- Hon Natalie Ward MLC, Minister for Metropolitan Roads and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence
- Mr Michael Tidball, Secretary, Department of Communities and Justice
- Ms Anne Campbell, Acting Deputy Secretary, Strategy Policy and Commissioning, Department of Communities and Justice
- Mr Paul McKnight, Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice
- Mr Rob Sharp, Secretary, Transport for NSW
- Mr Howard Collins, Chief Operations Officer, Greater Sydney, Transport for NSW
- Ms Trudi Mares, Deputy Secretary, Greater Sydney, Transport for NSW
- Ms Camilla Drover, Acting Deputy Secretary, Infrastructure and Place, Transport for NSW
- Mr Bernard Carlon, Chief of the Centre for Road Safety, Transport for NSW
- Mr Joost de Kock, Deputy Secretary, Customer Strategy and Technology, Transport for NSW
- Ms Tara McCarthy, Deputy Secretary, Safety, Environment and Regulation, Transport for NSW

Resolved, on the motion of Mr Graham: That for the portfolios of Transport and Veterans the committee invite the following witnesses:

- Hon David Elliott MP, Minister for Transport, and Minister for Veterans
- Mr Rob Sharp, Secretary, Transport for NSW
- Mr Matt Longland, Chief Executive, Sydney Trains
- Mr Peter Regan, Chief Executive, Sydney Metro
- Mr Howard Collins, Chief Operations Officer, Transport for NSW

- Ms Caroline Mackaness, Director, Office for Veterans Affairs
- Ms Camilla Drover, Deputy Secretary, Infrastructure and Place, Transport for NSW
- Mr Joost de Kock, Deputy Secretary, Customer Strategy and Technology, Transport for NSW
- Ms Trudi Mares, Deputy Secretary, Greater Sydney, Transport for NSW
- Ms Benedicte Colin, Chief Executive Officer, Transport Asset Holding Authority
- Ms Daniela Fontana, Chief Executive, State Transit Authority
- Mr Anthony Wing, Commissioner, NSW Point to Point Commission
- Mr Peter Allaway, Chief Customer Officer, Regional and Outer Metropolitan, Transport for NSW
- Mr Dale Merrick, CEO, NSW TrainLink
- Ms Tracey Taylor, Chief People Officer, Transport for NSW

Resolved, on the motion of Mr Graham: That for the portfolio of Regional Transport and Roads the committee invite the following witnesses:

- Hon Sam Farraway MLC, Minister for Regional Transport and Roads
- Mr Rob Sharp, Secretary, Transport for NSW
- Mr Matt Fuller, Deputy Secretary, Regional and Outer Metropolitan, Transport for NSW
- Ms Tara McCarthy, Deputy Secretary, Safety, Environment and Regulation, Transport for NSW
- Mr Joost de Kock, Deputy Secretary, Customer Strategy and Technology, Transport for NSW
- Mr Dale Merrick, A/Chief Executive NSW Trains, Transport for NSW
- Mr Peter Allaway, Chief Customer Officer, Regional and Outer Metropolitan, Transport for NSW
- Mr Anthony Hayes, Executive Director, Community and Place, Transport for NSW
- Ms Barbara Wise, Executive Director, Transport Partnerships, Transport for NSW
- Ms Gillian Geraghty, Chief Development Officer, Infrastructure & Place, Transport for NSW
- Mr Bernard Carlon, Chief, Centre for Road Safety and Maritime Safety, Transport for NSW
- Ms Cynthia Heydon, Executive Director, Planning and Programs, Transport for NSW

Resolved, on the motion of Mr Graham: That for the portfolio of Infrastructure, Cities, Active Transport the committee invite the following witnesses:

- Hon Rob Stokes MP, Minister for Infrastructure, Minister for Cities, and Minister for Active Transport
- Mr Simon Draper, Chief Executive Officer, Infrastructure NSW
- Mr Rob Sharp, Secretary, Transport for NSW
- Ms Elizabeth Mildwater, Chief Executive Officer, Greater Sydney Commission
- Ms Kiersten Fishburn, Deputy Secretary, Cities and Active Transport, Transport for NSW
- Ms Camilla Drover, Deputy Secretary, Infrastructure and Place, Transport for NSW
- Ms Suellen Fitzgerald, Chief Executive, Greater Sydney Parklands

The committee noted that where a witness no longer occupies a position, invitations will be made based on the position.

Resolved, on the motion of Mr Graham: That the committee submit any further witness requests to the secretariat by 5.00 pm, Wednesday 27 July 2022.

Resolved, on the motion of Mr Graham: That the committee not invite parliamentary secretaries to appear as a witness at the hearings.

5.3 Witness appearance time

The committee noted that under the Budget Estimates 2022-2023 resolution ministers are invited to appear for the morning sessions only, 9.30 am to 12.45 pm, unless requested by the committee to appear also for the afternoon session.

5.4 Recording of hearing

Resolved, on the motion of Mr Rath: That all Budget Estimates 2022-2023 hearings be recorded and that these recordings be placed on the inquiry webpage as soon as practicable after the hearing.

6. Inquiry into road tolling regimes

6.1 Submissions

The committee noted that submission no. 233 was published by the committee clerk under the authorisation of the resolution appointing the committee.

6.2 Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Ms Yasmina Kovacevic, private individual, received on 5 July 2022
- Ms Sue Weatherley, Director, City Strategy and Innovation, Georges River Council, received on 2 June 2022

Resolved, on the motion of Mr Rath: That the committee authorise the publication of Transurban's further answers to questions on notice received on 25 May 2022, with the exception of sensitive commercial information which is to remain confidential, as per the request of Transurban.

6.3 Clarification of evidence

Resolved, on the motion of Mr Graham: That the committee authorise:

- publication of the email from Ms Sue Weatherley, Director, City Strategy and Innovation, Georges River Council, providing further context to her remarks about changes to traffic volumes in the Georges River LGA from the road tolling hearing on 24 May 2022
- the addition of a footnote to Ms Sue Weatherley's evidence from 24 May 2022, reflecting her clarification of evidence
- the addition of a footnote to Mr Jeffrey Tullock's evidence from 24 May 2022, reflecting his clarification of evidence.

6.4 Consideration of Chair's draft report

The Chair submitted her draft report, entitled '*Road tolling regimes*', which, having been previously circulated, was taken as being read.

Chapter 1

Mr Mallard moved: That paragraph 1.65 be omitted:

'Over recent years, the use of private financing and 'user pays' to build new roads in New South Wales has been a clear policy preference for successive NSW Governments. While the committee acknowledges that both Coalition and Labor governments have partnered with the private sector to deliver new roads, under the Coalition's watch, we have witnessed a significant increase in the number of tolls on Sydney's roads with apparently no end in sight. In part, this has been enabled through a policy agenda focused on finding ways to release capital and generate revenue from already built roads that were no longer under concession, or ones nearing the end of their concession. The various upgrades, extensions and widening projects have added many more tolls to the network and have further entrenched Transurban as the owner of most of the State's privately-held roads. They reveal an appetite for privatisation on a scale we perhaps have never seen before. That the NSW Government must rely so heavily on private financing to build transport infrastructure in order to maintain its 'fiscal integrity' perhaps raises questions about its overall management of the State budget.'

And the following new paragraph be inserted instead:

'Over recent years, the use of private financing and 'user pays' to build new roads in New South Wales has been a clear policy preference for successive NSW Governments. While the committee acknowledges that both Coalition and Labor governments have partnered with the private sector to deliver new roads, under the Coalition's watch, we have witnessed a significant increase in the number of tolls on Sydney's roads. In part, this has been enabled through a policy agenda focused on finding ways to release capital for other State-led significant infrastructure including schools and hospitals and generate revenue from already built roads that were no longer under concession, or ones nearing the end of their concession. The various upgrades, extensions and widening projects have further developed Sydney's motorway network, reduced congestion and helped to connect the Western Suburbs of Sydney to the Eastern side of the City, with many funded in part via the user-pay policy consistently utilised by successive Labor and Liberal Governments. Whilst the NSW Government's use of private financing to build road infrastructure in order to maintain its 'fiscal integrity' must be viewed in a broader light of investment priorities and fiscal responsibilities, the committee views the current tolling regime in Sydney as ripe for reform'.

Mr Graham moved: That the motion of Mr Mallard be amended by inserting the following new paragraph instead:

'Over recent years, the use of private financing and 'user pays' to build new roads in New South Wales has been a clear policy preference for successive NSW Governments. While the committee acknowledges that both Coalition and Labor governments have partnered with the private sector to deliver new roads, under the Coalition's watch, we have witnessed a significant increase in the number of tolls on Sydney's roads. In part, this has been enabled through a policy agenda focused on finding ways to release capital for other State-led significant infrastructure including schools and hospitals and generate revenue from already built roads that were no longer under concession, or ones nearing the end of their concession. The various upgrades, extensions and widening projects have added many more tolls to the network. The committee views the current tolling regime in Sydney as ripe for reform'.

Amendment of Mr Graham put.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Original question of Mr Mallard, as amended, put and passed.

Resolved, on the motion of Mr Graham: That paragraph 1.66 be amended by omitting 'private financing is an ideological shift from seeing roads as essential public infrastructure' and inserting instead 'private financing is a distinction from seeing roads as essential public infrastructure'.

Mr Mallard moved: That paragraph 1.66, as amended, be omitted:

'In the committee's view, implicit in the preference for private financing is a distinction from seeing roads as essential public infrastructure like schools or hospitals, where the costs are borne by the entire taxpaying community via general taxation revenue or government debt, to thinking about roads as assets to be paid for by 'customers' who use and benefit from them. In other words, those who can afford to use a road should contribute directly to the cost of its design, financing, construction and maintenance. In the committee's view, it sets up a two-tiered system in which those who can afford to pay for the 'benefit' to use toll roads do so, while others must navigate often congested alternative routes on local, suburban roads to get where they are going.'

And the following new paragraph be inserted instead:

'In the committee's view, private financing is a distinction from seeing major motorway infrastructure development as essential public infrastructure like schools or hospitals, where the costs are borne by

the entire taxpaying community via general taxation revenue or government debt, to thinking about major motorway infrastructure development as assets to be paid for by 'customers' who use and benefit from them. In other words, those who use major motorway infrastructure should contribute directly to the cost of its design, financing, construction and maintenance. In the committee's view, whilst noting motorway infrastructure delivers clear benefits to those who utilise the network, and the local communities that benefit from a reduction in local streets, it sets up a two-tiered system in which those who pay for the 'benefit' to use toll roads do so, while others must navigate alternative routes on local, suburban roads to get where they are going.'

Mr Graham moved: That the motion of Mr Mallard be amended by inserting the following new paragraph instead:

'In the committee's view, implicit in the preference for private financing is a distinction from seeing roads as essential public infrastructure like schools or hospitals, where the costs are borne by the entire taxpaying community via general taxation revenue or government debt, to thinking about roads as assets to be paid for by 'customers' who use and benefit from them. In other words, those who can afford to use a road should contribute directly to the cost of its design, financing, construction and maintenance. In the committee's view, whilst noting motorway infrastructure delivers clear benefits to those who utilise the network, and the local communities that benefit from a reduction in local streets, it sets up a two-tiered system in which those who can afford to pay for the 'benefit' to use toll roads do so, while others must navigate often congested alternative routes on local, suburban roads to get where they are going.'

Amendment of Mr Graham put.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Original question of Mr Mallard, as amended, put and passed.

Resolved, on the motion of Mr Graham: That paragraph 1.70 be amended by omitting 'recently recommended to be shelved' and inserting instead 'recently recommended to be cancelled'.

Mr Mallard moved: That paragraph 1.70, as amended, by omitting the sentence at the end of the paragraph:

'Being locked into commercial arrangements with the private sector makes it very difficult to do this. It limits the government's ability to respond nimbly to changing circumstances. It also complicates any future reform to toll pricing schemes, as this is likely to trigger compensation claims by the private toll operator.'

The committee divided.

Ayes: Mr Fang, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That paragraph 1.71 be omitted:

'In the committee's opinion, the user-pays model of infrastructure delivery is fundamentally inequitable and regressive as it fails to consider capacity to pay. In asking people to contribute to the cost of a road, it makes no distinction between those who can most afford to contribute and those who can least afford to. This is at odds with the principles of a progressive taxation regime. Funding new roads through general taxation revenue or government debt is, in the committee's view, a much fairer way to spread public infrastructure funding costs through a progressive taxation regime.'

And the following new paragraph be inserted instead:

'In the committee's opinion, the user-pays model of infrastructure delivery has been utilised by successive Labor and Liberal Governments to fund critical major motorway infrastructure delivery. In asking people who utilise motorway infrastructure to save time and have a more reliable journey to contribute to the cost of a road, it makes no distinction between those who can most afford to contribute and those who can least afford to. This is at odds with the principles of a progressive taxation regime. Funding new roads through general taxation revenue or government debt is, in the committee's view, a much fairer way to spread public infrastructure funding costs through a progressive taxation regime.'

Mr Mookhey moved: That the motion of Mr Mallard be amended by inserting the following new paragraph instead:

'In the committee's opinion, certain user-pays models of infrastructure delivery are fundamentally inequitable and regressive as they fail to consider capacity to pay. In asking people who utilise motorway infrastructure intending to save time and have a more reliable journey to contribute to the cost of a road, they make no distinction between those who can most afford to contribute and those who can least afford to. This is at odds with the principles of a progressive taxation regime. Funding new roads through general taxation revenue or government debt is, in the committee's view, a much fairer way to spread public infrastructure funding costs through a progressive taxation regime.'

Amendment of Mr Mookhey put.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Original question of Mr Mallard, as amended, put and passed.

Chapter 2

Mr Mallard moved: That paragraph 2.89 be amended by:

- a) Inserting ', and noting committee comment 1.72,' after 'Since the inception of that inquiry in December 2016'
- b) Omitting 'be slugged with new tolls' after 'Looking ahead, motorists will', and inserting instead 'benefit from the delivery of mega toll-road infrastructure, accessible via the user-pay system'.
- c) Omitting the sentence at the end: 'If there was any doubt about Sydney being the most tolled city back in 2017, surely Sydney has to be an even stronger contender for this dubious distinction now.'

Mr Graham moved: That the motion of Mr Mallard be amended by:

- a) Omitting 'benefit from the delivery of mega toll-road infrastructure, accessible via the user-pay system' after 'Looking ahead, motorists will', and inserting instead 'pay'.
- b) Omitting the sentence at the end: 'If there was any doubt about Sydney being the most tolled city back in 2017, surely Sydney has to be an even stronger contender for this dubious distinction now.' And inserting instead 'If there was any doubt about Sydney being the most tolled city back in 2017, that has now been dispelled'.

Amendment of Mr Graham put and passed.

Original question of Mr Mallard, as amended, put and passed.

Mr Mallard moved: That paragraph 2.90 be amended by:

- a) Omitting 'The concerning growth' and inserting instead 'As a result of successive Labor and Liberal Government policy decisions for financing mega road infrastructure, there has been a concerning growth'
- b) Inserting 'a concession entered into by the Carr Labor Government' after 'For example, the cost of the Eastern Distributor'.

The committee divided.

Ayes: Mr Fang, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That paragraph 2.91 be amended by inserting 'In the Committees view, the Toll Relief package design to reduce cost of living pressures on Sydney household budgets is a welcome acknowledgment of the inefficiencies within Sydney's motorway network' after 'Every quarter see an inexorable increase in tolls'.

The committee divided.

Ayes: Mr Fang, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That paragraph 2.91 be amended by omitting:

'The private toll road operator Transurban has motorists over a barrel, all sanctioned and enabled by the NSW Government. Furthermore, we are disappointed that Transurban would trumpet to its investors the windfall that record inflation has delivered to their revenue, just as household budgets are being stretched to their breaking point. This is an affront to the long-suffering motorists of New South Wales.'

And inserting instead:

'Furthermore, whilst acknowledging the complexity involved in financing and delivering mega road infrastructure, the Committee were disappointed in the language used by Transurban to its investors regarding inflation and revenue, just as households budgets are being stretched to their breaking point.'

Mr Graham moved: That the motion of Mr Mallard be amended by inserting instead:

'Furthermore, whilst acknowledging the complexity involved in financing and delivering large scale road infrastructure, the Committee was disappointed in the language used by Transurban regarding inflation and revenue, just as households budgets are being stretched to their breaking point.'

Amendment of Mr Graham put and passed.

Original question of Mr Mallard, as amended, put and passed.

Resolved, on the motion of Mr Mallard: That paragraph 2.92 be amended by:

- a) Omitting 'The committee notes' and inserting instead 'The committee welcomes' at the start of the paragraph
- b) Omitting 'hastily' before 'announced'
- c) Omitting 'rubbery answers from NSW Treasury officials' and inserting instead 'The commentary from NSW Treasury officials'

Resolved, on the motion of Mr Mookhey: That paragraph 2.92, as amended, be further amended by omitting 'The commentary from NSW Treasury officials' and inserting instead 'The inadequate answers from NSW Treasury officials'.

Mr Mallard moved: That paragraph 2.92 be amended by omitting 'The inadequate answers from NSW Treasury officials about how the review came about do little to instil confidence. The NSW Government has had a long time to address issues with the current tolling regime. Instead, it has taken an Upper House inquiry and a looming State election to end the inaction.'

And inserting instead:

'The commentary from NSW Treasury officials did not adequately answer how the review came about, however the Toll-Relief package announced at the recent State Budget as the first stage of the review, illuminate a Government focused on achieving better outcomes for Sydney's motorway network. This Upper House inquiry and looking State election provide ample ground for both the Government and the Opposition to clearly outline and cost their policies on cost of living, major infrastructure delivery, tolling and toll relief in the context of responsible fiscal management of the NSW Budget'.

The committee divided.

Ayes: Mr Fang, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That paragraph 2.93 be amended by omitting 'The current tolling regime is a morass of the government's own making, and reform is well overdue'.

The committee divided.

Ayes: Mr Fang, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Graham: That paragraph 2.93 be amended by omitting 'morass of the government's own making', and inserting instead 'product of the government's own making'.

Mr Mallard moved: That paragraph 2.93, as amended, be further amended by inserting after 'The current tolling regime is a product of the government's own making, and reform is well overdue':

'As acknowledged by this report, stakeholders and the NSW Government, the current tolling regime is an inefficient example of successive Labor and Liberal Governments decision making focused on the pricing and delivery of single pieces of road infrastructure rather than a holistic view of Sydney's motorway network.'

Mr Mookhey moved: That the motion of Mr Mallard be amended by inserting instead:

'As acknowledged by this report, stakeholders and the NSW Government, the current tolling regime has led to inefficient pricing and delivery of single pieces of road infrastructure rather than a holistic view of Sydney's motorway network.'

Amendment of Mr Mookhey put and passed.

Original question of Mr Mallard, as amended, put.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Barrett, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Mr Mallard: That paragraph 2.93 be amended by:

- a) Omitting 'and re-branded toll relief initiatives that make expedient pre-election announcements', after 'In the committee's view, there needs to be commitment to sweeping and meaningful reform, not just tinkering around the edges with Band-Aid fixes'
- b) Omitting 'and its lack of focus on mounting cost of living pressures facing everyday people' after 'While the committee is not convinced that the government's toll pricing review will deliver genuine reform, given its reporting date of later this year'.

Mr Fang left the meeting. Mr Barrett joined the meeting.

Chapter 3

Mr Mallard moved: That paragraph 3.94 be amended by:

- a) Inserting 'if other benefits including a reduction of travel time, increased reliability of the road network and a reduction in traffic on local roads is discounted from the analysis' after 'Evidence before the committee painted a concerning picture of the impact tolls are having on everyday people,'
- b) Inserting 'a pressure that the Committee notes has been acknowledged by the NSW Government's toll relief package' after 'Tolls are clearly a significant burden on households and – along with other cost of living pressures – are absorbing an increasing share of household income,'
- c) Inserting 'successive Labor and Liberal' before 'NSW Government decision making'.

The committee divided.

Ayes: Mr Barrett, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That paragraph 3.96 be amended by inserting 'location specific' before 'evidence'.

The committee divided.

Ayes: Mr Barrett, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That paragraph 3.96 be amended by omitting the last sentence: 'With the incessant expansion of the tolled network, toll avoidance and rat running has reached a new level in Sydney' and inserting instead: 'In the context of this report and an upcoming State Election, it places significant onus on both the Government and Opposition to clearly articulate a policy position, costings and plan of action for road infrastructure delivery that will help to alleviate Sydney's congestion, and deliver City shaping infrastructure to benefit the NSW tax payer.'

Mr Mookhey moved: That the motion of Mr Mallard be amended by inserting inserting after 'With the incessant expansion of the tolled network, toll avoidance and rat running has reached a new level in Sydney':

'In the context of this report and an upcoming State Election, it places significant onus on all candidates to clearly articulate a policy position and plan of action for road infrastructure delivery.'

Amendment of Mr Mookhey put.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Barrett, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Original question of Mr Mallard, as amended, put and passed.

Mr Mallard moved: That paragraph 3.98 be amended by omitting ' – when the stubborn reality is one's purchasing power determines one's postcode, which in turn determines one's transport advantage or disadvantage.' after 'It assumes a level playing field in which all Sydney residents have equal choice in how and when they travel'.

The committee divided.

Ayes: Mr Barrett, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mookhey moved: That paragraph 3.98 be amended by omitting 'one's purchasing power' and inserting instead 'one's wealth'.

Mr Mallard moved: That paragraph 3.99 be amended by:

- a) Inserting 'there is anecdotal evidence a' after 'Similarly, the costs of toll roads are felt by a much broader group of people than those simply paying the tolls, as shown in the Bexley case study where'
- b) Inserting 'as a result of successive Labor and Liberal Government' after 'The committee recognises that substantial reform to the system is complex and will take time, with the NSW Government'.

The committee divided.

Ayes: Mr Barrett, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Graham, Mr Mookhey

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Graham: That the committee secretariat determine the most appropriate place to insert any new findings and recommendations adopted by the committee.

Resolved, on the motion of Mr Graham: That the following new finding be inserted:

'Finding X

NSW Drivers now undertake more than one million toll trips a day, raising more than \$2 billion in toll revenue every year.'

Mr Graham moved: That the following new finding be inserted:

'Finding X

That the Government has failed to provide information to this inquiry about the total toll burden that drivers will be forced to pay under existing toll contracts despite estimates that it is more than \$100 billion in today's dollars.'

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Barrett, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Mr Graham moved: That the following new finding be inserted:

'Finding X

That the decision by Treasury to withhold from public release contract details and traffic relating to WestConnex until 2060, and possibly longer, is an abuse of executive power'.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Barrett, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Mr Graham: That the following new recommendation be inserted:

'Recommendation X

That the NSW Government immediately release the traffic network performance review for the M8 and M5 toll roads, given its release was promised one year ago.'

Resolved, on the motion of Mr Graham: That Recommendation 1 be omitted:

That the NSW Government as part of its Toll Road Pricing and Relief Reform Review commit to:

- genuine and meaningful reform of road tolling with all options on the table
- consulting with affected stakeholders in government, industry and the community as part of this reform process
- not further limiting its flexibility and control over toll road pricing with new or revised contractual arrangements with private tolling operators.

And the following new recommendation be inserted instead:

'Recommendation 1

That the NSW Government as part of its Toll Road Pricing and Relief reform Review commit to:

- genuine and meaningful reform of road tolling
- consulting with affected stakeholders in government, industry and the community
- no new or revised tolls or new or revised toll road contracts being issued prior to consideration of such reform, in order to not further limit the Government's flexibility and control over toll road pricing.

Resolved, on the motion of Mr Graham:

- a) That Recommendation 2 be omitted: 'That the NSW Government move to realign toll pricing to ensure trucks can feasibly use toll roads instead of suburban streets where possible'
- b) That Recommendation 3 be omitted: 'That, in the interim, the NSW Government extend its current toll relief schemes to provide immediate and targeted toll relief to the road freight industry'; and
- c) The following new recommendation be inserted instead:

'Recommendation 2

That the NSW Government move to realign toll pricing in corridors where trucks are on suburban streets to ensure trucks can feasibly use toll roads where possible, including the option of the extension of current toll relief schemes to the road freight industry.'

Resolved, on the motion of Mr Graham: That Recommendation 5 be amended by inserting ', relating to transparency for tolling contracts,' after 'That the NSW Government implement Recommendation 5'.

Resolved, on the motion of Mr Graham: That Recommendation 6 be omitted:

That, in rationalising the current patchwork of inconsistent pricing, the NSW Government adopt a network approach to toll road pricing and:

- consider the introduction of daily caps
- review the automatic application of toll escalation rates to take account of real wages growth instead of inflation

- review toll relief and cashback schemes to ensure that toll relief is going to the people who most need it based on their ability to pay as well as the existence of public transport alternatives.

And the following new recommendation be inserted instead:

'Recommendation 6

That when a network approach to toll road pricing is considered by the review it should:

- consider the introduction of toll caps and appropriate flag falls, rather than just distance based tolling
- review the application of toll escalation rates which often include both a minimum 4% toll increase or inflation, whichever is higher, rather than take account of real wages growth
- review toll relief and cashback schemes to ensure that toll relief is going to the people who most need it based on their ability to pay as well as the existence of public transport alternatives.'

Mr Graham moved: That the table on page 5 be amended by the committee secretariat to include information regarding each of the WestConnex stages.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Barrett, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Mr Graham: That paragraph 1.49 be amended by the secretariat to include update information relating to the most recent State Infrastructure Strategy.

Resolved, on the motion of Mr Graham: That paragraph 1.67 be amended by omitting 'With 11 tolling regimes in place, and a further three toll roads in the infrastructure pipeline' and inserting instead 'With 11 tolling regimes in place, and a further four toll roads in the infrastructure pipeline'.

Mr Mookhey moved: That the draft report as amended be the report of the committee and that the committee present the report to the House.

The committee divided.

Ayes: Ms Boyd, Mr Graham, Mr Mookhey

Noes: Mr Barrett, Mr Mallard, Mr Rath

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Mr Graham: That:

- The transcripts of evidence, submissions, tabled documents, answers to questions on notice, responses to the online questionnaire, summary report of the online questionnaire and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions and individual responses to the online questionnaire be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The secretariat is tabling the report on Monday 1 August 2022;

- The Chair intends to hold a press conference on Monday 1 August 2022 at a time to be confirmed.

7. Adjournment

The committee adjourned at 11.25 pm until 9.30 am, Tuesday 2 August 2022 in Room 1043.

Madeleine Foley
Committee Clerk

Draft Minutes no. 69

Tuesday 2 August 2022

Portfolio Committee No. 6 - Transport

Room 1043, Parliament House, Sydney, 9.33 am

1. Members

Ms Boyd, *Chair*

Mr Banasiak, *Deputy Chair* (via Webex)

Mr Fang

Mr Graham

Mr Mallard (via Webex)

Mr Mookhey

Mr Rath

2. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes nos. 66 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 6 July 2022 – Email from Mr Stewart Mclachlan, Executive Director, Property and Development, Department of Planning and Environment, to the committee secretariat, agreeing to the publication of the document titled 'Confidential answers to land acquisition hearing 18 March 2022' dated 20 April 2022, with the names of the public servants redacted and requesting a copy of the redacted document prior to publication.

Resolved, on the motion of Mr Rath: That the committee authorise the publication of the document from Mr Stewart Mclachlan, titled 'Confidential answers to land acquisition hearing 18 March 2022', dated 20 April 2022, with the names of the public servants redacted and provide Mr Mclachlan with a copy of the redacted document prior to publication.

4. Inquiry into acquisition of land in relation to major transport projects

4.1 Consideration of Chair's draft report

The Chair submitted her draft report, entitled 'Acquisition of land in relation to major transport projects', which, having been previously circulated, was taken as being read.

Chapter 2

Mr Mookhey moved: That the following new finding be inserted after paragraph 2.160:

'Finding X

The purchase of 4-6 Grand Avenue, Camellia led to a loss of tens of millions of public dollars.'

Question put.

The committee divided.

Ayes: Mr Graham, Ms Boyd, Mr Mookhey, Mr Banasiak

Noes: Mr Fang, Mr Rath, Mr Mallard

Question resolved in the affirmative.

Resolved, on the motion of Mr Mookhey moved: That Recommendation 1 be amended by omitting 'property owners to be retrospectively compensated for any errors', and inserting instead 'previous property owners entitled to additional compensation to rectify errors by acquiring authorities'.

Mr Mookhey moved: That the following new finding be inserted after paragraph 2.164:

'Finding X

On the evidence presented, Sydney Metro has not negotiated in good faith with the residents of Orchard Hills.'

Question put.

The committee divided.

Ayes: Mr Graham, Ms Boyd, Mr Mookhey, Mr Banasiak

Noes: Mr Fang, Mr Rath, Mr Mallard

Question resolved in the affirmative.

Chapter 3

Mr Graham moved: That the following new finding be inserted after paragraph 3.163:

'Finding X

The current culture of acquiring authorities, including specifically that of Sydney Metro, is making the acquisition process more difficult for residents and small businesses than it should be.'

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Banasiak, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

Question resolved in the affirmative.

Resolved on the motion of Mr Graham: That Recommendation 3, dot point 3 be amended by:

- inserting 'partial' between 'acquiring authorities provide' and 'upfront payments'
- inserting 'including' between 'to affected owners' and 'for expert reports and legal fees'.

Mr Rath moved: That Recommendation 4 be omitted.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Banasiak, Mr Graham, Mr Mookhey

Question resolved in the negative.

Mr Mookhey moved: That Recommendation 4 be amended by omitting:

'That the NSW Government remove non-disclosure terms from all land acquisition agreements, and any other agreements entered into by acquiring authorities with residents impacted as a result of infrastructure projects.'

and inserting instead:

"That the NSW Government:

- seek to remove all non-disclosure terms that currently apply in all residential land acquisition agreements, and any other agreements entered into by acquiring authorities with residents impacted as a result of infrastructure projects
- not enter into any such future non-disclosure agreements.'

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Banasiak, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

Question resolved in the affirmative.

Mr Rath moved: That Recommendation 5 be omitted.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Mallard, Mr Rath

Noes: Ms Boyd, Mr Banasiak, Mr Graham, Mr Mookhey

Question resolved in the negative.

Mr Mookhey moved: That Recommendation 5 be amended by omitting:

"That the NSW Government amend the basis for determining compensation in the *Land Acquisition (Just Terms Compensation) Act 1991*, so that a 'reinstatement' approach is used as opposed to compensation being based on 'market value'.

and inserting instead:

"That the NSW Government urgently amend the basis for determining compensation in the *Land Acquisition (Just Terms Compensation) Act 1991*, to introduce a 'reinstatement' approach to the calculation of 'market value'."

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Banasiak, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

Question resolved in the affirmative.

Resolved on the motion of Mr Mookhey: That Recommendation 7 be amended by omitting 'have their property rezoned as a result of a project' and inserting instead 'a property rezoning which arises as a result of a government project.'

Mr Graham moved: That the secretariat prepare a paragraph about the evidence received in relation to the Sydney Science Park, to be inserted following recommendation 9, with the addition of the following recommendation:

Recommendation X

That the Legislative Council consider an inquiry into the status of land at the Sydney Science Park, infrastructure provision to that site and related matters.

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Banasiak, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

Question resolved in the affirmative.

Mr Mookhey moved: That the draft report as amended be the report of the committee and that the committee present the report to the House.

Question put.

The committee divided.

Ayes: Ms Boyd, Mr Banasiak, Mr Graham, Mr Mookhey

Noes: Mr Fang, Mr Mallard, Mr Rath

Question resolved in the affirmative.

Resolved, on the motion of Mr Mookhey: That:

- the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- dissenting statements be provided to the secretariat by 10.00 am Thursday 4 August 2022;
- the report be tabled on Wednesday 10 August 2022.

The committee noted that the Chair intends to have a press conference at 11.00 am on Wednesday 10 August 2022.

5. Adjournment

The committee adjourned at 10.14 am. *Sine die*.

Vanessa O'Loan
Committee Clerk

