

**REPORT OF PROCEEDINGS BEFORE**

**JOINT STANDING COMMITTEE ON THE OFFICE OF  
THE VALUER GENERAL**

**EIGHTH GENERAL MEETING WITH THE NSW VALUER GENERAL**

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**At Sydney on Friday 26 October 2012**

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**The Committee met at 8.30 a.m.**

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**PRESENT**

Mr M. J. Kean (Chair)

**Legislative Council**  
The Hon. S. MacDonald (Deputy Chair)  
The Hon. E. M. Roozendaal

**Legislative Assembly**  
Mr C. G. Barr  
Mrs L. G. Williams

**JOHN JAMES MILLER**, former Manager, Compensation and Valuations Unit, Land and Property Information, sworn and examined:

**CHAIR:** Mr Miller, the Committee monitors and reviews the exercise of the Office of the Valuer General, his functions with respect to land valuations. In particular, the Committee monitors valuation methodologies, the arrangements under which the valuation contracts are negotiated and entered into, and the standard of valuation services provided under such contracts.

I now declare this hearing open. I remind everyone to switch off their mobile phones as they can interfere with the recording equipment. The Committee welcomes Mr John Miller, former Manager, Compensation and Valuations Unit, Land and Property Information. Mr Miller, we thank you for appearing before the Committee today to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

**Mr MILLER:** No.

**CHAIR:** I would like to get some information, by way of background, of what your role was with Land and Property Information.

**Mr MILLER:** My role from late 2006 until I retired on 21 September 2012 was to look after just terms. Do you want me to go back further than that?

**CHAIR:** No, that is fine. When you say looking after just terms, what do you mean by that?

**Mr MILLER:** My role in Land and Property Information was management of acquisition advice. So, where properties were compulsorily acquired by the government or government authorities, it was to provide the determination of compensation on behalf of the Valuer General to the acquiring authority which would issue the determination of compensation as the entitlement of compensation for the land acquired.

**CHAIR:** Could you describe the work you did for the Valuer General regarding compulsory acquisitions?

**Mr MILLER:** The Valuer General sits to one side. I work for Land and Property Information, so my role was as Valuation Manager. That was my responsibility. I reported to the Chief Valuer.

**CHAIR:** Who is the Chief Valuer?

**Mr MILLER:** Michael Parker. My responsibility in looking after just terms was, when a proposed acquisition notice was issued by an acquiring authority—that is, advice that an acquisition was proceeding—to take that on board and, where it proceeded to compulsory acquisition, to arrange a valuation report and a determination of compensation to issue to the acquiring authority. That encompassed acquisitions by any acquiring authority authorised under the Land Acquisition Act. The other aspect of our work was to provide valuation advice where land was acquired under Treasury directions.

**CHAIR:** Might I clarify my understanding? Under the *Just Terms Compensation Act* the Valuer General is responsible for providing the valuation of just terms compensation.

**Mr MILLER:** The determination of compensation to the acquiring authority following a compulsorily acquisition.

**CHAIR:** But he outsources that function to Land and Property Information?

**Mr MILLER:** Yes. That is under delegated authority.

**CHAIR:** You mentioned that you also provided valuations for government agencies or acquiring agencies.

**Mr MILLER:** Where they acquired land from other government agencies under Treasury directions, which is not under the Just Terms Act because it is under Treasury directions.

**CHAIR:** Prior to the compulsory acquisition process occurring, so under the *Just Terms Compensation Act*, would you or Land and Property Information do work for the acquiring government agency?

**Mr MILLER:** No.

**CHAIR:** In the case of the South West Rail Link, for example, would Land and Property Information provide valuation advice for the Department of Transport?

**Mr MILLER:** No. Under the Just Terms Procedure Manual we do not provide pre-acquisition advice. Can I refer to that?

**CHAIR:** Yes, please do.

**Mr MILLER:** We have a Just Terms Procedure Manual, which I am sure that came in around 2007. If I can refer to page 12 of 28 of that Manual—

**CHAIR:** I do not have a copy of that Manual.

**Mr MILLER:** I can give it to you later, if you like?

**CHAIR:** That would be good, thank you.

**Mr MILLER:** "Request for pre-acquisition advice may only be serviced in accordance with a Valuer General policy. This requires that pre-acquisition advice may only be provided in an independent role with the agreement of both parties to the acquisition, with each party having the same opportunity to make submissions and with the advice being provided jointly to both parties." That means we do not provide pre-acquisition advice. The only time we provided pre-acquisition advice was if the claimant and the acquiring authority agreed to providing pre-acquisition advice. Now, that was hardly ever done—I would say possibly no more than five times. It was done that infrequently that it hardly ever happened. There are reasons for that—because on pre-acquisition advice it is not binding. So if we had provided pre-acquisition advice, with the agreement of both parties, either side could walk away. It was so infrequent that I can think of no more than about five occasions between 2006 and 2012. So we do not provide pre-acquisition advice to acquiring authorities.

**CHAIR:** What is the process employed for getting a valuation for the purposes of a Valuer General determination for a property that has been compulsorily acquired? Can contractors be used for compulsory acquisitions?

**Mr MILLER:** They can be insourced—done by Land and Property Information—or outsourced. Where Land and Property Information has the resources and technical expertise, they can be done internally; where we do not have resources or we do not have that particular expertise, they will be outsourced.

**CHAIR:** Who makes the decision as to whether it is outsourced or insourced? Who made that decision during the period that you were compulsory acquisitions manager?

**Mr MILLER:** In the early stages I would have discussed that with the valuation managers. Do you have the resources to go and do it? If you don't have the resources, we'll outsource it.

**CHAIR:** Is there a review of the valuation that is done?

**Mr MILLER:** Yes.

**CHAIR:** Who does that review?

**Mr MILLER:** When they are outsourced they come back to Land and Property Information and they are reviewed by the district valuer. Then they would have come to the valuation manager of Just Terms and they are reviewed again. So there are two review processes in there when they are outsourced.

**CHAIR:** Does the Valuer General need to sign off on it?

**Mr MILLER:** No. I would have to go back and look at the delegations in there. The delegations did change during that period. Later delegations were that my limitation was \$2 million; above \$2 million was to go

to the chief valuer. But there is a delegations register on who can sign off, and that did change during the course between 2006 and 2012. Obviously the higher the figure goes the higher it goes up the tree.

**CHAIR:** Was there a review of valuations that were insourced—compulsory valuations that were done in-house by Land and Property Information?

**Mr MILLER:** They are audited. So if they are insourced, inside Land and Property Information, they are done under a district valuer. The district valuer would peer review that. It would then go to the valuation manager of Compensations and get peer reviewed again. On those occasions it would have two peer reviews. If it was done by the district valuer, then it would go to the valuation manager of Compensations and get peer reviewed. So there were no valuations issued by Land and Property Information that were not peer reviewed.

**CHAIR:** Do you think it is important to get the valuations right?

**Mr MILLER:** Absolutely.

**CHAIR:** Why do you think is important to get the valuations right?

**Mr MILLER:** First off, it complies with the Land Acquisition Act, it complies with the Valuer General's role, it complies with the public's expectation of what the Valuer General's role is and it complies with the stakeholder's role—the stakeholder's role is the acquiring authority. That is our role: to get valuations right.

**CHAIR:** What is the purpose of the review process or the quality control process?

**Mr MILLER:** The purpose of that is to get the valuation as right as humanly possible, which is what the Just Terms Procedure Manual goes through. That does talk about audit and peer review.

**CHAIR:** You say it is about getting the valuation right, but is it also about ensuring that the process to come to that valuation is done correctly?

**Mr MILLER:** Correct. There are a number of features in there. Not only must the valuation be right but for someone who picks up that valuation report that it clearly articulates what drove that valuation. So someone can pick up a valuation report and they can read it. This is what was acquired. This was the zoning on the property. If the zoning was a public purpose zoning, the valuation report will articulate what the alternate zone was—because under the Land Acquisition Act you must remove the public purpose zone. What would it have been zoned, had it not been zoned for that public purpose?

To give you an example, if land is zoned for open space that is a step in the acquisition process. So that must be removed, that layer lifted, and you would say: What would it have been zoned, had it not been zoned open space? It could have been residential, it could have been commercial or it could have been something else. What would it have been zoned had it not been zoned for that public purpose? So that is part of it. The other part is that we go through valuation methodology in there; it must comply with the Australian Property Institute [API] professional standard. Can I refer to another piece of paper, if you do not mind?

**CHAIR:** Of course.

**Mr MILLER:** I go back to the valuation report again. So we talk about calculations, we talk about methodology. It has got to be clearly articulated in that report so if someone picks it up, the acquiring authority and, importantly, the claimant or the claimant's legal representatives, they can go through that valuation report and they understand that these were the sales that were used, this was the zoning that was considered to be appropriate on the property, this is how the sales were applied, these are the calculations and this is what drove that dollar amount in there.

So the idea is that they can pick that up and they know instantly—well, almost—once they read it from A to Z, this is what drove it. They can either accept that, or there is obviously a process that if they are disagreeable with that it can be referred to the Land and Environment Court. But it is transparent to the claimant what drove that valuation and how it was arrived at.

**CHAIR:** I would like to move into a bit more of the detail about the compulsory acquisition process. What is the basis for valuing land in compulsory acquisition? Is it market value? Is it unimproved capital value?

**Mr MILLER:** It is market value based on sales evidence.

**CHAIR:** Based on sales evidence, is it comparable sales? Do the properties that are used for the purpose of valuing the compulsory acquisition—

**Mr MILLER:** They are comparable sales as comparable as you will get them. But with all the sales they will never be truly identical to the subject property.

**CHAIR:** For example, will you look for properties with the same zoning?

**Mr MILLER:** The same attributes.

**CHAIR:** What might they be, for example?

**Mr MILLER:** They might be the type of land, the physical qualities of the land, its shape, the fall on the land, what its zoning is, where it is located, what services it has, does it have frontage to a road. Once you have looked at all of those aspects in there you might say, "Well, that's a little bit different. That looks better than that particular property. I will make an adjustment to reflect that" or "It wasn't as good as the subject property. We need to go and make an adjustment to move that upwards".

**CHAIR:** Are there any other sort of development elements that are considered for—

**Mr MILLER:** Potential?

**CHAIR:** Yes.

**Mr MILLER:** Whatever town planning information is out in the public arena so it is public knowledge must be taken into account. So if there was a draft LEP and it is public knowledge, the valuer, whether it is insourced or outsourced, must have regard to that because it is public knowledge. So the market value—anybody buying a property would be aware of what was public knowledge and they would buy property based on information that was out in the public arena.

**CHAIR:** Can the factors that are considered by a valuer doing a compulsory acquisition change quite quickly, say, for example, if the land was rezoned?

**Mr MILLER:** If the property was rezoned prior to the acquisition date or it was in a release area prior to the acquisition date, that would be knowledge in the public arena which you have regard to.

**CHAIR:** And it would affect the valuation that was given?

**Mr MILLER:** Yes. If there were sales in there that were transacted prior to that document being out in the public arena and you had to do a compulsory acquisition, those sales would not have the same weight as a sale that was transacted when that document was out there in the public. What I am saying is if you went to a rural area and there were sales in there and, say, for argument's sake, at a particular point in time later on there was a document that said that this land is going to be released and there were sales after that document became public knowledge, then the old sales would have no relevance because they would have been transacted in an environment where that land release was not known.

**CHAIR:** So you would take into account new property sales before you issued a valuation?

**Mr MILLER:** We would take into account the most relevant evidence on the attributes and what was available and as similar to that property as possible, which is market value.

**CHAIR:** So if there is a rezoning and if there are new property sales it is possible that the value of the land could change quickly over a short period of time?

**Mr MILLER:** It can. The value of land depends on its potential and the servicing and the timing of servicing.

**CHAIR:** But if there were property sales, if there was a rezoning, it could change the valuation of the land in a short period of time?

**Mr MILLER:** It would change dramatically. If land was rural one day and it was rezoned for residential the following day, it would change, but if there was public knowledge that this land would be released in two months time and there were sales prior to that—and being public knowledge there may be a shift but not great—but if you went back 12 months before that when it was not public knowledge that this land would be released then there would be quite a shift. There could be a shift, yes.

**CHAIR:** So, hypothetically, if land was valued once and then five years later it was revalued, would it be necessary to do a second valuation from scratch or would you just double-check the previous valuation?

**Mr MILLER:** You would start from scratch. Five years is a long time, so you would have to review all the market evidence, you would have to review what town planning information was out there, you would have to review what servicing was available. No-one would use a valuation that was five years old; it would have no credence, because the market would have changed anyway.

**CHAIR:** So you would start from scratch?

**Mr MILLER:** Pretty well, yes. If there was a report there you might have a look at the skeleton of it. In essence, you would start from scratch because you would review all of the market conditions, you would review the zoning, you would go and make inquiries at the council as to what the land's potential was.

**CHAIR:** When a valuation is done a record is kept of the valuation by LPI?

**Mr MILLER:** It is.

**CHAIR:** Would that include the valuation document itself?

**Mr MILLER:** Yes. When a request comes into LPI to do a valuation they are scanned and they are put in electronic form.

**CHAIR:** Is there a database or something where all this is kept?

**Mr MILLER:** There is.

**CHAIR:** What is the name of that database?

**Mr MILLER:** It is on the server for LPI. Documents come in from an acquiring authority having issued a PAN. They are scanned and they are put into the hard drive, so if the documents are ever lost we have got a ready record in there that they are there and they can be reproduced. So when a valuation report is done they are also saved electronically.

**CHAIR:** If in the event there was a valuation done and then five years later there was another valuation done, a valuer could go in and get the previous valuation?

**Mr MILLER:** He could have a look at that, yes. But the relevance of five years hypothetically, it probably would have no relevance.

**CHAIR:** Would that include the actual valuation document itself?

**Mr MILLER:** It would include all documentation.

**CHAIR:** Would that include the name of the person who valued that land?

**Mr MILLER:** They would be on that valuation report.

**CHAIR:** So the valuer's name would be able to be accessed—the valuer who did the original valuation?

**Mr MILLER:** Yes.

**CHAIR:** Does that include valuations done for any purpose, such as market negotiations, compulsory acquisitions—

**Mr MILLER:** We do not provide valuations for market negotiations.

**CHAIR:** But does it include any valuations done for a particular property?

**Mr MILLER:** I look after compulsory acquisitions. There is another valuation manager, Paul Goldsmith, who does special valuation advice, but that is basically for government clients, for asset purposes.

**CHAIR:** Mr Goldsmith does valuations for government clients?

**Mr MILLER:** Yes.

**CHAIR:** So, the Department of Transport would not get Mr Goldsmith to do a valuation for the purposes of their negotiations with a client before a compulsory acquisition?

**Mr MILLER:** No. We do not provide pre-acquisition advice. It is articulated in our Just Terms Procedure Manual, we do not provide pre-acquisition advice.

**CHAIR:** LPI does not provide pre-acquisition advice?

**Mr MILLER:** That is right. Prior to 2005 we did provide pre-acquisition advice. In about March 2005 Philip Western decided that it was a conflict of interest to provide pre-acquisition advice. So since early 2005 no pre-acquisition advice has been provided. The Just Terms Procedure Manual articulates pre-acquisition advice will only be done with consent between the two parties—it is on page 12 of 28. We do not provide pre-acquisition advice.

**CHAIR:** Are you able to table the Just Terms Acquisition Manual?

**Mr MILLER:** Sure. I do not work for LPI but it is a document that we have produced on a freedom of information request, so it is out there in the public domain.

**CHAIR:** If the valuations for compulsory acquisition were done externally would the contract valuers have access to the system to which you referred to help them with their valuations?

**Mr MILLER:** No. It would be a privacy issue and we would not do it.

**CHAIR:** How would they get the information?

**Mr MILLER:** Their valuations are based on market evidence, so they definitely have access to—

**CHAIR:** They would just start from scratch?

**Mr MILLER:** That is right. They do. But when we say that, I think we are missing quite a bit in there. When a proposed acquisition notice [PAN] is issued, it is issued to the Valuer General by the acquiring authority. We will call it a 90 day PAN for argument's sake. We go back to the acquiring authority and say, "Have you made an offer on this property?" so we can gain an understanding. They would provide us advice, "Yes, we have made an offer."

**CHAIR:** You would go to the acquiring authority?

**Mr MILLER:** And the claimant. They are equally treated, the acquiring authority and the claimant.

**CHAIR:** Would you see the offer that the acquiring authority had made?

**Mr MILLER:** Yes.

**CHAIR:** We might come back to that. I want to draw your attention to some valuation documents. I will refer you to an overview report entitled "South West Rail Link". Could you read the first sentence of the second paragraph at page 16 under the heading, "When will the Rail Link be built?"

**Mr MILLER:** "The Rail Link could be constructed and in operation as early as 2012 following completion of the Rail Clearways Program."

**CHAIR:** Thank you. I refer you to another document, entitled "South West Rail Link". Can you read the final sentence under "Status"?

**Mr MILLER:** "Major construction of the Glenfield to Leppington Rail Line component commenced at the beginning of 2012, works are on schedule for the commencement of revenue services in 2016."

**CHAIR:** I refer you to the valuation for Boustani.

**Mr MILLER:** That is before the court. That was heard before the court 12 months ago. The court is sitting in judgement on Boustani. The court has not issued a judgement on Boustani.

**CHAIR:** Can I get you to read the valuation on Vumbaca—

**The Hon. ERIC ROOZENDAAL:** We can discuss Boustani if we go in camera, I imagine.

**CHAIR:** Let us do Vumbaca. It is essentially the same. We can come back to Boustani.

**Mr MILLER:** I understand that it is outside the scope of the Committee to discuss individual valuations.

**CHAIR:** My interpretation of the terms of reference of the Committee is that we can look at process around individual valuations, which is where we are going with this line of questioning.

**Mr MILLER:** Sure.

**CHAIR:** Can I refer you to the Vumbaca valuation. Can you tell me who reviewed that?

**Mr MILLER:** Well, I can. It had two reviews. It would have been reviewed by Paul Goldsmith and it would have been reviewed by me. That is my understanding.

**CHAIR:** Is that your signature?

**Mr MILLER:** It is my signature because I was the—

**CHAIR:** Is Mr Goldsmith's signature there?

**Mr MILLER:** No, because I am the valuation manager of just terms so it would have been my responsibility to issue it.

**CHAIR:** Who wrote this valuation?

**Mr MILLER:** I will have to look at the report. That would have been done by Mr Carr.

**CHAIR:** Are you aware of an earlier valuation being done for this?

**Mr MILLER:** If we can roll the clock back a little bit—

**CHAIR:** I was just wondering whether you are aware of an earlier valuation that was done.

**Mr MILLER:** Yes, it was a draft report. If I can explain further, in 2008 we received PAN advice from the Department of Planning. There were 40 PANs. They were going to acquire a number of properties in the Leppington area and the Government aborted that process. What happened later was there were seven properties acquired late in 2008 out of that 40. Out of those 40 PANs there were 37 valuation reports done so there were three that were not done and there were 37 draft reports that were done.



**CHAIR:** Was a draft report done for this valuation?

**Mr MILLER:** I assume there was because there were 40 PANs. The three that were not done were on one particular property, so I assume that was one of the 37.

**CHAIR:** I refer you to page 12 of this valuation. Could you read the last sentence in the first paragraph?

**Mr MILLER:** "Work will begin on stage two by mid-2010 and is due for completion by 2016. Most of the planning work has already been done for stage two, which will allow it to go to an environmental assessment very quickly. Stage two of the South West Rail Link will include"—

**CHAIR:** That is fine, thank you. I refer you to page 26 of the same report. Can you read the third bullet point?

**Mr MILLER:** "It is proposed the railway line will be built in 2012."

**CHAIR:** Thank you. Can you explain to me why the dates differ in this valuation report?

**Mr MILLER:** No, I cannot.

**CHAIR:** Can I put it to you that a previous valuation done prior to this acquisition was used as the basis for this valuation?

**Mr MILLER:** There could have been certain information that could have transpired from the draft report to this one, yes. It could be simply that it could have been used as a skeleton, sure.

**The Hon. SCOT MacDONALD:** You just mentioned Boustani in the Land and Environment Court?

**Mr MILLER:** Yes. The hearing has been completed.

**The Hon. SCOT MacDONALD:** Right. It is just awaiting a decision.

**Mr MILLER:** The judge who heard that is now considering the evidence provided. A judgement has not been made at this point.

**The Hon. SCOT MacDONALD:** I assume he is just challenging the valuation, is he?

**Mr MILLER:** That is generally the grounds. It is generally a challenge to the quantum of money that has been offered for the determination of compensation.

**The Hon. SCOT MacDONALD:** I am really just after background information. The whole valuation process is pretty adversarial and claimants are never happy, I guess.

**Mr MILLER:** It can be adversarial. We try not to be. We try to engage with the claimants, so a part of our process is, when we get involved in determining the complaints, we try to find out the facts. When I say that, we go to the acquiring authority and we say, "Did you make an offer?", and we go and ask the claimant. Under the Land Acquisition Act—

**The Hon. SCOT MacDONALD:** I think your microphone might have switched off somehow.

**Mr MILLER:** My apologies. It has gone off, I am sorry. We try to understand why agreement was not reached. If we go and look at the Land Acquisition Act, the Land Acquisition Act encourages the acquisition of land by agreement. As part of the process, we go to the acquiring authority, "Did you make an offer on that? What was the offer? What was the basis of the offer?" We go to the claimant, "What is your claim? Do you have any professional reports? Is there something you would like just to tell us about your claim?"

**The Hon. SCOT MacDONALD:** That could actually help you in the valuation?

**Mr MILLER:** That is right. It is part of the process that we do not know. So we engage with the claimant so that we can understand the issues that affect them. It could be a total acquisition. It could be a partial acquisition. By engaging with the claimant, we are seeking information from the claimant. They are part of the

process of this. We try to find out how that acquisition has affected them, what professional reports they wish to provide—they might have a solicitor's advice, they might have town planning advice, they might have valuation advice—and "Do you wish us to go and talk with your valuer?"

**The Hon. SCOT MacDONALD:** With Mr Boustani, is it fairly unusual to take it up to the next level?

**Mr MILLER:** I am sorry?

**The Hon. SCOT MacDONALD:** To take it to the Land and Environment Court, that is reasonably unusual, is it?

**Mr MILLER:** Since I have been doing this role, since late 2006 to 2012, there have not been many that have proceeded on to the Land and Environment Court.

**The Hon. SCOT MacDONALD:** Basically, you mediate your way through it?

**Mr MILLER:** No, we do not. We do not. We simply provide a determination of compensation. We issue that to the acquiring authority. Our role is finished.

**The Hon. SCOT MacDONALD:** Right. The acquiring authority mediates its way through it.

**Mr MILLER:** That is under the rules of the court. The court encourages mediation prior to a hearing. There can be a number of these that are referred to court, and through the course of the mediation process, they will be resolved.

**The Hon. SCOT MacDONALD:** Right. That is all I really wanted to know.

**CHAIR:** Mr Miller, thank you so much for making yourself available. We really do appreciate your attendance, especially your coming in during your retirement. We wish you the very best of luck in your post-valuation life.

**Mr MILLER:** Thank you.

**CHAIR:** Mr Miller, for the record I need you to state your full name, occupation and in what capacity you are appearing before the Committee.

**Mr MILLER:** My name is John James Miller. I retired on 21 September. I received a call from the Committee to appear. I have signed an oath that I am not engaged by Land and Property Information [LPI]. I am not on contract to Land and Property Information.

**CHAIR:** You are here in your private capacity, but perhaps because the questioning related to your former capacity, you could just state what your former capacity was.

**Mr MILLER:** My present capacity is I am retired.

**CHAIR:** And your previous capacity?

**Mr MILLER:** My previous capacity was that I was valuation manager of compensation valuations.

**CHAIR:** It is just a procedural thing.

**Mr MILLER:** Sure.

**CHAIR:** Thank you, Mr Miller.

**(The witness withdrew)**

**The Committee adjourned at 9.17 a.m.**