



Transport for NSW

Responses to Post-hearing questions

Portfolio Committee No 6 – Transport and
Customer Service

Inquiry into acquisition of land in relation to major
Transport projects

Hearing Date – Tuesday, 15 June 2021

QUESTIONS ON NOTICE

QUESTION: page 21

1. Mr SHARP: Yes. The Minister wrote to me formalising a request for me to take actions on the Auditor-General's recommendations. Off the back of that, I communicated with ICAC to ensure that I was not crossing their investigation and that was the response that I have received from them.

The Hon. DANIEL MOOKHEY: Thank you for your appearance today, Mr Secretary and Deputy Secretary as well. Congratulations on your appointment, Mr Secretary.

Mr SHARP: Thank you.

The Hon. DANIEL MOOKHEY: On notice, can we get a copy of that exchange of correspondence—the Minister's letter to you—for the record.

Mr SHARP: Yes, I am happy to table that.

The Hon. DANIEL MOOKHEY: If you are in a position to table what you are referring to in terms of ICAC and your exchange of letters with them, that would be helpful as well. Ms Drover, when did you become the Deputy Secretary of Infrastructure and Place?

ANSWER:

Yes. This has been provided to the Committee.

QUESTION: page 22 - 23

2. The Hon. DANIEL MOOKHEY: How many properties are you currently commercially negotiating on the acquisition of today?

Ms DROVER: It varies year to year and obviously some acquisitions take longer than a year.

The Hon. DANIEL MOOKHEY: How many are active?

Ms DROVER: I would have to take that on notice and confirm. In any year—look, it is circa 200 but it depends on the capital program at the time and what property we are buying for pending projects that are approaching delivery.

The Hon. DANIEL MOOKHEY: Right now, in just the negotiation phases of your property acquisition, can we infer that there are approximately 200-odd properties that Transport for NSW is actively negotiating over, using the same policies and procedures that were in place for the Grand Avenue transaction?

Ms DROVER: We would have to take that on notice and confirm the exact number that are in train at the moment, but historically it has been anywhere from 100 up to 300. That is right across Transport, not just Infrastructure and Place.

ANSWER:

There are no acquisitions currently being undertaken that use the policies and procedures which were in existence at the time of the Grand Avenue acquisition.

RESPONSES TO POST-HEARING QUESTIONS

QUESTION: page 24 – 25

3. The Hon. DANIEL MOOKHEY: It was. Did Transport for NSW ever at that point think about referring these matters to the Auditor-General or ICAC?

Mr SHARP: There is a reference made—and I think it is highlighted in the Auditor-General's report—that at the time the consideration was that it was going to be subject to an audit report, not an investigation.

The Hon. DANIEL MOOKHEY: But that was because some people thought that it should be referred immediately to the Auditor-General and ICAC, did they not?

Mr SHARP: The question of a review would always in nature take the direction of is it an audit or is it an investigation? The comments that I believe were made at the time were that the—I am just looking for the right words that were used here. That there was no factual—sorry, I am just going to have to find the right words that were actually spoken. I will have to take that on notice. It is in the papers here. I think it is in the Auditor-General's report as well.

ANSWER:

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.

QUESTION: page 25

4. Mr SHARP: They are the facts that I have got here, yes.

The Hon. DANIEL MOOKHEY: The total acquisitions of the 80 in total were circa \$99 million, were they not?

Mr SHARP: I would have to take that on notice. I do not have that number here.

ANSWER:

Between September 2014 and July 2019, TfNSW acquired 83 commercial properties at a total acquisition value of \$99.6m.

QUESTION: page 25

5. The Hon. DANIEL MOOKHEY: Up until 2019 this was by far the biggest deal that Transport for NSW had engaged in in the marketplace whatsoever, correct?

Ms DROVER: We would probably need to take that on notice because—

The Hon. DANIEL MOOKHEY: But you have no reason to disagree with me right now?

Mr SHARP: I could agree that it was a large transaction. Whether it was the largest in a decade we would have to take on notice and come back to you.

ANSWER:

The acquisition of 4-6 Grand Avenue is not the largest that Transport has undertaken.

RESPONSES TO POST-HEARING QUESTIONS

QUESTION: page 26

6. The Hon. DANIEL MOOKHEY: Do you know why this report was not provided to the Minister at the time?

Mr SHARP: No. I would have to take that on notice.

The Hon. DANIEL MOOKHEY: Do you know whether or not it was ever discussed at the Transport for NSW executive?

Mr SHARP: I would have to take that on notice. I do not know.

ANSWER:

Prior to the internal audit report being finalised, the report was discussed with the then Acting Deputy Secretary, Infrastructure and Place. As per normal practice, the then Secretary was briefed on the results of the audit report for his noting. As internal audits are generally undertaken as part of an internal audit program approved by the Secretary, the internal audit report was provided to the Secretary and the independent Transport Audit and Risk Committee (and not to the Minister), and was not tabled at the TfNSW Executive. This is consistent with standard practice.

All internal audit reports are tabled for review and noting by the Audit and Risk Committee, and that included this report. The Audit and Risk Committee is an independent assurance and advisory Committee for the Secretary.

QUESTION: page 29

7. The Hon. DANIEL MOOKHEY: We are talking about the contract for the remediation of 6 Grand Avenue, are we not?

Mr SHARP: Correct.

The Hon. DANIEL MOOKHEY: This is a contract that has been entered into with Ventia.

Ms DROVER: Yes.

The Hon. DANIEL MOOKHEY: This was the one you announced on 26 March this year via press release as the updated figure. Is that correct?

Ms DROVER: I would have to clarify the timing, but that sounds about right.

ANSWER:

The media release was issued on 26 March 2021: <https://www.transport.nsw.gov.au/news-and-events/media-releases/parramatta-light-rail-stabling-and-maintenance-facility-construction>

The figure outlined in the media release excludes GST.

RESPONSES TO POST-HEARING QUESTIONS

QUESTION: page 29

8. The Hon. DANIEL MOOKHEY: Why then does the contract that has been published on the eContract database show that the amended cost for remediation is \$116 million? If you turn to the second page it says that the amended estimate payable to contractor is \$115 million or thereabouts.

Ms DROVER: I am not familiar with this form of the eTendering—

The Hon. DANIEL MOOKHEY: That is the contract database. It is the way it has to be published, according to the Information Commissioner.

Ms DROVER: I am very happy to take that away and get that validated and confirmed et cetera.

ANSWER:

The contract total excluding GST is \$105,176,000 and the contract total including GST is \$115,693,600. The contract price on the eTender website is \$115,693,600.00 (including GST).

QUESTION: page 29

9. The Hon. DANIEL MOOKHEY: I am familiar with it. I am familiar with the contract database. That number is an amended estimate. It is an updated contract. Originally the contract was published—last year it was circa, forgive me if I am wrong, about \$80 million, and then it was revised up to \$115 million. What is the actual cost? Is it \$105 million or \$115 million to clean up this site?

Ms DROVER: We can take that on notice and clarify for you.

ANSWER:

The contract sum total excluding GST is \$105,176,000 and the contract sum total including GST is \$115,693,600.

QUESTION: page 30

10. The Hon. DANIEL MOOKHEY: I accept, Ms Drover, that you will now have to go and clarify, but my point is since you entered this contract in March, has Ventia made any further claims? In the last three months have any further claims been made?

Mr SHARP: In the last three months? No.

Ms DROVER: Not to my knowledge, no.

Mr SHARP: But, once again, we can take that on notice and revert if that is a formal question that you would like us to answer.

The Hon. DANIEL MOOKHEY: Yes, I would like to know. It is a variation or a modification request—I think they are the two terms under your contract framework that you use. So, on notice, how many modification and variation claims, for what and for what value? Thank you.

ANSWER:

No further variation claims have been made by Ventia since March 2021.

RESPONSES TO POST-HEARING QUESTIONS

QUESTION: page 30

11. The CHAIR: Are you able to provide any information on the safety of the site? Has a safety audit of some sort been undertaken?

Ms DROVER: We can take that on notice and see what we can bring back on that.

ANSWER:

An independent Site Auditor accredited by the NSW Environment Protection Authority (EPA) regularly inspects the site to monitor the remediation progress and matters of occupational hygiene.

QUESTION: page 30 - 31

12. The Hon. DANIEL MOOKHEY: Did Transport for NSW ever obtain any legal advice as to whether or not you bear liability for cleaning up neighbouring landowners' land from contamination caused on 4-6 Grand Avenue?

Ms DROVER: I am not aware of that, but I am happy to take that on notice and see what we can provide.

The Hon. DANIEL MOOKHEY: Have you since obtained any legal advice as to whether or not any neighbouring landholder could sue Transport for NSW for the contamination of their land?

Mr SHARP: We would have to take that on notice. The typical project team would liaise with our in-house legal teams on a regular basis. I would need to take on notice that question.

The Hon. DANIEL MOOKHEY: Could you? The environmental reports that were prepared—

Mr SHARP: We will see what we can revert with.

The Hon. DANIEL MOOKHEY: Yes. The environmental reports that were prepared show that 77 hectares of neighbouring land might have been contaminated by activities which took place on 4-6 Grand Avenue, Camellia. Were you aware that that was said or have you since been made aware?

Mr SHARP: No. But, as I indicated, I will revert back to you with any legal advice that we can find on that.

The Hon. DANIEL MOOKHEY: Do taxpayers have any protection against any claim from neighbouring landholders for liability of their sites?

Ms DROVER: I am not aware of anything. But, as the secretary said, we can take that away. The only comment I will make is that it was well known that the whole of that precinct was contaminated, based on its historic industrial use.

The Hon. DANIEL MOOKHEY: Indeed. But the issue here is that because taxpayers have bought the site we are liable to clean up for neighbouring landowners if their land was polluted as a result of activities which took place on the site we now own. Is that fair?

Mr SHARP: As I said, I would need to get legal advice. I am not a lawyer and I am not across that. I have not been made aware of any such issue. But I will clarify that and revert as required.

The Hon. DANIEL MOOKHEY: This did feature in the public debate and in the public reporting, that the liability could be a lot larger if we are liable for neighbouring land pollution. It is quite a common part of the debate. This has never been looked into by Transport for NSW?

Mr SHARP: We are just not aware, so we will revert with the details.

The Hon. DANIEL MOOKHEY: Ms Drover, are you aware?

Ms DROVER: I am not aware, but I suspect our remediation solution addresses that. But, as I said, we will take that away and see what we can find on that.

RESPONSES TO POST-HEARING QUESTIONS

ANSWER:

Legal advice on liability was not sought as TfNSW's obligations with respect to the land were well understood.

The remediation solution being delivered, comprising a hydraulic barrier wall which sits broadly around the boundary of the land and a capping layer over the top (as set out in the Voluntary Management Proposal developed in consultation with the EPA) is designed to mitigate the risk of contamination migration and therefore mitigates the risk of liability to neighbouring landowners arising.

QUESTION: page 31 - 32

13. The Hon. DANIEL MOOKHEY: Are contaminants still seeping into the Parramatta River from this land?

Ms DROVER: I am not aware contamination ever seeped into the Parramatta River. But, again, we can take that away and clarify.

The Hon. DANIEL MOOKHEY: But the EPA investigated this just a couple of years ago, after people made complaints. This was reported by News Corp four months ago, that there was leakage from this site to the Parramatta River which caused the EPA to fine you I think?

Ms DROVER: As I said, I am not aware of that matter but I am happy to take it away and see what we can find to confirm.

Mr SHARP: The site itself has been subject to environmental reviews. This question would have been covered by that and we will revert on that. I am not aware of that. No-one has been raising that as an issue with me. But we will find out and revert—take that on notice.

The Hon. DANIEL MOOKHEY: Has the EPA signed off on your remediation solution?

Ms DROVER: I believe there have been some sign-offs from EPA. The exact nature of those? I am happy to take that away and clarify.

The Hon. DANIEL MOOKHEY: But it is still listed on their risks register, is it not?

Ms DROVER: I would have to confirm that.

The Hon. DANIEL MOOKHEY: Were the EPA asked to look into the solution prior to you committing \$100 million to create it?

Ms DROVER: I am aware EPA, as I said, have provided a number of sign-offs. We can take that away and clarify exactly the nature of those sign-offs, the timing, et cetera.

The Hon. DANIEL MOOKHEY: I appreciate that, but I am asking were they consulted prior?

Ms DROVER: Look, obviously I was not there at that time. But it is normal standard practice to consult the EPA on a remediation strategy of such a site.

The Hon. DANIEL MOOKHEY: Because it is a massive site?

The Hon. SCOTT FARLOW: Ms Drover, perhaps you could take it into consideration in that on notice response that you have already outlined to Mr Mookhey that you will undertake?

Ms DROVER: Yes.

The Hon. DANIEL MOOKHEY: That is fair. If you could take on notice if the EPA was consulted and, if so, when and by whom?

Ms DROVER: Yes, certainly.

ANSWER:

I am advised that there are no contaminants seeping into the Parramatta River from 4-6 Grand Avenue, Camellia.

Transport for NSW is aware the EPA undertook an investigation as a result of a self-reported pollution incident that occurred in 2019 in relation to 4-6 Grand Avenue, Camellia. EPA did not issue a fine to Transport for NSW.

RESPONSES TO POST-HEARING QUESTIONS

A Voluntary Management Proposal for the management of significantly contaminated land was approved by the EPA for 4-6 Grand Avenue. The remediation solution that has been constructed prevents the migration of groundwater from the site and has been in place since June 2020.

Since early 2017 Transport for NSW has engaged an independent Site Auditor accredited by the Environment Protection Authority, this was prior to awarding the remediation contract. The remediation approach has been reviewed and endorsed by the independent Site Auditor.

QUESTION: page 33

14. The Hon. DANIEL MOOKHEY: Are you still contemplating constructing apartments above the stabling yards?

Ms DROVER: No, we are not.

The Hon. DANIEL MOOKHEY: That has been taken off the table?

Mr SHARP: The site was purchased to support the light rail for staging and cleaning, and that is the use that it is committed to at the moment for the foreseeable future.

The Hon. DANIEL MOOKHEY: But there is no talk right now of putting in any other forms of development above?

Mr SHARP: There is none at the moment, no. There have been no current discussions at all.

The Hon. JOHN GRAHAM: But has it been ruled out? It may not have been discussed while you are doing this but it was a previous proposal.

Mr SHARP: We do not rule anything out on any asset, but it has not been discussed and we do not have plans to do so at the moment.

The Hon. JOHN GRAHAM: You did have plans?

Mr SHARP: You asked me currently. It is not on my plan list. The current position is that. I would have to take on notice the historical plans because I was not privy to them.

ANSWER:

Transport for NSW procured the site for the purposes of accommodating the Stabling and Maintenance facility for the Parramatta Light Rail project and not for constructing apartments.

The site is being remediated for the purpose of future use as the Parramatta Light Rail Stabling and Maintenance Facility only. The remediation solution is not conducive to residential development or any use other than as the Stabling and Maintenance Facility.

QUESTION: page 33

15. Ms DROVER: There has been no information in my time that that has ever been contemplated. We are happy to take that away and confirm.

The CHAIR: Perhaps you can take on notice also if there was ever any quote given in relation to remediation of the site to make it available for use as residential.

Ms DROVER: By Transport?

The CHAIR: I will rephrase my question. The question is whether there was a quote given to Transport in relation to remediating the site to a high level to allow the site to be used for other than just stabling?

Ms DROVER: We can take that away. To my knowledge nothing of that nature has ever been raised or discussed and I have not seen any documents that would suggest that was.

ANSWER:

Transport for NSW has not developed any proposal to remediate the land at 4-6 Grand Avenue, Camellia, for anything other than use as the Stabling and Maintenance Facility for the Parramatta Light Rail, and a quote was never obtained for anything other than this.

RESPONSES TO POST-HEARING QUESTIONS

QUESTION: page 34

16.The Hon. DANIEL MOOKHEY: Can you take on notice whether you ever instructed Colliers to value the site assuming it would be redeveloped and that was on the basis of the site coming in as being worth half what you paid for it.

Ms DROVER: We can take that on notice but as the secretary said we are obliged under the just terms Act to make a valuation based on highest and best use fair market value.

ANSWER:

As the 'Valuation Report 4 Grand Avenue Camellia NSW' prepared by Colliers confirms, the valuation was done on an 'as-is' basis and on a 'redevelopment potential basis'.

Mr Peter Hall, QC
Chief Commissioner
Independent Commission Against Corruption
Level 7, 255 Elizabeth Street
SYDNEY NSW 2000

Dear Chief Commissioner

I am writing regarding the New South Wales Auditor-General's Report dated 18 May 2021 relating to the Acquisition of 4-6 Grand Avenue, Camellia.

Following careful consideration of the Auditor-General's Report, Transport for NSW has accepted all of the report's recommendations directed to it and is currently considering plans to address each of those.

As part of our planning considerations I am seeking the Commission's advice regarding recommendation 2 of the report which states:

*By December 2021, Transport for NSW should:
ensure that an independent investigation is conducted to identify whether the acquisition of 4-6 Grand Avenue was affected by maladministration, fraudulent activity or misconduct*

I am aware that the acquisition of the land subject of the Auditor-General's Report was referred to the Commission by the The Hon Andrew Constance, Minister for Transport and Roads.

I am therefore seeking advice regarding Transport for NSW's intention to undertake an investigation into the land acquisition given the Commission has yet to finalise its consideration of this matter.

I recognise that the Commission's considerations focus on possible corrupt conduct, while any investigation undertaken by Transport for NSW would also need to consider the broader aspects of maladministration, fraudulent activity and/or misconduct. I am mindful that any investigation undertaken by Transport for NSW will consider aspects of this matter which may be within the scope of any investigation the Commission chooses to undertake.

Given the common areas of investigation, it is important that Transport for NSW take into account any considerations of the Commission before commencing its investigation to minimise the possibility of compromising those respective investigations.

I am therefore seeking the Commission's advice as to whether it has any concerns regarding Transport for NSW commencing an investigation into the issues identified by the Auditor-General's Report concerning the acquisition of land at 4-6 Grand Avenue, Camellia. Given the sensitivity of this matter, Transport for NSW will not commence its investigation until such time as the Commission's advice has been received.

Should you require any further information regarding this matter, please contact Grant Marley, Associate Director, Workplace Conduct and Investigations on 0466 794 261.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Sharp', written in a cursive style.

Rob Sharp
Secretary

28/05/2021

Mr. Rob Sharp
Secretary
Transport for NSW

Attention: Grant Marley

Your Ref: OTS20/09546
Our Ref: E20/1619

Dear Mr Sharp,

I am writing in response to your letter of 28 May 2021 concerning recommendation 2 in the Auditor-General's 18 May 2021 report relating to the acquisition of 4-6 Grand Avenue, Camellia.

That recommendation was that Transport for NSW should ensure that an independent investigation is conducted to identify whether the acquisition of that property was affected by maladministration, fraudulent activity or misconduct.

In your letter you sought the Commission's advice as to whether it has any concerns regarding Transport for NSW commencing an investigation into the issues identified in the Auditor-General's report. You noted that, given the sensitivity of this matter, Transport for NSW would not commence any investigation until such time as the Commission's advice was received.

On 31 May 2021, Roy Waldon, the Solicitor to the Commission, contacted Mr Marley, Associate Director, Workplace Conduct and Investigations and requested that Transport for NSW not commence any investigation until the Commission had time to consider the matter further and respond formally to Transport for NSW.

The Commission is presently conducting a preliminary investigation into whether any person involved in the acquisition of the property by Transport for NSW engaged in conduct of the kind referred to in s.13(1)(a) of the *Independent Commission Against Corruption Act 1988*. This section provides that one of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- (i) corrupt conduct, or
 - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
 - (iii) conduct connected with corrupt conduct,
- may have occurred, may be occurring or may be about to occur.

Given the fact the Commission is presently investigating, and the breadth of its investigation, the Commission considers that any investigation by Transport for NSW at this time would likely prejudice the Commission's own investigation. In these circumstances I request that Transport for NSW take no action to investigate the circumstances surrounding the acquisition of 4-6 Grand Avenue, Camellia.

Sensitive

Should you require any further information concerning this matter please contact Bernadette Dubois, Executive Director Investigation Division.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Hall', written over the typed name.

The Hon Peter Hall QC
Chief Commissioner

23rd June 2021