

Portfolio Committee No. 6 – Transport & Customer Service

Inquiry into acquisition of land in relation to major transport projects - 15 June 2021

Post-hearing responses – Grand 4 Investment Pty Ltd, Camellia

Question taken on notice	Response
<p>Page 9 of transcript:</p> <p>The CHAIR: If a neighbouring landholder was to claim that their land had got contaminated because of contamination on 4-6 Grand Avenue, they could still sue for that directly from Billbergia or would they get stuck at that SPV level?</p> <p>Mr GRAF: Our group does not function in that way.</p> <p>The CHAIR: Fine. Okay.</p> <p>Mr GRAF: There has never been a situation in 33 years where we have walked away from any relationship with any litigation in the company.</p> <p>The CHAIR: Legally, would they be limited? Would a person be limited to only be able to claim against the SPV or would they have recourse to Billbergia?</p> <p>Mr ADDISON: We would have to take that on notice. It is a complex question. Sure, it is an SPV but there are directors involved, which are common directors, common shareholders. It is probably a lot broader answer than we can anticipate at the moment.</p> <p>The CHAIR: Because if there are no assets sitting in the SPV other than the property—</p> <p>The Hon. DANIEL MOOKHEY: The land.</p> <p>Mr ADDISON: Yes.</p> <p>The CHAIR: If you could take it on notice, that would be useful.</p>	<p>The legislative, common law and contract law principles which apply in relation to environmental contamination matters, and claims by neighbouring landholders against the polluter or the land owner, are complex.</p> <p>We are unable to comment on a hypothetical situation, we can comment on the intention and commercial nature of the SPV and the SPV structure within which the Camellia property was purchased and held by Grand 4.</p> <p>The SPV structure was established prior to Grand 4’s acquisition of the land and without any intention for the land to be compulsorily acquired or sold. The intention was to hold and develop the land for industrial uses in the short to medium term and potentially mixed use in the long term.</p> <p>Grand 4 met all of its transfer duty, land tax and tax obligations and the entity continues as a registered entity, repurposed with an alternate asset.</p> <p>The SPV structure is common practice within corporate and private asset holding structures and it was similarly applied in this instance to assist with finance security arrangements, potential partnering arrangements and asset management.</p> <p>The environmental contract terms under which Grand 4 sold the land were back-to-backed with those under which it purchased the land.</p>

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	Accordingly, Grand 4 is not responsible for any remediation of the land, or liability for claims arising from contamination of the land.
<p>Pages 10 & 11 of transcript:</p> <p>The Hon. DANIEL MOOKHEY: And then you see also in that—there is an entry that is described as the Billbergia rationale that sets out that you would want \$75 million for the site, your site preliminary evaluation advice to Transport for NSW from Knight Frank for \$30 million, and what seems to be an internal Transport for NSW assessment that the market value of the site is \$49 million to \$55 million. Does that accord with your recollection?</p> <p>Mr ADDISON: Yes. I am not sure of the Knight Frank but we had had a CBRE valuation carried out based on the intended leases that were being negotiated.</p> <p>The Hon. DANIEL MOOKHEY: Are you in a position on notice to provide us with that valuation by CBRE?</p> <p>Mr ADDISON: Yes.</p>	<p>We refer to Annexure 2 to this response.</p> <p>Annexure 2 comprises our estimations of the values of the land at the time and subsequently those assessments of CBRE valuations, based on and referring to the intended leases.</p>
<p>Page 14 of transcript:</p>	<p>The email exchange included as Annexure 1 to this response hopefully clarifies the communication on the issue of indemnity for any environmental matters.</p> <p>Thereafter, the issue was addressed through lawyer negotiations, where TfNSW released and indemnified Grand 4 in relation to Grand 4’s disclosures on or matters arising from Environmental Reports, as well as TfNSW agreeing to acquire the property subject to all latent and patent defects including Environmental Matters and is prohibited from, amongst other things, taking any action in relation to such matters.</p>

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<p>The Hon. DANIEL MOOKHEY: Yes, 10 May 2016, up the top—the letter from Swaab regarding site acquisition. It says:</p> <p>We confirm your instructions that TfNSW is acquiring the property in its current state and will assume all liability for contamination and pollution in the property, both current and historical</p> <p>To be fair, it is not your lawyer and it is not your letter, but we can infer from this that somehow in the 11 days that passes from 29 April to 10 May 2016 you correct them of their assumption and they accept that therefore the liability is theirs. Is that a fair reading of the record?</p> <p>Mr ADDISON: According to this it is, but obviously—</p> <p>The Hon. DANIEL MOOKHEY: Does that accord to your recollection as to when you would have sent that email?</p> <p>Mr ADDISON: I think that is what I expressed in my previous statement, yes.</p> <p>The Hon. JOHN GRAHAM: It does not contradict anything you know of the process, though. This is not in contradiction to anything you were—</p> <p>Mr ADDISON: No.</p> <p>The Hon. JOHN GRAHAM: Can I just ask, where it says "confirms Grand 4 for indemnity", what does that refer to?</p> <p>Mr GRAF: We will have to take that on notice.</p>	
<p>Pages 15 & 16 of transcript:</p> <p>The Hon. DANIEL MOOKHEY: Can I just ask you for a final time, do you have any recollection whatsoever of anyone from Transport for NSW saying to you that it is your job to clean up the site?</p> <p>Mr ADDISON: I cannot recall, and I am aware that most of the discussion around that contamination was in emails.</p> <p>The Hon. DANIEL MOOKHEY: Fair enough. Is it possible that we could produce the emails that you are referring to on notice?</p> <p>Mr ADDISON: Yes.</p>	<p>Please refer to Annexure 1 to this response.</p> <p>As far as we can see, the balance of discussion surrounding contamination risk was between lawyers.</p>
<p>Page 17 of transcript:</p>	<p>We have reviewed the communication that you refer to.</p>

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<p>The Hon. DANIEL MOOKHEY: Can I just ask you about a couple of meetings? On 20 April Mr Kinsella had a meeting, it is not clear with whom. Was that with Mr James White?</p> <p>Mr ADDISON: Sorry, what was the date on that?</p> <p>The Hon. DANIEL MOOKHEY: It is 20 April 2016. It says in your chronology here that there was a meeting with John Kinsella and there are no minutes of that meeting. It is referred to in an email from James White to John Kinsella, cc'd to you, Mr Addison, and Mr Poole from Transport for NSW. Do you know what the purpose of that meeting was?</p> <p>Mr ADDISON: I cannot recall. I would need to look at the email.</p> <p>The Hon. DANIEL MOOKHEY: Could you, if you do not mind? Did you have any meetings or discussions with—</p> <p>The Hon. JOHN GRAHAM: Could you also tell us whether remediation discussed at that meeting— or the remediation costs or responsibility for remediation?</p> <p>Mr ADDISON: I would need to have a look at that.</p> <p>The Hon. JOHN GRAHAM: I would be happy if you do that on notice.</p>	<p>We cannot recall specifically negotiating a position on contamination risk at that meeting of 20 April 2016, however this was subsequently raised. We refer you to Annexure 1 of this response – our email exchange with Mr White of 22 April 2016, which addressed matters arising from the meeting of 20 April 2016 and in which we specifically raised the issue of contamination risk. The referenced 'Carol' was the lawyer acting for TfNSW.</p>

From:
To:
Cc: RE: Parramatta Light Rail (PLR) Project - Proposed Acquisition of 6 Grand Avenue, Camellia being Lot 3
Subject: DP843591 from Grand 4 Investment Pty Ltd
Friday, 22 April 2016 3:38:43 PM
Date:

Paul

Please find attached responses within your email below

Regards
James

-----Original Message-----

From:
Sent: Friday, 22 April 2016 8:51 AM
To:
Cc:
Subject: RE: Parramatta Light Rail (PLR) Project - Proposed Acquisition of 6 Grand Avenue, Camellia being Lot 3 DP843591 from Grand 4 Investment Pty Ltd

Dear James

Thank you for your letter. Please find below a few items for clarification.

1. From our previous conversation, we were of the understanding that the letter would be binding. You are aware that we have ongoing commitments and negotiations of a commercial and sensitive nature regarding the property and it's therefore in everyone's interests that this matter is closed out before a highly political circumstance arises. It is our opinion that without further documentation, the Transport Letter on its own will not be binding on TfNSW if accepted by Grand 4 Investment Pty Ltd. While the Transport Letter does not state that the offer is subject to formal documentation, reference is made within the Transport Letter to a 'Deed of Acquisition, Compensation and Release' and a 'a contract for sale of land', both of which TfNSW has undertaken to prepare. It is our view that these references evidence an intention on behalf of TfNSW to only be bound once formal documentation has been agreed and entered into by the parties. Accordingly, until this occurs, the Transport Letter on its own will not be binding. Further, as we have not yet seen the draft documents, there is a possibility that the documents will not be successfully negotiated and agreed by the parties. Can you please clarify what you need to become fully binding and also clarify the process that you need to go through and timeline for that process?

The offer letter asks for acceptance from you in writing.

Once the documents are finalised, I will need approval for their execution and drawing of the deposit, no shorter than 10 business days . We are running this approval in parallel. I will then need 5 business days for execution of the documents.

2. Noting our comments in point 1 above, it is imperative that we receive a copy of the

proposed Deed of Acquisition, Compensation and Release as well as the proposed contract for sale of land as soon as possible and ideally by no later say 2:00pm, 22 April 2016. This should be achievable as in principal, the broad terms of the proposed deal between the parties (i.e the price, deposit and completion date) are set out.

As discussed we will send the documents to you Tuesday.

3. Given the upcoming and ongoing obligations of Grand 4 Investment Pty Ltd in relation to 6 Grand Avenue, the parties should agree to act in good faith in negotiating and executing the documents no later than say 3 business days from receipt of the documents from TfNSW's lawyers. In an effort to expedite this process, it may assist raising the following issues:

- a. Grand 4 Investment Pty Ltd will not be able to provide any warranty or indemnity to TfNSW in particular for any environmental matters relating to the land (as Grand 4 Investment Pty Ltd have owned the land for a short while). We are aware that TfNSW had access to the full set of DD material as provided by the former owner, Akzo Nobel, during that sale process; and
- b. the presence of the easement for an Ausgrid substation on the land, although that substation has now been decommissioned.

4. We will shortly respond with details of actions, investigations and reports undertaken by Grand 4 Investment Pty Ltd in relation to the environmental issues of the site, although these are not of a significant nature (as Grand 4 Investment Pty Ltd have owned the land for a short while).

Noted, I've copied in Carol.

5. We discussed a tacit undertaking to look into the transfer or long term lease to Billbergia of the existing disused rail corridor that divides our property at 1 Grand Ave from our properties to the South.

As discussed at the time I would need clearances from the various divisions, business units and agencies within Transport before I could commit to this late proposal. We noted that if declared surplus the adjoining owners would be the obvious purchasers.

To assist in us being able to respond, could you kindly confirm these items as a matter of urgency and in particular forward the legal documents?

We are agreeable for TfNSW's lawyers to directly contact our lawyers at any time. That is:

Sparke Helmore

Billbergia Group

Direct

Website <http://www.billbergia.com.au>

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-----Original Message-----

From:

Sent: Thursday, 21 April 2016 11:18 AM

To:

Cc:

Subject: Parramatta Light Rail (PLR) Project - Proposed Acquisition of 6 Grand Avenue, Camellia being Lot 3 DP843591 from Grand 4 Investment Pty Ltd

Dear Mr Kinsella

Please find attached letter in relation to PLR Project - Proposed Acquisition of 6 Grand Avenue, Camellia.

Kind regards

Executive Assistant I Property

Finance and Investment

Transport for NSW

Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067

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From:
To:
Cc:
Subject: RE: Camellia, Grand 4
Date: Friday, 15 April 2016 3:50:53 PM

Hi Paul,

Further to my email below, our preliminary assessment of the site as is and assuming the HOA s are executed, the range of values would be in the order of \$60m to \$65m This is based on the industrial scenario only

In addition to the above, the value for the future residential potential of the site is currently difficult to quantify given the uncertainties and time-frame involved, however our estimate would lie in the vicinity of \$80m to \$90m As noted below, this has been derived from your estimates of current values noted below

In a nutshell, the site is worth \$60m at a minimum, assuming the HOA s are executed

Please keep in mind that as this is very preliminary, the value ranges above should be considered a rough approximate only

I trust this satisfies your requirement for the current time Please don t hesitate to contact me should you need to discuss further

Thanks and regards,

From:
Sent: Thursday, 14 April 2016 4:11 PM
To: paul.addison
Cc:
Subject: RE: Camellia, Grand 4

Hi Paul,

Good to chat earlier I ve had a brief look at the project and all we need at this time is the Deposited Plan Are you able to send please? you may have a copy handy also?

As discussed, the site values comprise two components – industrial and residential I ll send you a tight range of indicative values for the site based on the two HOA s having been executed Just to throw a spanner in the works, our residential site valuer is on his honeymoon so I ll adopt your estimate of value below for this component

We can provide this in an email which will be sent to you tomorrow morning in order to facilitate your discussions with the acquiring authority

Paul, I ll give you a call in the morning after I send the email

Cheers,

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From:
Sent: Wednesday, 13 April 2016 8:00 AM
To:
Subject: RE: Camellia, Grand 4
Importance: High

Gents,

Confidentially Transport for NSW are looking to acquire 4-6ha from a client (Billbergia) in Rosehill for a rail yard for the light rail

We recently sold the site to Billbergia for \$38m and have subsequently agreed terms for 10,000m2 pre-lease to Lion Nathan (\$1.5m pa net) and have verbal terms agreed for 26,000m2 to courier business (\$3.38m)

Billbergia are prepared to consider selling rather than compulsory acquisition but they obviously want the best result

Is there a convenient time for me to call you both – somewhat urgent?

Thank you,

CBRE | Industrial and Logistics
Level 5, 10 - 14 Smith Street | Parramatta, NSW 2150
www.cbre.com.au

From:
Sent: Wednesday, 13 April 2016 7:43 AM
To:
Cc:
Subject: Camellia, Grand 4
Importance: High

Hi

It appears that tNSW are focussed on establishing their facility on 4 Grand Av and want to agree a position this week. We're conscious that if we don't then a compulsory acquisition process could be initiated.

Would you please be able to provide some support for us through this process? We need some urgent advice on the Government acquisition process as well as, more urgent high level valuation advice that will be used to justify our case with tNSW.

I've set out a table below on our thoughts on value:

Industrial Development Land Value		
Facility 1 net rent	1,500,000	10,000m2 facility plus 10,000m2 hard stand - blue chip tenant, 10+5+5 term
Facility 2 net rent	3,510,000	26,000m2 facility with perimeter circulation - blue chip tenant, 10+5 term
Facility 3	1,080,000	8,000m2 facility with perimeter circulation - relocation of current logistic tenant or Construction Company, 10+5
Net income (per annum, after outgoings)	6,090,000	
Cap rate	6.00%	Considering quality of tenancies, new facilities and duration of leases
Value	101,500,000	
Construction Costs Facility 1	8,000,000	Current D&C contractor pricing inclusive of environmental management
Construction Costs Facilities 2&3	20,400,000	D&C 34,000m2 facility @ \$700psm, inclusive of environmental management
Other - finance costs, incidentals	3,844,800	6% interest on construction facility, waste water, authority & agency costs
Costs	32,244,800	
Net Value (Industrial short Term Holding)	69,255,200	

Future Residential Development Land Value		
Apartment Yield according to master plan	3,617	
Apartment site value	100,000	
Net Value (Residential Redevelopment)	361,700,000	
Notes:		
1 Masterplan has been presented to DEP - Parramatta Council supportive of this transformation to residential on the basis of it being a gateway site directly opposite the race course and cornering GPT site overlap		
2 Transformation to residential further supported by additional environmental clean up of the site and also value add contributions towards critical social and community infrastructure within Camellia		

Would you please be able to have your valuation colleague address this during the course of this morning?

Regards

Billbergia Group
 Direct
 Mobile
 Facsimile
 Website: <http://www.billbergia.com.au>



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