

**Submission
No 31**

**INQUIRY INTO ACQUISITION OF LAND IN RELATION TO
MAJOR TRANSPORT PROJECTS**

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Acquisition of land in relation to major transport projects

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Introduction

My name is John Douglas and I live in Lancaster Ave Melrose Park NSW, our property is subject to (unjust, restrictive & discriminatory) zoning and potential Government acquisition for now over 30 years. I make this submission as I believe I have a unique personal & related party knowledge & experience regarding the unjust, unfair, biased and questionable processes used to acquire/resume property for use by the NSW Government. I will outline several different examples that I believe give context for the committee which may demonstrate the methods the NSW Government, its “independent” contractors and other stakeholders use to gain ownership or resume property (“**theft by stealth**”) and violate the private property rights of its constituents.

In my opinion the only possible remedy to overcome the bullying, intimidation and deceitful practices employed by the acquiring authorities is via the courts. However, the time, costs, uncertainty & stress related to taking court action for land acquired by the Government is far too great for most.

While recently assisting a business (related party) whose land has been acquired for the Sydney Metro West project, I have again witnessed firsthand the unconscionable and unreasonable conduct employed to achieve a Compulsory Acquisition by the NSW Government and its “independent” contractors.

I have used anonymity in many of the examples, as they may prejudice future court actions or be stressful or disrespectful to the affected owners.

Example 1: Impact on a long-standing leaseholder

As a customer that has purchased produce supplies over many years, I am appalled at how this business was treated by the NSW Government. Not only has this long-standing business been forced to close, the disregard to the impact to the owners by the NSW Government was appalling.

“The **Carlingford Produce Store** is of local significance as an assemblage of vernacular functional buildings comprising the 1927 Feed Mill and incorporating elements from 1902 to the present day”.

Heritage NSW website 2021

- Long standing lease holdings since 1927.
- NSW Government refused to assist in cost of maintenance over decades.
- Leaseholder receives no compensation for land needed for Parramatta Light Rail stage 1.
- Carlingford Produce has serviced the community since 1927.
- Carlingford Produce was left with **no option than to close the business.**
- My fear is that “mates” of the NSW Government are given a “rails run” to develop this valuable site. This opportunity was not given to the long-standing tenant, despite request by the lease holder to do so.

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Example 2: The value of a human life – according to the NSW Government

Following the unfortunate death of a spouse, this property owner (a residential property – suburb not named due to respect to the grieving owner) requested a “hardship” consideration regarding compensation over the current offer from the NSW Government for a portion of the property being acquired.

- 2014 Government valuation by contracted Government valuer - \$55,000
- 2018 NSW Government valuation by contracted Government valuer - \$150,000
- 2018 Independent valuation engaged by landowner - \$750,000.
- 2020 Death of spouse – claim for “hardship”.
- 2021 NSW Government valuation including for “hardship” - \$165,000.
- 2021 “hardship” valuation accepted by distressed landowner.

Question: How much does the NSW Government value a human life?

Answer: \$15,000 (\$165,000- \$ 150,000)

Example 3: NSW Government changes private property boundary

“theft by stealth”.

Government agency changes private property boundaries without notification to landowners.

The summary of this acquisition example.

- Roads & Maritime Services (RMS) changes Mean High-Water Mark (MHWM) boundary of properties without landowners’ knowledge.
- NSW Government rezones portion of properties to “new” MHWM to be acquired.
- NSW Government valuation based on changed boundaries (i.e., reduced land size).
- Unknowingly, many property owners accept compensation offer for acquisition from NSW Government not knowing the area of their property had been reduced by RMS - MHWM boundary change.
- One property owner challenges RMS regarding MHWM boundary change and confirms RMS error and illegitimacy of boundary change.
- Conclusion, numerous property owners in the same street were not compensated for land they owned and was acquired by the NSW Government.

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Example 4: NSW Government uses land zoning to lock up private land for future acquisition.

In 1990 the Minister for Planning unjustly & indiscriminatory gazetted through Sydney Regional Environmental Plan no 22, two pockets of private land for future acquisition in Melrose Park & Concord.

- The zoning has prevented use of privately owned land for over 30 years (including fencing).
- Owners pay full Council rates on affected land, despite having zoning limitations on its use.
- The Government has since acquired some of the private land, with no intent or regard for maintenance or any documented explanation and or future planning for proposed use by Government or Council.
- As stated above, another government agency has redefined property boundaries without owner's knowledge, reducing the area of land to be included in compensation to owners.
- The Government has since shifted zoning to Local Council via their Local Environment planning.

Example 5: NSW Government avoids compensation by leasing land below MHWM to local Council.

A Government agency grants a "no charge lease" to a Council which avoids need for compensation for acquisition, disturbance and or violation of property rights to affected owners. Council as the consent authority refuses to make public, relevant documentation due to "legal privilege".

The summary of this example.

- Council proceeds with construction of a boardwalk at the rear of waterfront properties.
- Legal opinion by Senior Counsel on private property rights is ignored by Council.
- Benefits are given to one property owner over other affected owners.
- One property owner's registered boundary is ignored by Council.
- Expert Scientific advice on potential threat to vulnerable species is dismissed by Council.
- Both Department of Planning & Environment state Council is the consent authority, and they therefore have no means to enforce Government legislation on Threatened and Vulnerable Species.
- Council avoids need for acquisition of property or compensation to owners by Government granting lease.
- Council never provides full public disclosure, claiming legal privilege.
- Owners avoid legal challenge due to cost, uncertainty and stress involved in court proceeding.

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Overview

The people of NSW who own private property, (either residential or commercial) are at risk of unfair and unjust compensation should their properties be identified to be acquired by the NSW Government.

To be frank, 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. This is at a time also where businesses affected are already facing the challenges of COVID 19 and lack of alternate and suitable industrial land available to relocate to. While most understand the need for NSW State infrastructure, most would expect that those property owners should receive just compensation for the property value and reasonable disturbance costs, that enable them to find an alternate property close to their existing site to continue to live or operate a business from.

The decision by the NSW Government to Compulsorily Acquire property places residents under duress and places small businesses in jeopardy.

Essentially it is 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.

As most NSW property owners will never be affected by a Compulsory Acquisition, the general public is largely unaware of the difficulties that those affected experienced and are continuing to experience. If the public understood that private property rights can be so blatantly abused by Government and its contracted advisers and associates, I am sure there would be widespread outrage, support & fear.

In conclusion, the Compulsory Acquisition process is flawed.

1. Dispossessed owners must pay out of pocket to obtain necessary legal and valuation advice. Incurred legal and cost of necessary advice are only partially covered by the Government "reasonable" cost policy and only after an agreement is reached. If legal proceedings are taken to Court, payment and a conclusion may take years.
2. Contracted Valuers (to the NSW Government) are not held to account for their valuation methodology. e.g., using comparator sales from distant suburbs, different land zonings, different lot sizes and properties close to residential housing.
 - a. Contracted Valuers are rewarded by winning further Government valuation contracts.
 - b. There is limited substantive engagement by the Contracted Valuers in their discussions with the owner's valuer.
 - c. To challenge a Contracted Valuers valuation is expensive and time consuming to the owner and in most cases futile unless taken to the Courts.
 - d. For most affected property owners, going to court is too expensive, too time consuming and too stressful. Most owners settle for an unsatisfactory outcome which presumably leads the Government to believe owners are satisfied with the outcome.

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3. The professional bodies for Accrediting Valuers, The Australian Property Institute & The Australian Valuers Institute, seem unwilling and or unable to intervene.
 - a. Is this because of the board composition of these organizations?
 - i. Are there vested interests that support or benefit from inexplicably low values?
4. The objective of compensation for Compulsory Acquisition, surely should ensure the owner is not significantly disadvantaged and out of pocket, given it is the Government who is enforcing the unwanted relocation.
 - a. "Reasonable costs" cited in the Legislation generally will not fully cover the professional advice required to defend the owner's position.
 - b. Business owners need to spend considerable time focused away from their business to; understand, coordinate, and challenge the implications of valuations.
 - c. Owners are not compensated for the time taken to identify and source an alternate property, which deflects the focus of running the business and is time consuming.
5. The NSW Government and or the Department/ Authority involved, do not attempt to assist in identifying alternate properties for relocation.
 - a. Surely there is some responsibility on Government to assist in identifying nearby land that could be suitable for dispossessed owners to acquire a nearby property.

With the low values offered (for land value and disturbance costs) the inability of the dispossessed owner to find a suitable and affordable alternate property in the same or close location is virtually impossible.