

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

**Organisation:** Heworth Holdings Group

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**NSW Legislative Council – Portfolio Committee No.6**

**Inquiry into and report on the acquisition of land  
by Transport for New South Wales and related  
agencies in relation to major transport projects.**

**Submission**

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**The Hon. Abigail Boyd, MLC**

**Chair**

**Portfolio Committee No. 6 - Transport and Customer Service**

**NSW Legislative Council**

***Inquiry into and report on the acquisition of land by Transport for New South Wales and related agencies in relation to major transport projects.***

Dear Ms Boyd,

I am providing this written submission on behalf of Heworth Holdings Group ('Heworth') and the landowner of the former Balmain Tigers Leagues Club site in Rozelle, Grand Rozelle Pty Ltd (an entity owned by Heworth).

This submission relates directly to 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) 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) any other related matters.

In addition to this submission, I also formally and respectfully request the opportunity to give oral evidence directly to the Committee and attend any public hearing on this matter in order to constructively participate and contribute to this important Parliamentary process and ensure Committee members are properly informed to the fullest extent possible in their Inquiry.

I thank you in advance for your consideration.

Yours sincerely,



Christopher Walsh  
Head of Property  
Heworth Holdings Group



# EXECUTIVE SUMMARY

This submission is reflective of the public interest of all participants subject to the current compulsory acquisition process, particularly families, small businesses, and the wider community.

In our experience, the processes, approach, culture and attitudes encountered in dealings with TfNSW (and formerly RMS) can best be described as uncommercial and unprofessional, within a system that is substantially flawed.

When it comes to the former Balmain Tigers Leagues Club site at Rozelle, which had been left derelict for a significant period of time, an eyesore for the local community, Heworth formed a consortia with the view to develop and utilise the site in a manner which served the best interests of the wider community first and foremost.

The range of additional contributions and public benefits Heworth aims to deliver to the Inner-West community as part of the redevelopment of the iconic site include: a Town Square, a public car park with 130 spaces with two-hour free parking, 200 square metres of commercial space for local community use, and over \$5 million in monetary contributions and upgrades to local infrastructure.

The cornerstone of the \$135 million mixed-use development will be a new Balmain Tigers Leagues Club, built on the lower levels of the complex. The development would ensure that the beloved Balmain Leagues Club would return “home” to Rozelle.

Preliminary works had commenced on the 28,000 square metre development, which fronts Victoria Road, Darling Street, and Waterloo Street in Rozelle, following DA approval granted by the Sydney Eastern City Planning Panel in September 2020.

TfNSW has sought to acquire a leasehold interest in the site, to use as a tunnelling location for the Western Harbour Tunnel project.

Clarity and certainty is required on the short-term future of the site so that the project can be further prepared and progressed and achieve the best outcomes for all parties, particularly the Balmain Tigers, their members and the local community.

The community is frustrated and increasingly concerned about the delays to the project due to the actions of TfNSW and how this could jeopardise the reconstruction of the Club. The community is also concerned about how delaying the project will impact the Club’s backing of junior rugby league in the Inner-West and delay much needed support for local sporting and charitable organisations throughout the community. They are worried that the community could be stuck on the sidelines for years waiting whilst the Tunnel is being built.

TfNSW first made Heworth and Grand Rozelle aware of its intention to acquire a leasehold interest in the site in March 2018 for the construction of the Western Harbour Tunnel project. However, Heworth is yet to be given an offer of compensation that has been correctly assessed in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (Just Terms Act)*, and was issued with

a Property Acquisition Notice (**PAN**) on 28 May 2021, only after many months of formal requests to TfNSW.

This ongoing delay by TfNSW in providing certainty is not only causing Heworth and Grand Rozelle significant financial losses, but has prevented them from providing Balmain Tigers and the local community with a new Club and its associated amenities.

The project is shovel-ready and could have commenced off-the-plan sales before Christmas 2020, but the ongoing inaction by TfNSW over the acquisition of the site, means the project is stuck in limbo.

Heworth and Grand Rozelle hold serious concerns about the protracted process that has been undertaken by TfNSW to date.

The development has stalled, hundreds of jobs are at risk and the Balmain Tigers are still without their home. Heworth and Grand Rozelle want to get the best outcome for all parties and the wider Inner-West community.

Heworth's collaboration with Inner West Council, the two Leagues Clubs and other local community stakeholders have helped Heworth provide a sensible solution for the site, something the company is very proud of.

The project will also help secure the financial viability of Balmain Tigers and ensure the survival of the foundation club at both NSWRL and NRL levels.

It is with much hope and anticipation that the parties associated with the former Balmain Leagues Club site, particularly the local community, wish this Committee and their work on this very important Inquiry great success in highlighting and ensuring the NSW Government finally takes action to ensure a fair, just and equitable compulsory acquisition process and system is put in place.





# THE BALMAIN LEAGUES CLUB SITE



The matter pertains to the proposed acquisition by TfNSW of the former Balmain Leagues Club site in Rozelle, located at 138-152 Victoria Road, 154-156 Victoria Road, 697-699 Darling Street, and 1-7 Waterloo Street, Rozelle for the purposes of the Western Harbour Tunnel and Warringah Freeway Upgrade project.

In October 2020, Grand Rozelle requested that the Minister for Transport investigate the propriety and appropriateness of the conduct and processes undertaken by TfNSW to date in relation to the Proposed Acquisition.

In Grand Rozelle's and Heworth's view, TfNSW has acted inappropriately in an overly protracted process concerning the proposed acquisition and it has failed to make bona fide attempts to reach a settled outcome, despite the company's genuine attempts to resolve the matter.

TfNSW has caused Heworth and Grand Rozelle to suffer significant financial losses over an extended period of time and has prevented them from being able to provide comfort to the Balmain Leagues Club, the Inner West Council and the very concerned local community on the much-anticipated future use of the Site.



On 10 September 2020, development consent was granted for the delivery of a new space for the Club to call their home, housing retail offerings and public amenity on the Site which the Balmain and Rozelle community can claim as its own (Inner West Council DA 219/2018). This development consent makes it even more important that the company can provide the Club, the Council and the community with certainty on when it can expect the highly prized redevelopment to be delivered.

In short, TfNSW has been, and remains, highly insensitive to the needs of the Club, the Council, the proponents and the community in relation to the Site and the Proposed Acquisition.

### **Conduct of RMS and TfNSW**

Heworth and Grand Rozelle were first made aware of RMS' desire to potentially use the Site on a temporary basis for the Project in March 2018. Since that time, we have, in good faith, engaged in discussions with RMS and TfNSW in an attempt to reach an amicable resolution for all parties and stakeholders, however, very little headway has been made in this regard.

Throughout the course of the unnecessarily drawn-out negotiations between the parties, TfNSW has:

- delayed in providing offers of compensation;
- failed to adhere to a reasonable negotiation timeline or issue a PAN in a timely manner; and
- has not provided Grand Rozelle, Heworth, the Club, the Council and the local community with any certainty as to the future use and development of the Site (particularly in relation to the much-needed Club and community facilities that are earmarked and approved for the Site).

Grand Rozelle and Heworth are deeply frustrated by the protracted and unsuccessful discussions with TfNSW to date, including TfNSW's lack of reasonable efforts to negotiate in good faith.

The apparent practice of TfNSW and RMS of failing to negotiate in good faith and unnecessarily and unreasonably drawing out negotiations to the detriment of all except the government parties has been a common feature investigated by numerous past Inquiries, a cultural characteristic and pattern of poor behaviour attributed to TfNSW and RMS through extensive evidence before the Parliamentary Inquiries and Reviews. Despite the commentary for positive change by both the Premier of NSW and the Minister for Transport, who seem genuine in their regard, the government agencies responsible for the compulsory acquisition processes and system in NSW have not changed.

### **Impact of the Proposed Acquisition on the Club and the community**

Since the proponent's first meeting in 2018 with TfNSW in relation to the Proposed Acquisition, Grand Rozelle and Heworth have made it clear that their development of the Site is focused on two key objectives, being the continued support of the Club, including its predecessors and successors, and more broadly, providing support and facilities for the Rozelle and Balmain community. This continues to be a key driver for Heworth and Grand Rozelle but is a much-ignored factor by TfNSW.

This site was earmarked, very publicly, to be acquired in 2008 for the Sydney Metro. As the Committee may be aware, and as TfNSW is very much aware, the Club has faced financial difficulties over the years, recently resulting in an amalgamation with Wests Ashfield. Heworth and Grand Rozelle are committed to ensuring that the newly amalgamated Club will have a home on the Site,

and to secure this commitment, proposes to make substantial financial investment in providing the Club with over 2000m<sup>2</sup> of floor space within the development on the Site. Furthermore, the Club is now capitalised and ready to trade as soon as its new home is completed. TfNSW has done nothing to advance the Club's position, and indeed its conduct to date has been prejudicial and harmful to the Club.

After facing a decade of uncertainty and delay in returning to its home on the Site, the Club's return is further threatened by the Proposed Acquisition. The Club and its members deserve to know that at the end of this long period of delay it will receive the new home it has been openly asking for. The Council and the local community are also keen to see this outcome and a new home for the Club on the Site.

The Site is currently in a highly dilapidated condition and is an 'eyesore' in the locality, which we seek to address as soon as possible. However, the uncertainty of the future development of the Site caused by the Proposed Acquisition by TfNSW continues to put the restoration of this highly prized asset in jeopardy.

The development is 'shovel ready' and if not for the Proposed Acquisition, work could have commenced almost immediately following development consent, creating over 1,000 jobs and investment in the local economy. The projected total centre retail sales are estimated at \$59,400,000 per annum (not including the Club's revenue) which is a significant economic stimulus resulting from a Site which currently sits vacant.

It is hoped that the much-needed re-development of the Site and future of the Club can be secured, particularly if handled in the form of a leasehold acquisition on just terms as proposed by Grand Rozelle.

### **Request for Ministerial Inquiry**

In light of the development consent that has been granted, Heworth is ready to commence the development of the Site forthwith and to proceed with selling residential apartments on an off-the-plan basis.

There is much at stake for all of the above-mentioned parties and for the NSW Government as a whole in getting the Proposed Acquisition process for the Site right and in handling this matter with much greater sensitivity than has been shown by TfNSW to date.

Grand Rozelle has requested a Ministerial investigation into the Proposed Acquisition, in an attempt to, firstly, provide the Minister for Transport oversight of how poorly the compulsory acquisition process of such a high profile site has been handled, and, secondly, to progress the proposed acquisition with more efficiency in order to provide the Club, the Council and the local community as well as Grand Rozelle and Heworth, with certainty as to the future of the Site in the short, medium and long term.

# INCONSISTENCY IN THE SYSTEM

We believe public confidence in the compulsory acquisition processes and system in NSW have been dented significantly in recent times.

According to media reports, the TfNSW paid three times as much as the Valuer-General's estimate for a highly contaminated six-hectare parcel of land at Camellia in 2016, for the Parramatta light rail project.

A Member of this current Upper House Inquiry, Daniel Mookhey MLC, stated at the time that the *"department broke speed records to buy a toxic site from a property developer without even bothering to value the land"*.

According to media reports, an audit found no documentary evidence to confirm that the agency conducted due diligence for the Camellia land deal or other acquisitions at Hornsby and Manly Vale.

Furthermore, the internal investigation *"found no evidence"* that independent checks were made to ensure acquisitions complied with standards.

Premier Gladys Berejiklian said: "At face value, there are sufficient questions there that needed to be answered."

The Minister for Transport Andrew Constance said: "I expect full openness, transparency and accountability from Transport for NSW."

The land deal was later referred to the NSW ICAC for investigation by Mr Constance.



# RECOMMENDATIONS TO THE CURRENT INQUIRY

Heworth and Grand Rozelle suggest that the following recommendations should be implemented by the NSW Government following the completion of this Inquiry by the Committee:

1. Introduce a maximum timeframe for pre-PAN unless otherwise agreed in writing by the landowner.
2. As per the recommendations of the NSW Parliament Public Accountability Committee, award power to the NSW Valuer General to administer all offers of compensation from the beginning of the acquisition process.
3. All PANs issued in NSW should remain consistent with section 11 of the *Land Acquisition (Just Terms Compensation) Act, 1991 (Just Terms Act)*.
4. To ensure landowners receive fair treatment during the compulsory acquisition process, the NSW Government should commit to providing landowners with more detailed information about the project and the direct need for the acquisition of property for the project within the 6 month mandatory negotiation period prior to the formal acquisition process commencing. Without being provided with this information, TfNSW is not, in our opinion, making a meaningful attempt to acquire the land as required under section 10A of the Just Terms Act.
5. The landowner must be provided with a fair, honest and reasonable opening offer of compensation by the acquiring authority to purchase land in a timely manner. The acquiring authority must be obligated to act in good faith and not utilise practices which lead to lengthy and protracted negotiations, such as what is commonly referred to as “low-balling”, or allowing a situation where delays are caused by the acquiring authority not commencing the fixed negotiation process required under section 10A of the Just Terms Act (which commences when the landowner is first advised that the acquiring agency intends to acquire the land) by not being open and transparent in a formal manner about their intentions at the earliest possible opportunity. This would ensure the acquiring authority, once it approaches a landowner, is both genuine in its need to acquire the property for a public purpose and is prepared to make a genuine attempt to come to agreement on the compensation for the acquisition in a timely manner.
6. In relation to the fixed negotiation period of 6 months (S10A(2)), before any step can be taken to compulsorily acquire land under the Just Terms Act, or under any other cognate legislation, Ministerial discretion as to amendment of the period for genuine attempts to negotiate must be removed as this unfettered power undermines the very basis of the proposition.
7. To encourage acquiring authorities to plan their acquisitions carefully to avoid needlessly acquiring excess land or “land banks”, acquisition procedures should not be commenced by an acquiring authority until such time as a project has been given planning approval by the relevant planning

authority. Both the acquiring agency and the landowner should have a far better understanding of the purpose for the Property for the public purpose.

8. That a new compulsory acquisition process be adopted, so as to afford procedural fairness, as currently procedural fairness is not adequately incorporated into the Just Terms Act. This must include:

- Notice of the applicable procedures and substantive criteria;
- The opportunity to put a case;
- Disclosure of any adverse information that is credible, relevant and significant to the decision to be made; and
- The opportunity to refute such information.

9. To improve the overall performance and consistency of acquiring authorities and genuinely ensure greater transparency, the responsibilities currently within the domain of the Minister for Finance, Services and Property for the general oversight of acquisitions across government should be wholly transferred to a new independent statutory office holder who is obligated to act in the best interests of all parties in the process in a fair, just and equitable manner. This could be completed by employing a Chief Valuation Commissioner (Valuation Review/Compulsory Acquisitions) to replace the role of the Office of the Valuer General (who reports to the Minister for Finance, Services and Property) to ensure that there is adequate separation of the original valuation and review functions. The Chief Valuation Commissioner should have the power to quash and order new valuations. Above the Commissioner there should be an Acquisition Ombudsman who would provide regular reports of the valuation system and can deal with complaints from members of the public regarding the acquisition process.

10. The Property Acquisitions Standards Group should collect and publish whole-of-government land acquisition data quarterly on their new land acquisition website to ensure the performance of government is more readily open to public scrutiny, including the extent to which land is acquired through agreement rather than compulsorily. This quarterly reporting mechanism should be overseen by a new independent statutory office holder.

11. The 'Centre for Property Acquisitions' should be transferred from Transport for NSW to the NSW Department of Premier and Cabinet and the NSW Government should take a genuinely whole-of-government approach to the acquisition of land in the public interest.

Wherever possible, these recommendations should be legislated.

# FACT SHEET



Heworth Holdings Group ('Heworth') received a DA for the \$135 million redevelopment project in September, 2020.

The 28,000m<sup>2</sup> mixed-use development on the corner of Victoria Road and Darling Street, with an end value of \$400 million, includes:

- a new public town square and laneways;
- a community arts studio;
- communal open spaces;
- rooftop landscaping and green walls;
- 3 x levels of car parking;
- 167 apartments;
- commercial 'live/work' units;
- retail stores and a supermarket.

Heworth will build a new Tigers Leagues Club on the lower levels of the complex.



Over 417 jobs will be created throughout the construction phase, with an additional 593 direct and indirect operational roles within the new Club, retail and commercial components of the development.

TfNSW has indicated its intention to acquire the site, and despite a PAN having now been issued, there has been no reasonable offers of compensation made in accordance with the Just Terms Act.

This ongoing delay by TfNSW is causing Heworth and Grand Rozelle a significant financial burden and has prevented the companies from providing Balmain Tigers and the local community with a new Club and associated amenities.

Heworth and Grand Rozelle hold serious concerns about the protracted process that has been undertaken by TfNSW to date and have written to the Minister for Transport Andrew Constance asking for an investigation of the matter.

The Project is 'shovel ready' and the Club and its members, the Inner West Council and the local community want the development to proceed.

The inaction by TfNSW has left Heworth, Grand Rozelle and the Club in limbo.

Heworth is committed to delivering the development for the benefit of the Balmain Tigers and the wider Inner-West community but need clarity and certainty from TfNSW.

Heworth want to get the best outcome for all parties involved, most importantly the Inner-West community.

### **Community Benefits**

- Public benefit:
  - A town square for public use
  - A public car park with 2-hour free parking (over 130 spaces)
  - 200 sqm commercial space for community use
- Monetary contributions:
  - \$4,000,000 contribution to Council for community benefit
  - \$1,000,000 contribution towards affordable housing fund
  - \$300,000 contribution towards community grants
- Local infrastructure:
  - Upgrades to the public domain
  - Pedestrian links and connectivity via activated laneways
  - Car sharing scheme, public pick-up and drop-off locations, and taxi-stands