

INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

Organisation: Save Our Homes Jannali

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Inquiry into the acquisition of land in relation to major transport projects

Submission on behalf of Save Our Homes Jannali
July 2021

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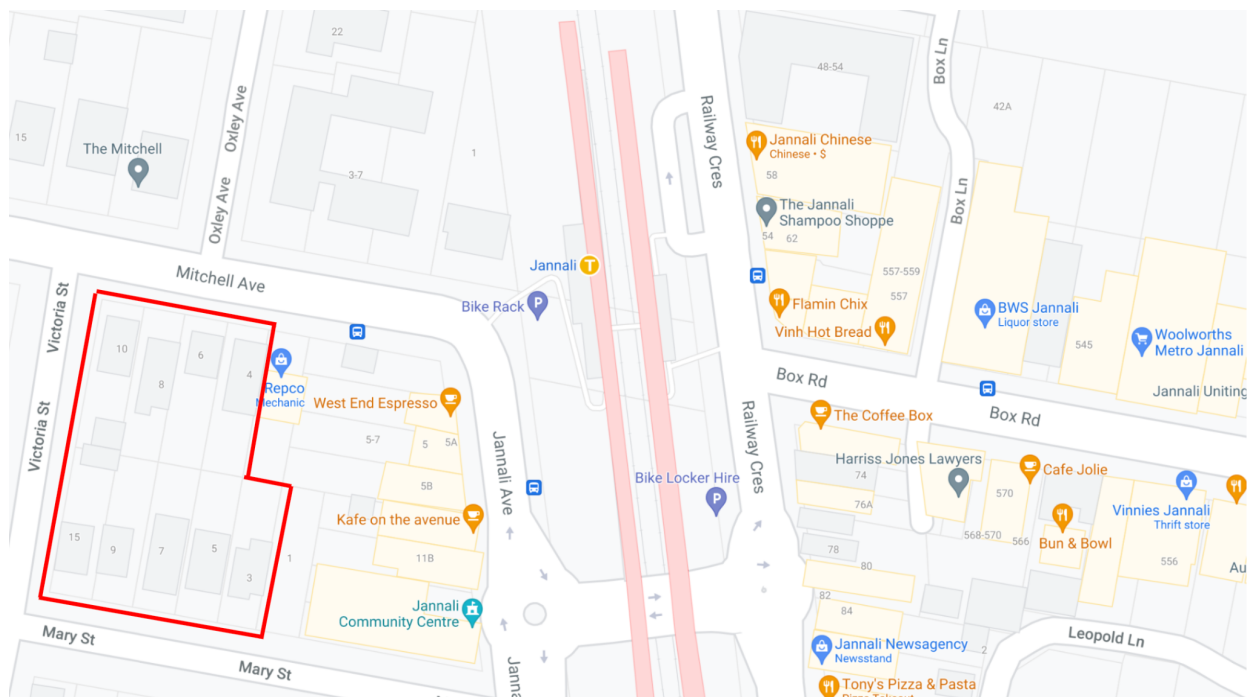
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1.0 Context & timeline of events

Save Our Homes Jannali is a collection of residents of Mary Street, Mitchell Avenue, Victoria Street and surrounding areas of Jannali all affected and disrupted by TfNSW attempting to compulsorily acquire 9 family homes in February / March 2021.

An outline of the story can be found in ABC News coverage [here](#).

The homes affected are marked below within the red box and all sit within a R2 Low Density Residential Housing zone:



Map of houses attempted to be compulsorily acquired - source: Google Maps.

We are making our submission today to ask for the inquiry to urgently review a number of suggested points we have experienced as part of our interaction in this process.

The proposed Jannali commuter car park project was not carried out in a proper manner and did not meet the regulatory requirements and therefore it was ultimately unjustifiable, but that is not what stopped it. It would have gone ahead. The current regulatory framework is deficient. What stopped it was the effective public protest we were fortunately able to mount and the substantial media attention that raised, something few neighbourhoods would have the resources and capabilities to do. Once the decision to compulsory acquire has been made and the Sec 10A notification letter has been issued, how can the average person realistically challenge or appeal the decision to take their homes, no matter how

wrong and unjust? There has to be a practicable means of holding the proponents to account, otherwise such abuses will continue.

We share this with the intention to assist any future families that are subject to this process and improve the performance of government departments and those that serve them.

Timeline

- **Thursday 11/02** (8am) - Residents of 9 affected homes advised of compulsory acquisition via door knock
- **Thurs 11/02** (3pm) - [First media article published](#), containing multiple quotes from local MP, Eleni Petinos
- **Sunday 14/02** - First community meeting – Sutherland Shire Mayor and Ward Councillor present
- **Monday 15/02** – TfNSW car park pamphlet in letter boxes
- **Wednesday 17/02** - Media cover residents story, Ms Petinos & Mr Constance hold press conference in response public interest in story
- **Thursday 18/02** – Sutherland Shire Council meets Transport for NSW
- **Thursday 18/02** – opening letter issued to residents starting 6 month process (letter was dated and effective from 12/02).
- **Thursday 04/03** (8am) - Residents of 9 affected homes received phone calls from TfNSW officials advising the compulsory acquisition notice has been withdrawn.
- **Thursday 04/03** (5:30pm) - TfNSW officials hand delivered the withdrawal notice to residents of 9 affected homes.

2.0 Suggestions for review as part of the inquiry

As part of the inquiry, there are a number of areas we would like to bring for review and discussion. We have attempted to group these under key headings below but can simplify or reorganise at request for ease of review.

2.1 Conduct of agencies

Despite numerous attempts to engage both TfNSW, Eleni Petinos MP, Andrew Constance MP and other senior ministers we still remain unclear of the decision making process that prevailed to have our homes door knocked on Feb 11th 2021.

We remain firmly of the view that, at the time the Sec 10A Notice letters were issued by TfNSW there was no legal ability to issue them as TfNSW had not transparently established a public purpose to acquire the homes. To that end we would request that you request further information on the below:

- The lack of independent technical analysis to demonstrate they had effectively assessed commuter demand for car parking, that the demand was valid, that the proposed location was best suited to meet this demand, and that the timeframe would meet this public need
- The proposed location of the car park was in conflict with the Local Environmental Plan (LEP), which was approved by the State Government. Currently the land is zoned as R2 residential and no rezoning conversations had been had.
- The lack of any public evidence of a thorough and evidence-based options analysis of sites around Sutherland and Jannali, informed by genuine community and stakeholder consultation, planning experts, transport experts and facts.
- Why did TfNSW proceed with Sec 10A Notices when there had been no prior communications and no offers made to land owners?
- Why did TfNSW proceed with Sec 10A Notices when there was no pre-existing enabling Public Purpose?

A public announcement of the proposal in online media (The Leader) was made within hours of the affected homeowners being door-knocked. Given the secrecy and lack of transparent decision making surrounding the proposal, noting that TfNSW had until only recently been working with Sutherland Shire Council on an alternative solution, we believe the proposal to develop a car park at the intersection of Mary, Mitchell and Victoria Streets was thrown together hastily and driven by a political agenda. It is our strong opinion that through the process that the State Government set down a path in opposition to the Sutherland Shire Council (SSC) and the wider community due to their desire to complete construction of a commuter car park at any cost, before the upcoming state election.

On public announcement of the proposal and discovery of the threat of losing homes the wider community outreached to the local member (Eleni Petinos MP) and other senior politicians for support and dialogue and were ignored (aside from comments passed through the press or receiving a standardised email response).

It is worth noting that a concerned resident had earlier (in November 2020) written to Eleni requesting to meet and discuss the Jannali car park after reading an article in the online Leader (from September 2020) that had stated that the State Government was proposing to abandon working with SCC and pursue an alternative site near the station in order to see “shovels in the ground as soon as possible”. This email went unanswered and when questioned (in February 2021) as to why this was the case, Eleni’s response was that she had “been busy”.

We therefore strongly encourage that this inquiry reviews:

- The conduct of Ms. Petinos in failing to respond to the community in a timely and meaningful manner and in upholding the accountabilities of an MP.
- The role Ms Petinos played in altering TfNSW's path of pursuing its (publicly stated) preferred option to develop the commuter car park as part of an integrated development with SCC and instead pursuing a seemingly faster development path despite the numerous issues associated with the proposed location of the development at Mary, Mitchell and Victoria Streets (including the need to acquire nine homes).
- The level of appropriateness of the State Government (namely, Eleni Petinos MP) sharing information with the media of the compulsory acquisitions prior to the affected community being consulted.
- The role in which Eleni Petinos MP played in the planning consideration and site location of the commuter car park in her role as Secretary for Transport and Roads
- The timeliness and level of responsiveness constituents should expect from their local member in cases as complex as this
- How did St George Sutherland Leader have sensitive government information on the proposal before the affected landowners had been advised of anything at all?

The Business Case for a proposal should provide a robust justification for the proposal to ensure that public funds are spent in the *"most efficient way and are directed to services that provide the best outcomes and benefits for NSW"* (NSW Government Business Case Guidelines, 2018). It is unclear how, if a robust economic analysis was conducted, the business case for the Jannali commuter car park could have shown a higher cost benefit ratio for the development option that included the acquisition of nine homes, rezoning of land and construction of a car park away from the local shopping area of Jannali as compared to the option of pursue an integrated development option for the commuter car park in an area already zoned for car parking and immediately supporting the local shopping area.

Funding of \$17 million for the commuter car park was publicly announced by Premier Gladys Berejiklian in February 2019 as a commitment subject to winning the upcoming March 2019 election. The additional costs that the acquisition of nine properties and rezoning process would have added to the original proposal would, at a modest estimate, have added at least an additional \$10 million to the cost of the project. The cost benefit analysis should also have taken into account:

- The financial impact to the local business area by moving commuter foottrack to the other side of the station
- The delayed timing of realising any benefit from additional commuter parking due to the impact of COVID on rail patronage.

We therefore strongly encourage that this inquiry reviews the conduct of TfNSW in regards to the:

- Preparation of a robust business case for the proposal, validating that all appropriate economic, social and environmental factors were taken into consideration when considering options for development.
- Evidence that the proposal to develop the commuter car park by acquiring nine homes and rezoning part of a residential area for the development would provide a value for money outcome for the people of NSW.

In regard to the standards set for TfNSW in their treatment of the home owners directly affected by the acquisition this is in need of urgent review. It was clear through our experience that TfNSW places great emphasis on the role a 'case manager' plays in supporting affected homeowners. The reality is however that a case manager is appointed to expedite the process at a pace that is acceptable to the acquirer, not the affected owners. In addition to this, no provisions were made to support the home owners mental wellbeing as the inevitable turmoil that unfolded following the notification on Feb 11th. We requested support numerous times from both Eleni Petinos MP, TfNSW and the SSC.

Further to the above there is a clear and missing need for TfNSW to be held to account when planning for compulsory acquisitions in the future to take into account the affected inhabitants of properties. In our case one of the families affected have a son living with a disability that had recently modified their home through a government grant. No additional planning or communication was considered in this regard adding to stress and anxiety.

We therefore strongly encourage that this inquiry reviews:

- The minimum standard of support, including mental health support, required to be provided by agencies when inflicting these decisions on the community. A genuine intermediary process is required rather than a TfNSW employee marshalling affected families through TfNSW's desired process at a pace that they dictate.
- TfNSW case management standards and duty of care for affected home owners once a process is enacted
- TfNSW requirement to specifically plan for affected homeowners circumstance and ongoing support requirements (e.g. constituents living with disability, or in need of wider support) prior to the enactment of the compulsory acquisition process

2.2 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

A particular concern on this point is that it is our belief the State Government made a consideration on the price of land and made an assumption on the nature of landowners (compulsorily acquiring these homes posed an 'easy option' rather than continuing to work with the SSC) in order to expedite the process.

We were never afforded an answer as to why TfNSW did not compulsorily acquire the Council car park when TfNSW clearly stated it was the preferred choice. It is difficult for us to objectively view this situation without the feeling that this acquisition process was an attempt to force the councils hand and therefore yield the car park to TfNSW within a quicker timeframe.

2.3 The interaction of the planning, infrastructure and transport planning systems of government to support best practice outcomes for the NSW community

We request that the inquiry investigate the clear lack of interaction between planning, infrastructure and transport planning systems in relation to the Jannali situation.

TfNSW had not conducted a proper and full assessment of the proposal prior to commencing the acquisition process. There was no approval of the proposal and the ability to implement the proposal was also subject to requiring a spot rezoning of land use.

Under the *Environmental Planning and Assessment Act 1979*, when considering whether or not a proposal should go ahead, the assessment must take into account "to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity". In our case, the assessment of environmental impacts was not yet completed before the acquisition process had started. The community notification that was issued to residents clearly stated that the planning documents and supporting studies would not be made available until later in the year. This effectively meant that the community consultation was likely to take place after acquisition had already occurred. Therefore, with the acquisition a seemingly done-deal, public submissions on the proposed acquisition and location of the car park could not be "fully considered".

As evidenced by the comments left on the Save our Homes Jannali Facebook page, which had over 2.5K followers during the turmoil, there was significant community outrage and concern at not just the acquisition process but the potential impacts of the proposal and issues associated with traffic, impacts to local business, safety, amenity, etc. If fully considered, these issues could have led to the proposal being significantly modified, including potentially changing the location, which would mean the purpose of the acquisition (ie for "future use for transport infrastructure or services" as per the acquisition powers granted via the *Transport Administration Act 1988*) would no longer exist.

Further to the above, the acquisition of nine homes in order to construct a 4-storey car park was going to require an abhorrent spot rezoning. This approach is in complete conflict with a wide range of public statements made by the Minister for Planning about the importance of place making and developing Town Centres (and their surrounds) using sound and well considered planning practices.

The car park location proposed by TfNSW on Mary, Mitchell and Victoria Streets was:

- Completely misaligned with the LEP, using land zoned for low density residential purposes, when land zoned specifically for car parking purposes elsewhere in the Jannali Town Centre was being ignored.
- Totally inconsistent with the local character given surrounding houses are predominantly small single level weatherboard houses. It is in total contravention of the DPIE Local Character and Place Guideline.
- It would not have activated the Jannali town centre compared to the alternate site under earlier consideration.
- Would lead train commuters away from local shops and down a residential street, rather than towards them.

We therefore strongly encourage that this inquiry reviews:

- The interaction between key planning legislation with the compulsory acquisition powers granted to TfNSW under the *Transport Administration Act 1988* in relation to ensuring a proper and full assessment of impacts from a proposal involving acquisition PRIOR to commencing the acquisition process, including how the subsequent development that follows acquisition aligns with local planning principles.
- The due diligence processes that should be put in place to ensure that prior to acquisition taking place:
 - A justified and valid public purpose has been established
 - There has been opportunity for transparent and meaningful community engagement on options
 - The objectives and obligations of the EP&A Act have been upheld
 - There is credible evidence that the benefits to the public outweigh the hardships to those affected.

2.4 Any other related matters

There are three key outcomes (as per the NSW Government Outcomes Statement 2021-22) to be delivered by the Transport Cluster:

- 1) Connecting our customers' whole lives
- 2) Successful places for communities and

3) Sustainable Transport systems and solutions that enable economic activity.

In regards to the Jannali proposal there were alternative solutions available that could deliver on all three of these outcomes but instead, an option was taken to pursue a seemingly quicker and easier development path that was in direct conflict to the desired outcome of "successful places for communities". There is no clear argument at all of how the proposed acquisition of nine family homes and creation of a four storey car park in a low rise residential area, away from the main business district of the community and in a significantly constrained location for traffic would achieve help "create places that integrate the right mix of infrastructure, services, access and experiences for communities, supporting them to achieve their desired social, cultural and economic outcomes" and there was no attempt to "work in close partnership with communities to ensure the places created reflect their people and culture, protecting and enhancing communities and their environments".

These three outcomes should be the governing principle of any Transport development. Where there was likely to be a considerable detrimental outcome for communities associated with a proposal (such as Jannali), a more rigorous process of assessment and options analysis should be put in place ensure that communities are appropriately engaged from an early stage, not just consulted at the last minute once decisions have already been made, so that locals can provide considerable local insight into how their community works and what might be an appropriate compromise and result in achieving a more acceptable outcome for all.

3.0 Closing comments & statements

Although we have a sense of relief that the compulsory acquisition orders were withdrawn on our homes the impact this has left on our community is profound. There has been a significant loss of anonymity for some, for others a clear deterioration of trust in State Government and for the majority a feeling that we were both underestimated and unnecessarily used as part of a wider deterioration of the relationship between TfNSW, the Member for Miranda and the Sutherland Shire Council. We call on this inquiry to help us find both answers to the questions we have been asking since 11th Feb 2021 but also to better hold to account the behavior of TfNSW and those that hold office on the impact their actions have on people's lives. In a process that can quite often feel bereft of compassion there needs to be a renewed standard to help impacted communities feel respected, informed and cared for.

4.0 Contact details

For further discussion please contact us on saveourhomesjannali@gmail.com

We have a number of our community that will happily appear before your inquiry and provide any further details you might require. We are also informed that key members of the SSC are willing to attend, we encourage you to liaise with them.



Thank you for your consideration