

INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

Organisation: Sutherland Shire Council

Date Received: 1 July 2021

NEW SOUTH WALES PARLIAMENT INQUIRY: ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

SUBMISSION BY SUTHERLAND SHIRE COUNCIL

Sutherland Shire Council welcomes the opportunity to make a submission to the Transport and Customer Service – Portfolio Committee No. 6 Inquiry into the acquisition of land in relation to major transport projects.

This submission relates to the following parts of the Inquiry's Terms of Reference:

- the response of agencies to the Russell and Pratt Reviews of the *Land Acquisition (Just Terms Compensation) Act 1991*¹, and
- the conduct of agencies in specific land acquisitions that may give rise to community concerns about current government process².

Council's submission relates to the now abandoned, Transport for NSW (TfNSW) proposed compulsory acquisition of nine private occupied homes in association with its Jannali Commuter car park project in February 2021.

Council's submission in brief

Council acknowledges the need to develop public infrastructure to meet the needs of the NSW community and economy and the reasons Government agencies may seek to compulsorily acquire private land to facilitate infrastructure development.³

However, land acquisition for the purposes of public infrastructure can be a distressing and complex experience for land owners, residents and businesses and the process needs to be fair, easy to understand and transparent.⁴

In relation to the now abandoned February 2021 TfNSW acquisition of nine private occupied residential homes for their Mary Street Jannali Commuter Car Park Project ("Mary Street"), it is Council's submission that the process followed by TfNSW is worthy of review by this Inquiry..

Council's submission in detail

Council recognises the importance of TfNSW's compulsory acquisition powers

At the outset Sutherland Shire Council recognises TfNSW should have powers of compulsory acquisition to ensure state significant projects such as railways and motorways are delivered to meet community needs. Council also supports TfNSW's program to expand commuter parking facilities within Sutherland Shire.

¹ Clause 1(a) of the Terms of Reference.

² Clause 1(b)(vii) of the Terms of Reference.

³ *NSW Government Response – Review of the NSW Land Acquisition (Just Terms) Compensation Act 1991 by David Russell SC and Housing Acquisition Review by Michael Pratt AM Customer Service Commissioner*, 18 December 2014, p8.

⁴ Ibid.

Council's concerns regarding how TfNSW has exercised its compulsory acquisition powers

Council submits the mode of exercise of the compulsory acquisition powers by TfNSW with respect to the Mary Street, Jannali commuter carpark project did not lead the community to believe the process was fair, easy to understand or transparent. Council's submission is based on lack of public information before the Mary Street Project was announced. The first awareness of the project to the most affected property owners and occupiers was a door knock by TfNSW representatives on 11 February 2021.

Council's position is also based on the information it obtained from TfNSW under a GIPAA application.

Council's key issues with how TfNSW exercised its compulsory acquisition powers

Without the benefit of a business case, it is difficult to understand how TfNSW's decision to compulsorily acquire the nine private homes in order to deliver the Mary Street commuter carpark was reached. It is clear three sites were under initial consideration for the project as evidenced by Appendix A (Mary Street being site B).

Based on the limited information provided to Council through the formal GIPAA request it appears that in the consideration of site options for a commuter carpark in Jannali, significant importance was given to the project delivery timeframe (2023),

Council was in a position to work with TfNSW on an alternative option for the commuter carpark. However, the agency broke off negotiations on the Box road carpark site on 7 September 2020 as evidenced by Appendix B, but no update was provided until February 2021. From the limited information obtained under GIPAA Council can see the Mary street project was developed rapidly after 7 September 2020 albeit without a detailed community impact assessment being made.

The notification on 11 February 2021 caused considerable anguish to the affected residents. This anguish also spread to the owners and occupiers of homes surrounding the site who discovered they would be looking at a multi storey carpark from their homes.

Council has publicly expressed its view on the manner in which TfNSW informed the affected residents in Mary Street and Mitchell Avenue of the Mary Street project and the likelihood that their homes would be acquired by compulsory means unless agreement was reached by a certain date. The media story and Council press releases in Appendix C shows the level of Council support for its residents.

Soon after the 11 February 2021 notification the residents organised an effective campaign to stop the Mary Street project and Council resolved on 22 February 2021 to support them. Copies of the report and resolution are attached as Appendix D:

Concern about this issue rapidly spread and became a national media story. A google search on "Jannali carpark protest" shows the level of media interest generated by this issue.

Also after the 11 February 2021 briefing, Council suggested a number of alternative sites, Council or TfNSW owned, to TfNSW in lieu of the Mary Street project and these were discounted by TfNSW staff for a variety of reasons.

Council suggested an at grade carpark site within the rail corridor at Oxley Avenue which could be delivered without private home acquisition, but this option was rebutted for the reason of a December 2019 preliminary draft plan of rail corridor augmentation. This document was refused for public release under Council's GIPA application due to its draft and preliminary nature.

Council's suggested Oxley Avenue option connected to existing TfNSW rail commuter parking.

Item 1 of the NSW Government Property Acquisition Standards "property owners will be treated fairly and with empathy and respect" was not, in the opinion of the wider Jannali community, followed in the Mary Street project.

The Mary Street project was not a state significant project but was allocated an accelerated delivery date on the basis of Pandemic infrastructure funding being provided.

How TfNSW should exercise its compulsory acquisition powers in future

Council submits that, for non-state significant transport projects above \$10m, prior to the application of the ten guiding principles the NSW Government has prescribed⁵, TfNSW should be required to:

1. Develop and publish a strategic (preliminary) business case for the project, without confidential information included, to test the project need.
2. Ensure the delivery date for a project allows adequate time for community engagement.
3. Exhaust all other practical site options before the acquisition of private properties are considered.
4. Consider the community and personal impacts of the private land acquisitions.

In order to gain a personal perspective the Inquiry may choose to hear from the affected residents themselves.

Conclusion

The way TfNSW exercised its compulsory acquisition powers in its now abandoned Mary Street Project was widely criticised in the media as not fair, or properly justified. In order to minimise a recurrence of these circumstances elsewhere in the future, it is suggested TfNSW provide greater public disclosure of its intent and justification for projects involving acquisitions of private homes.

Lastly, we respectfully suggest that it is open to the Inquiry to invite members of the Jannali community to make a personal submission on the impacts of the Mary Street Project.

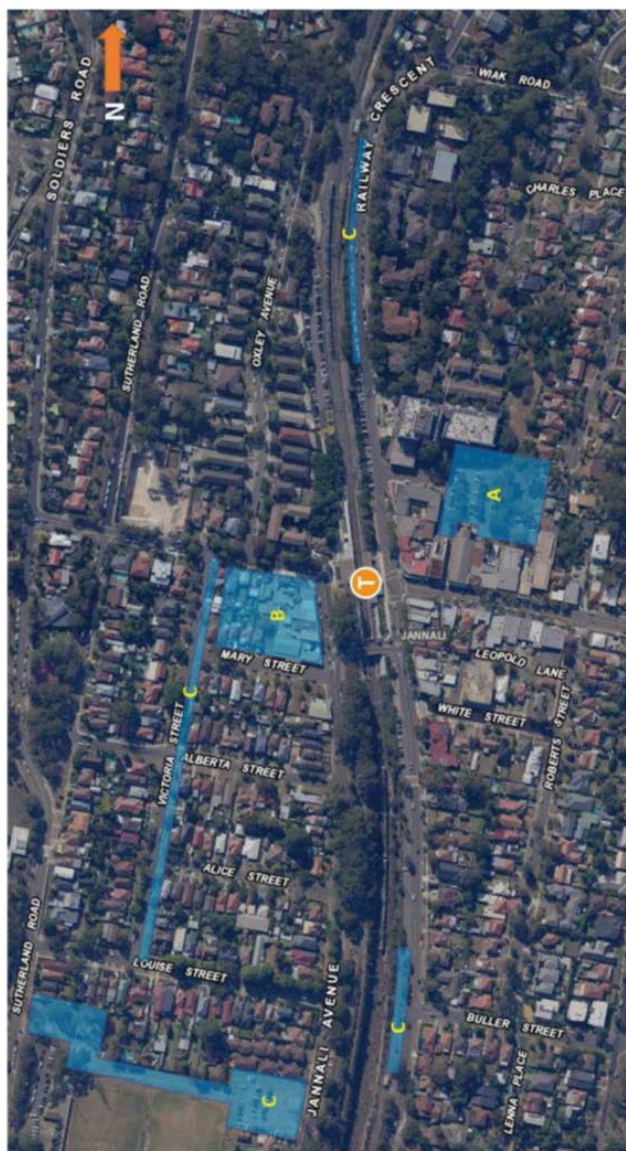
Sutherland Shire Council

June 2021

⁵ <https://www.propertyacquisition.nsw.gov.au/standards-and-principles#the-10-guiding-principles-of-property-acquisition>

Appendix A

Alternative Options - Locations



SENSITIVE: NSW GOVERNMENT

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Figure 1 Mary Street project is site B

Appendix B

The Hon. Andrew Constance MP
Minister for Transport and Roads

Cr Carmelo Pesce
Mayor
Sutherland Shire Council
Locked Bag 17
SUTHERLAND NSW 1499

Our Ref: 1112339

7 September 2020

Dear Councillor

The NSW Government is committed to doing all that it can to encourage the community to leave their cars at home and, where possible, use public transport to ease congestion across Greater Sydney. We recognise the provision of extra car spaces at key commuter hubs and interchanges is one of the critical strategies to delivering this mode shift.

The NSW Government is committed to making life easier for public transport customers. This includes providing customers with more parking near stations and interchanges, including at Jannali Station. Since 2011, more than 10,000 parking spaces have been delivered across the network, with more than 8,000 extra spaces on the way. Further information about our commuter car parks program is available at www.transport.nsw.gov.au and www.transportnsw.info.

As you know, in February 2019 the NSW Government committed to delivering up to 200 additional commuter parking spaces at Jannali Station. Whilst I acknowledge that Transport for NSW and Sutherland Shire Council staff have been working collaboratively together to determine the best way to deliver on this commitment, I am concerned that to date your Council has yet to finalise a clear pathway forward to deliver this local infrastructure.

Thanks to the strong advocacy of the Member for Miranda, Eleni Petinos MP, the NSW Government has determined to allocate additional funding towards the delivery of this project from our \$3 billion Infrastructure and Job Acceleration Fund. This fund, established in response to the ongoing COVID-19 pandemic, is intended to be used for smaller, shovel-ready projects, injecting up to an extra 20 thousand jobs back into the NSW workforce.

We cannot wait any longer to start delivering this project. The community expects us to deliver on our commitments and create more jobs, and that is what we will do. I am determined to see shovels in the ground as soon as possible. The NSW Government will therefore be proceeding to deliver up to 200 additional commuter parking spaces at Jannali Station on its own and will not be exploring integrated delivery opportunities with the Council. Transport for NSW will update the community on our plans as soon as we have more to say.

Yours sincerely

The Hon. Andrew Constance MP
Minister for Transport and Roads

CC: Eleni Petinos MP, Member for Miranda

MEDIA RELEASE - Statement from Sutherland Shire Mayor Steve Simpson

Published On 24 February 2021 at 06:00 PM

Sutherland Shire Council received written notification from TfNSW today rejecting viable alternative sites we put forward that would enable the State Government to deliver on their 2019 election commitment for a commuter carpark at Jannali.

Council has worked swiftly over the past week to put forward a number of alternative sites to support the delivery of a 200 space commuter carpark, none of which would result in local residents losing their homes.

Council, in its discussions has always maintained that the existing Council car park at Box Lane next to Jannali Station is an acceptable location to deliver a vibrant, integrated town centre solution, that would offer both TfNSW 200 commuter carparking spaces as well as retail carparking for the benefit of the broader Jannali community and local businesses.

Such outcomes require consultation and careful consideration. It's unfortunate that the State Government's arbitrary timeframe of delivery by the first half 2023 could not be extended to allow for this win:win outcome.

We understand that the State Government is keen to see infrastructure delivered quickly and to stimulate the economy. To this end Council has put forward an alternative, lower cost option, that benefits the State's tax payers by providing 200 ground level commuter carparking spaces at Oxley Ave and Jannali Ave and on TfNSW and Council land (see attached schematic).

These are all permanent solutions and all within close proximity to the Jannali station, meeting the TfNSW criteria.

Council encourages TfNSW to consider their other landholdings along the T4 line to deliver commuter carparking within the Sutherland Shire that doesn't require the displacement of residents from their homes. Council and the Jannali community would be keen to learn more about TfNSW's future rail augmentation as part of its More Trains More Services Program, including timing and scope.

Our Council remains committed to supporting the delivery of a commuter carpark but not at the expense of local residents and their right to live in their own homes.

Council is offering its professional expertise necessary to support TfNSW in exploring the options that still exist which would provide a better return for NSW taxpayers and for our community.

Our Council and our community are united on this issue. The State Government must immediately halt its six month compulsory acquisition deadline. We will not support any proposal that denies any local resident the right to live peacefully in their own home, without facing the threat of unnecessary and unfair compulsory acquisition.

MEDIA RELEASE - Council provides potential solution to impasse on State Government's Jannali commuter carpark

Published On 02 March 2021 at 08:00 AM

Sutherland Shire Council is calling on the State Government to come back to the negotiating table, after Councillors voted last night in support of a plan which would allow the delivery of a commuter carpark on Council owned land near Jannali train station.

With Councillors voting unanimously in support of an integrated planning solution that would revitalise the Jannali retail precinct while also providing scope for the inclusion of a 200 space commuter carpark, Council said it was vital that the State Government now get behind the proposal to deliver a sound outcome for the community.

Speaking after the meeting, Sutherland Shire Mayor, Councillor Steve Simpson, said that with a clear roadmap now set to be put to the State Government to enable delivery of their commuter carpark, it was imperative the all parties come together to make it happen in a timely fashion.

"What our Council signed off on last night is a sound plan that allows us to meet the future needs of local residents, retailers, and rail commuters, while pulling out all stops to get this commuter carpark built in a reasonable timeframe," Councillor Simpson said.

"Our Council staff have been working around the clock to meet a very challenging deadline set by Transport for NSW to provide a workable solution to this problem, and we are confident we now have a plan they can get behind.

"We acknowledge that this plan will not meet the 2023 deadline for completion that Transport for NSW has been pushing to date, but with appropriate support from the State Government to progress through the complex planning processes, it is still something we can achieve in a reasonable timeframe.

"Our message to the State Government is clear – it's better to take a little extra time in working with us to get this right than it is to steam ahead and force nine families out of their homes.

"We have to be clear that this plan is still reliant on a number of hurdles being cleared in terms of planning approval, land rezoning and community consultation. But I am sure Minister Constance will be able to impress upon his cabinet colleague, Planning Minister Rob Stokes, the need for this project to be given priority to ensure it makes its way through these processes in a timely manner.

"The State Government now has the opportunity get behind this plan and deliver a real win-win result for the community. Rail commuters get a carpark built in a reasonable space of time, the local retail sector still has room to grow and most importantly nine families get to stay in their homes."

"I was proud to see that our Councillors remained united in their stance against the compulsory acquisition of homes, and this is a point which we will again reiterate to the State Government.

"My fellow Councillors and I are out speaking with the residents impacted by this process almost every day, and we know full well how tough they are doing it.

"Once again we call upon the State Government to abandon the compulsory acquisition process and refocus their efforts on the clear plan set out by Council.

"Local residents don't need to live under the spectre of uncertainty at having their homes snatched away while negotiations are completed.

"We remain hopeful that the State Government will see reason and support us in backing this plan in the best interests of our community."

MEDIA RELEASE - “A win for people power” – Jannali residents successfully oppose compulsory acquisition of local homes

Published On 03 March 2021 at 08:00 AM

Sutherland Shire Council has joined local residents in welcoming a move to abandon the compulsorily acquisition of nine Jannali homes to clear the way for a new commuter carpark.

The residents of the nine homes earmarked for compulsory acquisition were notified by Transport for NSW staff of the eleventh hour reprieve this morning, following weeks of determined campaigning against the State Government proposal.

Sutherland Shire Mayor, Councillor Steve Simpson said the news would come as an overwhelming relief for those residents who had faced the threat of having their homes compulsorily acquired, praising those who had led an effective campaign against the move.

“Since this saga began, my fellow Councillors and I have met almost daily with the local residents who stood to be impacted by this development, and we know just how challenging it was for them to deal with the threat of being forced from their homes,” Mayor Simpson said.

“Through their effective opposition to these plans, they have achieved a hard fought victory and deserve tremendous congratulations for the dignified and determined way they have campaigned for the right to stay in their homes.

“Walking away from plans to compulsorily acquire homes sees the State Government deliver a win-win situation for all parties involved in what has been an arduous process, but one that looks set for an overwhelmingly positive resolution.”

Mayor Simpson acknowledged that while latest development was a major victory for those residents who had campaigned against the compulsory acquisition process, for Council the challenge posed by this development had only just begun.

“Council will continue to work collaboratively with all stakeholders to aid the State Government in delivering this piece of infrastructure in a way that benefits our whole community,” Mayor Simpson said.

“We again have to stress, this plan is still reliant on a number of hurdles being cleared in terms of planning approval, land rezoning and most importantly hearing the voices of the community, via meaningful community consultation. But if given appropriate priority by the State Government I am confident this project can clear these stages of approval in a timely manner.

“If done right, the inclusion of a 200 space TfNSW commuter carpark and associated improvements to the surrounding road and bridge infrastructure to cater for added commuter traffic, as part of a revitalised precinct at Jannali will deliver lasting benefit local residents and retailers as well as rail commuters and help us to deliver an incredible assets to our community.

“I would like to pay tribute to the combined efforts of my fellow Councillors in delivering an unambiguous message to the State Government that compulsory acquisition was not an acceptable way forward for this project – I know this message was heard loud and clear.

“I would also like to offer thanks on behalf of our whole community to the many Council staff members who worked tirelessly to draw up a comprehensive plan of how this commuter carpark could be effectively delivered as part of a revitalised Jannali town centre.

“We continue to commit to being an effective partner with the State Government, with lead agency Transport for NSW and undertaking all necessary community consultation ensure the delivery of a final result that will meet the needs of our community well into the future.”

Young widow and man with disability among those to have their homes acquired for c... Page 3 of 10

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PHOTOS
February 15 2021 - 3:30PM

Young widow and man with disability among 1 homes acquired for car park at Jannali



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<https://www.theleader.com.au/story/7126450/a-bastard-act-how-a-young-widows-life-...> 17/06/2021



A young widow with two children is among home owners who are devastated their properties will be compulsorily acquired by the state government to enable a four-storey commuter car park to be built at Jannali.

Another family includes a young man living with Cerebral Palsy, who is able to maintain a high degree of independence because of his modified home and easy walk to the train station and shops.

Sutherland Shire mayor Steve Simpson told a street meeting of about 50 residents on Sunday night it was "a bastard act" and the council would offer to work with the government to identify a better site.

Nine homes need to be acquired for the car park on the western side of the station behind the commercial precinct and community centre, bounded by Mitchell Avenue, Mary Street and Victoria Street.

Residents in adjoining houses and new apartment blocks are also outraged because of the impact on their neighbours in the tight-knit community, as well as the devaluation of their own properties.


The first the owners of the properties to be acquired knew of the plan was when they received a knock on the door on Thursday morning last week.

The message they received left them in tears.

Nicole, who is bringing up her two sons, six and three, alone after the death of her husband, was on her way to school at 8.30am when a Transport for NSW representative arrived at their home.

"He said, 'There is no easy way to say this, but the government has identified this property as being needed for a car park'," Nicole said.



 Nicole and her sons, six and three, at a happier time. Picture: supplied

"I was told we have six months to negotiate an agreed price. If that doesn't happen, they will end negotiations and the government valuer will decide.

"Nine months will be the longest the process will take."

Nicole and her husband bought their home 10 years ago.

"Because it's a little house on a little block and close to the station, I can just manage," she said.

"To purchase anything similar will cost another \$200,000, it will be a bigger property and it won't be as convenient.

"I can mow these lawns - imagine me trying to do it on a huge block of land."

Nicole would like Premier Gladys Berejiklian to visit her and her neighbours.

"During COVID, the Premier has presented a human side, which I have really appreciated, and I don't think she would support this action," Nicole said.

Ishpal, who is in his mid-20s and living with Cerebral Palsy, will also be displaced.

His parents bought their home five years ago with a view to the future of their son.

The house has been modified and this, together with the close proximity to shops and train station, gives Ishpal a high level of independence.

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The family was shocked when two Transport for NSW representatives came to the door and said, "We have some really bad news for you".

"Everyone was crying," a family member said.

"They told us the business case was approved last year.

"I was given the impression they are in stage two of the project, not stage one as the website says."

Many residents in the area can't understand the logic of the decision.

They say the roads around the narrow bridge over the train line are already heavily congested during peak periods, and it would make more sense for the transport authority to continue negotiations with the council and Woolworths over the council owned car park behind the shopping centre even if it took longer.

Mayor Steve Simpson, who attended the street meeting with Cr Peter Scaysbrook, said council staff had assured him Transport for NSW had not given any forewarning of the move.

"I think it's a bastard act to take people's home like this," he said.

Cr Simpson said compulsory acquisition might be justified for a major project such as a new hospital or motorway, but a commuter car park did not fall into the essential category.

"We think we can offer them a better site," he said.

Cr Simpson said the election promise of a commuter car park appeared to be the driving force behind the move - not what would provide the best outcome.

"It comes down to a political decision," he said.

[Save Our Homes - Jannali 2226 Facebook page](#)

RELATED:

[Nine homes to be acquired for new four-level commuter car park at Jannali](#)

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Appendix D

Council Meeting

22 February 2021

MM005-21 MAYORAL MINUTE - JANNALI COMMUTER CARPARK

MM005-21

Attachments: Nil

The Councillors of Sutherland Shire

Dear Councillors

I write to you concerning the initial notification to Council and I via a webcast meeting on 11 February 2021 by Transport for New South Wales that it intends to construct a 200 space Carpark at 4-10 Mitchell Road and 3-11 Mary Street Jannali. This has resulted in a broad community and media reaction and as a consequence I wish to see Council work with Transport for NSW continue to look at other site options to minimise the negative impacts of the current proposal.

Council would generally welcome the NSW Government providing a commuter carpark in Jannali, but the current site location gives rise to some significant issues including the acquisition of nine residential homes, with its personal cost, potentially by compulsory process. These concerns were first raised by Council officers and I at the webcast meeting on 11 February with Transport for New South Wales when we first were briefed on the proposal and subsequently the community also aired their concerns meeting on site on 14 February 2021. It is important Council recognises the community's concerns.

While our Council has made its policy position on compulsory acquisition clear it also recognises for major projects, such as hospitals and motorways, The NSW Government should be able to use compulsory acquisition to achieve significant public benefits.

I feel strongly that proper consideration needs to be given to other potential carpark sites in Jannali that can deliver a better outcome. To this end, I attended a meeting at my request and the invitation of the NSW Minister for Transport and Roads, The Honourable Andrew Constance MP, on 18 February 2021. In attendance was the Minister, the Parliamentary Secretary for Transport and Roads and State Member for Miranda, Eleni Petinos, Transport for NSW staff, Council officers and I.

In the spirit of collaboration and understanding, the Minister graciously agreed that both TfNSW and Council officers would quickly come together to determine whether another site can be selected and a better outcome achieved for all without delay, and enable the State Government to meet its commitment of a commuter carpark in Jannali by the first half of 2023.



MM005-21 **Mayoral Minute - Jannali Commuter Carpark**
File Number: 2021/398201

Minute No: 9

RESOLUTION: (Councillor Simpson/Councillor Scaysbrook)

THAT:

1. Council reiterates its policy of opposing compulsory acquisition of private property.
2. Council supports the concerns of the affected residents of Mitchell Road and Mary Street, Jannali and surrounds with the location of the proposed multi-level 200 space commuter carpark and the acquisition process by which Transport for NSW are progressing the project which may involve the compulsory acquisition of nine residential properties.
3. Council work with Transport for NSW to identify suitable alternative sites within Jannali for a commuter carpark and options that will appropriately consider the traffic management, design, social and environmental issues to secure the best outcome for the surrounding community.
4. Council acknowledges and thanks the NSW Minister for Transport and Roads, The Honourable Andrew Constance MP, for hearing the concerns of residents regarding the Jannali commuter carpark as proposed and his willingness to have Transport for NSW and Sutherland Shire Council officers work swiftly in identifying suitable alternative sites to deliver this transport infrastructure project.
5. Council requests NSW State Government abandon the compulsory acquisition process.
6. Council's relevant department(s) provide guidance where requested to assist residents obtain appropriate representation.

A **DIVISION** was taken on the RESOLUTION and the names of the Councillors voting FOR and AGAINST were as follows:

FOR:	AGAINST:
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The Mayor, Councillor Steve Simpson	
Councillor Michael Forshaw	
Councillor Carol Provan	
Councillor Kent Johns	
Councillor Jack Boyd	
Councillor Barry Collier	
Councillor Tom Croucher	
Councillor Daniel Nicholls	
Councillor Greg McLean	
Councillor Peter Scaysbrook	



Councillor John Riad

Councillor Carmelo Pesce

Total (12)

Total (0)

PROCEDURAL MOTION

RESOLUTION: (Councillor Simpson/Councillor Riad)

That the meeting be adjourned for 10 minutes to allow members of the public in attendance for MM005-21, to exit the gallery.

The meeting was adjourned at 8:51pm.

The meeting resumed at 9:01pm.