Submission No 57

INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

Name: Mr Walter McKenzie

Date Received: 1 July 2021

NSW PARLIAMENT

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Dear Committee Members

I am pleased to be able to make a submission to the NSW Parliamentary Inquiry into Acquisition of Land in Relation to Major Transport Projects. While the acquisition of my land does not relate to a transport project, it nevertheless it has much in common and exposes major flaws in a broken state acquisition process system and the Principal Council Officer suggested I lodge the submission.

If the Committee requires me to present any evidence, I would be pleased to do so.

EXECUTIVE SUMMARY

I have been contesting the acquisition of my land by the Blue Mountains City Council ("Council") since it was declared "Acquisition Requirement" in 1997/98.

Therefore I have extensive first-hand experience on how unfair and broken the current NSW Property Acquisition system is.

It will be clear from my submission that the modus operandi of the Council was and still is, to acquire at no cost to the Council Non Urban Rural 1(a3) land through forced sales due to outstanding rates debts and they accelerate this process by zoning the land "Environmental Protection – Open Space (Acquisition Requirement)" and imposing further costs like 'bushfire clearance', thus making it unsaleable and preventing it from progressing to Urban Development because the Water Board's Backlog policy does not provide for sewerage reticulation to such restrictive zonings .

Given that many of the Rural1 (a3) lands, especially those that were part of a historical subdivision are unlikely to get all services in the foreseeable future (unless the Council and land owners worked together to bring services to the area as was done in the 70 block paper subdivision over 1997 – 1999 at Pleasure Point near the Georges River with each owner contributing approx $25K, a Gold Standard in such collaboration), such a scheme may still carry a semblance of fairness if the Council (a) can justify the restrictive zoning in each case and (b) compulsory acquire the lands under the NSW Land Acquisition (Just Terms Compensation) Act 1991 ("LAJTC") and (c) rezone those few blocks (like my block) that have since received access to all services including mains sewer and a made road or value it based on this potential.

However under current legislation, the Council is not required to do any of these things.

Therefore Councils can sit it out until land owners have accumulated huge rates debts or realised that the land is just consuming revenue with no future development potential due to the restrictive rezoning and either give the land to the Council or accept a token payment of a few thousand dollars. Alternatively Councils can try to persuade owners to hand over the land through a private treaty offering a tiny amount of compensation. Usually, the

compensation is less than the outstanding rates so the Council effectively makes a profit. Under this process, the Council is not required to take into consideration any value adding developments that have occurred in relation to the land. For example, if all services have become available at the time of the proposed acquisition and so if Council had not intervened with a restrictive zoning, the land would have progressed from Rural Non Urban to Urban, then the Council can ignore this and value the land as if it was still Rural No Urban. This is what the Council is doing in my case. Also under this process the Council is not obliged to pay any legal costs incurred by owners for representation.

For those owners who can prove that they are unable to pay outstanding rates due to financial distress, they can request the Council to acquire the land under the LAJTC but will not be able to contest the value proposed by the Council because under the act, they are not entitled to legal costs and since they have financial distress, cannot afford private legal representation. In what seems like a Catch 22 situation, owners are entitled to legal fees under LAJTC if they are financially sound.

So in summary, the current legislation allows Councils to provide restrictive zonings on land that they have chosen to acquire, refuse compulsory acquisition, offer a subjective tiny compensation amount based on a subjective assessment of the lands worth and then do nothing and wait for rates to accumulate forcing landowners to hand over their land to the Council for virtually nothing.

The land has cost me to date approx $140K in purchase costs and rates using 7 years as the approximate time for money in the bank to double. An independent certified Real Estate Valuer valued it at $220,000 in 2017 based on the market value if council did not intervene and the land would accordingly have all the service available for Urban zoning. I am guessing that that value has appreciated by about 20%.

The Council offered to buy it for $800.00 in 1998, $3,500 on March 2015 and finally a 'take it or leave it' offer together with a Deed of Confidentiality for an increased but still miniscule amount compared to the valuation. They have refused to entertain the independent valuation or a mediation process or pay reasonable legal costs.

This equates to state sponsored legalised theft.

DETAILED SUBMISSION

After due diligence I purchased a half acre block of land, Hillview Road, Katoomba North, part of a paper subdivision, in 1989 when it was zoned Rural 1(a3). The paper subdivision consisted of East Yosemite, Central Yosemite and West Yosemite, a suburb in North Katoomba. Since then most of Central and East Yosemite land has been released for urban development. My land is on the border and West of Central Yosemite and in fact the blocks opposite the road are developed Residential (with some restrictions). Due diligence included viewing letters from the Council to the previous owners and a meeting with the Assistant Town Planning Officer all of which confirmed the land was intended for urban development after mains power, water and sewer became available. Since the former two were already available for my land as it fronted a made road with residential zoned blocks opposite, only mains sewer needed to be connected. The Water Board advised me that mains sewer was scheduled to be installed in 2000.

So having got these assurances, I proceeded with the purchase on the basis that it was not a speculative investment but would allow me to own a house in the future.

Numerous letters after my purchase between the Council and me over the intervening years reconfirmed that the land was destined for urbanisation after all services became available. For example, quoting the Mayor in a letter to me dated 29/5/89 "the release of additional unsewered residential blocks is not in the best interests of the City" followed by "This area *should be released* only after all services are available" (my emphasis).

In 1997/98 the Council rezoned the land "Environmental Protection – Acquisition Requirement" without any attached special restrictions and offered to buy the land for $800.00 but did not pursue a compulsory acquisition.

In 2001, mains sewer was reticulated along Hillview road and an entry point was located about 20mts from the corner of my block, opposite the road and in front of No . Water mains are directly opposite my block on the other side of the road as well. Preliminary enquiries of the appropriate Utility Services organisations have indicated about $25 to $30K to bring these across the road to my block.

In spite of promising to release the blocks on my side of Hillview Rd, the Council did nothing to collaborate with the Water Board to reticulate sewerage to my side of the road. This is another weakness in the legislation.

The legislation should provide for Councils to do everything reasonable to bring services to Rural 1(a3) including rate levies to recover costs before applying restrictive zonings.

More on this under the chapter A TALE OF TWO CITIES below,

In 2002, the land was again rezoned Environmental Protection- Open Space (Acquisition Requirement). The reason given in 2002 for the rezoning was as follows:

"The revised version of that the NSW Sydney Regional Environmental Plan 20 (SREP20) declared a number of the catchments of the Hawkesbury Nepean River system to be "Conservation Area Sub-catchments "and placed special restrictions on activities within the sub-catchments to protect water quality and bio-diversity. The Rural 1(a3) zoned lands of North Katoomba, North Lawson and Mount Victoria fall within declared SREP 20 Conversation Area Sub-catchments. SREP 20 requires Councils not to rezone land in these sub-catchments for further urban development."

From my reading of SREP, this statement is a combination of fact and fiction and the Council has interposed its own interpretation of the SREP to arrive at its own conclusions. My land is so far away from any rivers or creeks identified in the SREP that any water runoff from my one block of land could not possibly transverse the vast stretches of bushland to anywhere close to any sensitive waterways. And Council has never provided me any environmental study that justifies its position.

It could be true that blocks in the subdivision towards the extreme west and north-west may be within some river sub-catchment system but that does not mean that my block of land or any of those blocks along Hillview Road should be lumped in the same category as them.

The inability or unwillingness of Councils to treat each land owner's property on its own merits is another weakness of the current system.

Councils when considering blanket zoning revision for an entire or large part of a subdivision, should take into consideration individual holdings that may justify a different zoning due to different characteristics and / or access to services.

As I understand, all of the blocks in West Yosemite have been acquired by Council except No Hillview Road and mine. So there is no chance that allowing me to develop or partially develop (under a split zoning) the land could lead to other blocks being developed especially since mains water and sewer is only available along Hillview Road.

Over the years from before I bought the land to when it was zoned Environmental Protection in 1998, the Council has maintained in writing that the land was intended for Urban development when all services became available. So the Councils intent for the land to be developed in the future was clear and the potential for the land for urban development was similarly made clear.

Therefore, if one were to assume that the Council is justified to restrict the development with an Open Space, Acquisition Requirement zoning and especially when services that it maintained needed to be available before release have become available, then valuation of the land should take these value adding developments into account. This is in accordance with advice from expert lawyers in the field I have spoken to like Dr Head of Environment and Planning at

On this basis, an independent credited NSW Property Valuer, valued the land at $220,000 in 2017.

Council on the other hand state that the land should be valued on the basis that it cannot be developed for a dwelling (Attach 4) because of the restrictive zoning they applied to it and hence their pitiful offers of $800 in 1998, $3,500 in March 2005 and finally a 'take it or leave it' offer together with a Deed of Confidentiality for an increased but still miniscule amount compared to the valuation. As it is a confidential document I am unable to disclose the amount in this public forum but can disclose it to Committee members if requested.

In this way the Council is like a Judge who is also an Executioner. The Judge (read Council) wants to execute (acquire) a person (land) so he declares the person guilty of a crime (read applies restrictive zoning) and then arranges the execution.

This legalised murder in the case of the Judge equates to legalised theft in the case of the Council.

Over the course of years from 1998 to now, Council have flip- flopped between Compulsory Acquisition and "Prepared to Acquire', with the current position being the latter.

This is another major weakness in the acquisition system. Under current legislation, Councils can destroy the utility of private property while continuing to levy rates and refusing to compulsory acquire the system under LAJTC.

The legislation should be changed to ensure that when a restrictive zoning is placed on land that prevents it from being developed in the future, Councils should be mandated to acquire the property if requested to do so, and not necessarily within the hardship provisions, under the Land Acquisition (Just Terms Compensation) Act within a reasonable timeframe and rates should be suspended until the acquisition is finalised

The advantage for a landowner to have the property acquired under LAJTC is that the government acquiring body is required to pay reasonable costs for valuations and legal representation.

In my case the Council has refused to pay any legal costs in spite of knowing that I am an aged pensioner with one dependent.

In recognition of the potential high level of mental and financial stress caused by government acquisition of privately owned land on the owners, the State Government established a Centre for Property Acquisition with Support Services. The Centre lists 10 guiding principles of property acquisition. The Council had adhered to only one of these, No2. I was advised that the Centre x impose any of these Principles on Councils and it is up to the latter whether they wish to follow them.

In my opinion the Centre for Property Acquisition should be given enough powers to request that Councils abide by the 10 Principles and to take over the acquisition process if they do not.

A TALE OF TWO CITIES

The way Liverpool Council approached the rezoning of a 65 lot paper subdivision in Pleasure Point represents, in my opinion, the Gold Standard in such processes.

As it was a paper subdivision a stones throw away from the Georges River, the Council put the matter into the 'Too Hard Basket' over decades and did nothing to help progress its development in spite of determined lobbying by the Pleasure Point Rezoning Action Group (PRAG).

Two councillors, Mark Latham and Craig Knowles stepped in and directed the Council to collaborate with state utilities and PRAG to look for solutions to the problem. This resulted in the Council developing and successfully executing a plan to bring services to the area by levying a contribution of about $25K per owner which of course they were pleased to do. Today, the owners live in a well established suburb and will be forever indebted to Mr Latham and Mr Knowles.

In the case of the Council (BMCC), while most of the approx 120 blocks on the outskirts of the subdivision may well have been better suited as an Environmental Protection zone, there were a number of them close to central Yosemite that could have been released if Council collaborated with landowners.

SUMMARY OF SUGGESTED LEGISLATION AMENDMENTS

1. *The legislation should provide for Local Councils to do everything reasonable, including collaboration with utility providers and land owners to bring services to Rural 1(a3) small land holdings including imposing levies if necessary to recover costs in order to progress the land to urban rezoning before applying restrictive zonings or acquisitions.*

2. *Local Councils when considering blanket zoning revision for an entire or large part of a sub-division, should take into consideration individual holdings that may justify a different zoning due to different characteristics and / or access to services.*
3. *The legislation should be changed to ensure that when a restrictive zoning is placed on land that prevents it from being developed in the future, Councils should be mandated to acquire the property if requested to do so, and not necessarily within the hardship provisions, under the Land Acquisition (Just Terms Compensation) Act within a reasonable timeframe and rates should be suspended until the acquisition is finalised.*
4. *The NSW Centre for Property Acquisition should be given enough powers to request that Local Councils abide by the 10 Principles on its website and to be able take over the acquisition process if they do not.*

END

Sincerely

(signed)

Walter McKenzie