

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

**Name:** Ms Jennifer Downs

**Date Received:** 2 July 2021

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Partially  
Confidential

02 July 2021

Ms Abigail Boyd MLC  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000  
By Email to - [abigail.boyd@parliament.nsw.gov.au](mailto:abigail.boyd@parliament.nsw.gov.au)

**SNOWY MONARO REGIONAL COUNCIL COMPULSORY ACQUISITION of LOTS 4,5,7,8 & 10 DP 1245630  
FROM DOWNS – WERRALONG ROAD, DALGETY NSW 2628**

Honorable Minister,

I write to you as a victimised landowner, who seeks your assistance in a matter where the NSW Government is showing glaringly obvious signs of what I believe to be deceit, discrimination, and disregard of due process. It is with regret I am forced to report such senior levels of Government involvement, however I feel there are no alternative options.

I have extensive supporting documentation to verify my entire claim.

In brief

- My land is being forcibly and falsely acquired by Snowy Monaro Regional Council (SMRC) for a track, which has not been used for over 6.5 years, and cannot be used, for a public road without extensive building and repair over a major waterway, the Snowy River and its tributary, Kara Creek.
- The acquisition, originally motioned in September 2015, by Snowy River Council (SRC) was for acquiring the track in its “current location”. Our land (and track) is not the current location and has not been since January 2015.
- The land acquisition process is not being adhered to in any way, i.e. the Land Acquisition Act.
- Various senior levels of Government appear to be involved with this issue from the Council to the Deputy Premier’s Office, i.e. there are apparently emails from John Barilaro, (our local State Member,) on this matter, which have so far been refused to us by the GIPA process.
- Despite voluminous evidence, the Office of Local Government (OLG) has proven to be completely ineffective. They have failed to address the severe and unacceptable process deficiencies occurring over several years in this matter.
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## HISTORY IN BRIEF

- a former local resident, through his companies and or subdivided the property “Wollumbi” being some 4000 acres, into lot sizes, ranging from 140ha to 100ha without any legal access and with SRSC approval. Council approved DP 703294, under subdivision certificate 28/1983 down to a lot size of 40.5ha. This was further subdivided with SRSC approval under subdivision certificate 2002/15 on 5.4.2002, DP 1052039 to a lot size of 6.5ha. I believe the minimum lot size requirement at that time was 400 ha.
- In May 2014 an agreement was reached by my partner and me with our neighbours to cut a track along our boundary fence and then donate this land free of compensation to SRSC, to be used as a road to the Snowy River and Snowy River Cabins.
- A letter dated 6 August 2014 was received from the neighbours’ solicitor stating he acted for our neighbours and that if we did not do as “they” wanted, they would close off the track to our property and we would have to use our “other” access.
- Following this letter of 6 August 2014, we have been subjected to nothing short of concerted and vexatious allegations made against and me to various Government Departments, Police, and Council, which included being publicly denigrated with false accusations of the most serious nature.
- To the best of our knowledge, this entire issue surrounding the track, known as Werralong Road, is a Council attempting to rectify problems that were created by SRSC, where the subdivision of land for the Snowy River Cabins was approved on the basis of a letter written by a potential developer. This asked Council to approve a 100ha subdivision, where five cabins will be erected. Nine days later SRSC approved this letter. The current Mayor was involved in that decision as an employee, namely Director of Environmental Services at that time.

## BACKGROUND

SMRC Councillors carried Motion 10.1 in the 21 May 2020 meeting. This motion for public communication was to advise new land purchaser *“legal and practical access to the purchased land is the responsibility of the purchaser”*.

They acknowledged this was **due to “historic disputes” over legal and practical access. Some have remained “unresolved for decades and have cost the public purse significant amounts of money”**.

It was widely seen in the community as an attempt to correct poor decisions in the past, according to Councillors from the Snowy River Shire Council (SRSC) is one of the three Councils that merged in 2016 by the Premier’s proclamation to become Snowy Monaro Regional Council (SMRC).

Properties along Werralong Road are involved as one of those “historic disputes” over legal and practical access.

Council’s policy is to not to involve themselves in a civil matter between affected landowners, as described by Council’s solicitor in 2017. However, for Werralong Road, they have chosen to ignore this rule and unnecessarily and senselessly acquire part of my property for a track, which has not been used

by the public or anyone else, for over 6.5 years. It cannot be used without significant repairs and the building of a bridge over the Snowy River/Kara Creek intersection, all for the benefit of one property, the Snowy River Cabins (originally called Lappis). Currently, the route to that property adjustment ends in Kara Creek and involves Lot 10 of which I am comfortable being compensated for by Council.

The “track” known as Werralong Road is not now being used by any means, as an accessible road across my property (Lots 4,5,7,and 8) and hasn’t been since neighbours re-routed the road for public use in January 2015, over six and a half years ago. The same neighbours also totally blocked off one gateway to out property in 2017 at the northern boundary and then blocked the western boundary gate in 2018, forcing us into a landlocked position.

I do not believe Monaro residents want their rates being wasted on perceived unconscionable conduct. Nor do I want ratepayer and taxpayer money spent on completely unjustifiable projects, or an unnecessary court case and high-exposure through media channels, that will obviously result from seemingly inconsistent and discriminatory behaviour.

Snowy River Shire Council Resolution 178/15 made on the **22 September 2015** states at C, “*Formalise Werralong Road in its **current location** and apply to have the road gazetted as a public road*”. Since **January 2015**, the “current location” does **not** include Lots 4,5,7,and 8 (my property) with the exception of the small parcel of land (referred to as Lot 10) near Kara Creek. I am unaware of the rationale used to carry this motion.

In a letter to the SMRC (and previously SRSC) General Manager, Joseph Vescio, on 5 February 2018, it is re-iterated both SRSC and SMRC were fully aware that this portion of track was no longer in use after January 2015.

SMRC attempted to re-invigorate the SRSC acquisition of my property in their meeting of 19 September 2019 (Motion 9.2.1.). There was no logical rationale of why Council continued pursuing this pointless acquisition that has nothing to do with my Lots 4,5,7 and 8. Council knows the defunct track portion across my land is not required. This motion was withdrawn during the meeting.

SMRC then re-introduced the same motion two months later, titled “13.7 Werralong Road - Proposed Acquisition With and Without Consent”. This motion was carried in “Confidential” discussion for reasons of “commercial advantage” and “contrary to the public interest” on 21 November 2019. Neither reason applies in this situation and was orchestrated to avoid scrutiny of the decision with reasons discussed behind closed doors away from the public. I remain unaware of what was presented during this “confidential” discussion, in order for the Councillors to carry such a motion.

I attended the Council meeting in the public gallery on 21 November 2019 and during the dinner break at 7pm the Mayor approached my partner and I stating that Council had “**already decided to take our land at the Council pre-briefing session**”. Therefore we elected to leave the meeting at that time. At no stage at the start of this meeting do we recall the Mayor asking the public for objections to the motions listed in “confidential” items.

Only a month prior, during the 17 October 2019 SMRC meeting, a motion of a similar nature (Bundarra Road) was presented to Councillors. Both motions for Werralong Road and Bundarra Road involved a track for acquisition by Council. However, having elected to “**remove themselves from a civil matter between the affected land owners**” in Motion 9.1.5 (Bundarra Road), Councillors then made the opposite decision for Motion 13.7 (Werralong Road) in November 2019.

I believe Motion 13.7 was conducted in a discriminative and inconsistent manner and not in accordance with Councillor obligations and responsibilities under the Local Government Act and the Model Code of Conduct. As pointed out by SMRC they, decisions made by Councils on access issues have been strangely inconsistent. It has resulted in *“historic disputes”* over legal and practical access, where some have remained *“unresolved for decades and have cost the public purse significant amounts of money”*.

### **LACK OF FINANCIAL JUSTIFICATION**

In SMRC’s presentation of Werralong Road in their meeting of 19 September 2019 (Motion 9.2.1), it clearly states, *“ . . . costs have not yet been determined... ”*. If costs had not been determined when sufficient time has elapsed to do so, then I believe Council is not sufficiently performing its role with asset management and maintenance schedules, workforce strategy, and long-term financial planning.

By passing Motion 13.7 in November 2019, Councillors have committed high expenditure with an unknown ceiling of debt. The resultant public road and bridge will cost tens of millions of dollars to - all with still no cost analysis. It is believed Council still does not have funding for this project.

There remains no indication of constructing this road on Council’s 2021-2022 Capital Works Program. I do not believe they have any funding for this major project, as there has been no estimates provided for this work, and the construction will need to include bridge, also estimated to be tens of millions of dollars.

### ***What “governance” is Snowy Monaro Regional Council operating under?***

In SMRC’s December 2020 meeting, Councillor Anne Maslin advised the public that Council *“effectively had no working capital”*. There has continued to be multiple references to Council’s lack of funding reserves throughout this year during Council meetings. What would be the point of acquiring a disused track, when: -

- a) It has not (since January 2015) and cannot be used given my neighbours have blocked its public and private access with large boulders at either end of this track across Lots 4,5,7, and 8.
- b) There is no capital to start such a project, which suggests a complete failure in project approvals and governance.
- c) No estimates have ever been provided for this multi-million dollar project.
- d) If a public road is built on the existing “track” used since January 2015, it would be far less distance (and cost) than acquiring “without consent” my disused track that hasn’t been used for over 6.5 year

In Council’s Leadership outcomes it includes, ***“decisions and actions are evidence based and justifiable”***. Where is the evidence to suggest this is “value for money” or even required? Along with a multitude of allegations and absent financial analysis, there is also suggestion of personal agenda affecting the eventual outcome, instead of acting in the best interests of our community.

Section 223 of the LGA provides that the role of the governing body is as follows:

- to ensure as far as possible the financial sustainability of the council, and
- to make decisions necessary for the proper exercise of the council's regulatory functions

I believe neither of these obligations under Section 223 has been complied with in regard to Motion 13.7 on the 21 November 2019.

Council's procurement and disposal activities are governed by strict considerations of **probity, transparency and accountability, as they involve expenditure of public funds for public purposes**. The cost of developing Werralong Road will be in the vicinity of tens of millions of dollars and yet I believe there is no provision for this development in Council's existing funding model.

Part of Council's resolution on the 21 November 2019 was under the basis that acquisition of Lots 4,5,7, and 8, was "*necessary*". This is absolutely not true, as current public access does not use this portion of track at all, nor has it since January 2015.

The September 2019 Council business paper, under Motion 9.2.1 states, "*Without Council assisting in this matter there is every likelihood that a business (Snowy River Cabins) will fold, a family may lose its home and the reputation of Council will deteriorate.*"

This exaggerated statement is totally inaccurate. The financial sustainability of this business does not rely on Lots 4,5,7, and 8 being acquired, nor does it solely rely on a public road being developed, when there is existing public access, re-routed by our neighbours. **I also note this motion was not classed as needing "confidential" status**. The SMRC General Manager should have been able to assess these inaccurate statements prior to submission to Councillors. It is unknown why such irrelevant material was used to support this motion. Equally, it is not known why Councillors themselves could not interpret these statements as unjustifiable "cladding".

#### **OF SENIOR OFFICIALS**

The statements on page 108 under Action No. 573 in SMRC's November 2020's Council meeting papers, now identify this issue involved NSW Deputy Premier John Barilaro, the State Member for Monaro and the Minister for Local Government, as well as the Office of Local Government (OLG). It states:

*"A&B An email was received from one of the landowners on Werralong Road attaching an email from John Barilaro's office dated 23 October [year not included]. The email from John Barilaro referred to a reply from the Minister for Local Government responding to correspondence from the landowner. The email inferred that the OLG has made a recommendation to the Minister to be considered in the near future."*

The update continues to state:

*"B The consent of the landowners to the gifting of land for Werralong Road through their properties was conditional upon Council receiving approval from the OLG to the acquisition without consent."*

I believe this indicates an inappropriate "deal" has been brokered between the Council and the neighboring properties for no beneficial reason to the ratepayer, as the track across Lots 4,5,7, and 8 has not been used for over 6.5 years.

A GIPA Formal Access Application was lodged with the Snowy Monaro Regional Council on 27 April 2021 seeking information regarding the email referred to above. Despite the intervention of the Information Privacy Commission (IPC), Council as at 29 June 2021 has not supplied the information requested.

A request was also sent to the Deputy Premier's Office seeking this information. The IPC is conducting a Review of the Office of the Deputy Premier's response. The Deputy Premier's Office stated the

“information is not held”, which is very difficult to believe considering emails I have sent directly to his office would have been part of this search.

The Office of the Deputy Premier used totally irrelevant search criteria to find the emails in question. I believe this to be deliberate as two of the search phrases were my name and email address – neither of which would have been included for emails outside of my knowledge. For example, it is totally bewildering why the Office of the Deputy Premier did not simply review emails from the date listed under Council’s Action 573, namely 23<sup>rd</sup> October for 2020, 2019, or 2018 (as it would be unlikely to be before that period).

There is clearly obstructive behaviour occurring to prevent me from viewing this vital information from the Office of the Deputy Premier and how Minister Barilaro is unnecessarily involved in this matter.

An ex-employee of both SRSC and Cooma-Monaro Shire Council (CMSC) is now the Mayor of Snowy Monaro Regional Council. He was also a Snowy River Shire Councillor and the employee responsible for previous decisions with applications along Werralong Road.

In a 2008 SRSC meeting, where he, as a Councillor, was present, overseeing a Werralong Road report, the motion states it was *“not contrary to the public interest”*. Yet the motion submitted in November 2019 was inconsistently carried in the “confidential” session and “already had been decided” in the pre-briefing meeting as advised to my partner and myself by the Mayor himself.

This man was the Environment Director of Snowy River Shire Council in 1989, when he signed off on the permit paperwork for the Snowy River Cabins (originally called “Lappi”). This is the business referred to earlier. I believe he should have declared a conflict of interest in all Werralong Road matters. To my knowledge he has never done so. The same Council individuals appear to have presided over this issue during the last three decades.

The previous SMRC Mayor accompanied by two other Councillors and two Police Officers visited our house on 19 January 2018. During this visit the Mayor made statements claiming:

- My partner had shot at neighbours, at vehicles and guests of our neighbours when he did not,
- The landowners (my partner and I) were the cause of Snowy River Cabins heading towards bankruptcy which is and was absolutely not true, and;
- The landowners had locked internal gates, thereby preventing access when we had not.

I am very confident in stating we have never been charged with any such offences.

The then Mayor later threatened on the 19 January 2018 that unless my partner tries *“to get Jenny to change her mind [re donation of land] to Council, then “Council has deep pockets [to go to court with]”*. Those “deep pockets” are actually funded by the Monaro community, so the tone, language used, and implied abuse of power is completely unacceptable.

This unwarranted and unreasonable behavior by the then Mayor was reported to Council's General Manager via letter dated 5 February 2018, but was never followed up by Council nor was a response received from Council regarding the actions of the Mayor and Councillors.

As already stated above, the current Mayor appears to have an extensive history, which cannot be regarded as separate or discrete, on the issues of Werralong Road and approvals provided along it. His involvement dates back to 1989, as the Director of Environmental Services, where it appears he was involved with the building permit of Snowy River Cabins, which was originally titled, "Lappi".

Council has full knowledge of the Werralong Road track being re-routed by our neighbours in January 2015. Council's solicitor from Walker Gibbs & King Pty Ltd, stated in his letter 31 October 2016, ref CW: 1h: 2016/305, that he was "concurrently representing seven of our neighbours, " and was provided with "facts" from two other neighbours, while representing Council at the same time in the Werralong Road acquisition process.

The same solicitor acting for Council in one of three letters dated **4 April 2017**, regarding the access issue along Werralong Road stated that:

*"Council cannot become involved in trying to settle the civil matter" and "As I have indicated, it is not Council's role to resolve the dispute".*

Yet in a letter from another solicitor of Walker Gibbs & King Pty Ltd to the Valuer General NSW, dated Wednesday **15 April 2020** with the reference: LH: 2016/070 states:

*"We act for Snowy Monaro Regional Council" and "We ask that the Valuer General commence preparation of the determination as to compensation in relation to the compulsory acquisition of Lots 8 and 10 from Ms Jennifer Downs".*

"We enclose

- 1 Copy plan of acquisition: DP 1245639: and
- 2 Document setting out relevant facts of which we ask to be taken into consideration."

The relevant "facts" put to the Valuer General in the letter from Walker Gibbs & King Pty Ltd, to be taken into consideration, were disputed. Nine of the ten points were shown to be completely incorrect, while point 3 was irrelevant, due to the other nine being incorrect.

The Minister for Local Government was advised these so-called facts were incorrect in an email dated 2 October 2020, under reference A719370. It appears the Minister has failed to take into her consideration, the incorrect information that was provided to the Valuer General by Council and their agencies.



## SMRC's GENERAL MANAGER

Feeling there was a complete failure to assess this situation fairly and in an unbiased manner, I sent to the General Manager and copies to all Councillors, a detailed complaint for consideration, dated the 8 October 2019. Although my partner and I met with the General Manager on the 4 November 2019, but he never resolved the complaint. Staff (usually the same individuals) of SRSC and newly amalgamated SMRC failed to do the same, as did the SMRC Administrator, to whom we also took our complaint.

The systemic issues with Werralong Road date back to the previous Snowy River Shire Council, where they approved Snowy River Cabins in 1989 **without access to a public road**. The SMRC's General Manager has not responded or investigated the concerns brought to his attention from this meeting, breaching the 21-day acceptable period, for concluding reasons in writing for his decision not to proceed, as per the Model Code of Conduct Procedures. In addition, Council has breached their own Complaint Management Policy, where they express a five working day response time.

The meeting held with the General Manager on 4 November 2019 with my partner and I contained no discussion regarding acquisition or resolution. He was only interested in another neighbour who wanted to travel through our property to gain access to his. We could not agree as we were locked in our selves. I offered access through an area that we had found available to us to use, but he did not want that because the neighbour would have to clear some country like we did.

Then, at the Council meeting 21 November 2019, the Mayor approached us during the dinner break at 7pm and stated that Council had ***"already decided to take our land at the Council pre briefing session."***

I believe this is a total breach of meeting practices and procedural fairness, under the Model Code of Meeting Practice for Local Councils. Clearly motions should not be carried outside of an official sitting Council sessions. As per the decision made during the Council meeting on 17 October 2019 for Bundarra Road (Motion 9.1.5), the General Manager should have recommended Council should ***"remove themselves from a civil matter between the affected land owners"***. There has been absolutely no consistency in decision-making from Council regarding Werralong Road and the motion above - a critical flaw in functional processes that will result in disrepute of our region.

## LEGISLATION

Councils were advised in Council Circular 15-09 that changes took place on 1 February 2015 to the land acquisition process for acquiring authorities in NSW. The Department of Finance, Services and Innovation Circular DFSI-2017-02 Improvements to NSW Land Acquisition Processes, sets out a number of operational requirements on acquiring authorities, which includes:

*"Landowners/residents are, and feel they were, treated fairly, with empathy and respect, and had the support and information they needed to manage the land acquisition process in accordance with the Land Acquisition (Just Terms Compensation) Act."*

**I do not feel I have been treated fairly, with empathy and respect, and supported through this process.**

The Land Acquisition Act 1991 (Just Terms Compensation), section 10A (2) states, *“The authority of the State is to make a genuine attempt to acquire the land by agreement for at least 6 months before giving a proposed acquisition notice.”*

This issue has needlessly dragged on for over six years. Council has **never** made any genuine attempt to acquire this land by agreement, nor was a face-to-face meeting ever held where the object was to discuss this agreement.

Snowy Monaro Regional Council failed totally to comply with the land acquisition process in any way, e.g. the Land Acquisition Act or the Property Acquisition Standards, in the compulsory acquisition of my property along Werralong Road.

Despite a number of letters sent to the Minister for Local Government, including one dated 24 August 2020 highlighting the failure of Council to comply with the requirements, the Minister approved this acquisition. What confused matters was that only three lots were approved in the first instar. In a letter from the Hon. Shelly Hancock, Minister for Local Government to the Hon. J D Barilaro MP, dated 3 March 2021 with reference A755526, it states:

*“On 1 February 2021, I provided my approval for Snowy Monaro Regional Council to issue Proposed Acquisition Notices to all land owners relating to Lots 4, 8 and 10 DP1245630. Council was subsequently notified of my approval.”*

It is unknown why this letter was sent to Minister Barilaro? What exactly is his involvement and why is he involved at all? It provides further evidence of undue influence with this acquisition and the seclusion of vital information about my property from me.

The Snowy Monaro Regional Council’s Chief Executive Officer, signed a Proposed Acquisition Notice on 5 March 2021, oddly using the title of “General Manager”, claiming the Minister had approved Lots 4, 5, 7, 8 **and 10** for acquisition, which (as above) was **not** true. This PAN was executed on 19 March 2021 through Council’s solicitors, Walker, Gibbs & King Pty Ltd.

A question would appear to be – Does the Chief Executive Officer title not have the delegation at this time to approve the recommendation of a land acquisition? Have the delegations not been updated from General Manager? Perhaps this title does not legally exist in general usage. Else why would he revert to the old title of General Manager?

Part of our request for a formal and independent investigation, includes signing a Proposed Acquisition Notice that contravenes section 187 of the Local Government Act 1993 and section 178 of the Roads Act 1993, in which both provide:

*“187(2) A council may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister” and*

*“178 (2) A council may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.”*

Section 439 of the Local Government Act provides, in part, that: *“Every Councillor, member of staff of a Council and delegate of a Council **must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.**”*

I do not believe Councillors, staff, and Council's agencies have acted honestly and exercised a reasonable degree of care and diligence in carrying out their functions on this issue, given the decisions 13.7 (Werralong Road) and 9.1.5 (Bundarra Road) were completely different.

#### **FURTHER QUESTIONABLE CONDUCT ALONG WERRALONG ROAD BY SMRC**

A Deposited Plan Administration Sheet DP 1244542 registered on 14 August 2018 for the purpose of subdivision (along Werralong Road), contains three signatures of the landowners, without the signatures having any dates as to when this document was purportedly signed, or the date it was it witnessed. According to two of the landowners they never sighted this document and one landowner stated he would never sign any document, which is authorised by the person from Council whose name appears on that document.

This deposited plan administration sheet spans an eleven year period (from the survey completed in 2007) with an endorsement date of 8 July 2013, which presumably is the date that the subdivision certificate SC0002/2014 was issued. There are two Mortgages T740397 and 5225661 from WESTPAC crossed out, which both I and the other owners do not know how these are related.

Council sent a letter dated 9 July 2014 Trim Ref: ED/14/26987 to one of these landowners stating: "If Council does not hear from you within the next 14 days, it will be forced to proceed to acquire the land by compulsory acquisition under the Land Acquisition (Just Terms Compensation) Act 1991." I understand the landowner involved did not sign as requested. Therefore I am unaware if SRSC acquired the land and whether gazettal of the road is valid, if the Minister has not approved the acquisition.

#### **CONCLUSION**

The issue of Werralong Road has clearly prolonged for an extensive and unacceptable period of time, using unjustifiable amounts of Ratepayer's funds. Even though it has remained a "live" issue for over thirty years, significant paperwork and the reasons for properties sold along the track, known as Werralong Road, have oddly been either archived or lost (or conveniently forgotten).

It is my understanding this acquisition of the track across my property has now been forwarded to the Governor for final consent, so the track across our property that has not been used for over 6.5 years and blocked off by our neighbours, can be gazetted as a Council road for one business (namely Snowy River Cabins), without SMRC complying with the requirements for land acquisition.

I believe there is a grave injustice occurring with Council's proposal to acquire Lots 4,5,7,and 8 "without consent". This entire issue is about construction of a public road that is fair to all owners on surrounding properties. It may also resolve public liability concerns. However, a fair process has clearly **not** occurred, ie there is absolutely no requirement to acquire Lots 4,5,7,and 8.

It appears SMRC is attempting to correct an inherited problem that has existed for over three decades, i.e. the SRSC building permit of "Lappi", following approvals of Werralong Road, and in 2004, "*As a condition of development approval, all development within Snowy River Shire must have direct access to a Council maintained public road*". This was **not** enforced and our existing Mayor must be fully aware of this.

Given the extensive history on this issue, there is clearly a preposterous agenda to acquire Lots 4,5,7,and 8 with a fruitless "win at any cost" attitude. The update to Action 573 in SMRC's November 2020's

Council business paper, states that, *“The consent of the landowners to the gifting of land for Werralong Road through their properties was **conditional** upon Council receiving approval from the OLG to the acquisition without consent.”* I believe this indicates an inappropriate “deal”, which does not reflect effective and efficient government.

I do not believe Council should be involved in this issue, as advised by Council’s solicitor in 2017. The disused track across Lots 4,5,7, and 8 has **not** been in use since January 2015. It is an absolutely pointless acquisition, when the **existing public access route does not pass through these lots**. This existing route was designed and re-routed by our neighbours. Therefore in “fairness”, there is no requirement for the acquisition of Lots 4,5,7,and 8. Council appears to be stubbornly immobilised on a defunct motion from the previous Snowy River Shire Council in September 2015, which also does not specify the route across our property, but rather the one established by the neighbours on their property in January 2015, which had been for nine months “the current track”, as detailed in the Council decision. Since then, “the current track” has been mentioned in each attempt to take my land when this track still proceeds through the neighbors’ property. This no longer retains any value for reasons already stated.

There has **never** been any attempt by Council to communicate one on one with me, the owner of this property, about this acquisition.

As an outcome I seek:

- Presentation to the Governor to formally and independently investigate this very serious matter from end to end before she gives final approval to the acquisition.
- As per the decision made during the Council Meeting of 17 October 2019 for Bundarra Road (Motion 9.1.5), Council remove itself from a decision that should have remained a civil matter between affected land owners and never again should Council revise this issue.
- Immediately discontinue the acquisition of Lots 4,5,7, and 8, with the exception and compensation for Lot 10 by agreement only, as per legislation and the Local Government Act).
- Apologise for the trauma and unwarranted stress they have caused my partner and I, by involving themselves in a dispute that has only been aggravated by their unnecessary involvement and perceived abuse of power.
- Compensate me for the long-term and completely unnecessary stress, gross misconduct, discrimination, intimidation and reimburse the financial costs I endured throughout this indefensible process.

Anything else would be a lack of procedural fairness, which may result in the public’s losing confidence in the probity of Council decision-making and (no doubt) a very time-consuming, expensive, and exposed legal battle, which could have been very easily avoided by Council.

I believe Council is trying to get my acquisition finalised before this Council’s term is finalised in early September 2021.

I am sending a copy of this submission to the Valuer General and the Governor of NSW for their information.

I thank you for your time and decision to run this investigation.

Yours sincerely,

Jennifer Downs

## APPENDIX

### NOTED

In media release 17 March 2021, INQUIRY INTO THE ACQUISITION OF LAND, Ms Boyd added: "We want to ensure all processes in place during direct negotiations with landholders are fair, unbiased and equitable, especially during the compulsory acquisition process" and "The inquiry will also look at the response of government agencies to the Russell and Pratt Reviews into the Land Acquisition (Just Terms Compensation) Act 1991 and if further legislative measures are required."

One of the main flaws in the acquisition process, is that I have no knowledge of the material the Acquiring Authority has submitted to the Minister or the Office of Local Government to support their claim that the requirements of the Just Terms Act and the Standards have been complied with. No signature from the landowner is required that he/she has seen the acquiring authority's reasons, or has been spoken to about these reasons.

### RECOMMENDATIONS

The following summaries are some important points that are derived from our experience of the Werralong Road issues and decisions by Council. These submissions are:

1. **All** authority (e.g. Council) projects must follow strict guidelines of project briefs and business cases for major projects, as should be the case for Werralong Road. This includes acting in the public's best interests.
2. The business case and project's execution **must** follow the official principles of property acquisition, best practice delivery, and robust project governance, not what an authority believes these to be.
3. Decisions for approval of major projects **must** :
  - a. **First** - be based on whether the authority has the funds readily available. If not, the project is automatically stopped and disbanded. If the costs are provided by re-organising the delivery program then this must involve community consultation (not the current pathetic form of consultation that the authority provides).
  - b. **Second** - be based on whether the project can be achieved within the authority's delivery program. If not, it would be totally irresponsible and inappropriate to commit an incoming electoral base to expenditure, with which they may not agree. "They", means the Ratepayers of that community to whom the electoral base are accountable.
  - c. **Third** - be based on fact, merit, clear financials, and within the delivery program, including the authority's Capital Works Program.
  - d. **Forth** – cannot be influenced by senior Government officials (such as Deputy Premier's, Ministers, etc) or personal agendas, etc. They **must** follow the established rules within the Model Code of Conduct.
  - e. **Fifth** "Deals" or "gifts" or "trades" cannot be part of the land acquisition process. This must include a project's cost/benefit analysis, where a landowner may be forced into

acquisition “without consent”. The project **cannot** be approved unless all landowners “consent”.

- f. **Sixth** - an authority must not enter into a civil matter, e.g. the attempt to resolve matters involving a track through various properties to a public road. The project **cannot** be approved unless all landowners “consent” to their portions of their land being acquired for the benefit of the project.
4. There **must** be a process for complaint / objection and escalation established by the State Government, to an area which has complete independence and thus removal of potential unruly influence. Once the complaint is lodged, the project (regardless of size and cost) is halted until that investigation has concluded. It is clear the OLG and the Minister’s Office of Local Government have dramatically failed in both the proper investigation and management of Werralong Road, Snowy River Shire Council, and Snowy Monaro Regional Council.
5. Severe **penalties** need to be introduced for authorities, public servants, and their agents who have been proven to be acting unprofessionally. This may include employment termination, referral to ICAC and potential liability to repay legal fees borne by the applicant, due to their involvement.
6. The **removal of “confidential”** items with the authority, their meetings, and discussions must be enforced. This is to ensure authorities **do not abuse** the ability for affected parties to access vital information. The only exception for this would be a contract currently under consideration or tender, whereby that tender would be deemed invalid by the disclosure of relevant information. Once that tender period has passed, it must be on the public record and accessible.
7. Any **affected landowners must be provided all of the information** immediately regarding a decision to acquire their land or part thereof, if the project involves land acquisition. All acquisition processes **must** strictly follow the official guidelines, processes, and procedures as outlined by the State. This does not remove the landowner’s right to complain or contest the decision.
8. Legislation be introduced whereby the landowner involved is given written copies of all correspondence between the Council and the OLG. At present, the actual process is not openly available to the landowner.
9. All authorities **must** keep decisions consistent and maintain policy. They cannot decide to maintain policy for one project, but then apply a decision based on a personal agenda for another, e.g. the authority must not involve themselves in civil matters.
10. All authorities **must not** consider motions, which have no detailed cost analysis indicating the impact on their budget, asset management, maintenance schedule, and workforce strategy.
11. All authorities **must** update their constituents on a monthly basis with a Statement of Accounts, including a detailed general ledger report illustrating expenditure items.
12. Where the authority is a Council, their General Manager (or alternative position, e.g. CEO) **must** scrutinize motions prior to sitting before Council, particularly if they result in a major project of work. Failure to do so may result in an employment breach of contract or formal warning. This

is designed to prevent personal agendas, statements not based on fact, poorly constructed cost/benefit analysis, business case rationale, etc being submitted to Councillors.

13. Any authority, where it has been proven, that misuses Police or judicial systems to their advantage, **must** be formally addressed as a question of law.
14. Any authority, whereby a senior official or Councillor accepts or encourages influence of private interest or conflict whilst carrying out official duties, the improper presence of individuals during prolonged problems, misuse of position or power to obtain an outcome that is not in the general public interest or is discriminatory, evidence of intimidation, and harassment or bullying behavior will be deemed a breach of their Code of Conduct and may result in immediate termination of that individual's position.

There **must** be an investigation into that individual's involvement up to the time it is known such behaviour exists, which may result in the same outcome. Any senior official or Councilor who was aware of the behaviour and fails to report it, **must** suffer the same fate.

14. Any authority, whereby a senior official or Councillor wrongfully accuses a member of the public will be deemed a breach of their Code of Conduct and may result in immediate termination of that individual's position.

There **must** be an investigation into that individual's involvement up to the time it is known a false claim exists, which may result in the same outcome. Any senior official or Councilor who was aware of the false accusation and fails to report such an issue, **must** suffer the same fate.

15. Any authority, that is a Council, **must** adhere to Section 439 of the Local Government Act at all times, i.e. *"Every Councillor, member of staff of a Council and delegate of a Council **must** act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions"*. Where it is proven that individual or those individuals did not, it must result in immediate termination of employment of any involved persons.

## ATTACHMENTS

1. Minutes of Motion 9.1.5
2. Minutes of Motion 13.7
3. Business Paper of Motion 9.2.1