

**Submission  
No 72**

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

**Organisation:** Sydney Helicopters Pty Ltd, Heliport Developers Pty Ltd

**Date Received:** 2 July 2021

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2 July 2021

The Chair  
Acquisition of Land in relation to Major Transport  
Projects Inquiry  
Legislative Council of NSW

***Privileged and Confidential***

Dear Chair,

**Compulsory acquisition of leasehold interests of Sydney Helicopters Pty Ltd and Heliport Developers Pty Ltd in 25 Wentworth St, Clyde**

We act for Sydney Helicopters Pty Ltd (**SH**) and Heliport Developers Pty Ltd (**HD**) in relation to the compulsory acquisition of their interests in the land at 25 Wentworth St, Clyde (**the Property**) for the purposes of Sydney Metro West. Our clients' claims for compensation have not yet been determined and are currently with the Valuer-General.

Our clients, via their director Mark Harrold have instructed that we make a submission to the Inquiry. The submission focuses on the deficiencies in the process set out by the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**the Act**) as implemented by Sydney Metro up until the determination of compensation stage. Our submission does not seek to criticise the processes adopted by the Valuer-General or the contract valuer making the determination pursuant to s. 41 of the Act.

**Documents Enclosed**

1. Please find enclosed with this submission the following documents:
  - A. Statement of Mark Harrold, director of SH and HD and owner of the Sydney Helicopters Business;
  - B. Email correspondence from Sydney Metro to our clients at the start of the "negotiation" process pursuant to s. 10A of the Act;
  - C. Photos demonstrating the essential services that our clients provide to the people of NSW (for further information please see [www.sydneyhelicopters.com.au](http://www.sydneyhelicopters.com.au)); and
  - D. Letter from NSW RFS regarding the relocation of our clients' business to Penrith Lakes

**Summary – Business**

2. The Property is owned by the Parramatta Granville Sportsground Reserve Trust. The Trust has not operated since being placed into administration in 2014;
3. Mr Harrold has run the SH business from the Property since 2007. HD had until 30 June 2026 to run on its lease and prior to the notification of the acquisition was in advanced negotiations with the Department of Planning, Industry and Environment to secure a new, long-term lease at the Property;

4. The SH business is a dual-stream business. One stream provides charter flights, general tourism flights and film-work. The vast majority of this work is, logically, centred on Sydney Harbour. The other stream of work is the “essential services” stream. This involves aerial firefighting, flood relief, power line work, water sampling, national parks and wildlife surveys amongst others;
5. In the 2019/20 bushfire season, SH flew over 4,300 hours and dropped over 42,000,000 litres of water in the firefighting effort. It was the largest private provider of rotary-wing firefighting support in that devastating fire season;
6. In the recent floods in NSW, SH deployed a number of its fleet for over 3 weeks, assisting the SES with surveying and rescue operations;

#### Summary – Acquisition Process

7. Our clients were first informed of the proposed acquisition by Sydney Metro on 21 October 2019;
8. On 23 October 2019, Sydney Metro met with Mr Harrold and his wife to discuss the proposed acquisition and the desire to relocate the businesses. In that meeting, Sydney Metro “undertook” to seek alternative locations to relocate the businesses to (**email enclosed**);
9. Sydney Metro indicated very early in the process to Mr Harrold that it required possession of the Property by 1 July 2021. From that point in time, our clients’ sole focus has been on:
  - a. Identifying an appropriate site to relocate to; and
  - b. Facilitating that relocation
10. In Mr Harrold’s view, the clear indication from Sydney Metro from the outset of the process was that:
  - a. It understood that the businesses needed to be relocated and committed to facilitating that;
  - b. It understood that any relocated Heliport needed to be built to 2021 standards and regulations (**email enclosed**); and
  - c. That the Property was home to the only Heliport of its kind in Sydney and locating a new site to relocate to would be a challenge
11. To assist our clients to facilitate the relocation, Sydney Metro proposed a “deed of advance payment” be entered into between the parties to allow for the timely reimbursement of consultant’s costs. This suggestion was welcomed by our clients, and over \$350,000 in consultant’s costs were approved and reimbursed by Sydney Metro pursuant to the deed;
12. In about February 2020, our clients identified a property at Old Castlereagh Rd, Castlereagh, part of the Penrith Lakes Development Corporation land (**the PLDC Site**) as being suitable to relocate to;
13. From about March 2020, our clients focus has been on relocating to the PLDC Site. Sydney Metro were made aware of the site identification in March 2020;
14. In early April 2020, after being informed by Mr Harrold that support from DPIE would be required to facilitate a smooth relocation to the PLDC Site, Sydney Metro provided us with the contacts of senior officials within DPIE who could provide guidance and support to Mr Harrold and the town planners he had engaged;
15. Over the next few months, discussions continued between Mr Harrold, Sydney Metro and DPIE about the relocation to the PLDC Site;
16. In late July 2020, we submitted a “claim outline” to Sydney Metro and its lawyers, Ashurst. The claim outline set out what we believed our clients were entitled to pursuant to the Act. It did not set out specific amounts, rather the categories of compensation. The claim outline was based on a relocation to the PLDC Site. This step was taken to begin negotiations with Sydney Metro regarding compensation for relocation;
17. In Mr Harrold’s view, from the time the claim outline was received, the attitude of Sydney Metro changed immediately. Sydney Metro was no longer interested in assisting the businesses relocate to the PLDC Site;
18. On 9 September 2020, Sydney Metro made an offer of compensation to our clients of \$882,450. The offer was made on the basis of the extinguishment of our clients’ businesses;
19. On 11 September 2020, Sydney Metro convened a meeting with Mr Harrold. The 9 September 2020 offer was formally withdrawn at that meeting. Sydney Metro indicated that

- it had not properly understood our clients' claims for relocation and that it now required an 8-week period to gather further information and respond to our claim outline. This was further extended to 30 November 2020;
20. During the intervening period, we provided a significant amount of information to Ashurst regarding our clients' business and the relocation. On numerous occasions we requested that experts from both sides meet on a without prejudice basis to discuss their relevant field of expertise. Sydney Metro did not agree to this. Sydney Metro refused to tell our clients who their experts even were until 30 November 2020;
  21. On 30 November 2020, Sydney Metro made a further offer to our clients. The offer was for \$1,820,075 on an extinguishment basis or \$2,168,075 on the basis of a relocation to Bankstown Airport. No relocation to the PLDC Site was even considered;
  22. Our clients attempted to continue negotiations with Sydney Metro but attempts proved fruitless;
  23. Our clients' claims for compensation pursuant to s. 26 of the Act were submitted to the Valuer-General on 19 February 2021;
  24. Our clients' interests in the Property were compulsorily acquired on 19 March 2021;
  25. Our clients are yet to receive a determination of compensation from the Valuer-General.

### Particular Issues

26. In our clients' view, the negotiation process contemplated in s. 10A of the Act is not fit for purpose in matters such as this. It may work for smaller, residential property claims, where 2 valuers have competing views about comparable sales and have arrived at valuations 12% apart. However, these claims were always going to be extremely complicated;
27. In our clients' view, one of the driving forces behind the process not being fit for purpose is the attitude of the acquiring authority. In this case, Sydney Metro made it very clear to our clients that they were committed to finding a suitable replacement property for them to relocate to and facilitating that relocation. Our clients took that at face value. When the PLDC Site was identified, our clients assumed that Sydney Metro would be pleased that a site had been found and relocation could be achieved;
28. In our clients' view, the attitude of Sydney Metro has hampered our clients' efforts at every turn. Each case should be examined on its merits and our clients have not requested "special treatment". However, it should have been considered by Sydney Metro that our clients provide essential, life and property saving services to the people of NSW. This was not taken into account and in our clients' view, Sydney Metro have sought to make relocation difficult;
29. Compensation for reasonably incurred expenses in connection with the relocation of a person or business is specifically mentioned in s. 59 (1) (c) of the Act. Assessing compensation for relocation should always be the priority of an acquiring authority, particularly when a business is not only extremely profitable (and growing) but also provides a public service. In our clients' view, this has not occurred in this case;
30. The elongation of the process by Sydney Metro has caused great distress for Mr Harrold, his family and his staff. In our clients' view, Sydney Metro's conduct has risked Mr Harrold being unable to provide the essential services work this coming fire season. In his view, had Sydney Metro engaged in good faith negotiations with our clients at the outset, he would have already completed his relocation to the PLDC Site and be readying the business for the upcoming fire season.

### Conclusion

31. Mr Harrold's statement, although drafted to accompany the s. 26 claim of our clients, adds more detail to the points raised above;
32. It is clear that in the case of the acquisition of businesses with leasehold interests, the current process does not cater for complex relocation claims to be solved simply and efficiently;
33. The Inquiry should examine changes to the process that allow for:
  - a. Relocation to be the "assumed" compensation assessment method for acquired businesses;
  - b. Meetings or "hot tubs" of experts from both sides *early* in the process to identify the issues in dispute;
  - c. The requirement for *bona fide* negotiations to take place between the parties; and
  - d. A mechanism for mediation prior to entering the determination process

34. The implementation of the above would facilitate the timelier resolution of business relocation claims;
35. Mr Harrold would be pleased to speak with the Inquiry further about his experience. His details are included in the submission form.

Yours faithfully

Adrian McMillan  
Associate  
**SLATER AND GORDON**

Photos over page

2019/20 Fire Season – SH Bell 412



2021 Floods

