

**Submission
No 73**

INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

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NSW Government Submission

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

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1.1 Introduction

The NSW Government acknowledges that property rights are fundamental rights.

It does not approach potential property acquisitions lightly and will only do so where there is a significant benefit to the broader public. The NSW Government also recognises that land acquisition for the purposes of public infrastructure can be a difficult and complex experience for landowners, residents, and businesses.

Land acquisition for essential infrastructure purposes is an important step in the delivery of critical infrastructure, particularly in light of the State's growing population and government's duty to provide essential services to its citizens.

It is equally important, however, that land acquisition for these purposes is fair and transparent and contains the necessary checks and balances. A fair and transparent process ensures that landowners can make informed decisions, are provided with enough time to seek advice and negotiate with acquiring authorities and are properly engaged and supported throughout the process.

The NSW Government's position is to strike a balance between the property rights of landowners and the public good derived from essential public infrastructure.

The NSW Government welcomes this Parliamentary Inquiry and looks forward to considering its recommendations.

1.2 Background

1.2.1 The property acquisition process

The NSW Government makes the best use of existing state-owned land to build new infrastructure and public facilities. However, the complexity and extent of these projects means that it is often necessary to acquire some privately owned land. This process may also involve partial land acquisitions for power lines, sewerage or water, or temporary acquisition of easements to enable access to construction sites. In most cases acquisition of the land includes any buildings or other improvements on the land.

Consultation is generally carried out with the community as part of the development of a major project. Once a preferred design, route or location for the project is determined, the agency responsible may identify properties that need to be acquired to deliver the project.

Government agencies, some state-owned corporations, and local councils have authority to acquire private land for public infrastructure or facilities. These agencies are referred to as acquiring authorities.

The *Land Acquisition (Just Terms Compensation) Act 1991* (the "Act") is administered by the Minister for Housing and Property and was last amended in 2017. It prescribes the procedures a government agency must follow in order to acquire land from a landowner, as well as the principles for determining compensation on just terms.

The NSW Government's key objective is to acquire land by agreement with the landowner. The property acquisition process has been designed to be fair, easy to understand, and transparent for those affected. It provides landowners with comprehensive support throughout the process.

The Act encourages acquisition of land by agreement. The objects of the Act are to:

- Provide a statutory guarantee that the amount of compensation for land acquired will be not less than the market value at the date of acquisition;
- Ensure compensation on just terms for landowners whose land is acquired;
- Establish procedures which simplify and expedite the acquisition process;
- Require an authority to acquire land designated for acquisition for a public purpose where hardship is demonstrated;
- Encourage the acquisition of land by agreement instead of by compulsory process.

During the acquisition process, the acquiring authority will instruct an independent valuer to inspect the property. The valuer will determine the market value of the property and any additional compensation payable will also be determined. Landowners are also encouraged to obtain their own valuation from an independent valuer. The reasonable costs of this will be covered by the acquiring agency.

If the acquiring authority and the affected party cannot reach an agreement on the amount payable, the property may be acquired compulsorily under the Act. The acquiring authority commences this process by issuing a Proposed Acquisition Notice (PAN) to the property owner and advising the Valuer General. Following the expiry of the PAN period, the property will be compulsorily acquired through gazettal and the Valuer General will independently determine the amount of compensation payable.

Over 80% of government acquisitions of private land, purchased for vital public infrastructure, are achieved through agreement between the landowners and the acquiring authority on an independent market valuation of the property. Any additional compensation is also determined through the negotiation process. Less than 20% of acquisitions proceed to compulsory acquisition, which occurs when the acquiring authority and the landowner are unable to agree on land valuation and compensation.

1.2.2 The Russell and Pratt Reviews

A Review of the Land Acquisition (Just Terms Compensation) Act 1991 undertaken and released in 2014 by David Russell SC recommended several amendments to the Act and to the property acquisition process to ensure that it adequately supports participants.

A subsequent review entitled Housing Acquisition Review was undertaken by the then Customer Service Commissioner, Michael Pratt AM and released in September 2016 to improve the manner in which the NSW Government deals with residents. The Pratt Review also made a number of new recommendations, such as the establishment of the Centre for Property Acquisitions (CPA) and the Property Standards Group (PAS), and amendments to the administrative process.

Both these reviews were undertaken with the objective of delivering a fairer, more transparent, more equitable land acquisition process for landowners, while improving consistency and accountability of government agencies engaged in the acquisition of private property.

In the October 2016 NSW Government Response, the NSW Government supported most of the recommendations in the Russell Review and made several amendments to the Act as a result. The

NSW Government Response also immediately undertook work in response to the Pratt Review to improve the property acquisition process by developing circulars and certain guidelines, and by establishing the Centre for Property Acquisition to provide a whole-of-government approach to supporting landowners through the acquisition process. A full list of the Government's response to each of the recommendations of the Russell and Pratt reviews is attached (**Attachment A**).

1.2.3 Role of the Centre for Property Acquisition

The CPA is a whole-of-government entity which is responsible for overseeing the acquisition process and training managers and support personnel, with an emphasis on meeting landowners' needs and proactively providing advice and assistance. It is currently located within Transport for NSW.

The CPA model was established in response to feedback from citizens about improving and simplifying landowners' experiences throughout the property acquisition process. Improvements include providing the landowner with a single point of contact (a Personal Manager) and ensuring high levels of service, consistency of message, and resident empowerment.

The Personal Manager provides support throughout the length of the process, from the time landowners are first contacted about a property acquisition through to when the purchase of the property is complete. If the property owners also require assistance with relocation, then the Personal Manager will also help them to find and settle into a new home.

Information provided by the CPA is designed to help people to understand what to expect during the property acquisition process. It is not intended to replace legal or expert advice. The CPA recommends that people affected by the compulsory acquisition process obtain their own advice from an independent valuer and a lawyer. The reasonable costs of these services are covered by the acquiring authority.

More information is available on the Centre for Property Acquisition website at: www.propertyacquisition.nsw.gov.au

Role of the Valuer General

The Valuer General is an independent statutory officer appointed by the Governor of NSW to oversee the State's land valuation system. The Valuer General reports to Parliament through the Joint Standing Committee on the Office of the Valuer General (JSCOVG). The Valuer General's functions are primarily set out in the *Valuation of Land Act 1916* and the *Land Acquisition (Just Terms Compensation) Act 1991* and include:

- Setting the standards and policies for the land valuation system and the determination of compensation in the compulsory acquisition process;
- Monitoring the quality of the land values and services provided to the community by Valuer General NSW; and
- Providing professional leadership and stewardship to the valuation industry.

The Valuer General becomes involved in an acquisition when a landowner has not been able to reach an agreement with the acquiring authority on the amount of compensation to be paid and the property is acquired compulsorily through gazettal. The *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) requires the Valuer General to independently determine the appropriate amount of compensation due.

The Valuer General maintains an open and transparent valuation process which ensures just compensation for the acquisition of land. The Valuer General performs his functions independently

and provides both parties an opportunity to make a submission to ensure that the determination is informed by all relevant information and that both parties have an adequate opportunity to respond to any issues raised. The Act outlines the heads of compensation that the Valuer General must use to determine compensation.

The Valuer General has a long history of providing impartial valuations and determinations to landowners. The Valuer General is, nevertheless, committed to innovation and improvement. Following the Russell and Pratt reviews, the Valuer General implemented several improvements as recommended by the JSCOVG.

The Valuer General continues to maintain a strong focus on implementing measures designed to provide a fair, transparent, and accessible valuation system, including:

- Review, redesign and implementation of a new valuation review mechanism (objections) and compulsory acquisition process (not yet implemented) to ensure alignment with the *Valuation of Land Act 1916* and the *Land Acquisition (Just Terms Compensation) Act 1991*;
- Publishing several reviews aimed at understanding the impact of significant and emerging issues on land values, including the *Review of the impact of rezoning potentiality on land values (2021)* and the *Review of the impact of COVID-19 on the NSW property market (2020)*;
- Improved information access, including adding information on land values and the valuation system, as well as trends and median or typical land values for each local government area to the Valuer General's website to help landowners understand the basis of a land valuation;
- Connecting with multicultural communities through translation of State-wide media releases into the top five culturally and linguistically diverse (CALD) languages for distribution to multicultural media outlets; and
- Independent evaluation of customer surveys in 2020 to develop a simpler suite of feedback mechanisms to measure customer service experiences more accurately and translate findings into improvements more readily.

These initiatives have made it easier for landowners to understand the basis of a land valuation and enabled landholders to provide the Valuer General with the information and data necessary to determine whether an objection can be supported. This has resulted in improved transparency and timeliness of the objections process, an overall reduction in the number of objections to land valuations and a decrease in the number of court appeals.

1.2.4 Role of the Land and Environment Court

A landowner may choose not to accept an offer of compensation made by the acquiring authority. In such a case, the landowner can appeal to the NSW Land and Environment Court (Court) for a review of the amount of compensation they have been offered.

The application to the Court must be lodged within 90 days of the compensation notice being issued by the acquiring authority. The applicant must give the acquiring authority notice in writing that they have begun proceedings in the Court.

The applicant and the acquiring authority will provide evidence about entitlement to and quantum of compensation. In nearly all cases, the Court will arrange a conciliation conference between the parties under section 34 of the *Land and Environment Court Act 1979*. That conciliation conference will be conducted by a commissioner of the court usually with knowledge and experience in the law and practice of land valuation. The purpose of the conciliation conference is to assist the parties to resolve the claim for compensation without the need for a hearing.

The Court has published a formal document that sets out the Court's practice and procedure for proceedings involving claims for compensation by reason of the acquisition of land. This is called the Practice Note - Class 3 Compensation Claims.

The Practice Note explains the steps that need to be taken before the first direction hearing, at the first direction hearing, at the pre-trial mention, before and at the final hearing, and opportunities for conciliation, mediation and other means of resolving the proceedings without incurring the time and costs of a full hearing.

If the case does proceed to hearing, the amount of compensation determined by the Land and Environment Court could be more or less than the amount of compensation originally offered by the acquiring authority.

A party may appeal against an order or decision of the Court determining a claim for compensation for the acquisition of land on a question of law. If the order or decision was made by a commissioner, the appeal is made under section 56A of the *Land and Environment Court Act 1979* and is heard by a judge of the Court. If the order or decision was made by a judge, the appeal is made under section 57 of the *Land and Environment Court Act 1979* and is heard by the NSW Court of Appeal.

1.2.5 Property Acquisitions to Date

There are currently more than 60 statutory and government entities which have the authority to acquire land. Local councils are also able to acquire land under the *Local Government Act 1993* and the *Roads Act 1993*. Most land and property acquisitions are undertaken by transport agencies (Transport for NSW, Sydney Metro and the former Roads and Maritime Services). Health Infrastructure, Sydney Water, and the Office of Strategic Lands (Department of Planning, Industry and Environment) along with other government agencies also undertake acquisitions when required.

A total of 1,021 acquisitions have been completed between 1 July 2017, and 30 June 2020. Of these acquisitions, 666 have been by agreement and 120 have been acquired compulsorily under the Act. A complete overview of property acquisitions from the 2017/18 financial year to the 2019/20 financial year is provided in Table 1 below.

Table 1: Number of property acquisitions by acquiring authority from FY2017/18 – FY2019/20.

Agency	By Agreement	Compulsory Acquisitions	Hardship Acquisitions	Government Acquisitions	Total
RMS	490	58	20	70	638
Sydney Metro	24	12	0	1	37
Health	51	12	0	26	89
TfNSW	55	16	0	38	109
Local Councils	15	18	15	46	94
Strategic Lands	21	1	0	11	33
Sydney Water	10	3	0	8	21
Total	666	120	35	200	1,021

Source: CPA annual reports 2017/18, 2018/19 and 2019/20.

More information on the number and type of acquisitions made over the last three years to 30 June 2020, including types, property use, and locations is available on the CPA website at: www.propertyacquisition.nsw.gov.au/data

1.2.6 Hardship Provisions

An acquiring authority may designate land for future acquisition for a public purpose, even though it may not need the land for some time. Owners of these lands can apply for early acquisition under section 23 of the Act. To apply for early acquisition, owners must be able to show that they would suffer hardship if the acquisition of the land is delayed.

'Hardship' is defined broadly in the Act as not being able to sell the land - at all or at market value - because of its designation of land for acquisition for a public purpose, and it has become necessary for the landowner to sell because of pressing personal, domestic or social reasons, or to avoid a loss of income.

Applications for hardship acquisition are made to the relevant acquiring authority using a *Notice Requiring Acquisition of Land* form available from the Centre for Property Acquisition website.

If the acquiring authority rejects the application for hardship and early acquisition or it does not respond within 90 days, the applicant can seek an independent review of the application. The request is referred to one of a panel of independent reviewers appointed by the Minister for Water, Property and Housing under the Act to conduct an independent review. This quasi-judicial panel was established on 20 April 2017.

A total of eight applications have been considered by this panel since its inception, with four decisions upheld (in favour of the acquiring authority), two decisions overturned (in favour of the applicant), one application withdrawn and one application pending (awaiting further information).

Response to the Portfolio Committee Terms of Reference

A. The response of agencies to the Russell and Pratt Reviews into the Land Acquisition (Just Terms Compensation) Act 1991

The NSW Government released a joint response to the 'Review of the *NSW Land Acquisition (Just Terms) Compensation Act 1991*' (the Russell Review) and the 'Housing Acquisition Review' (the Pratt Review).

The NSW Government response to the Russell and Pratt reviews sought to deliver a fairer, more transparent, and more equitable land acquisition process for landowners, while improving consistency and accountability of government agencies engaged in the acquisition of private property.

The Russell and Pratt Reviews made a total of 40 recommendations concerning the acquisition of land by government, which were accepted in full by the Government. The majority of the government's commitments have been delivered or are ongoing and are monitored for continuous improvement as detailed in **Attachment A**.

The establishment of the Centre for Property Acquisition as a whole-of-government entity to oversee an agreed and consistent process of property acquisition was a key initiative resulting from the review.

The legislative amendments proposed in the NSW Government response were intended to strengthen the Act in relation to a number of key areas including:

- transparency and fair process
- recognising the stress and discomfort in having to move
- recognition of hardship and provision of review mechanisms
- provision for reinstatement of properties which may have no market value (eg a church hall)
- changes in the conditions of occupation after compulsory acquisition, including the removal of the requirement of a former property owner to pay rent to an acquiring authority for up to three months
- providing property owners with first right of repurchase if the acquired property is no longer needed.

Responsibility for implementing the recommendations was shared between Transport for NSW and the (then) Department of Finance Services and Innovation (DFSI).

In 2017 the Centre for Property Acquisition (CPA) was established (based in Transport for NSW) with a whole-of-Government remit to coordinate the implementation of the improvements arising out of Government's response to the Reviews. The CPA is responsible for ensuring:

- all government agencies have access to consistent property acquisition standards, processes and guidelines;
- property owners, residents and businesses are dealt with in a respectful and empathetic way;
- continuous improvement; and

- consistency of approach across agencies in lifting capability across the sector.

The Government also established Property Acquisition Standards team in DFSI which developed a number of standards (the Standards) which Government agencies acquiring properties for infrastructure projects are required to meet. Further to the Standards, the CPA has published a set of Minimum Requirements, providing information and processes that help to ensure interactions between acquiring agencies and residents are consistent across NSW.

Key property acquisition data is collected from NSW acquiring agencies and published on the Property Acquisition NSW website, as a means of monitoring performance and providing the public with transparency and accountability on property acquisitions across NSW.

Other significant parts of the reforms include:

- Minimum six-month negotiation period to provide residents with more certainty and time to understand the process (In urgent cases this period may be shortened in accordance with the provisions of the Act);
- Compensation for disturbance as a result of relocation is currently \$81,762 as of 1 July 2021. It increases every year following annual CPI indexation.
- Creation of the Personal Manager role in acquiring agencies to provide residents whose property is being acquired with a single point of contact for the acquisition;
- Offering a free counselling service for residents directly affected by the acquisition process;
- Providing access to the public on acquisition process and data including:
 - Delivery of a public facing website setting out residents' rights and the compulsory acquisition process (from the launch in 2017 until January 2021, it had been accessed by more than 22,000 unique users); and
 - Providing a range of publications including guides for non-English speaking backgrounds: Arabic, Cantonese, Mandarin, Greek, Hindi, Italian, Korean, and Vietnamese.

B. The conduct of agencies in acquiring:

- i. land for the WestConnex Project,
- ii. land for metropolitan rail projects,
- iii. land for any project related to the Western Sydney Airport,
- iv. land for the Parramatta Light Rail Projects (Stages One and Two),
- v. land zoned as commercial land acquired between 2015 and 2020,
- vi. land for the North Wilton estate acquired by Landcom,
- vii. any other specific land acquisitions that may give rise to community concerns about current government process

Transport for NSW understands property acquisition is a sensitive issue and works closely with those impacted to ensure property owners receive fair compensation in accordance with the Act. For residential acquisitions, Transport for NSW assigns a Personal Manager to assist and support affected owners through the process.

On 1 December 2019, the Roads and Maritime Services (RMS) was abolished as a statutory authority. Subsequently, the legacy RMS and Transport for NSW property functions were integrated into a single team. This has necessitated a review of all property policies and procedures, with work underway to ensure consistency. Transport is also putting in place a more robust governance and due diligence framework. Additionally, new training materials are being developed to ensure that staff have a clear understanding of relevant delegations, systems policies and practices.

The NSW Audit Office has recently reviewed Transport for NSW's acquisition of 4-6 Grand Avenue Camellia in a report released on 18 May 2021. The NSW Audit Office identified significant deficiencies with the acquisition in 2016. Transport for NSW has accepted all of the findings and is committed to making the necessary changes to remedy the deficiencies and ensure its property acquisitions program meets the community's expectations regarding integrity, rigour and value for money.

Legislative Framework

Transport for NSW and Sydney Metro have legislative powers to acquire land for public purposes, as prescribed within:

- *Transport Administration Act 1988 & Transport Administration Amendment (Sydney Metro) Act 2018.*
- *Roads Act 1993.*

The Act sets out the requirements for the acquisition process, including entitlement to compensation.

The NSW Government's Centre for Property Acquisition (CPA) Property Acquisition Standards are the five guiding principles that must be observed by agencies that acquire property under the Act. These standards state that:

- Property owners will be treated fairly and with empathy and respect.
- Property owners will be provided with clear information about their rights.
- Property owners will be supported throughout the acquisition process with assistance tailored to meet individual circumstances.
- The acquisition process will be consistent across projects and acquiring authorities.
- The Government will monitor and report publicly on the effectiveness of the land acquisition process.

All agencies that acquire land under the Act are required to comply with the Standards and minimum requirements.

All Transport for NSW and Sydney Metro property acquisition team members are required to complete the mandatory CPA Core Practitioners Training and continue to participate and contribute to the ongoing development and implementation of additional CPA training courses. These courses ensure that all persons involved in communication with landowners regarding land acquisitions have appropriate training in empathy and consideration of the support required for landowners during the acquisition and relocation process.

The Property Acquisition Capability Framework developed by the CPA gives full effect to the recommendations in the Russell and Pratt Reviews by identifying the occupation-specific skills and knowledge to recruit, develop and retain staff. The framework applies to key frontline roles in property acquisition, including: Personal Managers, Community Place Managers, Acquisition Managers and

other acquisition-related project staff involved in the acquisition process. The CPA is developing and review training programs to bridge any skills gaps.

What is the process for acquisitions?

Outlined below is the process Transport for NSW and Sydney Metro follow to align with the five guiding principles of the CPA.

Transport for NSW and Sydney Metro appoint qualified Personal Managers prior to the commencement of any residential acquisition program. Personal Managers are trained and experienced community engagement professionals who provide personal support and assist affected residents through the property acquisition process. They can also assist small business operators for commercial property acquisition processes (if required). Transport for NSW provides additional support where appropriate, which may include bespoke relocation services, translation services and counselling support.

To comply with the Act, Transport for NSW and Sydney Metro are required to make a genuine attempt to acquire the property interest by agreement (where applicable) and generally for a minimum of six months before commencing a compulsory acquisition process in parallel to continuing negotiations to reach agreement. In urgent cases this period may be shortened in accordance with the provisions of the Act.

Project Commencement Announcement

Legal and property due diligence is undertaken to ensure that all legal interests in land are appropriately identified before commencing acquisitions. Detailed planning of activities is typically done many weeks in advance of the announcement of a new project and the commencement of acquisitions, to ensure that as many property owners as possible hear this news from the acquiring authority first (i.e. directly from Transport for NSW), either through direct door knock (subject to any Covid-19 restrictions) and/or phone contact.

Property owners are provided with project specific, plain English information fact sheets and relevant project information to ensure that they understand the process and their rights in relation to the property acquisition process.

Negotiations to Reach Agreement

A primary objective of the Act is to complete land acquisition by agreement, wherever possible. The significant majority of acquisitions undertaken by Transport for NSW and Sydney Metro are completed by agreement.

Property acquisition teams at Transport for NSW and Sydney Metro engage independent and qualified valuation firms (and other independent expert advisors as appropriate) to assess the landowner's entitlement to compensation in accordance with the Act. Land owners are encouraged to obtain their own legal and valuation advice in relation to the acquisition, with reasonable costs being reimbursed by Transport for NSW as part of the compensation payment.

On completion of the independent compensation assessment, acquiring authorities will issue a formal letter of offer and enter into a process to reach agreement with land owners and their professional consultants. The process of reaching agreement typically involves the exchange of both parties' completed valuation reports, followed by a number of legal and valuation meetings between both parties, with a view to reach an agreement on compensation. (Landowners are welcome to attend such meetings in addition to their representatives.)

In instances where agreed terms of acquisition cannot be negotiated and, providing a genuine attempt to reach agreement has occurred over a minimum six-month period (since the date of the formal commencement letter, or shorter period as approved for urgent matters in accordance with the Act), the acquiring authority may, in accordance with the Act, choose to commence compulsory acquisition by way of the issue of a 90 day Proposed Acquisition Notice (PAN). This action is undertaken in parallel to continuing negotiations to seek agreement, and is necessary so as to ensure that entry to land is available when a particular project requires it.

In the event a property is compulsorily acquired, a person is entitled to remain the building for 3 months after it is compulsorily acquired if it is the person's principal place of residence or principal place of business.

Table 2: Property acquisitions from the 2017/18 financial year to the 2019/20 financial year

Agency	By Agreement	Compulsory Acquisitions	Hardship Acquisitions	Government Acquisitions	Total
RMS	490	58	20	70	638
Sydney Metro	24	12	0	1	37
TfNSW	55	16	0	38	109
Total	569	86	20	109	784

Note 1: Historical statistics separately reported RMS from TfNSW as they were regarded as separate agencies.

Note 2: Property acquisition data is available from the CPA and does not include data related to matters lodged with the Land and Environment Court (LEC).

Table 3: Applications lodged with the Land and Environment Court from the 2017/18 financial year to the 2019/20 financial year

Agency	Applications lodged with LEC	Settled prior to judgment	Acquisitions proceeded to judgment
RMS	56	63	18
Sydney Metro	11	4	1
TfNSW	30	18	1
Total	97	85	20

Note: Historical statistics separately reported RMS from TfNSW as they were regarded as separate agencies. The data presented captures LEC applications lodged prior to the 3-year CPA reporting period, hence applications lodged and settled may not correlate with CPA data. Data does not include leasehold interests and business interests.

Other acquisitions

As noted above, there are more than 60 agencies and organisations which are authorised to acquire property, and these are not confined just to transport projects. For example, Landcom acquired 873 hectares in North Wilton to deliver 5,600 new home sites over the next 25 years to support the growth of Western Sydney and the new aerotropolis. The site cost \$257.5 million, with payments to be spread over an eight-year period.

C. How government agencies identify land for acquisition and the extent to which the price of the land and the identity of landowners are taken into account when determining the route and sites for such projects.

Land acquisitions can be undertaken by a wide variety of Government and statutory bodies, as well as local councils, for a number of different reasons and uses. The required land will be identified by the acquiring authority to align with the purpose for which it is needed.

The NSW Office of Strategic Lands which sits within DPIE is able to identify, buy and hold land to enable government to protect land in future growth areas, accommodate population growth and new infrastructure and deliver future planning projects.

The NSW Government has also developed the Strategic Land and Property Framework to identify and manage Government land to ensure that it is utilised for maximum community benefit. The SLPF provides a first point of connection to determine if there is Government land available which could be repurposed to support infrastructure and service delivery, thereby potentially avoiding the acquisition of privately-owned sites.

Corridor protection is the first tangible step that governments can take to turn a strategic plan into a future piece of infrastructure on the ground. It reduces the cost of providing infrastructure in two ways:

- By ensuring land required for a corridor is not developed for other purposes, it minimises the risk that houses have to be acquired or that projects end up having to be built in expensive tunnels (commonly costing 5-10x more per kilometre)
- By enabling land to be acquired well in advance of construction of the infrastructure, thereby avoiding the higher cost that occurs as land prices rise over time.

Corridor protection was a common part of Sydney's planning and development throughout the mid-20th century. Infrastructure such as the M2 and M4 motorways were built on corridors protected between the 1950s and 1970s.

The Government's long-term land use and infrastructure plans for Sydney and NSW set out its intentions to protect corridors for future infrastructure. In July 2020, three corridors were protected through land-use zoning controls. These are the first major, long-term corridors to be protected in around 50 years. Depending on the size of the projects, the potential cost savings arising from corridor protection can be measured in the billions of dollars. In addition, corridor protection minimises the social and economic costs that occur when private properties have to be acquired.

1.2.5 How government agencies conduct direct negotiations with landowners in relation to purchasing land/properties prior to, or in parallel with, the compulsory acquisition process, and the extent to which such process is fair, unbiased and equitable

Transport for New South Wales understands property acquisition is a sensitive issue and works closely with those impacted to ensure property owners receive fair compensation in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) and that they understand the acquisition process.

Transport for NSW aims to complete all property acquisitions by agreement rather than by compulsory acquisition process. In the last financial year, Transport for NSW acquired over 90 per cent of all

privately owned properties by agreement. In these instances, the purchase price is based on the market valuation as assessed by accredited independent external valuers, in accordance with the Act.

Generally, there is a minimum six-month negotiation period, which provides land owners with time to obtain their own expert advice, including their own valuations. For residential acquisitions, Transport for NSW assigns a Personal Manager to assist and support affected owners and residents through the acquisition and relocation process.

In addition to the market value, the other payments to property owners may include reasonable legal costs, their own valuation fees, relocation expenses, eligible stamp duty costs, mortgage re-establishment costs, and other incidental costs. Residential owners are also entitled to receive an amount of up to \$81,762 for compensation when relocated. This amount is adjusted annually for inflation.

Where compensation cannot be agreed by negotiation, a Proposed Acquisition Notice (PAN) is issued and the property is acquired by compulsory process, in accordance with the Act. In these instances, compensation is determined by the Valuer General, not Transport for NSW. Additionally, if property owners are not satisfied with the determination of the Valuer General, they can lodge an objection with the NSW Land and Environment Court. The Court will then determine their compensation following necessary proceedings.

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

In 2018, the NSW Government released the Greater Sydney Region Plan *A Metropolis of Three Cities* and regional plans across NSW to provide the basis to integrate land use, transport and infrastructure planning between the three tiers of government and across State agencies. These plans were prepared concurrently with *Future Transport 2056* and *State Infrastructure Strategy 2018–2038* to align land use, transport and infrastructure outcomes for Greater Sydney.

These strategies set out the NSW Government's strategic spatial priorities for the next 20 to 40 years and brings together infrastructure investment and land-use planning for Greater Sydney and Regional NSW informing district, growth area, precinct and local plans. Integrated NSW Government land use and infrastructure decision making is supported by strong cross agency governance and collaboration informed by NSW Government Common Planning Assumptions.

The Common Planning Assumptions are agreed information assets (data sets, models and analytical tools) for use by NSW Government, and others, to prepare proposals, business plans and strategies and assist State agencies to plan and deliver for growth and change and to align 10-year capital planning service and infrastructure plans to support best practice outcomes for the NSW community in relation to transport, land use planning, education, health, public spaces and community facilities.

The NSW Government is enhancing the integration of the land use, infrastructure and transport planning systems through initiatives such as the Place Infrastructure Compact (PIC) that brings together NSW Government agencies, utility providers and local councils to plan for future growth in city shaping areas undergoing major transformation such as Greater Parramatta and the Olympic Peninsula and Western Sydney. The PIC identifies at a high level the most cost-effective sequencing for growth aligned with the provision of infrastructure over 10, 20 and 40 year periods. Underpinning the PIC is a place-based strategic business case to ensure the right infrastructure proposals are developed at the right time and put forward for capital and NSW Budget prioritisation to achieve the best place outcomes for the NSW community.

The NSW Government through the transport and planning systems undertakes the early identification and protection of land in response to future infrastructure needs. This includes identifying and

protecting major transport corridors such as the North South Rail Line, South West Rail Link Extension, and the Western Sydney Freight Line Stage 1. Another example is the Office of Strategic Lands which performs a key role in supporting government's strategic planning in the Greater Sydney Region, particularly for open space and land for public purposes.

Early land acquisition and corridor protection provides greater certainty and enhanced planning outcomes for infrastructure agencies and the community. This is through ensuring future delivery of infrastructure is not compromised because of land being 'built out' and minimising social disruption and land use conflict when infrastructure is delivered in developed areas. Different degrees of corridor protection are provided through the planning system ranging from rezoning and concurrence on development applications through to identification in strategic plans ensuring a logical ordered approach to development and infrastructure coordination and delivery.

A Metropolis of Three Cities

A *Metropolis of Three Cities* sets out how Sydney's growth is to be managed. Ten directions for the city's development are set out in the plan. Four of these are particularly relevant to corridor protection:

- A city supported by infrastructure
- A city of great places
- A well-connected city
- An efficient city

These directions are underpinned by more-specific strategies including Strategy 2.2 which proposes to sequence infrastructure provision across Greater Sydney using a place-based approach and Strategy 14.2 which calls to investigate, plan and protect future transport and infrastructure corridors.

Future Transport 2056

Future Transport 2056 is the NSW Government's overall transport strategy for NSW. The strategy addresses the transport needs of Sydney and regional NSW through a series of short, medium and long-term actions. It is focussed on delivering six outcomes to maintain and improve the lives of NSW's citizens and the prospects of its businesses. These are:

- Customer Focused
- Successful Places
- A Strong Economy
- Safety and Performance
- Accessible Services
- Sustainability

The concept of a '30-minute city' lies at the heart of the strategy. This concept provides a means of translating the six higher order outcomes into practical initiatives. At present, only 39 per cent of Sydney residents can reach one of the larger metropolitan centres by public transport within 30 minutes.¹ *Future Transport 2056* sets a target of increasing this to 70 per cent by 2056.

State Infrastructure Strategy 2018 - 2038

The *State Infrastructure Strategy*, prepared by Infrastructure NSW, provides an overarching direction for infrastructure decision-making in NSW. Along with the other documents discussed above, the strategy provides one of the foundations for infrastructure planning and development in NSW.

Two of the strategy's six key directions are particularly relevant:

- Continuously improve the integration of land use and infrastructure planning
- Plan, prioritise and deliver an infrastructure program that represents the best possible investment and use of public funds

The strategy also supports the use of corridor identification and protection where appropriate.

E. Whether government agencies are adequately protecting the public against 'land-banking' and other speculative practices undertaken by persons or interests seeking to profit from future transport projects and rezoning decisions

Corridor protection is the setting aside of land for future construction of major infrastructure, such as motorways or railway lines. It can reduce future land acquisition costs and the social and economic impacts from acquiring homes and disrupting businesses. Corridor protection should be identified upfront in strategic planning documents to provide certainty to landowners and developers, and to avoid problems with land speculation driving up future acquisition costs for the corridor.

The location and land requirements for future corridors can be uncertain. Planning mechanisms provide a tool to manage this. The controls allow for development to continue to occur, with some limitations, and delays any land acquisitions until there is certainty of land requirements and a clear government commitment. When final corridors are confirmed, the land can be rezoned and reserved for infrastructure purposes. This type of strategic planning, which identifies corridors and enables their interim usage, ensures that long-term protection continues.

Two corridors for passenger rail lines for the North South Rail Line between St Marys and Macarthur, the South West Rail Link Extension from Leppington to the Aerotropolis were protected through a 'special purposes' zoning in July 2020. In addition, Section 1 of the future Western Sydney Freight Line was protected.

In specific circumstances where questions are raised concerning particular property transactions, the NSW Independent Commission Against Corruption can be asked to investigate.

F. Whether, and what legislative or other measures should be taken by the government to capture the uplift in land/property value created as a result of such transport projects

In April 2020, the Minister for Planning and Public Spaces requested the Productivity Commissioner conduct a comprehensive review of the infrastructure contribution system. This included a review of aspects of property acquisition for infrastructure delivery, corridor reservations and the impact of rising land values.

The review found that land values can increase significantly and rapidly in response to, or through speculation about, government announcements on future urbanisation, potential transport investments and zoning changes. It noted it is not appropriate to value land based on speculation and recommended that guidance relating to terminology, methods and assumptions should be applied to ensure consistency and prevent valuations from being overly speculative.

Land Value Uplift

The sale of development rights is used as a way of opening development opportunities on government land whilst helping to defray the costs of State investment. It capitalizes on land value uplift from infrastructure investment and reflects the capitalisation of some of the benefits associated with infrastructure in the value of land within proximity. Land value uplift may be driven in part by property acquisitions based on speculation that new infrastructure will lead to the relaxation of planning controls. For transport infrastructure, the extent of uplift will depend on several factors:

- Willingness to pay for nearby land uses;
- Travel time to commuter and metro rail stations or motorway access;
- Existing user charges of infrastructure, such as fares and tolls;
- Any disamenity, such as additional pedestrian and road traffic, that the infrastructure creates;
- Speculation about the extent to which planning controls might be eased.

The aggregate impact of these factors reflects the benefit that tends to be capitalized. This uplift is effectively a transfer of wealth from the taxpayer – who has subsidized infrastructure delivery – to property owners.

The Valuer General recently published the *Review of the Impact of Rezoning Potentiality on Land Values* (February 2021), which examines the impact of rezoning potentiality over an extended period up until, and after, the rezoning occurs. The objective of the review was to develop a framework whereby land values may be determined for rating, taxing and compulsory acquisition purposes to fairly reflect the potentiality for rezoning. The review found that relevant sales evidence provided support for increases in land value prior to rezoning occurring.

The review forms the basis of the *Valuation of Land with Rezoning Potential* policy, which provides an approach to the analysis of sales in areas with rezoning potentiality to identify underlying indicative market value trends for land. How the Valuer General reflects uplift captured by transactions in the property market is further discussed in 'G'.

Transport Contributions Plan

The benefit of transport projects can be reduced when residential, commercial, and industrial rents for property close to transport nodes rise in response to a new project or upgraded service. Land value uplift is a challenge for spreading the full benefits of transport investment. It is also inequitable. The Productivity Commission also recommended that a transport contributions plan should be adopted by Transport for NSW in order to deliver transport services more efficiently and equitably.

When announced with the transport project itself, contributions will reduce the burden on the State budget by allocating a reasonable share of costs to properties benefiting from up-zoning. Charges would be signalled to the market long before changes to planning controls are implemented, which means they should not adversely affect development feasibility.

G. The conduct of agencies and government in relation to the determination of the route of the M9 (Outer Sydney Orbital)

The need to identify and protect a corridor for long-term development of an outer Sydney orbital was flagged in the *NSW Long Term Transport Master Plan*, published in December 2012. It is envisaged

that the corridor would extend around Sydney from the Illawarra, across Western Sydney to the Central Coast. Identification of the proposed corridor is occurring in three stages.

Stage 1, covering the area from South-Western Sydney to North-Western Sydney, was prioritised given the need to progress land use planning for development across the Western Parkland City and the Aerotropolis.

Stage 1 – South Western to North-Western Sydney

Technical studies were undertaken by the then Roads and Maritime Services to identify a range of technical and other considerations which would influence the selection of a preferred alignment.

A final draft corridor for Stage 1 of the Outer Sydney Orbital (OSO) corridor, from Box Hill in Sydney's North-West to the Hume Motorway, was exhibited in March 2018, along with a draft strategic environmental assessment of the corridor. The exhibited draft Strategic Environmental Assessment was prepared in accordance with guidelines produced by the Department of Planning, Industry and Environment, and encompasses assessment of the justification for the corridor, consideration of future connectivity, housing and land use issues, and the assessment of constraints such as engineering, ecology, heritage and Aboriginal culture. Following exhibition of the final draft corridor, further refinements of the proposed corridor were made to minimise the number of properties that would need to be acquired. In addition, Stage 1 was changed to start at Richmond Road in Sydney's North-West. A proposed rail loop at Dunheved was also removed from the proposed corridor.

Although the corridor has not been gazetted (rezoned), the NSW Government allocated funds to deal with any hardship created by exhibition of the corridor. Transport for NSW has purchased some properties in the Stage 1 OSO corridor with the principles of the Pratt and Russell reviews and the Land Acquisition (Just Terms Compensation) Act being adopted.

The need to confirm a corridor for Stage 1 OSO is acknowledged and supported by Western Sydney councils in their Local Strategic Planning Statements (LSPS) (prepared by local councils under the Section 3.9 of the Environmental Planning and Assessment Act). The LSPSs were signed-off by the Greater Sydney Commission and the Department of Planning, Industry and Environment in early 2020.

The relevant part of the alignment for the Stage 1 corridor is also incorporated in the plans for the Aerotropolis.

Stage 2 – South-Western Sydney to the Illawarra

Transport for NSW has publicly exhibited part of Stage 2 OSO (through Appin) in late 2020, and is currently reviewing feedback received.

H. Any other related matters.

In February 2021, the Valuer General released a report entitled *Review of the impact of rezoning potentiality on land values*.

The aim of the review was to understand the impact on land value of the potentiality for rezoning over an extended period leading to the rezoning. The objective is to develop a framework whereby land values may reflect the potentiality for rezoning for the purposes of rating, taxing and compulsory acquisition.

The review was informed by a review of recent Land & Environment Court decisions and used the Western Sydney Aerotropolis as a case study.

The review hypothesised that the impact on the land value of the rezoning process would follow four key stages:

- Stage 1 being the normal market period prior to any rezoning potentiality;
- Stage 2 being the period from when initial speculation about rezoning starts until the rezoning occurs;
- Stage 3 being the point at which the rezoning is formalised; and
- Stage 4 being the period where precinct planning and services provision occurs.

It was hypothesised that in Stage 2, transactions are distributed widely around market value and are challenging to analyse in that evidence to support the assessment of land value is not easily identifiable or generally consistent.

The review concludes that it is possible to have sufficient and consistent evidence to support trends in the assessment of land values reflecting rezoning potentiality prior to a rezoning occurring.

The review forms the basis for the Valuer General NSW policy 'Valuation of land with rezoning potential', March 2021. This policy provides direction to reflect any potentiality for rezoning where speculated, identified, acknowledged and/or published by government authorities over an extended period leading to rezoning. The policy applies to the determination of:

- land values under the *Valuation of Land Act 1916*; and
- market value for compulsory acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991*.

It provides an approach to the analysis of sales in areas with rezoning potentiality to identify underlying market value trends for land. This policy outlines the approach to take and factors to consider when valuing land identified as having rezoning potential.

These include:

- Valuers use mass valuation methods for rating and taxing and conventional valuation methods for compulsory acquisition, based on specific assumptions and considerations.
- Valuers apply market evidence and do ongoing quality reviews to support valuations.
- For rating and taxing, valuers assess the value of the land only, without including the value of structures or other improvements on that land.

The policy ensures that the Valuer General's valuations of land with rezoning potentiality are:

- consistent and fair
- transparent
- made within the provisions of the *Valuation of Land Act 1916* (Valuation of Land Act) for rating and taxing valuations
- made within the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act) for compulsory acquisition
- made within the provisions of other relevant legislation.

More information on the Valuer General Review and policy are available at www.valuergeneral.nsw.gov.au

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Attachment A

NSW Government response to the Pratt and Russell Reviews Recommendations

Table 1: NSW Government response to the Pratt Review Recommendations

Recom- mendation (Rec) No.	Recommendation	Status	Action to Date
Pratt Rec 1	Implement a new resident focused operating model. The report stated that a new whole-of-government Operational Centre of Excellence would be established in TfNSW.	Implemented	The Centre for Property Acquisition (CPA) was stood up in March 2017 as a whole-of-government Operational Centre of Excellence. The CPA Works with acquiring agencies to provide support and guidance to residents and property owners in NSW.
Pratt Rec 2	Create the role of Personal Manager, Acquisitions (PMA)	Implemented	The Personal Manager (PM) role was introduced as part of the new operating model and the Property Acquisition Standards include requirements for acquiring agencies to appoint appropriately trained PMs as the primary point of contact for residential property owners. The CPA training program and practitioner portal provide the scope and accountabilities of key functions of the role. The acquiring agencies (AAs) have implemented the PM role in quite different ways, with some being more effective than others.
Pratt Rec 3	Assign Community Place Managers for all infrastructure projects that require property acquisitions	Implemented	The Property Acquisition Standards include requirements for acquiring agencies to appoint appropriately trained Community Place Managers. The CPA training program and practitioner portal also cover the scope and accountabilities of key functions.
Pratt Rec 4	Clarify position accountabilities and apply consistent recruitment and training standards for all key roles	Implemented	The Property Acquisition Standards include requirements for appointment of key roles in the acquisition process. The CPA training program and practitioner portal both cover the scope and accountabilities of key functions.
Pratt Rec 5	Conduct a comprehensive review of all resident collateral to improve the standard and consistency of communication	Implemented	Comprehensive reviews have been undertaken. The Property Acquisition Standards include a range of communication requirements, and the CPA training program and practitioner portal provides guidance and resources in relation to communication practices.

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NSW Government response to the Pratt and Russell Reviews Recommendations

Recom-mendation (Rec) No.	Recommendation	Status	Action to Date
Pratt Rec 6	Review and enhance end to end support and services provided to residents	Implemented	<p>Introduction of the Personal Manager role has improved agencies' ability to assess and meet the support needs of people affected by acquisition. The CPA training program and practitioner portal provide guidance and resources to help staff provide an appropriate level of support.</p> <p>A forum of practitioners come together as a Community of Practice (CoP) to share information and case studies on best practice.</p>
Pratt Rec 7	Conduct in-depth and thorough pre-contact due diligence to be aware of possible and potential issues early in the process	Implemented	<p>Training programs and practitioner portal provides extensive guidance and resources to help staff conduct pre-contact due diligence activities. CoP also provides practitioners with information and case studies on processes and operations.</p>
Pratt Rec 8	<p>Provide greater transparency on planned infrastructure projects to residents and the community.</p> <p>This recommendation included:</p> <ul style="list-style-type: none"> · broadening information returned by a Local Council Zoning Certificate search; · developing a website where the public can find all relevant public planning information. 	Implemented	<p>The NSW Planning Portal is an initiative of the Department of Planning, Industry and Environment (DPIE) and has been designed to provide public access to a range of planning services and information including documents or other information in the NSW planning database established under the <i>Environmental Planning and Assessment Act 1979</i> - https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address</p>
Pratt Rec 9	Provide sufficient lead time and flexibility around negotiation for residents to be fully informed by introducing a minimum six-month negotiation period	Implemented	<p>Property Acquisition Standards and Minimum Requirements outline the expectations relating to the minimum six-month 'genuine attempt to acquire by agreement' period.</p>
Pratt Rec 10	Review hardship criteria with a view to replacing it with a more commercial strategic approach to owner-initiated acquisition.	Ongoing	<p>CPA has issued Minimum Requirements and a public Fact Sheet re Hardship available on the Property Acquisition NSW website: https://www.propertyacquisition.nsw.gov.au/hardship-fact-sheet</p>

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NSW Government response to the Pratt and Russell Reviews Recommendations

Recom- mendation (Rec) No.	Recommendation	Status	Action to Date
Pratt Rec 11	Ensure residential rental charges for former owners that are yet to receive payment where payment is held in trust are deferred and capped by extending RMS' rental policy changes across the whole of government.	Implemented	Legislative changes came into effect on 1 March 2017 to ensure an acquiring agency cannot require a former land owner (whose principal place of residence has been acquired) to pay rent for 3 months during which the former owner continues to occupy the premises following compulsory acquisition.
Pratt Rec 12	Amend legislation to ensure legal fees and other costs incurred in the acquisition process are reasonable.	Work in Progress	
Pratt Rec 13	Increase solatium to a maximum of \$50,000 and provide a standardised formulaic approach on how payments are calculated.	Implemented	In 2017 the disadvantage resulting from relocation (solatium) was increased to \$75,000 with annual CPI indexation, with an agreement to back paid until February 2014. As of 1 July 2021, the amount for 'disadvantage resulting from relocation' is \$ \$81,762.
Pratt Rec 14	Provide landholders a more cost-effective merits review of the Valuer General's determination.	No action required	The Government did not support this recommendation, noting the Land and Environment Court provides appropriate jurisdiction for owners to pursue review of compensation determinations.
Pratt Rec 15	Require the Valuer General's determination of compensation to be provided directly to interested parties and the acquiring agency.	Implemented	Legislative changes amending s41 of the Act to require the VG to provide the compensation determination and valuation report to the landowner at the same time as the acquiring agency came into effect on 1 March 2017.
Pratt Rec 16	Establish standards for data collection, monitoring and reporting. The regular collection (and publication) of data from acquiring agencies and the Valuer General is also considered in the response to Russell recommendation 1.	Ongoing	The CPA collates whole of government property acquisition data and published Data (including FY17/18; FY18/19 and 19/20) on the Property Acquisition website. Whole of Government property acquisition data was not previously publicly available.
Pratt Rec 17	All agencies to use a CRM system to capture common data to manage the property acquisition process.	Implemented	CPA has developed an Acquisition Hub CRM system, which is made available to all Govt. acquiring agencies. The CRM logs all interactions, tasks and events that can occur throughout the lifecycle of an acquisition.

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NSW Government response to the Pratt and Russell Reviews Recommendations

Recom-mendation (Rec) No.	Recommendation	Status	Action to Date
Pratt Rec 18	Establish a resident feedback mechanism throughout the acquisition process and on resettlement.	Implemented	<p>The CPA developed and introduced a resident survey (Property Acquisition Survey) in early 2019. The first tranche of responses covering 01/01/2019 to 30/06/2020.</p> <p>These insights are used to implement improvements to acquisition strategy and process, to address issues identified.</p> <p>CPA also tracks resident sentiment including correspondence from the public.</p>
Pratt Rec 19	Mandate and operationalise the recommended acquisition process across all NSW Government agencies.	Work in Progress	The recommended acquisition process has been operationalised through the introduction of Property Acquisition Standards and DFSI Circulars.
Pratt Rec 20	Establish the Property Acquisition Standards (PAS) Group to implement and monitor whole of government performance standards.	Work in Progress	<p>In 2017 a Property Acquisition Standards Group (PAS) was established in DFSI and the CPA was established in TfNSW. PAS was dissolved and its functions absorbed into DFSI's Office of the Secretary in 2018. As part of the Machinery of Government changes in 2019, the residual functions of PAS re the Just Terms Act were transferred to DPIE, with the Minister for Water, Housing and Property becoming responsible for the Just Terms Act.</p> <p>Whole of government performance standards have been implemented and a monitoring framework is currently being developed by the CPA however, the CPA was not stood-up to perform this function.</p>

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NSW Government response to the Pratt and Russell Reviews Recommendations

Table 2: NSW Government response to the Russell Review Recommendations

Recommendation (Rec) No.	Recommendation	Status	Action to Date
Russell Rec 2	Prior to the start of the negotiation period, the acquiring authority is obliged to provide a plain English explanation of the land acquisition process and the rights and responsibilities of both the landowner and the acquiring authority.	Implemented	<p>The Property Acquisition NSW website: https://www.propertyacquisition.nsw.gov.au/ provides the public with support information regarding the acquisition process. A plain English guide is available in hard print and on the website, translated in the 8 most common community languages.</p> <p>The Property Acquisition Standards (2019) include a range of communication requirements. The CPA's training and the practitioner portal provide guidance and extensive resources for property practitioners in relation to communication practices.</p>
Russell Rec 3	That the landowner and the acquiring authority, during the fixed negotiation period, conduct at least one face-to-face meeting.	Implemented	<p>Property Acquisition Standards and Minimum Requirements outline requirements relating to the minimum six month 'genuine attempt to acquire by agreement' period, including the requirement for agencies to make reasonable efforts to meet face-to-face with impacted property owners.</p> <p>Copies of the Standards and Minimum requirements are available to the public via the Property Acquisition website.</p> <p>CPA's Core Practitioner course (mandatory for practitioners) outlines requirements for engagement. However, it is noted that during COVID this requirements could not be met in all instances.</p>

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NSW Government response to the Pratt and Russell Reviews Recommendations

Russell Rec 4	That a new compulsory acquisition process be adopted, so as to afford procedural fairness in accordance with recommendation 11 of the Joint Standing Committee (JSC) Report 2013 which supported the right to:· make submissions;· attend a conference;· receive a preliminary valuation report;· make further submissions on the preliminary valuation report; and· the right to a further conference to discuss those submissions.	Implemented	
Russell Rec 5	That section 55(c) of the Just Terms Act be retained.	Implemented	Section 55(c) “Relevant matters to be considered in determining amount of compensation”, was retained.
Russell Rec 6	That further consultation be held with interested parties to ascertain whether the Land Acquisition Act provides adequate compensation in the assessment of business claims.	Implemented	Detailed guidelines have been developed for acquiring authorities to ensure a more consistent assessment of business claims.
Russell Rec 7	That section 60(2) of the Just Terms Act be amended to provide that the maximum amount of compensation in respect of solatium is \$50,000, and that such amount be indexed yearly to the CPI.	Implemented	In 2017 the disadvantage resulting from relocation (solatium) was increased to \$75,000 with annual CPI indexation, with an agreement to back paid until February 2014. As of July 2021, the amount for ‘disadvantage resulting from relocation’ is \$ \$81,762.
Russell Rec 8	That formal arrangements be set out in the Act to require acquiring agencies to pay the reasonable costs of the Valuer General for providing a compulsory compensation valuation.	Ongoing	Arrangements for the payment of the Valuer General’s reasonable costs have been formalised.
Russell Rec 9	That the Just Terms Act be amended to require both the acquiring authority and the landowner to notify the Valuer General of any issues that may affect the determination of compensation, within 7 days of the acquisition being gazetted.	Implemented	Legislative changes amending s41 of the Act to require acquiring agencies to notify the VG of any issues that may affect the determination of compensation within 7 days of gazettal came into effect on 1 March 2017.
Russell Rec 10	That the Just Terms Act be amended so that the 30-day timeframe for the issue of compensation notices by acquiring agencies be amended to 45 days.	Implemented	Legislative changes amending s42 of the Act to extend the timeframe in which the acquiring agency provides a compensation notice from 30 to 45 days came into effect on 1 March 2017.

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NSW Government response to the Pratt and Russell Reviews Recommendations

Russell Rec 11	That the Land Acquisition Act be amended to give the Valuer General authority to extend the time period for which a compensation notice is to be given to 90 days, if, in the opinion of the Valuer General, such additional time is required.	Implemented	Section 42 of the Just Term Act was amended so that the Minister may extend the period the period for a compensation notice if the Minister is satisfied that it is necessary to do so to enable a valuation to be made of any interest in the land concerned.
Russell Rec 12	The Review does not support extension of merits appeals against a compulsory acquisition valuation to acquiring authorities. The Act should remain as it is.	No action is needed	
Russell Rec 13	That the Just Terms Act be amended to remove the requirement for a land owner to establish hardship.	Ongoing	<p>The Government did not support this recommendation but did commit to three key improvements:</p> <ul style="list-style-type: none"> • introducing the right to seek merits review of a hardship decision (see Russell Rec 14) • developing guidance on hardship for owners; and • acquiring agencies should meet the reasonable costs associated with a hardship application. <p>The Government also committed to reviewing agencies' approach to acquisitions to ensure that there is sufficient flexibility in negotiation and a more strategic approach.</p> <p>2019 - CPA provided Hardship fact sheet for the public, available on Property NSW and Property Acquisition website https://www.propertyacquisition.nsw.gov.au, along with Minimum Requirements for Hardship.</p>
Russell Rec 14	The Just Terms Act should be amended to introduce a merits review of hardship decisions.	Implemented	<p>Legislative changes introducing a new merits review process for hardship came into effect on 1 March 2017. JTA: 27A Review of decisions on hardship applications by independent person.</p> <p>2019 - CPA provided Hardship fact sheet for the public, available on Property NSW and Property Acquisition website; along with Minimum Requirements for Hardship.</p>

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Russell Rec 15	The Just Terms Act be amended to require acquiring agencies to give owners a first right of refusal to repurchase land where a project does not proceed or where not all acquired land is needed.	Implemented	On 1 March 2017 s71A of the Act was introduced, to address this situation. Where an agency proposes to dispose of the land because it is no longer required for the public purpose, it must, if practicable, first offer the land to the former owner at the market value of the land at the time the offer is made, subject to certain criteria, including: if no more than 10 years has passed since the acquisition; the acquiring authority has not made substantial improvements to the land; the land is not Crown land; and the land is not proposed to be disposed of to another entity of the State for public purpose.
Russell Rec 16	The Just Terms Act be amended so that: <ul style="list-style-type: none"> · dispossessed owners reacquiring land (pursuant to a first right of refusal clause) only pay the market price paid by the acquiring agency; · if an acquiring agency resells the land the dispossessed owner should receive any uplift in value. 	No action required	The Government did not support this recommendation noting it was contrary to the well-established policy that any public land that is sold should maximise return to the taxpayer.
Russell Rec 17	The Just Terms Act be amended to provide for compensation on a reinstatement basis, in relation to a dwelling house, in terms similar to those of Section 61(2)(b) of the equivalent Commonwealth legislation.	Implemented	The Government did not support this recommendation, however agreed to amend the Just Terms Act to provide for reinstatement in limited circumstances. On 1 March 2017 s56 of the Just Terms Act was amended to require agencies to provide for compensation on a reinstatement basis in circumstances where there is a limited (or non-existent) market for a particular kind of property that the Government must acquire (e.g. land on which there is a church or a sports centre).

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Russell Rec 18	<p>That further consultation be held with TransGrid, Essential Energy and other electricity transmission authorities, together with any other interested parties:</p> <p>a) to ascertain whether a limitation should be placed upon the categories of “right, power or privilege” over the land which should be the subject of compensation for compulsory acquisition;</p> <p>b) to ascertain whether the perceived granting of easements for electricity substations without compensation requires attention.</p>	No Action required	<p>As recommendation 18(a) primarily relates to legal definitions in the Just Terms Act (JTA) responsibility for actioning the recommendation sits with Department of Planning, Industry and Environment.</p> <p>Recommendation 18(b) was not supported: the Government considers this to be a planning issue, and not relevant to the acquisition of land under the JTA.</p>
Russell Rec 19	<p>That the record of undetermined aboriginal land claims kept by Crown Lands be made available to all potential acquiring authorities, and that all such authorities be informed in writing of the practice which has developed to protect undetermined claims. Further, Crown Lands should be obliged to advise all Local Councils in writing, on a regular basis, of the existence and particulars of all undetermined Aboriginal land claims in the particular area relevant to each Local Council.</p>	Implemented	<p>In 2015 the Government formalised the practice of Crown Lands advising all local councils in writing, on a regular basis, of all undetermined Aboriginal land claims in the particular area relevant to each local council.</p>
Russell Rec 20	<p>That the review of the Just Terms Act (JTA) be conducted by a reviewer who is obliged to hold public hearings and take evidence from interested parties. Further, such reviewer should be assisted by an expert panel comprising of representatives of government authorities, user groups, industry groups, academics and dispossessed land owners, to report upon the effect of any amendments to the Act adopted as a result of this review, and of the Just Terms Compensation legislation generally.</p>	Work in Progress	<p>The Government agreed that a future review of the Act should allow for full and effective contributions from interested parties.</p>