Submission No 76

INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

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SUBMISSION TO THE TRANSPORT AND CUSTOMER SERVICE COMMITTEE
INQUIRY INTO THE ACQUISITION OF LAND FOR MAJOR TRANSPORT PROJECTS

Dear Committee Members,

My name is Pauline Lockie, and I am the independent Councillor for the Damun (Stanmore) ward of the Inner West Council. Prior to this, I was one of the founding members of the WestConnex Action Group (WAG), a community group that campaigns against the WestConnex project, and for sustainable city planning.

This document contains my formal submission to the NSW Parliamentary Inquiry into the acquisition of land for major transport projects. It is focused on my personal experience of having my home compulsorily acquired for the WestConnex project, as well as my experiences at WAG and Inner West Council of assisting others who have been through this process, or had their substratum land acquired for the project.

The process by which the compulsory acquisition of property took place for WestConnex was, in too many cases, brutal and deeply unfair. I know this from my own family's experience, as well as the many residents who spoke to me via the WestConnex Action Group or after seeing me speak publicly to share their own experiences of the process. In too many instances, the experience has left residents deeply traumatised, and unable to afford to remain in their local area.

While the legislation pertaining to compulsory acquisitions changed as my family were going through our acquisition, I remain deeply concerned as to whether this has actually improved matters for people whose properties are forcibly acquired. The question of why the RMS, now Transport for NSW, was allowed to get away with such an adversarial and unfair approach for so long remains unanswered.

There are also serious questions to be answered about the way in which compulsory acquisitions were allowed to commence for WestConnex before planning approvals were granted.

I therefore thank the Committee for agreeing to conduct this important Inquiry, and for considering my submission.

Yours sincerely,

Councillor Pauline Lockie

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SUBMISSION: ACQUISITION OF LAND FOR WESTCONNEX

1. My family's compulsory acquisition

The conduct of the agencies involved in the compulsory acquisition of my family's home for the WestConnex project was appalling.

Our experience can be summarised as follows. We were delighted to purchase our first family home at 4 Brown St in St Peters in July 2014, after searching for months across Sydney's Inner West for a suitable property.

It was during this property search that my husband and I first became aware of the WestConnex project. We were researching suburbs throughout the Inner West, and noticed that while the project's name came up consistently, there were no clear details about where it would be built, apart from the fact that it was supposed to follow Parramatta Rd.

When we began doing our due diligence on 4 Brown St, we decided to make some inquiries to see if the property could be impacted by the project, particularly as it was within the large area that had been identified as being within an F6 road reservation dating back to the 1950s. After calling Marrickville Council and the Roads and Maritime Service (RMS), my husband was referred to the WestConnex Delivery Authority (WDA), which was the public body responsible for delivering the project at the time.

When my husband spoke to the WDA in early July 2014, he identified our property by street address and lot number. He asked specifically whether it was likely to be impacted by the WestConnex project, especially given that government documents about the project stated there would be an exit built in St Peters.

My husband was told that while the road reservation meant the property could potentially be acquired for a future road project, there were "no current plans" to acquire it for WestConnex. At the time, we didn't have any reason to distrust or doubt what we were being told – we didn't see why a government agency would lie about this, or refuse to answer the question truthfully when asked so directly – so we did not request the assurance in writing. Of course, we soon discovered how misplaced that trust was.

We duly purchased the property and moved in just after settlement in early September 2014. But on the morning of the Melbourne Cup day that year – one day short of our two-month anniversary of moving in – we learned our home was one of over 80 in the area marked for forced acquisition for WestConnex.

We also learned that what had previously been described as an "exit" in St Peters was in fact a vast spaghetti interchange, with the surrounding roads to be turned into multi-lane highways. The timing of the announcement was clearly designed by the NSW government as an attempt to bury bad news, given most of the state's media would be focused on the outcome of the Cup.

I was home at the time two employees from the WDA knocked on the door to notify us. The employees were extremely young – they appeared to be in their early twenties – and could offer very little detail about how the process would proceed, or even the likelihood that our particular home would be acquired.

A government body should have a high enough level of professionalism and responsibility to ensure that only experienced, caring and knowledgeable staff are chosen to deliver news about compulsory acquisitions to residents, given the devastating and potentially far-reaching emotional, social and financial impacts such news has on its recipients. That the NSW government chose to use young, inexperienced, and unknowledgeable people to deliver it instead was the first of many instances where it failed to uphold its duty of care to residents.

The negotiation process that followed could not be described as fair, unbiased and equitable in any way. It ended up taking close to two and a half years of negotiations with the RMS before we received the compensation to which we were legally entitled. We ended up having to take the RMS to the Land and Environment Court ('the Court') in order to do so. It was at the Court mediation that we agreed a settlement of $1.85m, by which time our home had already been demolished.

This settlement was nearly $350,000 more than the first offer made to us by the RMS in May 2015, which was just over $1.5m. This enormous gap would have made it impossible for my family to remain in the local area. Yet such a gap is entirely in line with the experience of the many other residents I spoke to throughout our compulsory acquisition process, who reported receiving offers that were hundreds of thousands of dollars below what they were legally entitled to.

One aspect that was particularly disturbing to us was that the Valuer-General's determination – which is supposed to be an independent assessment – was almost identical to the last offer we'd rejected from the RMS. In fact, it was less.

By the time we had reached that stage of the acquisition process in April 2016, the RMS had increased their offer to just over $1.737m. If the Valuer-General had indeed been impartial, you would expect their assessment to come close to the $1.85m we eventually received. Instead, the determination we received from the Valuer-General was $1.732m – around $5,000 less than the RMS offer we'd rejected, and nearly $118,000 less than the amount we eventually received through the Court.

Something is clearly wrong with the Valuer-General process of assessing compulsory acquisition claims when it is biased so heavily in favour of government agencies over ordinary residents. In my opinion, this is directly related to the fact that the process of valuing compulsory acquisition claims has been outsourced to private operators, rather than handled within the public service.

In our case, the valuer for our property, David Knight of Cumberland Property Consulting Pty Ltd (ABN 42 607 685 978), had only just established his valuation business in August 2015. At the time, we could find very little information about his company and its history, no website, no address apart from a PO Box, no social media profiles on Linked In or elsewhere, and very little on Google beyond basic company registration information. That remains the case to this day.

If Mr Knight and the other valuers commissioned by the Valuer-General office are reliant on repeat business from the NSW government, I can imagine the pressure to hand down valuations that are in line with what the government agencies want, rather than what residents are legally entitled to, would be very great. It would be worthwhile for the Committee to investigate whether this process is indeed independent, or if it is another means of forcing residents to either accept less compensation than they are legally entitled to, or spending anywhere up to $150,000 taking the NSW government to the Court.

That the RMS and the Valuer-General's office appeared to have taken a deliberate and systematic approach to denying our legal entitlements was proven to us almost as soon as we began the Court process. In the months leading up to our Court mediation, the RMS had increased the last offer it made before our case went to the Valuer-General by nearly $50,000, to just over $1.737m. During the mediation, it took just a few hours for them to reach the final figure of $1.85m at which we agreed to settle.

The RMS's adversarial approach added years to our case. I still find it difficult to describe the emotional strain this put us under. I lost so much weight that people who had not seen me recently would note that I looked gaunt. My husband and I suffered bouts of insomnia for years.

We were forced to pay rent to the RMS to stay in our home after they gazetted it. Yet we couldn't buy elsewhere, because we didn't know if we'd receive enough compensation to allow us to stay in the local area.

We were evicted by the RMS in October 2016, only to see our home remain empty until it was finally demolished in January 2017. We had former neighbours send us photos of contractors helping themselves to our home's fixtures and fittings, which

we'd been forced to leave behind under threat of having our compensation reduced. And we had to pay almost $60,000 in additional legal fees to take the RMS to Court – fees that weren't included in our settlement.

Even though we were awarded costs, it took nearly eight months for the RMS to advise us that they only planned to pay just over $47,000 of the near-$60,000 we'd spent. The cost of continuing to take legal action would be more than the gap, so we had no choice but to accept the offer. But I think it's unacceptable that a process the government forced us to go into because they refused to pay just compensation was one that would still leave us out of pocket by thousands of dollars.

In a touch of bittersweet irony, we were informed on Melbourne Cup Day 2017 that the RMS had finally paid this sum for our legal costs. In total, the entire process took around 1,000 days. This is far, far too long, especially given much of the time was spent fighting for compensation we were legally entitled to receive.

2. The broader experience

Despite what my family and I endured, I know we are fortunate to have obtained the compensation we did, and to be able to stay within our local area.

As one of the main spokespeople for WAG, and someone who'd been regularly interviewed in the media about my own acquisition, I was contacted by many residents who shared their experiences of the process with me. Their stories highlighted the various ways in which ordinary people were bullied by the RMS, and forced to accept offers that were tens, if not hundreds, of thousands below what they were legally entitled to receive. Many of these residents were too frightened to go public with their experiences in case they were treated even more poorly.

On 23 August 2016, *The Sydney Morning Herald* published an opinion piece I wrote about the compulsory acquisition process as it stood at that time under the former NSW Premier Mike Baird, after a leaked letter revealed his government had deliberately hidden the results of a review due to fears it would add costs and delays to projects like WestConnex. This article can be found at https://www.smh.com.au/opinion/the-human-toll-of-mike-bairds-westconnex-20160823-gqz3uc.html.

I've reproduced this article in full on the following pages, as it remains a strong description of the process, and the manner with which the government routinely denied people of their legal entitlements when making offers of compensation:

The human toll of Mike Baird's WestConnex

Here are just a few of the statements Premier Mike Baird has made in recent weeks regarding his government's handling of compulsory acquisitions for WestConnex.

"We have to be generous and caring." "We have to do everything possible to minimise the inconvenience." "I strongly believe the process has not been anywhere near as good as it should be."

They are fine words. But now we know that every time Baird made these kinds of statements, he and his government weren't simply failing to follow them through. They were going out of their way to make sure that the compulsory acquisition process remains unfair, unjust, and unchanged.

The NSW Land Acquisition (Just Terms Compensation) Act 1991 gives you the right to "just compensation" if your property is compulsorily acquired. This includes its market value, limited compensation for non-financial disadvantage, and the losses or expenses you incur as a result of the acquisition. Because of this, the public perception of the process is that you'll be well compensated if the government comes knocking for your home or business.

But the NSW government was warned three years ago by a parliamentary committee chaired by Liberal MP Matt Kean that the system was unfair to landowners. In February 2014, it was handed another report by David Russell, SC, after it commissioned him to review the compulsory acquisition process.

Despite spending $100,000 of taxpayer money on the Russell review, the NSW government has never released its recommendations - and now we know why. A letter sent to Baird in December 2015 by his Finance Minister Dominic Perrottet says, in short, that fully implementing the reforms Russell recommended to make the system fairer would result in more disputes, more complex valuations - and more costs to projects like WestConnex.

It should come as no surprise, then, that there have been many reports of the Baird government offering people whose properties are being acquired for WestConnex - my own family included - hundreds of thousands of dollars below what we're legally entitled to receive. On top of this, it's used aggressive tactics to push people to accept these offers.

In one case reported to WestCONnex Action Group [note: this was reported to me directly], *Roads and Maritime Service (RMS) staff informed a resident that if*

he didn't accept their offer by close of business, they'd strip $70,000 from it. That's not paying "market value". That's hardball negotiation.

This is not something that's affecting one or two people. It is happening across the board. And it can only be interpreted as a systematic strategy to make people fight for their legal entitlements.

The toll this takes on people is horrific. Residents have suffered serious health issues as a result of the stress, including anxiety and depression severe enough to warrant medical treatment.

One particularly distressing example involved a former neighbour of mine, an elderly man who had received a disastrous offer for the home he'd lived in his entire life. He told me this was placing him under such strain that he went to bed each night hoping he wouldn't wake up the next morning, "because then all this would be over".

This process can go on for months before you either accept your RMS offer, or your case goes to the Valuer General - but this doesn't mean things will improve. If this happens, you will lose your home or business, even though [you] *still haven't received any compensation. The RMS will start charging you full market rent. And you'll still have to pay the mortgage on the property you no longer own.*

Baird and his government are doing this because they can. They know most people will be too frightened to speak out – and that many will settle for tens, if not hundreds, of thousands of dollars less than they should.

For people in their 30s or 40s, such a compromise will set them back years. I cannot begin to fathom how badly such a loss will affect people who've reached the end of their working lives.

In my family's case, we now have to take the government to court to have any hope of closing the six-figure gap that now exists between its offer and our claim. This would add months to a process that started in November 2014, and cost up to $140,000 in legal expenses. We've also been told the RMS is likely to evict us from our home in September, months before any demolitions in our area begin.

But for far too many people, the costs of taking legal action – financial, psychological and emotional – are just too high.

So they waive their rights. They sign on the dotted line. And the brutal system Mike Baird refuses to change goes on.

3. Compulsory acquisition of properties before planning approvals are granted

Throughout the WestConnex project, residents and businesses received compulsory acquisition notices before environmental impact statements (EISs) were released. This had the effect of residents being forced into a timeline for negotiations with the RMS (which had been charged with acquiring properties for WestConnex) for properties being taken before the project had even received planning approval.

In our case, our compulsory acquisition process began in November 2014. Yet it was not until 21 April 2016 that the relevant stage of WestConnex, the New M5 (now rebranded as the M8), received planning approval. This meant that instead of negotiations starting when the project was approved, our home was instead gazetted by the government the very next day – 22 April 2016 – meaning we lost legal ownership of our home almost immediately.

The experience reminded me of advice we were given at the beginning of our own compulsory acquisition process: that it was a deal in which the RMS couldn't lose. If they forcibly acquired our property and used it for WestConnex, they had met the stated purpose. If they did not, they had effectively grabbed prime real estate – potentially at a much lower cost than market value – that they could rent out or sell at a profit.

4. Acquisition of substratum land

During my term at Inner West Council, the issue of substratum acquisitions has also been an ongoing issue for residents.

Hundreds of residents throughout my local government area have had the land under their properties acquired for the purpose of building the WestConnex tunnels, often at very shallow depths. Under current acquisition laws, these landowners have not been entitled to compensation for the loss of the land beneath their homes.

This is problematic, particularly given the numerous reports that have emerged of residents suffering property damage that they claim has resulted from the tunnelling beneath their homes. Residents who have contacted me about their attempts to claim compensation for this property damage indicate that the process is long, difficult, and characterised by denial of responsibility by the project contractors and proponents.

5. Conclusion

The ordeal of having my home compulsorily acquired for the WestConnex project remains one of the most traumatic experiences of my life. If this inquiry finds that the NSW Government is still treating residents whose properties it is acquiring in the same way, it must act immediately to ensure this is stopped.

The NSW public, as well as those who lost their homes and businesses to WestConnex, deserve to have all the compulsory acquisitions that took place for this project fully investigated, so it can be determined if they took place legally, and if residents received the just compensation to which they were legally entitled. If the WestConnex project has failed on either or both of these counts, those residents deserve to be compensated accordingly, regardless of any releases they may have signed to date.

Compensating residents for the acquisition of substratum land for WestConnex would help alleviate the risk of financial losses for property damage if and when this arises, and ease fears that having a substratum acquisition on their property titles will decrease the value of their homes over time.

- End of submission -