

**Submission
No 85**

INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

Organisation: Inner West Council

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14 July 2021

Parliament of NSW
Attention: Chair - Ms Abigail Boyd MLC
Macquarie Street
SYDNEY NSW 2000

Dear Madam,

INQUIRY INTO ACQUISITION OF LAND FOR MAJOR TRANSPORT PROJECTS

1. Inner West Council (**Council**) is pleased to have the opportunity to make a submission on the impacts on Council's open space, community and operations of the acquisition of land for major transport projects

Executive Summary

2. Council's local government area is impacted by a number of projects associated with WestConnex, the Sydney Gateway Project, and the Western Harbour Tunnel (**major transport projects**), with many occurring simultaneously.
3. The compulsory acquisition of freehold and construction leases for major transport projects has had serious adverse impacts on the Inner West community including the removal or reduction of nine parks or reserves from community availability.
4. The compulsory acquisition process for the major transport projects has directly and indirectly impacted Council's resources.
5. The acquiring authority requires Council to enter into care, control and management agreements for residual land acquired but not used for major transport projects, generally pocket parks but including with some whole parks, with no funding offered for the day to day maintenance nor longer term asset replacement or renewal of these parks.
6. Council is excluded from the design process for the new pocket parks depriving Council the ability to have input into the usability of the new parks for the community. Council has no control over the assets being created and their future maintenance costs.
7. Areas of the Inner West are suffering the cumulative impacts of construction relating to major transport projects, rail and electricity projects.
8. There is a power imbalance in every aspect of acquisition and the care, control and management arrangements of land acquired but not used for projects with the negotiation phase, in particular, being neither fair nor transparent.

Introduction

9. Council's local government area encompasses the suburbs of Birchgrove, Balmain, Balmain East, Rozelle, Lilyfield, Croydon, Haberfield, Leichhardt, Annandale, Croydon Park, Ashfield, Summer Hill, Dulwich Hill, Lewisham, Petersham, Camperdown, Stanmore, Newtown, Enmore, St Peters, Marrickville, Sydenham, Tempe and Mascot (small area) (**Inner West**).
10. Since 2015 and ongoing, the Inner West is being impacted by the following major transport projects:
 - (a) Westconnex, Stage 1 - M4 East (Ashfield, Haberfield);
 - (b) Westconnex, Stage 2 – New M5 / M8 (St Peters, Sydenham, Newtown);

- (c) Westconnex, Stage 3 – M4-M5 Link Project including 3A – M4-M5 Link Mainline Tunnels, Stage 3B Rozelle interchange and Iron Cove (Annandale, Leichhardt, Rozelle, Lilyfield, Haberfield);
- (d) Western Harbour Tunnel and Warringah Freeway Upgrade (Birchgrove, Balmain, Balmain East, Rozelle);
- (e) Sydney Gateway Project – Road (Tempe, Mascot);
- (f) Sydney Metro South West metropolitan rail project (Sydenham, Marrickville, Dulwich Hill, St Peters);
- (g) King Street Gateway Project (St Peters, Enmore, Newtown) being an adjunct to WestConnex Stage 2; and
- (h) Rozelle Parklands (Lilyfield, Balmain, Rozelle) being an adjunct to WestConnex Stage 3B.

In addition, the Inner West is being impacted by the major project:

- (i) TransGrid's Powering Sydney's Future (Croydon Park, St Peters, Enmore, Newtown, Dulwich Hill, Sydenham, St Peters).
11. The compulsory acquisition of land in the Inner West for major transport projects has consisted of acquisition of freehold and construction leases of land vested in Council, acquisition of land under its control as a Crown land manager, acquisition of land under its care, control and management and acquisition of land leased to Council.
 12. The land compulsorily acquired to date has consisted of all or part of land in nine parks or reserves including Tempe Lands, Buruwan Park, King George Park, Reg Coady Reserve, Camdensville Park, Sydenham Green, Richard Murden Reserve, Yurulbin Reserve, Easton Reserve which is land used by the community for public recreation, two Council depots, two commercial parcels used for container storage, substratum parcels under parks or reserves (around sixty five) and two roads.
 13. The impacts of acquisition on the nine public parks or reserves have been either losing a portion of the reserve permanently or losing community access for significant periods (at times in excess of 5 years) during construction. These public reserves are used extensively by the community with one being used by 3,000 people accessing it each day.
 14. Council's *2018 Recreation Needs Study – A Healthier Inner West* identified Inner West as having limited open space with residential growth and density increasing in the future. In 2016 there was 16.8m² per person of open space which included non-Council owned land or 13.2m² of Council owned or controlled parks and sporting grounds.
 15. Given the existing shortage of open space in the Inner West, acquisition of any of this precious public open space for transport projects has a serious adverse impact on the community.
 16. Council acknowledges Rozelle Parklands will assist in alleviating the shortfall of sporting fields in the Inner West.

Conduct of Agencies in Acquiring Land for WestConnex

17. At present there are four WestConnex projects, the Western Harbour Tunnel and the Sydney Gateway Project – road, being constructed in the Inner West concurrently.
18. Several areas of Council are either involved directly with the acquisition process or indirectly dealing with the impacts of the acquisition on the use of public reserves and communications with the residents of Inner West. This has significantly impacted Council resources for more than four years and continues, placing an additional work-load on staff. Westconnex has not addressed this issue. The compulsory acquisition should allow for a disturbance claim for staff resourcing.

19. There is no uniformity in the way the acquisition process is conducted for the WestConnex Projects. Each project has a different acquisition manager and different staff managing the process. There are variations in the response times in the negotiation phase between managers placing time pressures on Council to respond. There are variations in what can be negotiated. There needs to be a single point of contact.
20. There appears to be no hand over between the acquisition team, the project team and the contractors for the WestConnex projects. This is reflected in the management of the construction leases. Matters raised during the acquisition negotiation phase and agreed in writing by TfNSW are not included in the contractor's contract leaving no recourse for Council to enforce the agreement. WestConnex will not vary its contractor's contract to require the actions which have been promised by TfNSW to Council to be carried out. This has serious adverse impacts on the community.
21. The standard construction lease that Council is required to enter into by TfNSW allows no recourse for disputes that may arise during the lease or on hand back of the acquired land. After the lease terminates, if the land handed back to Council has been adversely impacted by the construction activities or if improvements required by TfNSW's contractor have not been provided, it has been very difficult for Council to obtain TfNSW's agreement to address these issues.
22. WestConnex has compulsorily acquired around sixty-five substratum acquisitions affecting Council's parks, reserves or roads. There is no clear process on how the new land titles will issue.
23. When areas of land acquired from Council for the project are no longer needed, WestConnex will often create parks, which are generally pocket parks, out of the residual land. There is an expectation that the maintenance and management of these pocket parks will be passed onto Council through a care, control and management agreement while the ownership of the pocket parks remains with the acquiring authority or the State of NSW. In all but one instance, no financial assistance has been provided to Council for the day to day maintenance nor longer term asset replacement or renewal of these pocket parks.
24. With the exception of Rozelle Parklands (WestConnex Stage 3B), Council has limited input into the design process for the new pocket parks. The ultimate decision rests with TfNSW. Council therefore has limited capacity to have input into the usability of the new parks for the community and it has limited control over the assets being created and their future maintenance costs which will be Council's responsibility.
25. WestConnex has land at the St Peter's interchange which accommodates a large mound containing contaminated landfill, that is subject to slippage. Instead of transporting the contaminated landfill to an approved waste facility, at significant cost, it has remained in situ. WestConnex has identified this land to be open space for public recreation and for Council to assume the care, control and management. The care, control and management agreement that TfNSW will propose will most likely transfer the risk of damage and reinstatement to Council. For obvious reasons, Council does not intend agreeing to any such arrangement. The unreasonable expectation that Council would accept highly contaminated land and the potential significant liabilities and public health risks associated with that land is an example of the disrespectful manner in which Council and its community has been, at times, treated by NSW government acquiring authorities.
26. Council has been required to instigate legal proceedings in relation to two Crown reserves in the Inner West, portions of which were acquired for transport projects, in order to receive adequate compensation and to protect the community and Council from potential environmental impacts resulting from the transport projects. Councils should not need to resort to legal proceedings in order to receive adequate compensation for the loss of precious

community recreational land and protection from potential environmental harm and liabilities when land is acquired for NSW government projects.

27. The suburbs of Rozelle, Lilyfield, Balmain and St Peters are suffering from the cumulative impacts of construction, being exposed to WestConnex projects as well as rail projects and electricity cabling upgrades and other construction.
28. The major transport projects have seen the removal of trees and associated wildlife habitat. For WestConnex Stage 3B a row of palms at Buruwan Park were removed. At King George Park ecological restoration works undertaken over several years were removed.

How Government Agencies Identify Land for Acquisition

29. Council's comments are based on its experience. There are many reports that identify the lack of open space in the Inner West, yet portions of reserves have been routinely compulsorily acquired permanently or for construction compounds with nine reserves impacted to date. One reserve has been occupied since 2015 and used as a compound for two separate major NSW Government projects. This has necessitated Council cancelling contractors and putting on hold the upgrade of the reserve until the major projects are completed.
30. The acquiring authority compulsorily acquiring open space creates a permanent adverse impact on the community's access to usable open space. Because of the scarcity and importance of public open space, the default option for TfNSW should not continue to be acquiring open space community land for its projects rather than NSW government land or private land.
31. Large sites of land in the Inner West at Wattle Street Haberfield and Mallet Street Camperdown zoned IN2 are being used for the Major Transport Projects which is contrary to the objectives of the zoning which includes supporting and protecting industrial land for industrial uses and to retain existing employment uses and foster a range of new industrial uses to meet the needs of the community.
32. Residential properties in the suburbs of Haberfield and Ashfield, some heritage listed, have been acquired for the major transport projects impacting the heritage fabric of those suburbs.

How Government Agencies Conduct Direct Negotiations – Is the Process Fair, Unbiased and Equitable?

33. Under s10A of the *Land Acquisition (Just Terms Compensation) Act 1991 (Act)* the acquiring authority is required to make a genuine attempt to negotiate the acquisition for six months before the compulsory acquisition process begins.
34. During this period, the negotiation process is neither fair nor transparent. Council, rather than the acquiring authority, has been required to open the negotiation process, with an offer of compensation and justification for the amount sought by providing its valuation report. The acquiring authority does not provide its valuation reports, merely providing an amount per square metre with a cap on the amount of legal fees and valuations that can be claimed.
35. Council has been deprived of information the acquiring authority's valuer used to reach valuations, including methodologies and comparable sales. There is no established market for open space and therefore the methodologies and comparable sales used by valuers are an important component in the figure arrived at for the compensation amount. This makes it difficult for Council to ascertain whether it is being properly compensated.
36. There are generally no meetings between the acquiring authority, Council and their respective valuers in the negotiation phase.

37. Where the acquisition is a construction lease, the acquiring authority provides a memorandum of lease that is already registered with Land Registry Services. In most instances the acquiring authority will not vary the lease terms which are unfair and heavily weighted in the acquiring authority's favour.
38. There is a power imbalance during every stage of the acquisition, negotiation and post project processes.

Recommendations

Legislation

39. S56(3) of the Act requires clarification on how valuers are to approach purchasing replacement land when there is no established market for the land being acquired. This is particularly pertinent to open space land in the Inner West. The only available replacement land for open space in the Inner West in most cases will be high value residential land but acquiring authorities seek to avoid valuation based on residential replacement land.
40. The means of assessing the compensation for a claim under the hardship provisions of the Act need to be reviewed to include other heads of compensation other than market value. Currently s59 (disturbance) and s60 (relocation) of the Act are not included in the assessment of compensation. The legislation and the NSW Property circular on hardship do not align.

Major Transport Projects

41. Acquiring authorities should:
 - (a) plan the timing of the delivery of the major transport projects to reduce impacts on the community;
 - (b) coordinate the timing of the delivery of the major transport projects with other major projects within the same suburbs, such as Metro West and Sydney Gateway Project- road, to reduce the period of construction and therefore the impacts of the projects on the community;
 - (c) look for alternate sites for construction compounds rather than relying on council reserves as the default option;
 - (d) include the capacity for the landowner to claim additional staff costs resulting from an acquisition;
 - (e) be more transparent and open during the negotiation phase by providing copies of valuation reports and agreeing to meetings between the parties and their valuers; and
 - (f) have a single point of contact.

Thank you for considering Council's submission. Please contact Marcia Doheny, General Counsel, at if you require any further information.

Yours sincerely,

Peter Gainsford
General Manager