

Submission  
No 97

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

**Name:** Name suppressed  
**Date Received:** 30 September 2021

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Partially  
Confidential

# SUBMISSION IN RESPONSE TO THE INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

We are a young couple who currently reside at Kent Road, Orchard Hills.

Having just experienced firsthand the compulsory acquisition process as part of Sydney Metro's compulsory acquisition of our property, we have the following key concerns with the acquisition process:

- Confusion caused by the acquiring authority in relation to the area of land required for their project
- The acquiring authority acquiring more land than was required for the public purpose
- The acquisition process
- The Just Terms Act does not allow disposed landowners to be reinstated into the same position as prior to the acquisition

## **Purchasing our home**

We commenced negotiations to purchase our home in November 2018 and settled in April 2020. Our aspiration of living in our newly renovated home surrounded by our extended family was dashed by the proposed route of the Sydney Metro line.

On 1<sup>st</sup> June 2020, a press conference was held with Andrew Constance, Melissa McIntosh, Stuart Ayres, Gladys Berejiklian and Scott Morrison. The alignment of the Metro Western Sydney Airport Line was confirmed, including a new station at Orchard Hills. During this press release Andrew Constance stated that he had a very clear idea of which properties were to be acquired for the project.

On that same day we contacted Sydney Metro to verify if our property would be affected by the rail line and station. We were advised by a Sydney Metro representative that a sub-surface land acquisition would apply to our property and Sydney Metro contractors would tunnel approximately 20 metres beneath our property, however the surface would not be impacted. We were encouraged by the representative to continue with our renovations and property improvements as our land would not be acquired.

## **Sydney Metro's first engagement – acquiring more land than was required for the Metro project**

Then, on 11<sup>th</sup> September 2020 we received a hand delivered notice to inform us that Sydney Metro planned to acquire the freehold interest of our entire property for the Sydney Metro line, as part of the Western Sydney Airport Metro Link. This is the first time we were advised that our **entire** property (ie not just the sub-surface) would be required for the Western Sydney Airport Metro Link project.

Shortly after the acquisition notice was issued to us, a Sydney Metro representative contacted us to arrange an initial meeting to discuss the acquisition process and serve a commencement letter. We agreed to attend the meeting on the condition that Sydney Metro would bring supporting detailed plans and an expert to explain how our property was going to be affected by the project post construction. On 17<sup>th</sup> September 2020 we met with Sydney Metro's Acquisition Manager and two other Sydney Metro representatives. The Sydney Metro representatives did not have a detailed plan with them and did not provide reasonable justification for the land acquisition despite our request.

On 21<sup>st</sup> October 2020, the Environmental Impact Statement (EIS) was released to the public. After close examination of the EIS, it was apparent that the Metro line comprises a tunnel beneath our property without any impact to the surface of our property post construction. Based on the information and plans provided, a tunnel would be constructed approximately 20 to 24 metres below the surface of our property and our property would not be impacted post construction.

Therefore, based on the EIS, it was (and remains) our understanding that Sydney Metro did not need to acquire our entire property and only a relatively small portion of the surface of our property is required for construction purposes for a grout batching plant and only then during construction. Sydney Metro does not require any of the surface of our property to operate the Metro line post construction. It is still very difficult for us to understand why Sydney Metro must acquire the freehold interest in the entire parcel of our land.

It would appear that Sydney Metro are acquiring more land than necessary to construct and operate the Orchard Hills Station project.

Our solicitor formally requested that Sydney Metro consider revising their proposed acquisition to ensure that they can proceed to build and operate the project while minimising impact to us. Specifically, requesting Sydney Metro acquire a leasehold interest of the entire parcel for the construction phase and offering Sydney Metro the right to demolish all improvements. Post construction, Sydney Metro would then survey the land in which the metro line is situated and acquire the substratum in freehold with appropriate restrictions on title.

Sydney Metro advised that they would proceed with acquiring the freehold interest in our property as planned and in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (**Just Terms Act**). In our view, most of the reasons Sydney Metro used to support their position could have been managed during the construction phase under a lease proposal. We did not feel that Sydney Metro provided a direct answer to our question as to why Sydney Metro required the freehold interest in the land for the operational phase of the Project.

In an article published in the Sydney Morning Herald on 1<sup>st</sup> February 2021, it was reported that:

*The agency [Sydney Metro] said the Orchard Hills station would serve a future residential and mixed-use precinct. "As a new area, opportunities for integrated station and precinct development are being investigated – using the same place making principles as other Sydney Metro lines", it said.*

Based on the above, we believe it is apparent that the unstated reason for acquiring the freehold interest is to facilitate future development in the precinct after the completion of construction.

This highlights the issue that the present system provides no incentive for acquiring authorities to limit the area of land they acquire to that which is strictly necessary for the project.

### **Concerns with the acquisition process**

In May 2021, we received an email from Sydney Metro confirming they undertook a reassessment of their initial valuation to consider the latest town planning advice and comparable sales evidence. Sydney Metro did not change their position from their initial valuation which was prepared 6 months prior, this is contrary to not only our independent valuer and town planners advice, but CoreLogic's report to the ABC on 1<sup>st</sup> April 2021.

In an article published by the ABC on 1st April 2021, CoreLogic reported:

*"Australian house prices are rising at the fastest pace in 32 years, as the Sydney and Melbourne property markets stage a full recovery from the short-lived COVID downturn... Sydney prices had the most rapid rise, up 3.7 per cent in the month and 6.7 per cent over the first quarter of the year [2021]— the strongest quarterly growth since mid-2015."*

Sydney Metro continued to reiterate that they are committed to resolving the matter with fair and reasonable compensation for the acquisition of our property in accordance with the Just Terms Act.

In our case, the Just Terms Act does not provide a fair and just outcome. Throughout the acquisition process we have found the legislative requirements regarding the market value assessment result in unjust compensation to impacted landowners.

In our view, the Just Terms Act should be amended so that if a dispossessed landowner re-acquires part or all of their land (pursuant to a first right of refusal clause) then such re-acquisition be at the market price paid by the acquiring authority, so that any uplift in value accrues to the benefit of the dispossessed landowner. In our view, this amendment should also operate where it is the acquiring authority which resells the land to a third party, to the intent that the acquiring authority ought to account to the dispossessed landowner for any uplift in value.

Further, the Just Terms Act prevents Sydney Metro from factoring in any increase in the local market as a result of the public purpose announcement.

Many residents have resided in Orchard Hills for generations, it is a very tightly held area. Orchard Hills has always been regarded as a premium location; this can be supported when comparing transactional evidence to other neighbouring acreage suburbs over the years. This also makes valuing properties challenging during a rising housing market.

The Just Terms Act through the requirement that the public purpose be disregarded, prevents Sydney Metro from relying on comparable property sales within our own suburb, in our situation being the North Side of Orchard Hills, despite the properties sold having the same land zoning as our property (RU4 – Primary Production Small Lots). Again, given the suburb is tightly held, this further restricts the number of comparable sales that can be used within Orchard Hills as supporting evidence for our property valuation.

### **No ability to be reinstated into the same position as prior to the acquisition**

The key issue resulting from the Just Terms Act is actually very simple - we are unable to be reinstated back into our suburb of Orchard Hills in a like-for-like property. Orchard Hills landowners have been significantly disadvantaged by no fault of their own as a result of the acquisition process. We have been unjustly pushed out of the local property market due to inadequate compensation. When we received our notification of acquisition, we were immediately denied of having the financial capability to remain residing in Orchard Hills on a comparable property.

Compensation should be paid on a reinstatement basis. New South Wales is the only jurisdiction in Australia that does not offer some form of such compensation.

The Commonwealth version of the Act, the Land Acquisition Act, provides a summary of how reinstatement compensation should work as "the amount necessary to reimburse the person for the costs of acquiring a reasonably equivalent interest in land that entitles the person to occupation of a reasonably equivalent dwelling". This is a much fairer position than the current harsh operation of Section 56 (3) of the Just Terms Act.

The acquisition has imposed significant upfront costs. These costs are all the more significant given the impacts of the COVID pandemic, the economic downturn, and the fact that we are suffering major distress at this stage in our lives following the news that our newly renovated home is directly affected by the project. We requested a financial contribution from Sydney Metro towards our costs to lessen the stress, anxiety and impact the acquisition will cause. This request was declined by Sydney Metro.

We are not against infrastructure and acknowledge that this is a vital project that will only benefit future generations. However, it is very distressing that acquiring authorities can acquire substantial parcels of land without reasonable justification and without providing the landowners with fair compensation. We do not expect to benefit from this process, we simply want what we currently have. We do not think that this is an unreasonable request.

This is a major concern not only for the impacted landowners of Orchard Hills, but for all landowners of New South Wales if the Just Terms Act remains unchanged.

Sincerely,